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VIA EMAIL
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Re: COMMENTS REGARDING PROPOSED RULEMAKING UNDER THE CALIFORNIA CONSUMER FINANCIAL PROTECTION LAW, CALIFORNIA FINANCING LAW, CALIFORNIA DEFERRED DEPOSIT TRANSACTION LAW, AND CALIFORNIA STUDENT LOAN SERVICING ACT (PRO 01-21)

1. Introduction

This letter is submitted to the California Department of Financial Protection and Innovation ("DFPI") by DailyPay, Inc. ("DailyPay") in response to DFPI's Notice of Proposed Rulemaking, PRO 01-21, dated March 17, 2023 ("Proposed Rule") in relation to the aspects of the Proposed Rule relating to income-based advances. The Proposed Rule would require providers of income-based advances to register with and report information to the DFPI pursuant to the California Consumer Financial Protection Law ("CCFPL"). Data gathered by the DFPI from CCFPL registrants should help the state legislature develop a proper framework and tools to appropriately regulate providers of income-based advances. DailyPay believes that this data is important, because California's existing statutory licensing regimes do not contemplate income-based advances and are not suited to regulate it. Legislation specifically tailored to income-based advances is necessary to equip the DFPI with such a framework and such tools. The regulatory mismatch of existing licensing regimes in California is not unique, and DailyPay is collaborating across the country with interested parties on bills and proposed regulations to regulate providers of income-based advances (including DailyPay) the right way, which is under new licensing regimes that are tailored to our novel industry. Nonetheless, DailyPay opposes aspects of the Proposed Rule which DailyPay believes are flawed, including the Proposed Rule's assertion that income-based advances are "loans" for purposes of the California Financing Law ("CFL"), the framing of CCFPL registration as merely a temporary exemption from the CFL, and the inclusion of *optional* fees within the pertinent definitions of "charges." As discussed in more detail below, the Proposed Rule's characterization of income-based advances as "loans" is ultra vires and unnecessary under the CCFPL, is bad for consumers, and is not supported by law or fact; and the Proposed Rule's characterization of optional fees as "charges" is similarly problematic.

2. Brief Description Of DailyPay And Its Positive Impact on Financial Health Of Consumers

DailyPay is the nation's leading on-demand pay provider, offering a suite of software and services to enhance workers' financial wellness. With many workers living paycheck to

paycheck and yet being paid only once or twice a month, unforeseen events between payroll dates can be devastating.

Fortunately, new innovations, like the employer-integrated on-demand pay industry, are increasingly becoming a real part of the solution. In 2021, DailyPay commissioned a study with Leslie Parish from the Aite-Novarica Group, an independent research and advisory firm specializing in consumer protection in the technology and financial services industry.[1] Aite-Novarica studied more than 1,000 DailyPay users and after their work, they estimated savings of $660 annually for those that previously frequently overdrew their bank accounts and savings of $624 to $930 annually for those that previously frequently used payday loans. According to the research, out of the respondents reporting frequent or occasional bank overdrafts, 97% reported they either stopped overdrawing their accounts or overdrew them less frequently after using DailyPay, and 75% attributed this improvement to DailyPay. For DailyPay users reporting frequent or occasional use of payday loans, the results were similar—95% stopped or reduced their reliance on payday loans, and 88% attributed this change to DailyPay. Other significant findings of the Aite-Novarica study include:

- Out of the respondents reporting trouble with bills and loan payments:
  - 88% had less trouble with bills and loan payments
  - 94% attributed this change to DailyPay
- Out of the respondents reporting asking friends and family for money:
  - 96% had stopped or reduced asking friends and family for money
  - 88% attributed this change to DailyPay
- After beginning to use DailyPay, respondents agreed or strongly agreed that:
  - 82% worried less about money
  - 60% had less debt
  - 75% were better able to plan and budget

This is encouraging data, but we know there is no silver bullet and no one innovation, industry, law, or regulation that can solve the complex liquidity problems for financially vulnerable, hard-working Californians. Together with DFPI's partnership, and the CCFPL, California has a unique opportunity like nowhere else in the country to develop and promote best practices for an innovation, like on-demand pay, that research shows actually combats predatory lenders. It is for these reasons that we seek to revise DFPI's proposed regulations, so that the state will better enshrine industry best practices which will in turn, allow on-demand pay products to continue to help people save money and become more financially well.

[1] *See* Leslie Parrish, Aite-Novarica, *DailyPay Use and Impacts: A Summary of Survey Findings* (Aug. 2021), *available at* https://www.dailypay.com/wp-content/uploads/dailypay-use-and-outcomes-aite-report.pdf.

3. The DFPI Should Not Broadly Characterize Income-Based Advances As "Loans" And Should Not Frame CCFPL Registration As Merely A Temporary Exemption From The CFL

(a) It Is Unnecessary and Ultra Vires Under The CCFPL For The DFPI To Characterize Income-Based Advances As "Loans"

The CCFPL empowers the DFPI to require registration of covered persons engaged in the business of offering and providing a consumer financial product or service. In the Proposed Rule, the DFPI asserts that is has the authority to require income-based advance providers to register under the CCFPL because their products are "credit" (as such term is uniquely and very broadly defined for purposes of the CCFPL), which is a type of consumer financial product or service. In the Proposed Rule, however, the DFPI has chosen to further assert that "income-based advances," and any other products where advances are settled from a consumer's wages, salary, commissions, or compensation for services, are subject to the CFL and its related consumer protections, even if the provider has no legal recourse, if the provider is unable to collect the amount advanced, or the consumer has the right to cancel collection of an amount advanced.[2] Framing CCFPL registration as merely a temporary exemption from the CFL is ultra vires under the CCFPL, bypassing the state legislature. Further, the CCFPL does not require, and it is not necessary for, the DFPI to assert whether an "income-based advance" is a "loan" under the CFL to accomplish the CCFPL's purposes. As discussed in more detail below, the DFPI should choose ***not*** to make this assertion for many other reasons, including that such an assertion is unnecessary and ultra vires under the CCFPL, is bad for consumers, and is legally and factually incorrect.

Indeed, in the DFPI's March 2021 proposal related to the CCFPL registration rules, the DFPI did not make any such assertion regarding income-based advances with respect to the CFL. When promulgating regulations, the DFPI must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The DFPI did not publish a record demonstrating that it considered alternative approaches, so DailyPay is unable to comment on the specific alternatives the DFPI has evaluated. But even without the ability to evaluate DFPI's analysis on this point, DailyPay urges DFPI to adopt an alternative that clearly satisfies this standard, namely to simply refrain from asserting income-based advances are "loans" – just as the DFPI in fact refrained in its March 2021 proposal. Memorandums of Understanding, such as those the DFPI has previously undertaken with providers of income-based advances, are another option DailyPay brings to the DFPI's attention. Refraining from characterizing income-based advances as "loans" is a better approach, because it will preserve the CCFPL's registration process and the DFPI's

[2] The Proposed Rule also requires providers of income-based advances who would become registrants to submit their applications through NMLS under the category "Consumer Loan Lending." DailyPay opposes use of that label, and requests that the DFPI work with NMLS to create a new category called "Income-based Advance."

corresponding oversight authority while allowing the Proposed Rule to proceed without causing the various harms or prompting the various legal vulnerabilities identified in this letter.

The CCFPL is not a licensing law and does not authorize the DFPI to impose substantive conduct restrictions (e.g., fee caps) on registrants. However, that is what the Proposed Rule does. The overall approach taken by the Proposed Rule, including through Section 1461 of the Proposed Rule, is to treat income-based advances as "loans" for purposes of the CFL and to subject providers of income-based advances to licensing under the CFL, unless a provider qualifies (e.g., by registering with the DFPI under the CCFPL and adhering to certain proposed fee caps the Proposed Rule has borrowed from the CFL) for the Proposed Rule's temporary exemption from the CFL. It also disadvantages some providers according to their business model.

Section 1461 of the Proposed Rule disadvantages some providers according to their business model. Section 1461 of the Proposed Rule does not appear to apply to all on-demand pay services. However, statements made by the DFPI suggest that Section 1461 of the Proposed Rule might, as a practical matter, apply to nearly all potential registrants. Broadly speaking, this is because the on-demand pay industry is divided between employer-integrated providers and direct-to-consumer providers. The high-level distinctions between these types of providers are summarized in the DFPI's report, 2021 Earned Wage Access Data Findings (Q1-2023). On its face, Section 1461 of the Proposed Rule would appear to apply to employer-integrated providers who interface with, and are paid by, workers' employers. However, the DFPI's guidance relating to the Proposed Rule confusingly suggests that many direct-to-consumer providers' services might not be "income-based advances" (as defined in the Proposed Rule), because providers who "reasonably determine" income that has accrued to the benefit of a consumer cannot satisfy the requirement for income to have "in fact accrued" for purposes of the definition of "income-based advance."[3] DailyPay believes this would be the typical direct-to-consumer provider, who does not verify a worker's income with the worker's employer. If a direct-to-consumer product is not an "income-based advance," then the product might not be a "subject product" under the Proposed Rule.

These statements from the DFPI are confusing, and such statements together with Section 1461 present the risk that only employer-integrated on-demand pay services are treated under Section 1461 as "loans" for purposes of the CFL. But employer-integrated providers do not offer loans: They do not require workers to repay advances but rather the workers' employers pay them instead. All of this confusion is unnecessary to implement the CCFPL, and it can easily be addressed by deleting Section 1461 from the Proposed Rule.

This ultra vires framework, including Section 1461 of the Proposed Rule, appears to be an indirect attempt to establish a new consumer finance licensing regime for income-based advances, which the DFPI lacks the direct authority to do under the CCFPL. The objective of the CCFPL is not to push consumer financial products or services into existing licensing regimes; rather, it is to arm the DFPI with information and oversight authority, so that the DFPI can be

[3] *See* DFPI, Initial Statement of Reasons (PRO 01-21) at 21 (Mar. 17, 2023).

informed and provide support to the state legislature with respect to future actions. By treating income-based advances as "loans" under the CFL, subject to a temporary four-year exemption from the CFL for certain qualifying providers, before the DFPI has even received or evaluated any information from CCFPL registrants, the Proposed Rule stretches to regulate what will happen four years in the future. DailyPay strongly supports the mission of the CCFPL and the DFPI, but this approach is contrary to the intent of nation's most important consumer protection law. As is written clearly in the law, the CCFPL contemplates the DFPI reporting to the state legislature, and the state legislature conducting public hearings to determine whether to extend, revise, or terminate the Proposed Rule at the end of the four-year period.[4] The DFPI should not today be attempting to regulate this future through the Proposed Rule. Instead, the DFPI should be gathering, learning from, and using data from CCFPL registrants during our emerging industry's four-year period to help the state legislature develop an informed approach to regulating income-based advances.

(b) Applying The CFL To Income-Based Advances And Categorically Treating Income-Based Advances As "Loans" Under The CFL Is Bad For Consumers

The Proposed Rule's structure disincentivizes providers from becoming CCFPL registrants in favor of becoming CFL licensees, which is bad for consumers and steers innovation in the wrong direction. As discussed below, the Proposed Rule will impose on a provider of income-based advances equivalent requirements and limitations whether under the CCFPL or the CFL, yet under the CFL the provider will enjoy greater certainty of repayment from consumers and can impose on consumers a variety of loan features that are worse for consumers, such as repayment requirements, mandatory fees (rather than optional fees), delinquency fees, collections, and reporting to consumer reporting agencies.

The Proposed Rule sets the wrong incentives for providers by imposing equivalent administrative burdens on CCFPL registrants and CFL licensees. For example, the CCFPL registration application process through NMLS is equivalent to the CFL licensing application process, the reporting requirements imposed on CCFPL registrants mirror those imposed on CFL licensees providing income-based advances, and the Proposed Rule imposes on certain registrants the CFL's fee caps. CCFPL registration should be tailored and relevant to the actual business practices and models of on-demand pay providers, yet the Proposed Rule makes their requirements equivalent to those of CFL licensees. The CFL licensing regime as applied to income-based advance providers adds burden and cost, without benefits, and potentially harming consumers and business.

Coupled with these administrative burdens are the substantive conduct provisions of the CFL. The Proposed Rule's framework will cause consumer harm by subjecting workers to tougher contractual obligations, higher costs, and remedial actions that are more severe, each as permitted under the CFL. For instance, CFL licensees are permitted to *require* repayment from consumers. In contrast, many providers of income-based advances have structured their products so that consumers legally have either no repayment obligation at all or only a contingent

[4] *See* Cal. Fin. Code §§ 90009.5(b) and (c).

repayment obligation. Accordingly, providers who choose to become or are forced into becoming CFL licensees will have authority to wield stronger contractual rights against workers by requiring repayment.

Additionally, applying the CFL to income-based advances will discourage providers from offering optional fee arrangements to workers. As a CFL licensee, a provider is authorized to *require* consumers to pay fees. Specifically, CFL licensees are expressly authorized to impose not only periodic interest but also a host of non-interest fees, such as administrative fees. In contrast, many providers of income-based advances have structured their products so that consumers are not obligated to pay either mandatory interest or mandatory non-interest fees. Providers not only will be expressly authorized under the CFL to charge such mandatory interest and mandatory non-interest fees, but they also will be incentivized to impose such mandatory costs to the detriment of optional costs, because the Proposed Rule will treat both types of costs equally as "charges" (as discussed below). Pushing providers into the CFL will functionally deprive workers of their choice over whether to pay a fee, such as an optional expedited delivery fee, when they choose.

Beyond encouraging providers to assert stronger contractual rights against workers and to impose more fees upon workers, forcing the CFL upon income-based advances will also authorize providers to take severe remedial actions against consumers. For example, a CFL licensee may impose delinquency fees, report to consumer reporting agencies, and cause debts to be collected. In contrast, many providers of income-based advances do not impose delinquency fees, do not report to consumer reporting agencies, and do not engage in debt collection. Indeed, where a consumer has no payment obligation in the first place, there cannot be a delinquent payment, there is no underlying obligation which a provider could report to a consumer reporting agency, and there is no overdue account to collect. Of course, these notions also reinforce that income-based advances are not "loans" (as discussed below).

Instead of using the CCFPL to incubate and monitor the groundbreaking and consumer-friendly on-demand pay industry, the Proposed Rule constrains our industry's innovative products and advocates for the very same traditional debt products that on-demand pay users seek to escape. The Proposed Rule instead marches our industry back into the crosshairs of an antiquated regulatory regime that is clearly worse for consumers. All of these bad outcomes can be avoided by simply refraining from characterizing income-based advances as "loans" for purposes of the CFL.

(c) The Characterization Of Income-Based Advances As "Loans" Is Not Supported By Law or Fact

The terms "credit" (as used in the CCFPL, which includes a unique, specialized definition of the term "credit" for purposes of the CCFPL) and "loan" (as used in the CFL) are not interchangeable. A loan is a subcategory of credit. Under California statute, a "loan" is defined as the delivery of a sum of money to another where "the latter agrees to return at a future time a sum equivalent to that which is borrowed."[5] This statutory definition of "loan" has been adopted

[5] Cal. Civ. Code § 1912.

by the DFPI for purposes of determining the CFL's applicability to a transaction.[6] California courts similarly describe a loan as money that must be returned at some future date in an "equivalent amount with or without an additional sum agreed upon for its use."[7] And a foundational case followed in California and other states stands for the proposition that an arrangement that does not require a person to "repay absolutely" a sum should not be considered a "loan."[8]

As the DFPI is aware, income-based advances are offered through a wide variety of different product structures, and many are not "loans." Yet, the Proposed Rule does not differentiate among them. The Proposed Rule's characterization of income-based advances as "loans" ignores these important product distinctions and inappropriately sweeps non-loan products into the CFL. This approach is a significant departure from long-standing legal precedent, including the DFPI's own. With such product diversity in the on-demand pay industry, it is possible that some income-based advances might be a "loan," because they include an absolute obligation for a worker to repay. Meanwhile, some might be "credit" (as defined in CCFPL) but not a "loan," because they include a contingent obligation for the consumer to repay. And some might not be either "credit" (as defined in CCFPL) or a "loan," because the consumer has no payment obligation at all—neither absolute nor contingent. Indeed, some income-based advance products are not only "non-recourse" but are also even more lenient with respect to workers, who do not even have any legal or contractual obligation to repay (or otherwise make the provider whole) in the first place. These types of arrangements are the polar opposite of a "loan," and providers and workers entering into them do not intend them to be loans. Precisely because these types of arrangements are not loans, they also lack any hallmark of a loan:

- No application, credit report pulls, underwriting, or approval of worker—the only eligibility criterion is whether an employer gives the worker access to the program.
- No risk-based pricing.
- No interest or any other charges based on the time value of money (e.g., no periodic fees, late fees, or prepayment penalties).
- No installment, balloon, or any other required payments by workers.
- No payment authorizations (e.g., check, ACH, or debit card authorization) for the worker's repayment of the income-based advance.
- No debt collection activities against workers or placing their amounts as debt with, or selling the amounts to, third parties.

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[6] DFPI (f/k/a Calif. Dep't of Business Oversight), Opinion Letter No. 7667 (Dec. 20, 2019).

[7] *Barnes v. Hartman*, 246) (quoting *Milana v. Credit Disc. Co.*, 27 Cal. 2d 335, 339-40 (1945).

[8] *In re Grand Union Co.*, 219 F. 353 (2d Cir. 1914).

- No reporting to consumer reporting agencies.

All of this is to say that disregarding product distinctions by categorically treating income-based advances as “loans” is legally inappropriate.

Categorically treating income-based advances as “loans” is also factually unsupported. The Proposed Rule appears to rely on the data the DFPI gathered over a very brief period from a very small number income-based advance providers pursuant to Memorandums of Understanding, as described in the DFPI’s report “2021 Earned Wage Access Data Findings” (Q1-2023). The data generally underlying that report spans fewer than two years, and, according to the report, the underlying data from that brief period is incomplete and fails to paint a complete picture of income-based advances. In particular, the data specifically used to attempt to translate optional fees (such as nominal, flat, optional expedited delivery fees) into an “APR” is derived, according to the DFPI’s report, from only seven companies’ reported data, which data spanned only the last two quarters of 2021. Not only is this data from an exceptionally small sample but it also fails to consider seasonality and is already stale, as two-year old data in the fast-paced and evolving on-demand pay industry may not reflect current practices.

Moreover, the report does not describe the rights and obligations of various providers and workers, which, as discussed above, are critical considerations in evaluating whether a product is a “loan.” The report also asserts that average “APRs” for income-based advances are comparable to those of payday loans in California. It is unclear from the report how the DFPI calculated these figures, and it is also apparent that the DFPI chose to omit certain required fees, such as subscription fees, and yet included optional fees, such as gratuities and expedited delivery fees, in outcome-oriented “calculations” of “APRs” for income-based advances. The inclusion of optional fees in an “APR” is obviously misplaced: such fees are not costs of financing, which can be obtained without incurring them. And the DFPI’s report itself concludes that further study is needed to understand the full impacts on consumers and that additional data would help the DFPI assess trends and risks presented by income-based advances. Clearly, this report and its related data do not provide a sufficient basis to take an action as drastic as categorically labeling income-based advances as “loans.” Indeed, consistent with the purposes of CCFPL, the DFPI should be collecting data from CCFPL registrants and then, at the end of the four-year registration period, helping the state legislature make an informed policy decision, such as promulgating a stand-alone regulatory regime specific to and tailored for this emerging service area without leaning on the CFL’s regime for traditional loan products.

4. The DFPI Should Not Broadly Characterize Optional Fees As “Charges”

The Proposed Rule’s inclusion of fees that are not associated with an income-based advance as “charges” is a significant departure from precedent and practice. It is legally and factually incorrect to include within the scope of “charges” for an advance any optional costs that a consumer might choose to incur separate and apart from the charges actually associated with the advance. Yet, the Proposed Rule wrongly includes as “charges” fees that are not directly associated with an advance, such as charges for optional services or services that are not a condition for receiving an advance such as expedited fund fees. In contrast to the Proposed Rule, California Financial Code §§ 22200 and 22201 expressly require charges to be “in connection

with [a] loan," and agency rulemaking cannot override this statutory directive. DailyPay is also not aware of any federal or state lending regime that purports to treat as "charges" (aka "finance charges") amounts that are not a condition of or incident to a loan. To the contrary, optional fees for optional conveniences or add-on services provided to a borrower are not "charges" as a matter of law. For example, in *Veale v. Citibank FSB*, a federal court interpreting the federal Truth in Lending Act ("TILA") held that a $21 Federal Express fee charged by the lender in a mortgage loan refinance transaction and paid by the borrower in order to expedite the pay outs on three mortgage loans being refinanced in an effort to save the borrower additional interest expense was not "incident to" the loan. The court reasoned that if the borrower can choose to avoid the Federal Express fee by having the documents sent via regular mail, then the fee is not imposed as an incident to the loan and, therefore, is not a finance charge.[9] In an unreported case, the Ninth Circuit also determined that charges that were not required were not "finance charges" under TILA.[10] The Proposed Rule's treatment of charges is thus contrary to statutory and judicial precedent, would cause inconsistencies with TILA, and is contrary to the way income-based advance products work in practice.

The Proposed Rule is also confusing, because it is impossible for a provider offering a suite of optional conveniences or other add-on services to know where to draw the line: which fees for optional services will be caught up as "charges"?

Characterizing optional fees as "charges" will harm consumers who currently enjoy access to optional expedited delivery conveniences offered by providers of income-based advances. By treating optional fees as "charges," the Proposed Rule will impair the ability of a provider, whether a CCFPL registrant or a CFL licensee, to offer optional expedited delivery conveniences. Due to the CFL's fee caps, such offerings would depend upon the fee cap tolerances and the size of a worker's income-based advance. For example, where optional fees are cost-driven, a provider may be prevented from offering optional conveniences and other add-on services to lower-earning workers who lack the ability to request large income-based advances. In this way, the Proposed Rule will propel inequality and deprive consumers of flexibility and their choice of optional conveniences and other add-on services.

To the extent that the DFPI's goal here is to forge greater consumer protections with respect to transparency and disclosure of optional fees or gratuities, DailyPay respectfully brings to the DFPI's attention that UDAAP or other enforcement actions targeting specific provider misconduct or appropriate disclosure expectations (e.g., clear and conspicuous disclosure to a consumer at the time an optional fee or gratuity is solicited that such fee or gratuity is truly optional), pursuant to the UDAAP-related or disclosure-related rulemaking authority granted by the CCFPL,[11] are the right ways to achieve such objectives, not improperly characterizing all optional fees as "charges."

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[9] *See Veale v. Citibank FSB*, 85 F.3d 577, 579 (11th Cir. 1996).

[10] *See Slowjewski v. Polam Fed. Credit Union*, 2010 WL 4973757, at *10 (N.D. Cal. Dec. 1, 2010), aff'd sub nom. *Slojewski v. Polam Fed. Credit Union*, 473 F. App'x 534 (9th Cir. 2012) ("[T]he only evidence before the Court demonstrates that the escrow fee was not required, and is not part of the finance charge.").

[11] See Cal. Fin. Code §§ 90009(c), (d).

5. The Proposed Rule Will Have An Adverse Impact On Business, And The Proposed Rule's Assertion To The Contrary Lacks Support

In the Proposed Rule, the DFPI asserts that the Proposed Rule will have "no adverse impact" on business, and it cites comment letters from interested parties submitted during preliminary rulemaking activities (presumably the March 2021 proposal) and vaguely references "past experience" to support this conclusion. As described in this letter, the Proposed Rule will clearly have an "adverse impact," and DailyPay further notes that the preliminary rulemaking activities were remarkably different from the Proposed Rule. For example, the preliminary activities did not propose to treat income-based advances as "loans" or optional fees as "charges," and so there is no identifiable existing record upon which the DFPI may conclude the Proposed Rule will have "no adverse impact."

Additionally, the Proposed Rule includes some particularly burdensome administrative requirements. DailyPay believes the DFPI's estimate of only $544 per year to prepare and submit an extensive annual report significantly underestimates the costs and burdens the Proposed Rule imposes on providers. The DFPI did not publish a record supporting this estimate, so DailyPay is unable to comment on the DFPI's specific assumptions underlying the estimate. DailyPay also challenges this estimate based on its own experiences to-date providing periodic reports to the DFPI under a Memorandum of Understanding. More specifically, DailyPay must dedicate personnel from its finance and data science teams to prepare the data for such a report. The report is then reviewed by them and by DailyPay's compliance teams and counsel. Although DailyPay has become more proficient at preparing such periodic reports over time, it is hardly a $544 endeavor. DailyPay roughly estimates that while an initial report will be more costly to prepare, ongoing annual reporting costs are likely to be at least approximately $10,000 to $25,000. The Proposed Rule's reporting obligations are significantly broader and more burdensome than those of the Memorandum of Understanding, so DailyPay believes the costs imposed by the Proposed Rule will be significantly higher than those it currently incurs. Providers facing these costs and other compliance costs under the Proposed Rule can be expected to raise prices for their services, such as optional transaction-based services. This is unfortunate, because providers already endeavor to keep such fees low. As noted in the DFPI's report "2021 Earned Wage Access Data Findings" (Q1-2023), average optional transaction fees, such as expedited delivery fees, are even lower than average tips.

The administrative burdens and costs imposed by the Proposed Rule could also deter or discourage additional startups or other competitors from entering the California market, thereby having an anticompetitive impact. Further, if the administrative burdens and costs for CCFPL registration are equivalent to those of CFL licensing, existing providers might reasonably choose to either exit California or operate as CFL licensees, which for income-based advance services will be harmful to consumers (as discussed above).

6. DailyPay Supports The Proposed Rule's Clarification Regarding The CFL's 15-Day Rule For Installment Loans

DailyPay supports the DFPI's clarification in Section 1463 of the Proposed Rule that no section of the CFL explicitly prohibits "loans" being repaid in a single payment, and that California

Financial Code § 22307(b) (requiring an initial loan payment to be due not less than 15 days after the date the loan is made) refers to contracts with "periodical installments," which the DFPI interprets to apply only to transactions with multiple periodic payments and not to transactions collected in a single payment. Such clarification is critical for short-term liquidity products of all types.

7. DailyPay Supports The Proposed Rule's Express Assurances Of Confidentiality

DailyPay supports the Proposed Rule's express assurances that a registrant's application and reporting information will be confidential. Such information will include trade secrets and commercially and personally sensitive information from registrants, and maintaining such information's confidentiality is imperative.

8. Conclusion

DailyPay thanks the DFPI for the opportunity to comment on the Proposed Rule. DailyPay requests that the DFPI make any modifications to the Proposed Rule available for public comment before finalizing any aspect of the Proposed Rule. DailyPay looks forward to working with the DFPI regarding future iterations of this rulemaking.

Sincerely,

DailyPay, Inc.

By: /
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Title: Chief Legal & Strategy Officer