



December 20, 2021

*via Electronic Mail*

Department of Financial Protection and Innovation

Attn: Sandra Sandoval, Legal Assistant

300 S. Spring Street, Suite 15513

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regulations@dfpi.ca.gov

cc: Charles Carriere ( [REDACTED] )@dfpi.ca.gov

RE: Even Responsible Finance, Inc.'s Comments on Proposed Rulemaking under the California Consumer Financial Protection Law (PRO 01-21)

Dear Commissioner:

Even Responsible Finance, Inc. (“Even”) is grateful for the opportunity to provide comments to the California Department of Financial Protection and Innovation (“DFPI”) in response to its invitation for comments on proposed rulemaking under the California Consumer Financial Protection Law (“CCFPL”) (PRO 01-21). Even appreciates the productive dialogue between DFPI and the Earned Wage Access industry, including through the Memorandum of Understanding (“MOU”) Even and DFPI entered into earlier this year.

Even is a financial services company that provides tools to help individuals, especially those with income volatility, better match their income to their expenses. Fluctuations in income and expenses—what economists call “volatility”—is a critical issue for most U.S. households. Estimates of how many people experience significant income volatility month-to-month range from 20% to 40% of individuals.<sup>1</sup> Consumption varies, too. As with income, month-to-month swings in consumption are more pronounced for low-income households than high-income households.<sup>2</sup> These fluctuations contribute to the risk of housing instability, utility disruptions, and the risk of poverty.<sup>3</sup> Even has created a financial health platform that helps its users, which it calls “Members,” manage fluctuations from paycheck to paycheck.

Even partners with employers to offer Even’s services to their employees. Even offers Members a variety of services, including a financial management tool that helps Members create an automated and personalized financial plan, an earned wage access product that allows Members to access their earned (but not yet paid) net pay during the pay period, based on an integration with their employer’s payroll and time and attendance systems, and a savings tool, which allows Members to allocate a portion of each paycheck to savings.

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<sup>1</sup> See Aspen Institute, *Income Volatility: A Primer* 4 (May 2016), available at <https://www.aspeninstitute.org/publications/income-volatility-a-primer/>

<sup>2</sup> *Id.* at 8.

<sup>3</sup> *Id.* at 9.



Even supports the DFPI's desire to protect consumers in connection with wage-based advances, but the proposed rules impose certain requirements that are operationally challenging and impractical for providers. While Even supports a registration regime, it respectfully requests that the DFPI reconsider certain of the proposed provisions to ensure the continued provision of wage-based advance products to California consumers—products that help consumers improve their financial health and well-being. Towards that end, Even has provided comments addressing a number of specific provisions of the draft rules with respect to wage-based advances below.

### **1. Article 1, Section 10(a) – Ensure Continued Access to Wage-Based Advances During Transition to Registration System.**

As part of the initial implementation of the CCFPL, an applicant should be permitted to continue to offer wage-based advances while its application is under consideration by DFPI. The draft rules would prohibit companies from offering wage-based advances without first registering with DFPI. Even recommends that DFPI clarify its proposal to ensure that an applicant may continue to operate after an application has been submitted and before the commissioner has decided on an application. This will ensure the continued provision of wage-based advances and associated benefits to California consumers.

The new registration requirement under the CCFPL is an important step toward ensuring appropriate oversight over the Earned Wage Access industry. The establishment of the new requirement should not, however, be designed in a way that disrupts the ability of California consumers to access wage-based advances. Even is concerned with the potential for a delayed registration review process during which the provision of all wage-based advances would cease, needlessly disrupting both the Earned Wage Access industry and expectations of California consumers.

The California Debt Collector Licensing Act (“CDCLA”) provides a good model for ensuring that consumers retain continuity of services during the establishment of a new regulatory program. Pursuant to the CDCLA, a license applicant is permitted to operate while its application is under review, as long as the application has been submitted by the end of 2021.<sup>4</sup> Given DFPI's own estimate is that the review of CDCLA applications is anticipated to take place throughout 2022 and 2023,<sup>5</sup> this allowance is crucial.

A similar approach should be taken with regard to CCFPL registrants. The logic of the CDCLA—to avoid disrupting the market for debt collection—is all the more relevant for the CCFPL. Unlike, debt collection, wage-based advances empower consumers to access wages earned but not yet paid, and are not a prevalent source of consumer complaints. To ensure continued access to wage-based advances, Even recommends that DFPI modify the draft rules to allow an applicant

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<sup>4</sup> See Cal. Civ. Code 100000.5(c).

<sup>5</sup> See “Frequently Asked Questions – Debt Collector Licensing Act (DCLA)”, Q. 16, DFPI, <https://dfpi.ca.gov/debt-collection-licensee/>.



to operate pending review of its application.

## **2. Article 1, Sections 10(b) and 11(a) – Clarify CFFPL Exclusivity with Other Licensing Requirements.**

Registered wage-based advance providers should be clearly excluded from licensure under the California Financing Law (“CFL”) with regards to the provision of wage-based advances. The draft rules specify that approval of a registration would not rule out the need to obtain a license under other statutes. Similarly, though the draft rules would explicitly exempt licensed debt settlement service providers from registration, the proposal fails to extend this principle to CFL licensees. By failing to differentiate between the regulatory structures of the CCFPL and CFL and between Earned Wage Access and traditional credit products, DFPI misses an important opportunity to provide clarity to the market. DFPI should avoid creating duplicative and overlapping regulatory registration and licensing requirements. Clearly defined and demarcated regulation would help companies offering consumer financial services understand the rules of the road, and also improve DFPI’s ability to exercise effective oversight over the financial services market and protect Californians.

In entering into the MOU with DFPI, Even understood, and the MOU’s recitals memorialize, that DFPI desired to obtain regular reports from Even regarding Earned Wage Access for the purpose of evaluating “whether the Company’s advance pay product is a loan, and whether the advance pay product subjects Company to the California Financing Law.” Even believes that Earned Wage Access products are markedly different from loans and are not subject to licensure under the CFL. Even and other Earned Wage Access providers do not retain any recourse against consumers who do not repay an advance, other than to cease providing future advances. Unlike borrowers taking out a loan, consumers have no legal obligation to repay a non-recourse advance and face no adverse legal consequences for not doing so. Even will not sell the ability to collect on an outstanding balance to a collections agency or report the balance to a consumer reporting agency and has no legal or contractual claim or remedy. These types of non-recourse wage-based advance products are far removed from loans and should not be regulated as such. In turn, non-recourse wage-based advance providers should not be subject to CFL licensing and such exclusion should be explicit in DFPI’s draft rules.

Even would also note that DFPI has now received multiple reports from Even under the MOU that provide detailed information on its advance pay product, including information that would be required to be submitted from applicants and registrants under the draft rules. Even also expects that DFPI has received multiple reports from others that have entered into similar agreements with DFPI. Even hopes that by the time that DFPI finalizes its rulemaking, it will have been able to evaluate the benefits and risks of Earned Wage Access to sufficiently distinguish the need to register under the CCFPL from the requirement to obtain a license under the CFL.

## **3. Article 3, Section 21(a)(2)(5) – Simplify Detailed Ownership Information Reporting**



The requirement to identify every owner of a registrant as part of the registration process is overly onerous and serves no meaningful policy purpose. Even recognizes that DFPI seeks to understand who controls a given registrant to ensure consumer protection, but Even believes that granular ownership information is burdensome to applicants and unlikely to be helpful to DFPI. This is particularly true where, pursuant to the draft rules (and as further discussed below), any change in registration information (including ownership information) is required to be reported to DFPI.<sup>6</sup> Like many other industry participants, Even has raised capital from multiple investors and has issued equity-based compensation to employees. Requiring applicants and registrants to provide a detailed organizational chart—and especially to update the chart for each minor change in ownership—is exceedingly onerous and does not improve DFPI’s ability to oversee the industry and protect Californians.

Even recommends that DFPI revise the draft rules to require that an organizational chart need only list owners with “control” over a registrant, generally defined by the statute as owning 10% of outstanding voting securities. Insight at the 10% level is sufficient for DFPI to exercise oversight, and is, in fact, a lower threshold than that used to define control for other license types in other states. This revision would simplify the application process while ensuring appropriate DFPI oversight over applicants.

#### **4. Article 3, Section 21(d) – Streamline Unclear and Overly Detailed Updates**

Even believes that the draft rules would impose requirements to update application materials that are burdensome, imprecisely defined, and not useful to DFPI. In particular, the rules propose that an applicant submit and routinely update extraordinarily detailed information regarding the product experience, such as images documenting the process by which California consumers can request and repay wage-based advances and notifications provided during the process of requesting and repaying an advance. This level of information greatly exceeds that required of licensees under other California laws, such as the CFL, and is onerous on applicants.

Even believes that limiting the level of application detail to the terms to which consumers agree to be bound could be an effective way to ease the application process. Streamlining the application process in this way would not disrupt DFPI’s oversight into the key terms of wage-based advances, such as the terms of service and repayment authorizations. Still, Even does not oppose providing the additional images and other material proposed by DFPI.

However, the requirement to *update* these standard enrollment materials, disclosures, notifications related to repayment and other elements of a consumer’s interaction with a registrant’s website or application is overly burdensome and is likely to deter improvements in such materials. Even recommends that, at most, DFPI only require registrants provide updates to images provided annually, in conjunction with the annual report.

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<sup>6</sup> See Section 40(c).



Companies like Even routinely iterate on product design and information presentation to consumers, often in minor ways. Occasionally, Even may provide a subset of users with new interfaces designed to improve customers' user experience and help determine whether such changes should be provided to the entire user population. Given the requirements to update application information within a prescribed timeframe of making any such change, wage-based advance providers could be required to submit customer experience changes to DFPI constantly throughout the year. Not only does this pose a huge burden on providers, it also obligates DFPI to commit resources to the review and analysis of such screenshots. This level of burden is completely disproportionate to any value obtained by submitting such images to DFPI. We are also unaware of any remotely similar type of requirement imposed on any person licensed under California's financial services laws.

Further, the timeframe in which updates to application materials must be submitted to DFPI is unclearly defined in the draft rules. For example, Section 21(d) states that an amendment to an application must be made within 10 days and in accordance with Sections 40, 41, and 42, though Sections 40, 41, and 42 require that amendments be made within 30 days. Additionally, Section 40 provides for an exception to that timeline, referencing a subsection 40(d) that does not appear in the draft rules. Even recommends that DFPI clarify its proposed timeline for amendments to application information.

Put simply, DFPI should not require any amendments to be filed sooner than 30 days of the event of the change. DFPI should further clarify that amendments need only be provided as a result of a *material* change to application materials, and that changes to the customer experience need only be provided once a year, in conjunction with the annual report.

#### **5. Article 6, Section 51(e) – Provide Advance Notice of Changes to Annual Reporting.**

Even asks that DFPI be mindful of the costs for registrants to implement tracking requirements, consistent with its statutory mandate to promote innovation in consumer financial products and services.<sup>7</sup> Even notes that the reporting requirements outlined in the draft rules would require significant enhancements to many wage-based advance providers' tracking software. Even further recognizes that DFPI may, in the future, request additional information from registrants in the annual report. Implementing the tracking systems necessary to populate such reports is not only costly for registrants, but can also require extensive lead time. To that end, Even recommends that DFPI provide ample notice to registrants before adding additional reporting requirements.

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<sup>7</sup> See Cal. Civ. Code 90000(b).



We are grateful for the opportunity to provide comments on the proposed registration requirement, and we thank you in advance for your time and thoughtful consideration. To the extent you have questions or require any additional information, please do not hesitate to contact me. We look forward to continued dialogue regarding Earned Wage Access and to helping DFPI understand emerging markets for consumer financial products and services to support DFPI's statutory mandate of promoting access to nondiscriminatory and consumer-protective innovation and financial products and services.

Sincerely,



Priya P. Pai  
General Counsel  
Even Responsible Finance, Inc.