



August 30, 2024

VIA E-MAIL ONLY

Comment Intake
2024 Paycheck Advance Interpretive Rule,
c/o Legal Division Docket Manager,
Docket No. CFPB–2024–0032
Consumer Financial Protection Bureau,
1700 G Street NW,
Washington, DC 20552

RE: Consumer Credit Offered to Borrowers in Advance of Expected Receipt of Compensation for Work; Docket No. CFPB–2024–0032

To Whom It May Concern,

The Wisconsin Bankers Association (WBA) appreciates the opportunity to comment on the Consumer Financial Protection Bureau’s (CFPB) proposed interpretive rule regarding the paycheck advance marketplace, including earned wage access products (interpretive rule).

While these products are traditionally offered by non-bank companies, and CFPB’s study and the interpretive rule is issued in this context, WBA offers these comments to inform CFPB that the interpretive rule is unnecessary and requests that it be withdrawn. The following comments are submitted to show that these types of services function well in Wisconsin as non-credit products.

CFPB has addressed this issue before. In 2020, CFPB determined that covered earned wage access transactions are not “credit” for purposes of coverage under the Regulation Z (advisory opinion).¹ CFPB acknowledged that it “understands that the interval of time between hours worked and receiving a paycheck can contribute to employees’ financial distress, particularly for new hires when the length of time between the first day of employment and the first paycheck may be longer than subsequent paycheck intervals, depending on where the hire date falls in a pay cycle.” Furthermore, CFPB observed that “earned wage access products have recently emerged in the marketplace as an innovative way for employees to meet short-term liquidity needs that arise between paychecks without turning to more costly alternatives like traditional payday loans.” The advisory opinion describes the features of covered earned wage access products programs which would not be considered credit for purposes of Regulation Z.

CFPB has proposed the interpretive rule to replace the advisory opinion, stating an overall goal of ensuring fair competition in the market. The interpretive rule would now consider earned wage access products to be consumer credit for purposes of TILA and Regulation Z. A significant issue raised by CFPB is the solicitation of “tips” or similar payment, which encompass a wide range of practices to receive payments from consumers. However, fees associated with these products are already discussed in the advisory opinion. It is not necessary, or appropriate, for CFPB to now blanketly interpret the definition of credit to encompass an entire product just because CFPB does not like certain charges imposed as part of the product.

These types of products function well in Wisconsin and the market is diverse and competitive. In

¹ https://files.consumerfinance.gov/f/documents/cfpb_advisory-opinion_earned-wage-access_2020-11.pdf



fact, Wisconsin passed a law this year requiring earned wage access service providers to obtain a license through the Wisconsin Department of Financial Institutions.² Under the new law, earned wage access service providers are permitted to:

- Impose fees for delivery, or expedited delivery, of proceeds to Wisconsin consumers.
- Charge a subscription or membership fee for a bona fide group of services that include earned wage access services.
- Ask Wisconsin consumers to provide a voluntary tip, gratuity, or other donation for their service.

Providers are also required to provide consumers with at least one reasonable option to obtain earned but unpaid wages at no cost and must clearly explain how to select that no-cost option to the consumer. Wisconsin passed this law to create licensure to provide earned wage access services to workers, while maintaining innovation, regulatory clarity, and a competitive and functional market.

Conclusion

WBA appreciates CFPB's desire to ensure that lenders understand their legal obligations to disclose credit products to workers. However, the products addressed in the interpretive rule are not credit products. Earned wage access services function in Wisconsin under their own licensing requirements, and the market is able to provide services desired by employees who are properly informed of their options and able to select the product that fits their needs. WBA requests that CFPB withdraw the interpretive rule as it is not appropriate for CFPB to characterize earned wage access services as credit products simply because CFPB dislikes the charges now associated with them.

Once again, WBA appreciates the opportunity to comment.

Respectfully,

A handwritten signature in black ink that reads "Rose Oswald Poels". The signature is written in a cursive, flowing style.

Rose Oswald Poels
President/CEO

² 2023 Wisconsin Act 131