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CFPB DECLARES CERTAIN EARNED WAGE ACCESS PROGRAMS ARE NOT CREDIT SUBJECT TO REGULATION Z

Recently, the Consumer Financial Protection Bureau (“CFPB”) released two opinions that clarify the types of earned wage access (“EWA”) programs that do not involve the offering or extension of “credit” regulated by Regulation Z.

On November 30, the CFPB issued an advisory opinion to resolve regulatory uncertainty regarding the applicability of the definition of credit under Regulation Z, to certain EWA programs. The advisory opinion states that “covered EWA programs” are not credit subject to Regulation Z because the covered EWA programs do not provide employees with “the right to defer payment of debt or to incur debt and defer its payment” because covered EWA programs do not implicate debt.

“Covered EWA programs” must meet the following elements to qualify as a program that does not involve the offering or extension of credit as defined by Regulation Z:

- The provider of the EWA program contracts with employers to offer the EWA to employer’s employees;
- The amount of each EWA transaction must not exceed the accrued cash value of the wages the employee has earned up to the date and time of the transaction;
- The employee makes no payment to access EWA funds (except for nominal processing fees);
- The provider recovers the amount of each EWA transaction only through an employer-facilitated payroll deduction;
- The provider retains no legal or contractual remedy against the employee in the event of a failed or partial payroll deduction;
- The provider must provide certain disclosures before entering into a EWA transaction with an employee; and
- The provider will not directly or indirectly assess the credit risk of individual employees.

On December 30th, the CFPB issued a compliance assistance sandbox approval order for certain EWA products to a financial technology company that provides financial wellness programs that employers can offer their employees. The approved EWA product

has the following characteristics:

- The employee requests a transfer of wages that the employee has already earned;
- The amount of the EWA transaction will not exceed 60% of the accrued cash value of the wages the employee has earned up to the date and time of the transaction;
- Employees may choose to access the EWA funds either by (i) using an account that is managed by the company for no fee or (ii) receiving access to an unlimited number of EWA transactions by alternate means for a non-recurring fee of \$1, with fees capped at \$3 for a one-week pay period or \$5 for bi-weekly pay period;
- The company recovers the amount of each EWA transaction only through an employer-facilitated payroll deduction; and
- No other fees are charged except for the alternate transfer fee.

The CFPB ultimately determined that the EWA product in this approval order is not credit subject to Regulation Z.

The advisory opinion and approval order state that each is limited to the company named and the EWA product described in the opinion and order. Although limited in application, the advisory opinion or approval order provides insight on the CFPB’s view of EWA products.

We routinely advise clients on EWA programs. If you have any questions or would like assistance with developing an EWA product, please let us know. ☐

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