



December 23, 2021

Via E-Mail

Charles Carriere
Senior Counsel for the Commissioner
Department of Financial Protection and Innovation, Legal Division
300 S. Spring Street, Suite 15513
Los Angeles, CA 90013
regulations@dfpi.ca.gov
cc: [REDACTED]@dfpi.ca.gov

RE: PRO 01-21: Comment Letter to Proposed Rulemaking Under the California Consumer Financial Protection Law

Dear Mr. Carriere,

MoneyLion Inc. and its corporate affiliates (collectively, “**MoneyLion**”) welcome this opportunity to comment on the proposed regulations published by the Department of Financial Protection and Innovation (“**DFPI**”) on November 17, 2021, which would require registration for wage-based advance services and certain other consumer services under the California Consumer Financial Protection Law (“**Proposed Rules**”). MoneyLion supports the Proposed Rules, which we believe to be a constructive and thoughtful step in the continued dialogue wage-based advance service providers have had with the DFPI about the product, a dialogue that MoneyLion has actively participated in and continues to value.

At MoneyLion, we believe that wage-based advance services, also referred to as on-demand pay or earned wage access, are consumer-friendly and innovative product offerings that provide many California consumers with greater control and stability over their financial lives, and which help them avoid costly fees. Earned wage access gives consumers the flexibility to access wages or other income that they have earned but that has not yet been deposited into their bank accounts. These services give consumers the ability to smooth out their cash flows between their direct deposit cycles, allowing consumers to cover general living expenses or unexpected costs without subjecting themselves to overdraft charges, credit card fees, or the need to resort to expensive payday loans.

MoneyLion Inc.

30 West 21st Street, Ninth Floor
New York, NY 10010

MoneyLion appreciates that the DFPI takes a fair approach in recognizing multiple business models in the earned wage access industry. As the DFPI is aware, there are two predominant earned wage access business models: (1) an employer-based model that offers early access to wages in partnership with an employer as an employee benefit, and (2) a direct-to-consumer model that provides early access to income directly to consumers. MoneyLion's wage-based advance product, Instacash, is a direct-to-consumer service that allows consumers to access their earned income in advance with no interest, no mandatory fees and no credit check. The consumer may elect to receive the advance more quickly in exchange for an optional expedited transfer fee, and the consumer has the option to pay a "tip" to MoneyLion in appreciation of the service. Both the expedited transfer fee and tip are entirely optional, and choosing not to pay the transfer fee or leave a tip has no impact on a consumer's eligibility for the service or their approved advance limit. MoneyLion recognizes that both the employer-integrated and the direct-to-consumer earned wage access models are beneficial products that serve different segments of consumers. MoneyLion's direct-to-consumer model allows us to serve not only full-time salaried employees, but also gig economy workers and freelancers who may have less regular income or who receive income from multiple sources.

MoneyLion is strongly supportive of the goals of the Proposed Rules, and appreciates the DFPI's ongoing active and open dialogue with earned wage access service providers. MoneyLion strongly believes that the newly emerged earned wage access industry fosters strong competition among financial service providers and innovation for new financial products that ultimately benefit consumers. MoneyLion is strongly supportive of and would advocate for regulations that allow this competition and innovation to continue while ensuring the correct level of consumer protections for the users of this product. Therefore, MoneyLion has appreciated the DFPI's efforts in receiving information and learning from these innovative products. Even prior to drafting these Proposed Rules, MoneyLion's subsidiary, ML Plus LLC, which is the provider of the Instacash service, is among several earned wage access service providers that signed a Memorandum of Understanding with the DFPI in early 2021. We have welcomed the opportunity to share information about Instacash with the DFPI throughout 2021, and we look forward to continuing to do the same.

Nevertheless, MoneyLion believes that certain modifications and clarifications should be made to the Proposed Rules in order to ensure that the Proposed Rules achieve their stated objectives of overseeing and gathering information from earned wage access providers, and also to address certain technical issues. Therefore, MoneyLion respectfully asks the DFPI to revise the Proposed Rules in accordance with the comments and suggestions reflected in this comment letter.

I. Clarify the Expectations Around Information Provided in the Registration Process

3. Proposals that will clarify what information collected in connection with registration is and is not subject to public disclosure.

Economic Impact: 1. Explain whether and to what extent the draft rules would affect the competitive advantages or disadvantages for businesses currently doing business within the state.

All Information Provided in the Registration Process Should Remain Confidential

The Proposed Rules require extensive amounts of information to be provided both by applicants during the registration process, as well as by registrants pursuant to the annual reporting requirement. The list of information requested includes sensitive business information that could impact a registrant's competitive advantage if it were made publicly available, including specific financial information of a detail that would not be publicly disclosed even if the registrant was publicly traded. As a result, MoneyLion respectfully requests that the Proposed Rules be modified to clarify that none of the information submitted will be made available in a form that would allow identification of the particular registrant either to the general public or on an individual basis, e.g., under a Public Records Act request. Aggregated information provided in the public interest that relates generally to the wage advance industry and that cannot be separated and traced back to a particular registrant could be made publicly available.

II. The Regulations Should Not Create Duplicative Licensing and Registration Requirements

5. Proposals to clarify whether and when the registration requirements apply to Department licensees and licensees and registrants of other state agencies. For example, if a DFPI licensee originates bona fide retail installment contracts (RIC) that meet the definition of education financing, should the licensee be required to register in connection with its RIC origination practices?

In order to avoid duplicative regulations and additional burdens for both DFPI staff and regulated entities and to establish regulatory certainty, the Proposed Rules should provide that companies offering wage-advance services or other products requiring registration pursuant to the Proposed Rules and the Consumer Financial Protection Law should not be required to obtain a separate California license or registration in order to offer the same product, such as a CFL license. Similarly, companies offering products under the authority of another California license or registration should be exempt from registration requirements under the Proposed Rules. .

III. Registration Fee Assessments Should be Subject to a Flat Fee Rather Than a Pro Rata Fee

Economic Impact: 2. Explain the economic impact of the rules.

The Proposed Rules should modify the calculation of the registration fee assessment in Section 50(a) such that it should stipulate a flat fee rather than a pro rata fee based on the proportion of the registrant's gross income from subject products provided to California residents compared to the aggregate gross income from all registrants based on subject products provided to California residents. The flat fee could be subject to annual revisions by the DFPI based on inflation or the consumer price index. A pro rata fee could vary drastically each year depending on the activities in the industry, especially since it would include the revenue from *all* subject products, not just the subject product provided by that registrant. Therefore, MoneyLion respectfully suggests that the registration fee be a flat fee rather than a pro rata fee.

IV. Clarify and Modify the Scope of Certain Defined Terms

MoneyLion respectfully submits that the definition of "Obligor" in Section 1(u)(2) should be clarified so that it reads, in relevant part, as follows:

"'Obligor,' with respect to wage-based advances, does not include a ~~customer~~ **service provider** of an obligor or other third party whose obligation to make a payment to a worker is based solely on the worker's agency relationship with the obligor."

* * * * *

MoneyLion supports the DFPI's Proposed Rules, appreciates the opportunity to comment on the Proposed Rules, and wishes to thank the DFPI for their consideration of this comment letter. Please feel free to contact me by email at avanwagner@moneylion.com if you would like to discuss anything in this comment letter.

Sincerely,



Adam VanWagner
General Counsel, MoneyLion