



Innovative Payments Association

110 Chestnut Ridge Rd, Suite 111

Montvale, NJ 07645

btate@ipa.org

April 11, 2024

Submitted via E-Mail at:

Ms. Aviva Aron-Dine
Assistant Secretary for Tax Policy
Office of Tax Policy
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.,
Washington, DC 20220

Mr. William M. Paul
Chief Counsel (Acting)
Internal Revenue Service
1111 Constitution Ave. N.W.,
Washington, DC 20224

Re: President Biden’s 2025 Proposed Budget – On-Demand Pay Tax Proposal

Dear Ms. Aron-Dine and Mr. Paul:

The Innovative Payments Association is writing today regarding the President’s 2025 General Explanations of the Administration’s Fiscal Year 2025 Revenue Proposals (“[Proposal](#)”)¹ which would amend section 7701 of the Code to provide a definition of an on-demand pay (alternatively known as Earned Wage Access or “EWA”) arrangement as one that allows employees to access earned wages before their regularly scheduled pay dates. The Proposal also would amend section 3401(b) of the Code to provide that the payroll period for on-demand pay arrangements be treated as a weekly payroll period, even if employees have access to their wages during the week. Further, the proposal would amend sections 3102, 3111, and 3301 of the Code to clarify that on-demand pay arrangements are not loans. Finally, the Proposal would amend section 6302 of the Code to provide special payroll deposit rules for on-demand pay arrangements. The Secretary and her delegates would be given regulatory authority to implement the Code provisions addressing on-demand pay arrangements.

Generally, under the IRS’s definition of “Constructive Receipt,” wages are considered “paid” for purposes of employment tax and income tax withholding when they are actually or constructively

¹ 2025 General Explanations of the Administration’s Fiscal Year 2025 Revenue Proposals:
<https://home.treasury.gov/system/files/131/General-Explanations-FY2025.pdf>



received by the employee. Accordingly, when an employer allows employees to receive payment of earned wages before their regularly scheduled pay dates, there is a risk that employees could be in constant constructive receipt of their wages as they are earned. Currently, employers continue to recognize payments of wages and to make full tax payments to the IRS in accordance with the normal scheduled payroll cycle.

If the current Proposal is implemented as proposed, it would significantly amend the reporting and tax payment processes of EWA arrangements.² According to the [Bureau of Labor Statistics](#), nearly 66% of Americans get paid on a biweekly, bimonthly, or monthly basis. Additionally, the Financial Health Network has reported that [55 million Americans](#) have utilized an on-demand pay product. Regulations requiring employers to recognize all accrued wages earned and to calculate and pay related employment taxes to the IRS on a weekly basis if any employee merely has access to an on-demand/EWA pay platform appear to be out of step with the millions of Americans who utilize new technologies to access short-term liquidity due to the mismatch between the time when they may need money and their pay period selected by their employer ends.

The IPA highlights the fact that the Proposal makes a number of inaccurate assumptions regarding EWA providers and arrangements. Accordingly, the description of EWA in the “Reasons” section of the Proposal on its face is limited and overly simplistic and appears to be based on a unique EWA business model used by primarily one EWA company.³ Conversely, there are a wide range of EWA models utilized in the current marketplace.

Next, according to the “Current Law” analysis in the Proposal, the IRS states “when an employee has unfettered control over the date on which they actually receive their wages, they are typically considered to be in constructive receipt of those wages.” However, under most EWA arrangements in the market today, the employee does not have “unfettered” access to their wages due to the imposition of a third-party. Generally, most third-party providers limit access to earned wages to 50% of the wages earned in a pay period. One of the reasons these kinds of limitations are in place is to ensure that an employee does not access all of their pay and ensure that money is set aside for taxes and other deductions that occur in the regular pay cycle. Thus, an employee’s ability to access earned wages is not completely within their control. In short, the EWA provider essentially serves as *intermediary* as an unrelated and unaffiliated third-party to the employer or the employee and has the ability to put in place “substantial limitations or restrictions” before the employee receives any funds.

When an employer contracts with an independent third-party EWA service provider to make EWA products and services available to their employees, the independent third-party EWA provider

² It is important to note that the “Proposal” does not seek to amend Code Section 451, which sets forth (very generally) the agency’s interpretation of the constructive receipt doctrine.

³ <https://flexwage.com/ondemand-pay/>



connects and integrates with the employer’s payroll and/or time-keeping systems to enable the independent third-party EWA provider to directly and accurately verify earned wages. Therefore, more than likely, the employer is not aware of any real-time requests made by their employees to the third-party EWA provider or when the EWA provider fulfills the request made by the employee. In many cases employers may not even be aware as to whether an employee signs up for the service (which may be managed by the independent third-party provider) or if the employee makes an EWA transaction request until the transaction is settled on payday.

While we appreciate that the IRS has declared EWA services are not loans, and the Proposal is not recommending that employers are required to report daily, nevertheless, in practice, the Proposal’s requirement to recognize and pay employment taxes weekly for every employee may still prevent millions of Americans from gaining access to short-term liquidity provided by EWA arrangements. As the CFPB has acknowledged, “several obstacles prevent businesses from easily implementing shorter pay cycles.”⁴ In addition, “the Bureau has noted that periodic wage payment appears to be largely driven by efficiency concerns with payroll processing and employer’s cash management.”⁵

Accordingly, as drafted, the proposal on its face is overly broad and appears to apply to any employee who has access to EWA services and thus *could* receive an early disbursement of their wages, even if they do not receive their funds via an EWA product or service. This has the potential to be extremely costly to employers, and as a result few employers would offer EWA services.

If left unchanged, an expansive reading of the Proposal could provide a major disincentive for employers to offer EWA at all. The reality is many Americans lack access to low-cost credit or [substantial savings](#). EWA empowers employees to take control of their day-to-day financial lives, especially when emergencies arise, by smoothing out income volatility. According to the [Financial Health Network](#)’s 2023 report, “many (EWA) participants noted that they used EWA to pay bills that were due ahead of their paycheck or cover some other shortfall in paying for daily expenses.” EWA users also “described emergency situations or unexpected expenses as reasons for using the product. These situations included unexpected car and home repairs, as well as medical expenses.”

While EWA services are relatively new, according to a survey by the Financial Health Network, most EWA users “felt that using EWA has improved their financial health.” Additionally, EWA users thought faster access to wages “was helpful in covering both regular and unexpected expenses,” allowing users to resolve their own financial challenges with a “[sense of dignity](#)”.

If the Proposal is implemented in its current form - requiring employers who operate on a monthly, biweekly or twice a month pay schedule to begin to process payroll weekly and send withholdings

⁴ https://files.consumerfinance.gov/f/documents/cfpb_advisory-opinion_earned-wage-access_2020-11.pdf

⁵ https://files.consumerfinance.gov/f/documents/cfpb_advisory-opinion_earned-wage-access_2020-11.pdf



Innovative Payments Association

110 Chestnut Ridge Rd, Suite 111

Montvale, NJ 07645

btate@ipa.org

to the IRS - it would place a very significant administrative burden on businesses who make an on-demand pay option available to their employee.⁶ Most employers do not have the ability to move to a weekly reporting period. Requiring weekly reporting could thus severely restrict employers' ability to offer their employees EWA benefits because doing so could upend their payroll processes which, in most cases, are based on a two-week cycle. The likely outcome would be that many employers who offer on-demand pay may reconsider making this valuable tool available to their employees, driving them to more [costly](#) options, such as payday loans or car title loans.⁷

Therefore, the IPA respectfully recommends that the Current Law and Reason for Change sections of the Proposal be revised to reflect a more accurate description of the current EWA marketplace and acknowledge that the vast majority of arrangements are offered by third-party providers. If the Proposal takes steps to amend those respective sections based on the arguments outlined above, the IPA believes that a formal change to the current Constructive Receipt Doctrine is not needed at this time and should result in the agency removing the Proposal from future budget requests, permitting employers who have arrangements with independent third-party providers to continue to follow and comply with current IRS reporting regulations.

Lastly, and most importantly, maintaining the current tax reporting framework for third-party EWA providers has no effect on the tax revenues the IRS collects from employers. All wages and tax withholding by employers will continue to be recognized when the scheduled payroll is produced. Thus, neither employers nor EWA providers should be required to recognize EWA disbursements as wages subject to early income and employment tax withholding, nor that the existence of an EWA arrangement constitutes daily constructive receipt of wages for all employees. Guidance from the agency should clarify that disbursements made via a third-party EWA provider should be excluded for tax purposes at the time of their disbursement.

To provide clarity, we also urge the Treasury/IRS to consider amending Treasury Regulation Section 1.451-2 to provide an affirmative *exception* to the constructive receipt rules for qualified third-party on-demand payment arrangements based on the factors articulated above so that employers, EWA providers, and consumers are aware of the tax treatment of EWA services.

The IPA appreciates your consideration of our comments. We would very much appreciate the opportunity to meet with you or your staff to discuss the comments in this letter in greater detail.

⁶ Administrative burdens may include aggregating, review, and approve time and attendance data, deductions, garnishments, and other payroll related adjustments.

⁷ Financial Health Network - Earned Wage Access and Direct-to-Consumer Advance Usage Trends: https://cfsi-innovation-files-2018.s3.amazonaws.com/wp-content/uploads/2021/04/26190749/EWA_D2C_Advance-sage_Trends_FINAL.pdf



Innovative Payments Association

110 Chestnut Ridge Rd, Suite 111

Montvale, NJ 07645

btate@ipa.org

Please let us know when you or your staff may be available to meet with the IPA. If you have any questions or wish to discuss this letter, please do not hesitate to contact me at: btate@ipa.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'Brian Tate', is written over a light blue horizontal line.

Brian Tate
President and CEO
IPA
btate@ipa.org