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

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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, 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. 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] In an analysis of millions of transactions provided by employer-integrated EWA lenders, the Consumer Financial Protection Bureau (CFPB) found that employers subsidized less than 5% of total fees paid by consumers.[7]

Direct-to-Consumer Model

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 users' 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 often 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.[8] 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.[9]

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.[10] 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.[11] 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.[12] 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.[13] 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.[14] CRL also found that 75% of consumers are taking out EWA loans on the same day, or the day after, making a repayment.[15] 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.[16]

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.[17]

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.[18] 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:

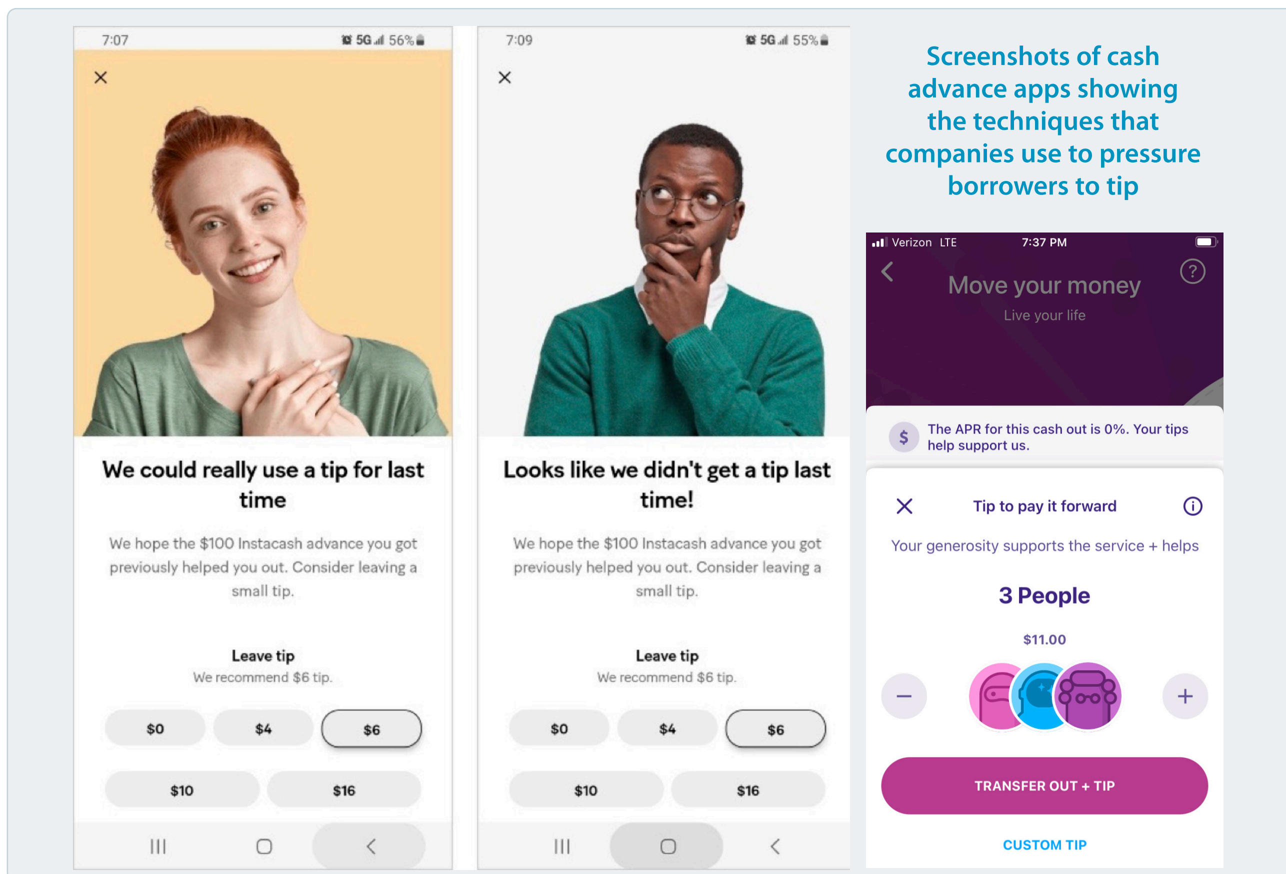
New car loans
7%
Credit card plans
21%
Wage-based cash advances that don't request tips
331%
Wage-based cash advances that request tips
334%
Payday loans
353%

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 Gedye, *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. The CFPB found that 96% of fees paid by consumers who use employer-integrated EWA were for expedite fees.[19]

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." [20] 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.[21]



Screenshots of cash advance apps showing the techniques that companies use to pressure borrowers to tip

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 has resulted in costly overdraft fees for consumers. CRL found that overdrafts on consumers' checking accounts increased 56% on average after starting to use an advance product.[22] The transaction analysis revealed that low-to-moderate EWA users doubled the number of overdraft fees over a three-month period after taking out EWA loans.[23] 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.[24]

Loan Stacking

Because direct-to-consumer loans are not tied to employer payroll information, borrowers may receive loans from multiple lenders at once. Nearly half (48%) of consumers use multiple EWA companies, often simultaneously.[25] A survey of low-income workers 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.[26] 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.[27] Personal data is also shared with a host of bank entities, whose individual privacy policies also apply to that shared information.[28] Another lender shares personal data with third parties so that those entities may advertise unrelated products and services to customers.[29]

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

In July 2024, the CFPB issued a proposed interpretive rule explaining that paycheck advance products are subject to the federal Truth in Lending Act (TILA). The proposed rule affirms that paycheck advance loans, regardless of their characterization by lenders, are credit products subject to TILA disclosure requirements, and that tips and expedite fees are finance charges. The proposed interpretive rule rescinded a 2020 advisory opinion published by the CFPB, which exempted a very narrow class of EWA loans from the scope of TILA. This earlier advisory opinion was misused by EWA lenders to mislead state legislatures into believing that the CFPB had determined that EWA loans are not extensions of credit subject to credit laws. The substance of the interpretive rule was supported by a robust analysis of millions of transactions furnished to the CFPB by eight companies that issue EWA loans.

This rule provides much needed clarity around the regulation of these credit products and applies the same disclosure framework to EWA.[30] One hundred and sixty consumer, labor, civil rights, faith-based, and community organizations also submitted a letter in support of the rule.[31]

In addition, industry has backed a bill in the House of Representatives that would exempt EWA loans from TILA. That bill has not advanced to a floor vote.

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. During the rulemaking process, however, the proposed rule was amended in several ways. The current version deems EWA products to be loans and requires lenders to register with DFPI, but it does not require lenders to comply with the state's interest rate cap. DFPI

does not currently require compliance with the state's interest rate cap, not because it deemed compliance to be bad policy or legally impermissible, but instead because of the unique procedural requirements of California rulemaking that prevented the agency from imposing that requirement in this specific rulemaking.

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."[32] The Connecticut Department of Banking subsequently released guidance confirming that this language covers most "earned wage access advances."[33]

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." [34] The Connecticut Department of Banking subsequently confirmed that this language covers the "tips" that EWA lenders and other fintech companies receive.[35]

Connecticut's new law went into effect on January 1, 2024, resulting in a shift in the marketplace in the state, with lenders offering only products that comply with the rate cap for all small dollar loans in the state. In response to industry pressure following the 2023 changes, some Connecticut lawmakers sought to pass a bill that would authorize employer-integrated only products, with caps on fees that would exceed the state's interest rate caps. That bill—opposed by industry in its original form due to its limitations and cost caps (despite allowing loans that would exceed the state's interest rate cap)—failed to pass.

Maryland's state financial regulator has also 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.[36] 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."[37]

Following this guidance, during the 2024 legislative session, the Maryland Office of Financial Regulation introduced a robust bill to regulate EWA with vital guardrails, including interest rate caps and APR disclosures. The bill was heavily opposed by EWA lenders and ultimately did not pass. Since then, Maryland has opened an investigation into EWA and requested data from several EWA companies on their operations, including the number of customers they serve, the number of transactions performed, and their total earnings. The stated aim of the inquiry is to enforce existing state laws.

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.[38] 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."[39]

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,[40] Kansas,[41] Mississippi,[42] Missouri,[43] Nevada,[44] New Jersey,[45] New York,[46] North Carolina,[47] South Carolina,[48] Texas,[49] Vermont,[50] Virginia,[51] and Wisconsin.[52] 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.[53]

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).[54] The 2024 legislative season saw industry-backed bills introduced in seven states, and three states joined Nevada and Missouri in passing industry-backed EWA bills. South Carolina and Kansas codified the high-cost business model, permitting various fees, subscription charges, and tips—with no cost limitations—and adopting the legal fiction that EWA is not a loan. Wisconsin also passed an EWA bill, authorizing limitless fees and tips without declaring whether EWA is a loan under its laws. Like Nevada and Missouri, these three states still allow traditional payday loans with triple digit APRs and have generally weak consumer protection laws. Thus, the bills add another triple-digit APR loan product to the payday loans currently permitted under the laws of these states. Lenders in these states must still comply with TILA disclosure requirements per the CFPB proposed interpretive rule discussed above.

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.[55] 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 should finalize its Proposed Interpretive Rule, which makes clear that all "tips" and expedite fees paid by the consumer are finance charges under TILA. In a joint comment letter on the Proposed Interpretive Rule, CRL and the National Consumer Law Center praised the CFPB's proposal, provided suggestions to strengthen the rule, and highlighted anticipated evasions that may require additional rulemaking and enforcement action.[56] The groups also called for the CFPB to continue monitoring the market for evasions to ensure compliance with the law and to identify, prevent, and correct unfair and deceptive practices.

At the state level, states should follow the determination of the CFPB by affirming that all monies paid as part of a cash advance transaction, including instant access fees and "tips," are finance charges and cannot be used to evade regulation as credit. Joint guidance from CRL and the National Consumer Law Center 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.[57] 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 data show 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. The CFPB has determined that these products are loans, subject to existing federal laws governing credit. States should regulate these products accordingly, under existing state 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

1 Ltr. from NCLC to Chair Michael Marcotte re H 87 An act relating to earned wage access service providers (March 13, 2023), *available at* https://legislature.vermont.gov/Documents/2024/WorkGroups/House%20Commerce/Bills/H.87/Witness%20 Documents/H.87~Lauren%20Saunders~Letter%20on%20Behalf%20of%20the%20National%20Consumer%20Law%20 Center%20and%20Vermont%20Legal%20Aid%20to%20Chair%20Marcotte~3-14-2023.pdf

2 *See* The ClearingHouse, *Simple, Transparent, Uniform Pricing for All Financial Institutions* (showing cost of RTP instant credit transfer at $0.045), *available at* https://www.theclearinghouse.org/-/media/new/tch/documents/payment-systems/rtp_-pricing_02-07-2019.pdf

3 Nakita Q. Cuttino, *The Rise of "Fringetech": Regulatory Risks in Earned Wage Access,* 115 Nw. U. L. Rev. 1515, 1511 (2021); Vt. House Com. on Comm. and Econ. *House Commerce 02-14-2023 1:00 pm* at 2:23:29, YouTube, available at https://youtube.com/clip/UgkxUizk9XuDLJZB2oRJR_XFkvjbZto4C57q?si=IjYHtSXJyjTO5ZGX

4 Cuttino, *supra* note 3, at 1521.

5 Marshall Lux and Cherie Chung, *Earned Wage Access: An Innovation in Financial Inclusion?,* M-RCBG Associate Working Paper Series | No. 214 (June 2023) at 15, *available at* https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/214_AWP_final_2.pdf

6 *Id.* at 34 ("While employers are given the option to cover [expedite fees] on their employees' behalf, only about 15% of Wagestream's corporate clients currently pay for even part of the fee.").

7 Data Spotlight: Developments in the Paycheck Advance Market | Consumer Financial Protection Bureau (consumerfinance.gov).

8 Vt. House Comm. on Com. and Econ., *supra* note 3 at 2:16:45, *available at* https://youtube.com/clip/Ugkx7fEU-NXc2ZqgurJSRZTHXm_rpCNHzVcU?si=I68xghXXHN6jXCP3

9 *See generally* NCLC, *Consumer Credit Regulation* § 9.10.4 (3d ed. 2020).

10 Devina Khanna and Arjun Kaushal, *Earned Wage Access and Direct-to-Consumer Advance Usage Trends,* Fin. Health Network (April 2021) at 2, available at https://cfsi-innovation-files-2018.s3.amazonaws.com/wp-content/uploads/2021/04/26190749/EWA_D2C_Advance-_sage_Trends_FINAL.pdf

11 *See Truth in Lending,* 65 FR 17129, 17129 (March 31, 2000).

12 U.S. Gov't Accountability Off., GAO-23-105536, *Financial Technology Products Have Benefits and Risks to Underserved Consumers, and Regulatory Clarity Is Needed* (2023) at 22.

13 *Id.* at 23-24

14 CRL, *Survey Summary of Earned Wage Advance and Cash Advance Apps* (August 2023), *available at* https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-ewa-research-factsheet-aug2023.pdf

15 crl-not-free-hidden-costs-apr2024.pdf (responsiblelending.org

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