

## Earned Wage Advance (EWA)

**Early wage advance products—which allow workers to access wages they have already earned ahead of the regular payday—another form of payday lending targeted to workers?**<sup>1</sup>

Data collected in 2021 by the California Department of Financial Protection and Innovation (DFPI) on earned wage advances and other fintech payday loans show a cycle of repeat use and high costs typical of traditional payday loans.<sup>2</sup> Their data findings<sup>3</sup> include:

There was a total advanced amount of \$765 million [in 2021] reported by responding companies.

- For the 5.8 million transactions completed by tip-based companies, providers received tips 73% of the time.
- The average annual APR was 334% for tip companies and 331% for the non-tip companies.
- Tips generated a total of \$17.55 million in revenue, and optional fees generated \$6.24 million.
- When a tip was provided by the consumer, the average tip amount was \$4.09.
- Most advance amounts (80%) are between \$40 and \$100.
- The average quarterly growth rate for EWA transactions was 17%.
- The average time for consumers to repay was 10 days.
- Among the companies that reported the advanced amount as percent of paycheck, it ranged from 6% to 50% of pay.
- The transaction point of receiving and repaying the funds represented 67% of complaints from EWA customers

In October 2023, the Center for Responsible Lending (CRL) and the National Consumer Law Center (NCLC) jointly released a short (two-page) document “**State Recommendations for Earned Wage Advances and Other Fintech Cash Advances**”.<sup>4</sup>

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

<sup>1</sup> See <https://www.nomoreloansharksaz.org/Earned-Wage-Advance/> for factsheets, news and updates.

<sup>2</sup> Data on Earned Wage Advances and Fintech Payday Loan “Tips” Show High Costs for Low-Wage Workers, NCLC, April 2023 at: <https://www.nclc.org/wp-content/uploads/2023/04/Data-on-Earned-Wage-Advances-and-Fintech-Payday-Loan-22Tips22-Show-High-Costs-for-Low-Wage-Workers.pdf>

<sup>3</sup> 2021 Earned Wage Access Data Findings, Analysis completed Q1 2023, at: <https://dfpi.ca.gov/wp-content/uploads/sites/337/2023/03/2021-Earned-Wage-Access-Data-Findings-Cited-in-ISOR.pdf>

<sup>4</sup> [https://www.nclc.org/wp-content/uploads/2023/10/202310\\_Issue-Brief\\_State-Recommendations-for-Earned-Wage-Advances-and-Other-Fintech-Cash-Advances.pdf](https://www.nclc.org/wp-content/uploads/2023/10/202310_Issue-Brief_State-Recommendations-for-Earned-Wage-Advances-and-Other-Fintech-Cash-Advances.pdf)

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.

Their recommendations are straightforward.

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.

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.<sup>5</sup>

### **Letter to the Arizona Attorney General**

In January 2023, NCLC, along with the Center for Economic Integrity (CEI), the William E. Morris Institute for Justice, and Wildfire, sent a letter<sup>6</sup> to the new Arizona Attorney General Kris Mayes urging her to rescind Opinion Letter 122-005 (R22-011) regarding Earned Wage Access Products<sup>7</sup>, which was adopted in Attorney General Mark Brnovich’s waning days on December 18, 2022. The letter explains that the opinion is not legally sound and is overbroad. Additionally, it may carve a potentially large loophole in Arizona’s strong anti-predatory lending laws.

### **The Federal Landscape**

In November 2020, guidance issued by the Consumer Financial Protection Bureau (CFPB) exempted a narrow class of EWA loans from the Truth in Lending Act (TILA).<sup>8</sup>

The guidance applies only to products integrated into employer timekeeping systems; and most importantly, 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.”** Industry has misused this guidance, wrongly arguing that it exempts EWA more generally from TILA. The CFPB has said that further guidance is forthcoming, either later this year or in 2024.

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<sup>5</sup> Survey Summary of Earned Wage Advance and Cash Advance Apps, CRL, August 2023, at: <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-ewa-research-factsheet-aug2023.pdf>

<sup>6</sup> <https://www.nomoreloansharksaz.org/gallery/2023-01-24%20AZ%20AG%20EWA%20letter.pdf>

<sup>7</sup> <https://www.azag.gov/opinions/i22-005-r22-011>

<sup>8</sup> [https://files.consumerfinance.gov/f/documents/cfpb\\_advisory-opinion\\_earned-wage-access\\_2020-11.pdf](https://files.consumerfinance.gov/f/documents/cfpb_advisory-opinion_earned-wage-access_2020-11.pdf)