Center for Responsible Lending

Earned Wage Advance: States Should Regulate as Credit, Protect Consumers

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Earned Wage Advance (EWA) providers market a means for workers to access their wages before payday, usually for a fee. In reality, there are two very different types of products that are marketed as EWA, one of which—sometimes called "faux EWA"—is simply a payday loan dressed up in "fintech" marketing.

While low-wage workers can benefit from true EWA programs that are properly designed and regulated, they can instead be harmed when products are allowed into the marketplace without guardrails that keep their use and cost within reasonable bounds.

States should regulate all EWA products as credit and require compliance with consumer protections that prevent the predatory lending debt traps commonly associated with payday loans.

Scope and Impact of Earned Wage Advance

The EWA market nearly tripled from 2018 to 2020, growing from **$3.2 billion to $9.5 billion.**

EWA borrowers are typically hourly, relatively low-wage workers. A recent Government Accountability Office study (GAO) found that the vast majority of EWA users report making less than $50,000 a year. One company reported that 78 percent of its users made under $25,000 per year.

Hispanic adults and younger workers are more likely to use EWA than the population as a whole, with use among the general population at 14%, compared to 25% for Hispanic people, according to an American Banker survey of U.S. adults.

Many low-wage workers are frequent users of EWA products. The GAO report found that users of a direct-to-consumer EWA company used the service between 26 and 33 times a year.

What is an Earned Wage Advance?

EWA companies offer employees advances on their pay, often for a fee. To be repaid on payday, these are short-term loans.

Some EWA companies contract with employers, who agree to provide payroll records to the EWA company. Employees who wish to access their wages early use an app to request funds. The EWA company checks the employer records to make sure the employee is due earned but unpaid wages. The EWA company provides funds in accordance with its policies, often charging the employee a fee. On payday, the EWA company is repaid by a deduction from the employee's paycheck.

When EWA products are offered to employees for free (as when the employer bears the cost of offering this benefit), they can offer an attractive, affordable alternative to payday loans. Even then, it is critical that these loans be repaid by payroll deduction, to avoid triggering overdraft and insufficient funds fees.

When these products impose costs on consumers, they are particularly concerning. In some cases, EWA companies call them free but require a fee to expedite the advance. EWA customers likely need the money immediately, so it would be typical for them to pay the fee. In addition, data from the GAO and the Financial Health Network show that consumers who use these advances tend to use them frequently. This is concerning because where 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 benefit drawing borrowers into a costly, long-term trap.

Regulators have a duty to ensure that EWA products are not piling more debt onto families in financial trouble.

"Faux" Earned Wage Advance Products Are Payday Loans And Must Also Be Regulated As Credit

EWA providers that do not contract with employers could be termed "Faux" EWA providers and their product is high risk. In this transaction, a company markets a payday advance directly to the consumer and collects repayment by debiting their bank account. Since faux EWA products are not connected to an employer's payroll system, they require access to the borrower's checking account to repay the loan. This is indistinguishable from payday lending, and policy makers should not allow lenders to evade state consumer protections simply by naming their products Earned Wage Advance, or Earned Wage Access, another term used for the same product.

These companies often distinguish the true cost of their product by marketing their loans as "free" while soliciting so-called "tips," which can be very high relative to the amount of the loan. A representative from the company Earnin has stated that **tips make up some 40% of Earnin's revenue**, and that their business model would have to change significantly if the practice were regulated. This is evidence that their business model depends on loans for which the true cost is often going to be higher than advertised or disclosed, with an APR that would exceed usury caps in many states. The representative also testified that Earnin suggests a default tip of up to $11 on $100 advanced, a shockingly high cost for such a short-term loan, which can be as short as just a few days.

Faux EWA programs, marketed directly to the customer and requiring access to their checking account for repayment, can also trigger non-sufficient funds and overdraft fees when the borrower lacks sufficient funds for repayment, a common condition for millions of families living paycheck-to-paycheck. Litigation against Earnin (resulting in a $3 million settlement) describes how when a borrower took out multiple Earnin advances within the same pay period, the repayment attempt for each individual advance triggered an NSF fee or an overdraft fee. The borrower was charged four $29 fees within three days, totaling $116, all directly triggered by Earnin's collection attempts.

If faux EWA providers are given a carveout from state laws, we should expect payday lenders – even in states whose usury limits currently keep payday lenders out – to begin attempting to operate within those carveouts.

Policy Recommendations

States should regulate true EWA programs under their state credit laws. Any advance on an employee's paycheck is a form of credit, and should be regulated as such to prevent unfair, harmful, and predatory terms.

States should treat Faux EWA products that are not employer-provided as credit. The federal Consumer Financial Protection Bureau ("CFPB") has announced that it "plans to issue further guidance soon" about the application of federal law to EWA products, including Faux EWA products.

States and the CFPB must protect consumers by regulating these products as follows:

- States should regulate these lenders under their state credit laws.
- The CFPB should actively supervise these lenders, under either its authority to supervise payday lenders or its authority to supervise nonbank lenders that pose a risk to consumers.
- States and the CFPB should affirm that "tips" on extensions of credit are evasive attempts to disguise interest charges.
- States and the CFPB should regulate as credit all fees charged to the consumer as to ensure evolving fee structures are not being used to evade regulation as credit.