

CFPB Issues Interpretive Rule for Paycheck Advance or “Earned Wage Access” Products

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Late last week, the Consumer Financial Protection Bureau (CFPB) [released](#) a proposed interpretive rule asserting that paycheck advance or earned wage access (EWA) products are considered consumer loans and therefore subject to the Truth in Lending Act (TILA), irrespective of whether the products are provided through employer partnerships or marketed directly to borrowers. The new interpretive rule, which unlike substantive rules issued under the APA do not impose new legal requirements or have the force and effect of law, explains how existing law (TILA and Regulation Z, specifically) apply to the increasingly popular financing option and replaces a 2020 advisory opinion issued in the Trump administration.

The 2020 advisory opinion explained that EWA programs would not be considered “credit” under TILA and Regulation Z if certain conditions were met, including that the provider of the EWA program contracts with the employer and the employee makes no payment, voluntary or otherwise, to access EWA funds or otherwise use the program, and there is no assessment of credit risk. But the 2020 opinion did not address whether EWA programs that do *not* meet the specified conditions were subject to TILA. The opinion suggested that programs that assessed a nominal processing fee would also be outside the scope of TILA, and invited providers to request clarification about specific fees from the CFPB.

The CFPB’s announcement last week and an accompanying [report](#) on the EWA marketplace state that the previous opinion addressed only “a very specific paycheck advance product that is not common in the real market.” In addition, the CFPB suggests that the previous opinion introduced confusion in the marketplace.

While EWA products aim to help workers manage the gap between when they earn their wages and when their bills are due, the CFPB’s accompanying [report](#) expresses concerns that costs associated with such products can be high and not adequately disclosed. The interpretive rule also lays out the CFPB’s position that any fees assessed in connection with EWA products, such as tips and expedited delivery fees, are “finance charges” within the meaning of TILA and Regulation Z. Providers will need to ensure that all fees, including those for expedited services and suggested “tips,” are transparently disclosed as finance charges.

The interpretive rule applies to products that provide funds based on accrued wages (estimated or otherwise) and are repaid via automatic means like payroll deductions or preauthorized account debits. While the CFPB distinguishes between direct-to-consumer products that are generally repaid via bank withdrawals and employer-partnered products that are repaid via payroll deductions, both

are considered EWA and subject to TILA and Regulation Z if any fee is imposed.

The CFPB will continue to monitor the market, collect data, and engage with stakeholders to ensure compliance and address any emerging issues in the paycheck advance marketplace. The CFPB is seeking public comments on the proposed interpretive rule until August 30, 2024.