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BY ELECTRONIC MAIL

Bryan Steil, Chairman
House Subcommittee on Digital Assets, Financial Technology, and Artificial Intelligence
c/o David Goldfarb (by email)

Stephen F. Lynch, Ranking Member
House Subcommittee on Digital Assets, Financial Technology, and Artificial Intelligence
c/o Grace Ryan (by email)

FinTech Payday Lending

Dear Representatives Steil and Lynch:

We, the undersigned attorneys general for New York, Arizona, California, Connecticut, Delaware, the District of Columbia, Hawaii,[1] Illinois, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, Vermont, and Washington write in opposition to the inaptly named "Earned Wage Access Consumer Protection Act" (the "Bill"), H.R. 9330, a draft of which we understand may soon be marked up before the House Financial Services Subcommittee on Digital Assets, Financial Technology, and Artificial Intelligence.[2] The Bill would federally regulate online and mobile lenders who extend payday loans through apps or websites and call it "earned wage access." But the bill does not protect consumers; instead it removes these loans from both federal and state oversight, leaving consumers vulnerable to misinformation and usury.

The Bill creates a loophole for a particular type of payday loan, referred to herein as an E-payday loan. E-payday lenders offer consumers cash a few days before payday in exchange for "fees" and "tips," contingent on the consumer agreeing to repayment from their employer or through their bank account. By naming this product something other than credit or a loan, lenders

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1 In addition to the Hawaii Attorney General, the Hawaii Office of Consumer Protection joins in this comment.

2 *See* https://www.congress.gov/bill/119th-congress/house-bill/9330/text.

attempt to circumvent the basic protections provided to consumers by the Truth in Lending Act ("TILA"), the Electronic Fund Transfers Act ("EFTA"), and state consumer protection laws.

The Bill creates a special exemption for E-payday loans from the Truth in Lending Act, which requires specific disclosures and rescission rights. It does so by allowing these lenders to call interest "fees" or "tips" making it difficult for consumers to understand the true cost of the loans and comparison shop. Further, by declaring that advances made by these lenders are not "credit" or "loans" for purposes of state or federal law, the Bill gives lenders the ability to use wage garnishment, which in New York, for example, requires a judicial judgment and order,[3] and access to consumers' bank accounts for debt collection, which conflicts with the EFTA's prohibition on credit being contingent on access to borrowers' bank accounts[4]. Finally, and most significantly, the Bill strips States of their sovereign authority to regulate consumer finance, including through usury laws, effectively converting federal law from the floor of consumer protection, beneath which no state may fall, into a ceiling, above which no state may offer no protection. In New York, for example, this means that the Bill will supplant well-established, centuries-old limits on lending that the State has successfully used to regulate predatory payday lending. The Bill will offer consumers no meaningful protection from high-cost debt that these technology-based lenders are already imposing throughout New York and the country. The Bill harms low-wage workers and undermines important consumer protections and State rights.

"Earned wage access" is a Payday Loan

Last year, the New York State Office of the Attorney General brought enforcement actions against two of the largest lenders in this industry, DailyPay and MoneyLion, following multi-year investigations into their operations.[5] Those investigations found that these and other "earned wage access" providers indisputably make loans. They lend sums of money, and in exchange workers enter into agreements to facilitate repayment of amounts lent, plus fees and other charges.[6] Industry proclamations that this transaction—I give you an amount of money today, you repay me that amount plus interest at a later date—is not a loan because the lenders have no "recourse" is belied by the facts. Workers who enter into loan agreements must agree to one of two forms of collection: (i) instruct their employers to send their paychecks to lenders first,[7] guaranteeing the lenders' cut before workers receive their pay, effectively operating like court-

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3 *See, e.g.,* N.Y. Civ. Proc. L. & Rules 5230-31.

4 It is unlawful under EFTA to condition the extension of credit direct access to bank accounts. 15 U.S.C. § 1693k ("No person may . . . condition the extension of credit to a consumer on such consumer's repayment by means of preauthorized electronic funds transfers"); 12 CFR 1005.10(e).

5 New York State Office of the Attorney General, *Attorney General James Sues Payday Lending Companies for Exploiting Workers with Illegal Loans* (Apr. 14, 2025), *available at* https://ag.ny.gov/press-release/2025/attorney-general-james-sues-payday-lending-companies-exploiting-workers-illegal. *See* Verified Petition, *People v. DailyPay, Inc.*, Index No. 154851-2025 (N.Y. Sup. Ct.), *available at* https://ag.ny.gov/sites/default/files/court-filings/state-of-new-york-v-dailypay-petition-2025.pdf ("DailyPay Pet."); Complaint, *People v. MoneyLion Inc.*, Index No. 451303-2025 (N.Y. Sup. Ct.), *available at* https://ag.ny.gov/sites/default/files/court-filings/state-of-new-york-v-moneylion-complaint-2025.pdf ("MoneyLion Compl."). Copies of the pleadings and any other court papers will be made available upon request.

6 DailyPay Pet. ¶¶ 64–92; MoneyLion Compl. ¶¶ 36–55.

7 DailyPay Pet. ¶¶ 64–92.

ordered wage garnishment; or (ii) give lenders access to their bank accounts,[8] enabling lenders to be first-in-line for new deposits. As a result, lenders' collections are virtually guaranteed,[9] leaving no need for "recourse" through traditional debt collection for unsecured loans

E-payday lenders argue that Congress and other regulators should not focus on APR but rather on the dollar amounts charged in each transaction. The Bill attempts to codify the legal fiction that these are not extensions of credit by including a provision obscured as a "Rule of Construction" that states: "Fees or tips paid by a consumer to an earned wage access provider may not be construed to be a 'finance charge' as such term is defined in the Truth in Lending Act." Congress adopted APR as the relevant benchmark for consumers to counter precisely this kind of industry obfuscation: APR represents a single, understandable benchmark across all forms of consumer credit—mortgages, auto loans, credit cards, and payday loans—thereby empowering consumers to readily understand the true cost of credit in and across all transactions.[10]

Every federal court to have considered the question of whether "earned wage access" lenders make interest-bearing loans has answered in the affirmative.[11] These modern-day, technology-enabled providers plainly are engaged in the lending of money.[12] There is no question these lenders are extending credit for which consumers must pay a finance charge and their operations should be regulated as such under federal and state laws.

States Regulate Payday Lending

Payday lending has long been governed by state law. For example, New York's interest-rate caps, in the form of its usury prohibitions, "extend back to at least 1717" and reflect the state "legislature's consistent condemnation of the evils of usury."[13] These prohibitions have been "construed broadly" by both the state legislature and New York's Court of Appeals throughout their history, reflecting a recognition that "the usurer usually seeks to conceal the usury, and to accomplish his purpose by indirect methods."[14]

Congress and federal law have long respected state authority to regulate usurious lending, including payday loans. Outside of the Military Lending Act, federal law contains no limits on interest rates, and Congress in Dodd-Frank expressly prohibited the CFPB from adopting

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8 MoneyLion Compl. ¶¶ 36–55.

9 DailyPay Pet. ¶ 92; MoneyLion Compl. ¶¶ 48–51.

10 Center for Responsible Lending, *Interest Rate Disclosures Allow Apple-to-Apple Comparisons, Protect Free Market Competition* (June 23, 2009), *available at* https://www.responsiblelending.org/research-publication/interest-rate-disclosures-allow-apple-apple-comparisons-protect-free-market.

11 *See, e.g.*, *Vickery v. Empower Fin., Inc.*, No. 25 Civ. 3675, 2025 WL 2841686 (N.D. Cal. Oct. 7, 2025); *Moss v. Cleo AI Inc.*, 799 F. Supp. 3d 1152 (W.D. Wash. 2025); *Golubiewski v. Activehours, Inc.*, No. 22 Civ. 2078, 2025 WL 2484192 (M.D. Pa. Aug. 28, 2025); *Johnson v. Activehours, Inc.*, No. 24 Civ. 2283, 2025 WL 2299425 (D. Md. Aug. 8, 2025); *Orubo v. Activehours, Inc.*, 780 F. Supp. 3d 927 (N.D. Cal. 2025).

12 DailyPay Pet. ¶¶ 113–24; MoneyLion Compl. ¶¶ 128–41.

13 *Adar Bays, LLC v. GeneSYS ID, Inc.*, 37 N.Y.3d 320, 327–33 (2021).

14 *Id*. at 339.

any usury limits on finance charges.[15] Instead, federal law clearly and expressly preserves state consumer finance protections that are more protective than analogous federal laws.[16]

E-Payday Lending Is Harmful to Low-Wage Workers

E-payday loans go beyond simple usurious lending; they are expensive loans to workers who can least afford them. The typical loan obtained by a New York wage earner is between $25 and $100, is to be repaid within a week, and incurs fees and other charges of $3 to $10, on average.[17] While the fees may appear nominal, in reality the cost of the credit for average loans ranges from 200% to 350% APR,[18] far in excess of any alternative, comparable consumer credit currently available. Indeed, for one major lender, more than half of all loans carried an APR in excess of 500%, while across both DailyPay and MoneyLion approximately one out of every ten loans in New York imposed an APR above 1,000%[19]. Such costs would be considered shocking if charged for mortgages or auto loans. The Bill would eliminate, rather than provide, clear information to consumers that would allow them to evaluate these costs.

Many lenders, such as MoneyLion, also push for additional "tips"[20]—a practice the Bill would further encourage. As a general practice, providers exert tremendous pressure on low-wage workers to pay additional amounts in myriad ways: by seeking tips repeatedly and making it difficult to avoid them; through guilt-based messaging about "community" and the need to "give back"; and by messaging that a lack of sufficient tipping will result in changes that will make future loans more expensive.[21] The Bill reinforces this tactic and does nothing to reign in other highly problematic tactics to steer low-wage workers towards more expensive credit.[22]

Indeed, the true costs to workers aren't even captured by the exorbitant APRs, which assign costs of credit to individual transactions. Across this industry, consumers tend

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15 12 U.S.C. § 5517(o)

16 *See* 15 U.S.C. § 1610(b) (Truth-in-Lending Act expressly does not "annul, alter, or affect in any manner the meaning, scope or applicability of the laws of any state, including, but not limited to, laws relating to the types, amounts, or rates of charges . . . permissible under such laws in connection with the extension or use of credit"); *see also* 12 U.S.C. § 5551(a)(2) (Dodd-Frank expressly preserves "greater protection under state law").

17 DailyPay Pet. ¶¶ 4, 58–59; MoneyLion Compl. ¶¶ 3, 90.

18 DailyPay Pet. ¶¶ 4, 58–59; MoneyLion Compl. ¶¶ 3, 90.

19 DailyPay Pet. ¶ 60; MoneyLion Compl. ¶ 91.

20 *See* MoneyLion Compl. ¶¶ 69–88. *See also* National Consumer Law Center, *The Tricks Cash Advance Apps Use to Coerce Borrowers to "Tip"* (Apr. 23, 2025), *available at* https://www.nclc.org/resources/the-tricks-cash-advance-apps-use-to-coerce-borrowers-to-tip/. The entire notion of "tipping" a consumer lender is preposterous.

21 MoneyLion Compl. ¶¶ 69–88.

22 Industry argues that the Bill would protect consumers by requiring lenders to offer the same funds at no-cost for borrowers who are willing to wait for their loan to begin (and thus to receive the advanced funds) a few days later. But virtually every provider already makes such an option available. DailyPay Pet. ¶¶ 50, 55; MoneyLion Compl. ¶¶ 56, 65. This is likely because these lenders know there is no demand for a loan with such a delay. Immediate funds availability is a core component of these modern-day payday loans and how they are advertised: lender tout the ability to "transfer your earnings instantly" or "anytime". DailyPay Pet. ¶¶ 41–43; MoneyLion Compl. ¶¶ 56, 65. And even where consumers attempt to select no-cost options, lenders push them into fee-based alternatives through manipulation, default selections, and friction screens. *See* MoneyLion Compl. ¶¶ 61–64.

towards regular, repeat borrowing to fill the hole created by the initial loan. To see how this plays out, consider Marsha, a nurse who takes a $50 advance for a $4 fee, after which she receives $54 less on payday. Facing a shortfall, Marsha takes a new, $54 advance (plus $4 fee) to fill this hole and cover her regular expenses. With her next paycheck, a new, $58 shortfall exists, resulting in a new $58 advance, plus fee. This pattern repeats and by the end of a year Marsha will need an advance of more than $150 just to cover the shortfall in her paycheck that was created by the original $50 loan. And the total fees paid will have amounted to a staggering 5,000% APR.

This is not hypothetical; as New York found, repeat loans to low-wage workers are common. Over time, both DailyPay and MoneyLion have seen their average loans-per-week approach and then cross the two-per-week threshold,[23] meaning that on average workers using their mobile apps are taking out new loans every three or four days, continuously. Typically, a worker taking out a loan either takes out one or two advances and then quits altogether or rapidly accelerates the pace of borrowing. As a result, roughly half of all borrowers now average two or more loans per week,[24] for which they incur repeat fees that quickly amount to hundreds, if not thousands, of dollars each year—all taken off the top of the paychecks of low-wage workers. And lenders further boost their own profits through other tactics, such as having employers promote loans as new "benefits" akin to health insurance[25] or setting artificial transaction caps to force workers to take multiple loans (and incur multiple fees) to obtain advertised amounts.[26] The Bill would sanction these and other abusive practices together with the outrageously high costs.

Low-wage workers' resulting dependency on near-constant access to short-term, high-cost loan after short-term, high-cost loan is a feature of this industry. As a factual matter, a sizeable and increasing proportion of the revenue generated by lenders comes from the most desperate and dependent of borrowers—those who take out loans every other day or more.[27] And lenders know this; take for example, the following explanation by DailyPay of its business model, which it provided to potential investors but kept hidden from workers and employers[28]:

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[23] DailyPay Pet. ¶¶ 95–97; MoneyLion Compl. ¶¶ 107–09.

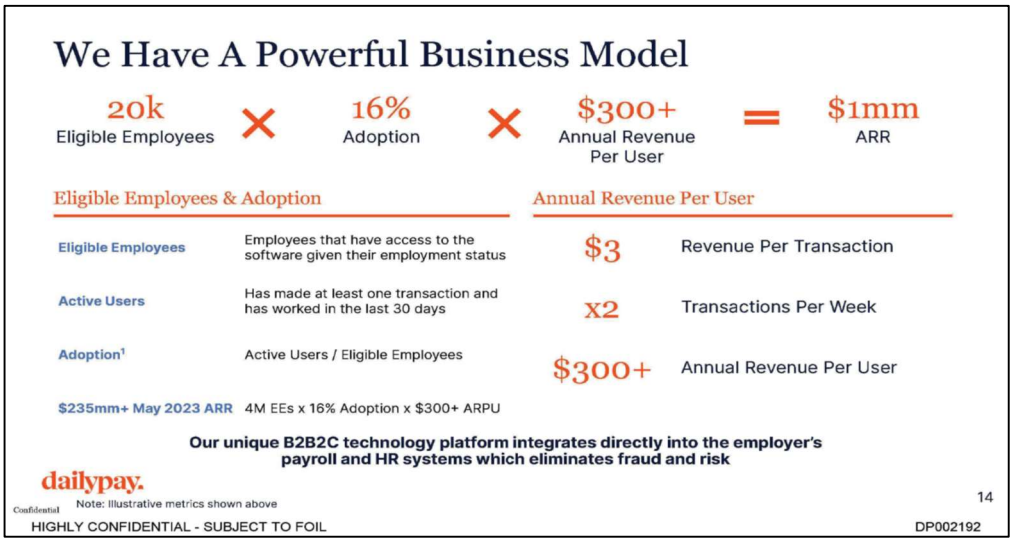
[24] DailyPay Pet. ¶¶ 102–03; MoneyLion Compl. ¶¶ 109–10.

[25] DailyPay Pet. ¶¶ 32–46.

[26] MoneyLion Compl. ¶¶ 97–104.

[27] DailyPay Pet. ¶¶ 103–06; MoneyLion Compl. ¶¶ 109–11.

[28] *People v. DailyPay, Inc.*, Index No. 154851-2025 (N.Y. Sup. Ct.) Doc. No. 20, at DP002224.



This graphic makes three notable claims: *first*, that a sizeable proportion of workers who are offered short-term, high-cost loans will eventually become part of the lender's "active user" base; *second*, that these "active users" will eventually average two or more loans per week; and *third*, that the lender will generate hundreds of dollars in fees annually from each captured worker. Further, despite charging astronomical APRs, these providers claim that their models "eliminate fraud and risk," in effect removing any justification for the high cost of credit being charged.

Congress Should Not Block States from Protecting Consumers

States have long been the country's vanguard of consumer protection and there is no reason for Congress to rework settled allocations of responsibility. The last time the federal government began to aggressively prevent states from protecting their own consumers, as it did when the Office of the Comptroller of the Currency adopted rules preempting virtually all state oversight of national banks, the result was the worst financial crisis since the Great Depression.[29]

Notably, certain states have adopted laws that, like the Bill, mandate registration in exchange for exemption from lending laws.[30] It is unnecessary for Congress to pass the Bill when states are perfectly capable of enacting its same substantive provisions if they so choose—and of applying different, more protective provisions, as states such as New York has chosen to do. The true purpose of the Bill is to avoid compliance with long-standing federal protections and, at the same time, override the sovereign judgment of states that wish to prohibit predatory lending. Indeed, the Bill will supplant state's historic roles and place responsibility for protecting consumers from exorbitant costs and abusive practices into the hands of the Consumer Financial Protection Bureau—the same Bureau that the Administration seeks to dismantle entirely.

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[29] *See* American Banker, *Earned Wage Access Regulation by State: A Complete Guide* (Jul. 30, 2025), *available at* https://www.americanbanker.com/payments/list/a-complete-guide-to-earned-wage-access-regulation-by-state.

[30] *See generally* Fin. Crisis Inquiry Commission, *Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States* at 67–80 (2011), *available at* https://fcic-static.law.stanford.edu/cdn_media/fcic-reports/fcic_final_report_full.pdf; Nicolas Bagley, *The Unwarranted Regulatory Preemption of Predatory Lending Laws*, 79 N.Y.U. L. REV. 2274, 2275 (2004).

The risks to states, including New York, are not limited to the Bill's currently proposed preemption provisions. The Bill's contemplated declarations that these E-payday lenders are not offering credit for purposes of federal law may impede states' efforts to apply their own usurious lending laws. Express federal requirements to disclosure costs in dollars rather than APR could preempt state requirements for interest rate or APR disclosures. Furthermore, the Bill strips protections provided to servicemembers under the Military Lending Act,[31] which numerous federal courts have held prohibits the very same predatory lending that the Bill would enable.[32]

The risks posed by the Bill also go beyond merely the modern-day payday loan industry and threaten tacit endorsement of expansive federal preemption that will override state's longstanding ability to protect its residents from risks posed by many industries. Federal regulators, for example, have begun to charter cryptocurrency-related entities as national trusts,[33] placing those entities potentially beyond the reach of state investigation or law enforcement. Congress, too, is actively considering cryptocurrency bills that would broadly preempt generally applicable state laws.[34] And federal banking regulators have promulgated proposed and final rules to preempt state laws that require banks to pay minimum interest to consumers on mortgage-escrow accounts, directly contradicting multiple federal appeals courts and undermining federal bank preemption standards limited by Congress in the wake of the financial crisis.[35] Adoption of the Bill will only serve to further weaken resistance to existing threats to state autonomy.

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Affordability is a crisis for countless Americans. It is a complex issue that will require a multi-prong approach, nuanced analysis, and thoughtful laws and regulations. The Bill will only take important tools away from regulators, increasing the vulnerability of a lower-income workforce that deserves regulatory protection. We therefore urge you not to pass this legislation.

Respectfully submitted,

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31 *See* Bill § 2(d) (providing that E-payday lenders "shall not be considered a creditor or lender" under federal law).

32 *See supra* note 10.

33 OCC, *OCC Announces Conditional Approvals for Five National Trust Bank Charter Applications* (Dec. 12, 2025), *available at* https://occ.gov/news-issuances/news-releases/2025/nr-occ-2025-125.html.

34 *See, e.g.*, H.R. 3633 (Sep. 18, 2025).

35 OCC, *Preemption Determination: State Interest-on-Escrow Laws*, 90 Fed. Reg. 61093 (Dec. 30, 2025).

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