

AMERICAN PAYROLL ASSOCIATION

February 25, 2022

Mr. Seth Frotman, Esq.
Acting General Counsel and Senior Advisor
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Re: Earned wage access, CFPB opinion letters, and proposed state legislation

Dear Mr. Frotman:

On January 18, you provided a CFPB response to New Jersey consumer groups regarding earned wage access (EWA) and the CFPB's November 30, 2020, advisory opinion. The American Payroll Association (APA) recommends that the CFPB treat employer-integrated EWA programs, when employers provide real-time payroll data, differently than payday loans.

About APA

Established in 1982, APA is a not-for-profit association serving the interests of more than 20,000 payroll professionals nationwide. APA's primary mission is to educate its members and the payroll industry about best practices associated with paying America's workers while complying with applicable federal, state, and local laws and regulations. APA members are directly responsible for calculating wages for their employers.

There are many different early pay products on the market subject to CFPB jurisdiction. Because APA represents payroll professionals, we can only speak to EWA programs in which payroll operations are directly involved.

Payday Loans and EWA

The APA requests that the CFPB consider employer-integrated EWA programs in a different context than payday loans. To ensure that employees are not placed in a cycle of debt, the early payment amounts must be confirmed earned wages.

The APA also believes that for a product to be defined as EWA by the CFPB, employees must have the full amount of the EWA transfer and any nominal fees settled through payroll integration in the pay period in which the pay was earned and not debited from their bank accounts. To protect employees and employers, EWA employer-provided programs must be transparent.

With payday loans, at best, employees are asked to provide evidence of likely future income. Lenders are not required to validate the information provided to them. Employers cannot release payroll data to these lenders. Payday loans are also fraught with high fees that are rolled over an average of eight times per the CFPB's own 2015 research.

CFPB Advisory Opinions

The CFPB's 2020 advisory opinion has sometimes been misconstrued; yet the CFPB's advisory opinion process is valued by the regulated community. For example, reasoning exists for revoking an advisory opinion if the CFPB finds substantive issues, but APA requests that the CFPB not revoke an opinion because of confusion over the role of advisory opinions in comparison to regulations and official guidance.

Instead, APA recommends that the CFPB conduct outreach regarding the advisory opinion process and take further action, if appropriate, based on data and public input. The APA would welcome the opportunity to work with the CFPB on this important issue and any other public policy priorities shared by both the agency and payroll managers.

New Jersey and CFPB Opinions

New Jersey prohibits payday loans, yet employees in the state can access payday loans through out-of-state lenders or pay significant bank fees for non-sufficient funds or late fees. The APA and other business interests recommended that New Jersey allow EWA by defining these services differently than payday loans within state law. The CFPB's 2020 advisory opinion did not address state laws nor are any CFPB interpretations of federal law identified in pending New Jersey legislation.

For reference, New Jersey proposed legislation provided other consumer protections under state law, including, but not limited to, restrictions on fees, vendor licensing and registration requirements, consumer statements, personally identifiable information protections, oversight by the state's banking authority, penalties for violations, and a study measure to review industry practices and consumer impacts.

The APA supported this New Jersey legislation and continues to believe that emerging EWA systems are far more beneficial to consumers than other alternatives.

Thank you for considering APA's views on EWA. The APA would be pleased to discuss EWA further with the CFPB.

Sincerely,

A handwritten signature in cursive script that reads "Alice P. Jacobsohn".

Alice P. Jacobsohn, Esq.
Director, Government Relations