November 27, 2023

Department of Financial Protection and Innovation
Attn: Araceli Dyson
2101 Arena Boulevard
Sacramento, California 95834
(submitted via email to regulations@dfpi.ca.gov)

Re: PRO 01-21 - Comment on the Modification to Proposed Rulemaking under the California Consumer Financial Protection Law and the California Financing Law

Dear Commissioner:

Chime appreciates the opportunity to provide feedback to the Department of Financial Protection and Innovation ("DFPI") on its modified proposed rulemaking under the California Consumer Financial Protection Law and the California Financing Law PRO 01-21 ("Modified Proposal") related to income-based advances (referred to herein as "earned wage access" or "EWA" products).

Chime is a California-based company that was founded on the idea of providing the simplest, lowest-cost financial products that improve the financial lives of Americans living paycheck-to-paycheck and earning up to $100,000. In partnership with two national banks, we've led the market in providing basic banking services for free, including free accounts, faster access to direct deposits, access to short-term liquidity and credit building. Most notably, Chime provides free overdraft through our SpotMe product. We continue to see how the timeframe in between pay cycles continues to be a real challenge for our customers. In light of this, we are exploring ways to bring to market a safe and low-cost EWA offering that can democratize access to liquidity for the everyday Americans we serve.

We do not believe that the DFPI's general characterization of all EWA as "a loan subject to the California Financing Law" is appropriate. Additionally, we do not agree with the DFPI's exemption for "employer-funded" programs, which arbitrarily creates a very limited preference for certain "employer-based" EWA models without rationale or discussion of how the underlying features of these programs are contributing to safe, consumer-friendly offerings.

The DFPI's mis-characterization of all EWA as "loans" will limit our ability to offer safe, consumer-friendly offerings that can help millions of California residents get the liquidity they need. It is clear to us that at least a broader set of EWA products are distinct from loans and should not be labeled or regulated as such. As we test and develop our own EWA product we are focused on five characteristics. Our aspiration is to (1) enable access *only* to wages already earned, (2) recover funds *only* from wages, (3) have *no recourse* against the consumer beyond recovering from wages, (4) undertake *no* consumer credit risk assessment, and (5) offer a

generally available free option. We derived this framework, which is described in more detail in this comment letter, to guide our work and to distinguish our EWA product from loans.

We believe that regulatory clarity can enable consumer financial services companies to offer safe consumer products. However, applying lending frameworks to products that are structured otherwise will needlessly limit the options made available to consumers and in some cases may harm consumers. In this comment letter, we outline the policy framework that we are aligning to as we develop an consumer-first EWA product. We are also supportive of the technical amendments that are being submitted to the DFPI Modified Proposal by other providers, as such changes would bring regulatory clarity and permit us to support our customers. We believe the framework we have developed aligns to what our customers need to enable their financial progress and should be excluded from the definition of a loan in the regulations that you are developing.

We would be happy to discuss our concerns with you and your staff at your convenience.

Sincerely,

/s/ Mark Troughton
Chief Operating Officer

Chime’s Earned Wage Access Policy Framework

Executive Summary:

- Giving Americans access to the pay that they have earned, when they earn it, is potentially the most significant opportunity to solve the short-term liquidity challenges of consumers that live paycheck-to-paycheck.
- Regulators have the power to incentivize the creation of safe and scalable earned wage access (EWA) products that simulate on-demand pay, which would give the majority of American workers access to *their* earned wages. To do so, regulation should promote the core principles of on-demand pay rather than the nature of the employer relationship or inappropriate credit definitions.

To date, there has been no policy solution that addresses the widespread financial stress experienced by the vast majority of American workers. On-demand pay, which is enabling employees to be paid in line with when they earn wages, holds great promise for allowing consumers to have more control over their finances but is not widely available. Regulators have the opportunity to incent the proliferation of safe, credit-exempt EWA products that simulate on-demand pay by establishing a regulatory framework that relies on the core characteristics of on-demand pay, including access to and settlement from actual wages, instead of irrelevant employer-based criteria. With such a framework, consumers of EWA products would benefit from the same protections provided by on-demand solutions today. Failure to take a broader definitional approach to EWA will prevent the ability of a competitive on-demand marketplace to develop. Worse, regulating all EWA products as credit will mean that many consumers will be left only with costly liquidity options that come with many downsides, or with no options at all.

Paycheck-to-paycheck consumers have a pressing need for low-cost liquidity while they wait for their earned pay

There are a number of challenges facing consumers in the short-term liquidity marketplace today. There is an enormous consumer need for safe, liquidity options: more than 65% of Americans have low cash balances, making it difficult or impossible to withstand any form of financial shock or accommodate their income volatility. Many traditional credit options are expensive or inaccessible and are not always optimal for addressing the consumer liquidity need that can occur between pay cycles.[1]

With most companies today providing payroll every two weeks, billions of dollars of liquidity ($285 billion each biweekly pay period) – which could be tapped to solve these challenges – are locked up in legacy pay cycles that are not built around the convenience or needs of the everyday worker. *This is resulting in a system in which Americans that live*

[1] Many low-cost small dollar loan options have requirements that are very difficult for paycheck-to-paycheck earners up to $100,000 to meet, including credit checks, minimum account tenures, positive account balances, and/or minimum daily balances. Consumers with no, limited or poor credit histories (about 40% of Americans) experience limited access to financing and higher cost for credit cards.

paycheck-to-paycheck have to borrow money during the paycycle – often at great cost – to meet their liquidity needs while they wait for the pay that they've effectively lent to their employers.

Chime does not believe that employees should have to wait to get paid for the work they've already completed. Every product and service our company has built over the past decade centers around meeting the most critical needs of our members – Americans that live paycheck-to-paycheck and make up to $100,000 – in the form of low fees, access to short-term liquidity and credit building.[2] We have a proven track record in leading the market for providing innovative consumer financial products. For example, Chime was the first to provide fee-free overdraft, which has resulted in more competitive banking services. For our members, we see how the timeframe in between paycycles continues to be a real challenge that the current market isn't addressing. In light of this, we are exploring ways to bring to market a safe and low-cost EWA offering that can democratize access to liquidity for all Americans.

EWA products are a much needed payroll innovation until on-demand pay is widely available

We believe that widespread adoption of on-demand pay is the future of pay, but that future is many years away. On-demand pay allows employees to receive wages from their employers as they earn them. It is safe and growing in popularity but is currently extremely limited in availability, usually only to employees of larger employers who have the benefit of size and resources to offer these services. While on-demand pay has the potential to replace the antiquated two-week pay cycle, it's estimated that only about 5-10% of U.S. employers offer on-demand pay.[3] We believe this may be a result of the upfront steps and costs required to integrate on-demand solutions with existing payroll (e.g., updating payroll technology stacks to allow for calculation of payroll on an ongoing basis, ensure tax and payroll law compliance and reconcile real-time payroll with account ledgers).[4] Therefore, the majority of Americans do not have access to on-demand pay today and will not have access to on-demand pay anytime soon.

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[2] As a result, we have millions of active users, the primary account relationship for 75% of our members, and one of the highest NPS scores among financial services apps (the primary metric measuring satisfaction).

[3] *See* Benefits Pro, *Earned wage access is only one piece of the financial wellbeing puzzle*, May 11, 2022, noting a study that found only about 10% of employers offer on-demand pay; also, Tilson HR blog, *What employers should know about on-demand pay*, August 2022, citing research from Gartner research and consulting that finds that less than 5% of large U.S. companies that provide most of their employees with hourly wages are currently using on-demand pay.

[4] *See* Workday blog, *3 Most Common Challenges With On-Demand Pay—and How to Fix Them*.

The right regulatory framework can incentivize the development of a safe and consumer-friendly EWA market that can provide on-demand pay at scale

By creating a credit-exempt EWA framework that is based on the key principles of on-demand pay, regulators have the power to enable third parties – whether they have a relationship with the employer or not – to simulate on-demand pay that would very quickly be available to the majority of everyday Americans. Importantly, with such a framework, consumers would benefit from the same protections provided by employer-based models. Additionally, regulators can and should facilitate open access to payroll data, which will spur increased innovation in this space, resulting in even more options for consumers.[5] Such actions would be the most significant moves in recent memory to solve the vast majority of the liquidity needs of America's most vulnerable.

Currently, policymakers take the view that EWA models have two forms – "direct to employer" products and "direct-to-consumer" products – and have focused on memorializing exemptions from credit for the former.[6] We encourage regulators, instead, to develop an EWA framework that is flexible enough to accommodate and incentivize products that safely simulate on-demand pay as well. To do so, regulators should define credit-exempt products as those that meet the five key principles below, which distinguish products that simulate on-demand pay (EWA products). Notably, a relationship with an employer is *not* needed to meet any of these criteria.

(i) Providing access to actual earned wages: To simulate on-demand pay (and be classified as EWA), a product would need to provide access to actual earned wages. There are a number of ways that EWA providers can give consumers access to actual earned wages. These include:

1. *Employer integrations into payroll and time and attendance systems*: EWA providers may integrate into payroll and time and attendance systems of each employer.

2. *Consumer-permissioned payroll and time and attendance data through aggregators*: EWA providers can access the same real-time payroll data that is used by on-demand providers by integrating into payroll data aggregators. Such data is available in the marketplace today, without an employer integration, via service providers that are collecting and aggregating consumer-permissioned payroll and time and attendance information. By integrating with one aggregator, EWA providers can access wage data from many employers. While access to real-time payroll data is growing rapidly, we believe that regulators can and should accelerate the availability of open payroll data, and the consumer protections that apply thereto, via regulation under Section 1033 of the Dodd-Frank Act.

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[5] The CFPB should consider regulating consumers' data rights related to payroll data, similar to how the CFPB is currently envisioning regulation related to account and credit card data. This would have many benefits for the offering of scalable and safe EWA products, in addition to many other benefits for underserved consumers, as discussed by Congressman Gregory Meeks and nine of his colleagues.

[6] The CFPB's 2020 Advisory Opinion provides a safe harbor from "credit" regulation that is limited to employer-based distinctions.

3. *Consumer-provided data*: Employees have access to first-hand and supporting data that, when appropriately permissioned and used, will lead to very accurate estimates of actual wages earned during the period. This includes sharing access to their own wage statements from employer portals and sharing access to their hours worked.

   It is important to note that *access to actual earned wages does not require a relationship with an employer*. Furthermore, we expect that an open payroll framework will spur innovation to create even more options for enabling access to actual wage data that are currently beyond our philosophy. That's why it's critical that any regulatory framework be flexible enough to incentivize and accommodate this criteria rather than narrowly requiring an employer relationship.

(ii) Settling from actual wages: To simulate on-demand pay (and be classified as EWA), an EWA provider would need to ensure that any earned wages that are accessed are deducted from payroll before they are made available to the employee. In our view, any model that deducts funds from general funds in an employee's bank account does not meet this criteria; deductions from general funds are more akin to a collection, likely resulting in the settlement of funds from non-wage sources (e.g., government benefits) and potentially overdrafts. There are a number of options for settling from actual wages:

1. *Settlement through an employer relationship*: In this model, an EWA provider would integrate with the employer and ensure deduction of any earned wages that are accessed before they are sent to the employee's (recipient) bank.

2. *Settlement through an aggregator*: In this model, an EWA provider would leverage an aggregator service that has integrations with multiple payroll providers for a consumer-permissioned deduction directly from payroll before funds are sent to the recipient bank. This includes services like 'pay by paycheck' and is an exciting area of innovation in fintech, which will give EWA providers access to payroll funds without requiring an employer integration.[7]

3. *Settlement by the recipient bank*: In this model, the funds are deducted directly *from payroll* by the recipient bank upon the payroll funds being deposited and before they are accessed by the employee. This model can be offered by any bank in terms of its own EWA service, and it is possible that in the future banks may enable this service for other providers (with consumer permission).

   It is important to note that *settlement from actual wages does not require a relationship with an employer*. As in the case of accessing earned wage data, we expect that an

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[7] For example, there are now services that can automate consumer bill payment directly from their paycheck. These services capture bill payment prior to a paycheck getting deposited into a consumer's account.

open payroll framework will spur innovation to create even more options for settlement against actual wages.

(iii) *No recourse:* To qualify as an EWA product, there should be no recourse to the consumer. As in on-demand pay, this means that in the event that a provider is not able to settle from actual wages, they would not have any contractual or legal claim to recover, or earn any interest or late fees.

(iv) *No credit risk assessment:* To qualify as an EWA product, there should not be any credit risk underwriting. Any decision as to whether to provide access to wages will be based on a consumer's employment and actual earned wages, not a consumer's creditworthiness. Further, as this is just accessing wages early, there will be no reporting of a consumer's EWA transactions to the credit bureaus.

(v) *A generally available free option*: We believe that qualification as an EWA product requires that there be a reasonable opportunity for all employees to access the service free of charge. For example, a free option could allow free access to all employees within the traditional ACH pay cycle delays (typically 1-2 days), which are likely to exist in most on-demand pay models. Free options should be easy-to-understand, with clear delivery timeframes.

While not a requirement to meet the definition of EWA, we believe that all EWA products should have prudent caps to limit the amount of wages that can be accessed early. A cap will provide responsible access and reduce the likelihood of consumers receiving insufficient amounts on payday to cover bills that may often be coterminous with the pay cycle.

Any product that meets the five criteria above should be regarded as credit-exempt EWA. In substance, the above criteria promotes a framework whereby a third-party is simulating on-demand pay by providing early access to actual wages and deducting these wages from payroll before the employee receives them. Here, we draw a distinction between products that simulate on-demand pay and other short-term liquidity options in the market today. Many short-term liquidity products do not provide access to earned wages and don't settle from actual wages. As such, they do not simulate on-demand pay. Hence, we do not address these products in this framework, and we defer to assessments of legislators and regulators on what is needed to protect consumers in these circumstances.

A relationship with an employer is neither a necessary nor a sufficient condition for a product to be EWA

While it is true, at the time of writing this document, that many employer-integrated (so called "direct-to-employer" or DTE) models would meet these criteria and many consumer (so called "direct-to-consumer" or DTC) models would not meet these criteria, the existence or nature of an employer relationship or integration is irrelevant. Given this and the fact that new solutions are developing rapidly, any framework that regulators develop for EWA should be based on the

core features of on-demand pay, as described in the section above, rather than the nature of the employer relationship.

In fact, the employer-integration approach is not only the least scalable approach but it is likely also the least competitive option, as it creates a captive employee audience with only one option.

1. *Severely restricted access to EWA for American workers*: Employer-integrated models are the least scalable as they require long sales cycles and integrations into multiple employer systems for each individual employer. Further, they are only likely to be feasible for large employers, which will exclude a significant portion of American workers.
2. *Higher costs through lack of competition*: Employers that implement on-demand solutions choose only one EWA provider. Due to high switching costs, employers are unlikely to switch or shop around for other providers. This results in employees having access to a single option, with little to no competition, which over time could lead to higher prices for these employees.

Therefore, any framework that is based solely on the nature of an employer relationship will likely result in downside to consumers and limit the ability of a competitive market to develop.

Policymakers need a new way of approaching EWA policy

It's critical that legislators and regulators, both federal and state, incentivize the development of a marketplace for EWA that, first and foremost, protects consumers, and also spurs innovation that will ensure that consumers have more and better options.

We see two pitfalls to the current regulatory landscape that is emerging for EWA products. First, regulatory action that pulls all products into credit definitions will mean that the vast majority of consumers living paycheck-to-paycheck will be left trying to access credit from a poor creditworthiness posture, where credit is expensive at best and unavailable at worst. Second, if policymakers' continue to make judgments about exemptions from credit based solely on "direct-to-employer" or "direct-to-consumer" labels, a small niche market will emerge, which will leave out the majority of American workers while also likely leading to higher prices over time.

Giving American workers access to the $285 billion that is locked up in payroll each biweekly pay period is perhaps the most significant regulatory opportunity in consumer financial services in recent history. It has the potential to largely solve the short-term liquidity needs of America's most vulnerable consumers, which is arguably today's most pressing need in financial services. We encourage regulators to choose a framework that is scalable, encourages innovation and competition, and bases EWA on the fundamental principles of on-demand pay rather than the nature of the employer relationship or an inappropriate credit definition. Chime stands ready to deliver a product that meets these criteria to the vast majority of Americans.