



March 5, 2024

Maryland General Assembly
Economic Matters Committee
Public Hearing Regarding HB1425: An Act concerning Commercial Law – Earned Wage Access Services

My name is Whitney Barkley-Denney, and I am Deputy State Policy Director and Senior Policy Counsel for the Center for Responsible Lending (CRL), a non-profit, non-partisan policy and research organization dedicated to building family wealth through the elimination of predatory lending practices. CRL is affiliated with Self-Help Credit Union, a national community development financial institution that provides access to safe, affordable financial services to low-income communities and borrowers. I am here on behalf of CRL and the communities we serve to recommend you **oppose HB1425: An Act concerning Commercial Law – Earned Wage Access Services.**

Among the hottest consumer finance topics in recent years is the proliferation of online lenders offering fintech cash advances, including the subset of those lenders who offer earned wage advances (EWA). While there are many different types of EWA products, from those that are truly employer-integrated wage advances to those that offer nothing more than a traditional small dollar loan, accessed through an app and based on wages earned instead of the borrower's full paycheck. , HB 1425 would require that Maryland regulators treat all iterations of this product as though they are the same, exempting them all from Maryland's longstanding and hard fought consumer loan statutes, allowing lenders to charge as much as they want, and legitimizing the EWA industry's legal fiction that lending money does not create a loan.

In reality the vast majority of EWAs are very short-term loans of small dollar amounts that users can access through a smartphone app. Like payday loan borrowers before them, the initial "advance" creates a cycle of reborrowing. Users report that they borrow nearly every [pay cycle, taking out, on average, less than \\$100 at a time.](#) Some users also report using multiple apps at one time, "stacking" loans on top of one another and increasing the amount they owe to multiple lenders.

While the industry touts EWA as a "free" option for accessing wages early, so-called no-cost options for consumers are mostly illusory. According to Earnin's [terms of service](#), the non-expedited advance would take 1-2 banking days to be deposited, while the expedited service takes up to 30 minutes. The overwhelming majority of users pay express fees when paying such fees is necessary to get immediate access to cash (after all, that is the entire purpose of getting an EWA advance). Despite this, HB 1425 would not require EWA providers to count these fees towards the costs of the "advance", nor would it place any cap on the amount providers could charge for the service.

Beyond charging to expedite the loan, several EWA providers also use a host of techniques, adopted from the field of Behavioral Economics, to induce users to pay the company a “tip” for a product that is advertised as “free.” For example, EWA providers that derive revenues from tips typically design their consumer-facing applications (“apps”) to default to the payment of a tip, so that the user must take additional steps to avoid paying. Other tactics include suggesting to the users that paying a “tip” helps keep the service available. For example, the Earnin [terms of service](#) tells consumers that tips “help fund” the service and “keep [it] going.” These tactics have proved highly effective at driving users to pay “tips” to the EWA providers.

Multiple regulators have illustrated the substantial finance charge represented by tipping, expedite fees, and subscription fees. In fact, in the past, Earnin has testified that 40% of their revenue comes from tips and that they would have to significantly change their business model without them, and the industry has strongly opposed even minor reform – like changing the default tip option to \$0. This is strong evidence that their business model depends on loans for which the true cost is often going to be higher than advertised or disclosed.

Most concerningly to CRL and our partners, proponents of this legislation have generated significant confusion by asserting that the Consumer Financial Protection Bureau and other states have blessed EWA products like those allowed under the bill. That is flatly inaccurate. In fact, the CFPB and regulators in other states have demonstrated serious concerns about certain types of EWA products authorized by this legislation. Were Maryland to pass HB1425, they would be the **only state with an effective small dollar lending cap to do so**. Maryland would be leading the nation towards deregulation of consumer loans, establishing a new definition of “loan” that, so far, every state with a small dollar rate cap has refused to do.

In reality, the [CFPB has said](#) only that EWA products that are entirely free to the consumer, including not soliciting so-called “tips” from users, are exempt from the federal Truth in Lending Act. In the waning days of the Trump administration, the CFPB issued an Advisory Opinion that EWA products are not “credit” under TILA *so long as* (among other things) 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 CFPB later expressly clarified that this Advisory Opinion did not apply to businesses that collect fees from consumers, whether voluntary or otherwise.

In fact, the CFPB has indicated concerns about EWA models that are not completely free to the consumer, announcing in summer 2022 that it “plans to issue further guidance soon to provide greater clarity concerning the application of the [federal] definition of ‘credit’” to EWA products. Later, in fall 2022, the agency invoked its authority to supervise nonbank financial companies that provide consumer financial products or services and that CFPB has reasonable cause to determine are engaging in conduct that poses risks to consumers. And in November of 2023, [the CFPB](#) again made clear that EWA products are not, as a whole, exempt from being supervised as loans. “The CFPB’s previous advisory opinion on this topic should not be misrepresented: Products that do not fit within its very narrow scope are not excluded from existing laws. To the contrary, the CFPB supports efforts to subject such products to rigorous oversight for the full scope of existing state and federal consumer protection and lending laws.” Certain EWA providers may end up being subject to CFPB oversight through this area of CFPB jurisdiction. Indeed, we expect additional regulatory guidance from the CFPB within the next few months.

At the state level, Maryland's own Office of Financial Regulation has echoed the [CFPBs guidance](#), noting that EWAs are not loans **only when they are offered directly from an employer to their employee, and based on wages that have already been earned.**

Finally, regulators in nearly a dozen states have announced a multi-state joint investigation in EWA companies like Earnin that use the tips model. New York State, which is leading the investigation, described the investigation as centered on the fact that "some of these firms appear to collect usurious or otherwise unlawful interest rates in the guise of 'tips,' monthly membership and/or exorbitant additional fees, and may force improper overdraft charges on vulnerable low-income consumers."⁸

Earned Wage Access providers target "liquidity constrained and credit thin" laborers living paycheck to paycheck, often struggling with insufficient income to meet their expenses. But costly debt tends to make matters worse. EWA providers should not get a pass to provide a loan product that is exempted from Maryland's hard won consumer lending statutes, nor should they be allowed to charge whatever they want for the service. As drafted, HB1425 is a one-sided contract for the industry, effectively removing any oversight from Maryland regulators and any cost protections for Maryland consumers. If passed as is, Maryland would be the first state with a history of serious consumer protections to allow this industry to make their own definitions for what a loan is while offering no meaningful guardrails for their product.

CRL is not totally opposed to Earned Wage Access. Instead, we join the Office of Financial Regulation, the CFPB and our national partners in recommending that any regulation of EWA products include provisions classifying these payday advances as credit, and the providers as lenders. We recommend defining tips and expedite fees as finance charges and subjecting said fees to the existing state usury cap on interest for these single payment loans.

Thank you for your consideration.

Sincerely,
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