



December 20, 2021

Submitted via E-Mail to regulations@dfpi.ca.gov

Department of Financial Protection, Legal Division
Attn: Sandra Sandoval, Legal Assistant
300 S. Spring Street, Suite 15513
Los Angeles, CA 90013

Re: Proposed Rulemaking (PRO-01-21)

To Whom It May Concern:

This comment letter is submitted by Instant Financial USA Inc. (“Instant”) in response to the invitation for comments on proposed rulemaking PRO-01-21 (“Proposed Rule”) under the California Consumer Financial Protection Law (“CCFPL”) published by the Department of Financial Protection and Innovation (“DFPI”) on November 17, 2021. The Proposed Rule would create registration and reporting obligations for certain financial service providers, including wage-based advances which are also known in the industry as earned wage access (“EWA”).

Instant is a financial services company based in Atlanta that provides EWA and other disbursement services to a number of employers and their workers. Instant offers a service that allows workers to access wages they have already earned, but which have not yet been paid to them. Using this service, workers may access their earned but unpaid wages without incurring a fee.

In general, EWA products are enormously popular with workers because they allow individuals to access their earned wages without having to wait until the next scheduled pay date. For individuals who live paycheck to paycheck and don’t have access to short-term credit, EWA products can be a lifesaver. Employers also like EWA because it makes their employees happy, reduces turnover and makes recruiting easier.

Instant appreciates the opportunity to submit the following comments to DFPI regarding the Proposed Rule.

1. DFPI should modify the Proposed Rule to clarify the requirements being placed on entities that are also registered as finance lenders.

Even though Instant does not believe its EWA services constitute an extension of credit, we obtained a California Finance Lender license to be completely transparent about our EWA activities in the state. We also took this action out of an abundance of caution because of the uncertainty in the application of California law to EWA products. As is acknowledged in footnote 1 to the Invitation for Comments, an entity

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that is licensed as a finance lender is exempt from the CCFPL when acting under authority of that license. See, Cal. Fin. Code §90002(b)(2).

It is unclear under California law, however, whether our provision of EWA services is performed under the authority of our lending license and thus exempt from the CCFPL or whether it is performed outside the authority of the lending license and is subject to the Proposed Rule. The lack of guidance on this fundamental question of whether the provision of wage-based advances constitutes lending makes it difficult for a provider like Instant, who obtained a lending license in an effort to be transparent in the face of ambiguity in California law, to determine whether the Proposed Rule applies to it.

As a registered finance lender, Instant already provides the state with detailed information on its EWA activities in California. If Instant is required to also register under the Proposed Rule, it would be obligated to report similar data a second time but in substantially different form. This additional, duplicative reporting requirement would place an undue and unjustified burden on Instant simply because we chose to be transparent about our activities and register as a finance lender. For these reasons, we urge DFPI to clarify under which regulatory framework – finance lending or wage-based advance – EWA providers like Instant should register.

2. DFPI should remove the retroactive reporting requirement in the Proposed Rule

Section 22(a) requires applicants to provide a report containing all of the data required under §51 but for the full calendar year preceding the data of application. This provision effectively requires the applicant to file the required annual reports for a full year before the entity applies for, let alone is granted registration, and thus before §51 would be applicable. This provision could potentially force entities to file reports for activity that took place before the effective date of the regulations. The retroactive nature of §22(a) is unprecedented and unwarranted and should be removed from the Proposed Rule.

3. DFPI should reduce the scope of information required for annual reports.

Section 51(e) of the Proposed Rule requires providers of wage-based advances to file annually a large amount of data regarding the services they have provided. The Proposed Rule does not explain the purpose for this data collection or how the information will be used. Several of the reporting requirements are unduly burdensome. For example, §51(e)(2)(B) requires registrants to report the “average length of time between when the advances were made and when they were fully repaid.” While Instant holds data on when advances are made and when they are repaid, we don’t calculate the time between these events. To generate reports calculating this information would require modifications to software systems. Section 51(e)(3) requires additional statistics on transactions which must be broken down into seven categories and provided on both a monthly and quarterly basis. Again, collecting this data will likely require significant software development and generating the reports will be a time and resource intensive burden for registrants. We urge DFPI to reduce the scope of the annual reporting requirements.

Instant appreciates the opportunity to submit these comments on the Proposed Rule. If you have any questions about these comments, please feel free to contact me at Tal.Clark@instant.co.

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Sincerely,

Tal Clark
Chief Executive Officer
Instant Financial USA Inc.

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