

# CFPB Addresses “Confusion” Over Earned Wage Access Program

Article By:

Moorari Shah

A.J. S. Dhaliwal

---

On January 18, acting CFPB General Counsel Seth Frotman sent a [letter](#) to three representatives of consumer advocacy groups addressing the CFPB’s November 2020 [advisory opinion](#) on earned wage access (EWA) products. The letter responded to concerns that the advisory opinion was being used as justification by the proponents of a pending New Jersey law that would allow third-party EWA providers to charge fees or permit “tips” for their products without having to abide by the state’s 30% usury cap.

Typically, an EWA provider allows an employee to request a certain amount of accrued wages, disbursing the requested amounts to the employees prior to payday, and later the EWA provider recoups the funds through payroll deductions or bank account debits on the subsequent payday. The advisory opinion addressed whether Regulation Z, implementing the Truth in Lending Act (“TILA”), covers an EWA program that (i) does not require an employee to pay any charges or fees, and (ii) does not require a credit check of individual employees. The advisory opinion concluded that this particular EWA program does not involve the offering or extension of “credit” within the scope of Regulation Z. In December 2020, the CFPB [issued](#) a compliance assistance sandbox (CAS) [approval order](#) to an EWA company regarding specific aspects of some of its EWA products and confirmed that its program did not involve the offering or extension of “credit” as defined by Regulation Z.

The CFPB’s letter acknowledges that the advisory opinion “created confusion” and that the proponents New Jersey legislation “seem to have misunderstood the scope of the opinion.” Frotman confirms that the advisory opinion is limited to a narrow set of facts where “no fee, voluntary or otherwise, is charged or collected.” Frotman also stated that “[g]iven these repeated reports of confusion caused by the advisory opinion” he plans to recommend to Director Chopra “that the CFPB consider how to provide greater clarity on these types of issues.” Finally, the letters notes that the advisory opinion does not speak to whether EWA products would be “credit” under federal laws other than the TILA, such as the CFPA or the ECOA, or under state law.

**Putting it Into Practice:** With its plans to further clarify the Bureau’s stance on EWA products, we should also anticipate the CFPB to use these circumstances as an opportunity to provide some

additional guideposts around what should or should not be considered EWA products.

Copyright © 2024, Sheppard Mullin Richter & Hampton LLP.

---

National Law Review, Volumess XII, Number 27

Source URL: <https://www.natlawreview.com/article/cfpb-addresses-confusion-over-earned-wage-access-program>