Department of Financial Protection and Innovation
Attn: Araceli Dyson
2101 Arena Boulevard
Sacramento, California 95834
regulations@dfpi.ca.gov
Peggy.Fairman@dfpi.ca.gov

Re: Comments on PRO 01-21, Notice of Proposed Rulemaking Under the California Consumer Financial Protection Law….

Dear Araceli Dyson:

The PayrollOrg (formerly American Payroll Association)[1] appreciates the California Department of Financial Protection and Innovation (DFPI) in its efforts to regulate earned wage access (EWA) services. However, PayrollOrg disagrees with the approach to sandwich these services into the definition of credit products, advancements, or loans.

Non-Credit Perspective

A loan often requires the consumer to provide collateral to borrow money. These lenders do not verify that the consumer is able to pay back the loan. If a consumer fails to pay back the borrowed amount with interest and fees, the provider can take possession of the collateral. In other loans, if the consumer is unable to pay owed money back, added interest and other fees can place the consumer in a never-ending cycle of debt.

This is not how EWA operates. There is no underwriting or credit risk. An employee does not provide collateral for use of early-paid wages. In fact, labor laws would prevent use of collateral. In the case of employer-integrated EWA, the employer provides real-time payroll data to show what an employee has earned to date, and the employee is only able to obtain wages that they have already earned, i.e., not based on future earnings. The no recourse

[1] Established in 1982, the PayrollOrg (PAYO) is a non-profit organization serving the interests of more than 20,000 payroll professionals nationwide. One of the PAYO's core missions is providing representation for payroll professionals at the federal, state, and local levels. This is done primarily through PAYO's Government Relations Task Force in which members educate government and community leaders about the payroll industry and the best practices associated with paying America's workers.

provision, that PAYO supports, means that if the EWA provider (or employer) miscalculates earned wages, the employee consumer is protected.

The DFPI assumes that EWA is a loan because employees receive money before they have a legal right to it — the employer's established pay day. Yet, employees do have a legal right to the money because labor law says that they do. We have established a pay period system to enable calculation of overtime in accordance with federal and state law, to ensure that employees regularly receive their pay and benefits, that taxes are withheld, and other programs are accommodated, such as child support and healthcare insurance. Within labor law requirements, employers establish a pay date to accommodate employee and societal needs. These pay dates vary from a one-day payroll to monthly paydays. More than 70% of the workforce are paid twice a month.

In general, because EWA programs are based on an affirmative verification of pay already earned and "owned" by employees (earned pay), amounts provided to employees are not credit. The difference is the date of receiving pay and not an advancement of pay. EWA is merely a new administrative feature enabling employees to access part of their own earnings prior to the next scheduled payday.

The DFPI's analysis uses Annual Percentage Rates applied to any administrative fees. This may be appropriate if EWA was a form of lending, but it is not. The critical reality that the DFPI should weigh is alternatives. EWA permits consumers to avoid a $35 bank returned item fee by spending $1.99, getting funds for emergency transportation easily and efficiently, or avoiding a predatory payday loan that could cost $40 to $60.

Preventing Predatory Practices

Placing regulatory restrictions on employees' use of EWA does not protect them. If an employee needs funds between paydays and cannot use EWA, the employee will find another way, including high-cost payday loans, overdraft fees for non-sufficient funds, and using the internet to find another source.

The best approach to prevent predatory practices is by requiring EWA providers to report EWA activity periodically (i.e., employee use of their services) and ensure transparency through disclosure of fees and amounts provided to employees. These proposed regulations the PAYO supports to the extent that they offer these protections.

The PayrollOrg recommends that the DFPI not take the approach of deeming all forms of EWA to be lending. DFPI should distinguish between the employer-integrated and "Direct-

to-Consumer" EWA models and clarify that employer-integrated EWA offerings are not deemed to be a form of lending.

To discuss these comments further, please contact us at Alice Jacobsohn [redacted] or ajacobsohn@americanpayroll.org.

Sincerely,

Alice P. Jacobsohn, Esq.
Director, Government Relations

For Government Relations Task Force
State and Local Topics Subcommittee
Cochairs: Pete Isberg; Carlanna Livingstone, CPP; and Bruce Phipps, CPP