



Innovative Payments Association

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November 17, 2023

Submitted via E-Mail at: regulations@dfpi.ca.gov;
Peggy.Fariman@dfpi.ca.gov

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

Re: Notice of Proposed Rulemaking [PRO 01-21]

To whom it may concern:

This letter is submitted to the California Department of Financial Protection and Innovation (the "DFPI") on behalf of the Innovative Payments Association ("IPA"),¹ in response to the Notice of Modification to Proposed Rulemaking issued by the DFPI on November 7, 2023 (the "Modification"), which revises the DFPI's March 2023 proposed rule (the "Proposed Rule"),² that would require providers of earned wage advance ("EWA")³ products in California to register with the DFPI and provide certain records to the DFPI to facilitate its oversight of registrants and to detect risks to California consumers.

IPA counts a number of EWA providers among our members and we appreciate the opportunity to provide comments on DFPI's Modification. The IPA again looks forward to continuing to engage with the DFPI to ensure regulation of this industry appropriately balances consumer protection and innovation. The IPA appreciates that DFPI has taken the time to make revisions to its March 2023 Proposed Rule. On its face, the changes DFPI made to its Proposed Rule via the Modification appear to streamline the DFPI's initial proposal. However, similar to the March 2023 Proposed Rule, the Modification continues to fail to acknowledge that the current EWA marketplace contains a wide variety of EWA providers and products, and not all EWA products are loans. Without such a declaration a final rule issued by DFPI would be inconsistent with the Consumer Financial Protection Bureau's ("CFPB") 2020 EWA Advisory Opinion,⁴

¹ The IPA is a trade organization that serves as the leading voice of the electronic payments sector, including prepaid products, mobile wallets, and person-to-person (P2P) technology for consumers, businesses and governments at all levels. The IPA's goal is to encourage efficient use of electronic payments, cultivate financial inclusion through educating and empowering consumers, represent the industry before legislative and regulatory bodies, and provide thought leadership. The comments made in this letter do not necessarily represent the position of all members of the IPA.

² <https://dfpi.ca.gov/wp-content/uploads/sites/337/2023/11/Rulemaking-PRO-01-21.pdf>

³ <https://dfpi.ca.gov/wp-content/uploads/sites/337/2023/03/PRO-01-21-TEXT.pdf?emrc=cf5bce>.

⁴ While they differ between themselves in structure and format, EWA services generally provide consumers with early access to earned, but unpaid wages. Under the Proposed Rule, a "wage-based advance" is defined as funds paid to workers by a provider other than an obligor that are based on wages or compensation that a worker or the worker's obligor has represented, and that a provider has reasonably determined, have been earned but have not, at the time of the disbursement, been paid to the worker for work performed for or on behalf of an obligor or obligors.

⁶ https://files.consumerfinance.gov/f/documents/cfpb_advisory-opinion_earned-wage-access_2020-11.pdf



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and former CFPB Director Richard Cordray's 2017 [statement](#) specifically excluding certain EWA from the agency's Payday Lending Rule.

While our members are generally not opposed to the March 2023 Proposed Rule's registration requirement, the IPA remains concerned that while the Proposed Rule includes a discussion of the different models and structures EWA services take in the marketplace, DFPI has failed again to differentiate between these models in concluding that **all EWA** disbursements are *per se* "loans" for purposes of the California Financing Law ("CFL").⁵

As we outlined in our May 2023 response to the DFPI's March 2023 Proposed Rule, we would like to reiterate that many EWA models do not contain any features or functionality that resemble "credit" nor do they constitute the establishment of a lending relationship between the employee and the EWA provider. We encourage the DFPI to continue to examine this aspect of the Proposed Rule, and the Modification, and once and for all clarify that, based on the features and functionality of some EWA models, all EWA models are not *per se* covered by the CFL. We urge the DFPI to adopt a separate registration requirement for EWA models that do not resemble credit and expressly recognize that disbursements under such models are not "loans" and should not be subject to CFL.

Our members do not believe it is appropriate to treat all EWA services in the marketplace as loans that would potentially be subject to the CFL. Specifically, we believe it would be appropriate for the DFPI to permit the wide variation in EWA models serving millions of Californians today when making regulatory policy and when issuing policy statements (i.e. all EWA disbursements are loans) and making decisions in this rapidly evolving marketplace.⁶

It is critical for the DFPI to have a firm understanding that EWA is a relatively new product and regulatory clarity is uniquely important in the current marketplace. Thus, a one-size-fits-all solution is not the most appropriate or effective means to regulate a product that has helped millions manage their own money in the event of an emergency. Moreover, depending on the particular product or provider, the differences in how EWA products function can be minor or significant from one product to another. At a minimum, we think it is essential for the DFPI to acknowledge that not all EWA transactions are loans before issuing a final rule, and we respectfully request this revision.

Conclusion

The IPA appreciates the opportunity to submit these comments to the DFPI on the Modification. If you have any questions on any of the comments contained in this letter, please do not hesitate to contact me at: btate@ipa.org.

⁷ Cal. Fin. Code §§ 22000 et seq.

⁷ Such a determination would be consistent with DFPI's advisory opinion issued last year with respect to FlexWage, in which DFPI found that an employer based EWA product was not subject to the CFL. See <https://dfpi.ca.gov/wp-content/uploads/sites/337/2022/02/FINAL-OP-8206-FlexWage-Specific-Ruling.pdf>. It is also consistent with opinions of other state agencies, such as in Arizona where in 2022, the Attorney General found that a fully non-recourse EWA disbursement did not qualify as a "loan" for purposes of Arizona law. See <https://www.azag.gov/opinions/i22-005-r22-011>.



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Sincerely,

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