



Innovative Payments Association

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December 17, 2021

Submitted via E-Mail at: regulations@dfpi.ca.gov;
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Department of Financial Protection, Legal Division
Attn: Sandra Sandoval, Legal Assistant
300 S. Spring Street, Suite 15513
Los Angeles, CA 90013

Re: Notice of Proposed Rulemaking
[PRO 01-21]

To Whom it May Concern:

This letter is submitted to the California Department of Financial Protection and Innovation (the "DFPI") on behalf of the Innovative Payments Association ("IPA"),¹ in response to the Notice of Proposed Rulemaking issued by the DFPI on November 17, 2021 (the "Proposed Rule").² The Proposed Rule would require providers of financial products and services operating within four industries to register with the DFPI and provide certain records to the DFPI to facilitate its oversight of registrants and detect risks to California consumers. The four industries covered by the Proposed Rule include debt settlement services, student debt relief services, education financing, and wage-based advances.

The IPA appreciates the opportunity to submit comments to the DFPI for its consideration on this topic. We note that the Proposed Rule's requirements for registration, and the provision of information to the DFPI by providers operating in the "wage-based advances" industry, appear directed at the Earned Wage Advance ("EWA") industry.³ The IPA counts a number of EWA providers among our members, so we appreciate the opportunity to provide comments on the

¹ The IPA is a trade organization that serves as the leading voice of the electronic payments sector, including prepaid products, mobile wallets, and person-to-person (P2P) technology for consumers, businesses and governments at all levels. The IPA's goal is to encourage efficient use of electronic payments, cultivate financial inclusion through educating and empowering consumers, represent the industry before legislative and regulatory bodies, and provide thought leadership. The comments made in this letter do not necessarily represent the position of all members of the IPA.

² <https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/11/PRO-01-21-11-17-21-TEXT-CCFPL-Registration-Regulation-For-Publication.pdf>.

³ While they differ between themselves in structure and format, EWA services generally provide consumers with early access to earned, but unpaid wages. Under the Proposed Rule, a "wage-based advance" is defined as funds paid to workers by a provider other than an obligor that are based on wages or compensation that a worker or the worker's obligor has represented, and that a provider has reasonably determined, have been earned but have not, at the time of the advance, been paid to the worker for work performed for or on behalf of an obligor or obligors.



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Proposed Rule and look forward to working with the DFPI to ensure regulation of this industry appropriately balances consumer protection and innovation.

Background Information on EWAs

At the outset, we believe it is important to provide some background on EWA services and how they are currently regulated in the marketplace.

EWA products have emerged in the marketplace as a new option for employees to meet short-term liquidity needs that arise between paychecks without turning to more costly alternatives like traditional payday loans.

EWA products seek to address the timing mismatch between consumers' hours worked and receipt of their paychecks by facilitating advanced access to earned but as yet unpaid wages. At present, EWA providers have developed a variety of business models and solutions to try to shorten the gap described above. Generally, these programs involve an EWA provider enabling employees to request a certain amount (or share) of accrued wages and disbursing the requested amount to the employee prior to payday.

When financial stress occurs, readily accessible options are not always available to hardworking Americans. And the options that are available can be costly. For example, according to the Financial Health Network's April 2021 report on EWA, employees experiencing financial distress typically utilize one of three options: Overdraft of their bank account (avg. fee: \$35), Title/Payday Loans (fees range: \$15-100), or Pawn Loans (fee range: \$75-\$100).⁴ Alternatively, according to the same study, the average amount an EWA consumer paid per advance ranged between \$2.59-\$6.27,⁵ and several EWA providers even offer free versions of their service.⁶

Critics have incorrectly attempted to equate EWA services to payday loans. It is critically important to understand that EWA and payday loans are not remotely similar and, in fact, have nothing in common. Attempts to equate the two have no merit. In brief, **payday loans are loans**. Payday loans allow an employee to borrow against future earnings. EWA allows an employee to access wages that have already been earned for work that has already been performed, and employer-based EWA programs have been shown to be an effective substitute for payday loans and overdraft fees, freeing many low-income consumers from a cycle of debt. The appropriate legal analysis regarding the regulatory classification of the service hinges on whether or not the

⁴ Financial Health Network, *Earned Wage Access and Direct-to-Consumer Advance Usage Trends*, April 2021, available at:

https://s3.amazonaws.com/cfsi-innovation-files-2018/wp-content/uploads/2021/04/26190749/EWA_D2C_Advance-sage_Trends_FINAL.pdf.

⁵ *Id.*

⁶ *Id.*



pay is earned. If funds provided represent take-home pay, much like accessing equity in an insurance policy, the transaction would not be classified as credit. Wages are earned when work is performed, not when an employee actually gets paid. Similarly, in situations where an employee quits or is fired mid-pay cycle, that individual is entitled to his/her earned pay. This is undisputed and, in fact, some states mandate that in these situations the employee must be paid his or her net wage balance immediately.⁷

Given the increasingly important role EWA products serve in addressing financial stress of consumers, we urge the DFPI to ensure that any final rule continues to allow for innovation and growth in this emerging industry. On this point, we note that DFPI has previously committed to an oversight approach that encourages, rather than hinders, innovation. We note that DFPI has utilized a data-driven and collaborative model with respect to EWA services. An example of this occurred earlier this year when DFPI entered into memorandums of understanding ("MOUs") with various EWA providers.⁸ The IPA supports this approach and encourages the DFPI to continue utilizing it throughout its rulemaking process.

The Final Rule Should Detail how the DFPI Intends to Use, and Protect, Information Submitted by Registered Providers

The IPA believes it would be beneficial to the public and the covered entities for the DFPI to provide additional detail as to the reasoning behind DFPI's decision to apply to the Proposed Rule to EWA providers. In particular, we note that the Proposed Rule would expand the scope of the MOUs referenced above beyond the initial EWA providers. Our members request clarity as to whether this expansion stems from specific market activity or other quantifiable metrics that have not been made public at the time DFPI released the proposal.

In addition, our members note that because EWA services are new consumer products, which encompass a variety of business models they do not necessarily fit cleanly into legacy frameworks for registration and licensing of business groups. The proposal also asks for detailed ownership information of private companies, appears to request registration for a broad and unspecified set of employees, and imposes substantial ongoing obligations with respect to marketing materials and even application design.

An additional aspect of the Proposed Rule that we believe requires additional clarity is how the DFPI intends to use and protect information submitted by registrants as part of an initial registration and the anticipated ongoing reporting obligations. In particular, we urge the DFPI to clarify how it will use such information and under what circumstances, if any, it will share such

⁷ <https://www.jdsupra.com/legalnews/how-do-you-have-earned-wage-access-1909144/>.

⁸ *The DFPI Signs MOUs Believed to be Among the Nation's First with Earned Wage Access Companies*, available at <https://dfpi.ca.gov/2021/01/27/the-dfpi-signs-mous-believed-to-be-the-among-the-nations-first-with-earned-wage-access-companies/>.



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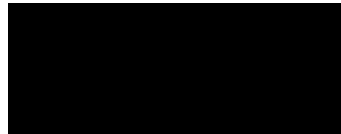
information with other regulators, including other state and federal regulators. The IPA notes that reports under the MOUs are currently non-public, and our members are concerned that if proprietary information is released publicly, it could significantly alter what is currently a highly competitive marketplace.

Finally, we request further clarification on how the DFPI plans to maintain and safeguard information submitted by a registrant. Government agencies are increasingly the targets of cyber-attacks and resultant data breaches. Our members note that federal agencies have reported thousands of information security incidents to the Department of Homeland Security,⁹ where hackers were able to gain access to sensitive and private information obtained by government agencies. Given the increasing prevalence of these attacks, our members request clarification from the DFPI on how it intends to maintain and secure data submitted by registrants.

Conclusion

The IPA appreciates the opportunity to submit these comments to the DFPI on the Proposed Rule. If you have any questions on any of the comments contained in this letter, please do not hesitate to contact me at: btate@ipa.org.

Sincerely,



Brian Tate
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DOCS/2738330.1

⁹ GAO, Agencies Need to Improve Implementation of Federal Approach to Securing Systems and Protecting against Intrusions, December 2018, available at <https://www.gao.gov/assets/700/696105.pdf>.