

HB 246 - Commercial Law - Credit Regulation - Earn

Uploaded by: Donna Edwards

Position: FAV



MARYLAND STATE & D.C. AFL-CIO

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**HB 246 - Commercial Law - Credit Regulation - Earned Wage Access and Credit Modernization
House Economic Matters Committee
January 19, 2024**

SUPPORT

Donna S. Edwards

President

Maryland State and DC AFL-CIO

Chairman and members of the Committee, thank you for the opportunity to provide testimony in support of HB 246 - Commercial Law - Credit Regulation - Earned Wage Access and Credit Modernization. My name is Donna S. Edwards, and I am the President of the Maryland State and DC AFL-CIO. On behalf of the 300,000 union members in the state of Maryland, I offer the following comments.

We support HB 246 because workers deserve protection from lenders that fail to register or abide by Maryland's lending laws and ends the unfair and opaque tipping practices used by some earned wage access products. We fully support employer connected entities that provide wage advancement at no cost and believe the ultimate solution to this issue is for workers to be paid reliable, prompt, and predictable family sustaining wages. Unregulated earned wage access products that skirt Maryland's consumer lending laws are not the temporary financial solution that workers need. Workers should not have to pay egregious tips, fees, or interest to be paid.

Companies that are providing loans, regardless of whether they call themselves financial technology platforms, must follow Maryland's lending rules and register with the Office of Financial Regulation. HB 246 would clear up any ambiguity and create a path forward for these products to continue if they agree to follow our consumer protection laws.

We urge a favorable report on HB 246.

testimony2024hb246ltr.pdf

Uploaded by: Franz Schneiderman

Position: FAV



**Testimony to the House Economic Matters Committee
HB 246– Commercial Law – Credit Regulation –
Earned Wage Access and Credit Modernization
Position: Favorable**

Jan. 23, 2024

The Honorable C.T. Wilson
House Economic Matters Committee
251 Lowe House Office Building
Annapolis, MD 21401
cc: Members, House Economic Matters Committee

Honorable Chair Wilson and Members of the Committee:

I'm a consumer advocate and Executive Director of Consumer Auto, a nonprofit group that works to safeguard Maryland consumers and for safety, transparency and fair treatment for Maryland drivers and car buyers.

We support **HB 246** because we believe it provides important safeguards for the many working Marylanders who often use digital cash advance and Earned Wage Access programs to get more timely access to the wages they have earned but haven't yet been paid. Since those programs function much like often-predatory payday loans and high-interest cash advances, those Marylanders need – but currently do not have – the same sort of protections our laws establish for older forms of cash advances. This bill would help extend to them such protections.

Research has found that those who use EWA loans are mostly lower-income people who often end up using those services again and again. Borrowers tend to make less than \$50,000/year. And because many of those loans are repaid automatically from future pay (leaving many borrowers with ongoing shortfalls of resources) they often create a kind of debt trap, with a California study finding that the average borrower taking 36 loans per year and some taking as many as 100 advances/year. And with all the tips and fees charged taken into account, the effective average interest rates for some of these products has been found to be a shocking 330%.

This bill would establish some much-needed consumer protections for those who take such advances. It would, among other protections, require:

- The “tips” many of these products to be truly voluntary – clarifying that future access to the services is not contingent on a user “tipping the provider – and set the default tip rate at zero to prevent borrowers from inadvertently paying expensive gratuities.
- Those who engage in direct-to-consumer EWA lending to be properly licensed by the state.
- That those lenders respect the same interest rate caps that apply to other consumer lenders.



Auto Consumer Alliance
13900 Laurel Lakes Avenue, Suite 100
Laurel, MD 20707

It would also prevent those lenders from using a third-party debt collector to pursue outstanding fees or from selling those debts to predatory debt buyers or reporting that information to a credit reporting agency in ways that would damage a borrower's credit rating.

Those provisions of the bill would provide important additional protections for the many thousands of vulnerable Marylanders who rely on EWA products to help make ends meet.

Consumer Auto supports HB 246 and urges a FAVORABLE report.

Sincerely,

Franz Schneiderman
Consumer Auto

UFCW 400 Written Testimony for HB 246 (Earned Acce

Uploaded by: Kayla Mock

Position: FAV

Testimony in Support of HB 246
Earned Access Credit & Modernization
January 19, 2024

To: The Honorable C.T. Wilson, Chair, and members of the House Economic Matters Committee

From: Kayla Mock, Political & Legislative Director
United Food and Commercial Workers Union Local 400

Chair Wilson and members of the Economic Matters Committee:

I appreciate the opportunity to share my testimony on behalf of our over 10,000 members in Maryland, who have worked the frontlines and have been essential employees in grocery, retail, food distribution, law enforcement, and health care. Through collective bargaining, our members have raised the workplace standards of wages, benefits, safety, and retirement for all workers.

We strongly support HB 246 and urge you to vote it favorably.

Earned Wage Access products are a way for workers to get money in advance of a next paycheck. These products can be offered by an employer, a third-party provider or a third-party provider working in connection with an employer. Funds advanced to workers through these products are repaid either through a payroll deduction or through authorized payment from a worker's bank account. The advanced pay often comes with a fee, and sometimes, the wage access providers ask workers to pay a voluntary "tip." These products are most often used by low-wage workers who get cash in increments of \$100 or less. These products are marketed as affordable, but while the actual fee may be low in nominal terms, the cost of only a few dollars assessed on these cash advances over a pay period can result in an annual percentage rate (APR) of 100% or more, far above the maximum interest rates allowed under Maryland's consumer lending laws.

We support House Bill 246, Earned Wage Access and Credit Modernization, which is currently before the House Economic Matters Committee and ask that all members of the Committee support this important legislation that provides necessary consumer protections for workers, particularly for low-income workers of Maryland, many of whom are workers of color.

This legislation will ensure that Maryland workers can keep their hard-earned wages and avoid being potentially exploited by financial entities charging high-interest fees for pay advances that exceed what's permitted under Maryland law. In our view, and in the view of both the Consumer Financial Protection Bureau and Maryland's Office of Financial Regulation, Earned Wage Access Products are a form of payday loan and should be regulated by the state of Maryland.

Research demonstrates that these products are most often used by low-wage workers who get cash in increments of \$100 or less. These small amounts add up quickly because workers resort to these products repeatedly—as often as every week or two—and product providers charge fees each time, often requesting a voluntary "tip" for service.

The fees charged on these cash advances, which are provided for a very short period before repayment is required, result in significant interest charges: According to [data from the California Department of Financial Protection and Innovation](#), “the average annual APR was 334% for tip companies and 331% for the non-tip companies” that offered these services to California workers. In comparison, Maryland’s Consumer Loan Law caps these fees at 33% APR.

As you know, many Maryland low-wage workers are people of color, and data shows that these workers are particularly vulnerable to using these products. These workers are living paycheck to paycheck, and they use these products often to buy basic goods and services. If companies are given special exceptions to charge interest well above what’s currently allowed under Maryland consumer loan law, workers will see their pay shrink and not be able to provide for their families.

We also encourage the committee to scrutinize the practice of suggesting or requesting voluntary “tips” or “gratuities.” Although these are characterized as voluntary, this practice is misleading to workers and consumers. Some workers might think that a “tip” is necessary to reward a company for processing their cash advance, but very plainly, these are simply another form of service charge, adding to the high costs of these products.

We encourage the Committee to pass HB 246 to ensure that Maryland constituents/ low-income workers/our members can keep more of their hard-earned wages. HB 246 makes our state more equitable by clarifying that Earned Wage Access Products are loans under Maryland law and regulated accordingly.

MD HB 246 EWA Testimony of NCLC final.pdf

Uploaded by: Lauren Saunders

Position: FAV

Testimony in Support of Maryland HB 246: Earned Wage Access and Credit Modernization
House Economic Matters Committee
By Lauren Saunders, Associate Director, National Consumer Law Center
January 23, 2024

Chairman Wilson and members of the Committee:

I am Lauren Saunders, Associate Director of the National Consumer Law Center, a national non-profit organization that uses its consumer law expertise to work for economic justice for vulnerable consumers.

I write in support of HB 246, which clarifies that earned wage advances and other fintech cash advances are loans subject to Maryland law and interest rate limits. The bill would prevent new forms of high-cost loans from evading Maryland's strong consumer protection laws and limit high-cost services that result in workers paying to be paid.

How Earned Wage Advances and Other Fintech Cash Advances Work

Earned wage advances (EWAs) are advances made ahead of payday, repaid on payday. With employer-based EWAs, a third party typically advances money, based on the amount of wages that have been earned but are not yet due wages, and is repaid through payroll deduction or another method. Employers may cover the costs, but otherwise workers generally pay fees.

Other direct-to-consumer products have no connection to payroll and are repaid by debiting a consumer's bank account. They collect "tips," "donations" or instant access fees.

The Cost and Impact of Wage Advances: 330% APR Loans and Paying to be Paid

California studied EWAs and collected [data](#) on nearly 6 million advances, finding:

- The average **APR is over 330%**, for both tip-based and employer-based advances.
- Workers take an **average of 36 loans a year and up to 100**. As with payday loans, using next week's pay to pay this week's expenses leaves a hole in the next paycheck that triggers chronic reborrowing. Fees quickly snowball, and workers end up paying to be paid week after week.
- Companies that **push "tips" collect them 73% of the time**, generating over \$17 million for three companies. California [identified](#) "multiple strategies that lenders use to make tips almost as certain as required fees."
- With the ability to debit payroll or bank accounts, lenders [collect 97% of the time](#). California concluded EWAs are credit as workers agree to repay, and it is immaterial if the loans are "non-recourse" in the sense that lenders don't sue or use debt collectors are immaterial.

HB 246 will protect Maryland workers from these high, snowballing costs, requiring earned wage advances to comply with the same fee and interest rate limits as other cash advances.

EWAs and Other Fintech Payday Loans are Loans

HB 246 is consistent with the historic and modern treatment of wage advances.

Small dollar loan laws across the country arose to address abuses by “salary lenders.” Loan laws in [at least 24 states](#) include in their loan definitions money provided for assignments of unpaid earnings or for wages “earned or to be earned.” EWAs also fit in other states’ loan definitions.

More recently:

- In a [December 2023](#) comment, the Consumer Financial Protection Bureau stated that earned wage advances “**share fundamental similarities with payday lending products,**” and that California’s proposal to treat them as loans is consistent with federal law. The CFPB’s 2020 advisory opinion only applies to completely free advances.
- Connecticut has enacted a law sponsored by its banking regulator to treat earned wage advances as loans
- A similar bill from the Washington State regulator is pending.
- California has proposed to treat EWAs as loans, and “tips” and expedite fees as charges.

HB 246 is important to clarify Maryland’s treatment of wage advances and to prevent evasions of Maryland’s anti-predatory lending laws.

The bill would continue to exempt free employer loans, and to allow third-party EWA services where the employer covers the cost or the service is otherwise free to workers.

But the bill would make clear that any advance that comes with a cost is a loan that must comply with Maryland’s interest rate limits. Third-party lenders that charge fees for wage advances must simply comply with the cost limits and other protections that other cash advances follow.

Old Wine in New Bottles

Evasions often take the form of new innovations. The payday loan industry got its start by arguing that it was not making loans, just charging check cashing fees on deferred checks. We must reject similar arguments equating fees for fintech cash advances to ATM fees.

High-cost earned wage advances drain fees from low-wage workers, disproportionately from communities of color, who just end up paying to be paid. The loans should comply with Maryland law.

Thank you for the opportunity to testify. I urge you to support HB 236.

_HB246 EWA EconAction_FAV (2024).pdf

Uploaded by: Marceline White

Position: FAV



Testimony to the House Economic Matters Committee
HB246: Commercial Law-Credit Regulation-Earned Wage Access & Credit
Modernization
Position: Favorable

January 23, 2023

The Honorable C.T. Wilson, Chair
House Economic Matters Committee
Room 231, House Office Building
Annapolis, Maryland 21401
cc: Members, House Economic Matters

Honorable Chair Wilson and members of the committee:

Economic Action Maryland (formerly the Maryland Consumer Rights Coalition) is a statewide coalition of individuals and organizations that advances economic rights and equity for Maryland families through research, education, direct service, and advocacy. Our 12,500 supporters include consumer advocates, practitioners, and low-income and working families throughout Maryland.

We are writing today in strong support of HB246. HB246 simply clarifies that Earned Wage Access and other fintech products are loans and should be subject to Maryland law and interest rates.

This is a simple bill designed to provide clarity at a time when new fintech products are flooding the market. HB246 builds on the history and long legislative intent of the Maryland General Assembly to provide commonsense guidance and interpretation-in this case defining a situation where an individual borrows money now and agrees to repay it at a later date as a loan.

Earned Wage Access products enable low-wage and cash-strapped workers to borrow against their future paychecks which are repaid on payday. With employer-based models, a third party typically advances money based on the amount of earned but not yet due, and is repaid through payroll deduction. Employers may cover the costs, but otherwise workers generally pay fees. Other models are repaid by debiting a consumer's bank account. They collect "tips," "donations" or instant access fees.

There are a number of concern with these products:

- **High cost**-when we talk about high cost, we mean cumulative costs -workers borrow 36 to 100 times a California study found so those fees add up;
- **Loan churning**-getting an advance one week means you are short the next payday, so it creates a cycle of repeated borrowing with fees and no relief. It does not solve a problem, it creates one.



- **Expediting fees & tips**-which some products use make it expensive. People paying tips to advance their own wages.

HB246 simply says these products are loans and should be treated as such under Maryland law. It provides for licensure and regulation of providers of EWA products. It provides consumers with clarity about these products, comports with Maryland legislative history regarding high cost loan products, and creates an even playing field with similar products under Maryland law.

For all these reasons, we support HB 246 and urge a favorable report.

Best,

Marceline White
Executive Director

202310_Issue-Brief_State-Recommendations-for-Earne

Uploaded by: Monica Burks

Position: FAV



State Recommendations for Earned Wage Advances and Other Fintech Cash Advances

October 2023



States are grappling with how to regulate earned wage advances (EWAs) and other fintech cash advances that purport not to be credit. These loans often closely resemble payday loans, with fees that multiply into rates above 300% and cycles of reborrowing that result in workers paying to be paid. State legislatures and regulators should not adopt industry-backed approaches, like those recently passed in Missouri and Nevada, that carve these loans out of state credit laws, including rate caps, and lack any meaningful substitute consumer protections.

Instead, at the state level, **the best policy approach is to enforce existing credit laws and, if necessary, clarify that they cover earned wage advances and other fintech cash advance loans.**

- Many if not most state small dollar loan laws are broad enough to cover EWAs and other cash advances, as well as evasions through “voluntary” payments, such as “tips.” State financial regulators should consider enforcement actions under existing laws.
- If desired, additional clarity regarding the definition of a “loan” under a state’s credit laws could be provided through guidance, regulations or legislation to expressly cover these loans. A sample loan definition is:

A loan subject to [state’s credit laws] includes any sale, assignment, order, or agreement for the payment of unpaid wages, salary, commissions, compensation, or other income, or any portion or amount thereof, whether earned, to be earned, or contingent upon future earnings. Such a sale, assignment, order, or agreement is a loan without regard to the lender’s means of collection, without regard to whether the lender has legal recourse against the borrower in the event of non-repayment, and without regard to whether the advance carries mandatory charges.

- Any clarifying measure should also specify that all payments, whether “voluntary” or not, are finance charges subject to the state’s interest rate cap. Here is sample language:

All payments made by the consumer in connection with the making of a loan, whether mandatory payments, voluntary payments such as a tip or gratuity, or optional payments for additional or enhanced services such as an expedite fee for faster delivery of loan proceeds, are finance charges subject to [the state’s rate cap].

If legislators are nevertheless considering a regulatory regime specific to earned wage and other cash advances, **for the protections to be meaningful they must treat those advances as credit and include strict cost caps and other measures. The following are the bare minimum protections that must be in any such legislation.**

- **Employer-integrated only.** At most, the only types of advances that should be given special treatment distinct from existing categories of loans are employer-integrated earned wage advances that access time and attendance systems. These advances have the employer as a gate check, have a closer connection to actual earned wages, tend not to debit bank accounts, and are more distinct from traditional payday loans. By contrast, direct-to-consumer cash advance lenders are nothing more than a payday loan through the consumer's phone.
- **Strict cost cap.** Cap the total amount lenders can collect from users at a nominal fee of a few dollars per month or a couple of dollars per pay period. An overall, low cost cap is essential to prevent evasions of interest rate limits and to protect users from the snowballing costs of multiple advances over the course of the month.
- **Cover all costs, including "tips."** Expressly state that all payments, whether "voluntary" or not, are charges that count toward this cost cap. Crediting all payments toward the cost cap is the best way to protect users from the various pressure tactics and hidden tricks that companies use to push users to pay expedite fees or to "tip." This method of regulation is far more effective than trying to police whether these payments are in fact "voluntary," as companies continue to alter their practices and implement new ways to evade restrictions on pressuring users to pay "voluntary" fees.
- **Default tip of \$0.** For any "voluntary" payments like "tips," require that the default amount be set to \$0. Otherwise, product design can make it difficult or cumbersome not to "tip."
- **Repayment only directly from the employer, not bank accounts.** Permit advances to be repaid only through payroll deduction or another method that is direct from the employer. Expressly bar debiting a user's bank or prepaid account, which can trigger overdraft and nonsufficient fund fees.
- **Require licensure and data reporting to regulators.** Require lenders to be licensed by the state, to collect data on the advances they make, and to report that data to state regulators. The data should include information such as the total cost of advances, the size of the advance, time to repay, how frequently users are taking advances, how often advances are not repaid on time, and other key information showing how these products affect consumer welfare. Licensure and data reporting of this sort are needed so that state regulators can continue to monitor these products for possible consumer harm.
- **No late fees or debt collection.** Bar late fees, use of debt collectors or collection lawsuits, sales to debt buyers, and reporting unpaid loans to credit bureaus. These rules, which lenders generally comply with voluntarily as part of their business model, are not sufficient protections for EWAs and other cash advances. Nevertheless, it makes sense to include them in any EWA-specific legislation.
- **Include a sunset date.** Any new regime should have a sunset date so that it can be reevaluated in light of the data collected to ensure that it is not facilitating a new form of predatory lending.

American Banker.pdf

Uploaded by: Monica Burks

Position: FAV

BankThink

States must protect consumers from high-cost fintech cash advances

By Lauren Saunders Yasmin Farahi December 20, 2023, 10:00 a.m. EST 4 Min Read



State regulators shouldn't allow fintech-enabled earned wage access programs to become the new face of predatory lending, write Lauren Saunders and Yasmin Farahi. [ruiiruii/eakgrungenerd](#) - [stock.adobe.com](#)

States are starting to grapple with purportedly new categories of small-dollar loans: [earned wage advances](#) and other types of fintech cash advances. Their approach will determine if workers and consumers will be protected from spiraling fees that drain low wages or if a new kind of payday loan will be allowed to operate outside of laws against high-cost lending.

Earned wage advances (EWAs) are advances on pay, repaid on payday from payroll deduction or another method, with the loan amount tied to wages accrued but not yet due. Employers may cover the cost as a benefit, or workers may pay fees. A fake form of EWA has no connection to payroll, is repaid by debiting bank accounts and hides fees in purportedly voluntary "tips."

[California data](#) on over 5 million total transactions from several leading companies show that both models offer little credit, \$40 to \$100 for about 10 days, at alarming average annual percentage rates of over 330%. Tip-based

companies succeed in pushing consumers to "tip" 73% of the time. Both models result in reborrowing even more chronic than traditional payday loans, with an average of 36 advances a year — more than one advance every biweekly pay period. These are clear signs of a debt trap.

Providers claim that these advances are not loans and that costs are just like an "ATM fee" for accessing "your own money" — a claim eerily similar to arguments payday lenders used decades ago to exempt their "check cashing fees" on deferred check presentments from usury laws.

This year, Missouri and Nevada bought those arguments, exempting EWAs from lending laws with no limits on costs and no meaningful consumer protections. The bills they passed were based on model legislation from the American Legislative Exchange Council (ALEC). The states define "earned wages" so broadly — based on self-certification and "reasonable" verification — that traditional payday lenders could restyle themselves to fit the definition. Providers must offer a free option, but it can be slow and inconvenient for borrowers who were sold on fast cash. "Tips" must be voluntary, but the laws do not restrict a myriad of design, behavioral and psychological techniques that California found "make tips almost as certain as required fees."

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AMERICAN BANKER

California, Connecticut and Maryland have charted a different course, recognizing that EWAs from third parties with costs can be loans. Connecticut is the leader: The state has clarified coverage in statute and the Department of Banking has put out clear guidance that the state's lending laws, including rate caps, apply. California, with generally strong consumer protection laws, is on a similar course, though it has proposed a four-year transition period where only registration would be required. Maryland has issued guidance that assesses factors that all point to the conclusion that third-party EWAs that are not provided directly by employers are loans. The state warns consumers that costs can equate to 300% APR and are "possibly illegal under Maryland law."

PAYMENTS

How earned wage access apps are rapidly evolving

Competition in the earned wage access arena is leading to more innovation — and emphasizing the need for regulation, according to a new report from Harvard University researchers.

By Kate Fitzgerald

August 2



It is not hard to see a pattern in these two camps. Missouri and Nevada have unfettered payday loan markets, no interest rate caps on short-term loans to evade and weak consumer protection laws generally.

The trio of states meaningfully regulating EWA as credit all have strong anti-predatory lending laws and a track record of defending their laws against evasion. Their model should be followed in all states, but particularly by states that have strong lending laws and want to prevent evasion by new, unaffordable forms of fintech cash advances.

Our two organizations recently issued [state recommendations](#) for regulating earned wage advances. Our top recommendation, especially for states with strong lending laws, is to follow the Connecticut approach: Enforce and, if necessary, clarify and strengthen credit laws to cover fintech cash advances, without creating a new category specifically for them.

We recognize that states plagued by payday loans, and without effective lending laws to enforce, may be tempted to embrace EWA as an alternative that appears less pernicious. In that situation, the second-best model is not Missouri and Nevada, but real cost limits and protections from the worst aspects of the EWA business model. At most, special treatment should be given only to employer-integrated EWAs repaid directly from the employer, not fake direct-to-consumer models that debit bank accounts. Total cost, including all payments however labeled, should be at most a few dollars per month or a couple of dollars per pay period.

Limiting costs to workers living paycheck to paycheck is critical, as every dollar counts. EWA companies tout the [benefits to employers](#) "At zero cost to you" (the employer). But they usually expect low-wage workers, disproportionately in Black and brown communities, to cover those costs.

States have a choice: They can adopt real protections, or they can enshrine a system where workers pay to be paid and fintech cash advances are the new payday loan.

Lauren Saunders Associate Director, National Consumer Law Center

Yasmin Farahi Deputy Director Of State Policy, Center For Responsible Lending

cfpb_comment-letter-to-dfpi-2023-11.pdf

Uploaded by: Monica Burks

Position: FAV



1700 G Street NW, Washington, D.C. 20552

November 27, 2023

Via electronic mail

Department of Financial Protection and Innovation
Attn: Araceli Dyson
2101 Arena Blvd.
Sacramento, CA 95834
regulations@dfpi.ca.gov

Comment on Proposed Rule Addressing “Income-Based Advances” and Related Charges

The Consumer Financial Protection Bureau (CFPB) appreciates the opportunity to comment on the California Department of Financial Protection and Innovation (DFPI)’s proposal to undertake registration and examinations of providers of what DFPI refers to as “income-based advances.”¹ The CFPB is the primary regulator of consumer financial products and services at the federal level. Among its responsibilities, the CFPB has an obligation to coordinate with other regulators, including states, to promote consistent regulatory treatment of consumer financial products and services.²

I. Income-Based Advance Products Have Long Existed

Income-based advances – products where repayment is related, theoretically or concretely, to a worker’s next payday – have long been part of the U.S. consumer lending market. As DFPI references, in the early 1900s, these products often took the form of wage “sales” or

¹ DFPI, Notice of Modification to Proposed Rulemaking, PRO 01-21 (Nov. 6, 2023).

² 12 U.S.C. § 5495; *see also* CFPB, Consumer Financial Protection Circular 2022-01: System of *Consumer Financial Protection Circulars* to agencies enforcing federal consumer financial law (May 16, 2022), https://files.consumerfinance.gov/f/documents/cfpb_2022-01_circular_2022-05.pdf.

assignments.³ In the 1990s, payday lending products proliferated and were often promoted as “deferred presentment” transactions.⁴ Banks have marketed similar products as “deposit advances.”⁵ With all these products, a consumer receives funds that are typically repayable in full on their next payday.

Some firms have recently begun to market income-based advance products that either are or purport to be made based on wages that the employee has earned using various branding terms, such as “earned wage access.” As DFPI has recognized, firms marketing their products in this manner include both firms seeking to integrate cash advances through an employer, where repayment of the advance is made via payroll deduction, and firms that, without the involvement of an employer, contract with a consumer to obtain authorization to debit the consumer’s bank account to collect repayment of the advance. In both scenarios, and especially when advances are provided and repayment is collected without the involvement of the consumer’s employer, these products share fundamental similarities with payday lending products. And federal and state regulators have long administered laws and regulations that apply to income-based advance products such as payday loans.⁶

II. Supervision Promotes Robust Consumer Protection

The Consumer Financial Protection Act provides that the CFPB may conduct examinations of providers of consumer financial products and services, which, broadly speaking, include providers of income-based advance products.⁷ At the same time, states have long provided critical oversight of nondepository providers of consumer financial products and services, like those typically offering income-based advance products.

While providers of these products generally do not need a federal license, they frequently must obtain licenses from the states in which they operate. In turn, obtaining a license often subjects a licensee to supervisory examinations for compliance with applicable law. This supervision is critically important for ensuring that firms are meeting their legal obligations. The CFPB believes that it is consistent with this longstanding practice to subject providers of income-based

³ See DFPI, Initial Statement of Reasons, PRO 01-21, at 53 n.88 (Mar. 15, 2023) (citing F. B. Hubachek, The Development of Regulatory Small Loan Laws, 8 Law and Contemporary Problems 108-145, 138, 142 (Winter 1941)).

⁴ See, e.g., *Turner v. E-Z Check Cashing*, 35 F. Supp. 2d 1042, 1048 (M.D. Tenn. 1999) (holding that transactions described by defendant as “deferred presentment” transactions were extensions of credit and noting that “[o]ther courts which have addressed the issue are unanimous in holding that those who participate in the deferred presentment/check-cashing business are ‘creditors’”); see also Board of Governors of the Federal Reserve System, 65 Fed. Reg. 17,129, 17,130 (Mar. 31, 2000) (“[A]greements [to defer payment of a debt] are deemed to be ‘credit’ as defined by [Regulation Z] however they are described—as payday loans, cash advances, check advance loans, deferred presentment transactions, or by another name.”).

⁵ See generally CFPB, Payday Loans and Deposit Advance Products (Apr. 24, 2013), https://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf.

⁶ The laws that the CFPB administers that apply to income-based advance products such as payday lending include the Consumer Financial Protection Act, the Truth in Lending Act, the Equal Credit Opportunity Act, and the Electronic Fund Transfer Act, as well as those laws’ implementing regulations.

⁷ See 12 U.S.C. § 5514(a)(1).

advances marketed as “earned wage access” to state oversight – as providers of other income-based advance products, such as payday loans that have long been offered in some states, are. Rigorous supervision of all income-based advance products helps to ensure that the label of a product does not determine how providers are held accountable, or the extent to which consumers are protected, under the law.

III. Definitions of “Loans” and “Charges”

The CFPB notes that DFPI’s proposal would clarify that income-based advances are “loans” under the California Financing Law and that “charges” under that law include “gratuities” as well as “expedite fees.” By treating these products as loans and including a variety of charges that accompany the advance, DFPI’s proposal takes a similar approach as the Truth in Lending Act and its implementing Regulation Z, which generally applies to extensions of consumer credit⁸ and provides that a finance charge “includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit,” with certain limited exceptions.⁹ As DFPI pursues its supervisory work, both state and federal law provide critical consumer protections.¹⁰

As the CFPB has stated previously, the CFPB plans to issue further guidance to provide greater clarity concerning the application of the Truth in Lending Act in this market.¹¹ 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.

IV. Conclusion

The CFPB believes that, in light of the emergence of firms marketing “earned wage access” income-based advance products, it is appropriate for states to ensure that these products are treated similarly to other income-based advance products with respect to supervision for compliance with applicable law, including ensuring that costs are accurately reflected in the price

⁸ See 12 C.F.R. 1026.1(c).

⁹ 12 C.F.R. 1026.4(a).

¹⁰ States have authority under the Consumer Financial Protection Act to bring claims with respect to violations of the federal consumer financial laws, including the Truth in Lending Act. See CFPB, Authority of States to Enforce the Consumer Financial Protection Act of 2010 (May 2022) (“[W]hen a covered person or service provider violates any of the Federal consumer financial laws, section 1042 [of the Consumer Financial Protection Act] gives States authority to address that violation by bringing a claim under section 1036(a)(1)(A) of the [Consumer Financial Protection Act].”), https://files.consumerfinance.gov/f/documents/cfpb_section-1042_interpretive-rule_2022-05.pdf.

¹¹ See Letter from CFPB Director Rohit Chopra (Feb. 13, 2023) in Government Accountability Office, Financial Technology: Products Have Benefits and Risks to Underserved Consumers, and Regulatory Clarity is Needed, GAO-23-105536, at 51 (Mar. 2023), <https://www.gao.gov/assets/gao-23-105536.pdf>.

of credit. Thank you for your consideration of the CFPB's input as you plan for examinations in this market.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Seth Frotman".

Seth Frotman
General Counsel and Senior Advisor to the Director
Consumer Financial Protection Bureau

CRL Letter to MD commerce committee re HB 0246.pdf

Uploaded by: Monica Burks

Position: FAV



House Economic Matters Committee
Public Hearing Regarding House Bill 246
January 19, 2024

Chairman Wilson and Members of the Committee:

We are writing to express our support of House Bill 246.

My name is Monica Burks, and I am Policy Counsel with 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.

For twenty years, the Center for Responsible Lending has been involved in research and policy regarding payday lending and other high-cost lending products. In the past few years, we have seen more “fintech” products entering the market, offering similar products but in a different form. We join the Consumer Financial Protection Bureau in its recognition of fee-based, direct-to-consumer earned wage advances (“EWA”) as the latest iteration of payday lending.¹

While fintech cash advance lenders advertise their loans as safer alternatives to payday loans or as “innovative” products that increase access to credit, in reality these advances pose the same issues as other small dollar balloon payment loans. These harms include repeat usage that can lead to a debt trap, high cost of credit, costly overdraft fees, the potential for users to take out multiple loans at one time, and data privacy concerns for companies that require users to share their banking history to receive advances.

Despite proponents framing these advances as a service to access wages that consumers have earned, EWA and other cash advances are credit products that must be regulated as such. Fintech cash advances are simply an agreement to receive money now and pay it back in the future, either without—or much more frequently with—an additional fee paid to the lender. In every other context, we call such an agreement a loan, and fintech cash advances are no different.

¹ November 2023 Comment on Proposed Rule Addressing “Income-Based Advances” and Related Charges, [CFPB Letterhead \(consumerfinance.gov\)](https://www.consumerfinance.gov/letterhead)

Our position is that, consistent with the guidance from the Department of Labor, fintech cash advance lenders are subject to existing Maryland consumer lending laws, including required annual percentage rate (APR) disclosures and usury caps. We understand the Legislature's desire to act in this area, given the need to protect consumers and efforts by the country's largest fintech cash advance lenders to codify carve-outs from state law for their loan products. Accordingly, we write in support of HB 0246 and urge you to pass this bill with the most vital provisions in-tact, namely:

- Including EWA in the definition of a loan
- Including all fees and tips in the definition of interest
- Clarifying the applicability of Maryland's interest rate cap to EWA transactions

Please refer to the attached resources as you consider the best path forward for Maryland consumers in this matter. Thank you for your consideration.

Sincerely,

Monica Burks
Policy Counsel
Center for Responsible Lending
www.responsiblelending.org

crl-ewa-brief-oct2023 (1).pdf

Uploaded by: Monica Burks

Position: FAV

Paying to be Paid: Consumer Protections Needed for Earned Wage Advances and Other Fintech Cash Advances

Andrew Kushner, Senior Policy Counsel

Monica Burks, Policy Counsel

Yasmin Farahi, Deputy Director of State Policy & Senior Policy Counsel

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). These are very short-term loans of small dollar amounts that users can access through a smartphone app. Lenders that offer these products strenuously attempt to avoid being regulated like other lenders and rely on legal fictions to assert that their loans are not credit. These lenders also typically argue that their products further financial inclusion while, in reality, the worst versions of these products closely resemble a payday loan, with high levels of repeat usage and expensive fees that add up to APRs over 300%.

Across the entire fintech cash advance class, moreover, there is a concerning lack of active regulation, which lenders have exploited to grow their business despite the real harms that these loans can cause. Frequent reliance on early access to wages is a sign of financial distress, all too common among working Americans, whose wages have lagged behind the rising costs necessary to sustain a basic standard of living. Without appropriate consumer protections and limitations on costs, these products—which have workers paying to be paid—only further reduce workers’ net earnings and reduce wealth-building capacity for low-income workers and their families.

This policy brief explains what EWA and other fintech cash advances are and how they work, the impact these loans have on consumers, legislative activities of these lenders, and the current legal landscape for regulation of these loans. Finally, this brief recommends vital safeguards for the protection of consumers who use these loans.

What Is Earned Wage Advance?

Earned wage advances and other fintech cash advances are small, short-term loans that consumers can take against their future income. Many of these companies advertise their products as “free” or “0% interest” while obscuring the many ways in which they earn fees from users. Lenders earn money by charging consumers a variety of fees as shown on the right.



Transaction fees: Fees charged for each loan transaction.

Expedite fees: A fee charged to expedite or provide instant access to loan funds. The average charge is between \$1–\$4 per advance.¹

The actual cost of providing the service is less than \$.05.²

Subscription fees: A fixed monthly fee that users pay in order to receive multiple advances per month.

So-called “tips”: Additional funds the lender prompts the user to pay. For example, one prominent lender prompts users to pay a default tip, ranging from \$2 to \$14 dollars, depending on the amount of the loan they request.³

Several companies offer EWA products that do not carry fees for users. One company, for example, requires users to send all or a portion of their paycheck to a prepaid Mastercard. This allows the company to earn interchange fees and keeps the service free for users. Another employer-integrated company offers the option for users to receive their advances or their entire paycheck on a prepaid debit card without fees.

There are two main models commonly referred to as EWA: employer-integrated and direct-to-consumer. In reality, only the employer-integrated model can accurately be called EWA. Despite direct-to-consumer companies often marketing their products as “EWA,” their loans are a garden-variety cash advance.

Employer-Integrated Model

Employer-integrated EWA is offered by an employer, or a company contracted with an employer. The amount of earned wages is determined by integration with the employer’s time and attendance system, and the loans are typically repaid through payroll deduction or other direct deduction from the wages on payday. Employer-integrated lenders similarly collect fees, including per transaction fees, expedite fees, and subscription fees.⁴

Some employers offer EWA as an employee benefit by absorbing the cost of the service rather than passing that cost on to the employee. Still others may partially subsidize the costs of EWA for employees.⁵ While some of these products are subsidized by the employer, such subsidies remain a small subset of the industry.⁶

Direct-to-Consumer Model

Unlike the employer-integrated model, which offers an advance of wages that have been confirmed to be earned, the direct-to-consumer cash advance model is not meaningfully tied to a borrower’s earnings. Companies that offer direct-to-consumer loans typically use an application downloaded on user’s phones. These applications usually provide companies with access to users’ bank account transactions, running balances, and direct deposit activity. Users also provide authorization for direct debits from their bank accounts for repayments of the loans.

Marketed directly to the customer, these loans require access to their checking account for repayment. As a result, they can trigger non-sufficient funds fees and overdraft fees when the borrower lacks sufficient funds for repayment, a common condition for millions of families living paycheck to paycheck. These companies charge expedite fees for advances, and some expect users to pay a tip each time they take an advance. One direct-to-consumer advance company earns 40% of its multimillion-dollar revenue from tips alone.⁷ While direct-to-consumer companies purport to provide access to wages, they are simply a third-party business offering a small dollar loan.

EWA and Other Cash Advances Should Be Regulated as a Form of Credit

Despite proponents framing these advances as a service to access wages that consumers have earned, EWA and other cash advances are credit products that must be regulated as such. Fintech cash advances are simply an agreement to receive money now and pay it back in the future, either without—or much more frequently with—an additional fee paid to the lender. In every other context, we call such an agreement a loan, and fintech cash advances are no different. This is true for both direct-to-consumer and employer-integrated loans. While direct-to-consumer and employer-integrated products operate differently, as described above, both are loan products.⁸

Lenders make two arguments regarding why their products are not loans. First, they argue that their products are “non-recourse,” by which they mean that the lenders’ debt collection strategies do not include suing a user for an unpaid debt or selling the unpaid debt to a debt collector. Instead, lenders use other ways to collect on their loans, including a payroll deduction (in the case of employer-integrated lenders) or a bank account debit (in the case of direct-to-consumer lenders). These debt collection methods are so successful that lenders recoup their advances at least 97% of the time using these tactics.⁹ Regardless, loans that are repaid by taking money out of the borrower’s bank account cannot accurately be described as non-recourse, and even non-recourse advances are loans.

Second, they argue that their products do not carry mandatory finance charges. But courts and regulators have long rejected attempts to evade usury limits through a consumer’s purportedly “voluntary” payment. Generally, all monies paid by the borrower in connection with a loan transaction are finance charges. In addition, this second argument ignores the many pressure tactics companies use to induce users to make “voluntary” payments to lenders.

Notably, in the 1990s when payday loans were the “innovative” financial product of the day, payday lenders argued, unsuccessfully, that their loans were not credit.¹⁰ Fintech cash advance lenders are using a similar playbook in trying to evade regulation today.

Consumer Advocates Are Concerned about These Loans

While fintech cash advance lenders advertise their loans as safer alternatives to payday loans or as “innovative” products that increase access to credit, in reality these advances pose the same issues as other small dollar balloon payment loans. These harms include repeat usage that can lead to a debt trap, high cost of credit, costly overdraft fees, the potential for users to take out multiple loans at one time, and data privacy concerns for companies that require users to share their banking history to receive advances.

Repeat Usage

Lenders target borrowers living paycheck to paycheck, often struggling with insufficient income to meet their expenses. Lenders claim that borrowers use cash advances to address short-term liquidity problems in unexpected, emergency circumstances.¹¹ However, recent data show that consumers who use these advances tend to use them frequently; one direct-to-consumer lender reported that the average consumer takes between 26 and 33 advances per year.¹² Another recent survey conducted by the Center for Responsible Lending (CRL) revealed that over half of consumers use direct-to-consumer cash advance apps to pay for everyday expenses like food, transportation, housing costs, and bill and utility payments.¹³ Lenders encourage these patterns by facilitating the use of cash advance loans for daily expenses such as transportation and recurring bills. For example, one lender (which operates a direct-to-consumer app and an employer-integrated program) offers users the options of receiving EWA funds in Uber Cash or Amazon Load or paying bills directly.¹⁴

The frequency of use of these loans by consumers is concerning because when one advance is taken out to cover the gap left by repayment of a prior advance, consumers are essentially getting the benefit of only the initial advance but continuing to pay for each subsequent advance. This is how payday loans work, with a very short-term loan drawing borrowers into a costly, long-term trap.¹⁵

High APRs

Many cash advance lenders claim their loans are no-cost and interest free, but they carry annual percentage rates (APRs) similar to payday loans and far in excess of other credit products like credit cards. The California Department of Financial Protection and Innovation (DFPI) analyzed data from many cash advance lenders, including several employer-integrated EWA lenders, and found that the average APR was 334% for companies that collect tips. Lenders that do not collect tips still earn around 331% on EWA loans.¹⁶ Given the high rates of repeat usage of these products, the APRs reveal the high cost of these products as they are most often used—in a long-term cycle similar to payday loans.

Total cost of using **earned wage access** products is close to that of payday loans

The average APR for earned wage access advances is over 330%, according to 2021 data on transactions across five companies. Of the 5.8 million transactions completed by tip-based companies, 73% included tips.

Annual Percentage Rates (APRs) help compare the total cost of borrowing money, including interest and fees:

New car loans

7%

Credit card plans

21%

Wage-based cash advances that don't request tips

331%

Wage-based cash advances that request tips

334%

Payday loans

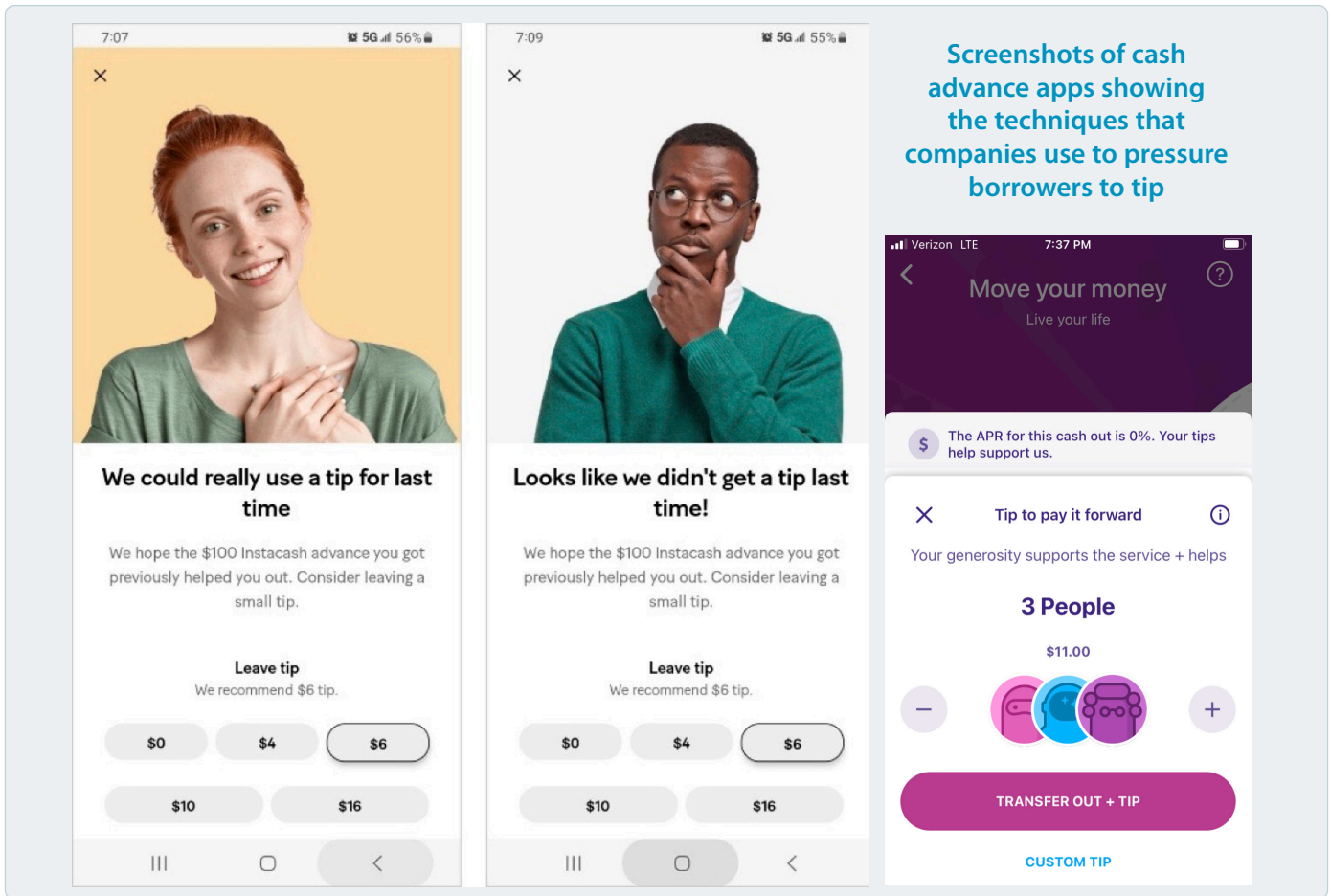
353%

Chart: Erica Yee, CalMatters • Source: national average APRs for new car loans and credit card accounts with finance charges (2023 Q1) from the [Federal Reserve](#); state average APRs for [earned wage access products](#) and [payday loans](#) (2021) from the CA Dept. of Financial Protection & Innovation • [Get the data](#) • Created with [Datawrapper](#)

(Source: Grace Gedy, *The new payday loans? California moves to regulate cash advance apps*, CalMatters (June 5, 2023), available at <https://calmatters.org/economy/2023/06/earned-wage-access/>)

Lenders veil the true costs, appropriately referred to as finance charges, of their loan products. So-called no-cost options for consumers may be difficult to access, negating their usefulness for consumers. For example, the free, non-expedited version of an advance usually takes 1–2 banking days for users to receive, while the expedited service takes just a few 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 a cash advance prior to payday. As the National Consumer Law Center (NCLC) has noted, 90% or more of workers pay expedite fees to receive the advances quickly.¹⁷

Lenders also deploy a host of techniques from behavioral economics to pressure users into tipping each time a loan is requested. For example, the DFPI listed the “multiple strategies that lenders use to make tips almost as certain as required fees” including “[d]isabling a service if a borrower does not tip. . . making it difficult to set a \$0 tip. . .” and “claiming that tips are used to help other vulnerable consumers.”¹⁸ Additionally, the U.S. Government Accountability Office (GAO) recently highlighted the lack of transparency around the cost of these loans, commenting that many users may not know that tipping is optional.¹⁹



Overdraft Fees

Direct-to-consumer lenders obtain access to user bank accounts. They use this access to authorize withdrawals from bank accounts for repayment of loans and subscription fees. Even lenders that do not monitor account activity use ACH authorizations to withdraw repayments. Despite having up-to-date information regarding consumer account balances, direct-to-consumer lenders process ACH transactions to recoup loan funds, regardless of the available balance in a consumer’s account. They will attempt to do so multiple times if the first attempts are not successful. This practice may result in costly overdraft fees for consumers. Litigation against one prominent direct-to-consumer lender revealed that the lender’s repeated attempt to collect repayment led to some users incurring multiple overdraft fees during a single pay period.²⁰

Loan Stacking

Because direct-to-consumer loans are not tied to employer payroll information, borrowers may receive loans from multiple lenders at once. A CRL survey of cash advance app users found that almost a quarter of borrowers used more than one company regularly.²¹ Another survey of low-income borrowers receiving government benefits found that 60% used a direct-to-consumer app and that the “vast majority” of the workers used multiple apps, averaging 2.45 apps used per person.²² This practice also increases the risk of overdraft fees when multiple loans become due in the same pay cycle and reduces the consumer’s available funds on payday. All of these factors work to further trap consumers in a cycle of debt and increase reliance on loan products.

Data Privacy

To procure an advance, borrowers are compelled to grant direct-to-consumer EWA companies access to all financial data available through users' bank accounts. Financial data can reveal users' general geographic location, brand preferences, spending habits, and much more. One company uses identifying information and employment information to design targeted advertising and shares the same information with companies like Google, TikTok, Facebook, and Reddit.²³ Personal data is also shared with a host of bank entities, whose individual privacy policies also apply to that shared information.²⁴ Another lender shares personal data with third parties so that those entities may advertise unrelated products and services to customers.²⁵

This paper does not explore data privacy concerns in depth. However, it is essential to acknowledge the power dynamic under which economically marginalized users consent to the broad collection, sharing, selling, and use of their personal and financial data. Sufficient data privacy guardrails and robust opt-out abilities are vital.

Laws and Regulations Governing These Loans

Because fintech cash advances are a newer form of loan, there is a relatively small body of law that directly answers what regulations apply to these products. Nevertheless, based on the guidance that has been issued—and under general principles of credit regulation—these advances are clearly loans under federal law and in nearly every state, even if lenders currently refuse to comply with these laws.

Federal Regulatory Landscape

To date, the federal government has provided limited guidance regarding the application of federal credit regulations like the Truth in Lending Act (TILA) and Equal Credit Opportunity Act (ECOA) to cash advance loans. In 2020, the Consumer Financial Protection Bureau (CFPB) issued an advisory opinion exempting a very narrow class of EWA loan from the scope of TILA, which guarantees accurate disclosures and other consumer protections for users of consumer "credit."²⁶ The CFPB's 2020 guidance exempts from TILA EWA programs that have all of the following characteristics:

- (1) The provider must contract with an employer to offer the program.
- (2) Amounts advanced cannot exceed the actual amount of earned wages, which must be verified through the employer's payroll system.
- (3) The employee makes no payment, voluntary or otherwise, to access advances, and the provider does not solicit or accept tips or any other payments from the employee.**
- (4) Repayment must be through payroll deduction, not through debiting the employee's bank account.
- (5) In the event of a failed deduction, the provider cannot make a legal claim against the employee.
- (6) Before providing an advance, the provider clearly and conspicuously discloses to the employee their rights.
- (7) The provider does not assess the credit risk of individual employees.

As illustrated by the above list of requirements, this guidance exempts only a small fraction of cash advances from TILA. Nevertheless, in 2020 and 2021 the fintech cash advance industry—including lenders whose business models do not satisfy the criteria in the CFPB advisory opinion—misrepresented this guidance to state legislatures as the CFPB's determination that their loans in general do not involve an extension of credit.²⁷ This misuse of the 2020 advisory opinion necessitated that the CFPB's Acting General Counsel release additional clarification in early 2022 reiterating the very narrow scope of the advisory opinion, in particular that it has no application at all to any advance for which the lender receives any payment or money from the consumer.²⁸

While the CFPB has not provided any additional guidance about the application of TILA and other federal statutes to cash advances not covered by the 2020 advisory opinion, more guidance is expected soon. It said in a letter to the GAO in spring 2023 that further guidance is forthcoming, and Bloomberg subsequently reported that the Bureau hopes to complete that guidance at some point in 2024.²⁹ In addition, Bloomberg has also reported that the CFPB was actively supervising at least one unidentified EWA company to determine if the company's products were harmful to consumers.³⁰

State Regulatory Landscape

When 2023 began, fintech cash advance lenders were operating across the country despite no state expressly addressing whether these advances are loans subject to state credit laws. It is therefore no surprise that, in 2023, these loans were touted as the hottest consumer lending issue at statehouses and before state-level financial regulators across the country. California led the way in initiating a rulemaking that would apply the state's lending law to fintech cash advances, while Connecticut has confirmed that its credit code covers these loans and Maryland has issued guidance confirming that at least some of these loans are covered by the state's credit laws. At the same time, in many other states industry pushed bills that would exempt fintech cash advances from state laws regulating credit.

In March 2023, California's DFPI embarked on a rulemaking under the California Financing Law that would require fintech cash advance lenders to obtain a lending license from, or register with, the state; that would require all lenders to abide by the state's interest rate caps; and that clearly states that these loans are credit and that the deceptive ways that some lenders make money (e.g., "tips" and expedite fees) are finance charges that cannot exceed the applicable cap. The proposed rules are currently subject to a public comment process, which must be completed by March 2024. At that point, when the regulations are final, cash advance app lenders will be required to comply with California's lending laws.

Similarly, lawmakers and regulators in Connecticut confirmed that these advances are loans subject to the state's credit laws in a bill modernizing the state's credit code. In the bill, the legislature reaffirmed language that a "small loan" includes "an advance on. . . a future potential source of money, including, but not limited to, future pay, salary, pension income or a tax refund."³¹ The Connecticut Department of Banking subsequently released guidance confirming that this language covers most "earned wage access advances."³²

In addition to confirming that cash advances are loans, Connecticut's credit code modernization law makes clear that tips and expedite fees must be included as finance charges in the APR calculation for all loans, including these advances. New language in Connecticut's lending law expressly states that "finance charges" include "any fee, voluntarily or otherwise, charged, agreed to or paid by a borrower in connection or concurrent with a small loan."³³ The Connecticut Department of Banking subsequently confirmed that this language covers the "tips" that EWA lenders and other fintech companies receive.³⁴

Maryland's state financial regulator also recently weighed in, issuing guidance in August 2023 that strongly indicates that nearly all fintech cash advances are loans under the state's law. While the guidance states that whether a specific transaction is a loan depends on the "facts and circumstances," the factors cited in the guidance are such that nearly all advances funded by a third-party (i.e., a fintech lender, rather than the employer) are likely loans under Maryland law.³⁵ In addition, the guidance states that "tips or fees" paid in connection with a loan are "compensation for an extension of credit" and any lender receiving such compensation "must adhere to Maryland interest rate limits."³⁶

Finally, there is also the potential for enforcement actions against fintech cash advance lenders for flouting state lending laws. In 2019, regulators in 11 states, including New York, North Carolina, and Texas, launched an investigation to determine if the fintech companies engaging in cash advances are doing so in violation of state banking laws.³⁷ In announcing the investigation, regulators noted 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."³⁸

On the other hand, the industry has introduced bills in recent years that would exempt these new loans from state laws regulating credit (without providing any meaningful consumer protections) in many states, including Georgia,³⁹ Kansas,⁴⁰ Mississippi,⁴¹ Missouri,⁴² Nevada,⁴³ New Jersey,⁴⁴ New York,⁴⁵ North Carolina,⁴⁶ South Carolina,⁴⁷ Texas,⁴⁸ Vermont,⁴⁹ Virginia,⁵⁰ and Wisconsin.⁵¹ Working off model legislation that the conservative American Legislative Exchange Council (ALEC) released last year, these industry-backed bills expressly declare that both employer-integrated and direct-to-consumer advances are not credit and are not subject to the state's lending laws.⁵²

The industry-backed bills are problematic because they do not set any limit on the fees that lenders can charge, and they have minimal protections against pressure tactics to induce users to “tip” the companies. Proponents of the bills assert that they protect consumers by preventing lenders from suing to collect an unpaid loan or selling the bad loan to a debt collector. But these are not meaningful consumer protections, because lenders do not use these tactics and do not need to in order to recoup their money. As discussed above, lenders are able to collect on nearly all loans simply by using payroll deductions and bank account debits.

Of the many bills introduced, two passed in 2023, in Nevada and Missouri. Notably, both Nevada and Missouri have lax payday lending laws, even among states that permit payday lending, and they allow some of the highest-cost payday loans in the entire country (with APRs of 548% in Nevada and 652% in Missouri).⁵³ Thus, while these bills were an unfortunate capitulation to industry, they do not actually undermine real-world consumer protections for borrowers in Nevada and Missouri, where existing lending laws are unfortunately not consumer-friendly. There is therefore no basis for other states to look to the Nevada and Missouri bills as templates for how to address fintech cash advances, as the industry-backed approach would significantly erode consumer protections if it were enacted in other states (especially, but not only, in those states that restrict payday lending).

Similarly, in his final days in office in late 2022, the outgoing Attorney General of Arizona issued an opinion asserting that earned wage advances are not loans under Arizona law.⁵⁴ That opinion is not an accurate statement of Arizona law, as it fails to cite any relevant state law but instead relies primarily on the 2020 CFPB opinion that applies to only a very narrow category of earned wage advances. Given these factors, other states should not look to the Arizona opinion for guidance as to how to treat these products.

What Lawmakers and Regulators Should Do To Protect Consumers from Harmful Fintech Cash Advance Loans

Because CRL expects cash advance apps to continue to be a major consumer financial protection issue in 2024, CRL recommends the following policy interventions at the federal and state levels to protect consumers.

At the federal level, the CFPB must provide guidance that advances not covered by its 2020 opinion letter are “credit” subject to TILA and other federal statutes regulating consumer loans. By carving out from TILA’s coverage only those loans that are employer-integrated and that involve no cost whatsoever (whether “voluntary” or not) to the consumer, the 2020 opinion letter suggests that other fintech cash advances (including *all* that do carry a cost, whether “voluntary” or not) are “credit” subject to TILA. The Bureau must make that explicit.

The CFPB should also actively supervise these lenders under its authority to supervise non-bank lenders that pose a risk to consumers, as the Bureau appears to have already done for one EWA lender.

At the state level, states should follow the joint guidance from the Center for Responsible Lending and the National Consumer Law Center regarding state regulation of fintech cash advance loans.⁵⁵ This guidance explains that the best approach is to enforce existing credit laws and, if necessary, clarify that they cover earned wage advances and other fintech cash advance loans. Many, if not most, state small dollar loan laws are broad enough to cover EWAs and other cash advances, as well as evasions through “voluntary” payments. State financial regulators should consider enforcement actions under existing laws.

If desired, additional clarity regarding the definition of a “loan” under a state’s credit laws could be provided through guidance, regulations, or legislation to expressly cover these loans. A sample loan definition is:

A loan subject to [state’s credit laws] includes any sale, assignment, order, or agreement for the payment of unpaid wages, salary, commissions, compensation, or other income, or any portion or amount thereof, whether earned, to be earned, or contingent upon future earnings. Such a sale, assignment, order, or agreement is a loan without regard to the lender’s means of collection, without regard to whether the lender has legal recourse against the borrower in the event of non-repayment, and without regard to whether the advance carries mandatory charges.

Any clarifying measure should also specify that all payments, whether “voluntary” or not, are finance charges subject to the state’s interest rate caps. Here is sample language:

All payments made by the consumer in connection with the making of a loan, whether mandatory payments, voluntary payments such as a tip or gratuity, or optional payments for additional or enhanced services, such as an expedite fee for faster delivery of loan proceeds, are finance charges subject to the state’s rate cap.

If legislators are nevertheless considering a regulatory regime specific to earned wage and other cash advances, for the protections to be meaningful they must treat those advances as credit and include strict cost caps and other measures. The following are the bare minimum protections that must be in any such legislation:

Employer-integrated only. At most, the only types of advances that should be given special treatment distinct from existing categories of loans are employer-integrated earned wage advances that access time and attendance systems. These advances have the employer as a gate check, have a closer connection to actual earned wages, tend not to debit bank accounts, and are more distinct from traditional payday loans. By contrast, direct-to-consumer cash advance lenders are nothing more than a payday loan through the consumer’s phone.

Strict cost cap. Cap the total amount lenders can collect from users at a nominal fee of a few dollars per month or a couple of dollars per pay period. An overall cost cap at a nominal amount is essential to prevent evasions of interest rate limits and to protect users from the snowballing costs of multiple advances over the course of the month.

Cover all costs, including “tips.” Expressly state that all payments, whether “voluntary” or not, are charges that count toward this cost cap. Crediting all payments toward the cost cap is the best way to protect users from the various pressure tactics and hidden tricks that companies use to push users to pay expedite fees or to “tip.” This method of regulation is far more effective than trying to police whether these payments are in fact “voluntary,” as companies continue to alter their practices and implement new ways to evade restrictions on pressuring users to pay “voluntary” fees.

Default tip of \$0. For any “voluntary” payments like “tips,” require that the default amount be set to \$0. Otherwise, product design can make it difficult or cumbersome not to “tip.”

Repayment only directly from the employer, not bank accounts. Permit advances to be repaid only through payroll deduction or other method that is direct from the employer. Expressly bar debiting a user’s bank or prepaid account, which can trigger overdraft and nonsufficient fund fees.

Require licensure and data reporting to regulators. Require lenders to be licensed by the state and to collect data on the advances they make and to report that data to state regulators. The data should include information such as the total cost of advances, the size of the advance, the time to repay, how frequently users are taking advances, how often advances are not repaid on time, and other key information showing how these products affect consumer welfare. Licensure and data reporting of this sort are needed so that state regulators can continue to monitor these products for possible consumer harm.

No late fees or debt collection. Bar late fees, use of debt collectors or collection lawsuits, sales to debt buyers, and reporting unpaid loans to credit bureaus. These rules, which lenders generally comply with voluntarily as part of their business model, are not sufficient protections for EWAs and other cash advances. Nevertheless, it makes sense to include them in any EWA-specific legislation.

Conclusion

Earned wage advances and other fintech cash advances are troubling new forms of online lending that can bear many similarities to payday loans, such as high costs, very high levels of repeat usage, and other consumer harms. Despite what lenders argue, these products are generally not a safer alternative to payday loans or an “innovative” way to expand access to credit and can often simply mean workers are “paying to be paid.” Another form of high-cost credit is not a solution to the financial distress that is all too common among American workers. Lawmakers and regulators addressing these products should impose meaningful guardrails on their use. Ideally, these products should be regulated under existing credit regulations, including usury caps that apply to other small dollar loans, or if that is not feasible, with the specific minimum consumer protections outlined in this issue brief.

Endnotes

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crl-ewa-research-factsheet-aug2023.pdf

Uploaded by: Monica Burks

Position: FAV

Survey Summary of Earned Wage Advance and Cash Advance Apps

August 2023

Consumers are increasingly accessing small short-term loans through digital cash advance and Earned Wage Advance (EWA) online applications. Consumers can receive advance amounts [up to \\$750 per pay period while using these apps](#). Some companies contract with employers to provide this product while others work directly with consumers. In the direct-to-consumer model, the advances are often marketed as “free,” but providers require a variety of fees to expedite the advance and employ pressure tactics allowing them to collect fees in the form of “tips”. These fees make advances very costly for consumers, with [APRs averaging over 330%](#) for some of the biggest companies.

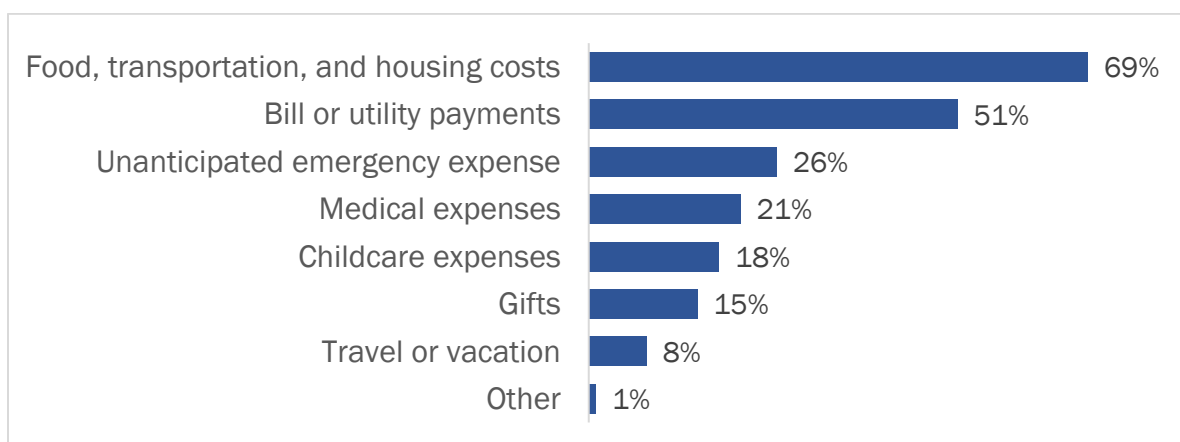
The Center for Responsible Lending conducted an online survey to better understand the usage patterns of EWA and the prevalence of tipping and expedite fees.¹ [We found that consumers are relying on EWA advances to pay for daily, recurring expenses while losing money on fees and tips](#). These findings add to a growing body of evidence that suggests EWA products have additional costs and should be regulated to protect consumers.

Finding 1: Users are relying on EWA advances frequently for daily, recurring expenses.

Low-income workers are a significant customer base for EWA companies. Existing [research](#) has found that EWA consumers tend to earn less than \$50,000. One [survey](#) of low-income workers receiving government benefits found that 60% used a direct-to-consumer app and the workers used multiple apps, averaging 2.45 apps used per person. The same survey found that 73% of users withdrew \$100 or less, which was very similar for respondents in our survey; 63% reported \$100 or less as the most common advance amount.

Most consumers in our survey reported using their EWA advance on food, transportation, housing costs (69%) or bill and utility payments (51%).

Figure 1. Uses of funds from EWA and Cash Advance Applications

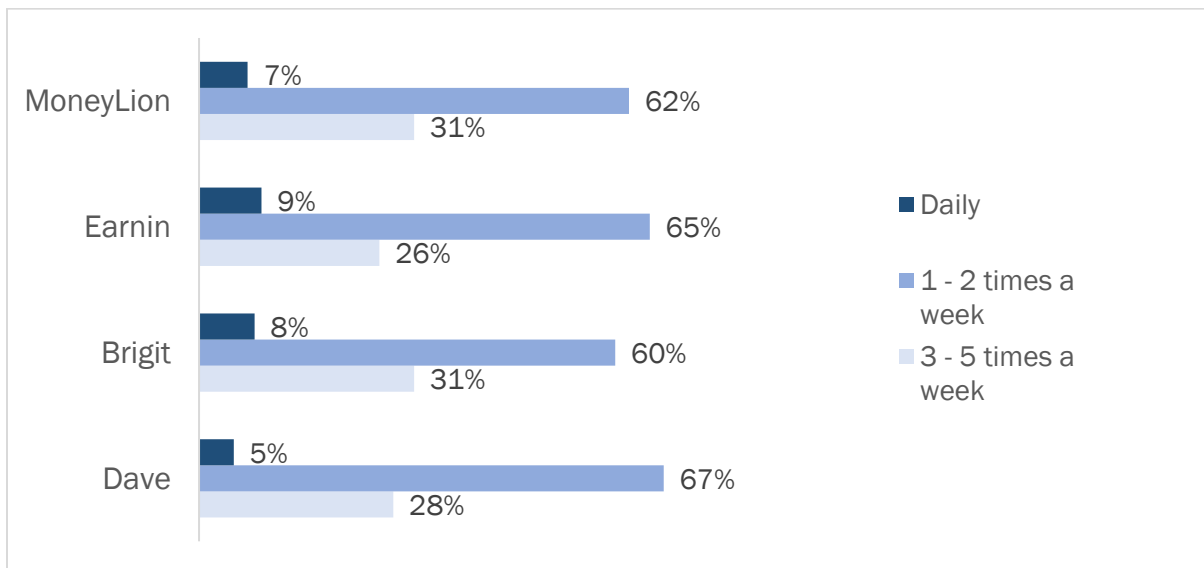


Source question: *When you receive an advance using an app, what do you most often use it for? (Select all that apply)*

¹ The Center for Responsible Lending conducted an online survey with an online polling firm between May 1 – May 5, 2023, of 300 EWA users who had taken out an advance in the past six months. Users were specifically asked about their experiences with direct-to-consumer EWA and cash advance companies.

Any advance received is debited from a consumer’s bank account, making it more difficult to meet future expenses. Unable to consistently pay for daily expenses, consumers may find themselves using EWA apps more frequently. Research from the [GAO \(Government Accountability Office\)](#) has found users of one direct-to-consumer application used the service on average 26 to 33 times per year. Our survey found that most respondents accessed wages early one to two times a week in a typical month and 24% used more than one company regularly. Using more than one app at the same time increases the risk of shortfall upon repayment. Although consumers may not feel they are “worse off financially” over one third (39%) reported they “*feel like I must keep using the product to pay for my expenses*”.

Figure 2. Frequency of EWA and Cash Advance App use by Company



Source question: *In a typical month, how often do you use [company name] to obtain a cash advance?*

Finding 2. Collection of expediting fees and so-called “tips” is common, making EWA expensive

Expediting fees ranged from [\\$0.99 to \\$13.99](#) depending on speed of the transaction, adding to the cost of each transaction. Nearly 8 in 10 surveyed EWA users (79%) said they typically pay a fee to receive funds faster, with 72% who reported paying a fee doing so 1 – 2 times a week.

Tipping was also common with 70% of respondents using MoneyLion, Earnin or Dave leaving tips.² Of those who do leave tips, 62% of those surveyed do so most of the time or every time. Tips can range from \$0.49 to \$14.99, with respondents earning less than \$50,000 typically tipping \$1 to \$3 for advances of less than \$100.

² Brigit does not allow for tips on its platform and thus is not included.

Figure 4. Share of respondents paying fee and leaving tips



Source questions: *When using an app to access wages early, do you typically leave a fee to receive funds faster? When using Dave, Earnin or MoneyLion, do you leave a tip?*

Tipping and fees, especially when combined with frequent usage, make EWA and cash advance apps costly for consumers. Data from [California's financial regulator](#) shows an average annual percentage rate over 330%, which is similar to APRs for payday loans. While companies portray tipping as optional, they pressure consumers to tip through various strategies including making it seem like tips help other consumers. Of the respondents that tipped, 38% reported doing so because it felt good to “pay it forward to another user”.

Our research adds to a growing body of evidence that suggests earned wage advance and cash advance apps are effectively functioning as a new form of payday lending and should be regulated to protect consumers.

HB246_FAV_NELP_SONN.pdf

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Position: FAV

Testimony of Paul Sonn

National Employment Law Project

In Support of HB 246: Earned Wage Advances and Credit Modernization

Hearing before Maryland House of Delegates

Economic Matters Committee

January 23, 2024

Paul Sonn

State Policy Program Director

National Employment Law Project

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Chairman Wilson and members of the Committee, the National Employment Law Project (NELP) is delighted to submit this written testimony in support of HB 246. By clarifying that earned wage advances and other fintech cash advances (EWA's) are loans subject to Maryland's laws regulating loans and interest rates, this legislation will provide crucial protection for Maryland workers and prevent vendors and employers offering new forms of high-cost loans from evading the state's strong and longstanding consumer protection laws. Without these vital clarifying protections, too many lenders and employers will take advantage of underpaid workers by charging them exorbitant fees and rates of interest, worsening their and their families' hardship and in some cases driving their pay so low as to violate Maryland's wage and hour laws.

About NELP. NELP is a nonprofit research, policy, and capacity building organization that for more than 50 years has sought to strengthen protections and build power for workers in the U.S., including workers who are unemployed. For decades, NELP has researched and advocated for policies that create good jobs, expand access to work, and strengthen protections and support for underpaid and jobless workers both in the workplace and when they are displaced from work. Our primary goals are to build worker power, dismantle structural racism, and ensure economic security for all.

EWA's. EWA's are advances on workers' paychecks that are made ahead of payday, and then repaid on payday. With employer-based EWAs, a third party lender typically advances money based on the amount of earned but not yet due wages, which is repaid through payroll deductions or other methods. Workers pay fees for the service, unless their employer covers the cost.

Similar direct-to-consumer products with no connection to payroll are repaid by debiting bank accounts. In such cases, lenders often profit by collecting "tips" and instant access fees. Other types of cash advances also collect "tips," "donations," or instant access fees but do not claim to be paying wages.

The Risks Posed by Unregulated EWA's. EWA's and other fintech payday loans are deeply harmful to workers and their families. Key points based on experiences in other states include:

- EWA's charge **abusively high fees**, sometimes as high as 330%, through a combination of high interest rates and "tips," driving underpaid workers' earnings even lower.
- In fact, EWA's, like other high employer-linked fees, **can drive workers' effective earnings down below the level of the Maryland minimum wage**, causing extreme hardship and violating the state's wage and hour laws.
- Unsurprisingly, like pay day loans, workers who are forced to avail themselves of EWA's typically **use them repeatedly throughout the year** – since once they start pre-spending their paychecks, they fall into a vicious circle of needing to do so many pay periods.

The Need for HB 246. HB 246 will protect Maryland workers from these high, snowballing costs and would require EWA's to comply with the same fee and interest rate limits as other cash advances. It would continue to exempt free employer loans, and would also allow employers like Walmart to cover the costs of third-party advances so that they are free to workers. But the bill would make clear that any advance that comes with a cost is a loan that must comply with Maryland's interest rate limits. Third-party lenders that charge fees for wage advances would need to comply with the same cost limits and other protections that other cash advances follow.

While employers and vendors should be encouraged to innovate, new products and practices that seek to profit by evading crucial consumer and worker protections hurt all of us. Maryland should reject efforts by fintech to side-step these basic standards by moving swiftly to pass HB 236. Thank you for the opportunity to share our views on this important topic.

Letter of Support re HB 246 [MSC NAACP].pdf

Uploaded by: Rev. Kobi Little

Position: FAV



NAACP

Maryland
STATE CONFERENCE

January 19, 2024

House Economic Matters Committee
Maryland General Assembly
Annapolis, Maryland

Re: HB 246 - Earned Wage Access and Credit Modernization

Members of the Committee:

I am writing on behalf of the Maryland State Conference of the NAACP. We support House Bill 246, Earned Wage Access and Credit Modernization, which is currently before the House Economic Matters Committee and ask that all members of the Committee support this important legislation that provides necessary consumer protections for workers, particularly for low-income workers of Maryland, many of whom are Black or other people of color.

This legislation will ensure that Maryland workers can keep their hard-earned wages and avoid being potentially exploited by financial entities charging high-interest fees for pay advances that exceed what is permitted under Maryland law. In our view, and in the view of both the Consumer Financial Protection Bureau and Maryland's Office of Financial Regulation, Earned Wage Access Products are a form of payday loan and should be regulated by the state of Maryland.

Research demonstrates that these products are most often used by low-wage workers who get cash in increments of \$100 or less. These small amounts add up quickly because workers resort to these products repeatedly—as often as every week or two—and product providers charge fees each time, often requesting a voluntary “tip” for service. The fees charged on these cash advances, which are provided for a very short period before repayment is required, result in significant interest charges: According to [data from the California Department of Financial Protection and Innovation](#), “the average annual APR was 334% for tip companies and 331% for the non-tip companies” that offered these services to California workers. In comparison, Maryland's Consumer Loan Law caps these fees at 33% APR.

As you know, many Maryland low-wage workers are people of color, and data shows that these workers are particularly vulnerable to using these products. These workers are living paycheck to paycheck, and they use these products often to buy basic goods and services. If companies are given special exceptions to charge interest well above what is currently allowed under Maryland consumer loan law, workers will see their pay shrink and not be able to provide for their families.

We also encourage the committee to scrutinize the practice of suggesting or requesting voluntary “tips” or “gratuities.” Although these are characterized as voluntary, this practice is misleading to workers and consumers. Some workers might think that a “tip” is necessary to reward a company for processing their cash advance, but very plainly, these are simply another form of service charge, adding to the high costs of these products.

We encourage the Committee to pass HB 246 to ensure that Marylanders can keep more of their hard-earned wages. HB 246 makes our state more equitable and fair by clarifying that Earned Wage Access Products are loans under Maryland law and regulated accordingly. Thank you.

Best regards,

REVEREND KOBI LITTLE
President, NAACP Maryland State Conference
rev.kobi.little@gmail.com

HB 0246- Earned Wage Access.pdf

Uploaded by: ricarra jones

Position: FAV



Testimony in support of
HB 0246
Commercial Law - Earned Wage Access and Credit Modernization

Dear Chair Wilson and Members of the Economic Matters Committee:

My name is Ricarra Jones and I am the Political Director of 1199 SEIU United Healthcare Workers East in Maryland and DC. 1199 SEIU is the largest healthcare union in the nation, with over 10,000 members in hospitals, long term care settings, and federally qualified health centers in the region. 1199 strongly supports HB 246 Earned Wage Access and Credit Modernization as a measure to protect low-income workers, many of whom are people of color, and regulate earned wage access products under Maryland Consumer Loan Law.

HB 246 will protect the most marginalized workers in the state. According to data from the Bureau of Labor Statistics, 1,356,000 Maryland workers were paid hourly in 2022. That year, there were about 931,652 low-income individuals in the state, people who earned annual wages less than 150% of the federal poverty level. Black and brown residents are more likely to face poverty than others; 38.5% of low-income individuals in Maryland are Black.

Earned wage access product lenders deliberately mislead workers by encouraging short-term borrowing practices that trap consumers long-term. Earned wage access products are expensive and are used most frequently by consumers who are living paycheck to paycheck, struggling to pay for everyday expenses like food, transportation, housing costs, and bill and utility payments. Lenders encourage these patterns by offering cash advance loans for daily expenses such as transportation and recurring bills. Data from California's financial regulator shows these loans come with an average annual percentage rate over 330%, which is similar to APRs for payday loans.

Many of these lenders also request "tips", a practice that 1199SEIU encourages the committee to examine. The U.S. Government Accountability Office (GAO) recently highlighted the lack of transparency around this practice, commenting that many users may not know that tipping is optional. Tipping and fees, especially when combined with frequent usage, make EWA and cash advance apps costly for consumers.

HB 246 will, if passed, regulate the earned wage access industry in Maryland, offering much-needed consumer protection. For these reasons, we support HB 246 and urge a favorable report. Please reach out to me at ricarra.jones@1199.org with any further questions.

Sincerely,
Ricarra Jones
Political Director
1199 SEIU United Healthcare Workers East

HB 246 MD 2024 Earned Wages Access and Crdt Moder

Uploaded by: Roxana Mejia

Position: FAV



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January 19, 2024

House of Delegates Economic Matters Committee:
C.T. Wilson, Chair
Brian M. Crosby, Vice Chair
House Office Building, Room 231
6 Bladen St., Annapolis, MD 21401

Dear Honorable Members of the House Economic Matters Committee:

I am Roxana Mejia Director of Government and Community Affairs at the International Union of Painters and Allied Trades District Council 51 covering the Maryland, Virginia, and District of Columbia jurisdictions. I represent over 1,500 members in the finishing trades of the construction industry.

I want to thank the Committee Members for taking the time to read our SUPPORT to HB 246, Earned Wage Access and Credit Modernization.

We support House Bill 246, Earned Wage Access and Credit Modernization, which is currently before the House Economic Matters Committee and ask that all members of the Committee support this important legislation that provides necessary consumer protections for workers, particularly for low-income workers of Maryland, many of whom are workers of color.

This legislation will ensure that Maryland workers can keep their hard-earned wages and avoid being potentially exploited by financial entities charging high-interest fees for pay advances that exceed what's permitted under Maryland law. Earned Wage Access Products are a form of payday loan and should be regulated by the state of Maryland.

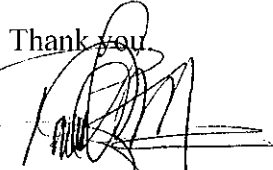
Research demonstrates that these products are most often used by low-wage workers who get cash in increments of \$100 or less. These small amounts add up quickly because workers resort to these products repeatedly—as often as every week or two—and product providers charge fees each time, often requesting a voluntary “tip” for service. The fees charged on these cash advances, which are provided for a very short period before repayment is required, result in significant interest charges: According to [data from the California Department of Financial Protection and Innovation](#), “the average annual APR was 334% for tip companies and 331% for the non-tip companies” that offered these services to California workers. In comparison, Maryland’s Consumer Loan Law caps these fees at 33% APR.

As you know, many Maryland low-wage workers are people of color, and data shows that these workers are particularly vulnerable to using these products. These workers are living paycheck to paycheck, and they use these products often to buy basic goods and services. If companies are given special exceptions to charge interest well above what’s currently allowed under Maryland consumer loan law, workers will see their pay shrink and not be able to provide for their families.

We ask the Committee to pass HB 246 to ensure that Maryland constituents/ low-income workers/our members can keep more of their hard-earned wages. HB 246 makes our state more equitable and fair by clarifying that Earned Wage Access Products are loans under Maryland law and regulated accordingly.

Please vote favorably on HB 246.

Thank you



Roxana Mejia
Director of Government & Community Affairs
IUPAT DC 51

HB 246 Earned Wage Access and Credit_01.12.24.pdf

Uploaded by: Tammy Bresnahan

Position: FAV



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**HB 246 Commercial Law – Credit Regulation- Earned Wage Access and Credit
Modernization
FAVORABLE
House Economic Matters Committee
January 23, 2024**

Good afternoon, Chairman Wilson and members of the Economic Matters Committee. I am Tammy Bresnahan, Senior Director of Advocacy for AARP Maryland. AARP has more than 850,000 members statewide. AARP is the largest nonprofit, nonpartisan organization representing the interests of Marylanders age 50 and older and their families. Key priorities of our organization include helping all Marylanders achieve financial and health security. AARP MD and supports HB 246. We thank the Maryland Department of Labor for requesting this bill for introduction.

Employers have a role to play in helping workers manage their finances, and cash management tools can help older workers juggle expenses. At the same time, high-cost loans and products that drain fees from slim budgets and lead workers to pay to be paid worsen the financial health of older workers. We support HB 246 because it will stop evasions of Maryland's strong consumer protection laws and interest rate limits by earned wage advances and other fintech payday loans that claim not to be loans.

Background

What is HB 246 and why is AARP Maryland supporting it. Earned wage advances (EWA) enable consumers to obtain an advance of wages that they have earned prior to their scheduled pay date. Employer-based EWAs are offered by third parties that have access to the employer's time and attendance system. Other direct-to-consumer advances have no connection to the employer but claim to pay wages and collect instant access fees along with purportedly voluntary tips or donations. In both circumstances, the amount the consumer is offered is limited to the amount they have earned, or estimated to have earned, but is not yet due.

Employers offering EWA may cover the full costs themselves, may contract with an EWA provider or payroll provider that offers the advances for free to the worker, or may allow the provider to charge fees to the worker. In any of these models, the third party typically advances the funds to the worker and then is repaid the amount the consumer receives and any associated fees or costs from the consumer's next paycheck, either through payroll deduction, split direct deposit, or another manner. When offered through direct-to-consumer apps unconnected to the employer, the consumer is typically required to provide the third party with a copy of a previous pay stub and their bank account information. The consumer repays the advance by allowing the lender to make a direct debit of the advance along with fees, tips or donations from the consumer's bank account at the time of their next paycheck.



[California data](#) collected on nearly 6 million transactions reveal an average annual percentage rate (APR) over 330% for both tip-based and fee-based products, and a cycle of chronic reborrowing with an average of 36 advances a year and up to 100. California's regulator also observed multiple strategies that lenders use to make tips almost as certain as required fees" and that, while providers technically limit their recourse if they cannot collect, as a practical matter they are repaid 97% of the time.

AARP has a long history of against payday lending loans, and EWA that collect fees or tips are remarkably similar. The Consumer Financial Protection Bureau recently observed that "these products share fundamental similarities with payday lending products." You know that there are more older people in the labor market than ever before living paycheck to paycheck. If they fall short before payday, they should not be subject to high fees and a cycle of "paying to be paid" for borrowing against their wages.

AARP Policy and Suggestions for States

Alternative financial services such as payday loans and their variant called "earned wage advances" are provided outside the traditional banking system. Providers of these products are disproportionately located in workplaces with a sizable proportion of Black and Hispanic/Latino residents, and they disproportionately strip wealth from these communities. They are also a major source of transactional and credit services for consumers with low and moderate incomes and people with heavy debt burdens or less favorable credit histories. Like traditional payday loans, earned wage advances offer advances of pay before it is due. These products impose fees, interest, or other costs on workers. This leads to payment of effective interest rates like payday loans. Products may also contribute to chronic financial instability if borrowers become too reliant on them to meet expenses.

As such, these earned wage advance products and other fintech payday loans should be regulated as loans subject to state and federal law. Maryland has strong consumer protection laws that limit interest rates and prevent predatory payday lending, and new fintech providers of payday advances should be required to abide by the same cost limits and licensing requirements as other lenders.

AARP believes that regulators should eliminate unfair, deceptive, or abusive practices in the alternative financial services industry. Prior to extending a loan, lenders should be required to evaluate whether an applicant can be expected to be able to repay the loan without reborrowing or refinancing, and while covering expected essential expenses.

States' ability to cap interest rates and enforce interest rate caps on new forms of loans should be upheld. We believe programs that offer early wage advances should be regulated as loans subject to Maryland's loan laws. Employers can continue to offer access to early pay for free as a benefit, but third parties that charge fees or tips should not get a special exemption to charge more than other lenders for payday advances.

For these reasons we ask for a favorable report on HB 246. If you have questions or comments, please contact me at tbresnahan@aapr.org or by calling 410-302-8451.

01.19 - HB 246 - Commercial Law - Credit Regulatio

Uploaded by: Tonaeya Moore

Position: FAV



HB 246 - Commercial Law - Credit Regulation - Earned Wage Access and Credit Modernization
Economic Matters Committee
January 23, 2024
FAVORABLE

Chairman Wilson and members of the committee, thank you for the opportunity to submit testimony in support of House Bill 246. This bill will provide more consumer protections for workers who use earned wage access products. It will subject earned wage access products to the Maryland Consumer Loan Law, which will provide necessary disclosures, APR limits, and other consumer protections.

The CASH Campaign of Maryland promotes economic advancement for low-to-moderate income individuals and families in Baltimore and across Maryland. CASH accomplishes its mission through operating a portfolio of direct service programs, building organizational and field capacity, and leading policy and advocacy initiatives to strengthen family economic stability. CASH and its partners across the state achieve this by providing free tax preparation services through the IRS program 'VITA', offering free financial education and coaching, and engaging in policy research and advocacy. **Half of CASH's tax preparation clients earn less than \$10,000 annually; more than half earn less than \$20,000.**

Earned wage access providers give workers an advance on their pay, charging a fee per transaction as well as fees if the employee wants the funds expedited or wants to "tip." While some companies offer a free option, a majority pay the fees to get their funds as fast as possible. These products are not just used sporadically to cover an emergency expense. Many customers take out multiple loans each month. The root need for these products is insufficient income and pay frequency that is out of line with expenses (bi-weekly or monthly vs daily or weekly).

The funds are paid through banks, not using the employer funds. The bill will clarify that these advances are technically a loan. Though this industry may be new, the Maryland legislature has a long history of affirming small dollar advances as loans and maintaining a usury rate of 33%.

HB 246 would institute multiple consumer protections, including:

- Ensuring that the earned wage access product does not include an automatic tip amount, and holds the lender accountable to still providing services without a tip from the employee;
- Codifying the requirement that any earned wage access provider needs to be licensed;
- Capping the amount in fees and interest that earned wage access providers may charge.

The federal Consumer Financial Protection Bureau and other states are recognizing the need for more consumer protections for earned wage and cash advance providers. Without regulations, it is possible for workers to accrue debt through fees by using these providers, which have shown to accrue to more than 300% APR¹. These fees benefit employers and earned wage access providers, but disproportionality impact low-wage workers in Black and Brown communities.

Enacting HB 246 would provide more protections for low-wage workers in Maryland, and therefore provide more economic stability for both individual households and for the state as a whole.

¹ National Consumer Law Center: [Data on Earned Wage Advances and Fintech Payday Loan "Tips" Show High Costs for Low-Wage Workers - NCLC](#)

CASH CAMPAIGN OF MARYLAND

We urge a favorable report for HB 246.

Creating Assets, Savings and Hope

HB 246 Victoria Leonard LiUNA (SUPPORT).pdf

Uploaded by: Victoria Leonard

Position: FAV



January 19, 2024

The Honorable CT Wilson, Chair
The Honorable Brian Crosby, Vice Chair
House Economic Matters Committee
House Office Building Room 231
Annapolis, Maryland 21401

**HB 246: Earned Wage Access and Credit Modernization
Position - Support**

Thank you Chair Wilson and Vice Chair Crosby and members of the House Economic Matters Committee for the opportunity to submit written testimony in support of HB 246.

My name is Victoria Leonard, Political and Legislative Director for the Baltimore-Washington area of the Philadelphia/Baltimore/Washington Laborers' District Council (PBWLDC), an affiliate of the Laborers' International Union of North America (LiUNA). The PBWLDC represents more than 13,000 members. Our members are proudly employed on many infrastructure construction projects across the region. Nationwide, LiUNA represents more than 500,000 members.

We support HB 246. It provides necessary consumer protections for workers, particularly for the low-income workers of Maryland, many of whom are people of color. This bill will ensure that Maryland workers can keep their hard-earned wages and avoid being potentially exploited by financial entities charging high-interest fees for pay advances that exceed what's permitted under Maryland law. Without doubt, Earned Wage Access Products are a form of payday loans and should be regulated by the state of Maryland.

Research demonstrates that Earned Wage Access Products are most often used by low-wage workers who get cash in increments of \$100 or less. These small amounts add up quickly because workers resort to these products repeatedly—as often as every week or two—and product providers charge fees each time, often requesting a voluntary “tip” for service. The fees charged on these cash advances, which are provided for a very short period before repayment is required, result in significant interest charges.

Many Maryland low-wage workers are people of color, and data shows that these workers are particularly vulnerable to using these products. These workers are living paycheck to paycheck, and they use these products often to buy basic goods and services. If companies are given special exceptions to charge interest well above what's currently allowed under Maryland consumer loan law, workers will see their pay shrink and not be able to provide for their families.

Finally, we urge the committee to examine the practice of suggesting or requesting voluntary “tips” or “gratuities.” This practice is misleading to workers and consumers. Some workers might think that a “tip” is necessary to reward a company for processing their cash advance, but very plainly, these are simply another form of service charge, adding to the high costs of these products.

Please pass HB 246 and send it over to the Senate.

cfpb_comment-letter-attachment.pdf

Uploaded by: Amy Hennen

Position: FWA



1700 G Street NW, Washington, D.C. 20552

November 27, 2023

Via electronic mail

Department of Financial Protection and Innovation
Attn: Araceli Dyson
2101 Arena Blvd.
Sacramento, CA 95834
regulations@dfpi.ca.gov

Comment on Proposed Rule Addressing “Income-Based Advances” and Related Charges

The Consumer Financial Protection Bureau (CFPB) appreciates the opportunity to comment on the California Department of Financial Protection and Innovation (DFPI)’s proposal to undertake registration and examinations of providers of what DFPI refers to as “income-based advances.”¹ The CFPB is the primary regulator of consumer financial products and services at the federal level. Among its responsibilities, the CFPB has an obligation to coordinate with other regulators, including states, to promote consistent regulatory treatment of consumer financial products and services.²

I. Income-Based Advance Products Have Long Existed

Income-based advances – products where repayment is related, theoretically or concretely, to a worker’s next payday – have long been part of the U.S. consumer lending market. As DFPI references, in the early 1900s, these products often took the form of wage “sales” or

¹ DFPI, Notice of Modification to Proposed Rulemaking, PRO 01-21 (Nov. 6, 2023).

² 12 U.S.C. § 5495; *see also* CFPB, Consumer Financial Protection Circular 2022-01: System of *Consumer Financial Protection Circulars* to agencies enforcing federal consumer financial law (May 16, 2022), https://files.consumerfinance.gov/f/documents/cfpb_2022-01_circular_2022-05.pdf.

assignments.³ In the 1990s, payday lending products proliferated and were often promoted as “deferred presentment” transactions.⁴ Banks have marketed similar products as “deposit advances.”⁵ With all these products, a consumer receives funds that are typically repayable in full on their next payday.

Some firms have recently begun to market income-based advance products that either are or purport to be made based on wages that the employee has earned using various branding terms, such as “earned wage access.” As DFPI has recognized, firms marketing their products in this manner include both firms seeking to integrate cash advances through an employer, where repayment of the advance is made via payroll deduction, and firms that, without the involvement of an employer, contract with a consumer to obtain authorization to debit the consumer’s bank account to collect repayment of the advance. In both scenarios, and especially when advances are provided and repayment is collected without the involvement of the consumer’s employer, these products share fundamental similarities with payday lending products. And federal and state regulators have long administered laws and regulations that apply to income-based advance products such as payday loans.⁶

II. Supervision Promotes Robust Consumer Protection

The Consumer Financial Protection Act provides that the CFPB may conduct examinations of providers of consumer financial products and services, which, broadly speaking, include providers of income-based advance products.⁷ At the same time, states have long provided critical oversight of nondepository providers of consumer financial products and services, like those typically offering income-based advance products.

While providers of these products generally do not need a federal license, they frequently must obtain licenses from the states in which they operate. In turn, obtaining a license often subjects a licensee to supervisory examinations for compliance with applicable law. This supervision is critically important for ensuring that firms are meeting their legal obligations. The CFPB believes that it is consistent with this longstanding practice to subject providers of income-based

³ See DFPI, Initial Statement of Reasons, PRO 01-21, at 53 n.88 (Mar. 15, 2023) (citing F. B. Hubachek, The Development of Regulatory Small Loan Laws, 8 Law and Contemporary Problems 108-145, 138, 142 (Winter 1941)).

⁴ See, e.g., *Turner v. E-Z Check Cashing*, 35 F. Supp. 2d 1042, 1048 (M.D. Tenn. 1999) (holding that transactions described by defendant as “deferred presentment” transactions were extensions of credit and noting that “[o]ther courts which have addressed the issue are unanimous in holding that those who participate in the deferred presentment/check-cashing business are ‘creditors’”); see also Board of Governors of the Federal Reserve System, 65 Fed. Reg. 17,129, 17,130 (Mar. 31, 2000) (“[A]greements [to defer payment of a debt] are deemed to be ‘credit’ as defined by [Regulation Z] however they are described—as payday loans, cash advances, check advance loans, deferred presentment transactions, or by another name.”).

⁵ See generally CFPB, Payday Loans and Deposit Advance Products (Apr. 24, 2013), https://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf.

⁶ The laws that the CFPB administers that apply to income-based advance products such as payday lending include the Consumer Financial Protection Act, the Truth in Lending Act, the Equal Credit Opportunity Act, and the Electronic Fund Transfer Act, as well as those laws’ implementing regulations.

⁷ See 12 U.S.C. § 5514(a)(1).

advances marketed as “earned wage access” to state oversight – as providers of other income-based advance products, such as payday loans that have long been offered in some states, are. Rigorous supervision of all income-based advance products helps to ensure that the label of a product does not determine how providers are held accountable, or the extent to which consumers are protected, under the law.

III. Definitions of “Loans” and “Charges”

The CFPB notes that DFPI’s proposal would clarify that income-based advances are “loans” under the California Financing Law and that “charges” under that law include “gratuities” as well as “expedite fees.” By treating these products as loans and including a variety of charges that accompany the advance, DFPI’s proposal takes a similar approach as the Truth in Lending Act and its implementing Regulation Z, which generally applies to extensions of consumer credit⁸ and provides that a finance charge “includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit,” with certain limited exceptions.⁹ As DFPI pursues its supervisory work, both state and federal law provide critical consumer protections.¹⁰

As the CFPB has stated previously, the CFPB plans to issue further guidance to provide greater clarity concerning the application of the Truth in Lending Act in this market.¹¹ 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.

IV. Conclusion

The CFPB believes that, in light of the emergence of firms marketing “earned wage access” income-based advance products, it is appropriate for states to ensure that these products are treated similarly to other income-based advance products with respect to supervision for compliance with applicable law, including ensuring that costs are accurately reflected in the price

⁸ See 12 C.F.R. 1026.1(c).

⁹ 12 C.F.R. 1026.4(a).

¹⁰ States have authority under the Consumer Financial Protection Act to bring claims with respect to violations of the federal consumer financial laws, including the Truth in Lending Act. See CFPB, Authority of States to Enforce the Consumer Financial Protection Act of 2010 (May 2022) (“[W]hen a covered person or service provider violates any of the Federal consumer financial laws, section 1042 [of the Consumer Financial Protection Act] gives States authority to address that violation by bringing a claim under section 1036(a)(1)(A) of the [Consumer Financial Protection Act].”), https://files.consumerfinance.gov/f/documents/cfpb_section-1042_interpretive-rule_2022-05.pdf.

¹¹ See Letter from CFPB Director Rohit Chopra (Feb. 13, 2023) in Government Accountability Office, Financial Technology: Products Have Benefits and Risks to Underserved Consumers, and Regulatory Clarity is Needed, GAO-23-105536, at 51 (Mar. 2023), <https://www.gao.gov/assets/gao-23-105536.pdf>.

of credit. Thank you for your consideration of the CFPB's input as you plan for examinations in this market.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Seth Frotman".

Seth Frotman
General Counsel and Senior Advisor to the Director
Consumer Financial Protection Bureau

HB246 Letter of Support.pdf

Uploaded by: Amy Hennen

Position: FWA

January 23, 2024

House Economic Matters Committee

Chair: Delegate Wilson
House Bill 246 – Earned Wage Access and Credit Modernization

Re: Letter of Support

As Maryland’s Consumer Financial Protection Agency, the Office of Financial Regulation (OFR) requests a favorable report on HB246 which confirms consumer protections for Marylanders.

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.” Originally, employers offered wage access directly, but, starting in the 1990s, payroll services and other third parties that contracted with employers developed products that could offer employees advance wage access on behalf of the employer.

These types of services have been growing in popularity because they allow consumers faster access to their earned, but not yet paid, wages. However, these products, particularly when offered by third-party providers unaffiliated with the employer, often come with fees or other costs. For example, the company providing these advances may charge a flat fee or even request a “tip” to provide the loan. Other companies advance funds using a debit card and charge transaction fees to access the wage advance.

These costs can be difficult for the 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, the fees can carry an annual percentage rate (APR) of between 100% and 400%, far above the maximum interest rate of 33% APR permitted under Maryland loan law.

Today’s marketplace offers earned wage access products under a variety of business models. They can provide a tangible benefit to workers, particularly if it allows them to draw a portion of their earned wages when they need them at a low or no cost. However, depending upon how the product is structured, consumers face risks of paying high costs to participate in the program or drawing too much of their pay triggering a repayment obligation. Like all consumer lending services, these products require careful regulation.

In the last two years, some states have introduced legislation to address earned wage access products through either licensure or registration of providers, or through the establishment of product requirements and consumer protections. There is no direct federal law on the topic, though 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.”

The OFR licenses and regulates consumer lenders in Maryland. This proposed legislation codifies principles that the OFR determines currently already apply to earned wage access products. The legislation provides that any earned wage access products that charge a fee are subject to Maryland’s Consumer Loan Law.

This bill explicitly treats certain earned wage access products as loans, and the amendment bans the solicitation of so-called “tips” related to providing advanced wage access and credit. Further, the bill confirms that any fees such as subscription fees or expedited processing fees must be included in the calculation of interest. It also provides for the licensure of entities offering earned wage access products with fees. Additionally, it provides exemptions from licensure for employers and employer-connected entities who provide earned wage access at no cost to employees. All these provisions are similar to those applied to other types of consumer lenders and consumer loan programs.

With that, we urge a favorable Committee Report.

ofr-advisory-earnedwageaccess.pdf

Uploaded by: Amy Hennen

Position: FWA



**MARYLAND COMMISSIONER OF
FINANCIAL REGULATION
INDUSTRY ADVISORY
REGULATORY GUIDANCE**



August 1, 2023

Guidance on Earned Wage Access Products

The Maryland Office of Financial Regulation (OFR) is issuing this guidance to provide clarity on how this Office views Earned Wage Access products and to describe the requirements entities offering these products must adhere to.

What is an Earned Wage Access product?

Earned Wage Access allows consumers to obtain access to wages that they have earned but not yet received via employer payroll. These products commonly come in two varieties: products employers offer as an employee benefit or products independent third parties offer consumers. In both circumstances, the amount the consumer is offered is limited to the amount they've earned, but not been paid.

An Earned Wage Access product, if offered directly by the employer is usually paid by a deduction from the consumer's wages in the next paycheck. When an independent third party provides the Earned Wage Access product, it is usually repaid via a direct debit from the consumer's bank account.

One-time or Subscription Earned Wage Products

Earned Wage Access products can also be divided into one-time transactions or subscription-based products depending upon how frequently the consumer obtains the advance. In a one-time transaction, the advance is provided on a non-recurring basis. A subscription product provides a consumer with an advance on a recurring basis.

How large are the advances under an Earned Wage Access product?

The California Department of Financial Protection and Innovation conducted a survey of Earned Wage Access providers and 80% of transactions in their state were between \$40-\$100.

How does Maryland law classify the Earned Wage Access product?

Whether an Earned Wage Access product is classified as a loan or not under Maryland law depends upon certain factors. Since these advances are under \$25,000.00, if they are loans, they would fall under Maryland Commercial Law Title 12, Subtitle 3. Under Maryland Commercial Law §12-301 a loan is defined as "any loan or advance of money or credit subject to this subtitle regardless of whether the loan or advance of money is or purports to be made under this subtitle". However, Maryland Commercial Law §12-303(a)3(iii) also stipulates that Subtitle 3 does not apply "to a loan between an employer and an employee". Therefore, if the employer provides the Earned Wage Access product directly to their

employee at no cost, Maryland law does not consider it a loan subject to Subtitle 3. Additionally, if the product is truly for earned wages – i.e., the limit on what is provided is based on how much the employee has earned to date - and provided directly by the employer, it would not be an advance since the employer “owes” the employee those funds.

If a Maryland consumer receives the product from an independent third party, the arrangement’s facts and circumstances must be analyzed to determine if those providers are to be deemed lenders and whether they would require a license.

How does Maryland view Third-Party Providers?

Earned Wage Access products provided directly by employers or provided by independent third parties are merely two ends of the spectrum on how consumers obtain these products. Maryland law requires a case-by-case analysis for those products provided by employers but through a connected third party. To determine if the third-party provider is truly a service provider to the employer – and thus not a lender – or the party providing the advance OFR will consider the following factors:

- Who bears the economic risk?

If the consumer defaults on their repayment obligation does the third party bear the loss of the default or the employer? If the third party bears the burden, OFR will be more likely to view them as the true provider of the advance rather than the employer and thus a lender under Maryland law.

- What level of contact does the third party have with the consumer?

If the consumer has minimal to no contact with the third-party provider, OFR is more likely to view the third party as truly a vendor/service provider to the employer. The greater the level of contact the consumer has with the third-party provider, the less the third party will appear to be merely a service provider to the employer.

- Who benefits from any fees or “tips” the consumer pays?

If the third party receives most of the economic benefit from the transaction they are more likely to be viewed not as a service provider, but as the lender. This is particularly the case if the consumer pays the “tips” or fees directly to the third party instead of the employer.

Are fees and “tips” permissible under Maryland law?

Under Maryland Commercial Law §12-101(e), interest is “any compensation directly or indirectly imposed by a lender for the extension of credit for the use or forbearance of money, including any loan fee”. Maryland Commercial Law §12-306 caps the amount of interest a lender may charge a consumer on a transaction.

Because a tip or fee would be compensation for an extension of credit, whether a “tip” or fee is permissible depends upon the amount and who is providing the product. If the employer provides the product directly to the employee, as noted above, it is not considered a loan under Maryland law and thus Maryland interest rate limits do not apply. However, if a third-party provides the product, it is a loan under Maryland law and the lender must adhere to Maryland interest rate limits. If the third party sets a tip default at an amount greater than zero, the consumer may feel compelled to provide a tip. In some instances, the tip would factor into the interest rate on the loan product.

OFR Oversight

As a new and evolving product, OFR will be monitoring the use and provision of Earned Wage Access products. OFR will pay particular attention to the fees that providers charge consumers for the use of Earned Wage Access products. As part of its monitoring efforts, OFR is issuing an advisory to consumers about these products and is encouraging consumers to contact OFR with questions or concerns about the products that they have been offered. OFR will also be monitoring this product for any practices that are deceptive, unfair, or abusive.

If you would like to discuss the Earned Wage Access product you offer to consumers, please contact Assistant Commissioner Shereefat Balogun of the Office of Financial Regulation at 410-230-6390, or by email at shereefat.balogun@maryland.gov.

The Office of Financial Regulation, a division of the Maryland Department of Labor, is Maryland's consumer financial protection agency and financial services regulator. For more information, please visit our website at www.labor.maryland.gov/finance.



[Click here to subscribe to emails from the Office of Financial Regulation.](#)

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HB246_MDL_Support - EWA Secretary testimony FINAL.

Uploaded by: Portia Wu

Position: FWA

TESTIMONY OF PORTIA WU

SECRETARY, MARYLAND DEPARTMENT OF LABOR

HB 246: EARNED WAGE ACCESS AND CREDIT MODERNIZATION - CONSUMER PROTECTION

Dear Chair Wilson, Vice Chair Crosby, and Members of the House Economic Matters Committee,

I am pleased to introduce HB 246, the Department of Labor’s Bill on Earned Wage Access and Credit Modernization. Governor Moore is committed to making our state more fair and equitable for all Marylanders, and HB 246 supports this goal. The Department of Labor Office of Financial Regulation is proposing this legislation to make clear that companies offering cash advances to workers either directly or through an employer cannot charge exorbitant fees or add deceptive charges. Such products must comply with Maryland consumer loan laws and be transparent to workers about the costs of borrowing. This bill creates a level playing field so workers in our state who need cash before payday will not get price gauged and see their hard-earned dollars evaporate.

The Department strongly believes that Earned Wage Access products act functionally as loans and therefore must be subject to the same regulatory requirements and guardrails as other consumer and payday loan products. Maryland lawmakers have created a comprehensive and robust system for regulating consumer loans that has served consumers well for many years. HB 246 clarifies that Earned Wage Access products are loans subject to Maryland’s consumer loan law and establishes rules governing these products. The bill gives workers using these pre-payday cash advances the same consumer protections they would have using other regulated loans products.

Earned Wage Access products are a way for workers to receive money in advance of a next paycheck and are increasingly common in our state and around the country. The advanced money often comes with various fees, and sometimes, workers are asked if they want to add a voluntary “tip.” In a November 27, 2023 [letter](#), the Consumer Financial Protection Bureau stated that Earned Wage Access products share “fundamental similarities with payday lending,” and it is the Bureau’s recommendation that these products should be subject to state laws regulating loans and consumer credit.¹ Maryland’s Office of Financial Regulation agrees and issued guidance last year that entities offering these pre-payday cash advances need to register with the state.²

¹ **Consumer Financial Protection Bureau letter to California Department of Financial Protection and Innovation, Nov. 27, 2023,** https://files.consumerfinance.gov/f/documents/cfpb_comment-letter-to-dfpi-2023-11.pdf

² **Maryland Commissioner of Financial Regulation, Industry Advisory Regulatory Guidance, August 1, 2023,** <https://www.labor.maryland.gov/finance/advisories/advisory-ind-earnedwageaccess.pdf>

The principle behind our approach is simple: Maryland law deems any transaction in which there exists any expectation of repayment to be a loan or extension of credit subject to licensing and regulation. Products that offer workers a cash advance before their next paycheck and require repayment—either directly from the employer or the worker themselves—clearly fall within the scope of that definition and therefore must abide by the same guidelines for loans as other vendors.

Earned Wage Access Products are most often used by low-wage workers who repeatedly withdraw small amounts. Marylanders in need of cash advances before payday are living paycheck to paycheck; these are lower-wage workers assisting us in retail shops, providing food in stores and restaurants, and taking care of our loved ones in jobs such as home healthcare aides. A GAO report on Earned Wage Access products cited data that “showed that about 75 to 97 percent of users reported earning less than \$50,000 a year.”³ Other reports indicate that users of these products frequently have poor credit and are less likely to have access to lower-cost lending options.⁴ In Maryland a large percentage of lower-wage workers are likely to be workers of color: one-third of Maryland workers earning \$40,000 a year or less in 2022 identified as Black – that’s 440,000 Marylanders. Those earning these wages who identify as Hispanic or Latino comprise 203,000 Maryland workers or 15%.

Workers who use the products typically do so to access cash in increments of \$100 or less. Data shows that workers who draw on these products are likely to do so repeatedly. A [2023 GAO survey of Earned Wage Access](#) providers and consumers found that “users of one direct-to-consumer earned wage access Financial Technology company used the service on average approximately 26 to 33 times per year during that same period.”⁵ These small loans can also come with costs and risks that borrowers may not be fully understand, and some groups appear to be particularly likely to find themselves in more costly arrangements: for example, one survey found that Hispanic and Latino users of EWA products were more likely to use “on demand” pay products that carried higher fees.⁶

As the Center for Responsible Lending testified before Congress, “Consumers who use these products can find themselves in a debt trap, leading borrowers to take out multiple loans over consecutive pay periods.”⁷ In some cases, a worker may not have sufficient funds in their bank account and risk incurring overdraft fees as well.

³ “Financial Technology: Products Have Benefits and Risks to Underserved Consumers and Regulatory Clarity is Needed,” United States Government Accounting Office Report to Congressional Committees, March 2023, <https://www.gao.gov/assets/820/818014.pdf>

⁴ See *Earned Wage Access: An Innovation in Financial Inclusion?* Marshall Lux and Cherie Chung (June 2023), Appendix;

⁵ GAO, <https://www.gao.gov/assets/820/818014.pdf>

⁶ Lux and Chung (June 2023) page 12.

⁷ “Modernizing Financial Services Through Innovation and Competition,” Mitria Spotser, Vice President, Center for Responsible Lending, Testimony to the United States House of Representatives, Committee on Financial Services, Oct. 25, 2023

These concerns are why consumer groups, civil rights organizations and worker organizations support regulation of these products to ensure that low-wage workers can keep their hard-earned pay.

Some Earned Wage Access product fees result in effective interest charges several times more than what is permitted under Maryland law. These products are marketed as affordable, but while the dollar amount may be low in nominal terms, the cost of only a few dollars assessed on these cash advances over a pay period can result in an annual percentage rate (APR) of 100% or more, far above the maximum interest rates allowed under Maryland’s consumer lending laws. According to data from the California Department of Financial Protection and Innovation, “the average annual APR was 334% for tip companies and 331% for the non-tip companies” that offered these services to California workers. A [2023 Harvard Kennedy School working paper](#) surveying products found APRs from 91% to over 500%.⁸ In comparison, Maryland’s Consumer Loan Law caps interest at 33% APR.

As noted in [one report](#): “Since the typical fees charged by EWA firms are flat transaction-based fees, the cost to withdraw funds punishes low-value transactions; and because low-income users tend to do more low-value transactions, they end up paying more than higher-income users. . . . Essentially, the fee structure is regressive, costing those who can least afford it the most while affluent users end up paying the least and are subsidized by the poor.”⁹ The fees charged may include basic services fees, expedite fees, subscription fees, and requests for gratuities.

Any fees charged to workers for paycheck cash advances should be transparent and subject to existing limits on high-interest laws. Many products employ “tip” or “gratuity” online screens to ask consumers for additional payments. These asks are misleading because such payments do not go to workers like a tip in a restaurant or other service industry job, they are retained by the company. The GAO report plainly stated, “[C]onsumer groups raised concerns that consumers may not recognize that tipping is optional and questioned whether a consumer’s decision not to tip would decrease the amount of money advanced or wages that can be accessed in the future.”¹⁰

Given such gratuities function as a de facto additional service charge, the costs paid by the worker must be included in calculating the effective interest the individual is paying. And there is evidence that these workers using these services frequently add a tip: in a recent poll conducted by Center for Responsible Lending, 70% of respondents who used the popular MoneyLion, Earnin or Dave apps reported leaving tips.¹¹

By defining Earned Wage Access products as loans under Maryland law, this bill limits the costs and fees providers may charge a worker, and it codifies the Office of Financial Regulation

⁸ Lux and Chung (June 2023) page 27.

⁹ “Earned Wage Access: Faster wage payments disrupt the traditional payday,” Michael Moeser,, page 14.
¹⁰

¹¹Modernizing Financial Services Through Innovation and Competition,” Mitria Spotsler, Vice President, Center for Responsible Lending, Testimony to the United States House of Representatives, Committee on Financial Services, Oct. 25, 2023


guidance that providers are subject to licensure by the State. Additionally, it provides exemptions from licensure for employers and employer-connected providers who provide payroll cash advances at no cost to workers. The Attorney General and consumer groups propose taking the additional step of banning “tips” or gratuities altogether from Earned Wage Access Products.

Finally, while the state of Maryland encourages technology innovation that expands access to financial services to the unbanked and underbanked, we strongly believe that innovations can and should comply with basic consumer protections and not put vulnerable workers in even more precarious economic circumstances. The Moore Administration is committed to helping Marylanders in all communities to build wealth. Ready access to pay, ability to access loans to accumulate emergency savings, are critical to helping families meet both daily costs and unexpected financial needs. The Office of Financial Regulation is in the process of operationalizing the Community Investment Venture Fund created in the Access to Banking Act to work with financial services providers to encourage the development of financial products that will enable Maryland financial institutions to better serve the needs of the State’s low-to-moderate income communities. Maryland Saves also provides incentives for small businesses to offer emergency savings accounts to individuals.

In closing, Earned Wage Access products should be treated as consumer loans and come under the same regulatory guidelines. Labor's Office of Financial Regulation supports innovation in financial products to help Marylanders build savings and accumulate wealth; however, those innovations must comply with our laws and retain basic protections for consumers and workers. This legislation would not prevent employers from offering these products, and in fact, the bill provides exemption from licensure for those companies who offer cash advances with no additional fees or costs to their workers. Currently, companies operating in Maryland can and do offer these products to their workers while bearing all or much of the cost—this ensures that workers have faster access to their pay and companies would still be able to offer these products to workers so they can meet daily expenses or other emergencies.

The Department of Labor remains committed to working with the General Assembly to support financial products innovation while continuing to protect consumers and workers. We urge a favorable report on HB 246.

Sincerely,



Portia Wu, Secretary

Maryland Department of Labor

HB 246 - CPD testimony in support with amendments

Uploaded by: Wilson Meeks

Position: FWA

ANTHONY G. BROWN
Attorney General

CANDACE MCLAREN LANHAM
Chief Deputy Attorney General

CAROLYN QUATTROCKI
Deputy Attorney General

LEONARD HOWIE
Deputy Attorney General



WILLIAM D. GRUHN
Chief
Consumer Protection Division

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION

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January 19, 2024

To: The Honorable C. T. Wilson
Chair, Economic Matters Committee

From: Wilson M. Meeks – Consumer Protection Division

Re: House Bill 246 – Earned Wage Access and Credit Modernization (SUPPORT WITH AMENDMENTS)

The Consumer Protection Division of the Office of the Attorney General supports House Bill 246, a Departmental Bill introduced by the Commissioner of Financial Regulation, with amendments. House Bill 246 explicitly provides that “direct-to-consumer earned wage access” products, where companies charge consumers for supposed “advances” on their wages which are paid back when consumers’ employers pay the consumers their wages, are loans, and that the companies providing those loans are subject to Maryland lending laws, including lender licensing requirements and loan interest rate caps.¹ The Division believes that the bill should also ban the practice of lenders accepting so-called “tips” from consumers.

Direct-to-consumer earned wage access products generally are targeted at and used by lower-income consumers. A U.S. Government Accountability Office report on financial product technology observed that the vast majority of consumers surveyed who used the products earned less than \$50,000 a year, with one provider indicating that approximately 78% of its users “made under \$25,000 a year.”² The amounts advanced are usually small. The California Department of

¹ House Bill 246 treats “employer-integrated earned wage access” companies, those that contract directly with and are paid for advancing funds to employees by their employers, differently, prohibiting the employer-integrated earned wage access providers from seeking interest from consumers and requiring them to register with the Commissioner.

² *Financial Technology Products Have Benefits and Risks to Underserved Consumers, and Regulatory Clarity Is Needed*, UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE (March 2023), at pg. 24 (“Data we received from the four earned wage access companies we interviewed indicated their products generally were used by lower-income consumers. Data from three companies showed that about 75 to 97 percent of users reported earning less than \$50,000 a year from 2019 through 2021; data from the remaining company indicated that around 59 percent of

Financial Protection and Innovation found that 80% of earned wage access advances are between \$40 and \$100.³

Direct-to-consumer earned wage access companies typically require consumers to provide both proof of employment or regular income and access to a checking or savings account with direct deposit, allowing the company to withdraw funds owed when the consumer is paid.⁴ Rather than charging a specific interest rate, these companies use a confusing array of pricing models, making it difficult for consumers to understand the product’s true cost or to compare those costs to other credit options. Many providers generate revenue by charging consumers subscription fees, “expedite fees” for faster access to funds, or by accepting so-called “tips.”⁵ According to the California Department of Financial Protection and Innovation, these fees and charges result in an average Annual Percentage Rate (“APR”) on advances of “334% for tip companies and 331% for the non-tip companies.”⁶

The Division believes that, under existing Maryland law, direct-to-consumer earned wage access products clearly are loans,⁷ and the fees the providers charge are interest⁸—i.e., the products are pay-day loans under a different name. Maryland caps the interest rate chargeable on loans of \$1,000 or less at 33%.⁹ Thus, the vast majority of direct-to-consumer earned wage advances observed by the California Department of Financial Protection would be usurious in Maryland. Although the General Assembly long ago specifically provided that a “transaction [that] purports to be the purchase of wages” is a loan, *see* Section 12-303 of the Commercial Law Article, direct-to-consumer earned wage access companies have taken the position that their advances are not loans, and that the fees they charge are not interest charges.

The Division supports House Bill 246 because it confirms the current law in the Maryland Commercial Code that direct-to-consumer earned wage access products are loans and the fees and charges that providers are charging consumers for their loans are interest. However, the Division supports amending House Bill 246 to prohibit lenders from accepting so-called “tips” from consumers altogether—an amendment the Division understands the Commissioner will be

users reported earning less than \$50,000 a year as of August 2022. Further, data from one direct-to-consumer company indicated that about 78 percent of its users made under \$25,000 a year.”).

³ *2021 Earned Wage Access Data Findings*, CALIFORNIA DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION (Analysis completed Q1 2023) (“California Earned Wage Access Analysis”), at pg. 1, available at <https://dfpi.ca.gov/wp-content/uploads/sites/337/2023/03/2021-Earned-Wage-Access-Data-Findings-Cited-in-ISOR.pdf>.

⁴ *Id.* at 2.

⁵ *Id.* at 2-3.

⁶ *Id.* at 1.

⁷ *See* Md. Code Ann., Com. Law § 12-301(e)(1) (“‘Loan’ means any loan or advance of money or credit subject to this subtitle, regardless of whether the loan or advance of money or credit is or purports to be made under this subtitle.”); *Matter of Cash-N-Go, Inc.*, 256 Md. App. 182, 202–03 (2023) (“we adopt the definition of ‘loan’ as articulated in the Division’s final order and relied upon by the circuit court: ‘[L]oan’ or ‘consumer loan’ means any loan or advance of money or credit made, provided, advertised, offered, or made available to any Maryland consumer regardless of what the loan is called or how it is characterized....”).

⁸ *See* Md. Code Ann., Com. Law § 12-101 (“‘Interest’ means ... any compensation directly or indirectly imposed by a lender for the extension of credit for the use or forbearance of money, including any loan fee, origination fee, service and carrying charge, investigator’s fee, time-price differential, and any amount payable as a discount or point or otherwise payable for services.”).

⁹ *See* Md. Code Ann., Com. Law § 12-306(a)(6).

submitting. The reason for this amendment is that “tipping” in the context of lending is inherently deceptive, unfair, abusive, and predatory. Indeed, the current form of House Bill 246, which deems “tips” to be interest, may have the perverse effect of normalizing the practice of lenders seeking “tips” from consumers—imagine mortgage lenders seeking tips from consumers.

Consumers may feel required to “tip” even when companies claim the tips are optional and do not impact lending determinations.¹⁰ Indeed, direct-to-consumer earned wage access lenders have used tactics such as disabling services if borrowers do not tip, setting default tips, making it hard to avoid tipping or to set a “\$0 tip” in user interfaces, making it unclear whether the tip is optional, and misleadingly claiming or implying that tips are used to help other consumers.¹¹ The word “tip” itself is confusing in the context of lending, misleadingly implying the charge goes to an individual for providing a service (like tipping a waiter whose primary income is from tips), or is customary, expected, or generous, when the “tip” is really just a finance charge to the lender.

Likewise, the predominant purpose of tipping models in lending appears to be an improper one: obfuscating the true cost of lending, which varies wildly depending on the amount of the tip. The California Department of Financial Protection and Innovation estimates that earned wage access loans with tipping models are paid back in an average of 10.1 days.¹² It is difficult for consumers to calculate the APR for a tip on advances averaging \$40-100 that are paid back in less than two weeks. Presumably, lenders have adopted supposedly “optional” tipping, rather than set charges, *because* the end result is that consumers pay an average 334% APR in tipping models.¹³ Ultimately, if lenders wish to charge for their loans, the charges should be clear and the impact on the true cost of lending should be transparent and not usurious.

cc. Members, Economic Matters Committee
The Honorable Anthony Salazar

¹⁰ The California Department of Financial Protection found that data from 5.8 million transactions shows that consumers paid tips 73% of the time. *California Earned Wage Access Analysis*, at pg. 1. Why would anyone “tip” a lender unless they felt obligated to do so?

¹¹ See *Initial Statement of Reasons for the Proposed Adoption of Regulations*, DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION, at pgs. 61-62, available at <https://dfpi.ca.gov/wp-content/uploads/sites/337/2023/03/PRO-01-21-ISOR.pdf>.

¹² *California Earned Wage Access Analysis*, at pg. 10.

¹³ *Id.* at 10.

MD HB 246 - Earned Wage Access - Submitted Testimo

Uploaded by: Alain Xiong-Calmes

Position: UNF



Testimony of Alain Xiong-Calmes
Director of State & Local Public Policy, Eastern Region
Chamber of Progress
Re: MD HB 246
“An Act Concerning Earned Wage Access and Credit Modernization”

January 23, 2024

Thank you for the opportunity to submit testimony for the record regarding HB 246. On behalf of the Chamber of Progress, a tech industry coalition promoting technology’s progressive future, I write to urge your committee to oppose HB 246 because this bill could possibly stop many earned wage access products from being offered in the state of Maryland.

Marylanders have experienced a higher cost of living compared to the national average,¹ and current market conditions are making it even harder to stretch bills from today to payday. Earned wage access is an emerging financial innovation where workers can access the money they've earned but haven't been paid yet. It's super helpful during money emergencies or when bills are due, so that consumers don't have to turn to expensive options like payday loans or overdraft fees at the bank. This frees workers from dependency on the payroll cycle and alternative options like predatory lending practices.

Preferential Treatment of Business Models Hinders Innovative Growth

The earned wage access industry has different business models. One is employer-integrated, which generally allows employees to receive their paychecks earlier from their employer. Another model is direct-to-consumer, where a third-party service provider provides funds to the consumer, without direct involvement from the employer. In this instance, the consumer downloads an application, establishes an account with the service provider and links their checking account information.

HB 246 has a preferential treatment of the employer-based model, which if passed, would effectively leave the consumer with limited options to make the best decisions for themselves and their families. Additionally, the continued development of financial

¹ <https://meric.mo.gov/data/cost-living-data-series>

technology will lead to new business models to emerge. If strict regulation is crafted around a preferred model, this may hinder innovation in this space and again, leave consumers with limited options.

Because earned wage access is an emerging fintech service, we recommend the committee take reasonable steps to fully understand the scope of this service – like looking at the characteristics of each business model and what draws consumers to them. The committee should solicit the input of stakeholders like consumers, service providers, and non-profit organizations to accurately capture earned wage access' impact on the state.

Earned Wage Access Differs from Traditional Lending

Additionally, we suggest revising the interpretation of tips and fees as interest charges, since earned wage access is not a loan – it operates on the principle of allowing workers to access their own wages before the traditional payday. It is not a credit-based service either, and the funds accessed are derived from wages already earned by the individual. This clear distinction is important to the nature of earned wage access and sets it apart from traditional lending.

Service providers do not engage in lending-related activities such as pulling credit reports, underwriting, assessing fees based on creditworthiness, charging interest, or imposing origination fees. There is also no credit reporting or any form of collection activity associated with delinquent earned wage access accounts. In essence, earned wage access is the opposite of a loan provider, providing a straightforward way for individuals to access their own income as an alternative to traditional, high-cost financial products. Misrepresenting earned wage access as a loan product will mislead consumers and impact the ability for service providers to continue providing low-or-no-fee services for Marylanders.

Families working paycheck to paycheck are currently beholden to the 2-4 week pay cycle, trapped in a system that does not account for real life factors that cannot wait for payday. Marylanders deserve flexible financial options, which is why I urge you to oppose HB 246. With the right regulatory approach framework, EWA has an opportunity to make a greater impact by providing a service that meets the consumer where they are. Like many other innovations in fintech, consumer choice with EWA will allow workers to vote with their pocketbooks and choose the service that is best for them and their budget.

Thank you.

Immediate Maryland Testimony - 1-23-2024.pdf

Uploaded by: Matt Pierce

Position: UNF

Immediate

TO: Chair, Economic Matters Committee

RE: House Bill 246

DATE: January 23, 2024

SUBJECT: Testimony from Immediate Solutions, Inc

Testimony

Thank you Chair and Committee members for the opportunity to speak today.

My name is Matt Pierce, Founder and CEO of Immediate, a Financial Wellness and Earned Wage Access company. We share the Committee's goal of increasing consumer protections and enacting safeguards, but respectfully oppose House Bill 246 due to the inclusion of Earned Wage Access as a lending product.

We started Immediate with the mission to combat predatory lending. Our system is designed to contract with employers as an extension of their payroll to allow employees access to their earned but unpaid wages.

There are multiple free options for employees to access their earned funds but often employees need earnings right away to pay a bill on time or fill their gas tank to get to work and will need their money within a few minutes. There is a flat, nominal fee to receive their funds immediately due to the costs incurred to move those earnings.

We have found that over 85% of usage has been for needs-based items with the top uses of funds being Bills, Groceries, Transportation, and Housing.

Since these are earnings the employee has a legal right to, the wages they are accessing don't constitute a loan. Unlike credit products, we do not pull credit, report employees to creditors, or have recourse in any way for helping facilitate the access for the employee.

Earned Wage Access is a responsible alternative to a loan and the inclusion of it in these House Bills will negatively impact the people of/workforce in Maryland who rely on it for their basic needs. Our request is that we can have the opportunity to collaborate with the Committee on a new framework to regulate EWA under its own financial product and not as a loan.

I thank you for your time and consideration today.

HB0246_AFC_Goldfeder.pdf

Uploaded by: Phil Goldfeder

Position: UNF



American Fintech Council Testimony

TO: The House Committee on Economic Matters
FROM: Hon. Phil Goldfeder, CEO, American Fintech Council
DATE: January 23, 2024
SUBJECT: House Bill 246

Position: Oppose.

Testimony:

Thank you Chair Wilson, Vice-Chair Crosby, and members of the House Committee on Economic Matters for allowing me the opportunity to testify in opposition to House Bill 246 (HB 246). My name is Phil Goldfeder, I am a former state legislator from New York and now continue in my public service as the CEO of the American Fintech Council (AFC).

During my time as a member of the New York State Assembly, it was crucial to ensure that my constituents could live their lives in strong mental, physical and financial health. As legislators, we are quick to answer the most important call to action: ensuring the families we represent are protected from harm and have the tools and resources they need to thrive in our communities and state. Every day, the families we represent are faced with new challenges that require strong and concise action for me in Albany, NY and for you, in Annapolis.

HB 246, as written, may be the most expedient path forward, but absolutely not the best solution. This bill represents an example of improperly applying an existing framework, in this case Maryland lending laws, to a new and distinct and responsible financial product of Earned Wage Access (EWA).

AFC's mission is to promote an innovative, transparent, inclusive, and customer-centric financial system by supporting responsible innovation in financial technology (Fintech) and encouraging sound public policy. To that end, we have developed a specific set of standards for determining what constitutes a responsible EWA provider.

Simply put, EWA is not a loan and should not be regulated as such. Shoehorning EWA into existing Maryland lending laws will allow the companies who are seeking to take advantage of families you represent to exploit loopholes in the existing regulatory framework. As I mentioned, the American Fintech Council believes in properly regulating Earned Wage Access. As we have successfully in other states, we commit to working with you to develop a new and distinct regulatory framework for EWA that only allows responsible actors to offer the product in Maryland. More than 100,000 Maryland residents have already utilized EWA as a safe, reliable

alternative to payday and predatory and they deserve to right to access the money they have already earned on their own terms.

In closing, I thank you again for the opportunity to raise my concerns regarding HB 246. My sincere hope is that we can find a path forward to draft pragmatic legislation that will establish the proper guardrails for the industry while allowing responsible EWA providers to offer their much-needed services across Maryland.

DailyPay Testimony - HB246 - Jan 2024.pdf

Uploaded by: Ryan Naples

Position: UNF



DailyPay, Inc. Testimony

TO: House Economic Matters Committee
RE: HB 246
DATE: January 23, 2024
SUBJECT: Testimony from DailyPay, Inc.

Position: Oppose

Testimony:

Good afternoon

Chair Wilson, Vice Chair Crosby, and members of the Economic Matters Committee thank you for the opportunity to provide opponent testimony on House Bill 246.

My name is Ryan Naples, and I serve as the Director of Public Policy at DailyPay, Inc. We are the leading provider of employer-integrated on-demand pay nationwide, partnering with nearly 500 in-state businesses in Maryland. Today, more than 62,000 Marylanders have used DailyPay's EWA service.

As an industry, I am joined today by several other providers of earned wage access. Together, we are testifying in opposition to House Bill 246.

As this committee knows, two-thirds of Americans live paycheck to paycheck. But bills and emergencies do not wait every two weeks or once a month for an employer to run payroll.¹

¹ SecureSave, January 25, 2023, Survey: Americans personal savings are plummeting as 74% are now living paycheck to paycheck (<https://www.prweb.com/releases/2023/01/prweb19128966.htm>).



Earned wage access is popular with Maryland workers today because it facilitates access to the wages they have earned but have yet to receive. This allows EWA users to manage their finances and access liquidity when unexpected expenses arise, such as medical bills. It gives employees an alternative to late fees, bank overdraft fees, and high-cost credit products.

EWA is popular with businesses because it reduces employee turnover, absenteeism, and filling open jobs. My company's own in-house surveys have found, that specifically, EWA is popular with employers because it reduces turnover by 45%, employee absenteeism by 38%, helps businesses and recruiters fill roles 52% faster, and employees are 3x more motivated to pick up extra shifts.

While each EWA company differs slightly, we share a few key characteristics.

1 - First, all EWA is based on wages earned. Workers can only access their own money they have already worked for. We are not providing credit.

2 - No EWA provider charges interest or late fees because our product is not a loan.

3 - All EWA products are also non-recourse. If an employer fails to make payroll, the risk is on the EWA provider, not the worker. There is also no requirement to repay, no collection activity, and no credit bureau reporting for non-payment.

4 - While there are usually some small costs associated with EWA, at least one "no-cost" option is offered by most EWA providers, such as through a debit card, or a next business day ACH bank transfer. A nominal fee of about \$3 for instant delivery to any bank account is also common.

Without EWA, available options to access funds quickly can be very costly, especially without good credit.



In 2021, DailyPay commissioned [independent research](#) that found the majority of our platform users previously relied upon costly financial strategies that harmed their financial health before gaining access to DailyPay. Specifically, 57% of our users had previously paid bills late, 49% had borrowed money from friends and family, 39% regularly overdrew their bank accounts and incurred a fee, 21% took out pay day loans, and 21% made a loan payment late or not at all.

For the 40% of our users who were frequent overdrafters, 97% of these individuals no longer did so after gaining access to EWA. This resulted in savings of approximately \$660 per year, per user, and the results were equally positive for the 21% of our platform users making loan payments late and the 57% of our users previously paying other bills late.

Independent research commissioned in 2022 [corroborated these findings](#) as well.

From February to May 2023, we tracked our high frequency users to better understand how EWA helps break cycles of debt. The data showed a 50% decline in high frequency usage after 4 weeks, an 80% decline by week 8, and within 12 weeks or 3 months, there was a 97% decline in high frequency usage.

Clearly, an extremely small portion of people use our platform often when they have an emergency, because it is a low cost or no-cost alternative to all other options available. This accurately depicts how EWA helps people break the debt cycle.

In December 2023, the Financial Health Network recently released a user study sponsored by DailyPay that spoke to users of any EWA product available. The study found people used EWA to pay bills due ahead of their paycheck or cover some other financial shortfall. Nearly all participants in the study did not view EWA as a loan. Instead, participants asserted that



EWA provided wages they had already earned, fundamentally different from borrowing against future earnings.

The participants also preferred EWA to alternatives and other short-term liquidity options, with one user adding that EWA allowed them “to access the liquidity they needed, while preserving their dignity.”

This is welcome feedback to the industry and we believe it is because our companies do the opposite of how lenders treat consumers. For example, since EWA is not credit, our industry conducts no underwriting and does not base its low transaction fees or access to wages on creditworthiness. We also do not charge these low fees in installments.

For these reasons as well, an APR rate, which would be misleadingly high even with our low fees, are incongruous to how EWA is structured. These rates therefore do not represent the actual cost and potential savings available to EWA users.

EWA is best regulated as a separate and distinct financial product because a credit designation is not the answer. HB 246 would in effect limit access to earned wage access, removing an important lifeline for Marylanders, and impacting the employers in the state who have come to use this product as an important tool to retain and grow their workforce.

Instead of passing HB 246 as written which we oppose, we respectfully request the opportunity to collaborate on a compromise that creates new regulatory oversight and licensing for the EWA industry. Our request is that the compromise allows EWA to continue to be utilized by those presently accessing this service.

Thank you for your time and I would be happy to take any questions.

HB0246_HB0254_Financial Technology Association.pdf

Uploaded by: Samantha Russell

Position: INFO



**Statement for the Record from the
Financial Technology Association**

**Before the
Maryland House Economic Matters Committee
January 23, 2024**

Chair Wilson, Vice Chair Crosby, and Members of the Committee, thank you for the opportunity to submit written testimony on HB 246 and 254.

FTA is a non-profit trade association representing leading digitally-native financial services companies, including earned wage access providers and consumer and commercial lenders. Our members support policy efforts that prioritize regulatory frameworks that spur innovation while safeguarding consumers. We appreciate the opportunity to testify today as the bills being considered could impact our members and have unintended consequences for Maryland residents.

First, HB 246 could curtail access to Earned Wage Access (EWA) products. Today, EWA products help tens of thousands of Marylanders – and millions of consumers nationwide – better manage cash flows between pay cycles while avoiding traditional high-cost and predatory alternatives. A survey of nearly 5,000 national EWA customers found that ninety-three percent (93%) had a greater sense of financial control after using EWA, and ninety-one percent (91%) understand how the service works.¹

Furthermore, EWA, unlike credit products, is nonrecourse and there are no late fees, no interest rates, no evaluation of creditworthiness, and no impact on a consumer's credit score. While FTA EWA members are supportive of regulation, it's important that any regulatory framework reflect these consumer-centric elements.

When a new, innovative product is working well for consumers—and not subject to widespread complaints—we believe it is important for policymakers to take a calibrated approach to regulation. Because EWA products are not credit, we believe a purpose-built regulatory framework is more beneficial to—and protective of—consumers than force-fitting EWA products into legacy legal frameworks.

Therefore, we support the creation of an EWA registration and disclosure framework that prevents mandatory fees and collections proceedings. This approach would mitigate any perceived consumer risks, while not prematurely imposing ill-fitting requirements on an area of financial services innovation that is

¹ FTI Consulting, Re: Direct to Consumer Earned Wage Access User Survey Key Findings (July 7, 2021), available at <https://www.earnin.com/assets/pdf/FTI-Earned-wage-access-memo.pdf>.

benefiting consumers. To that end, numerous industry participants have come together to endorse such a framework as it has significant consumer protections and is intended to ensure that these products remain consumer-friendly, consumer-protective, non-abusive, and non-predatory. This framework has already been successfully adopted in Nevada and Missouri.² We would be happy to work with you on collectively moving a similar framework forward.

In addition, we have concerns about elements of HB 254 that would significantly impact bank-fintech partnerships. The bill contains provisions that will treat the non-bank in a bank partnership as the lender for state law purposes if it has the predominant economic interest in an underlying loan. If passed as drafted, this bill will upend fundamental and critical banking practices and restrict access to credit for low to moderate income consumers as well as underserved small businesses.³ As described in further detail by a recent Federal Reserve study, “these [bank-fintech] partnerships could help to move us toward a more inclusive financial system.”⁴

With the above potential consumer impacts in mind, we would be happy to work with the Committee to find a path forward that addresses Member concerns while retaining access to covered financial products and services. We appreciate the opportunity to provide our views on these important bills and look forward to working with you.

² Missouri Senate Bill 103 (2023), available at https://senate.mo.gov/23info/BTS_Web/Bill.aspx?SessionType=R&BillID=44662, and Nevada Senate Bill 290 (2023), available at <https://www.leg.state.nv.us/App/NELIS/REL/82nd2023/Bill/10146/Overview>.

³ It is necessary to the functioning of bank lending and credit origination that banks have the ability to subsequently sell or transfer loans in order to generate the capacity for further lending; the predominant economic interest test will force banks to retain loans, thereby increasing risk exposure and reducing their capacity to extend further credit. Furthermore, if non-bank purchasers of loans cannot enforce those loans on the same terms as the originating bank, the secondary market demand for such loans will decrease or disappear, and banks will no longer originate them. See Honigsberg C., Jackson R. J., and Squire R. (November 2017). *How Does Legal Enforceability Affect Consumer Lending? Evidence from a Natural Experiment*, University of Chicago Journal of Law and Economics, vol. 60 no. 4; available at <https://www.journals.uchicago.edu/doi/abs/10.1086/695808>

⁴ Chernoff, A. and Jagtiani, J. (2023), *The Role of Bank-Fintech Partnerships in Creating a More Inclusive Banking System*, available at <https://www.philadelphiafed.org/-/media/frbp/assets/working-papers/2023/wp23-21.pdf>. See also Ellichehausen, G. and Simona, H. M. (2023), *FinTech and Banks: Strategic Partnerships That Circumvent State Usury Laws*, Finance and Economics Discussion Series 2023-056, Federal Reserve Board, Washington, D.C. ISSN 1936-2854 (Print) ISSN 2767-3898 (Online), available at <https://www.federalreserve.gov/econres/feds/files/2023056pap.pdf>, which shows that state-chartered banks that can effectively export their home state interest rates expand access to responsible credit products for near-prime and low-prime consumers.