



1700 G Street NW, Washington, D.C. 20552

January 18, 2022

Beverly Brown Ruggia  
Financial Justice Program  
New Jersey Citizen Action

Renee Steinhagen, Esq.  
Executive Director  
New Jersey Appleseed

Chuck Bell  
Advocacy Programs Director  
Consumer Reports

RE: Your letter concerning the CFPB's advisory opinion on earned wage access

Dear Ms. Ruggia, Mr. Steinhagen, and Mr. Bell,

Thank you for your letter of December 22, 2021, concerning the November 30, 2020 advisory opinion issued by the Consumer Financial Protection Bureau (CFPB) regarding certain earned wage access products and asking the CFPB's Director, Rohit Chopra, to immediately rescind it. Your letter discusses New Jersey legislation that would, if enacted, provide that a wide range of earned wage access products would not be treated as "loans" under New Jersey law. It appears from your recounting of the legislative history that the advisory opinion has created confusion, as proponents of the bill seem to have misunderstood the scope of the opinion. The CFPB's advisory opinion, by its terms, is limited to a narrow set of facts – as relevant here, earned wage products where no fee, voluntary or otherwise, is charged or collected.<sup>1</sup>

Your letter discusses a bill in the New Jersey Legislature that would permit third-party earned

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<sup>1</sup> "EWA programs that charge nominal processing fees ... are not covered by this advisory opinion...." Earned Wage Access Programs Advisory Opinion at 3.

wage access companies to operate in New Jersey—and charge fees and/or “tips” for their products—without abiding by the state’s 30% usury cap and other legal protections that apply to consumer credit transactions. You state that proponents of this legislation cite the CFPB’s advisory opinion as justification for its passage. Your description of these statements is consistent with concerns voiced by consumer advocates in an October 12, 2021, letter to Director Chopra. Both that letter and yours make evident that the advisory opinion has caused significant confusion in the marketplace.

Based on your description of the pending New Jersey legislation, proponents have no basis to cite the CFPB’s advisory opinion in support of the legislation. You state that the proposed legislation “allows a provider to charge a consumer for earned income access services two times in any week” and further that it has “no limit on ... products with ‘optional’ fees or ‘tips.’” That alone means that the proposed legislation cannot claim *any* support from the advisory opinion, which on its face is limited to circumstances in which “the employee makes no payment, voluntary or otherwise ... and the provider or its agents do not solicit or accept tips or any other payments from the employee.”<sup>2</sup> While the advisory opinion leaves open the theoretical possibility that some products with “nominal processing fees” might not be credit under the technical definition in the Truth in Lending Act (TILA), the CFPB noted that the advisory opinion did not cover those products. Products that include the payment of any fee, voluntary or not, are excluded from the scope of the advisory opinion and may well be TILA credit.

Moreover, the advisory opinion says nothing about whether earned wage access products would be “credit” as that term is defined under laws other than the Truth in Lending Act. The opinion addresses only the technical definition of credit under TILA. For example, the advisory opinion does not address whether such products would be “credit” under the Consumer Financial Protection Act (CFPA) or the Equal Credit Opportunity Act (ECOA), much less whether these products would be “credit” under state law. The CFPA, ECOA, and the usury law of many states do not share TILA’s technical definition of credit and creditor. Accordingly, it is incorrect to suggest, as you report that proponents of the New Jersey legislation have, that the advisory opinion provides guidance as to what constitutes “credit” or a “loan” under other laws.

Given these repeated reports of confusion caused by the advisory opinion due to its focus on a limited set of facts, I plan to recommend to the Director that the CFPB consider how to provide greater clarity on these types of issues. I thank you for bringing this legislation, and its proponents’ apparently misplaced use of the CFPB’s advisory opinion, to my attention. I look

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<sup>2</sup> Earned Wage Access Programs Advisory Opinion at 3.

forward to working with you and others on this issue and other critical consumer protection issues.

Sincerely,

Seth Frotman  
Acting General Counsel  
Consumer Financial Protection Bureau