

**BUREAU OF CONSUMER FINANCIAL PROTECTION**

**12 CFR Part 1026**

**Truth in Lending (Regulation Z); Earned Wage Access Programs**

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Advisory opinion.

**SUMMARY:** The Bureau of Consumer Financial Protection (Bureau) is issuing this advisory opinion to resolve regulatory uncertainty regarding the applicability of the definition of credit under Regulation Z, which implements the Truth in Lending Act (TILA), to certain earned wage access (EWA) programs that conform to the summary of material facts provided in part I.B of this advisory opinion.

**DATES:** This advisory opinion is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Edward Blatnik, Acting Assistant Director; Will Wade-Gery, Senior Advisor; or Nathalie Prescott, Attorney; Office of Innovation, at *officeofinnovation@cfpb.gov* or 202-435-7000. If you require this document in an alternative electronic format, please contact *CFPB\_Accessibility@cfpb.gov*.

**SUPPLEMENTARY INFORMATION:** The Bureau is issuing this advisory opinion through the procedures for its Advisory Opinions Policy.<sup>1</sup> Refer to those procedures for more information.

**I. Advisory Opinion**

*A. Background*

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<sup>1</sup> Bureau of Consumer Fin. Prot., *Advisory Opinions Policy* (Nov. 2020), [https://files.consumerfinance.gov/f/documents/cfpb\\_advisory-opinion\\_policy\\_2020-11.pdf](https://files.consumerfinance.gov/f/documents/cfpb_advisory-opinion_policy_2020-11.pdf).

According to the Bureau of Labor Statistics, nearly two-thirds of U.S. private businesses use biweekly, semimonthly, or monthly pay periods.<sup>2</sup> The Bureau understands that the interval of time between hours worked and receiving a paycheck can contribute to employees' financial distress, particularly for new hires when the length of time between the first day of employment and the first paycheck may be longer than subsequent paycheck intervals, depending on where the hire date falls in a pay cycle. A study by the Financial Health Network found that 38 percent of respondents cited timing mismatches between income and expenses as a reason for using short-term, small-dollar credit.<sup>3</sup>

Despite advancements in payment technologies over the past several decades, several obstacles prevent businesses from easily implementing shorter pay cycles. For instance, there may be cash flow limitations on businesses that depend on incoming payments and receivables, which subsequently need to be processed and deposited.<sup>4</sup> The Bureau has noted that periodic wage payment “appears to be largely driven by efficiency concerns with payroll processing and employers’ cash management.”<sup>5</sup> Employers may also face a lack of technical ability and regulatory uncertainty about State wage and hour laws as contributing factors.<sup>6</sup>

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<sup>2</sup> Bureau of Labor Statistics, *Length of Pay Periods in the Current Employment Statistics Survey* (last modified Aug. 29, 2019), <https://www.bls.gov/ces/publications/length-pay-period.htm>.

<sup>3</sup> Rob Levy & Joshua Sledge, Ctr. for Fin. Serv. Innovation, *A Complex Portrait: An Examination of Small-Dollar Credit Consumers*, at 6 (2012), <https://s3.amazonaws.com/cfsi-innovation-files/wp-content/uploads/2017/01/31163518/A-Complex-Portrait-An-Examination-of-Small-Dollar-Credit-Consumers.pdf>. (Center for Financial Services Innovation became the Financial Health Network in 2019, check the Fin. Health Network’s about page, <https://finhealthnetwork.org/about/> (last visited Nov. 16, 2020).)

<sup>4</sup> See Jose Pagliery, *Why do we get paid every two weeks instead of daily?*, CNN Bus. (Feb. 10, 2016), <http://money.cnn.com/2016/02/10/technology/daily-paychecks/index.html>; see also Julian Alcazar & Terri Bradford, *In the Nick of Time: The Rise of Earned Wage Access*, Fed. Reserve Bank of Kan. City, at 4 (Sept. 2020), <https://www.kansascityfed.org/publications/research/rwp/psrb/articles/2020/rise-earned-wage-access> (“Payroll providers often cite costs, both financial and time, as the reason they are unable to pay employees more frequently.”).

<sup>5</sup> See 82 FR 54472, 54547 (Nov. 17, 2017).

<sup>6</sup> See David S. Mitchell, The Aspen Inst., *Payroll Innovation: How Smarter, Faster Paychecks Could Mitigate Volatility*, at 5-6 (May 2017) (“When employers – as well as workers themselves – decide they want to access their pay earlier and faster, they must turn to the technical experts – financial service and payroll providers – to operationalize the new policy.”).

Earned wage access products have recently emerged in the marketplace as an innovative way for employees to meet short-term liquidity needs that arise between paychecks without turning to more costly alternatives like traditional payday loans. EWA products seek to address the lag between consumers' hours worked and receipt of their paychecks by facilitating advance access to earned but as yet unpaid wages. EWA providers are developing programs with a variety of business models and fee structures. Typically, these programs involve an EWA provider enabling employees to request a certain amount (or share) of accrued wages, disbursing the requested amounts to the employees prior to payday, and later recouping the funds through payroll deductions or bank account debits on the subsequent payday.

The Bureau understands that there is uncertainty about the application of Regulation Z to EWA programs. Specifically, the Bureau has been asked whether EWA providers are offering or extending “credit” within the scope of the regulation.<sup>7</sup> The Bureau itself has acknowledged that there is uncertainty concerning the conditions under which EWA programs involve an offer of “credit” under Regulation Z.<sup>8</sup>

On November 30, 2020, the Bureau issued its Advisory Opinions Policy, the primary purpose of which “is to provide a formal mechanism through which the Bureau may more effectively carry out its statutory purposes and objectives by better enabling compliance in the face of regulatory uncertainty.”<sup>9</sup>

The Bureau is issuing this advisory opinion under the Advisory Opinion Policy to resolve regulatory uncertainty regarding the application of Regulation Z to the particular type of EWA program described in the Summary of Material Facts in part I.B below (Covered EWA Program).

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<sup>7</sup> 12 CFR 1026.2(a)(14).

<sup>8</sup> 82 FR 54472, 54547 (Nov. 17, 2017).

<sup>9</sup> Bureau of Consumer Fin. Prot., *Advisory Opinions Policy* (Nov. 2020), [https://files.consumerfinance.gov/f/documents/cfpb\\_advisory-opinion\\_policy\\_2020-11.pdf](https://files.consumerfinance.gov/f/documents/cfpb_advisory-opinion_policy_2020-11.pdf).

Specifically, this advisory opinion clarifies that a Covered EWA Program does not involve the offering or extension of “credit” as defined by section 1026.2(a)(14) of Regulation Z.<sup>10</sup>

*B. Summary of Material Facts*

For purposes of this advisory opinion, the term “Covered EWA Program” means an EWA program that includes all of the following characteristics<sup>11</sup>:

(1) The provider of the Covered EWA Program (Provider) contracts with employers to offer and provide Covered EWA Transactions<sup>12</sup> to the employer’s employees.

(2) The amount of each Covered EWA Transaction does not exceed the accrued cash value of the wages the employee has earned up to the date and time of the transaction, which amount is determined based upon timely information provided by the employer to the Provider. The Provider may not rely upon information provided by the employee, or on estimates or predictions of hours worked or hourly wage rates. The “accrued cash value of the wages” are wages that the employee is entitled to receive under State law in the event of separation from the employer for work performed for the employer, but for which the employee has yet to be paid.

(3) The employee makes no payment, voluntary or otherwise, to access EWA funds or otherwise use the Covered EWA Program, and the Provider or its agents do not solicit or accept tips or any other payments from the employee. (The Bureau notes that there may be EWA programs that charge nominal processing fees—and thus differ from the fee structure described

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<sup>10</sup> The definition of “credit” in TILA is virtually identical to Regulation Z’s definition of the term. *See* 15 U.S.C. 1602(f). Although this advisory opinion focuses on Regulation Z and concludes that its definition of “credit” does not apply to Covered EWA Programs, for similar reasons the Bureau clarifies that the same analysis applies to TILA’s definition of “credit” and thus that Covered EWA Programs do not involve the offering or extension of “credit” under TILA.

<sup>11</sup> This advisory opinion is limited in its application to Covered EWA Programs. It has no application to EWA programs that are not Covered EWA Programs as described in this part I.B. As a result, products that meet some but not all of the characteristics may be credit under Regulation Z.

<sup>12</sup> The term “Covered EWA Transaction” means the transactions between a Provider and an employee that are associated with a Covered EWA Program.

in this section B(3)—that nonetheless do not involve the offering or extension of “credit” as defined in § 1026.2(a)(14). Such programs are not covered by this advisory opinion, but providers of such programs may request clarification from the Bureau about a specific fee structure by, for instance, applying for an Approval under the Policy on the Compliance Assistance Sandbox.<sup>13)</sup>

To conform to this characteristic, the Provider must provide EWA funds to an account of the employee’s choice, and the Provider cannot charge fees for the delivery of EWA funds to that account. If the employee chooses a prepaid account as defined under Regulation E<sup>14</sup> and that account is managed, issued, or otherwise facilitated by the Provider (Provider Account), the Provider cannot charge fees for opening that Provider Account. In addition, the Provider Account must allow the employee reasonable use of that account at no charge. In this context, “reasonable use” means, *inter alia*, that any prepaid card associated with the Provider Account must be issued on a major network brand that permits use at multiple, unaffiliated merchants; the Provider Account must not charge fees for use of an associated card to buy goods or services at merchants that accept the associated card; the Provider Account must not impose any periodic fees; and the employee must have some free and reasonably accessible means to obtain cash from the Provider Account.<sup>15</sup>

(4) The Provider recovers the amount of each Covered EWA Transaction only through an employer-facilitated payroll deduction from the employee’s next paycheck.<sup>16</sup> One additional

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<sup>13</sup> See 84 FR 48246 (Sept. 13, 2019).

<sup>14</sup> 12 CFR 1005.2(b)(3).

<sup>15</sup> The Provider Account may charge the employee, at cost, for non-standard uses of the Provider Account or associated card, such as foreign ATM use, card replacement, check provision, or directing ACH payments from the Provider Account.

<sup>16</sup> EWA programs where a provider obtains any authorization to transfer funds from a consumer’s account, including both electronic payment authorizations and checks and including authorizations that the provider may not actually utilize, do not meet the requirements of this section B(4).

payroll deduction may be attempted in the event of a failed or partial payroll deduction due to administrative or technical errors. Administrative or technical errors include, for instance, an application programming interface (API) malfunction or a mistake in the employer's payroll process (*e.g.*, miscalculation of an employee's base pay or overtime award), but do not include, for instance, situations in which the employer has garnished an employee's wages following a Covered EWA Transaction.<sup>17</sup>

(5) In the event of a failed or partial payroll deduction, the Provider retains no legal or contractual claim or remedy, direct or indirect, against the employee, although the Provider may choose to refrain from offering the employee additional EWA transactions.

(6) Before entering into a Covered EWA Transaction, the Provider clearly and conspicuously explains to the employee, and warrants to the employee as part of the contract between the parties (and ultimately complies with these warranties) that it:

- (a) Will not require the employee to pay any charges or fees in connection with the Covered EWA Transaction;
- (b) Has no legal or contractual claim or remedy, direct or indirect, against the employee in the event the payroll deduction is insufficient to cover the full amount of a Covered EWA Transaction, including no right to take payment from any consumer account; and
- (c) Will not engage in any debt collection activities related to a Covered EWA Transaction, place a Covered EWA Transaction amount as a debt with or sell it to

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<sup>17</sup> For example, a Covered EWA Transaction may occur in week one of an employee's pay cycle, but the employer learns of and subjects the employee's paycheck to a required wage garnishment in week two of the pay cycle. As a result of the garnishment, the employee's paycheck is less than the amount of the Covered EWA Transaction.

a third party, or report to a consumer reporting agency concerning a Covered EWA Transaction.

(7) The Provider will not directly or indirectly assess the credit risk of individual employees, including through obtaining and reviewing credit reports or credit scores about the individual employees.

### *C. Legal Analysis*

Regulation Z applies to any non-exempt<sup>18</sup> individual or business that offers or extends credit when four conditions are met: (i) the credit is offered or extended to consumers; (ii) the offering or extension of credit is done regularly; (iii) the credit is subject to a finance charge or is payable by a written agreement in more than four installments; and (iv) the credit is primarily for personal, family, or household purposes.<sup>19</sup> 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.”<sup>20</sup> Neither Regulation Z nor TILA define the term “debt.”

It is unclear whether the term “credit” in section 1026.2(a)(14) of Regulation Z includes Covered EWA Transactions.<sup>21</sup> For the reasons set forth below, the Bureau concludes that Covered EWA Transactions are not “credit” for purposes of § 1026.2(a)(14).

First, the Bureau concludes that Covered EWA Transactions do not provide employees with “the right to defer payment of debt or to incur debt and defer its payment” because Covered

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<sup>18</sup> The Bureau’s Regulation Z does not apply to “a person excluded from coverage of this part by section 1029 of the Consumer Financial Protection Act of 2010, title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376.” 12 CFR 1026.1(c)(1).

<sup>19</sup> 12 CFR 1026.1(c)(1).

<sup>20</sup> 12 CFR 1026.2(a)(14). TILA defines “credit” as “the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.” 15 U.S.C. 1602(f).

<sup>21</sup> The Board of Governors of the Federal Reserve System recognized that, “while the concept of credit is central to Truth in Lending, the regulatory definition may be difficult to apply in particular fact situations . . . [A] precise, easy-to-apply standard cannot be devised to resolve all questions.” 45 FR 80648, 80652 (Dec. 5, 1980) (proposing revisions of Regulation Z); *see also* 46 FR 20848, 20851 (Apr. 7, 1981) (adopting the definition from the December proposal and noting that “[t]he regulatory definition may be difficult to apply in particular fact situations”).

EWA Programs do not implicate a “debt.”<sup>22</sup> Regulation Z does not define “debt.” The common meaning of the term debt is a “[l]iability on a claim; a specific sum of money due by agreement or otherwise.”<sup>23</sup> But the Bureau has determined that no such liability of the employee arises in the context of a Covered EWA Program. Rather, the Bureau believes that a Covered EWA Program facilitates employees’ access to wages they have already earned, and to which they are already entitled, and thus functionally operates like an employer that pays its employees earlier than the scheduled payday.<sup>24</sup> For instance, a Provider must have knowledge, from timely information the Provider receives from the employer, of the accrued cash value of an employee’s wages at the date and time of the Covered EWA Transaction. The Covered EWA Transaction cannot be more than this amount, which reduces the risk that EWA funds do not correspond to funds the employee has actually earned and is entitled to receive on payday. Further, a Provider can recover EWA funds, directly or indirectly, only through an employer-facilitated payroll deduction that occurs on the next scheduled payday,<sup>25</sup> which corresponds to the pay period when the employee actually earned the funds related to the Covered EWA Transaction.<sup>26</sup> In addition, EWA funds are transferred to an employee’s chosen account at no cost to the employee, just as receiving a paycheck costs employees nothing. And the only eligibility criterion for an employee to participate in a Covered EWA Program is whether the partner employer gives the

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<sup>22</sup> 12 CFR 1026.2(a)(14).

<sup>23</sup> *Debt, Black’s Law Dictionary* (11th ed. 2019).

<sup>24</sup> This often occurs in the employer-employee context, for instance, when an individual whose employment has been terminated receives her final paycheck via paper check on her last day at work, which may not be the same day as a scheduled payday.

<sup>25</sup> Cf. 12 CFR part 1026, supp. I, 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 personal check, or in exchange for the consumer’s authorization to debit the consumer’s deposit account, and where the parties agree either that the check will not be cashed or deposited, or that the consumer’s deposit account will not be debited, until a designated future date.”).

<sup>26</sup> Payroll deductions may not be attempted in any other pay period in the event the paycheck corresponding to the Covered EWA Transaction is insufficient to cover the full amount of the transaction. However, in the event of a technical or administrative error, one additional payroll deduction may be attempted on the following payday.

employee access to the program; the Provider does not directly or indirectly assess an employee's credit risk for a Covered EWA Transaction, just as underwriting is not used to issue a paycheck.

Second, interpreting § 1026.2(a)(14) not to apply to Covered EWA Transactions is consistent with comment 2(a)(14)-1.v to Regulation Z. This comment provides “[b]orrowing against the accrued cash value of an insurance policy or a pension account if there is no independent obligation to repay” is “not considered credit for purposes of the regulation.”<sup>27</sup> As the Board of Governors of the Federal Reserve System explained when it revised Regulation Z to implement the Truth in Lending Simplification and Reform Act, in such instances, “credit has not been extended because the consumer is, in effect, only using the consumer’s own money.”<sup>28</sup> The Bureau believes there are significant similarities between comment 2(a)(14)-1.v and a Covered EWA Program. For instance, like the accrued cash value of a consumer’s insurance policy or pension account, the accrued cash value of an employee’s earned but unpaid wages is the employee’s own money. That is, an employee is “in effect, only using the [employee’s] own money” when she accesses earned wages through a Covered EWA Program, and is not incurring debt or deferring its payment. Moreover, “there is no independent obligation to repay” a

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<sup>27</sup> 12 CFR part 1026, supp. I, comment 2(a)(14)-1.

<sup>28</sup> 46 FR 20848, 20851 (Apr. 7, 1981) (“The regulatory definition [of ‘credit’] may be difficult to apply in particular fact situations, and the Board therefore offers the following guidance, which will also be incorporated into the commentary.”); *see also* 46 FR 28560, 28560 (May 27, 1981) (proposing official Regulation Z commentary) (“The commentary does not purport to be exhaustive. It concentrates on material of general application whose inclusion will, in the staff’s view, be useful to the widest possible audience . . . [T]he commentary will address prevalent credit transactions, to the extent that they present important questions under the regulation. It will not, however, attempt to address each credit plan’s unique set of facts. The commentary instead identifies several basic factors characterizing that type of transaction. Creditors must then determine whether the discussion applies to their own transactions given their particular variations.”); 46 FR 50288, 50288 (Oct. 9, 1981) (adopting official Regulation Z commentary) (“The commentary modifies the staff’s approach to providing interpretations of Regulation Z. Under the previous regulation, individual staff opinions were issued in response to inquiries about specific fact situations and were normally limited to those facts. Over time, more than 1,500 separate opinions were issued. While this commentary provides specific guidance and examples, it employs language of somewhat more general application for use by the widest possible audience.”).

Covered EWA Transaction, since the Provider may only recover the corresponding EWA amounts via the allowed employer-facilitated payroll deduction (or in the event of an administrative or technical error, one additional employer-facilitated payroll deduction) and has no claim direct or indirect against an employee for nonpayment in the event of a failed or partial deduction.<sup>29</sup>

Third, the totality of circumstances of a Covered EWA Program supports that these programs differ in kind from products the Bureau would generally consider to be credit. Courts tend to agree that a transaction's substance, not its form, controls whether it qualifies as TILA "credit," and they generally undertake fact-specific inquiries and weigh multiple factors when analyzing the true nature of a transaction.<sup>30</sup> The Bureau notes that features often found in credit transactions are absent from Covered EWA Programs. Unlike many credit transactions, for instance:

- Providers have no rights against the employee in the event of nonpayment. As explained above, a Provider must warrant to employees that it has no contractual claim or remedy, direct or indirect, against them in the event a payroll deduction is insufficient to cover amounts corresponding to a Covered EWA Transaction. A Provider also must warrant that it will not, with regard to any such transaction, engage in debt collection activities, report to consumer reporting agencies, or sell or place the transaction as a debt with any third party.

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<sup>29</sup> This could happen, for instance, if an employee's wages become subject to garnishment or an employer goes out of business after an EWA transaction but before the scheduled payday.

<sup>30</sup> *See Meyers v. Clearview Dodge Sales, Inc.*, 384 F. Supp. 722, 728 (E.D. La. 1974), *aff'd in part, rev'd in part*, 539 F.2d 511 (5th Cir. 1976), *cert. denied*, 431 U.S. 929 (1977) ("In construing a piece of remedial legislation such as the Truth-in-Lending Act, designed to protect consumers, courts must focus on the substance of a transaction rather than its mere form."); *see also Edwards v. Your Credit, Inc.*, 148 F.3d 427, 436 (5th Cir. 1998) (applying substance-over-form analysis to TILA claim); *Arrington v. Colleen, Inc.*, No. Civ. AMD 00-191, 2001 WL 34117735, at \*4 (D. Md. Mar. 29, 2001) ("A common task of courts is to determine whether particular conduct or transaction falls into a class of conduct or transactions that a statute regulates. Such is particularly the case here, where the TILA regulates the extension of credit in various forms and in fact anticipates that the form of credit will be ever-changing.").

Employees have no obligation to make any payments directly or indirectly to a Provider at any time. This is true even if, for instance, an employer goes bankrupt before attempting a payroll deduction.

- Providers do not charge employees to participate in a Covered EWA Program, open a Provider Account, transfer EWA funds to the Provider Account (or to the employee's choice of account), or use an associated card issued on a major network to buy goods or services at the multiple merchants that accept the card. And Provider Accounts must allow employees to have reasonable use of the accounts at no charge, which means, *inter alia*, that the Provider Account and associated card must not impose any periodic fees.<sup>31</sup>
- No interest or other fees are charged against a Covered EWA Transaction, ensuring that the amount the Provider is entitled to recover does not “increase[] with the passage of time, another characteristic of a loan.”<sup>32</sup> The absence of interest and other fees demonstrates that Providers are not taking on the type of credit risk characteristic of a typical credit transaction.
- There are no late fees or prepayment penalties associated with a Covered EWA Transaction.
- Providers do not take any payment authorization from employees, such as a check, ACH, or debit card authorization.
- Providers do not pull credit reports or credit scores on individual employees or otherwise assess their credit risk.
- Providers do not report information concerning Covered EWA Transactions to consumer reporting agencies.

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<sup>31</sup> The Provider may charge, at cost, for non-standard uses of the Provider Account or associated card as noted in part I.B.

<sup>32</sup> *Oasis Legal Fin. Group, LLC v. Coffman*, 361 P.3d 400, 410 (Colo. 2015) (noting in the context of the UCCC that “growth in the repayment obligation over time is a finance charge and a hallmark of a consumer loan”).

- Providers do not engage in debt collection activities related to Covered EWA

Transactions or place such amounts as debt with, or sell such amounts to, any third party.

Finally, the Bureau notes that its interpretation of § 1026.2(a)(14) in the context of a Covered EWA Program is consistent with the Bureau’s discussion of these types of products in its 2017 Payday Lending Rule, where it noted that “some efforts to give consumers access to accrued wages may not be credit at all. For instance, when an employer allows an employee to draw accrued wages ahead of a scheduled payday and then later reduces the employee’s paycheck by the amount drawn, there is a quite plausible argument that the transaction does not involve ‘credit’ because the employee may not be incurring a debt at all.”<sup>33</sup> The Bureau stated that it “is aware that some of these products provide access to the consumer’s own funds in the form of earned wages already accrued but not yet paid out because of administrative and payroll processes historically developed by employers.”<sup>34</sup>

Similarly, Covered EWA Programs are designed to “provide access to the consumer’s own funds” through Covered EWA Transactions that are limited to the accrued cash value of employee wages. Providers recover amounts corresponding to such transactions through payroll deductions and they retain no right to pursue claims against employees in the event of a failed or partial deduction.

This advisory opinion applies solely to the question of whether Covered EWA Programs (*i.e.*, those meeting all of the characteristics described in part I.B above) fall under the definition

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<sup>33</sup> 82 FR 54472, 54547 (Nov. 17, 2017). The Bureau further noted that this “is especially likely where the employer does not reserve any recourse upon the payment made to the employee other than the corresponding reduction in the employee’s paycheck,” but that other initiatives are more likely to constitute “credit” under Regulation Z. *Id.* “For example, if an employer cannot simply reduce the amount of an employee’s paycheck because payroll processing has already begun, there may be a need for a mechanism for the consumer to repay the funds after they are deposited in the consumer’s account.” *Id.*

<sup>34</sup> *Id.* at 54548. The Bureau contrasted this with “other products [that] rely on estimates of wages likely to be accrued, or accrued on average, and may make advances against expected wages that are not already earned and accrued.” *Id.*

of credit in section 1026.2(a)(14) of Regulation Z identified above. This advisory opinion has no application to any other circumstance, and it does not offer a legal interpretation of any other provisions of law.

The Bureau continues to seek stakeholder feedback and evaluate whether the Bureau should provide any additional guidance (including through its advisory opinion and innovation policies) about the application of Regulation Z to EWA programs that differ from those described in part I.B above.

## **II. Regulatory Matters**

This advisory opinion is an interpretive rule issued under the Bureau’s authority to interpret TILA and Regulation Z, including under section 1022(b)(1) of the Dodd-Frank Act, which authorizes guidance as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of Federal consumer financial laws.<sup>35</sup>

By operation of TILA section 130(f), no provision of TILA sections 130, 108(b), 108(c), 108(e), or 112 imposing any liability applies to any act done or omitted in good faith in conformity with this interpretive rule, notwithstanding that after such act or omission has occurred, the interpretive rule is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.<sup>36</sup>

As an interpretive rule, this advisory opinion is exempt from the notice-and-comment rulemaking requirements of the Administrative Procedure Act.<sup>37</sup> Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.<sup>38</sup>

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<sup>35</sup> 12 U.S.C. 5512(b)(1).

<sup>36</sup> 15 U.S.C. 1640(f).

<sup>37</sup> 5 U.S.C. 553(b).

<sup>38</sup> 5 U.S.C. 603(a), 604(a).

The Bureau has also determined that this advisory opinion does 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.<sup>39</sup>

Pursuant to the Congressional Review Act,<sup>40</sup> the Bureau will submit a report containing this interpretive rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to the rule's published effective date. The Office of Information and Regulatory Affairs has designated this interpretive rule as not a "major rule" as defined by 5 U.S.C. 804(2).

### **III. Signing Authority**

The Director of the Bureau, Kathleen L. Kraninger, having reviewed and approved this document, is delegating the authority to electronically sign this document to Grace Feola, a Bureau Federal Register Liaison, for purposes of publication in the *Federal Register*.

Dated: November 30, 2020.

/s/Grace Feola

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**Grace Feola,**

*Federal Register Liaison, Bureau of Consumer Financial Protection.*

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<sup>39</sup> 44 U.S.C. 3501 through 3521.

<sup>40</sup> 5 U.S.C. 801 *et seq.*