



February 6, 2024

Department of Financial Protection and Innovation
Attn: DeEtte Phelps
2101 Arena Boulevard
Sacramento, California 95834

Via email: regulations@dfpi.ca.gov

SUBJECT: Comments on Proposed Regulation PRO 01-21

Dear Commissioner,

The California Chamber of Commerce, California Asian Pacific Chamber of Commerce, California Black Chamber of Commerce, and California Hispanic Chambers of Commerce appreciate the opportunity to provide comments on Proposed Regulation PRO 01-21. Our organizations represent the interests of businesses of all sizes and companies from every industry within the state, and consequently comprise a significant portion of the private sector jobs in California. Our organizations are committed to helping California businesses thrive while complying with complex laws and regulations.

The revised regulations submitted by the Department of Financial Protection and Innovation (DFPI) on January 17, 2024 remain ambiguous and confusing. While we appreciate DFPI's commitment to monitoring and collecting data on the Earned Wage Access (EWA) market, the proposed regulation will cause significant problems for businesses and consumers across California.

The draft regulations still classify EWA as a loan under your licensing laws but excepts EWA from licensure requirements. While this construct may make sense to DFPI philosophically, in practice, it is against the best interest of each California employer evaluating whether to offer an EWA service and what requirements they must follow. Providing only a partial exception means that it becomes confusing for businesses and EWA to understand exactly what their obligations are. For instance, there is a question as to whether a company that uses an EWA platform might need a data broker license if they are sharing relevant data. This is unclear and would unfortunately not become settled until DFPI takes enforcement actions based on this proposed regulation. It also raises questions about compliance and perceptions in our sister states. Businesses are compliance-driven, so it is critical that they know at the outset how to comply properly. The DFPI regulations could accomplish everything else in its current form without this disputed definition of EWA as "loan," and thus resolve this ambiguity.

As you know, EWA, particularly employer-integrated EWA, is a tool utilized throughout the state by over thousands of employers and hundreds of thousands of employees. Businesses offer EWA to attract new talent, retain staff, and decrease worker absenteeism. For employees, EWA provides the ability to access their own, already earned wages when they need it. Research finds that this allows people to avoid overdrafting bank accounts, paying bills late, and getting trapped in payday loan debt. Given the size and scale of California's economy, its employers expect that state regulations provide clarity for operating in the state. Unfortunately, these proposed regulations do the opposite and make it more confusing for employers offering EWA, and the EWA industry as a whole.

Fundamentally, we and others believe EWA is not a loan. As such, we ask that DFPI clarify this and provide a clean, full exemption from the lending law for EWA products. This full exemption would correct confusion resulting from what is currently proposed and ensure employers and employees who use EWA today in California can continue to access it.

To that end, we offer the following language to clarify the regulatory landscape pertaining to EWA, with our suggestions shown in green and single underline:

Article 4. Loans.

§ 1461. Advances Under the California Financing Law.

(f) Income-based advances under California Code of Regulations, title 10, section 1004, subdivision (g), are sales or assignments of wages or loans under subdivision (a) of this section, except those satisfying the following criteria:

- (1) The advance of funds is an obligor-based advance as defined by California Code of Regulations, title 10, section 1004, subdivision (i).
- (2) The provider has contracted with the obligor as defined by California Code of Regulations, title 10, section 1004, subdivision (h) to provide income-based advance services.
- (3) The provider's determination of accrued but unpaid income pursuant to California Code of Regulations, title 10, section 1004(q)(1) is made based on employment, income, or attendance data obtained directly or indirectly from an obligor, including, without limitation, an obligor's payroll service provider, and
- (4) The provider is registered with the Department to offer income-based advances under California Code of Regulations, title 10, section 1010. This paragraph shall expire when the registration requirements for income-based advance providers under section 1010 expire.

§ 1463. Income-Based Advances to be Collected in a Single Periodic Payment.

Financial Code section 22307, subdivision (b), does not apply to income-based advances as defined by California Code of Regulations, title 10, section 1004, subdivision (g) to be collected in a single periodic payment.

We appreciate DFPI's consideration of these comments.

Sincerely,



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