November 20, 2023

Department of Financial Protection and Innovation
Attn: Araceli Dyson
2101 Arena Boulevard
Sacramento, CA 95834
regulations@dfpi.ca.gov

Re: PayrollOrg comments on Notice of Modification to Proposed Rulemaking Under the California Consumer Financial Protection Law, California Financing Law, California Deferred Deposit Transaction Law, and California Student Loan Servicing Act (PRO 01-21)

Dear Araceli Dyson:

PayrollOrg (PAYO), formerly the American Payroll Association,[1] appreciates the opportunity to comment on the California Department of Financial Protection and Innovation's (DFPI) modified rulemaking on earned wage access (EWA) services. Because PAYO represents payroll professionals, these comments only apply to employer-integrated EWA benefits.

Advances and Loans

PAYO continues to object to terms "advances," "loans," and "finance lenders" in reference to EWA employee benefits. The licensing exception in the modified rulemaking with rate cap relief does not resolve the problem with the definitions.

Despite other language in the proposed rulemaking, "a sale or assignment of wages and a loan subject to the [CFL]" found in section 1461-1462 is not a good description of EWA. A "wage assignment" takes funds directly from an employee's paycheck to pay back a debt. A debt implies interest payments and penalties for failure to repay a borrowed amount of money.

[1] Established in 1982, PayrollOrg (PAYO) is a non-profit organization serving the interests of more than 20,000 payroll professionals nationwide. One of the PAYO's core missions is providing representation for payroll professionals at the federal, state, and local levels. This is done primarily through PAYO's Government Relations Task Force in which members educate government and community leaders about the payroll industry and the best practices associated with paying America's workers.

There is no debt in EWA benefits or interest payments and penalties. In accordance with most wage and hour laws, the funds used in EWA belong to the employee. These EWA funds are merely provided to participating employees on a date different from the employer's regularly scheduled payday. This is why employers provide real-time payroll information to their selected EWA provider to ensure that employees only receive disposable earnings, i.e., EWA programs must account for taxes, child support, and other employee benefits.

Because EWA is not a debt, PAYO agrees with the DFPI under §1004(g)(3)(B) that EWA providers should not have recourse regarding repayment.

Regulating EWA Programs and Providers

PAYO agrees with the DFPI that EWA programs and providers should be regulated to create legitimacy for EWA providers in California and to prevent predatory practices. A simplified registration requirement that informs payroll professionals and their employers and employees found in the modified rulemaking makes sense.

PAYO agrees with the modified rulemaking that eliminates the licensing requirement and fee caps. Employers should have the flexibility to negotiate arrangements for employee EWA benefits.

In addition, excluding payroll service providers from the EWA regulations will prevent unnecessary cost increases for payroll departments when employers outsource some or all of their payroll management responsibilities.

To discuss these comments further, please contact PAYO at Alice Jacobsohn 202-669-4001 or ajacobsohn@payroll.org.

Sincerely,

Alice P. Jacobsohn, Esq.
Director, Government Relations

For: Government Relations Task Force
State and Local Topics Subcommittee
Cochairs: Pete Isberg; Carlanna Livingstone, CPP; and Bruce Phipps, CPP