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May 12, 2023

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

Department of Financial Protection, Legal Division
Attn: Araceli Dyson
2101 Arena Boulevard
Sacramento, California 95834

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 Notice of Proposed Rulemaking PRO-01-21 ("Proposed Rule") published by the Department of Financial Protection and Innovation ("DFPI") on March 17, 2023. The Proposed Rule would implement the California Consumer Financial Protection Law ("CCFPL") by creating registration and reporting obligations for certain financial service providers, including income-based advances ("IBAs") 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 that they have earned but which have yet to be paid to them. Instant makes this service available without a fee to employees. Even though Instant does not believe its EWA services constitute an extension of credit, we have obtained a California Finance Lender license in 2020 in order to be completely transparent about our EWA activities in the state.

Instant is a member of the Innovative Payments Association and we support the comment letter submitted by the association. We agree with IPA that employer-based EWA business models differ significantly from direct-to-consumer models and urge DFPI not to automatically categorize these two different services as one product for regulatory purposes.

We write today to express our own additional comments regarding the Proposed Rule. We urge DFPI to modify the provisions in Section 1461 regarding wage assignments to make clear that the Agency will not grant registration under the CCFPL or CFL to entities that use wage assignments in an unfair, deceptive, or abusive manner or in ways that otherwise violate state law.

Section 1461 of the Proposed Rule restates California law that an advance of funds repaid by receipt of a consumer's wages is a wage assignment the provision of which is subject to the CFL. Consequently, providers who utilize wage assignments in their business model would be required to obtain a license

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under the CFL. While we support this requirement, we do not feel it goes far enough to protect California consumers from certain unscrupulous actors.

We are aware that some providers, in an effort to skirt the CFL, choose to characterize their products as “wage factoring” when they are in fact utilizing a dangerous form of wage assignment to recover income-based advances. At least one of these providers requires participating consumers to modify their direct deposit authorization with their employer to route payments to a bank account belonging to the provider. On payday, the provider receives all of the consumer’s wages, takes what it feels it is owed, and then transfers the remainder to the consumer’s personal bank account. To participate in this program, the consumer is required to assign the entirety of their future wages to the provider, exposing the worker to undue risk. This means that even in a pay period in which the consumer does not utilize the wage advance service, the entirety of their wages is sent to the provider.

Because this provider obscures the true risks of the arrangement from consumers and requires them to hand over the entirety of their pay even when they are not using the advance service, we believe this provider is engaged in unfair, deceptive, and abusive practices prohibited by California law. Financial Code Section 90003(a). In addition, given that this provider is receiving funds from the employer and then transmitting them to the employee, it is also likely engaging in money transmission without a license. We urge DFPI to make clear in the Proposed Rule that it will not grant registration under CCFPL or CFL to entities that are engaged in unfair, deceptive, or abusive practices or otherwise act in violation of other state laws. We urge DFPI to use its full legal authority to put a stop to these illegal practices.

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.

Sincerely,

Tal Clark

Chief Executive Officer

Instant Financial USA Inc.

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