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February 6, 2024

Submitted via E-Mail to regulations@dfpi.ca.gov and Peggy.Fairman@dfpi.ca.gov

Department of Financial Protection, Legal Division
Attn: Araceli Dyson
2101 Arena Boulevard
Sacramento, California 95834

Re: Proposed Rulemaking PRO-01-21

To Whom It May Concern:

This comment letter is submitted by Instant Financial USA Inc. ("Instant") in response to the Notice of Second Modification to Proposed Rulemaking PRO-01-21 ("Second Modification") published by the Department of Financial Protection and Innovation ("DFPI") on January 17, 2024. The Second Modification revises DFPI's March 17, 2023 proposed rule ("Proposed Rule") which would create registration and reporting obligations for certain financial service providers, including those providing earned wage access ("EWA") services which the proposal refers to as income-based advances ("IBAs").

Instant is a financial services company based in Atlanta that provides EWA and other disbursement services to a number of employers and their workers. Instant offers an EWA service that allows workers to access wages that they have earned but which have yet to be paid to them. We are a member of the Innovative Payments Association and support the comment letter it submitted regarding the Second Modification. We submit this letter to provide our perspective on the Second Modification.

In prior comments, we expressed concern that the definition of "charges" in Section 1004(c) which included any fee for "any other service rendered" was overly broad and would cause consumer confusion and place certain providers at a competitive disadvantage. The Second Modification attempts to address this concern by replacing the phrase "or any other service rendered" with "or otherwise in connection with an income-based advance." This change, however, does not resolve the issue because the modified Proposed Rule still conflates payroll card and other account fees with IBA fees. More specifically, the definition of "account transfer fee" treats certain fees associated with payroll card and other accounts as IBA fees that must be reported pursuant to Section 1045. The Second Modification fails to articulate any standard for distinguishing account transfer fees from other payroll card fees. If a bank transfer from a payroll card is sufficiently connected to an income-based advance deposited to trigger fee reporting, then out-of-network ATM or other fees could also be deemed sufficiently connected to the IBA so as to fall within the ambit of the Second Modification.

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Instant makes the proceeds of an EWA payment available to an employee by loading those funds on the person's payroll card. By placing EWA funds on the payroll card, Instant is able to offer the EWA service **without a fee** to the employee. Once EWA funds are deposited on the payroll card, employees have full and **free access** to those funds. The proceeds of an EWA are treated exactly the same as deposits of regular wages and other compensation. Employees may make purchases using their payroll card **without a fee** and may obtain cash back at the point-of-sale. They may access cash **without a fee** through a large network of surcharge-free ATMS and may also obtain cash through teller-assisted withdrawals at most banks, again **without a fee**. And finally, cardholders may transfer funds from their payroll card to a personal bank account. We offer standard transfers through ACH **without charge** and instant transfers for a small fee.

Payroll cards are heavily regulated at the federal and state level. The Consumer Financial Protection Bureau has issued extensive regulations governing prepaid accounts, including payroll cards. Payroll cards are subject to detailed requirements, including short-form and long-form disclosures which include a full explanation of all payroll card fees, including what the Second Modification calls account transfer fees and other charges. Instant believes that categorizing payroll card fees as IBA will lead to consumer confusion about whether certain fees are payroll card fees or EWA fees. Consumers may think that such fees are being assessed twice. Because of the confusion over fees created by the Second Modification, some consumers may choose to use EWA providers who charge fees, membership dues, or solicit tips when they could have received an EWA for free from Instant or other providers.

For these reasons, Instant urges DFPI to amend the Second Modification to remove the reporting requirement for account transfer fees and to make it explicitly clear that "charges" for IBA services do not include payroll card fees. We appreciate the opportunity to submit these comments on the Second Modification. If you have any questions about these comments, please feel free to contact me at Tal.Clark@instant.co.

Sincerely,

Tal Clark

Chief Executive Officer

Instant Financial USA Inc.

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