TO Z OR NOT TO Z? CFPB CLARIFIES THE REGULATION Z TREATMENT OF CERTAIN EARNED WAGE ACCESS PRODUCTS

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The Consumer Financial Protection Bureau (CFPB) issued an advisory opinion (the 2025 Opinion), effective 23 December 2025, on whether earned wage access (EWA) products constitute "credit" under Regulation Z of the Truth in Lending Act, and whether Regulation Z's definition of "finance charge" includes expedited delivery fees and tips when an EWA product constitutes credit under Regulation Z.

As explained below, the 2025 Opinion concludes that covered EWA (Covered EWA) is not credit for Regulation Z purposes, any fees associated with Covered EWA would not be finance charges under Regulation Z, and expedited delivery fees and tips usually will not be finance charges for EWA that is not Covered EWA.

On 15 January 2025, the CFPB had rescinded a 10 December 2020 advisory opinion on EWA products (the 2020 Opinion).[1] The 2025 Opinion is similar to the 2020 Opinion in that they both exclude Covered EWA products from the definition of "credit" for Regulation Z purposes, but the 2025 Opinion improves on the 2020 Opinion in some important ways. In this article, we summarize the scope and impact of the 2025 Opinion, contrasting it with the 2020 Opinion in some cases.

COVERED EWA TRANSACTIONS DO NOT RESULT IN REGULATION Z "CREDIT" BEING EXTENDED

The 2025 Opinion states that Covered EWA is not "credit" for Regulation Z purposes. The 2025 Opinion correctly states that Regulation Z defines "credit" as "the right to defer payment of debt or to incur debt and defer its payment." The 2025 Opinion concludes that Covered EWA does not provide these rights and therefore is not "credit" because Covered EWA "offers workers access to money that they are owed by virtue of work that they have already performed."

However, in order to make this work, Covered EWA must include all of the four following characteristics:

- Covered EWA transactions may not exceed the "accrued cash value of the wages the worker has earned up to the date and time of the transaction."

This ensures that the EWA only provides workers access to funds that are already owed to the worker. The 2025 Opinion strengthens this element of Covered EWA by requiring that the determination of the accrued cash value of wages that the worker has earned at the time of the transaction be determined "based upon payroll data that

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evidence the amount [and not] based on other information, such as worker representations or on estimates or predictions of accrued wages."

While it might seem that satisfying this element should be enough in itself to establish that no credit is being extended with the Covered EWA, the CFPB apparently concluded that this would work only if the worker never had any personal liability to the EWA provider for the amount of the Covered EWA transaction. That would explain the other three required characteristics of Covered EWA, as explained below. In each case, we provide an abbreviated description of the characteristic and then quote it in full.

- The provider must use a "payroll process deduction" to be repaid for the EWA transaction:

> "The provider uses a payroll process deduction in connection with the worker's next payroll event. In a payroll process deduction, payment instructions received and acted upon by the payroll processor (or by the employer itself if it does not use a processor) enable the EWA provider to receive accessed amounts without debiting the consumer's regular transaction account after the consumer is paid. A transfer to the provider from any of the consumer's regular transaction accounts after the payment of wages into that account is not a payroll process deduction."

The 2025 Opinion indicates that this characteristic helps to ensure that no debt to the provider is created:

> "With Covered EWA, there is no liability or obligation sufficient to create a debt because the provider, by engaging with the consumer's employer or its payroll processor, makes a payroll process deduction for the pay period in which the wages have been accrued, and reserves no recourse against the consumer if that deduction falls short of the amount of the EWA transaction…."

- The provider must warrant to the worker, in effect, that it cannot and will not attempt to collect the Covered EWA transaction amount from the worker:

> "Before providing Covered EWA, the provider [must] clearly and conspicuously explain[] and warrant[] to the worker that it: (a) has no legal or contractual claim or remedy, direct or indirect, against the worker in the event the payroll process deduction is insufficient to cover the full amount of a Covered EWA transaction, including no right to take payment from any of the consumer's regular transaction accounts; and (b) will not engage in any debt collection activities related to Covered EWA, place a Covered EWA transaction amount as a debt with or sell it to a third party, or report to a consumer reporting agency concerning Covered EWA."

- The provider may not base its decision whether to provide a Covered EWA transaction on the worker's creditworthiness:

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> "The provider [may] not directly or indirectly assess the credit risk of individual workers, including through obtaining and reviewing credit reports or credit scores about the individual workers."

Thus, all four of the required characteristics of Covered EWA are intended to ensure that a Covered EWA transaction does not result in an extension of credit for Regulation Z purposes.

ANY FEES ASSOCIATED WITH COVERED EWA WOULD NOT BE REGULATION Z "FINANCE CHARGES"

The CFPB's rationale for this conclusion is clear and logical. Under Regulation Z, a "finance charge is the cost of consumer credit." Because Covered EWA is not credit, the 2025 Opinion states that "any fees charged in connection with Covered EWA cannot be finance charges."

This is a significant improvement over the 2020 Opinion, under which, in order to have Covered EWA, employees generally could not make any payment, voluntary or otherwise, to access EWA funds or otherwise use the Covered EWA program, and under which neither the provider nor its agents could solicit or accept tips or any other payments from the employee.[2]

CERTAIN EXPEDITED DELIVERY FEES ASSOCIATED WITH NON-COVERED EWA TRANSACTIONS ARE NOT REGULATION Z "FINANCE CHARGES"

The 2025 Opinion first explains that, to the extent any non-Covered EWA products are credit, fees associated with them "can be finance charges."[3] The 2025 Opinion then explains that, to qualify as a finance charge, "a charge must be either 'an incident to' or 'a condition of' an extension of credit and be 'imposed directly or indirectly' by the creditor."

The expedited delivery fees in connection with non-Covered EWA products that are the focus of the 2025 Opinion are fees for the expedited delivery of EWA funds to the worker. The key factors for excluding these fees from the Regulation Z definition of "finance charge" appear to be these:

- The worker likely must have a reasonable means to receive EWA funds without payment of an expedited delivery fee.
- The EWA service obtained without payment of an expedited delivery fee likely cannot be significantly different from the service received when the fee is paid, except for expedited delivery of the EWA funds.

When these factors are satisfied, then the 2025 Opinion provides that, "in the normal course," the expedited delivery fees in connection with non-Covered EWA products are not finance charges. The CFPB notes, however, that "to the extent that an EWA provider does *impose* expedited delivery fees on a consumer's receipt of funds of earned wages, those fees could qualify as finance charges" (emphasis added). Whether such imposition is occurring would depend on the facts and circumstances of the provider's practice. By way of example, the 2025 Opinion states that if an EWA provider "makes it too difficult for consumers to select the un-expedited delivery of

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EWA funds, the resulting expedited delivery fees may effectively be imposed." We interpret this to mean that a fee is "imposed" if the fee is not voluntary or the consumer is not given a reasonable opportunity to avoid the fee.

CERTAIN TIPS ASSOCIATED WITH NON-COVERED EWA TRANSACTIONS ARE NOT REGULATION Z "FINANCE CHARGES"

The CFPB's basic conclusion as stated in the 2025 Opinion is that a bona fide tip, because it is voluntary, is not imposed by the EWA provider and therefore cannot be a finance charge. However, "[t]o the extent tipping for EWA services is not voluntary, however, tips can be 'directly or indirectly imposed' by providers and thus qualify as finance charges." This is again a facts-and-circumstances analysis. The 2025 Opinion states that "if the provider makes it too difficult to avoid tipping," the resulting consumer payment may be a finance charge.

NEXT STEPS

EWA products will need to be reviewed on a case-by-case basis to determine whether such products are Covered EWA, and fees associated with non-Covered EWA products will need to be reviewed on a fee-by-fee basis to determine if such fee is a finance charge. Finance charges will need to be disclosed in compliance with Regulation Z.

It also will be necessary to consider state laws, regulations, and applicable regulatory guidance. The 2025 Opinion only considers Regulation Z, but a number of states regulate at least some forms of EWA products.

FOOTNOTES

[1] The 2020 Opinion used the term "Covered EWA Program" while the 2025 Opinion refers to "Covered EWA." We use the shorter term in all cases unless quoting from the 2020 Opinion.

[2] The 2020 Opinion recognized that there might be EWA programs that charge nominal processing fees and that nonetheless do not involve "credit," but it did not elaborate on what might be acceptable in terms of such processing fees.

[3] The 2025 Opinion further noted that this was "not to imply that any EWA products other than Covered EWA are credit" and that the CFPB continues to seek stakeholder feedback and evaluate whether it should provide additional clarity and whether and when other EWA products, which are not Covered EWA as described in the 2025 Opinion, also are not credit.

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