August 30, 2024

The Honorable Rohit Chopra
Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

RE: Truth in Lending (Regulation Z); Consumer Credit Offered to Borrowers in Advance of Expected Receipt of Compensation for Work – Docket Number CFPB-2024-0042

Dear Director Chopra,

The Independent Community Bankers of America ("ICBA")[1] appreciates the opportunity to respond to the Consumer Financial Protection Bureau's ("CFPB") proposed interpretive rule that would require Earned Wage Access ("EWA") providers to disclose certain information to consumers. While ICBA appreciates the CFPB's intent to protect consumers from potentially usurious or unscrupulous EWA providers, we are concerned that the interpretive rule is too broad in defining "debt." In particular, the broadened definitions create the potential for ambiguity among everyday consumers and others in the financial services industry, thus precluding responsible lenders from providing wage access.

Background

EWA products to provide consumers access their wages ahead of the normal pay cycle to assist with unexpected circumstances.[2] These EWA products provide consumers with an alternative to predatory payday loans.[3] In November 2020, the CFPB released an Advisory Opinion ("AO"), limited to covered EWA programs, clarifying that "Covered EWA Programs" did not constitute "credit" as defined by Regulation Z.

[1] *The Independent Community Bankers of America® has one mission: to create and promote an environment where community banks flourish. We power the potential of the nation's community banks through effective advocacy, education, and innovation. As local and trusted sources of credit, America's community banks leverage their relationship-based business model and innovative offerings to channel deposits into the neighborhoods they serve, creating jobs, fostering economic prosperity, and fueling their customers' financial goals and dreams. For more information, visit ICBA's website at icba.org.*

[2] https://www.adp.com/spark/articles/2022/10/earned-wage-access-101.aspx

[3] Consumer Financial Protection Bureau, "Truth in Lending (Regulation Z); Earned Wage Access Programs," (Nov. 2020), Page 3, cfpb_advisory-opinion_earned-wage-access_2020-11.pdf (consumerfinance.gov).

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The AO defined a "Covered EWA Program" to include the following characteristics, among others: (1) EWA providers contract with employers to provide wage advances to the employer's employees; (2) the wage advance does not exceed the accrued cash value of the wages; (3) the EWA provider does not solicit or accept tips or payment from the employee; (4) the EWA provider recovers the amount of each transaction only through an employer-facilitated payroll deduction from the employee's next paycheck; and (5) the product is non-recourse.

However, the CFPB did not address other products outside the scope of Covered EWA Programs, such as direct-to-consumer EWA products. While Covered EWA Programs are offered under an Employer-partner model, direct-to-consumer products provide employees with funds in amounts that they estimate are below their accrued wages and are recovered by the third party through automated withdrawal from the consumer's bank account.[4] The AO stated in footnote 11 that non-Covered EWA Programs may be considered credit under Regulation Z.

Following the 2020 AO, EWA product usage grew by over 90% from 2021 to 2022,[5] with employer-partnered products being more prevalent than the direct-to-consumer model.[6] In recognition of EWA products' growth in popularity, the CFPB has now issued this proposed interpretive rule to provide consumers with clarifications related to their usage of EWA products.

The CFPB now proposes a broader definition of "debt" as obligations owed to another party, which would encompass EWA products and transactions where consumers pay certain transaction-based fees for their advanced wages.

ICBA's Comments

EWA Products Should Not Be Considered Consumer Debt

TILA and Reg Z do not provide a definition of "debt." Instead, the CFPB proposes to use a broad definition of debt, based on numerous sources, including bankruptcy law and the Fair Debt Collection Practices Act ("FDCPA").

Under bankruptcy law, "debt" is defined as "liability on a claim, where a claim is the right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." The FDCPA defines debt as, "any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the

[4] *Id.*
[5] Consumer Financial Protection Bureau, "Data Spotlight: Developments in the Paycheck Advance Market," (Jul. 18, 2024), https://www.consumerfinance.gov/data-research/research-reports/data-spotlight-developments-in-the-paycheck-advance-market/.
[6] *Id.*

subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment."[7]

Citing to these sources, as well as state laws and ordinary usage of "debt," the Bureau contends it is justified in using a broad definition – i.e., all obligations to pay another. Using this definition, the CFPB asserts that EWA products are considered "debt" because consumers borrow money from employers or other parties to receive their paychecks ahead of the normal pay cycle, then are obligated to pay back the advance.

However, the CFPB rejected this common understanding of debt as the basis of a definition in its 2020 Advisory Opinion of EWA products. The 2020 AO found that Covered EWA Programs allow employees to access wages they have already earned, and thus, "functionally operates like an employer that pays its employees earlier than the scheduled payday."[8] Despite the Bureau's contention otherwise, Covered EWA Programs – as illustrated in the 2020 AO - *do* leave consumers in the same position that they would be if their employer just paid them earlier, especially when considering that no fees are required or no recourse to the EWA provider is available.

Even if the Bureau were accurate in its finding that "the vast majority of earned wage transactions involve consumer payment," then logic would hold that there is still a slim minority of EWA transactions that do not involve consumer payment, and therefore, should not be considered debt. The Bureau would be unreasonably broad in defining all EWA products as "debt," regardless of any other offsetting characteristics that would more like leave the consumer in the same position as if the employer just paid them earlier.

Conclusion

While we support the CFPB's goal of providing more consumer disclosure to fees charged when they request their wages in advance of their normal pay cycle, we strongly urge the CFPB to revise its broad interpretation of essential terms that will affect everyday consumers. A preferred narrower approach will decrease confusion consumers might face in adjusting to a new understanding of EWA products, without discouraging responsible Financial Institutions from offering such wage access.

[7] 89 Fed. Reg. 61358 at 61360.
[8] https://files.consumerfinance.gov/f/documents/cfpb_advisory-opinion_earned-wage-access_2020-11.pdf

ICBA appreciates the opportunity to provide our comments in response to this proposed interpretive rule. If you have any questions, please do not hesitate to contact us at Michael.Emancipator@icba.org.

Sincerely,

/s/

Michael Emancipator
Senior Vice President, Senior Regulatory Counsel