

May 17, 2023

Ms. Clothilde V. Hewlett
Commissioner, Department of Financial Protection and Innovation
2101 Arena Blvd.
Sacramento, CA 95834
Submitted electronically to regulations@dfpi.ca.gov

Re: PRO-01-21

We, the undersigned organizations, which include consumer, civil rights, and labor groups in California, appreciate the opportunity to comment on the Department of Financial Protection and Innovation's (the "Department") proposed regulations for novel financial products. In recent years, many affirmatively harmful financial products and practices have been pushed on underserved communities in the name of "access to credit" and "financial innovation." In reality, these products are nothing more than traditional predatory financial products that carry a fintech veneer. Our organizations know from firsthand experience that low-income and marginalized communities, especially Black and Latino ones, are more likely to be at risk from these predatory products. We are very pleased that, in this rulemaking, the Department has taken on abuses by several of these products, including earned wage advance.

The Department's own analysis of 2021 data has demonstrated that earned wage advance loans bear all the hallmarks of predatory payday loans, including:¹

- **High APRs:** The average annual percentage rate (APR) was ~330% across the industry, "comparable to the average APRs for licensed payday lenders in California."
- **Repeat borrowing:** Consumers took out 36 advances a year on average, and up to 100.
- **Users "tip" when pushed to:** Despite companies' assertions that their products are "free," when companies induce users to "tip," customers do so 73% of the time.
- **Very little credit extended:** Most advances were between \$40 and \$100, for an average of 10 days.

The harmful characteristics of these products require strong regulation, and we applaud the Department for recognizing that in this rulemaking.

In particular, the following components of the proposed draft text are essential and should not be weakened in response to inevitable opposition from industry to the rulemaking.

- **Defining earned wage advances as loans:** The proposed draft text rightly determines that earned wage advances are loans, without regard to means of collection, whether the

¹ Department of Financial Protection and Innovation, 2021 Earned Wage Access Data Findings (Q1 2023), <https://dfpi.ca.gov/wp-content/uploads/sites/337/2023/03/2021-Earned-Wage-Access-Data-Findings-Cited-in-ISOR.pdf?emrc=08148f>.

provider has legal recourse if the provider is unable to collect the amount it advanced, or whether the consumer has the right to cancel collection of the amount advanced. If the Department does not conclude that these products are loans, then it will not be able to effectively regulate these products.

We also note that this conclusion applies equally to loans that are offered by fintechs that cannot register with the Department as employer-integrated “income-based advance” providers as defined in this rulemaking. We encourage the Department to use its enforcement authority to ensure that *all* lenders abide by this commonsense conclusion.

- **Defining all monies paid, including expedite fees, subscription fees and gratuities, as “charges” subject to the relevant interest rate caps:** EWA providers use various ruses to disguise the true cost of their products, including advertising the product as free but demanding an “expedite fee” to receive instant access and using behavioral economics techniques to solicit tips. The Department has adopted the correct approach to this evasion by simply mandating that all monies paid cannot exceed the California Financing Law’s rate caps.

In sum, the undersigned organizations commend the Department for moving to regulate abusive fintech lenders, including earned wage advance providers. We are very pleased to support the proposed rules and encourage the Department to vigorously enforce them to ensure that California’s most vulnerable consumers are not harmed.

Signatories

California Employment Lawyers Association (CELA)
CA Labor Federation
CA League of United Latin American Citizens (CA LULAC)
California Low-Income Consumer Coalition (CLICC)
California Reinvestment Coalition (CRC)
Center for Responsible Lending (CRL)
Consumers for Auto Reliability and Safety (CARS)
Consumer Federation of California (CFC)
Consumer Reports
Dolores Huerta Foundation
East Bay Community Law Center
Greater Sacramento Urban League (GSUL)
Housing and Economic Rights Advocates (HERA)
Manfred, APC
MyPath
National Consumer Law Center
NextGen California
Office of Kat Taylor
Public Counsel
San Francisco Office of Financial Empowerment

SEIU CA
Student Borrower Protection Center
UFCW Western States Council
Western Center on Law and Poverty