On June 30, the CFPB issued an order terminating an EWA provider’s Sandbox Approval Order relating to its earned wage access products. In December 2020, the CFPB provided the company special regulatory treatment, including a temporary safe harbor from liability under TILA/Reg. Z because, in part, the EWA program did not involve the offering or extension of “credit” as defined by Reg. Z. In its press release, the CFPB note that the “temporary safe harbor is for offering and providing certain earned wage access products, subject to good faith compliance with the terms of the approval order.”

According to the Bureau, the CFPB informed the company on June 3, 2022, that it was considering terminating the approval order in light of certain public statements the company made wrongly suggesting a CFPB endorsement of its products. On June 21, 2022, the company notified the CFPB that it was planning to modify its earned wage access product fee model. The CFPB notes that the 2020 approval order only applies to the company’s existing products and any changes to the product fee model
would require modification to the order. The company instead requested termination of the order so it could make fee model changes quickly and flexibly.

**Putting It Into Practice:** In its announcement, the CFPB states that it has received requests for clarification regarding its November 2020 advisory opinion on EWA products. In January 22, the CFPB General Counsel indicated that more clarity on EWA products was needed from the CFPB in response to consumer groups arguing that the opinion was being misused as justification for illegal EWA products (we discussed this in a previous blog post here). The CFPB plans to issue further guidance soon to provide greater clarity concerning the application of the definition of “credit” under TILA/Reg. Z. In light of these developments, it is possible that the CFPB will revise or rescind the 2020 Advisory Opinion, and, as such, EWA providers should prepare for greater regulatory scrutiny.

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