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Re: Earned Wage Access and the Truth in Lending Act (Regulation Z)

Dear Senior Managers Laura Udis and Amy Zirkle:

PayrollOrg (PAYO), formerly the American Payroll Association, is concerned about the Consumer Financial Protection Bureau's (CFPB) consideration of the Truth in Lending Act (Regulation Z), regarding earned wage access (EWA) benefits and the impact on payroll management.

About PAYO

PAYO is a nonprofit association representing more than 20,000 payroll professionals throughout the United States. PAYO's Government Relations Task Force partners with government agencies to help payroll professionals with compliance, while minimizing the administrative burden on government, employers, and individual workers.

PAYO members are directly responsible for calculating wages and withholding for their employers across all industries and employer types. PAYO does not endorse any technology or management approach. Therefore, PAYO is not positioning itself with any specific business, employer, or group.

These comments are only applicable to employer-integrated models of EWA. Direct-to-consumer models do not impact payroll management.

Financial Wellness

Today, employees say that the most important employer-provided benefit is financial wellness.

Research data varies on employees' stress about their finances, but the numbers are significant. A [December 2023 report](#) by PYMNTS and LendingClub found that 62% of employees are living paycheck to paycheck. PwC [found](#) that 60% of employees are stressed about their finances. BrightPlan's [2023 survey](#) determined that 92% of employees are financially stressed. In PAYO's



[2023 Getting Paid in America Survey](#), 49% of survey participants said it would be very difficult if their paycheck was delayed for just one week.

Employers are adopting or improving financial wellness programs to increase worker satisfaction and retention. The Employee Benefits Research Institute found that 85% of the companies it [surveyed](#) indicated that financial wellbeing initiatives had either a large impact or a small impact on employees' mental, emotional, and social wellbeing.

One employer-provided financial benefit comes from advances in technology that have made possible the ability of employees to access their earned wages before their regularly scheduled payday. These technologies, collectively known as earned wage access (EWA), are an important benefit and in demand by employees.

Culture of U.S. Consumers

In the U.S., neither government entities nor employers control how employees spend their earned income (with some exceptions). Therefore, regardless of which financial tools employees use or the regulations that apply to these tools, the advantages and potential disadvantages of EWA are based on employees' needs at the time wages are accessed.

In context of the U.S. culture of employee financial control, it is imperative that the CFPB's approach to regulating EWA does not interfere with employees' decision-making to better manage their finances. Regulations should not unintentionally lead to more expensive outcomes for employees. Arbitrarily adding restrictions on EWA products and services is not the answer, especially without a clear process to properly evaluate restrictions.

For example, if the CFPB determines that Annual Percentage Rate (APR) fee caps are appropriate for EWA, employees will be forced to take out larger amounts than are needed, e.g., \$500 or more when they only need \$60, and without adding to consumer protections. If the CFPB adopts frequency limits, employees, especially those living paycheck to paycheck, would not be able to apply the least-costly alternative that would otherwise be available to them. Employees only options will be to seek high-interest payday loans, overdraw their bank accounts resulting in non-sufficient fund fees, or paying bills late. These expensive options build actual cycles of debt that EWA benefits are designed to prevent.

Technological Advances Versus Administrative Capabilities

Financial tools, like EWA, bridge the gap between pay periods to help workers meet expenses as they come due. If implementation and use of EWA become too cumbersome, the value of the benefit will diminish and could become untenable for use.

The payroll period concept began during the Industrial Revolution when factories hired workers and paid them weekly. Over time, payroll periods have been used to ensure that workers received

pay at regular intervals, overtime pay could be calculated, taxes were paid, children received support, and contributions were made to healthcare insurance and retirement plans.

This background information is important. Today, technological advances to payroll management systems have created the capability to eliminate the pay period approach, meaning the technology would allow workers to receive their earned pay at any time. However, payroll professionals, employers, and government agencies do not have the resources to manage the administration of this capability. The technology is available but not all employers and government agencies are able to acquire, implement, and maintain these systems or have the cash flow to fully process payroll and legal withholding at employees' demand.

EWA is Not a Form of Credit

PayrollOrg concurs that employer-integrated EWA is not a form of credit, and fees should not be considered in the context of credit. EWA is simply a new administrative feature that allows employees to obtain part of their already earned wages easily and efficiently in the current pay period before the next scheduled payroll.

Credit is defined in Regulation Z as “the right to defer payment of debt or to incur debt and defer its payment [12 CFR § 1026.2(a)(14)]. While “debt” is not defined in Regulation Z, it usually entails the repayment of a principal amount plus interest.

In a recent letter to the California Department of Financial Protection and Innovation, CFPB General Counsel and Senior Advisor to the Director Seth Frotman states that Regulation Z, “generally applies to extensions of consumer credit and provides that a finance charge includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit.”

In EWA, employees receive earned wages earlier than they would otherwise and without owing interest. That an employer makes wages available to employees earlier than the scheduled date, does not necessarily mean that an employee has received an income-based advance. Because the amount of earnings an employee receives on a regularly scheduled payday is reduced by the amount the employee received at an earlier date, also does not necessarily mean the earlier payment is defined as credit. This is especially true when the employee is receiving already earned wages and the employer is providing real-time payroll data to the EWA provider to ensure accuracy of earnings calculations.

When EWA is employer-integrated, employers may pay the EWA provider fees or pay for the provider's services through a contract arrangement. It is not unusual for employers to share the costs of benefits with employees. For example, provision of healthcare insurance benefits usually involves employee contributions that are withheld from their pay. The cost of other benefits, such as gym memberships, subsidized meals, and wellness programs, are also provided through shared payments by employers and employees. EWA benefits should be considered in this context. If the

employee costs are too high and employees do not take advantage of the benefits, the employer's purpose in offering the benefits is defeated. This is part of the negotiation between the employer and EWA vendor.

APR is the yearly interest charged on a loan. In EWA, there is no interest. Because EWA is not a form of credit, using the APR to measure the reasonableness of fees does not make sense. EWA amounts are small (80% of EWA transactions are between \$40 and \$100)¹ and are generally taken a few days before the next payday; thus, application of an APR limit would be prohibitive. Instead, fees for EWA benefits should be viewed as a comparison to other financial options, such as the cost of bank overdraft fees and payday loans.

Predatory Practices

PAYO supports regulation of EWA benefits. Payroll professionals have consistently stated that predatory practices should not be allowed. Requirements should include transparency for employers, payroll professionals, employees, and government agencies with plain language explanations of an EWA provider's process, how the provider complies with regulatory requirements, how payroll management will be impacted, all fees and costs associated with EWA benefits, and employee responsibilities.

Usually, predatory practices refer to high-interest rates and penalties to repay loans, threats that an employee's credit rating will be lowered, and harassment by providers to pay the money back. In employer-integrated EWA, there is no interest and funds are reimbursed to the EWA provider on the employee's next payday. A true EWA benefit would not have carryover beyond the next pay period. EWA providers have no recourse if unable to recoup an EWA amount with the next payroll. The transparency requirements should include this information. The CFPB should define EWA benefits and those products and programs that may be financial wellness tools and called EWA but are not.

In addition, PAYO supports EWA provider reporting requirements on use of their program with employee demographics on total average annual costs.

Stakeholder Engagement

PAYO is concerned that the process for developing guidance on EWA at the CFPB is not inclusive of all stakeholders.

In the letter from the CFPB to California, it states that the CFPB supports California's proposed interpretation of the state's financial laws and that the CFPB considers EWA to be an income-based

¹ California Department of Financial Protection and Innovation, [2021 Earned Wage Access Data Findings](#), at page 1.

advance. The letter is not official CFPB guidance or interpretation; yet it does indicate CFPB's viewpoint. EWA stakeholders were not contacted about the expressed CFPB viewpoint.

Senior Advisor Frotman said, "Among its responsibilities, the CFPB has an obligation to coordinate with other regulators, including states, to promote consistent regulatory treatment of consumer financial products and services." In the past two years, two states (Missouri and Nevada) have enacted laws on EWA, ten states have introduced legislation on EWA, and, at least, two states (Connecticut and Maryland) have offered administrative opinions on EWA. The Missouri and Nevada laws clearly define EWA benefits as non-credit services, as have several other proposed state laws and interpretations. The CFPB did not send these states letters to support or coordinate their regulatory approach.

PAYO requests to meet with the CFPB to talk about how to regulate EWA benefits to protect employee-consumers, payroll professionals, and employers without damaging opportunities for employees to better manage their finances and for employers to retain talent. PAYO would like to work with the CFPB to carefully consider the unintended negative consequences of a TILA designation for employer-integrated EWA benefits before new guidance is issued.

PAYO can be reached through Alice Jacobsohn at 202-669-4001 or ajacobsohn@payroll.org.

Sincerely,



Alice P. Jacobsohn, Esq.
Director, Government Relations

For: Government Relations Task Force
Federal Issues Subcommittee:
Cochairs Rebecca Harshberger, CPP, and Jon Schausten, CPP
Electronic Payments Subcommittee:
Cochairs Nancy Fletcher, CPP; Ronn Gilson, CPP; and Kristine Willson, CPP