BILLING CODE: 4810-AM-P

CONSUMER FINANCIAL PROTECTION BUREAU

12 CFR Part 1026

[Docket No. CFPB-2024-0032]

Truth in Lending (Regulation Z); Consumer Credit Offered to Borrowers in Advance of Expected Receipt of Compensation for Work

AGENCY: Consumer Financial Protection Bureau.

ACTION: Notice of proposed interpretive rule; request for comment.

SUMMARY: The Consumer Financial Protection Bureau (CFPB) is charged with promoting competition and innovation in consumer financial products and services. After careful study of emerging offerings in the paycheck advance marketplace, including those marketed as "earned wage advances" and "earned wage access," the CFPB is proposing this interpretive rule to help market participants determine when certain existing requirements under Federal law are triggered. The proposed interpretive rule would also address certain costs that are in substantial connection with extensions of such credit, such as expedited delivery fees and costs marketed as "tips."

DATES: Comments must be received by August 30, 2024.

ADDRESSES: You may submit comments, identified by Docket No. CFPB-2024-0032, by any of the following methods:

- *Federal eRulemaking Portal*: https://www.regulations.gov. Follow the instructions for submitting comments.
- *Email*: 2024-Paycheck-Advance-Interpretive-Rule@cfpb.gov. Include Docket No. CFPB-2024-0032 in the subject line of the message.

- *Mail/Hand Delivery/Courier*: Comment Intake—2024 Paycheck Advance Interpretive Rule, c/o Legal Division Docket Manager, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552. Because paper mail in the Washington, DC area and at the CFPB is subject to delay, commenters are encouraged to submit comments electronically.

Instructions: The CFPB encourages the early submission of comments. All submissions must include the document title and docket number. In general, all comments received will be posted without change to https://www.regulations.gov. All submissions, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Submissions will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: George Karithanom, Regulatory Implementation & Guidance Program Analyst, Office of Regulations, at 202–435–7700 or at: https://reginquiries.consumerfinance.gov/. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

One major source of demand for consumer credit is derived from the mismatch of when American workers receive compensation for their labor and when they incur expenses. While there have long been sources of credit for consumers to pay expenses in advance of receiving their compensation, there are a number of new offerings that seek to provide additional choices for consumers.

Instead of being paid daily or upfront, American workers generally provide services before employers pay for those services some time later—typically on a biweekly or semi-monthly wage cycle.[1] Employers have a strong incentive to delay payment, since these delays reduce working capital needs. Nearly three-quarters of non-farm payroll employees remain paid biweekly or even less frequently, and the remainder are generally paid their wages weekly. To address liquidity challenges, many consumers therefore turn to third-party credit products, such as payday loans, personal installment loans, and credit cards. In recent years, American consumers have significantly expanded their use of products sometimes marketed as "earned wage access" or "earned wage advance."[2] As these paycheck advance products generally have features that make them subject to the CFPB's jurisdiction, the CFPB has sought to understand these and other products, particularly those offered online, by engaging in ongoing monitoring of the market, including, for example, collecting and analyzing data, engaging with stakeholders (e.g., market participants, consumer groups, and States), tracking and studying market developments, and conducting market research, among other things.

While many of these products have similarities to payday loans, there are important distinctions. The CFPB has found that there are two emerging models of earned wage products: employer-partnered and direct-to-consumer.

For "employer-partnered" products, providers contract with employers to offer funds in amounts not exceeding accrued wages. Those funds are recovered via one or more payroll deductions, lowering the consumer's paychecks accordingly, with other recourse options

[1] While the terms "employer" and "employee" are used throughout, the proposed interpretive rule would apply more broadly to situations where consumers receive payment for work performed.
[2] A CFPB report, also issued today, describes rapid recent growth in one part of this developing market. *See* CFPB, *Developments in the Paycheck Advance Market*, at 3 (July 2024) (hereinafter *2024 Paycheck Advance Report*).

generally unavailable to the third-party provider. In contrast, "direct-to-consumer" products provide funds to employees in amounts that they estimate to be below accrued wages; funds are then recovered via automated withdrawal from the consumer's bank account,[3] and generally without limit to the provider's ability to seek further recourse as necessary.[4]

Some of the significant differences between these two types of earned wage products, however, are starting to erode. For example, some direct-to-consumer providers are now connecting directly to payroll records and recouping funds from payroll deductions, and ongoing State legal developments may cause them to limit their recourse options as well.[5]

Before the CFPB's market monitoring of these products intensified, the CFPB issued an advisory opinion in November 2020,[6] that described how one particular type of earned wage product does not involve the offering or extension of "credit" as that term is defined in Regulation Z and the Truth in Lending Act (TILA).[7] The opinion explained that an earned wage product is not TILA or Regulation Z credit if it meets *all* of several identified conditions, including: providing the consumer with no more than the amount of accrued wages earned; provision by a third party fully integrated with the employer; no consumer payment, voluntary or

---

[3] This includes, without limitation, e.g., prepaid and payroll card accounts.
[4] As described, direct-to-consumer products lie outside the scope of the "wage advance" (12 CFR 1041.3(d)(7)) and "no cost advance" (12 CFR 1041.3(d)(8)) exclusions from the CFPB's 2017 Payday Rule. Employer-partnered products, however, may be (but are not necessarily) within the scope of one exclusion or both, with their revenue model particularly relevant to that determination. *See* 12 CFR 1041.3(d)(7)(ii)(A), 1041.3(d)(8).
[5] *See 2024 Paycheck Advance Report*, *supra* note 2, at 4 n.7. Several recently enacted State laws prohibit providers of earned wage products, including direct-to-consumer products, from compelling consumer repayment of earned wage amounts and fees through various means, such as lawsuits or third-party debt collection. *See, e.g.*, 24 Mo. Rev. Stat. sec. 361.749(5)(6); Wis. Stat. sec. 203.04(2)(f); *cf.* Montana Op. Att'y Gen., Vol. 59, Op. 2 (Dec. 22, 2023) (finding earned wage products do not meet the state law definitions of "consumer loan" or "deferred deposit loan" when they are "fully non-recourse," among other criteria).
[6] CFPB, *Truth in Lending (Regulation Z); Earned Wage Access Programs* (Nov. 2020), https://files.consumerfinance.gov/f/documents/cfpb_advisory-opinion_earned-wage-access_2020-11.pdf (hereinafter *2020 Advisory Opinion*).
[7] Regulation Z defines credit at section 1026.2(a)(14).

otherwise, beyond recovery of paid amounts via a payroll deduction from the next paycheck, and no other recourse or collection activity of any kind; and no underwriting or credit reporting.

The 2020 advisory opinion was silent about whether earned wage products that do not meet all of these conditions are credit under TILA and Regulation Z.[8] The opinion did not address what counts under TILA and Regulation Z as a finance charge with respect to any such product that is credit. As the CFPB has acknowledged, the 2020 advisory opinion appears to have caused significant regulatory uncertainty.[9]

---

[8] The opinion stated that it had no application to such products. *See 2020 Advisory Opinion*, *supra* note 6, at 3-7.

[9] *See, e.g.*, Nat'l Consumer L. Ctr., Ctr. for Responsible Lending, *Concern About Prior Leadership's Finding that Certain Earned Wage Access Products Are Not "Credit" Under TILA*, NAT'L CONSUMER L. CTR., CTR. FOR RESPONSIBLE LENDING, at 36-37 (Oct. 12, 2021), https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-nclc-ewa-letter-to-cfpb-oct2021.pdf (noting "chaos" and "further questions" caused by advisory opinions); U.S. Gov't Accountability Off., *GAO-23-105536, Financial Technology: Products Have Benefits and Risks to Underserved Consumers, and Regulatory Clarity is Needed*, at 36-37 (Mar. 2023), https://www.gao.gov/assets/gao-23-105536.pdf (citing industry requests for clarification). The CFPB has acknowledged the need for clarification in this area. *See*, *e.g.*, Letter from CFPB Director Rohit Chopra (Feb. 13, 2023) in U.S. Gov't Accountability Off., *supra*, at 51; Letter from CFPB Acting General Counsel to N.J. Citizen Action, *et al*., at 2 (Jan. 18, 2022).

Problematically, the 2020 advisory opinion has been widely cited in support of legal conclusions that it did not reach. For example, it has erroneously been cited for the general propositions that no-fee earned wage products are not credit, *see, e.g.*, Ariz. Op. Att'y Gen. No. I22-005 (Dec. 16, 2022), https://www.azag.gov/sites/default/files/2022-12/I22-005.pdf, and that employer-partnered earned wage products are also not credit, *see, e.g.*, ZayZoon, Comment Letter on Cal. Dep't of Fin. Prot. & Innovation re: Notice of Proposed Rulemaking [PRO 01-21], at 4 (May 17, 2023), https://dfpi.ca.gov/wp-content/uploads/sites/337/2023/08/46-PRO-01-21-ZayZoon-US-Inc.-5.17.23_Redacted.pdf; Innovative Payments Ass'n, Comment Letter on Cal. Dep't of Fin. Prot. & Innovation re: Notice of Proposed Rulemaking [PRO 01-21], at 4 (May 11, 2023), https://dfpi.ca.gov/wp-content/uploads/sites/337/2023/08/10-PRO-01-21-Innovative-Payments-Association-5.11.23_Redacted.pdf. Some regulatory uncertainty may have resulted from the near-contemporaneous issuance of a "Sandbox Approval Order" that gave one provider a temporary safe harbor from liability under TILA and Regulation Z with respect to a specific product that did not satisfy all the conditions that the 2020 advisory opinion identified as taking such a product outside the reach of TILA and Regulation Z. *See* CFPB, *Payactiv Approval Order*, at 5 (Dec. 30, 2020), https://files.consumerfinance.gov/f/documents/cfpb_payactiv_approval-order_2020-12.pdf. The 2020 advisory opinion applied only to products that had all of a number of characteristics, including that they were free to consumers. In contrast, the approval order encompassed earned wage transactions in connection with which the consumer incurred fees. *See id.* The approval order was issued under a CFPB policy that is no longer in effect. *See generally* CFPB, *Statement on Competition and Innovation* (Sept. 30, 2022), https://files.consumerfinance.gov/f/documents/cfpb_statement-on-competition-innovation_2022-09.pdf. However, that approval order was never of general interpretative applicability, *see Payactiv Approval Order*, *supra*, at 4 n.15, and was terminated even before its temporary status expired, CFPB, *CFPB Rescinds Special Regulatory Treatment for Payactiv* (June 30, 2022), https://www.consumerfinance.gov/about-us/newsroom/cfpb-rescinds-special-regulatory-treatment-for-payactiv/.

The CFPB is taking a number of steps to spur greater competition in markets for consumer financial products, including to address the credit needs of households who incur costs due to a mismatch in the timing of their income and expenses. In addition, some market participants and investors seek to better understand the applicability of existing federal law in these emerging business models. To provide greater clarity, the CFPB is proposing to replace the 2020 advisory opinion with a new interpretive rule. In light of the uncertainty caused by the 2020 advisory opinion as noted above and the fact that the CFPB is proposing to overturn and replace that opinion, the CFPB is opting to publish this proposed interpretive rule to solicit public comment. The proposed interpretive rule is informed by the CFPB's extensive study of this market, including data collection, continuous monitoring, investigation, coordination with states, and engagement with market participants. The CFPB is seeking comment on any aspect of this this proposed interpretive rule. The CFPB intends to publish a final interpretive rule after considering comments received.

II. Proposed Interpretive Rule

The text of the proposed interpretive rule is as follows.

A. Coverage

1. Earned wage products

This interpretive rule applies to products that involve both: (1) the provision of funds to the consumer in an amount that is based, by estimate or otherwise, on the wages that the consumer has accrued in a given pay cycle; and (2) repayment to the third-party provider via some automatic means, like a scheduled payroll deduction or a preauthorized account debit,[10] at

[10] This includes repayment via ACH, check, or any other preauthorized repayment.

or after the end of the pay cycle. Many payday loans would also meet this definition where the lender or State law restricts the amount of the loan based on accrued wages.[11]

2. Other products and other laws

This interpretive rule only addresses the application of certain Regulation Z and TILA provisions; it does not address the application of any other laws that concern "credit." Because the rule explains the applicability of Regulation Z, the rule may be useful to designers and creators of other financial products, including those relying on "tips" and other related payment mechanisms.

B. Legal Analysis

1. The Truth in Lending Act and Regulation Z cover products where there is an obligation to repay debt.

Section 1026.2(a)(14) of Regulation Z defines "credit" as "the right to defer payment of debt or to incur debt and defer its payment."[12] TILA defines "credit" virtually identically as "the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment."[13] As described further below, earned wage products are consumer credit for purposes of TILA and Regulation Z.

TILA and Regulation Z do not define "debt." Used infrequently in the statute and the regulation, "debt" for the most part only appears in the definition of "credit." The term "debt" in ordinary usage means simply "something owed," without any obvious limitation.[14] Legal

[11] This interpretive rule does not apply to an employer's actual payment of wages. Note that while the terms "employer" and "employee" are used throughout, this interpretive rule applies more broadly to situations where consumers receive payment for work performed.
[12] 12 CFR 1026.2(a)(14).
[13] 15 U.S.C. 1602(f).
[14] *Debt*, Merriam-Webster, https://www.merriam-webster.com/dictionary/debt (last updated Jan. 30, 2024).

dictionaries, including those dating to the enactment of TILA,[15] similarly describe debt as a "sum of money due by certain and express agreement" or "a financial liability or obligation owed by one person, the debtor, to another, the creditor."[16] If Congress had intended to substantially narrow the types of transactions that could constitute "debt," it could have done so by defining the term in TILA.[17] In light of this precedent, and the context in which the term "debt" appears in TILA, "debt" in TILA and Regulation Z includes any obligation by a consumer to pay another party.

This commonsense understanding of debt is reflected in State laws[18] defining the term, which also tend to use very broad language to describe debt to mean an obligation by the consumer to pay.[19] Bankruptcy law also uses a broad definition—"liability on a claim," where a

---

[15] *See New Prime Inc. v. Oliveira*, 586 U.S. 105, 113 (2019) ("It's a fundamental canon of statutory construction that words generally should be interpreted as taking their ordinary meaning at the time Congress enacted the statute.") (cleaned up).

[16] *Debt*, Black's Law Dictionary (4th ed. 1968) (defining debt as "[a] sum of money due by certain and express agreement; as by bond for a determinate sum, a bill or note, a special bargain, or a rent reserved on a lease, where the amount is fixed and specific, and does not depend upon any subsequent valuation to settle it."); *Debt*, Wex, https://www.law.cornell.edu/wex/debt (last updated Sept. 2021).

[17] As the Court observed in *Whitman v. Am. Trucking Ass'ns*, "Congress, we have held, does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions — it does not, one might say, hide elephants in mouseholes." 531 U.S. 457, 468 (2001).

[18] *See* 12 CFR 1026.2(b)(3) (providing interpretive guidance with respect to undefined terms). As the Board of Governors of the Federal Reserve System noted when it first proposed section 1026.2(b)(3), the provision and its fellow rules of construction "are intended to assist in understanding the regulatory language." 45 FR 29702, 29705 (May 5, 1980).

[19] *See, e.g.*, Cal. Civ. Code sec. 1788.2(d) ("The term 'debt' means money, property, or the equivalent that is due or owing or alleged to be due or owing from a natural person to another person."); Colo. Rev. Stat. Ann. sec. 5-16-103(8)(a) ("'Debt' means any obligation or alleged obligation of a consumer to pay money arising out of a transaction, whether or not the obligation has been reduced to judgment."); D.C. Code Ann. sec. 28-3814(b)(2) ("'Consumer debt' means money or its equivalent, or a loan or advance of money, which is, or is alleged to be, more than 30 days past due and owing, unless a different period is agreed to by the consumer, as a result of a purchase, lease, or loan of goods, services, or real or personal property for personal, family, medical, or household purposes."); Fla. Stat. Ann. sec. 559.55(6) ("'Debt' or 'consumer debt' means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment."); Haw. Rev. Stat. Ann. sec. 480D-2 ("'Debt' means any obligation or alleged obligation of a person to pay money arising out of any transaction, whether or not the obligation has been reduced to judgment."); Me. Rev. Stat. tit. 32, sec. 11002(5) ("'Debt' means any obligation or alleged obligation of a

"claim" is "the right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured."[20]

The only enumerated consumer financial law identified in the Consumer Financial Protection Act[21] that defines "debt," the Fair Debt Collection Practices Act (FDCPA), broadly states that debt encompasses "any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or

---

consumer to pay money arising out of a transaction in which the money, property, insurance or services that are the subject of the transaction are primarily for personal, family or household purposes, whether or not the obligation has been reduced to judgment."); N.H. Rev. Stat. Ann. sec. 358-C:1(VI) ("'Debt' means any obligation or alleged obligation arising out of a consumer transaction."); N.M. Stat. Ann. sec. 61-18A-2(F) ("'[D]ebt' means an obligation or alleged obligation of a debtor to pay money arising out of a transaction in which the money, property, insurance or services that are the subject of the transaction are primarily for personal, family or household purposes, whether or not such obligation has been reduced to judgment."); N.Y. Gen. Bus. Law sec. 600(6) ("'Debt' means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment."); N.D. Cent. Code Ann. sec. 13-05-01.1(6) ("'Debt' means an obligation or alleged obligation to pay money arising out of a transaction, regardless of whether the obligation has been reduced to a judgment."); Or. Rev. Stat. Ann. sec. 646.639(f) ("'Debt' means an obligation or alleged obligation that arises out of a consumer transaction."); 19 R.I. Gen. Laws Ann. sec. 19-14.9-3(4) ("'Debt' means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services that are the subject of the transaction are primarily for personal, family, or household purposes, whether or not the obligation has been reduced to judgment."); Tex. Fin. Code Ann. sec. 392.001(2) ("'Consumer debt' means an obligation, or an alleged obligation, primarily for personal, family, or household purposes and arising from a transaction or alleged transaction."); Utah Code Ann. sec. 12-1-11(1)(b) ("'Debt' means an obligation or alleged obligation to pay money arising out of a transaction for money, property, insurance, or services."); Wash. Rev. Code Ann. sec. 6.01.060(2) ("'Consumer debt' means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes."); Wyo. Stat. Ann. sec. 33-11-101(a)(vii) ("'Debt' means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family or household purposes, whether or not the obligation has been reduced to judgment.").

[20] 11 U.S.C. 101(5)(A), (12). Bankruptcy law defines "consumer debt" as "debt incurred by an individual primarily for a personal, family, or household purpose." 11 U.S.C. 101(8).

[21] 12 U.S.C. 5481(12).

not such obligation has been reduced to judgment."[22] The main limiting feature in the definition of "debt" in the FDCPA is that it is limited to transactions for personal, family, or household purposes, a limitation already imposed elsewhere in TILA.[23] The FDCPA definition, therefore, also supports a broad reading of "debt" under TILA and Regulation Z in this context, consistent with ordinary usage that includes all obligations to pay another.

In an earned wage transaction, the consumer incurs an obligation to pay money at a future date. For some earned wage products, the specific amount of money that the consumer is obligated to pay at a future date has an element of contingency; for example, the obligation may be limited by whether funds available from the next payroll event (or events) are sufficient to cover the amount of earned wage funds the consumer received. But that is still an obligation to pay money at a future date. TILA has long been understood to cover contingent obligations.[24]

Earned wage products provide consumers with "the right to defer payment of debt or to incur debt and defer its payment" because they incur a "debt" when they obtain money with an obligation to repay via an authorization to debit a bank account or using one or more payroll

---

[22] 15 U.S.C. 1692a(5); *see also* 12 CFR 1006.2(h); *Pollice v. Nat'l Tax Funding*, 225 F.3d 379, 410 (3d Cir. 2000) ("Although [TILA] does not contain a definition of the term 'debt,' we believe the term as used in [TILA] should be construed as it is defined in the FDCPA."). Like TILA, the Consumer Financial Protection Act and Equal Credit Opportunity Act, for example, use the term "debt" in their definitions of "credit" without defining it. *See* 12 U.S.C. 5481(7); 15 U.S.C. 1691a(d).

[23] 15 U.S.C. 1602(g), (i).

[24] *See, e.g.*, *Madewell v. Marietta Dodge, Inc.*, 506 F. Supp. 286 (N.D. Ga. 1980) (retail installment contract for purchase of automobile subject to TILA even though contingent on seller's ability to arrange financing); *Bailey v. Comm'r of Internal Revenue*, 993 F.2d 288, 292 (2d Cir. 1993) (discussing "[n]onrecourse debt"); 12 CFR 1026.33(a) (reverse mortgages—where repayment is contingent on future home value at the time of a termination event, such as the death of the borrower—subject to TILA as credit); *cf.* Small Business Lending Under the Equal Credit Opportunity Act (Regulation B), 88 FR 35150, 35163 (May 31, 2023) (explaining that merchant cash advances—under which a provider offers a merchant a lump sum in exchange for a specific portion of the merchant's proceeds from future sales of goods and services—are credit, notwithstanding that the repayment obligation may be contingent on the merchant's future sales); Consent Order, *In re Better Future Forward, Inc.*, Admin. Proceeding No. 2021-CFPB-005 (Sept. 7, 2021) (identifying as credit income share agreements, which "finance postsecondary education" whereby "[i]n exchange for money up front, students agree that once their income exceeds an income threshold, they will make payments based on a percentage of their income until either: (i) they meet a payment cap or (ii) a period of years elapses.").

deductions.[25] It does not matter that the obligation to repay is sometimes satisfied via payroll deduction.[26] It is still an act of repayment. In contrast, when an employer pays wages, no later act of repayment is required, by deduction or otherwise.

This interpretive rule replaces the advisory opinion the CFPB issued in November 2020, which stated that some earned wage products are not "credit" because they would not constitute a "debt."[27] A primary justification for this statement, based on a legal dictionary definition of "debt" requiring a "liability," was that the narrow type of earned wage products covered by that opinion—which, among other characteristics, were administered through the employer and cost-free to the consumer—were "effectively" providing earned wages to consumers early and, therefore, were not debts. Per the analysis above, the 2020 advisory opinion—narrowly focused as it was on one unique type of product—did not consider the full scope of available precedent and definitions in common legal usage when reaching its narrow conclusion.[28] Many credit products are used to gain liquidity in advance of receipt of a paycheck and thus will have some *de facto* resemblance to early payment of wages, but that does not take them outside the

---

[25] Earned wage products are offered or extended to consumers primarily for personal, family, or household purposes, so they also meet the Regulation Z definition of "consumer credit." 12 CFR 1026.2(a)(12).

[26] It is not uncommon for credit providers to compel repayment of debt using wage garnishment automatically deducted from consumer paychecks. Payday lenders are sometimes repaid through court-ordered wage garnishment. *See* CFPB, *Ask CFPB: Can a Payday Lender Garnish My Bank Account or My Wages?* (last reviewed Sept. 23, 2022), https://www.consumerfinance.gov/ask-cfpb/can-a-payday-lender-garnish-my-wages-en-1609/. Consumers may pay some lenders directly by paycheck allotment. *Cf.* 12 CFR part 1026, comment 2(a)(14)-2 ("Credit includes a transaction in which a cash advance is made to a consumer . . . in exchange for the consumer's authorization to debit the consumer's deposit account, and where the parties agree . . . that the consumer's deposit account will not be debited, until a designated future date.").

[27] *See 2020 Advisory Opinion*, *supra* note 6.

[28] The 2020 advisory opinion stated that there would not be a "liability." That word is not used in all dictionary definitions of the term "debt," and regardless, the earned wage product did require repayment.

definition of credit. Earned wage products, as distinct from an employer's actual payment of wages, are no exception.[29]

Moreover, because the 2020 advisory opinion only addressed one particular type of product, its analysis does not shed light on how TILA and Regulation Z apply to new offerings on the market. The 2020 advisory opinion found that the products it addressed "functionally operate[] like an employer that pays its employees earlier than the scheduled payday," but earned wage products in which, for example, consumers make a payment in connection with receiving funds do *not* leave consumers in the same position that they would be if their employer just paid them earlier. While the 2020 advisory opinion emphasized the absence of fees or charges to support its conclusion that covered products were different in kind from the credit covered by TILA and Regulation Z, except on a small number of employer-specific products, the vast majority of earned wage transactions involve consumer payment.[30]

---

[29] The CFPB also noted that the 2020 advisory opinion would be consistent with comment 2(a)(14)-1.v to Regulation Z. *See 2020 Advisory Opinion*, *supra* note 6, at 9. However, that comment was promulgated as an exclusion from the definition of "credit" after notice and comment, which suggests that the product would be subject to TILA and Regulation Z but for the exclusion. Products similar to products in the exclusion, but not covered by the exclusion, should therefore be presumed to be "credit."

In the 2020 advisory opinion, the CFPB also noted that its interpretation was consistent with certain statements in the CFPB's 2017 Payday Lending Rule. However, the Payday Rule did not make a determination as to whether earned wage products are credit, stating only that some product constructs "may not be." The CFPB declined to perform the more detailed analysis necessary to come to a considered conclusion on the boundaries of TILA and Regulation Z at that time because that was not necessary for the rulemaking exercise. It is performing that analysis now, in this interpretive rule. Some earned wage products may not be covered by the Payday Rule because of its "wage advance" and "no cost advance" exclusions. *See* 12 CFR 1041.3(d)(7), 1041.3(d)(8). However, these exclusions can only apply to earned wage products to the extent that such products are TILA and Regulation Z credit. As a result, the CFPB's earlier decision to exclude certain earned wage product constructs from the Payday Rule has no impact on the credit status of such products under TILA or Regulation Z.

[30] *See, e.g.*, *2024 Paycheck Advance Report*, *supra* note 2, at 11 ("Without employer subsidization, across both years in our [employer-partnered earned wage] sample, around 90% of workers paid at least one fee and approximately 82% of transactions incurred a fee."); Cal. Dep't of Fin. Prot. & Innovation, *2021 Earned Wage Access Data Findings*, at 7 (2023), https://dfpi.ca.gov/wp-content/uploads/sites/337/2023/03/2021-Earned-Wage-Access-Data-Findings-Cited-in-ISOR.pdf ("In 2021, for the 5,827,120 transactions completed by tip-based companies, providers received tips 73% of the time."). To the extent the interpretation underlying the 2020 Payactiv approval order articulated a different rationale regarding fees or charges for earned wage transactions, the CFPB no longer believes that interpretation is correct.

2. Finance charge disclosures include consumer payments that are made incident to the extension of credit and imposed by the creditor directly or indirectly on the consumer.

a. General

In general, the obligations of Regulation Z apply to any credit provider that regularly offers or extends consumer credit subject to a finance charge.[31] The finance charge is "the cost of consumer credit as a dollar amount."[32] Unless specifically excluded by the regulation, this includes "any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit."[33] If providers do not disclose finance charges properly, they violate Regulation Z.

Neither Regulation Z nor TILA further explains the meaning of "incident to the extension of credit." The statute's history and context indicate that Congress intended this term to be interpreted expansively. When TILA was enacted in 1968, Black's Law Dictionary defined "incident" to mean "anything which is usually connected with another, or connected for some purposes, though not inseparably."[34] The phrase "incident to the extension of credit" thus did not require that the degree of connection be significant. The Supreme Court, in a unanimous decision by Justice Thomas, noted in the context of TILA's finance charge provision that while "the phrase 'incident to or in conjunction with' implies some necessary connection between the

---

[31] *See* 12 CFR 1026.1(c)(1)(iii). Note that finance charges are not a necessary precondition for the obligations of Regulation Z to apply to a provider of Regulation Z credit. For example, the requirements of Regulation Z will apply where the provider regularly offers or extends consumer credit that is payable by a written agreement in more than four installments, even if the credit provided is not subject to finance charges. *See id.* As another example, certain Regulation Z requirements apply when the offering or extension of consumer credit involves a credit card, even if the credit is not subject to a finance charge. *See* 12 CFR 1026.1(c)(2). This interpretive rule does not state any view about grounds on which an earned wage provider of Regulation Z credit might be subject to Regulation Z obligations other than due to their provision of credit subject to a finance charge.

[32] 12 CFR 1026.4(a).

[33] *Id.*

[34] *Incident*, Black's Law Dictionary (4th ed. 1968).

antecedent and its object . . . the phrase 'incident to' does not make clear whether a substantial (as opposed to a remote) connection is required."[35] Thus, while a substantial connection may not be the minimum degree of connection required under Regulation Z and TILA for a payment to be part of the consumer's cost of credit, as an interpretive matter, any payment exacted by the creditor that *is* substantially connected must be part of the finance charge.[36]

In addition, a payment may be "imposed directly or indirectly by the creditor" and hence part of the finance charge even if the credit can be obtained without making such payment. Regulation Z includes in the cost of credit payments imposed by the creditor that are "conditions of" the extension of credit and that are "incident to" it.[37] By the same token, a creditor can "impose" a cost on a consumer—in the sense of exacting it from them—"directly or indirectly" even if that payment is not required for the extension of credit.[38] The non-exhaustive list of

---

[35] *Household Credit Servs., Inc. v. Pfennig*, 541 U.S. 232, 240–41 (2004). In *Pfennig*, the Supreme Court held that an overlimit fee was not unambiguously imposed as an incident to the extension of credit because it could reasonably be seen as a penalty for violation of the credit agreement instead. *See id.* at 239-41. The Court recognized that "regardless of how the fee is characterized," there was "at least some connection" between the fee and credit extension, but that was not enough to conclude that the fee was necessarily imposed as an "incident to" credit because the term "does not make clear whether a substantial (as opposed to a remote) connection is required." *Id*. at 241.

[36] This interpretive rule does not seek to establish the degree of connection required beyond interpreting "incident to" to cover charges that are substantially connected to a particular extension of credit.

[37] TILA's definition of finance charge only references charges imposed "as an incident to the extension of credit." 15 U.S.C. 1605(a). The Board's implementing regulation then interprets the statutory term "incident to" as encompassing—while not being limited to—payments that are conditions of the extension of credit. *See* 12 CFR 1026.4(a). This interpretation has been in uninterrupted effect since the Board first adopted TILA regulations on point.

[38] TILA's history and context indicate that Congress intended the word "imposed" to be interpreted broadly to encompass a variety of charges the creditor might seek to have a consumer pay in connection with the extension of credit. The finance charge definition uses parallel language: the charges are "payable directly or indirectly by" the consumer, and "imposed directly or indirectly by" the creditor. The structure of the provision thus uses "imposed" as a counterpoint to "payable," so as to identify the party doing the charging as opposed to the party being charged. Similarly, the 1968 Black's Law Dictionary definition of "impose"—"to levy or exact as by authority; to lay as a burden, tax, duty, or charge"—emphasizes the deployment of power by the party doing the imposing. *Impose*, Black's Law Dictionary (4th ed. 1968). As the Board previously noted, "the term 'imposed' is understood broadly, to include any cost charged by the creditor (unless otherwise excluded)." 60 FR 66179, 66180 (Dec. 21, 1995). *See also, e.g.*, *Impose*, Merriam-Webster, https://www.merriam-webster.com/dictionary/impose (last updated Feb. 9, 2024) (defining "impose" with a range of meanings, from "to establish or apply by authority" to "to establish or bring about *as if* by force" to simply "pass off" (emphasis added)).

finance charges provided in Regulation Z includes consumer payments that, even when they are not a condition of the extension of credit, are nonetheless finance charges because the creditor exacts them in connection with the extension of credit.[39]

Two costs that consumers may incur in connection with particular extensions of earned wage credit are "tips" (and other similarly labeled payments, like "gratuities") and expedited funds delivery fees. When incurred, these payments are substantially connected to the extension of credit. Each happens because of the associated extension of credit, and the connection between each type of payment and that extension is close and clear. Thus, each is incident to the extension of credit. Expedited funds delivery fees are also "imposed directly or indirectly by the creditor" and so should be included as part of the "cost of consumer credit as a dollar amount." Under certain circumstances, discussed further below, "tips" and similarly styled consumer payments may similarly be "imposed directly or indirectly by the creditor" such that they are a part of the finance charge.

b. Expedited funds delivery fees

Speed of access to funds is an integral and defining aspect of earned wage products. They are designed to address—and marketed as addressing—the liquidity problem that arises between the accrual of wages and their actual payment. That problem necessarily occurs in a very short period,[40] so the value of this type of credit to the consumer includes the rapid availability of funds. Thus, when earned wage product providers offer two speeds for delivering

---

[39] *See* 12 CFR 1026.4(b); *see also* 61 FR 49237, 49239 (Sept. 19, 1996) (explaining that payments for services that the creditor does not require can still be finance charges when the payment is "imposed as an incident to that particular extension of credit"); *cf. Incident*, Black's Law Dictionary (11th ed. 2019) (defining "incident" as "[d]ependent upon, subordinate to, arising out of, or otherwise connected with (something else, usu. of greater importance)").

[40] To obtain earned wage credit, consumers must first accrue wages within a given pay period. Repayment then occurs at or very shortly after the conclusion of that same pay period. As a result, the duration of any particular earned wage credit extension has to be very brief.

funds (which they typically do), consumers predominantly opt for the faster.[41] That option typically involves direct imposition of an expedited delivery or "instant funds" fee that the creditor does not impose on the slower form of credit.

Availability of a slower speed does not control the cost of credit for the faster form of credit. Though consumers may not have to opt for faster funds, when they do so, the resulting speed is a feature of the credit extended, so the resulting fee is part of the cost of credit. As observed by the Board of Governors of the Federal Reserve System, "even though a lender may not require a particular loan feature, the feature may become a term of the credit if it is included."[42] The speed with which earned wage credit provides liquidity to the consumer is an integral feature of such credit, which is why consumers tend to opt for faster delivery when it is available. Thus, when the consumer pays for that faster delivery, the associated fee is immediately and directly connected to the particular extension of credit. That substantial connection makes this "a fee imposed as an incident to that particular extension of credit," and accordingly one that must be disclosed as part of the finance charge.[43]

---

[41] *See 2024 Paycheck Advance Report*, *supra* note 2, at 11. For the sample of employer-partnered providers covered in the CFPB's 2024 Report, expedited delivery fees accounted for more than 96.6 percent of all consumer-paid fee revenue by dollar value. *See id.* Public data also indicates that earned wage advance providers relying on a tipping revenue model obtain more than 25 percent of the dollar value of consumer payments as expedited delivery fees. *See* Cal. Dep't of Fin. Prot. & Innovation, *supra* note 30, at 6 n.11, 7.

[42] 61 FR 49237, 49239 (Sept. 19, 1996). The expedite fee at issue here differs in kind from the two types of expedite fees previously considered by the Board of Governors of the Federal Reserve System in the context of credit cards accessing home equity lines of credit: a fee for expediting delivery of the physical card, and a fee for expediting a consumer's payment. *See* 12 CFR part 1026, comments 6(a)(2)-2(ix) and (x). The Board determined that fees for those services did not need to be included in account opening disclosures as "other charges" or "finance charges." *See* 68 FR 16185, 16186-87 (Apr. 3, 2003). Neither of those services—faster possession of a physical card or faster payments of amounts outstanding—are as closely and integrally connected to the extension of credit as faster funds access is to obtaining an earned wage product.

[43] *Cf.* 61 FR 49237, 49239 (Sept. 19, 1996) (noting with respect to debt cancellation fees that "[a]lthough the same loan may be available without that feature, with respect to a loan that has been structured in this manner, the … fee is one that has been imposed as an incident to that particular extension of credit"). Before this clarification from the Board, the Eleventh and Seventh Circuits had held that charges for optional services should not be considered finance charges because the consumer assumed their payment voluntarily. *See Veale v. Citibank*, 85 F.3d 577, 579-

Regulation Z also covers expedited delivery fees as finance charges because such a fee is a "condition" of an extension of credit. As noted above, when an earned wage product provider offers a slower and faster loan, and the faster loan requires payment of an expedited delivery fee, the expedited delivery fee is a "condition" of the extension of that type of credit.

c. "Tips" and similarly labeled payments

In connection with the extension of earned wage credit, some providers solicit consumers for what they variously describe as "tips," "gratuities," "donations," "voluntary contributions," or the like. The CFPB is aware of a wide range of practices used by credit providers to solicit these kinds of payments from consumers, including: default "tip" amounts that the consumer must remove each time to avoid being charged; suggesting particular "tip" amounts or percentages; suggesting or stating that "tips" serve to ensure the future supply of credit to the individual or other users; and including multiple prompts to "tip" throughout the process of receiving credit.

Whatever the exact practice used, when such "tip" payments are solicited and then paid in connection with the extension of credit, there is a clear and close connection between the "tip" and the associated extension of credit. In such circumstances, consumers pay the "tip" for the credit extended, and the credit is the direct and proximate cause of the "tip."[44] That substantial connection between payment and associated extension of credit means that the payment is "incident to . . . the extension of credit."[45] Indeed, as a practical matter, tips are a central source

---

81 (11th Cir. 1996); *McGee v. Kerr-Hickman*, 93 F.3d 380, 381-86 (7th Cir. 1996). The CFPB sees no textual basis in the regulation (or statute) to disagree with the Board's considered 1996 position on payment for voluntary services. As the Board discerned, it does not matter that it is possible to obtain credit without the relevant service if the service is a feature of the loan affecting the total price paid for the credit.

[44] Such payments are not tips or gratuities in any traditional sense. Consumers generally pay tips to individual workers in the service industry, not to firms (whether partnered with the employer or otherwise) for lending them money. Providers should exercise care in ensuring that the language they use here is not deceptive.

[45] *See supra* note 35.

of revenue for the earned wage product providers that solicit them. For such providers, public data shows that consumers made "tip" payments in connection with about 73 percent of all such credit extensions, with such payments representing roughly the same share of consumer-side revenue for these providers.[46]

As explained above, a payment may be "imposed directly or indirectly by the creditor" and hence may be part of the finance charge even if the credit can be obtained without making the payment.[47] Under certain circumstances, "tips" and similarly styled consumer payments may be "imposed directly or indirectly by the creditor" such that they are part of the finance charge. A provider using its authority—real or implied—to exact a "tip" from a consumer in connection with an earned wage transaction has "imposed" the resulting consumer payment.[48] Relevant considerations when determining whether a "tip" or similar payment is imposed by the creditor as part of the finance charge include but are not limited to: soliciting a "tip" before or at the time of a credit extension (rather than some significant time after it); labeling the solicited payment with a term (such as "tip") that carries an expectation that the consumer will make such a payment in the normal course; setting default "tip" amounts or otherwise making it practically more difficult for the consumer to avoid leaving a "tip"; suggesting "tip" amounts or percentages to the consumer; repeatedly soliciting "tips," even in the course of a single transaction; and

---

[46] *See* Cal. Dep't of Fin. Prot. & Innovation, *supra* note 30, at 1, 7.

[47] As explained above, payments that are not required as a condition of the credit but are nonetheless incident to it can be "imposed directly or indirectly by the creditor." Including only "conditions of" the extension of credit in the finance charge would improperly read "incident to" out of Regulation Z's definition of finance charge, and a creditor can "impose" a cost on a consumer even if the cost is not required for the extension of credit.

[48] A consumer's reasonable understanding that a provider expects a "tip" in connection with a transaction is evidence that the provider exacts it as if by authority. This kind of reasonable understanding does not depend on whether "tipping" impacts the supply of credit to the consumer now or in the future.

stating or otherwise implying, directly or indirectly, truthfully or otherwise, that "tipping" may impact subsequent access to or use of the product.[49]

III. Regulatory Matters

This is a proposed interpretive rule issued under the CFPB's authority to interpret TILA and Regulation Z, including under section 1022(b)(1) of the Consumer Financial Protection Act of 2010, which authorizes guidance as may be necessary or appropriate to enable the CFPB to administer and carry out the purposes and objectives of Federal consumer financial laws.[50] While not required under the APA, the CFPB is soliciting comments on the proposal and may make revisions when it issues a final interpretive rule as appropriate in light of feedback received.

By operation of TILA section 130(f), no provision of TILA sections 130, 108(b), 108(c), 108(e), or section 112 imposing any liability would apply to any act done or omitted in good faith in conformity with the final interpretive rule, notwithstanding that after such act or omission has occurred, the final interpretive rule is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.[51]

The CFPB has determined that this proposed interpretive rule, if finalized, would not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act.[52]

---

[49] The presence or absence of one or all of these considerations may not be determinative. The importance and relevance of these and other considerations will vary in the context of a particular product and how it is offered or provided to consumers.
[50] 12 U.S.C. 5512(b)(1).
[51] 15 U.S.C. 1640(f).
[52] 44 U.S.C. 3501-3521.

Rohit Chopra,

Director, Consumer Financial Protection Bureau.