CHAMBER OF PROGRESS

May 17, 2023

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

Re: PRO 01-21 Proposed Rulemaking Under the CCFPL and CFL: Income-based Advances

Dear Ms. Dyson,

On behalf of Chamber of Progress, a tech industry association working to ensure that all Americans benefit from technological leaps, I appreciate the chance to submit comments on Proposed Regulations under the California Consumer Financial Protection Law (CCFPL) and the California Financing Law (CFL).

Consumers' Financial Flexibility is Threatened by Loan Classification

From single parents to 9-5 workers, income-based advance services provide flexibility for workers' families and budgets. Based on customer feedback from Earnin, a fintech company that provides on-demand access to already earned income,[1] income-based advances are helping people make ends meet by providing better alternatives to payday and title loans that could cause a backslide into debt.

The proposed rulemaking threatens consumers that currently use income-based advance products by implying that all income-based advances would be considered loans subject to the California Financing Law (Article 4 §1461). Loans are associated with add-on costs like origination fees, interest charges, late payment fees and prepayment penalties.[2]

These add-on costs could exponentially increase the amount repaid by a consumer, which makes loans a costlier option compared to income-based advance services that often do not require a fee for participation. This could impact Californians who are currently benefiting from income-based advance services that are not required to follow the same guidelines as traditional lenders to obtain financing, such as credit history, collateral, or even loan purposes.

[1] Earnin App Store Customer Reviews - accessed 2/13/23
"Hey, sometimes life happens and I'm grateful to have this app" - Earnin App Store Review
"Game changer! - I personally had times where I just needed some extra cash to hold me over till my next payday and the only option was to get a rip-off payday loan" - Janice, Earnin App Store Review
[2] https://www.wellsfargo.com/goals-credit/smarter-credit/manage-your-debt/total-cost-of-borrowing/

The intention of the CCFPL is to foster innovation in a safe way for consumers, but requiring income-based advance services to comply with both CCFPL and CFL regulations are counterintuitive to establishing a competitive marketplace for emerging fintech companies in California.

Additionally, DFPI has said for years through Memorandums of Understanding (MOU) with income-based advance companies that various costs like voluntary gratuities, subscription fees and expedited transaction fees are not considered finance charges and wouldn't be included in an APR calculation.[3] However, DFPI's Earned Wage Access Data Findings from service providers compared these costs to APRs from traditional lending,[4] leading to claims that APRs calculated for income-based advances were similar to the average payday lender APR in California.[5]

Costs like voluntary gratuities are not directly related costs of an income-based advance due to their status of being discretionary payments from customers as gratitude or appreciation for services provided. And most if not all income-based advance services do not require their customers to provide a voluntary gratuity in order to use their service at any time.

Income-based Advance Services Challenge the Financial Services Status Quo

Traditionally, banks and other financial institutions have limited the timing and availability of funds for their customers, leading to stress and financial constraints for many people and their families. The introduction of income-based advance services provides a solution by allowing consumers to access a portion of their earned wages before their scheduled payday, which spurred traditional banks to offer their customers early access to their direct deposits too.

For example, JP Morgan Chase debuted a product called Secure Banking costing $4.95 each month that allows customers to receive their direct deposits days before payday.[6] This shows that banks are aware that fintech companies are providing competitive products and services that are attuned to consumers' needs and preferences.

Income-based advance services do not typically report their usage to credit bureaus and other reporting agencies, which allows consumers with limited credit history an increased access to financial services. By not relying on credit history as a determining factor, these services focus on the consumer's ability to access their earned wages when needed, without the risk of negatively impacting their credit score.

This increased access to financial services empowers consumers to meet their immediate financial needs, build financial stability, and widen their financial options in a

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3 https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/01/Admin.-Action-Activehours-Inc.-Memorandum-of-Understanding.pdf

4 https://dfpi.ca.gov/wp-content/uploads/sites/337/2023/03/2021-Earned-Wage-Access-Data-Findings-Cited-in-ISOR.pdf?emrc=08148f

5 https://dfpi.ca.gov/wp-content/uploads/sites/337/2022/07/DFPI_AnnualReport_CDDTL-2021.pdf

6 https://personal.chase.com/personal/secure-banking

way that was constrained by traditional credit-based systems. In order to remain competitive, traditional financial services have had to adapt by reevaluating their lending criteria and product offerings. This increased competition has driven innovation, which ultimately benefits consumers who have more diverse and accessible options for accessing their wages on demand.

We are concerned that DFPI's proposed rulemaking on income-based advances may hinder other innovative financial services that use similar business models from operating fully in California. These fintech companies provide financial services to non-traditional workers– including content creators, freelancers and entrepreneurs.

By imposing stringent requirements and limitations on emerging financial products, DFPI is at risk of limiting consumer access to beneficial services for millions of Californians. This rulemaking's restrictive stance contradicts DFPI's mission of promoting innovation in California, and providing an equitable marketplace for consumers to make optimal decisions for building a more financially secure future.

Sincerely,

[redacted]

Janay Eyo
Director, Financial Policy
Chamber of Progress