

(By email to regulations@dfpi.ca.gov)

Department of Financial Protection and Innovation

Attn: DeEtte Phelps

2101 Arena Boulevard

Sacramento, California 95834

RE: PRO 01-21

Thank you for the opportunity to provide comments on the proposed regulations specifically as it pertains to 1004 – Income Based Advances.

FlexWage created the OnDemand Pay/Earned Wage Access (EWA) space in 2009 with the mission to provide the millions of people struggling paycheck to paycheck with a sustainable and responsible, non-loan cash flow solution. Utilizing accurate earned wage data, employer funding and controls, instant funding to the employees account of choice and recoupment via payroll deduction, distinguishes our benefit-based solution from the imitation EWA services. FlexWage launched this product to the first employer in 2011. FlexWage has consistently sought feedback from employers, regulatory authorities, consumer advocates the others, focused on delivering the most compliant and responsible product available.

In 2017 the CFPB provided EWA with exclusion from their Payday Lending Rule. This exclusion also gave rise to Venture Capitalists pouring billions of dollars into this industry, funding the creation of many products that claim to be EWA providers. Most do not adhere to the level of data accuracy and product construct that ensure consumer protection. On November 30 of 2020 the CFPB provided an Advisory Opinion on EWA providing 7 distinct characteristics that set EWA apart from consumer credit products.

It wasn't until DFPI was requesting MOU's and data from EWA providers that the potential consumer impact was seen. The data provided by these MOU's provide a clear picture of the consumer risks, complaints and lack of transparency associated with some "EWA" services. In contrast, the information provided in the FlexWage Opinion request and subsequent Opinion clearly shows the importance funding source, data accuracy, and transparent capped fees for compliant, sustainable, consumer friendly cash flow solution.

FlexWage applauds DFPI in your continued pursuit of educating everyone on the EWA industry and the vast differences among all providers claiming to be EWA. You have maintained a continued focus on consumer protections yet provide a clear path for safe innovation. We believe you have clearly defined the solution attributes that distinguish EWA from consumer lending services.

While FlexWage has reviewed all the changes in the proposed legislation it appears the Opinion we were provided on 2/11/2022 would not require FlexWage to be registered as an

EWA provider. However, in a desire to continue to provide DFPI with data, FlexWage would voluntarily provide data to DFPI annually for your review and inclusion with all other data received.

Thank you for your continued efforts to ensure this industry remains the consumer benefit it was created to be.

Sincerely,

Frank Dombroski

CEO and Founder

FlexWage Solutions LLC