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CALIFORNIA DFPI SIGNS MOUS WITH FIVE EARNED WAGE ACCESS COMPANIES

On January 27, 2021, the California Department of Financial Protection and Innovation (“DFPI”) announced that it signed memorandums of understanding (“MOUs”) with five earned wage access (“EWA”) companies. The MOUs were issued pursuant to the DFPI’s authority to regulate and investigate certain consumer financial providers under the newly effective California Consumer Financial Protection Law. See our prior ALERT dated [Sept. 3, 2020](#).

The EWA companies have agreed to deliver quarterly reports on several metrics intended to provide the DFPI with a better understanding of the products and services being offered. The reports must include: (i) payment volumes, (ii) material changes to any advance pay product agreement, (iii) repayment, delinquency and default information and rates, (iv) information regarding the ratio of money advance to paycheck and frequency of consumers’ use of the advance pay product, (v) information related to “rollover” advances and (vi) the APR and other fees that may be assessed. In addition to the quarterly reports, the EWA companies have agreed to include certain disclosures in their EWA products agreements with California consumers.

The EWA companies are offering two basic types of advance pay products: (i) an employer-based model which offers early access to wages in partnership with an employer as a benefit and (ii) a direct-to-consumer model which does not require employer participation. According to the MOUs, a few of the EWA companies will charge a program fee (either monthly or per EWA transaction), and a few of the other EWA companies will not charge a fee unless the consumer uses an external bank account. The latter EWA companies also give the consumer the option to “tip” the EWA company for the EWA product. The MOUs provide that the EWA advances represent a limited portion of a consumer’s wages. Depending on whether the program is employer-based or direct-to-consumer, the consumer will repay the advance either by payroll deduction or electronic funds transfer directly from the consumer’s bank account.

The DFPI Commissioner noted that “these first of their kind agreements reflect the type of balanced approach and oversight [DFPI] strives to provide that encourages responsible innovation” and

that the agency expects to sign more MOUs with fintech companies in the coming weeks.

In addition to the DFPI’s MOUs, in the past two months the Consumer Financial Protection Bureau (“CFPB”) released two opinions that clarify the types of EWA programs that do not involve the offering or extension of “credit” regulated by Regulation Z. See our prior ALERT dated [Jan. 4, 2021](#).

The DFPI’s MOUs and the CFPB’s opinions provide significant insight on how federal and state regulators view EWA products. If you have any questions or would like assistance in developing an EWA product, please let us know. ☐

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