

# Earned Wage Access

## States Should Regulate As Credit, Protect Consumers

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Earned or Early Wage Access (EWA) products offer workers access to their wages before payday, usually for a fee. While low-wage workers can benefit from EWA programs that are properly designed and regulated, they can instead be harmed when products are allowed into the marketplace without guardrails keeping their use and cost within reasonable bounds.

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

The federal Consumer Financial Protection Bureau's Acting General Counsel issued a [statement](#) on January 18, 2022, clarifying that one federal law (the Truth in Lending Act) requiring disclosure of APR does not apply to EWA products that are offered to consumers for free (free products cannot collect "tips" or voluntary payments). Consumer advocates have asked CFPB to go even further in ensuring consumer protections apply to these products. (See [October 2021 letter](#) from the National Consumer Law Center (NCLC) and CRL and [Bloomberg report](#)).

### What is Earned Wage Access?

EWA companies offer employees advances on their pay, often for a fee. 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 has 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. These products are credit, offering people money today to be repaid at a later date, and should be regulated as such.

### Scope and Impact of Earned Wage Access

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. 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. The EWA provider PayActiv [reports](#) that 500,000 Walmart employees have used the product.

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 a payroll deduction, to avoid triggering overdraft and insufficient funds fees. These products, whether offered free of charge or for a fee to employees, are clearly credit and they should be regulated as such to prevent misuse. Regulators have a duty to ensure that EWA products are not piling more debt onto families in financial trouble.

While free products may be offered, many employees are being charged fees to use these services. And [data](#) show that consumers who use these advances tend to use them frequently, which means costs can add up. Where one advance is taken out simply 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 exactly how payday loans work, with a very short-term benefit drawing borrowers into a costly, long-term trap.

## Policy Recommendation

***States should regulate 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.

### **“Faux” Earned Wage Access Products Are Payday Loans And Must Also Be Regulated As Credit**

A different but related product, “faux” Earned Wage Access, is decidedly perilous. In this transaction, a company markets a payday advance directly to the consumer and collects repayment by debiting their bank account. 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 Access.

There is evidence that faux EWA programs, marketed directly to the customer and with access to their checking account for repayment, triggers 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. [Litigation](#) against Earnin (resulting in a \$3 million settlement) describes how when a borrower took out multiple Earnin advances within the same pay period, each individual 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.

Faux EWA products are provided by “fintechs” that attempt to position themselves as EWA providers, but are not connected to an employer's payroll system. Instead, faux EWA demands access to the borrower's checking account to repay the loan. This is not an EWA provider and poses heightened risks to consumers. Therefore, faux EWA providers should not be given the carveouts from credit laws they seek.

Not only do current faux EWA providers pose risks, but if they 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 treat Faux EWA products that are not employer-provided as credit.***

- States should regulate these lenders under their state credit laws.
- States and the CFPB should affirm that “tips” on extensions of credit are evasive attempts to disguise interest charges.
- States and the CFPB should monitor use of “participation fees” to ensure they are not being used to evade regulation as credit.
- CFPB should supervise these lenders pursuant to its authority under Dodd-Frank to supervise payday lenders regardless of their size.