

Memorandum of Understanding

This Memorandum of Understanding (Memorandum) is entered into and effective as of the last signature date below, by and between the California Department of Financial Protection and Innovation (Department) and Branch Messenger, Inc. (Company). (The Department and Company collectively are referred herein to as the Parties.)

Recitals

- A. Company is a Minnesota based company with the principal place of business at 8014 Olson Memorial Hwy 55, #471, Golden Valley, MN 55427 and along with other product offerings for employers, is in the business of providing money to consumers based on the consumers income that has been earned from their employment but not yet paid out by the consumers' employers during a particular pay period. Company markets this as an advance pay product or service, also referred to as Earned Wage Access (EWA). The funds Company provides to the consumer through this advance pay product is not the full amount of the consumer's wages earned but not yet paid out, but rather limited to a portion thereof.
- B. As of the date of this Memorandum, Company and consumers enter into agreements for the advance pay product and the Company enters into agreements with employers to offer advance pay products as a benefit to its employees. There is no fee or cost for a user to get an earned wage advance. Users can access the advance instantly if the funds are deposited into the Company's digital wallet and they use the Branch debit card (physically or through ApplePay or GooglePay.) Users may also choose to transfer the funds externally to a bank account with 3-day standard delivery without any fees or costs. If a user wants the funds deposited instantly to an external account, the user will be charged an expedited delivery fee of \$2.99 to \$4.99 depending on the amount of the advance. The consumer pays Company back through electronic funds transfer (EFT) directly from the consumer's bank account or user's Company bank account if they have direct deposit set up within their digital wallet, within a short period of time, usually within two weeks. For users that are employees of enterprises that have contracted with the Company, repayment is made directly from consumer's employer to Company as a payroll deduction. The consumer has the option to pay a "tip" to Company for the advance pay product although this feature is not enabled for most Company-employer agreements. Also, whether or not the user tips the Company has no impact on a user's access or eligibility for the advance pay product.
- C. On January 1, 2021, the California Consumer Financial Protection Law (CCFPL), Financial Code section 90000, et seq. will become effective. The CCFPL provides the Department with authority to regulate and investigate certain consumer financial providers. Company offers a consumer financial product or service through its advance pay product that the Department contends is defined in the CCFPL, and thus is a "covered person" as defined in Financial Code section 90005(f).

- D. Pursuant to the CCFPL, Financial Code section 90009(f)(2), the “department may require any covered persons and service providers participating in consumer financial services markets to file with the department, under oath or otherwise, in the form and within a reasonable period of time as the department may prescribe by rule or order, annual or special reports, or answers in writing to specific questions, as necessary for the department to fulfill its monitoring, assessment, and reporting responsibilities.”
- E. The Department acknowledges that Company has been and intends to continue doing business in the State of California. The Department desires to obtain regular reports concerning Company’s business activities to allow it to evaluate the benefits and risks that Company and the advance pay product pose to California consumers, whether the Company’s advance pay product is a loan, and whether the advance pay product subjects Company to the California Financing Law or any other provision of California law.
- F. Subject to Financial Code section 90009(f)(2), Company will provide true and accurate information under oath and subject itself to regular periodic onsite examinations as requested by the Department pursuant to the terms to this Memorandum.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

- 1. Beginning on April 1, 2021, Company agrees to provide the following information and data to the Department, relating to the previous calendar quarter, on a quarterly basis, in a form and manner reasonably acceptable to the Department including:
 - a. Advance pay payment volumes and summary of key contract terms and characteristics, including information describing payment amounts, number of payments, duration before consumer’s payback and consumer’s wages with employer during the consumer’s contact term.
 - b. Repayment, delinquency and default information and rates, and number of consumers making no repayments, partial repayments or requesting cancellations or deferrals.
 - c. Information regarding the ratio of money advance to paycheck and frequency of consumers’ use of the advance pay product.
 - d. Information relating to the number, frequency and amount of consumer “rollover” of advance repayment to next pay period.
 - e. If applicable, information relating to any “tips” received including the amount if tips, number of tips, ratio of tips to amount borrowed, and ratio of tips to amount advanced both on an aggregated and granular basis. The Annual Percentage Rate (APR) for the advance pay product offered, if any, as calculated pursuant to Truth In Lending Act (TILA), 15 U.S.C. §§ 1601-1667f methodology. For the avoidance of doubt, subscription fees are not considered “finance charges” for purposes of TILA and thus are not included in an APR calculation.

- f. Other fees that may be assessed to consumers but not included in an APR calculation, such as subscription fees, voluntary gratuities, and/or fees for faster delivery of advance pay.
 - g. Other aggregated and granular information, whether on a per transaction basis or otherwise, as requested by the Department that the Department seeks for its analysis.
 - h. Information about consumer complaints from California consumers received by Company including the identity of the complainants, number of complaints, the nature of the complaints and Company's resolution thereof
 - i. Information as required by section 1 shall be provided in a form to be developed by the Department.
2. Company agrees to regular periodic examination of its books and records in relation to the advance pay product by the Department during regular business hours and upon at least ten (10) days prior written notice to Company.
- a. In connection with the examination Company will use commercially reasonable efforts to produce documents and information as requested by the Department related to the Company's activities in California and which relate to the Company's advance pay product offered to consumers in California.
 - b. Company agrees to use commercially reasonable efforts to respond to questions in connection to such examination.
3. Company agrees to the following best practices- with regard to its advance pay product:
- a. If consumer "tips" are part of the advance pay model, that company shall not make the offering of its financial products, either in the amount of advance pay offered or suite of products offered, contingent on any tips the consumer chooses to make or does not make.
 - b. Comply with the TILA if applicable.
 - c. In accordance with TILA disclose the APR, if any, on the advance pay to the consumer before advancing the funds.
 - d. Limiting APR calculated pursuant to TILA methodology to 36% on the advance of funds.
 - e. Disclose any potential fees that may be assessed to consumers to the consumer before advancing the funds, regardless of whether such fees area condition of accessing the advance pay.
 - f. Disclose to the consumer before the advance pay is offered, that in the event of lack of adequate funds to repay the advance in the consumer's account at the time

with the Department of Financial Protection and Innovation at (866) 275-2677 (toll-free) or at the following URL: <https://dfpi.ca.gov/file-a-complaint/>

Company shall make this disclosure in the same font (size, weight, and style) as the largest font appearing on the virtual first page of the advance pay product agreement.

7. Company agrees to refrain from representing to its customers that it is supervised, approved, or endorsed by the Department in any way.
8. Nothing in this Memorandum shall prevent the Department from asserting at any time in the future that the advance pay product offered by Company to California consumers requires licensure or registration with the Department under any law under the Department's jurisdiction. Nothing in this Memorandum shall be interpreted as the Department's approval of Company's business model or conclusion that the model complies with state or federal law. Nothing in this Memorandum shall be interpreted to restrict the Department from asserting any provision of law including the CCFPL. Furthermore, nothing in this Memorandum shall prevent the Company from contesting the jurisdiction of the Department over the Company at a future date.
9. Nothing in the terms of the Memorandum involves or is a result of a finding by the Department that the Company has violated or is in violation of any law, including but not limited to the CCFPL, in connection with its offering of EWA products to California consumers, or as an admission by Company of any violation of California law or regulation.
10. Nothing in the terms of this Memorandum, nor the existence of this Memorandum, shall be used as evidence for or against the proposition that advance pay products are subject to the licensure under the laws in this state in any legal or administrative proceeding, whether or not the Department is a party to the proceeding. Furthermore, the terms of this Memorandum shall not be used as evidence in any legal proceeding between the Parties, except to enforce the provisions of this Memorandum.
11. This Memorandum shall terminate upon (i) 60 day notice by the Department, (ii) 60 day notice by Company, (iii) the effective date of regulations adopted by the Department governing EWA, or (iii) the effective date of legislation adopted by the California State Legislature regarding EWA products or that repeals the CCFPL.
12. This Memorandum is governed under the laws of the State of California.
13. An electronic signature, or a faxed, photocopied, or scanned copy of an original signature, shall be deemed the same as an original signature.
14. This Memorandum is a public record.

AGREED AND ACCEPTED:

MANUEL P. ALVAREZ
Commissioner of Financial
Protection and Innovation

By: _____

Mary Ann Smith
Deputy Commissioner
Enforcement Division

Date: January 22, 2021

Branch Messenger, Inc.

Smitha Mortis
General Counsel

Date: January 22, 2021