

STATE OF NEVADA



JOE LOMBARDO
Governor

DEPARTMENT OF BUSINESS AND INDUSTRY

DR. KRISTOPHER SANCHEZ
Director

FINANCIAL INSTITUTIONS DIVISION

SANDY O'LAUGHLIN
Commissioner

**Minutes of Workshop to Solicit Comments on
Proposed Regulations S.B.290- Earned Wage Access**

Date: Friday, November 3, 2023

Time: 10:00 a.m.

Locations:

Physical in-person location:

Nevada State Business Center, Nevada Room, 4th Floor
3300 W. Sahara Avenue, Las Vegas, Nevada 89102

Virtual location:

Webex meeting- videoconference and teleconference

Agenda Item 1. Call to Order:

The workshop to consider S.B.290 was called to order Friday, November 3rd at 10:03 a.m. The purpose of the workshop was to receive input with respect to the proposed regulations pertaining to Senate Bill 290, as described by the Notice of Workshop dated and posted on October 16, 2023.

Financial Institutions Division Staff Present at the Hearing:

Commissioner Sandy O'Laughlin
Deputy Commissioner Mary Young
Senior Deputy Attorney General Louis Csoka
Examiner Jennifer Ramsay
Administrative Assistant Devan Owens

Agenda Item 2. Comments by General Public:

There were no comments during this general public comment period.

Agenda Item 3. Presentation and Discussion of Proposed Regulation:

A summary of each section of the proposed regulations was read during the workshop.

Regulation Comments per Section:

Sections 3 and 4.

One (1) written comment received prior to the workshop regarding section 3:

- The comment was to request the Division to remove “verified live data” from the definition of indirectly. The Division agrees to remove the term “live” but intends to keep “verified data” in the definition of indirectly.

There was one (1) verbal comment received on section 3.

- Matt Morris, Holland and Hart on behalf of DailyPay. The proposed revision to remove “live” from the definition will be helpful. It will provide a little more clarity and consistency.

Sections 5 through 8.

Written comment received prior to the workshop regarding section 8:

- Comment for section 8 subsection 1(c) proposed new language. To add “where the provider is seeking repayment of outstanding proceeds.” The Division is in agreement to add the additional language for this section to read “where the provider is seeking repayment of outstanding proceeds, the total number of users who have outstanding proceeds at the time of reporting, and the value of outstanding proceeds.”
- Comment for section 8.2, regarding the audited financials. The commenter would like the Division to remove “no later than June 30” and add “submit within 180 days following the end of a reporting licensee’s fiscal year”. The Division does not think a change is necessary since the regulation already provides for a licensee to request an extension for good cause.

There were no verbal comments received on sections 5 through 8.

Sections 9 through 12.

There were two (2) written comments received prior to the workshop regarding section 10.2.

- Regarding unethical advertising. The commenter requested the Division to replace the language “all licensees” with “that licensee” so its specific to the one licensee in violation of this section. That was the intent of the Division, and we agree to make that change.
- The second commenter also requested the change above, and also requested to add “or any electronic or print format distributed in the users’ workplace.” The Division will consider adding this language.

There was also one written comment on section 11.1.

- The comment requested the Division to remove the term “issued” and replace with the term “required” The Division does not think a change is necessary.

There was one (1) written comment received prior to the workshop and the same commenter gave verbal comment during the workshop on section 10.6.3:

- Beau Hurtig, Ceridian. He wanted to make sure we received his written comment regarding the definition of payroll provider.

Mary Young, FID. Yes, we did receive your comment. We were going to cover your comment later since it was more directed at the Senate Bill and not the regulation.

Beau Hurtig, Ceridian. The comment was in respect to the Bill but was hoping to get an exemption that we believe exists in the bill, written into the regulation. There are already two exemptions in the section.

Mary Young, FID. We cannot change the language in the Senate Bill and cannot write language that may contradict the Bill language. We recommend all payroll providers request a license determination to see if they need a license under this Senate bill or NRS 671 as a money transmitter for their specific business model. Your business model covered wallet programs, which usually fall under NRS 671. But it is recommended to request a licensure determination.

Beau Hurtig, Ceridian. He sees there is an exemption under the bill generally, that their business model could be given an exemption from the law. Wanted clarification of the Senate bill in the regulation, wanted to have the exemption language in the Senate bill to be in the regulation.

Mary Young, FID. We should talk offline because the business model doesn’t appear to meet that exemption.

Beau Hurtig, Ceridian. He will seek clarification.

Sections 13 through 16.

There was one (1) written comment received prior to the workshop regarding section 16.

- The commenter requesting to add language “or other person that may be subject to any requirement...” to allow the Division the right to request documentation from any person, not just applicants and licensees. The Division does not think this is necessary since it has the authority to request from any person in section 17 and section 18 of Senate Bill 290.

Comments received during discussion of section 15.

- Nicole Miller, Activehours, Inc. dba: Earnin. Section 15 requires a user signature on the agreement. They operate an app and don't get a signature. They would accept by clicking to accept the services or to give a tip.

Mary Young, FID. Do you get some form of electronic signature or acknowledgment from the users?

Nicole Miller, Activehours, Inc. dba: Earnin. Yes, the user clicks the box to agree to services.

Mary Young, FID. Can you send us an example of what a user sees. We may consider the language in this section. This industry is new to the Division, we appreciate any clarification. Is there anyone in the room or anyone on the call that would like to comment on this?

- Matt Morris, Holland and Hart on behalf of DailyPay. Generally, he is trying to keep track of the comments that he didn't submit, it's hard to know what the regulations will look like with the changes. Would like a way to comment on the comments and changes.

Mary Young, FID. If there are a lot of material changes, we will hold a second workshop. LCB has to approve the language before the adoption hearing. During the adoption hearing you can always make comment, and we can make changes then, but we don't prefer to during the adoption hearing. But there is a mechanism to provide additional comments. Everyone will see the public comment. If you want any more information on the comments I mentioned, you can email us fidmaster. We are open to answer any questions.

Louis Csoka, Senior Deputy Attorney General. Did you have any comments on the electronic signature issue?

Matt Morris, Holland and Hart on behalf of DailyPay. Without seeing the comment that they are submitting, it's hard to say.

Sandy O'Laughlin, FID Commissioner. Is there an initial sign-up to use the service?

Matt Morris, Holland and Hart on behalf of DailyPay. Typically, there is. What came up during the session is there are a lot of different business models across the industry but generally, yes.

Mary Young, FID. If anyone would like to us any samples of user agreement, that would be welcomed.

- Garth McAdam, ZayZoom. They do not accept tips but very similar for them as Nicole pointed out. Not a signature but an express agreement.

Agenda Item 4. Public Comments:

There were no comments during this general public comment period.

Agenda Item 5. Close Workshop (Adjournment):

The workshop pertaining to Senate Bill 290 was closed and adjourned on November 3, 2023, at 10:24 a.m.

To review and/or listen to comments in their entirety, please refer to the attached written comments and/or the audio recording. The recording can be found at: [Proposed Regulations \(nv.gov\)](#)



Nevada Department of Business of Industry
Financial Institutions Division
Attn: Commissioner Sandy O’Laughlin
3300 W. Sahara Avenue, Ste. 250
Las Vegas, Nevada 89102

Submitted Electronically to fidmaster@fid.state.nv.us

RE: Daily Pay, Inc.’s Stakeholder Comments In Response to Proposed Regulation LCB File No. R096-23I (Earned Wage Access, SB 290 (Nev. 2023))

October 27, 2023

Commissioner O’Laughlin:

Thank you for the opportunity to submit the following stakeholder comments on behalf of Daily Pay, Inc. (“Daily Pay”) responding to the Financial Institution Division’s (“FID’s”) Proposed Regulation R096-23I, implementing SB 290 (Nev. 2023) relating to earned wage access services. Daily Pay respectfully submits the following comments for FID’s consideration, pursuant to NRS 233B.0603, and NRS 233B.061, *et seq.*, which provide that interested persons must be afforded the opportunity to submit data, views, arguments, and comments on proposed agency regulations.

Having participated extensively in the development and advancement of SB 290 throughout the 2023 Nevada Legislative Session, Daily Pay appreciates the opportunity to provide the following comments and suggestions in response to FID’s draft regulation. As a key stakeholder in the State of Nevada’s efforts to implement SB 290 and create a regulatory framework for earned wage access service providers, Daily Pay looks forward to continued collaboration and to supporting a regulatory structure in Nevada that balances the needs to promote industry growth and innovation while protecting Nevada’s consumers from predatory, unethical, and harmful business practices.

To that end, Daily Pay respectfully submits the following comments and suggestions in response to proposed Regulation R096-23I for FID’s consideration.

Daily Pay’s Comments to Proposed Sec. 8.1(c) – Annual Reporting Requirements

FID’s proposed regulation, at Section 8.1(c), would require a licensee’s annual report, submitted pursuant to SB 290, Sec. 28, to include “[t]he total number of users who have outstanding proceeds at the time of reporting, and the value of outstanding proceeds.”

Daily Pay respectfully submits that it is unclear why such information would be included in a licensee’s annual report. SB 290, Sec. 28(1) requires the annual report to be submitted on or before April 15th of each calendar year, which in many instances could fall in the middle of a pay cycle for many users. Amounts that may have been transferred to a user prior to the user’s pay day could constitute “outstanding proceeds at the time of reporting,” *i.e.*, proceeds remitted to a user by a provider that have not yet been repaid to the provider. Including such information in an annual report may provide an inaccurate or incomplete picture to regulators.

To clarify the scope and intent of this requirement, and to ensure the annual report under SB 290, Sec. 28 provides a clear and accurate picture to Nevada regulators, Daily Pay respectfully suggests the following revision to the Proposed Sec. 8.1(c):

(c) Where the provider is seeking repayment of outstanding proceeds, [t]he total number of users who have outstanding proceeds at the time of reporting, and the value of outstanding proceeds.

Daily Pay's Comments to Proposed Sec. 8(2) – Submission of Audited Financial Statements

The proposed regulation, at Section 8.2, provides that ***“If audited financial statements are not available before April 15, and unaudited financial statements are submitted on or before April 15, the audited financial statements shall be submitted to the Division when available to the licensee but no later than June 30, unless an extension is requested by the licensee and the Commissioner extends for good cause.”***

Existing Nevada statute acknowledges that regulated entities may have fiscal years that are different from the State's fiscal year, and that regulated entities' reporting requirements may need to align with such fiscal periods. (*See, e.g.*, NRS 666.095(1)-(2), requiring a bank holding company's annual registration reports to be submitted to the Commissioner based on the end of its fiscal year). Daily Pay recommends revising the proposed regulation to provide that the due date for audited financial statements, if not submitted on or before April 15th, should be submitted within 180 days following the end of a reporting licensee's fiscal year. This will ensure that auditors have sufficient time to complete an audit of a licensee's financial statements, such that the licensee can timely include such statements in its report to FID.

Alternatively, the regulation should expressly provide that an extension in the reporting timeframe for audited financial statements will be granted to provide a licensee sufficient time to obtain audited financial statements, given the licensee's fiscal year end schedule.

Daily Pay's Comments to Proposed Sec. 3 – Verified Live Data

The proposed regulation, at Section 3, provides that ***“For the purpose of Section 9.1, “indirectly” means verified live data of the user's employment, income, or attendance obtained from an integrated system which is not directly obtained from an employer's system, and is not employment, income, or attendance data obtained directly from the user.”***

Daily Pay submits that the “verified live” concept represents an additional and more stringent verification standard that is not contemplated in SB 290. The term “verified live” is undefined, and the language seems to impose a higher standard for data obtained “indirectly” from an integrated system. If the data is obtained from an employer-integrated system, the data should be sufficient as such to ensure that wages provided to a user have actually been earned.

SB 290, Sec. 9.1, expressly provides for this framework by defining “employer-integrated earned wage access services” as the “delivery to a user of access to earned but unpaid income determined based on employment, income or attendance data ***obtained directly or indirectly*** from an employer[...].” By introducing the “verified live” concept for data obtained “indirectly” from an

employer-integrated system, the proposed regulation appears to be revising the language of SB 290 to create a new distinction, which creates unnecessary confusion for licensees.

Daily Pay respectfully suggests **omitting** the term “verified live” from proposed Section 3.1

Daily Pay’s Comments to Proposed Sec. 10(2) – Unethical Advertising

The proposed regulation, at Section 10(2), provides that “*No unethical, false, or misleading advertising by licensees will be permitted. If violations pertaining to a licensee’s advertising practices are discovered during an examination or investigation of a licensee, ~~and~~ the Commissioner ~~reserves the right to~~ may require all licensees to submit proposed advertising for approval before its dissemination through the press, by radio, television, or the internet.*”

Daily Pay respectfully submits that the proposed language should be clarified to ensure that regulators can effectively protect consumers against unethical, false, or misleading advertising, while balancing the rights of licensees and industry participants to engage in constitutionally protected commercial speech. *See generally, North Nevada Co. v. Menicucci*, 96 Nev. 533, 536, 611 P.2d 1068, 1070 (1980) (to be constitutionally acceptable, a regulation authorizing officials to license activity that is presumptively protected by the First Amendment “must establish precise, narrowly-drawn standards to guide the officials” in their regulatory oversight).

The proposed language, as drafted, is not clear as to what constitutes “unethical advertising” and would appear to allow regulators to review and approve all advertising material, for “all licensees,” whether it is “unethical” or not, and regardless of whether the licensee engaged in violations of advertising rules. Daily Pay submits that the regulation should be revised to provide more narrowly and precisely that the Commissioner has the authority to pre-approve advertising for a specific licensee, where violations pertaining to that particular licensee’s advertising practices are discovered.

The following revision would comport with Nevada law espousing “precise, narrowly-drawn standards” to guide regulation of advertising presumably protected under the First Amendment:

No unethical, false, or misleading advertising by licensees will be permitted. If violations pertaining to a licensee’s advertising practices are discovered during an examination or investigation of a licensee, ~~and~~ the Commissioner ~~reserves the right to~~ may require that licensee ~~all licensees~~ to submit proposed advertising for approval before its dissemination through the press, by radio, television, or the internet.

Daily Pay’s Comments to Proposed Sec. 11(1) – Local Government Licensing & Permits

FID’s proposed regulation, at Section 11(1), should be clarified to provide that a licensee is required to obtain a license or permit from a local governmental entity only if the local governmental entity requires such a license or permit. This language aligns with existing regulatory language, for example, under NAC 675.120(1), requiring licenses to possess any “required” licenses, certificates, or permits issued by a local governmental entity.

Daily Pay suggests the following revision:

Sec. 11. A person shall not engage in the business of providing earned wage access services in this State unless:

1. The person holds a license required by Senate Bill 290, and any license or permit ~~issued~~ required by a local governmental entity;

Once again, Daily Pay appreciates FID's consideration of these comments and suggestions and appreciates the opportunity to work with FID and co-stakeholders to establish an effective regulatory structure for earned wage access service providers in the State of Nevada.

Please direct any comments or questions regarding Daily Pay's submitted comments to the undersigned.

Sincerely,



Ed Garcia, Esq.
egarcia@edgarcialaw.com



Matt Morris, Esq.
mcmorris@hollandhart.com

Counsel for Daily Pay, Inc.



Rain Technologies Inc.
209 10th Ave S Ste 160
Nashville, TN 37203-0702

Rain.us

Via Electronic Mail to FIDmaster@fid.state.nv.us

October 27, 2023

Mary Young
Deputy Commissioner
Financial Institutions Division
3300 W. Sahara Ave., Suite 250
Las Vegas, NV 89102

RE: Comments on Revised Regulations to Implement Senate Bill No. 290 (2023)

Deputy Commissioner Young:

On behalf of Rain Technologies Inc., I appreciate that the Nevada Financial Institutions Division has reached out to Rain regarding the agency's proposed regulations for Senate Bill 290 (SB290) regulating the provision of earned wage access services.

By letter dated September 1, 2023, Rain provided its comments on the NFID's initial proposal for regulations. Rain recommends that the NFID accept this comment letter in the spirit of supplementing, not replacing, the recommendations that Rain offered in its September 1 letter. For the sake of efficiency in the NFID's rulemaking process, this comment letter focuses on key points raised in the agency's revised proposal, contained in its notice dated October 16, 2023.

As discussed below, with respect to the October 16 proposal, Rain urges the NFID to adopt in its final regulations these measures:

1. Clarify the scope of the restrictions on advertising, in Section 10 of the NFID's regulations; and
2. Preserve the NFID's authority to demand information to investigate any "person" that may be a *provider*, pursuant to Section 16 of the NFID's regulations.

If you have any questions regarding Rain's recommendations for the NFID's final rule, please reach out to me.

Sincerely,

Tom Scanlon
THOMAS E. SCANLON
General Counsel & Chief Compliance Officer



Rain Technologies Inc.
209 10th Ave S Ste 160
Nashville, TN 37203-0702

Rain.us

COMMENTS ON PROPOSAL BY NEVADA FINANCIAL INSTITUTIONS DIVISION FOR REGULATIONS IMPLEMENTING SB 290

1. In Section 10, Clarify the Scope of the Restrictions on Advertising

Section 10 is designed to sanction acts involving fraudulent or misleading advertising by reserving the NFID's authority to "require all licensees to submit proposed advertising for approval before its dissemination through the press, by radio, television, or the internet."

As stated in the September 1 comment letter, Rain does not dispute the Commissioner's authority to examine a licensee's advertising, including by imposing a prior-approval requirement. Moreover, Rain believes that the purpose of Section 10 should be to enable the Commissioner to thwart unethical or misleading advertising conducted by a particular "provider" or "licensee."

A licensee that promotes its EWA services in ways that historically do *not* involve false or misleading marketing activities should not be subject to the stifling effects of compliance with a prior-approval order imposed by the NFID when developing proposals for new or different forms of advertising. Under the October 16 proposal, the NFID would, appropriately, place the predicate condition for imposing a prior-approval order on the agency's finding of "violations" that are uncovered during its examination of a licensee's advertising practices. However, once the NFID finds that the specific licensee has committed violations, the regulations would allow the agency to fashion a prior-approval order that would apply to "*all* licensees" (emphasis added). Rain believes that compliance with the requirements of submitting proposed advertising to the NFID for its approval before dissemination should apply only to the licensee that had been found committing the violations.

Accordingly, Rain recommends that the NFID modify subsection (2) of Section 10 as follows:

2. No unethical, false, or misleading advertising by licensees *or providers* will be permitted. If violations pertaining to a licensee's advertising practices are discovered during an examination or investigation of a licensee, the Commissioner may require ~~all licensees~~ *that licensee* to submit *its* proposed advertising for approval before its dissemination through the press, by radio, television, or the internet, *or any electronic or print format distributed in the users' workplace.*



Rain Technologies Inc.
209 10th Ave S Ste 160
Nashville, TN 37203-0702

Rain.us

2. In Section 16, Clarify that the NFID Has Authority to Demand Information to Investigate Any Person That May Be Acting as a Provider

Section 16, as drafted in the October 16 proposal, is designed to state (in the regulations) the NFID's authority to obtain "any information or documentation" that the agency needs to examine or to investigate "an applicant or licensee." However, the specific language that the NFID has proposed could be interpreted as constraining the scope of the agency's authority to investigate a person that could be acting as a "provider" or holding itself out as a provider, and thus potentially operating in violation of Nevada law. Rain believes that the NFID's regulations should avoid the risk that a person that is violating one or more requirements of SB290 (or other applicable Nevada law) could escape an investigation by the NFID because the NFID's own rule limits its investigative powers to a person that is either an "applicant" or a "licensee."

Section 17.1(1) of SB290 provides that the "Commissioner may conduct any necessary *investigations* and hearings to determine whether any licensee *or other person* has violated any of the provisions of this chapter or whether any licensee has conducted himself or herself in a manner that requires the suspension . . . of his or her license." (Emphases added.) Likewise, Section 17.1(2) authorizes the Commissioner, when "conducting any investigation or hearing" under that law, to "require the attendance and testimony *of any person* and compel the production of all relevant books, records, accounts, and other documents" (*i.e.*, of that person). Rain believes Section 16 of the NFID's regulations should track the Commissioner's authorities to conduct investigations of any "person" that may violating requirements of SB290 so that the EWA industry can be protected against unlawful practices conducted by unlicensed providers.

Accordingly, Rain recommends that the NFID modify Section 16 as follows:

16. The Commissioner may request any information ~~or documentation~~, ***whether through any documentation or testimony***, deemed necessary to perform an examination or investigation of ~~an applicant or licensee~~ ***any applicant, licensee, or other person that may be subject to any requirement under Senate Bill 290.***

VIA Federal Express

October 26, 2023

Mary Young
Deputy Commissioner
Financial Institutions Division
3300 W. Sahara Ave., Suite 250
Las Vegas, NV 89102

Email: fidmaster@fid.state.nv.us

Re: Ceridian HCM, Inc. (“Ceridian”) Comment on Proposed Regulations of Senate Bill 290 (SB 290)

Dear Deputy Commissioner Young,

Ceridian is writing in response to the October 16, 2023 request for comments in advance of the November 3, 2023 Notice of Workshop to Solicit Comment on Proposed Regulations pertaining to SB 290. Ceridian’s position is that SB 290 exempts compliant payroll providers from its requirements and regulations. Accordingly, Ceridian proposes to add additional language to the Proposed Regulations to explicitly exempt compliant payroll providers from any requirement to register with the Commissioner of Financial Institutions as an earned wage provider for the reasons set forth herein.

I. Ceridian is a Compliant Payroll Provider

Ceridian is a global human capital management (“HCM”) software company, providing human resources, payroll, benefits, workforce management, and talent management capabilities to commercial customers in a single solution.

Given Ceridian’s core business is payroll, Ceridian continues to see cohorts of workers whose needs are not automatically met by traditional payment cycles, in which over 70% of paychecks are paid monthly or bi-weekly. As a result, some workers turn to high interest payday loans and credit cards to access an instant payment that bridges the gap between regularly scheduled pay periods. Additionally, more than 1/3 of U.S. adults would be unable to cover an unexpected \$400 expense, disproportionately affecting Black and Hispanic households and adults without a college degree.¹

¹ Economic Well-Being of U.S. Households in 2021, published May 2022 by the Board of Governors of the Federal Reserve System, <https://www.federalreserve.gov/publications/files/2021-report-economic-well-being-us-households-202205.pdf>.

In response to this demand, and given Ceridian’s unique capabilities as a payroll provider, Ceridian launched Dayforce Wallet in 2020. Dayforce Wallet is a digital financial management solution – offered through employers using Ceridian’s HCM payroll software – that empowers employees by providing their pay through the innovative Dayforce Wallet program that provides compliant access to earned but unpaid wages on demand (“On-Demand Pay” or “ODP”). Generally speaking, there are broadly two models of providing employees with access to their earnings prior to a regular payday: 1) employees drawing funds against a future paycheck, or 2) Ceridian’s ODP model. Ceridian’s ODP program is driven by innovation in the payroll process, allowing employees to access wages on demand that they have already earned for no fee through a true payroll run that is compliant with Federal, State, and local law, including applicable tax laws and the Fair Labor Standards Act of 1938.

To elaborate, Ceridian’s unique HCM platform architecture allows it to immediately and continuously update time, attendance data and other pay related data in order to calculate, throughout the duration of the pay cycle, withholdings for pre-tax deductions, post-tax deductions, and garnishment amounts, and the resulting net pay based on earned wages. Ceridian’s ODP product is not a loan or advance to employees. Instead, Ceridian provides wages to the employees of its employer customers as a tangential payroll service to employer customers, thus there is no obligation by the consumer (employee). Further, Ceridian’s Dayforce Wallet does not charge consumers mandatory fees nor request tips. Instead, Ceridian’s Dayforce Wallet enables employees to request an ODP payout of their net earnings any time during the pay cycle for no fee, giving consumers a risk-free way to access funds for everyday or unexpected expenses. In order to provide access to funds, Ceridian partners with an FDIC insured institution to issue Dayforce Wallet accounts into which ODP proceeds are nearly instantaneously credited upon employee request. Ceridian’s ODP products allow consumers to use earned funds paid prior to the normal payday to pay bills on time, cover unplanned expenses, engage in financial planning, and improve overall financial health with net wages actually calculated and paid. See attached Appendix A for visual aid.

II. Application of SB 290 to Compliant Payroll Providers

Ceridian understands that states and federal agencies are concerned with protecting vulnerable consumers and have been requiring persons who provide income-based advances products and services to register and report on their business practices. However, Ceridian does not interpret the text and meaning of SB 290 as applicable to its business, and seeks further clarity in the proposed regulations through inclusion of an explicit exemption for compliant payroll providers.

SB 290 defines “Employer-integrated earned wage access provider” as a person who is “engaged in the business of offering to provide or providing employer-integrated earned wage access services.” SB 290, Section 9, paragraph 1. Furthermore, the same section excepts “payroll service providers, including, without limitation, payroll service providers whose role may include verifying the available earnings but who are not contractually obligated to fund earned wage access service proceeds to a user” from the defined group of Employer-integrated earned wage access providers. SB 290, Section 9, paragraph 2. This language is included in the proposed regulations

in sections 10.6.1 and 10.6.2. Ceridian proposes that the following language be included as section 10.6.3 in the regulations:

“The term Provider does not include a payroll service provider that facilitates payments to workers of earned, available wage balances in accordance with Federal, State, and local law, including the Fair Labor Standards Act of 1938.”

Ceridian proposes that the explicit exception should apply to itself and similarly situated compliant payroll service providers. This includes all business models in which employees request ODP services from the company that processes their normal, compliant payroll and provides earned, unpaid, net income for employees without mandatory fees, charges, or other costs. The inclusion of an explicit exception is supported by the text of SB 290 Section 9, as a payroll services provider, Ceridian is not contractually obligated to fund ODP proceeds absent an employer’s contractual election to use Ceridian’s ODP service.

Compliant ODP is distinguishable from any type of loan, advance, or other exchange in which the end user is ultimately not receiving compliant, net pay from its employer, but is actually obtaining funds against a future paycheck from a third party, regardless of whether the exchange of funds is premised on actual or verified earned but unpaid income. Compliant payroll providers, like Ceridian, grant their services in addition to processing the employer’s normal payroll, and do so in a manner free to employees such that the complaint payroll provider’s main business and source of income is *not* EWA services. Further, compliant payroll providers have absolutely no recourse against the employee for ODP proceeds and must instead proceed against the employer in the event of default.

III. Conclusion

Ceridian believes that employees are entitled to payment in real time, rather than being limited to receiving payment during traditional pay periods. As set forth above, Ceridian’s ODP program allows consumers to receive compliant, net payment for work that they have already performed at any point in the payment cycle for no fee. Since Ceridian offers net income access that is calculated when employees have earned it, the ODP system does not constitute a consumer advance as contemplated in the bill, as this would require payment to the employee before net earnings are calculated and due. Moreover, Ceridian’s ODP business model does not require the employee to draw funds against a future paycheck, but instead innovates the payroll process to allow employees to access their earned wages through a true, compliant payroll on demand service. Ceridian has absolutely no recourse against the employee for ODP proceeds and must instead proceed against the employer in the event of default.

Ceridian encourages the Commissioner to formalize the distinction in EWA services and explicitly exempt complaint payroll providers from the proposed regulations of SB 290, through inclusion of the proposed language, or similar language, to create a new section 10.6.3. Ceridian submits that compliant payroll providers are not engaging in the type of EWA business activities regulated (or intended to be regulated) by the bill. Thank you for your attention to this matter, and please do not hesitate to contact me with questions or comments.

Regards,

A handwritten signature in black ink, appearing to read "Beau J. Huttig". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Beau J. Huttig
Vice President, Associate General Counsel, Financial Services

enclosure

