



February 7, 2024

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

Re: Developing a Pragmatic Regulatory Framework for Earned Wage Access

Dear Director Chopra,

On behalf of The American Fintech Council (AFC),¹ I am writing you to request that the Consumer Financial Protection Bureau (CFPB or the Bureau) convene a meeting with relevant stakeholder groups to discuss the development of a pragmatic regulatory framework for Earned Wage Access (EWA).

While AFC has consistently maintained that EWA is not a loan and should not be regulated as such, we recognize and respect the fact that the Bureau has multiple options in their regulatory toolkit that could be used to formally or informally regulate the emerging EWA market. Therefore, we believe that the Bureau should convene the various stakeholders espousing these diverging views in order to develop a pragmatic policy solution—such as a formal rulemaking—for the EWA industry that properly protects consumers while not stymieing innovation.

AFC's mission is to promote an innovative, transparent, inclusive, and customer-centric financial system by supporting the responsible growth of lending, fostering innovation in financial technology (Fintech), and encouraging sound public policy. AFC members are at the forefront of fostering competition in consumer finance and pioneering ways to better serve underserved consumer segments and geographies. Our members are also improving access to financial services and increasing overall competition in the financial services industry by lowering the cost of financial transactions, allowing them to help meet demand for high-quality, affordable financial products.

EWA represents a responsible and innovative alternative to payday loans that, while serving consumers in a similar manner, does not engage in the mandatory fees, interest accrual, and

¹ American Fintech Council's (AFC) membership spans EWA providers, lenders, banks, payments providers, loan servicers, credit bureaus, and personal financial management companies.

harsh debt collection practices found in payday lending. Responsible EWA providers, who constitute AFC's membership offer crucial services for consumers to access their pay prior to payday in a way that makes the most sense for the individual consumer's situation. Nationally, our members have already assisted millions of consumers in ensuring that they are able to handle unexpected expenses when they inevitably come up before their next paycheck.

This optionality in EWA products, while beneficial from a consumer and economic perspective, presents a unique opportunity to develop robust regulatory guardrails. To that end, AFC has publicly advocated for a clear and consistent regulatory framework for innovative financial services and products that avoid duplicative or diverging requirements and accurately reflects the nuances of the innovative service. Further, AFC consistently advocates for a strong, unified approach to regulation that properly balances consumer protections with innovation that ensures regulators protect against actual, not perceived, harms to consumers. In practice, we have also developed Standards for Earned Wage Access to help inform the best approach to regulating EWA and ensure responsible actors operate within the EWA market.²

Unfortunately, at the state level, we are beginning to see a patchwork approach towards regulating EWA develop. We recognize and appreciate the intent of these various state legislatures and regulators to expeditiously pursue a path that will ensure their citizens remain protected; however, some states are settling for speed over quality. While AFC is supportive of the legislation that has developed a bespoke regulatory framework for EWA, such as in Nevada and Missouri,³ we disagree with the approach of shoehorning EWA products into existing lending laws, pursued by other states. Regardless of how states have chosen to pursue the regulation of the emerging EWA market, we believe that pragmatic federal engagement on this matter is necessary.

As evidenced by the Bureau in its other regulatory endeavors, CFPB is imbued with a multitude of regulatory tools to ensure that it can meet its congressional mandate of enforcing consumer financial laws, protecting consumers in the financial market, and monitoring emerging financial markets and their impact on consumers. Historically, the CFPB, like other financial regulators, has pursued formal rulemaking to implement its regulatory agenda. However, more recently, the Bureau has relied more heavily on non-binding guidance, such as Advisory Opinions, policy statements, and blog posts, that, while helpful for understanding supervisory expectations at the time of issuance, do not carry the same effect as formal rulemaking and leave market participants unsure about how to strategically deploy their limited resources to comply with these expectations and offer responsible products to consumers.

² Among other provisions, AFC's standards require members to register and/or obtain appropriate licenses; offer a "no cost" option to all users; provide strong fee disclosures represented in a clear and transparent manner; and allow users the ability to cancel their EWA service at any time. For additional information on AFC's Standards for EWA, see <https://fintechcouncil.org/what-we-do>.

³ See Nev. Rev. Stat. Ch. 400. and RSMo. § 361.749.

To date, the Bureau has opted to pursue less comprehensive or binding guidance with regards to EWA.⁴ Initially, we agreed with this approach, as it allowed the industry to develop responsible options that fit the demands of consumers, without significant limitations to their business models. However, given the developments that have occurred in the market and various states since the Bureau issued its previous Advisory Opinion, we believe that it is time to engage in a more substantive regulatory endeavor, such as a formal rulemaking on EWA, which, as prescribed under the Administrative Procedures Act, would provide the public the ability to adequately convey the myriad views on this subject and ensure that the Bureau duly considers these views.

To facilitate the necessary discussion to develop a pragmatic regulatory approach to EWA, we respectfully request that the CFPB work with AFC to establish a convening on EWA with all relevant stakeholders. While we continue to advocate for the Bureau to pursue a full notice and comment rulemaking process under the Administrative Procedures Act, we remain open to understanding and supporting the regulatory tool that will ultimately serve consumers and responsible industry participants best. We have greatly appreciated our previous work with you and your staff and look forward to continuing to find opportunities to collaborate on the pragmatic regulation of responsible innovations in a manner that ultimately serves consumers best.

Sincerely,



Ian P. Moloney
SVP, Head of Policy and Regulatory Affairs
American Fintech Council

⁴ Bureau of Consumer Fin. Prot., “Truth in Lending (Regulation Z); Earned Wage Access Programs”, Advisory Opinion (Nov. 2020), available at https://files.consumerfinance.gov/f/documents/cfpb_advisory-opinion_earned-wage-access_2020-11.pdf.