August 29, 2024

Comment Intake—2024 Paycheck Advance Interpretive Rule
c/o Legal Division Docket Manager
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552
https://www.regulations.gov

Re: Truth in Lending (Regulation Z): Consumer Credit Offered to Borrowers in Advance of Expected Receipt of Compensation for Work, CFPB-2024-0032-0001 (July 21, 2024)

Dear CFPB:

PayrollOrg[1] promotes the regulation of earned wage access (EWA) benefits and raises concerns with the CFPB's proposed Paycheck Advance Interpretive Rule. It is imperative that employers and employees receive accurate information on how EWA benefits operate so they can make informed decisions. Interpreting provisions merely to regulate EWA under the Truth in Lending Act (TILA) is not helpful. The result will make useful financial health tools inaccessible to the employees who need them.

THE CFPB INCORRECTLY DEFINES DEBT

The CFPB correctly states that TILA and Regulation Z do not define "debt." However, the CFPB incorrectly defines congressional intent and is missing a component of the common definition of debt. Debt implies an offer of money not already owned by a consumer. Thus, loan providers use collateral, interest, and credit history to mitigate their risk of repayment. In EWA, risk is based on the accuracy of calculating wages -- that risk is borne by the EWA provider, not the consumer. EWA fees are associated with the cost of doing business and not the dollar amount provided to employees.

Narrow versus broad definition. The proposed interpretive rule says that if Congress intended to narrow the types of transactions that are determined to be debt, it could have

[1]PayrollOrg, formerly the American Payroll Association, is a nonprofit association representing more than 20,000 payroll professionals throughout the United States. PayrollOrg'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. PayrollOrg members are directly responsible for calculating wages and withholding for their employers across all industries and employer types.

added a definition of debt in TILA. As congressional intent would be based on the date TILA was enacted in 1968 and Congress has not added a definition since then, a commonsense approach would say that Congress did not intend to broaden the definition of debt to include EWA as suggested by the CFPB.

It is highly unlikely that 1968 congressional leaders foresaw the technological advances that allow for the administration of EWA benefits. Thus, there was no need for Congress to carve out an exception for EWA transactions. In the analysis, the CFPB seems to be inventing congressional intent to justify its desired interpretation of TILA.

Wages are not debt. The CFPB references several dictionaries and other laws to say that debt is a financial liability or obligation owed by one person to another (simplified here). The CFPB also references "delayed payment" by employers in distributing wages to employees. By the CFPB's interpretation, all employers would be debtors, i.e., owing money to employees between the time wages are earned and distributed, which is not the intent of Congress under TILA.

When data on wages is provided by employers, an EWA product accelerates the timing of distributing wages. This does not make the wages a credit product, even when reconciled on payday. The money is still wages owed and not debt. Whether there is a cost for this timing change is not determinative of debt.

State definitions of debt. The CFPB refers to states in defining debt, yet at least three states (Missouri, Nevada, and Wisconsin) have enacted laws finding that EWA benefits do not fall within their statutory definitions of debt. This has been acknowledged by the CFPB, yet the CFPB ignores these state laws in favor of selecting California's approach. The CFPB offers no explanation of the relationship between California law and TILA nor does the CFPB provide evidence that Congress intended the CFPB to rely on California law and in absence of other state laws.

EWA IS A WORKER BENEFIT

When an employer arranges an EWA benefit for interested employees with a shared cost, the benefit should not be considered a credit product.

Employers offer benefits as part of employee compensation packages. The costs of the benefits to each employee depends on the arrangement. Costs are often paid in full by employees or shared with employees, for example, health care insurance, pet insurance, retirement plans, subsidized meals, and gym memberships. Although the process for each of these benefits is different, the costs are not defined as debt to employees. Whether the costs are considered reasonable and which disclosures are required depends on the benefit. Some of these benefits

are paid in advance of payday yet are still not credit products or services. For example, many employers deduct health insurance a month in advance of the employee's receipt of the benefit.

In addition, the purpose of providing an EWA benefit to employees will be lost if EWA is defined as a loan. For example, onerous loan origination and credit check requirements under TILA run counter to the intent of an expedient solution to provide cash to workers without causing them harm. Without a reasonable regulatory approach to EWA benefits, employers will not be able to offer the benefit and employees would not be able to access their own, already earned pay when they may really need it.

APR IS NOT AN ACCURATE MEASUREMENT OF EWA

PayrollOrg is concerned that employers and employees may be confused by the CFPB's proposed interpretive rule if EWA benefits are measured as an Annual Percentage Rate (APR). The APR is not an accurate measurement of the cost to consumers of using employer-integrated EWA services.

APR refers to the yearly rate charged for a loan or earned by an investment and includes interest and fees. Even if EWA is considered a loan, each early payment of wages would be a separate loan as they are paid back on the employee's next payday. The CFPB is using APR to consolidate fees on all the EWA payments an employee might pay annually and based on limited data of average usage of EWA benefits, not actual usage by an employee. This is not how APR works.

In addition, requiring an APR measure to show costs under EWA can produce absurd, widely variant results that are not helpful to workers in understanding the actual cost. For example:

((Fees + Interest / Principal / Term) x 365) x 100 = APR		
Employee 1: Single Request $3 EWA transaction fee $100 earned wages 6 days before payday	Employee 2: Single Request $3 EWA transaction fee $100 earned wages 2 days before payday	Employee 3: Two Requests $3 EWA transaction fee $100 earned wages 6 days before payday $3 transaction fee $100 earned wages 2 days before payday How should APR be calculated? What is the term?
APR = 182.5%	APR = 547.5%	?

Even with a concern about total fees per year, APR is not a good measure. Any means of combining terms will result in inaccurate APR. Without knowing an employee's total number of annual transactions, determining APR by combining all early wages, fees, and terms is anecdotal with little meaning for the employee's financial well-being. In addition, the burden to produce APR calculations can be onerous for EWA providers, increasing the need to charge higher fees. This cycle is not helpful.

REGULATING EWA

PayrollOrg agrees with the CFPB that EWA benefits should be regulated. This means a clear definition of when a product can be defined as EWA. The CFPB correctly found that many businesses refer to their products as EWA, when they are not. For example, if a product looks and acts like a payday loan and not EWA, then it should be regulated accordingly.

The CFPB needs to recognize and provide clear and distinct differences between EWA and any other type of payroll advance product. PayrollOrg and its members are focused on employer-based solutions. These solutions provide:

- Accurate net wage calculations to prevent overpayments and suspension of services for this benefit,

- Payroll deductions to eliminate bank overdraft fees and to ensure transparency and compliance with state and federal laws, and

- Clear and small fees in comparison to other financial options to minimize employee expenses and wage reductions.

EWA was intended to be a benefit employers provide for their employees to help with short-term liquidity challenges, regardless of employee decisions on wage spending. By differentiating employer-based EWA products, the CFPB can ensure consumers have access to transparent, accurate, and responsible EWA solutions while protecting employees and employers from harm.

Regulations should require full disclosure of all costs and fees to employers and employees using direct cost tools. While APR is not a correct measurement, requiring EWA providers to offer employees examples of potential total annual costs depending on usage is an appropriate means of transparency. Government agency oversight to prevent predatory practices including employer and employee guidance is also important.

The states that found EWA is not a loan also require registration or licensing of vendors along with consumer transparency and reporting measures. PayrollOrg supports this approach.

PayrollOrg encourages the CFPB to correctly define early wage products and services to create accuracy and meaningful regulations. We would be pleased to discuss these comments further.

Sincerely,

Alice P. Jacobsohn, Esq.
Director, Government Relations

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