

Consumer Finance Monitor (Season 7, Episode 16): An Update on Earned Wage Access Products

Speakers: Alan Kaplinsky, Michael Guerrero, and Ian Moloney

Alan Kaplinsky:

Welcome to the award-winning Consumer Finance Monitor Podcast, where we explore important new developments in the world of consumer financial services and what they mean for your business, your customers, and the industry. This is a weekly podcast show brought to you by the Consumer Financial Services Group at the Ballard Spahr Law Firm, and I'm your host, Alan Kaplinsky, the former practice leader for 25 years, and now Senior Counsel of the Consumer Financial Services Group at Ballard Spahr. And I'm delighted to be moderating today's program. For those of you who want even more information, either about the topic that we're going to be covering today or for that matter, any other topics or issues in the world of consumer financial services. Don't forget about our blog, which also goes by the name of Consumer Finance Monitor. We launched our blog on July 21st, 2011, when the CFPB became operational, and we have been operating it since that time.

There is a tremendous amount of content on our blog. We also host webinars on subjects of interest to those in the industry. So if you want to subscribe to our blog or to get on our list for our webinars, please visit us at ballardspahr.com. And if you like our podcast show, please let us know about it. You can leave us a review on whatever platform you use to access your podcast shows. Also, please let us know if you have any ideas for other topics that we should consider covering or speakers that we should consider as guests on our show. Finally, I want to mention something to our listeners that I'm very proud about, and that is that our podcast show was recently ranked by Good2bSocial as the number one podcast show among law firm podcast shows in the US that's devoted exclusively to consumer financial services.

Good2bSocial is a prominent law firm that provides consulting to law firms, and it's now owned by Best Lawyers. We're very gratified by this recognition from one of the country's leading social media consultants.

So let me just say a couple of words about our topic today, and then I'm going to introduce our presenters. So let me first introduce our very special guest, Ian Moloney. Ian is Senior Vice President, Head of Policy and Regulatory Affairs for the American Fintech Council, which we often refer to as AFC. He leads the association's policy strategy across the Fintech ecosystem. Prior to joining AFC, Ian was Head of Policy and Regulatory Affairs at Cross River Bank where he was responsible for leading the bank's regulatory strategy, focusing on Fintech and traditional banking regulations, and representing the bank as a regulatory expert to direct Cross River's public policy objectives and positions to engage effectively with key federal and state regulators and policy makers. Ian was previously employed by the US Government Accountability Office in Washington, DC. And I think I will stop there, Ian, because that's already a lot of very significant positions that you have maintained.

So with that, I'd like to wish you a warm welcome to the program, Ian.

Ian Moloney:

Thanks, Alan. I'm really happy to be here. I actually am an avid listener of the podcast, so I'm very happy to be a guest.

Alan Kaplinsky:

Yeah. This is actually the second time I've had somebody from AFC on our podcast show. Back in, I'd say about a year and a half ago, we did a show called A Look at Consumer Financial Products Offered by Fintechs and the Regulatory Issues They Raise. And our guests at that time were Penny Lee, the CEO of Financial Technology Association, and Geron Levvi, who was then Senior Vice President and I think Head of Regulatory Affairs, I guess your predecessor at AFC. So this is a hot topic that we're talking about today, and it's Earned Wage Access, which is when you think of hot products in the Fintech industry, at least in my way of thinking, what comes to mind are Earned Wage Access, buy now, pay later, and income share agreements. Those are the three things. And there's been a lot of focus that's been given to earn wage access or sometimes during the remainder of our show, we'll call it EWA.

But before we get there, let me introduce my colleague at Ballard Spahr, Mike Guerrero. Mike is the co-leader of our firm's Fintech and payment solutions team. He advises companies across a wide range of industries, consumer protection and consumer financial services issues, including clients offering point of sale and personal property financing and leasing, rent-to-own products and installment loans. He helps clients navigate compliance with state and federal calling and telemarketing, retail installment sales, lending and payments laws. He regularly provides guidance on the structuring and documentation of consumer credit programs involving the financing of goods or services. He's advised banks, professional sports teams, Fintech companies, retailers and automotive finance companies. And I think there's hardly a product that you haven't been involved with, Mike, over your very prosperous and prominent career. So Mike, again, glad to have you on our show.

Michael Guerrero:

Yeah. Thanks, Alan. It's always great to be here.

Alan Kaplinsky:

Okay. So we're going to start to build a foundation. Well, I'll give at least a little bit of a preview to our listeners. I hope it's not like I'm giving away the punchline before I get to the rest of the program. But the idea for the program was precipitated by a letter that a few months ago was written by the American Fintech Council to Rohit Chopra. It was a letter that recited all the problems that the industry was having with state-by-state regulation and that there was a need for the federal regulator to step up to the plate and play a prominent role. And I found that is so interesting and unique because usually, at least I think in my experience, it's very unusual for a regulatee, guess you would call them, to raise their hand and say, "Yeah, we want to be regulated." But anyway, that's what AFC did, and that gave me the idea for the program.

But before we get to that, which we will get to it before the end of our show, I thought I would ask Mike to first describe what is EWA in its various permutations and how it operates, how a consumer might use the product?

Michael Guerrero:

Sure thing. So Earned Wage Access products, as you were alluding to, Alan, are relatively new or one of the more innovative Fintech products out there. They seek to help consumers address short-term liquidity needs by providing them with access to wages that they've already earned through working with an employer or the gig economy, but they have not yet received that income in the form of their typical paycheck or on their pay date. So only about a quarter of private employers have a weekly payroll. That means that about three quarters of consumers employed by private businesses have to wait at least two weeks before receiving their earned wages on their pay date.

So for consumers who are living paycheck-to-paycheck, or if a big expense comes in, there can be significant issues. The CFPB conducted a study or they cite to a study rather where they found that 40% of folks who turned to short-term credit, and this could be credit that might be more expensive than an EWA, which is something we'll get into. The reason for turning to this credit was because there was a mismatch between when they're getting the income and when the expenses arise. They might have had the earned income, but they just didn't have the ability to access it.

Alan Kaplinsky:

It sounds a lot like a payday loan, Mike.

Michael Guerrero:

Right, right. But the differences, and I think we'll unpack it a little bit, are that the consumer here is theoretically only getting access to wages that they already earned, so money that they already have a right to. And the cost of this type of product is generally going to be significantly cheaper if you compare, let's say APRs, if you were to put that term on something like this, which I don't think we'd want to do. But if you look at it from that perspective, this is a cheap, very consumer-friendly product.

Alan Kaplinsky:

And there are various ways in which it's offered. Am I right? I think sometimes it's offered directly by an employer, other times it's offered by some third party.

Michael Guerrero:

Right, exactly. And before jumping over to that, when I was thinking about this product, you say, "Well, wouldn't it be easy just for employers to pay their folks more frequently, move to that weekly payment schedule?" But it's not a quick and easy solution. Businesses have their own cashflow limitations. There's payroll systems that might not be capable, and there's state wage and hour laws. So you have these Fintech providers, these third parties that jump in to fill this need. And as you just mentioned, there are different ways to address these products, or there's different ways that these products can be structured, and there's two predominant ways. One is what I'll refer to as the employer-based program, and this is where the Fintech provider has a relationship with the consumer's employer. The consumer's employer will provide information to the Fintech provider about hours worked, the wages earned, they'll facilitate a payroll deduction.

They're very involved in this process. The Fintech provider will deliver the funds to the consumer, but there's no credit check. The provider is really just giving the consumer access to the wages that are earned as told to the provider by the consumer's employer. The consumer has no obligation to repay this advance because again, these are funds that the consumer has already earned and has the right to have, so no obligation to repay, it's nonrecourse. And then the employer will facilitate the repayment through a payroll deduction on the consumer's typical pay date.

The other type of structure is what I'll call a provider-based advance, and this is where the provider does not have that relationship with the consumer's employer. The provider's relying on the consumer in this instance to provide details about the hours worked, the wages earned. How does that occur? Well, the provider might ask for the pay stub.

There could be screen scraping technology utilized. The provider might rely on just representations of the consumer to make estimates of the amount of the advance. A lot of different structures. But the key component here is that there's no employer and Fintech provider relationship. Generally, I think we see these being non-recourse as well, but it's not always the case.

And then the repayment mechanism is typically going to be what you would more typically see in some other consumer financial products. So like an EFT repayment from the consumer's bank account that attempts to line up with the consumer's pay dates. And as a general matter without regard to whether you fit into the employer-based or provider-based buckets, these products generally don't have a periodic rate. Some have fees like a per advance fee, a membership fee, expedited disbursement fee. Some will request tips or gratuity. So the consumer experience might function like the consumer gets this free product and then they get a screen at the end that says, "We love providing this. If you could provide us a tip, we can continue to do so." Something along those lines. And the consumer can voluntarily choose to provide or pay a tip or gratuity to the provider.

And I don't think you see this as much, late fees or penalties. Some might have those types of fees. I think what you typically see is if a consumer doesn't repay an EWA in an earned wage advance, then future access tends to be terminated. And that's the carrot, I guess, to have folks continue to pay because there is a lot of value in these products. And we'll get to this a little later, but in a letter that the National Consumer Law Center wrote to the bureau about this product, they give stats about how frequently consumers are using these products, and they range from 12 to over a hundred times per year to get access to the funds earlier than their pay date. So it's a product that has a use case, a need, and there's a clear benefit. Consumers continue to use it.

So it's not like a product that a consumer's going to get once, it's very relationship based. The last thing I'd add is even though you have these two buckets and all these factors we discussed, each individual factor could have a very, very significant outcome as to whether a state or federal law applies to the product or whether the product is deemed credit or not. So it's a simple product when you step back and you look at it, but as you get into the weeds and start looking at individual attributes of each structure, there's really significant impacts.

Alan Kaplinsky:

Yeah, I take it, Mike, that you have to look when you get engaged by a potential client or a client to consult with them on EWA, after you find out how it's going to work, you ask yourself immediately a number of questions, "Is there any state user or interest rate law that might apply? Is there any license that might be required for the product?" And then I guess there were issues under the labor laws as well and their disclosure laws as well. So yeah, I think you put it well by saying that it's a very simple product to the consumer and something that they... it's very popular, but yet from a regulatory standpoint, things can get very complicated very quickly.

So let me go now to you, Ian. Maybe first you could just briefly describe for our listeners what AFC does. What is the organization all about?

Ian Moloney:

Sure, Alan. So the American Fintech Council is a standards-based trade association. We represent the largest Fintech companies as well as the innovative banks that power them, and that includes Earned Wage Access companies, and we actually represent all the major entities that are operating in the US offering Earned Wage Access products. So they're all our members. We recognize that not all Fintech is created equal, and I think that goes across the board. But within Earned Wage Access, as Mike alluded to, there are different ways to offer the product. And with our members, we took a very standards based approach. And so all of our members, actually, they must offer a no-cost option for EWA users. They commit to data sharing with the appropriate state and federal regulatory authorities. They make sure to conduct due diligence on their payroll information that they're getting from a reliable data source.

And so all of that among other standards that we've pushed, that's really what we see as a responsible EWA provider. And that can touch on, I think what we're going to discuss throughout, which is how is this being regulated? What's the opportunity for recognizing the popularity of the product? How should it be regulated?

Alan Kaplinsky:

Yeah. But when you say, Ian, no cost or no fee product, does that really mean there isn't any funds that the consumer or the employee has got to pay for getting his or her paycheck ahead of time?

Ian Moloney:

Exactly. And that's for our members. Of course EWA is a broader ecosystem. But for the folks that joined AFC, they all said, "We want to make sure that employees of all shapes and varieties, whether they have the service offered directly through their employer or if it's without an employer, because ultimately we want to make sure that individuals are met where they're at. And not all employers offer this service, even though it is a definite benefit to consumers, they make sure to have a no-cost option for those consumers. So that would be no fees. They'd be able to access their funds completely free.

Alan Kaplinsky:

Okay. They can offer other products where there are fees, but they've got to have at least one no-cost option?

Ian Moloney:

Exactly. And this gets back to trying to make sure you're meeting the consumer where they're at and ensuring that they have optionality for their services. And so there may be some expediting fees that are associated if a consumer needs the funds that day or in a short period of time. And so there are those options. But for all of our members, there's that no cost option.

Alan Kaplinsky:

Right. I got it. So Ian, if you would, tell us the challenges that the industry has been facing from a regulatory standpoint. And I think from a business standpoint, I hardly hear any criticism of the product, particularly one where there's no fee involved and the employee is getting his or her paycheck a week ahead of time. There's nothing to argue against there. But as Mike and I

alluded to, there have been a number of states that have not been quite as friendly. Maybe that's the right word to use, to the product. Am I right?

Ian Moloney:

Yeah, it's been an interesting space from a regulatory standpoint, and I think you experienced this across the board when you're dealing with new and innovative products and services. And when we're thinking about the regulatory structures associated with a given product or service, this includes EWA, of course, that when the technology is enabling an existing financial product or service to reach more consumers, and Alan you had alluded to or mentioned buy now, pay later. That's a good example of where this is a term loan and it's able to function better because of the technology that's being enabled. And so in that case, the existing financial product and service fits under an existing regulatory framework by and large. So it's similarly situated and it should be sufficient. However, when there's a technology that's used to create a wholly new product or service, then a distinct regulatory framework is required.

So that would be more akin to Earned Wage Access. And so that gets to the point of where the regulatory question comes into play, and that's been what is EWA and how should it be regulated? And the crux of that centers on, as Mike discussed briefly, is EWA a loan or is it not a loan? And from our perspective, it's not a loan and should not be regulated as such because it doesn't have some of the key characteristics that loans typically have. So unlike a loan or credit product, Earned Wage Access, it doesn't perform credit checks or inquiries. It doesn't assess fees based on access to credit worthiness or charge fees and installment. It doesn't charge interest or late fees, or it doesn't report to the credit bureau. So there's a lot of those aspects that are traditionally understood in the lending market as what constitutes a loan that just don't exist in Earned Wage Access.

Alan Kaplinsky:

Okay. And I know we're going to get to this in a little more detail later when we talk about the letter that AFC wrote to the director of the CFPB. But how have the state's been dealing with this? You've got 50 states that you have to deal with. My guess is there are some states that people have no idea how the regulators feel about it. They fall into the letting sleeping dogs lie category, but there are a lot of other states, a growing number of states that have been more proactive. And maybe you could give us an example of some of the states that have been active in the area.

Ian Moloney:

Absolutely. So this kicks off just from a historical perspective. It kicks off in mid of last year. So Nevada and Missouri were two states that took up this issue of Earned Wage Access and how to regulate it. And they moved pretty quickly and developed a bespoke regulatory framework that it was a licensing framework and it had key consumer protections associated for the Earned Wage Access providers, but it did not impose things like APR and some of the other more difficult aspects of that lending framework into the Earned Wage Access products, since, again, Earned Wage Access doesn't function alone.

And so for us, we were heavily involved in it across the board, and we've seen two camps come out, and it is been the camp of create that bespoke regulatory framework and then some say to shoehorn the Earned Wage Access products into the existing lending framework at a given state. And so you've seen that in Connecticut and Maryland, to name a couple of states that they've got legislation out there that's trying to consider Earned Wage Access as a loan and just take the existing regulatory framework and draw that across to Earned Wage Access.

Alan Kaplinsky:

So Mike, let's turn to you now to talk about what's been going on at the federal level, both by way of any legislation, I think. There hasn't been anything enacted that I'm aware of that directly applies to EWA, although I think there's been a bill introduced but hasn't gone anywhere. But also focus, if you would, on the CFPB, the role that they have played and the role, if any, that the Federal Trade Commission has played.

Michael Guerrero:

Got it. Yeah. So it's interesting at the federal level, and I think while we would certainly see state action to regulate a product, I think we're seeing more of it or an increased urgency because at the federal level, there is a lot of uncertainty as to how these products should be characterized. So this goes back to November, 2020. If I were to point to one specific point in time, November, 2020, is where I think the direction and maybe the confusion started. So an advisory opinion was issued, and this advisory opinion related to whether an EWA is credit for purposes of the Truth in Lending Act in Regulation Z. And essentially the opinion said if it's an employer-based product where the total amount of the advance does not exceed the accrued value of the consumer's wages, it's nonrecourse, there's no fees including tips to access the product. Maybe a nominal fee is okay, but they didn't unpack that a ton.

There's no credit risk assessment, so no credit check. And then you recoup the advance through a payroll deduction, and if that payroll deduction fails, you get one more payroll deduction attempt. Beyond that, there's no further attempts to collect. If you have a product that fits in that very, very specific framework, the Bureau's advisory opinion says that it's not credit for Truth in Lending Act purposes. It doesn't talk about other federal laws. So right after that advisory opinion was issued, there was a sandbox approval order that was issued to a Fintech that had a product that was very similar to that, and it was basically a no action under the Truth and Lending Act that we're not going to find this product to be in violation of TILA if it's offered to consumers. Then shortly after that, in October of '21, a group of consumer advocates, I believe there were 96 organizations including National Consumer Law Center, they sent a letter to the bureau urging reconsideration of the advisory group. October 21st is important because that's when Director Chopra assumed his role.

The arguments were that third party advance... This is a loan, it's a third party advancing funds to a consumer that the consumer has to repay. And then there's some policy arguments and I alluded to this earlier, that consumers will use this a lot. And if I'm seeing a consumer use a 0% product that costs them nothing a lot, to me, that tells me that there's a need in the market for expedited funds, and this is satisfying that. But their take is that this is putting the consumer in a cycle of debt. They're not able to save for their other upcoming expenses. Having a waiting period between income earning and the actual receipt is helpful. And they have charts with consumer preferences as to stating, it's more difficult to budget if they got paid daily, that kind of stuff. But the crux of the legal issue is that they're saying that this is a loan because a third party is advancing fees and the consumer has to repay.

So a couple of months go by and the CFPB, then acting, now current general counsel, acknowledged that the advisory opinion created confusion and stated that clarity would be forthcoming. That was in January, 2022. Early 2023 comes, we haven't really seen a ton of clarity come out of the CFPB and we get the government accountability office issuing a report, to which Director Chopra agrees in a responsive letter stating that at least as it relates to the Truth in Lending Act, we need clarity as to whether this product is credit under TILA, subject to TILA, what happens when you fall without of these very predefined construct from the 2020 order, which not a lot of products are going to fit squarely within. So we get the GAO, we have consumer advocates. Everyone's asking for clarity, and the bureau keeps telling us they're going to provide clarity. That's early '23.

Then towards the end of last year, this whole time you have states creating this patchwork where you have some states like the California, Nevada, Missouri, taking an approach that is regulating them in some way. And then you have states like Montana and Arizona where you have AGs coming out and saying, "We're not going to view these as credit if there's certain characteristics." So you're creating this framework and patchwork that is a little bit... or that is disparate.

You get the CFPB in November '23, the general counsel sends a letter to the California DFPI, who is proposing some of the more onerous regulations in the space, essentially blessing the regulations stating that gratuities should be charges. Telling us in a sense where the CFED might be going with guidance and stating that again, guidance will be forthcoming. And that's where we are right now. The Bureau continues to tease guidance, but when you have these public letters like this letter to the DFPI, you can't help but take that as some form of guidance from the bureau as to at least where they're going to be going. So from a federal perspective, well, there's no certainty and it's difficult to kind of get comfortable with a position when you have a bureau continually telling you that guidance is forthcoming, but the guidance hasn't been issued.

Alan Kaplinsky:

Did they ever, Mike, withdraw the earlier no-action letter that they had issued to, I can't remember the name of the company right now?

Michael Guerrero:

Yeah, it was Payactiv. Payactiv asked for it to be terminated. There was discussion about the CFPD terminating it, but essentially that was terminated June, 2022.

Alan Kaplinsky:

If you look at the product that AFC requires its members to offer, that is a no-cost, no-fee product. Is there really any doubt about that not being subject to TILA because there's no finance charge, right? There's not any kind of a charge, and it's not payable in four or more installments.

Michael Guerrero:

Right. But the bureau's letter to the DFPI is troubling in that they're blessing the DFPI's position, its proposed regulations which state that gratuities and tips, for example, are charges. And if you go back to the 2020 advisory opinion, gratuities and tips were expressly excluded from that hypothetical product. So it's difficult to plan and create a product as a Fintech provider knowing that you have this federal, at least cloud hanging over you. And the only way for these companies to even know what's going on right now is to be on the lookout for advisory opinions, supervisory guidance, looking for a letter from the CFPB's general counsel to a state regulator in the form of a comment to a proposed regulation. It's incredibly nuanced and it's difficult and not particularly fair for these Fintech companies who are trying to comply, but they have to go out and search for all this type of guidance to read the tea leaves or just figure out where things are going.

Alan Kaplinsky:

Yeah. All right. Thanks, Mike. I want to go back to you now, Ian, because this brings us to the event that prompted my great interest in doing a program on EWA. AFC seems to take and they've taken the bull by the horns and they have gone to... you've gone to the regulator and you have beseeched them to issue a regulation or if not a regulation, some type of guidance in the area. As I said earlier, it's very unusual. The first thing, ordinarily when I'm advising clients and they've got a novel idea, they generally don't want to raise their hand and go to the regulator and ask for their advice because regulators have a way of saying no to a lot of things. It's just part of their DNA.

And so I guess you could say you were really fed up with your inability to tell your members for sure how they could structure an EWA program as fully compliant. And this, I take it seemed to you is the best alternative at this juncture. But why don't you tell us what were the events leading up to that and had you met with the CFPB ahead of time to feel them out about whether they'd be receptive to doing anything? Did you know in advance? Did they discuss with you what they're thinking of doing in the way a regulation and what's happened after you wrote the letter?

Ian Moloney:

Sure. So the letter I think came from a few different places. First, from the market standpoint, markets function best, especially innovative markets when there's some level of clarity, some settled expectations that participants can engage with. And our members, we strive to be compliance first and really have that be the focus of their efforts. And because we're standards-based, as I mentioned before, we've been able to have a very productive relationship with the CFPB and with other federal and state regulators. And that comes in the form of very candid conversations that we've been able to have with both the leadership as well as the staff. And so when it came to Earned Wage Access, thinking about some of the stuff that Mike had laid out earlier around the GAO's recommendation and the patchwork nature of the states going on and the advisory opinion, that it was very helpful initially to providing some space for industry to develop.

But industry has moved beyond just that advisory opinion, and now there seems to be a need for additional clarity and something that's a little more formalized. And so we had met previously with various members of CFPB staff and discussed

with them at length Earned Wage Access. And to their credit, they've taken a very good approach in trying to understand the issue, particularly I think the more markets-focused parts of the bureau have really tried to understand the product and there's not this understanding or this perspective that they want to ban Earned Wage Access outright. They do see that this is not only a consumer demanded product, but also it's a consumer benefit product. So that's where our letter stemmed from. And so we wanted to, in that letter, ask the bureau, we recognize they have many different tools within their regulatory toolkit. And this ranges from things that are very binding, like formal rulemaking, which we all know about, all the way to things that are very not binding, like the general counsel's letter to the California regulator.

It's a comment letter. It's essentially, yes, he's part of the leadership team, but it's one person's opinion. It does not represent necessarily the entire view of the bureau. And so we wanted to recognize that fact and say to them, "Convene all relevant stakeholders." So this would be the consumer groups, the industry, government officials, and really take the opportunity to see what the regulatory approach should be. Our perspective within the letter was to say that we think a formal rulemaking in accordance with the APA is the right path, but we recognize that there might be other avenues to pursue, but ultimately we want to see clarity and that settled expectations for our members so that way they can engage in offering their product in the most effective fashion.

Alan Kaplinsky:

Okay. So the CFPB knew that you were going to be sending them a letter in connection with the dialogue that you've had with them. Did they give you an inkling of how they would be thinking of regulating or the type of guidance that they would give? Were they specific at all?

Ian Moloney:

So it was interesting in our conversations, I think, there's a lot of debate within the CFPB around how to regulate and what needs to be done on EWA. So there wasn't necessarily that specific discussion of, "We're going to regulate it in this capacity," because there's a lot of nuance to this conversation. And so at this point, we're hopeful that we can continue to have these conversations with the bureau staff specifically because we have seen beneficial outcomes. Those candid conversations I think are crucial to ensuring that the regulators are properly educated about the products and service. And especially in a time where we're starting to see some regulators move their innovation offices a little bit more internally. It's great to have that front door to have that conversation, but we haven't necessarily heard anything of exactly where the bureau is going to fall.

Alan Kaplinsky:

Yeah, or timing, I guess. That's the other thing, right?

Ian Moloney:

Yeah. Timing is crucial, especially when considering the election is on the horizon and likely whether it's the federal legislation from representative styles office or any federal regulation, the elections are going to play a role. And those politics become all too clear the closer we get to that election.

Alan Kaplinsky:

Has the administration, Biden administration taken any position at all on the product?

Ian Moloney:

Nothing formal.

Alan Kaplinsky:

One would think that it would actually be a good thing. I'm just thinking out loud right now. If Biden were to come out and say that he negotiated the development of this product that is really very, very good for consumers, I get to see it being a big

positive for him. But I guess there are others who think differently. What do you think, Mike, your reaction to the letter from AFC? Do you have a sense of what the outcome could be here?

Michael Guerrero:

Yeah. I think right now it's a little bit colored by what we're going through with the credit card weight fee rule. And when I say that, we just went through a rulemaking process and not to get us off-topic, but just looking at the data the bureau relied upon, there was a lot of controversy there, and the industry unanimously, nearly got together and said, "This data, we didn't even get a chance to scrutinize it, and this is what you're relying on to make a rule." And the bureau got all that commentary, all that feedback, and then still said, "No, the data's good enough." So I'm nervous when I see calls to the bureau to engage in a rulemaking process because the concern is that we might not be heard. This is a little bit different though, and I think the letter is good here in that the late fee proposal, that came as part of this junk fee initiative all the way down from the White House, and maybe there's a predetermined path that folks wanted to get to.

Here you have industry saying, "Look, we have a product we want to offer it. There's consumers using it." You don't see a ton of disgruntled folks. There's a clear benefit to consumers, but we want to offer it in a compliant way. And the best tool in my view, would be for the Bureau to update the official interpretation to the Truth in Lending Act like they've done to contemplate payday loans in the past. And that would go through a rulemaking process. And if that's the case, and if there is truly open dialogue and comment, then that's a good outcome. The industry will have certainty, and assuming the industry's heard it, it will get us to the right spot.

Alan Kaplinsky:

Yeah. Well, I guess we're going to have to see how this thing plays out. Being in an election year, I tend to question, unless there was unanimity of opinion among all the stakeholders involved here, I think it is going to be a tough thing for the CFPB to get involved in right now, but I do give AFC a lot of credit for giving it a try. It can't hurt. I don't think.

Any other final comments before we end our show today, Ian? First to go to you.

Ian Moloney:

So I think that the election is definitely a crucial factor, and when it comes to, just circling back to the federal legislation that Mike had discussed, there's a good opportunity to find bipartisan solutions here. And ultimately, I think having that federal piece of legislation in a bipartisan fashion could really create some of the clarity and also provide the CFPB an opportunity to leverage that. And so while it may be a pipe dream of ours, we've been supportive of that legislation throughout its drafting and now through its introduction, and we'd like to see that move forward because ultimately creating that bespoke regulatory framework, I think is very beneficial and recognizes the nuances that Earned Wage Access has within its product.

Alan Kaplinsky:

Ian, is the legislation bipartisan or is it principally Republicans?

Ian Moloney:

So currently it's principally Republicans, but I know from our perspective, we've been looking for and hopeful for some moderate Democrats to get on board and to engage effectively on this conversation so that way there can be that bipartisan piece of legislation.

Alan Kaplinsky:

Yeah, yeah. Has Elizabeth Warren taken a position yet?

Ian Moloney:

Not to my knowledge.

Alan Kaplinsky:

I'd be curious as to what she might think. Mike, did you have any final comments that you want to make before we close out our show today?

Michael Guerrero:

No, I would just thank Ian. It's always great when we get folks like Ian to come on and help us to understand what's going on actually at the ground level, because when we were talking about preparing for this webinar, I think, Ian, in between kicking this off, and now you've been at numerous testimonies on this specific topic. So it's always nice to have folks that are really living and breathing it to join us. So thank you.

Alan Kaplinsky:

Yeah. And I second that feeling.

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