



May 17, 2023

Department of Financial Protection and Innovation
Attn: Araceli Dyson
2101 Arena Boulevard
Sacramento, CA 95834

Re: Proposed Rule PRO 01-21 regarding Earned Wage Access

On behalf of the American Fintech Council and its members,¹ we thank the California Department of Financial Protection and Innovation (DFPI) for the opportunity to comment on its proposed regulation regarding earned wage access (EWA). We welcome the discussion to obtain greater clarity on this revised rule proposal (Revised Regulation).

AFC's mission is to promote an innovative, transparent, inclusive, and customer-centric financial system by supporting the responsible growth of lending, fostering innovation in financial technology (fintech), and encouraging sound public policy. AFC members are at the forefront of fostering competition in consumer finance and pioneering ways to better serve underserved consumer segments and geographies. AFC has publicly supported 36 percent rate caps at state and federal levels, which is a key component of our advocacy and of addressing responsible lending. Our members are also lowering the cost of financial transactions, allowing them to help meet demand for high-quality, affordable products. A number of our members proudly operate in the State of California.

AFC strongly believes in working with regulators and policy makers to create standards in fintech that balances innovation with consumer protection. We support regulating EWA in California and hope to be a resource to the DFPI throughout this process. Since earned wage access is a non-credit product, AFC requests additional clarity on the Revised Regulation's credit license exemption and looks forward to engaging on this issue and others related to EWA in the future. AFC represents a wide range of diverse financial services providers, including EWA providers. AFC and its members prioritize advocating for uniform standards that codify the best practices in traditional and emerging industries, including the buy-now pay later (BNPL) and EWA industries. Our pro-consumer advocacy work directly links to our members' shared commitment to fair, transparent, and responsible financial services.

¹ AFC's membership spans technology platforms, non-bank lenders, banks, payments providers, loan servicers, credit bureaus, and personal financial management companies.

We thus appreciate the balance you seek, ensuring strong consumer protections for all earned wage access products while facilitating a competitive financial marketplace where consumers have “the three A’s”: **availability** of financial products and services; **accessibility** for a diversity of consumers including those across the credit risk spectrum and that may be underserved; as well as **affordability**.

Responsible earned wage access companies and products meet the three As, and importantly, provide a needed and affordable alternative to high-cost credit and debt options in the marketplace. AFC supports California setting out standards and parameters for responsible providers and for responsible use of these products. AFC as a trade represents EWA providers that honor key product features and principles, including:

- ✓ **Access to Wages based on data, including Employer data, Payroll data, or Earned income data**
- ✓ **Non-Recourse for the Worker**
- ✓ **Free Options and Cost Transparency**

Importantly, the need for clarification that EWA is not a loan or credit product is fundamental. Unlike a credit or loan product, EWA requires no credit checks, does not incur late fees or penalties, is non-recourse, and does not impact a user’s credit score. The amount of the transaction is later deducted from the employee's paycheck or debited from an employee’s account. And, unlike a lender, EWA providers cannot and do not pursue collections of EWA payments if it is not reimbursed. Users are also not reported to credit bureaus. Regulations clarifying that EWA is not a loan helps ensure these protections are continued and the product is as affordable as possible.

Additionally, smart regulation should be data-driven and based on comprehensive, transparent data analysis. Since EWA is not a loan and not paid back in installment payments, annual percentage rates (APR) do not accurately represent the actual cost and potential savings available to EWA users compared to other more costly financial products.

Industry survey data demonstrates that EWA, for example, helped consumers avoid and replace payday loan fees, bank and credit union overdraft fees, bill late fees, and loan payment late fees.² This is why we strongly believe that allowing workers to access their wages early is an option that California consumers deserve. Any data analysis related to EWA should take into account these important savings, as well as other key features, like low fees and costs compared to traditional lending products.

In the future, we look forward to engaging in more substantive discussions on the earned wage access issue and the proposed regulations, and we thank you for your hard work on behalf of California consumers. We know we share many of the same priorities, including a commitment to a data-driven regulatory process and we are grateful for the time and effort we know your thoughtfully revised proposed regulations required.

² See Daily Pay’s response letter to the Consumer Financial Protection Bureau’s junk fees Request for Information (study of more than 1000 consumers), *available at* <https://www.regulations.gov/comment/CFPB-2022-0003-2571>.