



*National Payroll Reporting Consortium*

PO Box 850 ★ Henrietta, NY 14467-0850 ★ [www.NPRC-Inc.org](http://www.NPRC-Inc.org)

May 17, 2023

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

Re: PRO 01-21 - Notice of Proposed Rulemaking  
Proposed Regulations under the California Consumer Financial Protection Law

via e-mail: [regulations@dfpi.ca.gov](mailto:regulations@dfpi.ca.gov)  
[Peggy.Fariman@dfpi.ca.gov](mailto:Peggy.Fariman@dfpi.ca.gov)

To Whom it May Concern:

Thank you for the opportunity to comment on the Notice of Proposed Rulemaking ("Proposed Rule").<sup>1</sup> The Proposed Rule would generally require providers of earned wage advance ("EWA") products in California to register with the DFPI and provide specified data to the agency to facilitate oversight of registrants. We are writing to ask that the proposed regulations be clarified to exempt payroll service providers (PSPs) whose role is limited to verifying available earnings and other related facilitation functions, but who are not EWA service providers.

The National Payroll Reporting Consortium ("NPRC") is a non-profit trade association whose member organizations provide payroll processing and related services to over three million U.S. employers, representing over 48% of the U.S. workforce. NPRC members have long served an important role as a conduit between employers and government authorities. NPRC members improve efficiency through electronic payroll and tax collections and reporting, and improve employer compliance.

We do not believe that it is the intent of the Proposed Rule to include PSPs; however, the Proposed Rule is unclear on this point. Inclusion of PSPs could have substantial impact on the EWA market and availability of such services to California employers and consumers. Under § 1004 (Definitions – Income-Based Advances), a "Provider" that would be required to register under § 1010 is defined as a person other than an obligor that "engages in the business of providing income-based advances."

Without further clarification, there could be uncertainty whether PSPs are considered to be "engaged in the business" of providing income-based advances, notwithstanding that their role may include only limited support functions.

It is worth noting that the most recent legislative attempt to address this issue (SB 472

---

<sup>1</sup> <https://dfpi.ca.gov/wp-content/uploads/sites/337/2023/03/PRO-01-21-TEXT.pdf?emrc=cf5bce>.



(Caballero) from 2019<sup>2</sup>) specifically excluded PSPs from the definition of “provider” unless the PSP was separately engaged in the business of providing income-based advances. Although SB 472 was not enacted into law, we believe that the clarification requested herein is consistent with the approach taken in that prior legislative effort.

**1. Payroll service providers serve a necessary support function that should not be discouraged**

Payroll service providers (PSPs) serve as an essential enabler of EWA services, facilitating but not providing EWA services in most cases. The role of a PSP is primarily to assist by verifying (upon authorization by both the obligor/employer and employee) the amount of any wages earned to date by the employee.

Payroll firms only act on behalf of the employee and employer as authorized and instructed. There may be other supporting functions that could apply, depending on the design of the EWA program and capabilities of the EWA provider and PSP, such as:

- When authorized, facilitating a deduction from wages or other mechanism to recover EWA amounts
- Furnishing marketing materials and disclosures
- Recordkeeping (e.g., to document disclosures and consent)
- Facilitating enrollments

A Harvard Kennedy School Research Paper<sup>3</sup> studied the early wage access industry and noted that offerings “are more efficient than market alternatives and provide clear and compelling benefits to employees . . . one-seventh of the typical \$35 per overdraft fee charged by banks . . . 16.7% of the cost a payday loan, for which lenders typically charge \$15 per \$100 borrowed.”

The study concluded that “the principal reason we found to explain both the lower cost and the greater inclusiveness of these products is the power of the so-called “salary link”—the ability of the FinTech [EWA] provider to access an employee’s salary directly to ensure repayment of advances or loans.”

Without the ability to efficiently and accurately verify earned wage amounts and arrange for recovery of any amounts accessed, EWA services would cease to function efficiently. Many EWA service providers now offer such services at no cost to users or at a nominal cost. This low- to no-cost model has proven invaluable to consumers, whose alternatives prior to EWA were limited to high-cost payday loans or car title loans, or asking their employer or friends or family for help.

---

<sup>2</sup> [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200SB472](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB472)

<sup>3</sup> *The Power of the Salary Link: Assessing the Benefits of Employer-Sponsored FinTech Liquidity and Credit Solutions for Low-Wage Working Americans and their Employers*, May 2018



**2. Regulatory costs may dissuade PSPs from offering support services or could increase the cost of EWA services to consumers.**

If the Department were to take the position that PSPs are considered to be “engaged in the business” of providing income-based advances, even if only providing limited support functions, the vast majority of PSPs might simply decline to offer support services for EWA rather than undertake the substantial burdens and costs of registration. For those PSPs that choose not to register, this would automatically make EWA services unavailable to every employee of every client employer.

There are thousands of payroll firms that may wish to facilitate EWA services. The U.S. Census bureau reported 635 payroll firms “physically located” in California in the 2020 census<sup>4</sup>. However, based on the number of active payroll service providers registered in Maine, which regulates payroll service providers offering services to in-state employers, California would likely have several thousand PSPs that could potentially facilitate EWA services in the state.

According to IRS statistics, more than four out of five payroll service providers are small businesses, i.e., with fewer than 40 clients. If registration and added regulatory burdens (registration, fees, renewals, reporting, audits, proportionate shares of DFPI’s operating expenses) became necessary even to provide limited support roles, most PSPs may find it infeasible to support EWA services.

**3. Section 1010(a) - Define or Clarify “Offering”**

Section 1010(a) provides that “[n]o person shall engage in the business of *offering* or providing subject products to California residents without first registering with the Commissioner pursuant to this subchapter.” [emphasis added.]

“Offering” is undefined. As noted above, some PSPs may offer limited supportive services to EWA providers, which could include simply making client employers and/or employees aware that EWA is available. This could take any number of forms, such as advertisements, website banners, emails, employee payroll or time-keeping portals, in-App messages, etc. If not clarified, this could result in PSPs refusing to permit any information to flow through the normal channels of communications between employers and employees regarding EWA services that may be available through third-party EWA service providers.

Please clarify that only persons contractually obligated to supply funds for EWA payments to users require registration under this section. (See item (5) below for suggested language.)

**4. Inadvertent inclusion of payroll service providers would result in redundant information that would complicate an accurate assessment of EWA volumes and related data.**

Any reporting from PSPs could result in double-counting of every transaction. Registered EWA

---

<sup>4</sup> County Business Patterns for the U.S., States, and Selected Geographies: 2020. Table ID: CB2000CBP



providers would need to report on their activities as outlined below. Any reports from PSPs would simply duplicate information already reported by EWA providers, making actual volumes, costs and impact less clear.

- The number of California residents who received at least one EWA advance in the prior calendar year.
  - The total dollar amount and the total number of EWA advances made.
  - Total dollar amount of fees by fee type, and all other charges paid.
    - PSPs may only have information on any service or processing charges to EWA service providers, i.e., not the cost to consumers.
  - Average length of time between each EWA advance and the collection date
    - Depending how EWA amounts are recovered, PSPs may not have this information.
  - The number of times the amount collected was less than the amount due.
    - Depending how EWA amounts are recovered, PSPs may not have this information.
  - For each month and each quarter of the prior calendar year:
    - Number of California residents who received no EWA advances but paid a charge and the total of charges paid.
      - PSPs would likely not have this information.
    - Number of residents who received a specified number of EWA advances; the amount advanced and amount of charges
      - PSPs may have the number of EWA transactions but may not have amounts charged.
      - Any reporting would be duplicative of data already reported by the EWA provider.

## 5. Suggested Language

We believe that the following language would clarify that a person is not “engaged in the business” of “offering” or “providing income-based advances” based merely on their facilitation of such services:

### **§ 1010. Persons Required to Register.**

*(a) No person shall engage in the business of offering or providing subject products to California residents without first registering with the Commissioner pursuant to this subchapter.*

*(b) Subdivision (a) of this section shall not apply to:*

...

**(6) With respect to Income-based advances as defined in Section 1004, service providers, including without limitation, payroll service providers, whose role may include verifying available earnings and other facilitation functions, but who are not contractually obligated to supply funds for EWA payments to users.**



## 6. Clarify Reporting of Account Transfer and Interchange fees

§ 1004(b) defines “Account transfer fee” as a fee imposed to move an income-based advance from an account designated or required by the provider to other accounts owned or controlled by the consumer. § 1045 requires detailed annual reporting relating to income-based advances, including “the total dollar amount of . . . account transfer fees paid . . .”.

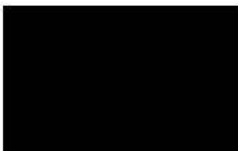
Further guidance may be necessary to enable registrants to report account transfer fees. “Account transfer fees” are costs of outbound funds transfers to other financial accounts, which may be only partially funded by EWA transactions. For example, employees may use prepaid debit cards to receive net payroll amounts and EWA amounts. They may receive payroll or contract payments from other employers or payers on such cards. They may receive government benefits, tax refunds, and funds transfers from friends and family on the same prepaid debit card. Thus, if an account transfer fee applies to an outbound funds transfer, the amount may be comprised of multiple sources. It may not be possible to isolate account transfer fees attributed exclusively to any EWA transactions.

Further, such fees might be charged by banks or other financial institutions or service providers, not by the EWA provider, which may be unaware of such fees. It would be helpful to clarify that a registrant need only report account transfer fees assessed directly for an EWA transaction.

Similarly, section 1022 requires that registrants report, as part of the registration application,“(5) The applicant’s gross income for the prior calendar year from subject products provided to residents of this state.” Many EWA programs are offered at no cost to users if they receive EWA amounts on a prepaid debit card. The registrant’s gross income from EWA services often includes interchange fees, which are paid by merchants. As with account transfer fees, interchange fees are associated with spending, which could be funded by many other income sources in addition to EWA. It may not be possible for registrants to report this form of income, or it may bear no relation to the EWA amounts, which may obscure any statistics.

Again, thank you for the opportunity to comment on the proposed rule. We believe that Earned Wage Access services represent a dramatic improvement over virtually every alternative for consumers in resolving unanticipated financial needs. We would be pleased to discuss this with DFPI if it would be helpful.

Sincerely,



Pete Isberg  
National Payroll Reporting Consortium, Inc.





## Appendix: The IRS Regulates the Payroll Services Industry

As background information for the Department, PSPs (“Reporting Agents”) are subject to IRS regulations<sup>5</sup> that prescribe procedural and other requirements for payroll service firms.

Reporting Agents must:

- Report client lists and provide copies of client authorization forms to the IRS.
- Pay all federal taxes electronically.
- File all federal employment tax returns electronically.
- Furnish quarterly disclosures to clients warning of their continued liability for employment taxes and how to verify that tax payments are being made.

Reporting Agents may be suspended for any failure to meet these requirements.

- Suspended Reporting Agents are prohibited from providing any covered services.
- Reporting Agents must provide written notice to clients of any suspension within 10 days
- IRS Regulations provide for immediate notice to clients and immediate shut-down of operations if the IRS becomes aware that any of the regulatory requirements are not being followed.

Critically, **employees (consumers) virtually never suffer losses** as a result of a problem with a payroll service provider. Employers retain the legal responsibility to pay all wages and taxes, so in the event of a problem with a PSP, the client employer must pay such amounts and seek recovery from the payroll firm. Employers are protected through the court system as with any non-performing vendor.

---

<sup>5</sup> E.g., *IRS Revenue Procedures 2012-32; 1999-39; and 2001-9*