

July 24, 2024

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, appreciate the opportunity to comment on the Department of Financial Protection and Innovation's (the "Department") updated proposed regulations for novel financial products.

Over a year ago, a broad coalition of consumer, civil rights, and labor groups in California praised the Department for a proposed rule that found that earned wage advances (EWA) are loans, that "tips" and other purportedly voluntary charges are charges, and that EWA lenders must comply with the California Financing Law's cost caps. The coalition urged that California's most vulnerable, hard-working consumers needed this protection from the costly cycle of reborrowing associated with EWA loans, which the DFPI's own data revealed carried average annual percentage rates of around 330%.¹

The coalition was dismayed when the DFPI later removed any requirement to comply with the CFL's cost caps from the proposed rule. Notably, the Department did *not* find that EWAs are outside the scope of the CFL or that the cap is bad policy as applied to EWA loans. Instead, DFPI expressed concerns that the Department had not conducted the economic impact analysis required under California's Administrative Procedures Act ("APA"). DFPI recently clarified that this is not a temporary exemption; under the proposed regulation, EWAs will be permanently exempt from any cost limit unless DFPI or the legislature takes action.

The net result of this back and forth is that the Department has serious unfinished business regarding EWA loans. Indeed, the DFPI has fallen behind peer states in regulating these harmful products, as both Connecticut and Maryland have, since the DFPI proposed its rule in March 2023, clarified that most EWA lenders are subject to those states' lending laws. By contrast, the current DFPI proposed rules provide consumers with *no* protection from the very expensive trap of reborrowing associated with EWA loans.

Accordingly, the undersigned organizations call on the DFPI to finish what it started and revive the obligation that EWA lenders comply with the CFL's cost caps. Such an obligation can easily be justified under an economic impact analysis, given the CFL's relatively high cost caps and the harms that flow from EWA loans. The Department need only conduct that analysis and

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>.

reinstate the cost-cap requirement, which it must do in this rulemaking or a new rulemaking opened as soon as possible after this one has become final.

In sum, California consumers and workers need relief *now* from high-cost predatory EWA loans, and DFPI must not adopt a rule that permanently enshrines a new form of fintech payday loan exempt any cost limits. The DFPI must protect consumers by applying the CFL's cost caps to these loans.

Signatories

AFSCME California
California Employment Lawyers Association
California Labor Federation
California Low-Income Consumer Coalition
California Nurses Association
California School Employees Association
CAMEO Network
Center for Responsible Lending
CFT--A Union of Educators & Classified Professionals, AFT, AFL-CIO
Community Legal Services in East Palo Alto
Consumer Federation of California
Consumer Reports
Consumers for Auto Reliability and Safety
Dolores Huerta Foundation
East Bay Community Law Center
FreeFrom
Housing and Economic Rights Advocates
Inclusive Action for the City
National Consumer Law Center
National Employment Law Project
Office of Kat Taylor
Prof. Alysson Snow, Professor/Director Housing Rights Legal Clinic, University of San Diego
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Public Counsel
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Service Employees International Union (SEIU) CA State Council
United Food and Commercial Workers (UFCW) Western States Council
Western Center on Law & Poverty

* Signing in an individual capacity.