

March 6, 2024

Senate Finance Committee

Chair: Senator Beidle

Senate Bill 998 – Earned Wage Access and Credit Modernization

Re: Letter of Opposition

The Maryland Department of Labor (MDL) and its Office of Financial Regulation (OFR) are responsible for providing consumer financial protections and enforcing state laws regarding pay and wages. The Department believes it is critical that any financial products allowed in the state, including earned wage access products (EWA), maintain the protective consumer framework established by Maryland law. SB 998 places no cap on the interest, charges or fees that can be charged for an EWA product, and it weakens long standing Maryland consumer protection laws just for these products by exempting them from Maryland’s Consumer Loan Law. SB998 stands in contrast to HB 246 that is pending the House of Delegates, which is supported by MDL, the Consumer Protection Division of the Attorney General’s Office, various consumer advocacy groups and unions, and which represents an approach to the regulation of EWA products that is consistent with Maryland’s existing consumer protection approach and laws. For reasons explained further below, the Department requests an unfavorable report on SB 998.

By way of background on these products; employers have long offered their employees, mostly low-wage and hourly workers, the opportunity to access some of their accrued wages before the end of their payroll cycle. Recently, this service has become known as “earned wage access (EWA)” and with advances in financial technology, third-party companies have aggressively marketed EWA products directly to workers. Such products typically involve the EWA company advancing its own funds to the employee with the expectation that they will be repaid from the employee's bank account when the employee is paid. Workers are generally charged fees or other associated costs to receive their pay this way. The fees and associated costs are generally not well disclosed and come in many different forms, making it difficult for the average worker to compare the costs of the services provided by different companies. And, some companies even ask workers to give the company a “tip” to provide the loan. Overall, the fees and costs come in many forms, are not clearly disclosed, and are difficult to compare.

EWA products clearly fall within the definition of a loan under Maryland’s consumer loan law: The third-party EWA products involve a company that is not the employer advancing its own funds to the employee with the expectation that they will be repaid when the employee receives their wages. This activity clearly falls within the scope of Maryland’s definition of a loan and as such, providers of such EWA products must be licensed as consumer lenders and the products subject to the disclosure requirements of Maryland’s consumer loan law.

OFR has issued guidance for EWA providers describing the factors they need to consider in determining whether they should be licensed with the state. To date, however, third party EWA providers have not

sought licensing as consumer lenders in Maryland and those operating in the State typically do not give consumers a statement of the true cost of their service. As noted above, such costs can be difficult for a consumer to understand and avoid, particularly since there is no disclosure of the rate of interest being charged. Statistically, consumers using these products seek advances of \$100 or less. And while these products are marketed as affordable, costing only a few dollars over a two-week period, it can result in an annual percentage rate (APR) of between 100% and 400%, far above the maximum interest rate of 33% APR permitted under Maryland's Consumer Loan Law. This APR range is similar to those offered by the payday lenders the General Assembly have sought to bar from Maryland. Like all consumer lending services, these products require careful regulation.

In the last two years, some states have introduced and/or passed legislation to address earned wage access products through either licensure or registration of providers, or the establishment of product requirements and consumer protections. This includes Connecticut and California which have passed/proposed regulations and statutes treating earned wage access products as loans. Hawaii has also recently introduced legislation that would also define earned wage access as a loan. Kentucky has also recently introduced legislation that would prohibit earned wage access providers from requesting a "tip" as well as limiting the fees they can charge consumers. Some other states such as Missouri and Nevada, have passed or are considering legislation along the lines reflected in SB 998, but they do not have strict rate caps and strong consumer protections.

Federal regulators have also described these products as loans and should be regulated

accordingly. While there is no direct federal law on the topic, the products are likely covered by federal Regulation Z, which covers consumer loan disclosures, as well as the Truth in Lending Act. The Consumer Financial Protection Bureau ([CFPB](#)) [recently affirmed](#) treating these products as loans and stated "these products share fundamental similarities with payday lending products." In a [letter regarding California's proposed rule](#), the CFPB also said it "supports efforts to subject such products to rigorous oversight for the full scope of existing state and federal consumer protection and lending laws," and that "it is appropriate for states to ensure...that costs [of these products] are accurately reflected in the price of credit."

The MDL licenses and regulates consumer lenders in Maryland and introduced HB246. That proposed legislation codifies principles that the MDL determines currently apply to earned wage access products under existing provisions of Maryland's Consumer Loan Law.

This Committee has already recognized the importance of transparency in loan transactions for small businesses by giving a favorable report to SB 509. Moreover, as the American Fintech Council stated in announcing their support for SB 509 (HB 574), a bill that requires "important transparency for small business borrowers including annual percentage rate (APR) financing charges, and clearly identifiable loan terms and payment amounts," such information provides "clarity" that "enables" borrowers "to make informed decisions about the financial options" available to them. The Committee should recognize that SB 998 fails to apply those same standards for workers in the EWA context.



OFFICE OF FINANCIAL REGULATION
1100 NORTH EUTAW STREET; SUITE 611
BALTIMORE, MARYLAND 21201
ANTONIO P. SALAZAR, COMMISSIONER

While many EWA providers may operate reasonably and responsibly, passage of this bill would weaken Maryland consumer loan law and inadvertently create an opening for a return of many predatory lending practices Maryland has worked hard to eliminate.

With that, we urge an unfavorable Committee Report.