

WADE KILPELA SLADE, LLP

Gillian L. Wade, State Bar No. 229124

gwade@waykayslay.com

Sara D. Avila, State Bar No. 263213

sara@waykayslay.com

Marc A. Castaneda, State Bar No. 299001

marc@waykayslay.com

Kristin K. Graham, State Bar No. 342529

kkg@waykayslay.com

2450 Colorado Avenue, Suite 100E

Santa Monica, CA 90404

Tel: (310) 667-7273

Fax: (424) 276-0473

EAST END TRIAL GROUP LLC

Kevin Tucker

PA State Bar No. 312144

ktucker@eastendtrialgroup.com

Kevin Abramowicz

PA State Bar No. 320659

kabramowicz@eastendtrialgroup.com

6901 Lynn Way, Suite 503

Pittsburgh, PA 15208

Tel: (412) 223-5740

Fax: (412) 626-7101

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

BRENNAN ORUBO, MICHAEL SIMS,
DEMETRICE MATHIS, and CIDNEY LETT
individually and on behalf of all others similarly
situated,

Plaintiffs,

v.

ACTIVEHOURS, INC. d/b/a EARNIN

Defendant.

Case No. 5:24-cv-04702-PCP

**FIRST AMENDED CLASS ACTION
COMPLAINT**

1. Violation of the Georgia Payday Loan Act O.C.G.A. §§ 16-17-1, *et seq.*
2. Violation of the Truth-In-Lending Act 15 U.S.C. §§ 1601, *et seq.*

Judge: Hon. P. Casey Pitts

Complaint Filed: August 2, 2024

FIRST AMENDED CLASS ACTION COMPLAINT

Brennan Orubo, Michael Sims, Demetrice Mathis, and Sidney Lett (“Plaintiffs”), individually and on behalf of the class defined below, bring this action against Activehours, Inc. d/b/a EarnIn (“Defendant” or “EarnIn”), and allege as follows:

I. NATURE OF THE ACTION

1. Payday lending—the business of making short-term, high-cost loans or cash advances to consumers—is illegal in Georgia.

2. Despite Georgia outlawing payday lending, Defendant has offered a short-term, high-cost cash-advance product to Georgia consumers, for over a decade.

3. In violation of Georgia law, Defendant has used this product to extract from Georgia consumers charges that, on average, yield an annual percentage rate (“APR”) close to 300%, which is almost thirty times the legal limit.

4. And, in violation of federal law, Defendant fails to disclose the credit terms on its cash advances to consumers.

5. Accordingly, Plaintiffs bring this action, on behalf of themselves and the class defined below, under Georgia’s Payday Lending Act (“PLA”), O.C.G.A. §16-17.1 *et seq.*, and the Truth In Lending Act (“TILA”), 15 U.S.C. § 1601 *et seq.*

6. Plaintiffs seek to recover the principal they paid in connection with their cash advances from Defendant, along with three times the amount of any interest or other charges they paid, attorneys fees and costs, and all other relief available under the law.

II. JURISDICTION AND VENUE

7. The Court has subject matter jurisdiction under 28 U.S.C. § 1331.

8. The Court also has jurisdiction under 28 U.S.C. § 1332, as amended by the Class Action Fairness Act of 2005 (“CAFA”), because this is a class action and the matter in controversy exceeds \$5,000,000.00 exclusive of interest and costs and some members of the class are citizens of states different than Defendant. *See* 28 U.S.C. § 1332(d)(2)(A).

9. The Court has personal jurisdiction over Defendant because Defendant's principal place of business is located in this judicial district and because Defendant conducts in California substantial business from which the claims in this case arise.

10. This judicial district is the proper venue for this action because Defendant resides in this district and a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this district. *See* 28 U.S.C. § 1391.

III. DIVISIONAL ASSIGNMENT

11. Assignment to this division is appropriate because a substantial part of the omissions or events giving rise to Plaintiffs' claims occurred in this division, as Defendant's principal place of business is located in this division.

IV. PARTIES

12. Brennan Orubo is a person residing in DeKalb County, Georgia.

13. Michael Sims is a person residing in Cherokee County, Georgia.

14. Demetrice Mathis is a person residing in Lee County, Georgia.

15. Cidney Lett is a person residing in Cobb County, Georgia.

16. EarnIn is a technology company headquartered in Palo Alto, California.

17. EarnIn is not a bank and is not licensed under any Georgia statute.

V. FACTUAL ALLEGATIONS

A. EarnIn Offers A Cash-Advance Loan Product To Georgia Consumers

18. EarnIn offers a cash-advance loan product to Georgia consumers over the internet.

19. EarnIn offers this product through a lending app called "EarnIn."

20. The app provides up to \$100 in cash advances at a time, and up to \$750 per pay period.

21. EarnIn advertises its cash-advance loan product as a way for people to access their earned wages before payday.

22. The advertised and intended purpose of EarnIn's cash-advance loan product is to provide an instant source of money, accessible directly from a mobile phone, that consumers can use to pay time-sensitive obligations or cover surprise expenses.

23. For example, EarnIn's website advertises EarnIn's product as allowing users to access cash "within minutes," as providing "instant access" to cash so users can "cover surprise expenses," and as allowing users to access cash "right when [they] need it."

Cash Out

Make every day payday

Access your pay within minutes (not weeks) of earning it¹

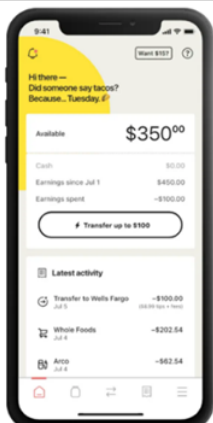
- Get up to \$750 per pay period²
- No interest and no mandatory fees³
- No hard or soft credit check⁴



Why do people love EarnIn?

With over 3.8M customers, this is what people say they love most.

-  **Access to your money as you work**
Don't wait weeks until payday to use your hard-earned money. Get it within minutes of earning it instead.³
-  **Pay your bills on time**
EarnIn helps save money, cover those surprise expenses, and pay bills on time with instant access to your earnings.³
-  **Get support when you need it**
We'll respond to your questions in 60 seconds or less and are available 24/7.



Go from start to paid in just a few steps

Tap into the money you've already worked for, right when you need it. From monthly bills to weekly thrills, your earnings are ready when you are.

24. Similarly, EarnIn’s video advertisements show people in situations where they need immediate cash—filling gas tanks, covering surprise vet bills, taking spur of the moment vacations, paying impromptu haircuts, and covering unexpected expenses for children—and advertise the EarnIn app as providing a solution. See <https://www.youtube.com/watch?v=nTm8iKvAZ04>.

B. EarnIn Collects Charges from Borrowers In Connection with Borrowers’ Cash Advances

25. Like every lender, EarnIn offers its cash-advance loan product to generate profits from the pockets of borrowing consumers.

26. EarnIn achieves this goal through charges that are labeled as “lightning speed fees” and “tips.”

27. EarnIn has structured its cash-advance loan product to ensure that borrowers pay these charges on the vast majority of transactions.

28. For example, a borrower must pay the lightning speed fee to use EarnIn’s product for its intended and advertised purpose—as an instant source of cash.

29. This charge ranges in amounts of \$1.99 to \$3.99, depending on the amount of money borrowed.

30. The lightning speed fee is \$1.99 for an advance of up to \$24.99; \$2.99 for an advance of \$25.00-\$74.99; and \$3.99 for an advance of \$75.00 or more.

31. Because EarnIn only allows borrowers to obtain up to \$100.00 in cash advances at a time, borrowers may incur multiple lightning speed fees in a single day or pay period.

32. If a borrower does not pay the lightning speed fee, they cannot obtain the advertised version of EarnIn’s cash-advance product or use the product for its intended purpose.

33. Instead, a borrower obtains an inferior version of EarnIn’s loan product, which provides access to cash days after a request is made, and which cannot be used to pay time sensitive obligations or cover surprise expenses.

1 34. EarnIn’s lightning speed fee does not actually cover the cost of providing a service, as
2 it costs little to nothing to offer cash advances immediately as opposed to days later; instead, this
3 charge is imposed solely to obtain compensation for lending money.¹

4 35. Because this fee must be paid to use EarnIn’s cash advance product for its intended and
5 advertised purpose, virtually every user pays this charge.

6 36. Regarding EarnIn’s “tip” charge, EarnIn uses a host of deceptive tactics to pressure,
7 fool, coerce, confuse, and/or exhaust its users into agreeing to pay this charge.

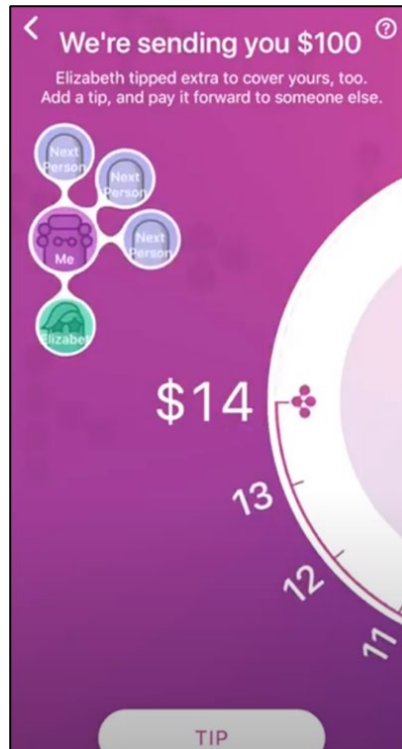
8 37. Indeed, the use of the word “tip” to describe this charge is deceptive in its own right
9 because this charge does not go to delivery drivers, hourly workers, or employees trying to make ends
10 meet; instead, this charge, like EarnIn’s lightning speed fee, is solely intended to generate loan profits
11 for EarnIn.

12 38. In addition to deceptively labeling this charge as a “tip,” EarnIn employs a host of
13 deceptive tactics to make payment of this charge difficult to avoid and to mislead borrowers into
14 believing it is a mandatory charge.

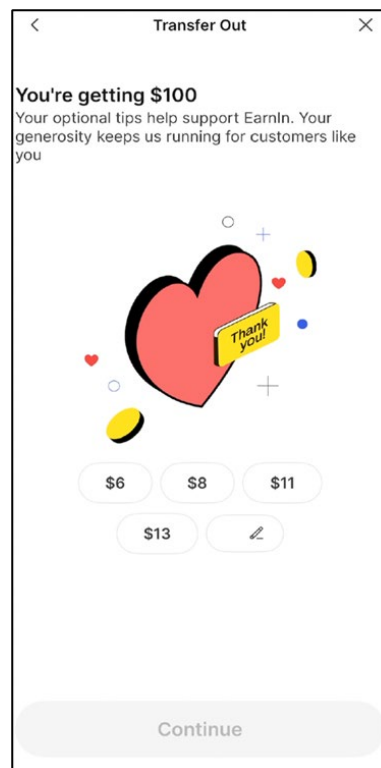
15 39. At times and for some borrowers, EarnIn employed pay-it-forward language on its tip
16 screen to coerce borrowers into paying the tip charge, falsely claiming that a previous borrower had
17 paid the tip to cover the cost of EarnIn’s service for the current borrower, and asking the borrower to
18 do the same for a future borrower.

19 40. This same screen presented the borrower with a default tip for the borrower to pay, and
20 represented that a greater tip would cover the cost of providing a cash advance for a greater number
21 of borrowers.

22
23
24
25
26
27 ¹ Before 2022, EarnIn did not charge users to obtain the advertised version of its product, and users
28 could obtain advances immediately, and use them for their advertised and intended purpose without
paying an additional charge. Clearly, EarnIn instituted the lightning speed fee to force its users to pay
money on virtually every loan transaction.



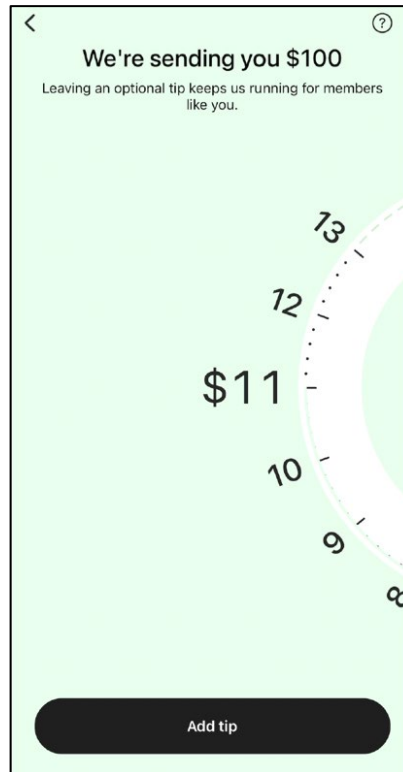
41. Other borrowers were confronted with the current language on EarnIn’s tip screen, representing that users must pay tips to “keep[] us running,” and by presenting consumers with four, non-zero tipping options of \$6, \$8, \$11, and \$13.



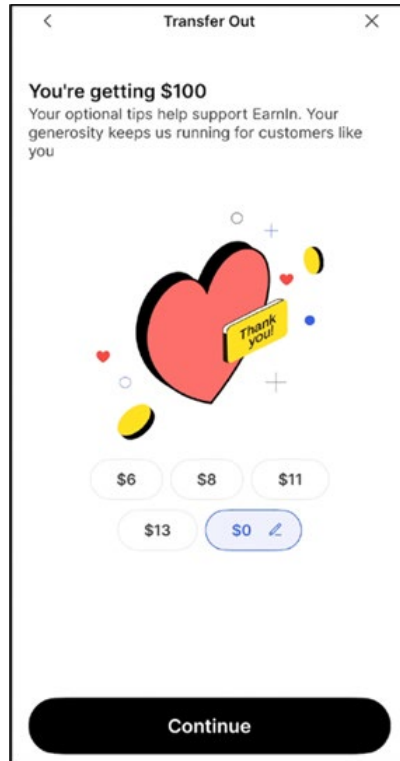
42. By presenting consumers with non-zero tip options of \$6, \$8, \$11, and \$13, EarnIn suggests that borrowers have the option to pick one of the default amounts, but do not otherwise have the option to avoid tipping.

43. These representations are intended to lead borrowers to believe EarnIn's tip charges are mandatory, or to otherwise guilt or pressure borrowers to pay this charge at a sufficiently high rate to ensure that EarnIn obtains sufficiently high profits.

44. To avoid paying a tip, a borrower must click the pencil button on the above-shown tip screen, after which they are taken to another screen that defaults to an \$11 tip, representing that tips "keep us running for members like you."



45. If a borrower manages to change the default tip to \$0 on the screen shown in the paragraph above, they are taken back to the original tip screen, and asked to confirm that they wish to forgo paying a tip and forgo helping to "support EarnIn."



46. To avoid paying a tip, borrowers must go through this exhausting and confusing hurdle, and often, do not understand how to navigate the app to avoid doing so.

47. EarnIn has used other deceptive strategies as well, including representing that tips “help” people,² “support the service,” and “keep EarnIn running for the rest of the community,” while presenting borrowers with a default tip to pay.

48. EarnIn’s deceptive strategy to coerce borrowers into paying additional tip charges works, as most users pay this charge, despite the vast majority being in desperate need of cash.

49. For example, a 2023 study by a California regulator found that cash advance apps that solicit tip-like charges receive them on 73% of loan transactions. *See* Exhibit A, pp. 1, 7.

50. The structure of EarnIn’s cash-advance loan product has been successful at ensuring that EarnIn’s borrowers pay large sums on top of the principal loan amount to receive cash advances, as EarnIn’s product yields an average APR of 284%. *See* Exhibit B, p. 10.

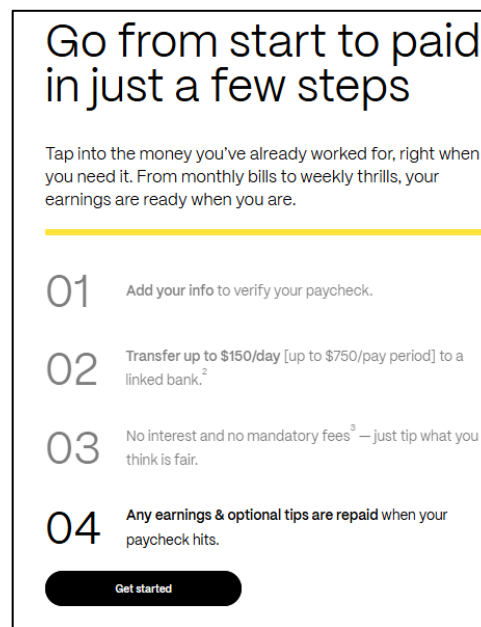
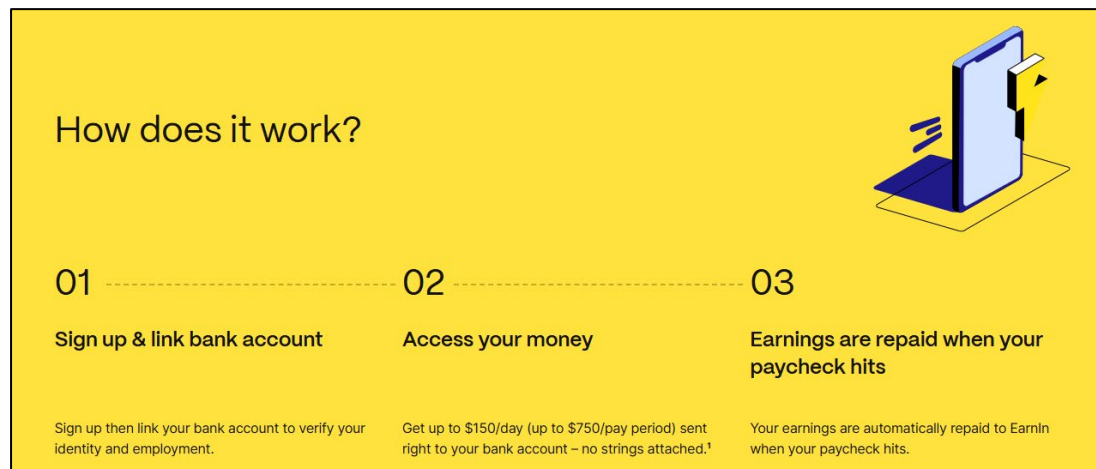
² EarnIn has represented that: a \$6.00 tip will help one person; an \$8.50 tip will help two people; and an \$11.00 tip will help three people.

51. The average APR is so high because the vast majority of loan transactions include the charges described above—a lightning speed fee, tip, or both—in return for obtaining EarnIn’s cash-advance loan product.

C. EarnIn Obtains Repayment On Virtually All Cash-Advance Loan Transactions

52. EarnIn requires borrowers to repay their cash-advance loans on their next payday.

53. On its website, EarnIn prominently represents that is cash advances and charges must be repaid “when your paycheck hits.”



54. EarnIn’s in-app screens similarly state that EarnIn’s cash advances are “due to EarnIn on payday.”

1 55. To ensure it gets repaid, EarnIn requires borrowers to: (i) have an employer that pays
2 them regularly; (ii) link the bank account to which paychecks are deposited to EarnIn's app; and (iii)
3 authorize EarnIn to automatically debit the linked accounts on the borrower's payday in an amount
4 that is equal to the cash advance the borrower receives (the principal loan amount) and the additional
5 charges the borrower paid when taking out their cash-advance loan.

6 56. Borrowers cannot obtain cash advances without: (i) verifying their employment; (ii)
7 linking the account to which paychecks are deposited to EarnIn's app; and (iii) allowing EarnIn to
8 automatically debit linked accounts on the borrower's payday.

9 57. And before issuing advances, EarnIn performs a proprietary credit check on the
10 borrower's linked bank account to ensure that the account will have sufficient funds to repay EarnIn's
11 automatic account debits on the borrower's payday.

12 58. The sole purpose of this credit check is to guard against the risk of non-payment.

13 59. EarnIn does not issue a cash-advance loan unless it believes it will be able to
14 automatically deduct the sum of the cash-advance loan amount (the loan principal), plus any additional
15 charges (including lightning speed fees and tips), from the linked account as soon as the borrower's
16 employer deposits the borrower's next paycheck.

17 60. The requirements that EarnIn imposes on borrowers ensure that EarnIn obtains
18 repayment on virtually every cash-advance loan it issues.

19 61. Furthermore, borrowers do not agree to pay EarnIn's tips or lightning speed fees after
20 they obtain or receive a cash advance; instead, they are required to agree to pay these charges before
21 advances are issued or received.

22 62. That agreement becomes part of the loan contract, with any lightning speed fees or tips
23 a borrower has paid being incorporated into the automatic account debit rights that EarnIn obtains as
24 part of the loan contract.

25 63. As explained, EarnIn structures its cash-advance loans so that borrowers are required
26 to repay them on their next payday. This remains true despite EarnIn's recent addition of a sham
27 provision in its terms and conditions that purports to disclaim a borrower's obligation to repay cash
28 advances.

D. EarnIn's Cash-Advance Loans Violate Georgia Law

64. Payday lending refers to a short-term, high-cost form of lending, requiring consumers to repay small dollar loans on their next payday.

65. This form of lending has been around for more than a century, with its defining feature being the varying attempts that lenders have created to evade the law.

66. Historically, payday lending took the form of “salary” or “wage buying,” where lenders would claim that they were purchasing earned wages, even though they were really loaning money at excessive rates.

67. Georgia enacted the Industrial Loan Act (“ILA”) to regulate payday lending, and stop the various evasions that lenders used to circumvent the law.

68. Georgia sought to stop payday lending because short-term, high-cost loans can create a cycle of debt.

69. This occurs because the high fees charged on this form of credit eat into paychecks, which reduces the amount borrowers receive on payday, requiring borrowers to take out new loans to fill the gap created by original loans.

70. This cycle of reborrowing is well documented in the cash advance arena, as various studies show that the typical cash advance app user takes out at least one advance each pay period and continues to borrow even after the first loan is repaid. *See* Exhibit B, pp. 7-9; Exhibit A, p. 11.

71. It also is well documented for EarnIn’s specific cash-advance loan product. *See* Paulina Cachero, Popularity of Apps for Early Paydays Masks Added Risks, Bloomberg (June 29, 2023), <https://www.bloomberg.com/news/articles/2023-06-29/know-the-risks-before-using-cash-advance-apps-like-earnin-dailypay> (user found himself trapped in “a constant loop of borrowing,” and felt he had “completely lost control of the situation, with no way to work it out”); Cyrus Farivar, Millions use Earnin to get cash before payday. Critics say the app is taking advantage of them, NBC News (July 26, 2019), <https://www.nbcnews.com/tech/internet/millions-use-earnin-get-cash-payday-critics-say-app-taking-n1034071> (user “had no money” after paying fees, describing app as a “vicious cycle”); Sidney Fussell, The New Payday Lender Looks a Lot Like the Old Payday Lender, The Atlantic (Dec.

18, 2019), <https://www.heatlantic.com/technology/archive/2019/12/online-banking-lending-earnin-tip/603304/> (user fell into a “cycle of get paid and borrow, get paid and borrow”).

72. Unfortunately, the ILA proved insufficient to stop payday lending in Georgia.

73. In the 1990s and early 2000s, payday lending resurfaced in other forms.

74. Some lenders used banks to issue loans, after which the lenders repurchased the loans for themselves, attempting to hide under the banks’ charter to charge excessive interest.

75. Other lenders described their transactions as “sale/leasebacks,” whereby consumers purportedly sold personal property and leased it back for a fee.

76. And yet other lenders described their transactions as “deferred presentments,” whereby lenders would advance cash to borrowers in return for a post-dated check for the amount of the advance and a fee, which the borrower agreed the lender could cash on payday.

77. Recognizing that the ILA did not provide sufficient deterrence to stop these evasions, Georgia enacted the PLA to cease payday lending in the state.

78. The PLA “encompasses all transactions in which funds are advanced to be repaid at a later date, notwithstanding the fact that the transaction contains one or more other elements,” O.C.G.A. § 16-17-1(a), prohibits payday lenders from collecting any amounts on payday loans, deems payday loans void and unenforceable, and makes payday lenders liable to borrowers for damages in an amount equal to three times any charges made on an illegal payday loan, *id.* § 16-17-3.

79. Despite the PLA, payday lending has resurfaced yet again in Georgia—this time in the form of EarnIn’s cash-advance loan product, which offers cash to borrowers in return for the authorization to debit the borrower’s bank account on their payday in an amount equal to the principal cash-advance loan amount and any additional charges.

80. EarnIn’s cash advance product falls within the scope of the PLA because EarnIn’s cash advance product is a “transaction[] in which funds are advanced to be repaid at a later date.” O.C.G.A. § 16-17-1(a).

81. EarnIn explicitly represents that its product advances money that is “repaid when your paycheck hits.”

82. Additionally, the receipt of EarnIn’s product is conditioned on consumers linking their bank account to EarnIn’s app, and authorizing EarnIn to debit the linked account immediately after an employer directly deposits a paycheck on payday, EarnIn seeks repayment on every advance it issues by enforcing its automatic debit rights, and EarnIn obtains repayment on virtually every advance by timing its automatic account debits to coincide with the date that employers directly deposit paychecks into the bank accounts that are linked to EarnIn’s app.

83. EarnIn’s cash advance-loan product is the newest form of payday lending, which means it is prohibited under Georgia law.

E. EarnIn’s Cash-Advance Loan Product Does Not Include Disclosures Mandated by TILA

84. Congress passed TILA to ensure “a meaningful disclosure of credit terms” and to avoid “the uninformed use of credit.” 15 U.S.C. § 1601(a).

85. To that end, TILA requires lenders to disclose the cost of credit beforehand, including the disclosure of the cost of credit as a “finance charge,” and as an “annual percentage rate” or “APR,” depending on the amount of the advance and its cost. *Id.* § 1638.

86. EarnIn’s cash-advance loan product is within the purview of TILA.

87. EarnIn’s lightning speed fees and tips are charges that add to a borrower’s cost of credit when taking out a cash-advance loan from EarnIn,

88. Specifically, cash-advance borrowers must pay EarnIn’s “lightning speed fee” to use EarnIn’s product for its advertised and intended purpose, and EarnIn misleads borrowers into believing that “tips” are mandatory and makes it difficult for borrowers to avoid paying this additional charge in connection with their cash-advance loan.

89. Even though EarnIn’s product falls under TILA’s purview, EarnIn does not disclose *any* of the information that TILA requires.

90. The Consumer Financial Protection Bureau (“CFPB”) agrees that TILA applies to EarnIn’s loan product, and the CFPB recently proposed an Interpretive Rule that treats the “tip” and “lighting speed fee” charges that EarnIn collects as “finance charges” within the meaning of TILA. *See* Exhibit C.

1 91. Regarding EarnIn’s “lightning speed fee,” the proposed Interpretive Rule states:

2 [T]he speed with which earned wage credit provides liquidity . . . is an
3 integral feature of such credit, which is why consumers tend to opt for faster
4 delivery when it is available. Thus, when the consumer pays for that faster
5 delivery, the associated fee is immediately and directly connected to the
particular extension of credit. That substantial connection makes this “a fee
imposed as an incident to that particular extension of credit,” and
accordingly one that must be disclosed as part of the finance charge.

6 *See id.*, p. 16.

7 92. Regarding EarnIn’s “tip” charge, the proposed Rule recognizes that this charge is not
8 a “tip[] or gratuit[y] in any traditional sense,” but is a central component of the revenue model of cash
9 advance providers, like EarnIn, and is solely intended to “finance” the extension of credit, meaning it
10 is a “finance charge” within the meaning of TILA. *See id.*, pp. 17-18.

11 F. **Plaintiffs’ Experiences with Cash Advances from EarnIn**

12 93. From at least 2018 to present, each Plaintiff has obtained more than one cash-advance
13 loan from EarnIn. The amount of each cash advance was less than or equal to \$100.00. Each Plaintiff
14 was required to authorize EarnIn to debit their account for repayment, and EarnIn initiated those debits
15 on the following payday.

16 94. Plaintiffs used those loans for personal, family, and/or household purposes.

17 95. Plaintiffs paid EarnIn’s finance charges, in the form of lightning speed fees and tips, to
18 obtain cash-advance loans from EarnIn, and those charges yielded triple-digit APRs.

19 96. Below are illustrations of some of the loans Plaintiffs obtained and some of the charges
20 that Plaintiffs paid.

21 97. Plaintiff Orobu obtained a \$100.00 loan, which was to be repaid in ten days or less, and
22 paid a \$3.99 express fee, which yielded an APR over 145%.

23 98. Plaintiff Sims obtained a \$100.00 loan, which was to be repaid in three or less days,
24 and paid a \$3.99 express fee and a \$0.50 tip, which yielded an APR over 546%.

25 99. Plaintiff Mathis obtained a \$100.00 loan, which was to be repaid in two weeks or less,
26 and paid a \$3.00 express fee and a \$1.00 tip, which yielded an APR over 130%.

27 100. Plaintiff Lett obtained a \$100.00 loan, which was to be repaid in three days or less, and
28 paid a \$3.00 express fee and an \$11.00 tip, which yielded an APR over 1,700%.

1 **VI. CLASS ALLEGATIONS**

2 101. Plaintiffs bring this action individually and on behalf of all others similarly situated
3 under Fed. R. Civ. P. 23.

4 102. Plaintiffs seek to certify the following class: “All Georgia borrowers who obtained a
5 cash advance or loan from Defendant, and paid a fee, charge, or other amount within the applicable
6 statute of limitations.”

7 103. Fed. R. Civ. P. 23(a)(1): On information and belief, there are tens of thousands of class
8 members, making joinder of those persons impracticable. Additionally, the members of the class are
9 identifiable through Defendant’s records, Defendant’s third-party service providers, and the banks
10 through which the class members hold accounts.

11 104. Fed. R. Civ. P. 23(a)(2), 23(b)(3): Plaintiffs and the class members share numerous
12 common questions of law and fact that will drive the resolution of the litigation and predominate over
13 any individual issues. For example, there is a single common answer to whether Defendant’s cash
14 advances qualify as “loans” under the relevant laws and whether the “tips” or “fees” Plaintiffs paid
15 qualify as “finance charges,” “interest” or other amounts under the laws at issue. These common
16 questions, and other common questions of law and fact, will predominate over individual questions,
17 to the extent any individual questions exist.

18 105. Fed. R. Civ. P. 23(a)(3): Plaintiff’s claims are typical of the claims of the members of
19 the class because the claims of Plaintiffs and the class are based on the same legal theories and arise
20 from the same conduct.

21 106. Fed. R. Civ. P. 23(a)(4): Plaintiffs are adequate representatives of the class because the
22 interests of Plaintiffs and class align. Plaintiffs will fairly, adequately, and vigorously represent and
23 protect the interests of the class and have no interest antagonistic to the class. Plaintiffs retained
24 counsel who are competent and experienced in the prosecution of class action litigation generally and
25 consumer finance litigation specifically.

26 107. Fed. R. Civ. P. 23(b)(3): Given the complexity and nature of the issues presented and
27 the relief requested, the expense and time necessary to obtain such relief, and the anticipated recovery
28 and relief Plaintiffs and the classes may obtain, the class action mechanism is by far the preferred and

most efficient litigation mechanism to adjudicate the claims of Plaintiffs and the class members. Additionally, requiring Plaintiffs and the class members to file individual actions would impose a crushing burden on the court system and almost certainly lead to inconsistent judgments. Class treatment presents far fewer management difficulties and provides benefits of a single adjudication and economies of scale.

VII. CAUSES OF ACTION

COUNT I Violation of the Georgia Payday Loan Act O.C.G.A. §§ 16-17-1, *et seq.*

108. Plaintiffs bring this claim individually and on behalf of the class.

109. Defendant engaged in the business of making, offering, arranging, or acting as an agent in the making of loans of \$3,000.00 or less. O.C.G.A. § 16-17-2(a), (b).

110. Defendant is not a bank or credit union and is not licensed under any Georgia law to engage in that business.

111. Defendant does not meet any of the statutory exceptions to the general prohibition against the making of loans of \$3,000.00 or less. *See* O.C.G.A. § 16-17-2(a)(1)-(4).

112. Plaintiffs are borrowers who obtained cash-advance loans from Defendant and paid interest and other charges in connection with those loans.

113. Defendant advanced funds to Plaintiffs to be repaid at a later date.

114. Defendant's conduct described herein violated and continues to violate the PLA, which means that the loans of Plaintiffs and the class were void *ab initio*, that Defendant is barred from collecting any amounts on those loans, and that Defendant is additionally liable to Plaintiffs and the members of the class for three times the amount of any interest or other charges, and attorneys' fees and costs. *See* O.C.G.A. § 16-17-3.

115. Accordingly, Plaintiffs, individually and on behalf of the class, request: (i) payment of all principal of any loans repaid in the last 20 years; (ii) payment of triple the amount of any tips, fees, or other amounts repaid in the last 20 years; (iii) a declaration that Plaintiffs' and the class members' loans are void *ab initio*; (iv) and an order prohibiting Defendant from attempting to debit Plaintiffs' or the class members' bank accounts to repay any cash advances.

COUNT II
Violation of the Truth-In-Lending Act
15 U.S.C. §§ 1601, *et seq.*

116. Plaintiffs bring this claim individually and on behalf of the class.

117. Through its cash-advance loan product, Defendant advances money to borrowers, and borrowers, in return, authorize Defendant to debit their bank accounts on their following payday, in an amount equal to the money advanced and any additional charges or fees borrowers paid upon obtaining their cash advance.

118. These types of transactions meet the definition of “credit,” as defined by TILA, as Defendant grants consumers the right to defer payment of debt or incur debt and defer its payment. 15 U.S.C. § 1605(f).

119. And because Defendant’s cash advances are “credit” transactions, Defendant is a “creditor,” Plaintiffs’ and the class’s advances are “consumer credit transactions,” and Plaintiffs, Defendant, and the class members are “persons” within the meaning of TILA. *Id.* §§ 1602(e), (f), (g), (i).

120. TILA requires “creditors,” like Defendant, to disclose, among other things, the “amount financed,” “finance charge,” “annual percentage rate,” and “total of payments.” *Id.* §§ 1638(a)(2), (3), (4), (5).

121. Defendant fails to disclose *any* of the information required to be disclosed by TILA.

122. As a result of Defendant’s refusal to comply with TILA and its systematic violation of the various disclosure required in each of its numerous cash advance transactions, Defendant is liable to Plaintiffs and the class members in an amount equal to actual damages, statutory damages, costs, reasonable attorneys’ fees, and all other available relief. 15 U.S.C. § 1640(a), (e).

VIII. JURY TRIAL DEMANDED

Plaintiffs request a jury trial on all claims so triable.

IX. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

a. An order certifying the proposed class, appointing Plaintiffs as

representative of the proposed class, and appointing undersigned counsel as counsel for the proposed class;

- b. An order awarding the members of the class actual, statutory, treble, and all other damages available by law, with pre- and post-judgment interest;
- c. An order providing Plaintiffs and the members of the class restitution for any principal, interest, fees, or other charges paid to Defendant;
- d. An order declaring the cash advances that Plaintiffs and the class members obtained were or are void *ab initio*;
- e. And order preventing Defendant from attempting to collect its cash advances from Plaintiffs and the class members;
- f. An order awarding attorneys' fees and costs;
- g. An order awarding all other relief that is just, equitable, and appropriate.

Respectfully Submitted,

Dated: November 12, 2024

WADE KILPELA SLADE, LLP

/s/ Gillian L. Wade
Gillian L. Wade
Sara D. Avila
Marc A. Castaneda
Kristin K. Graham
2450 Colorado Avenue, Suite 100E
Santa Monica, CA 90404

EAST END TRIAL GROUP LLC

Kevin Tucker
Kevin Abramowicz
6901 Lynn Way, Suite 503
Pittsburgh, PA 15208

Attorneys for Plaintiffs

EXHIBIT A

**California Department of
Financial Protection and Innovation**

2021 Earned Wage Access Data Findings

Analysis completed Q1 2023

EXECUTIVE SUMMARY

This analysis provides an overview of the earned wage access (EWA) industry from data collected in 2021 through Memorandum of Understanding (MOU) Agreements between several EWA companies and the Department of Financial Protection and Innovation (DFPI). These findings focus on amounts advanced, annual percentage rates, days to repay, frequency of use, and other related information to assess impacts to consumers.

In general, the EWA companies considered in this analysis operate via two major fee structures: transactions and subscription fees. A transaction-based company may accept tips, charge fees, and collect optional fees for faster service. EWA companies that accept tips typically maintain that their tips are wholly voluntary and have no effect on their EWA services or availability of future EWA advances. Below are some key highlights of the 2021 Earned Wage Access Data Findings:

There was a total advanced amount of \$765 million 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.

BACKGROUND

The California Consumer Financial Protection Law (CCFPL) became effective in 2021, giving the Department expanded oversight authority to further protect consumers and respond to emerging

innovative financial products and services not previously regulated by DFPI.¹ In 2021, the DFPI entered into 11 MOU agreements with EWA companies, which requested quarterly data addressing advanced payment amounts, transactions, numbers of advance requests per customer, how transactions occur (e.g., through the employer, bank account, debit card), delinquencies, annual percentage rates, and other related information for 2021. A total of seven² EWA companies responded with quarterly summary reports, amounts advanced, charges, complaint information, and key terms.

BUSINESS MODELS & FEE STRUCTURES

Earned wage access companies are broadly based on two types of business models: 1) a business-to-business (B-to-B) model in which the EWA company contracts with employers who then roll the services into benefits for their employees and 2) a direct-to-consumer (D-to-C)³ model in which the EWA company works directly with the employee, eliminating the employer from transactions.

With a business-to-business model, the EWA company typically works with the employers' payroll processing function to gauge advance payment amounts (amounts cannot surpass the amount earned during the pay period) and arranges for repayments when employees are paid. Advances can be funded either by the employer (with the employee's salary deducted by the advance amount at the time of payroll processing) or by the EWA company that is reimbursed by the employer (who debits the employee's account) at the time of payroll processing.

In the direct-to-consumer model, the EWA company usually requests proof of employment or regular income from the consumer at the time of sign-up and requires access to a checking or savings account with direct deposits that will allow the EWA company to recoup the advances when users receive their regular income. The D-to-C model often has features such as integration with the consumer's bank account.⁴

Fee Structures

In general, the earned wage access companies considered in this analysis operate via two major fee structures: transactions and subscription fees.

Transaction-based companies

A transaction-based company may accept tips, charge fees, and collect optional fees for faster service. EWA companies that accept tips typically maintain that their tips are wholly voluntary and have no effect on their EWA services or availability of future EWA advances.

¹Department of Financial Protection & Innovation. (2022, June 1). *Glossary of Financial Terms*. The Department of Financial Protection and Innovation. Retrieved March 16, 2023, from <https://dfpi.ca.gov/ca-consumer-financial-protection-law/>.

² Of the eleven MOUs that were signed, two companies did not submit data, one company canceled their EWA service offering, and one submitted file types that were unusable.

³ Also known as business-to-consumer model.

⁴ Weinberger, Evan (2022, February 3). *Earned-wage access products face fresh scrutiny from CFPB, states*. Bloomberg Law. Retrieved March 16, 2023, from <https://news.bloomberglaw.com/banking-law/earned-wage-access-products-face-fresh-scrutiny-from-cfpb-states>.

A Note on Tips, APRs and Interest Rates.

An Annual Percentage Rate (APR) is the annual cost of credit expressed as a percentage. An APR is different from an interest rate because an APR can include fixed costs that a consumer pays in addition to periodic interest. In the “Annual Percentage Rate” section below, the DFPI includes tips in APR calculations. Stakeholders have various perspectives on how to treat EWA products and optional charges under the federal Truth in Lending Act (TILA). The DFPI takes no position on questions of federal law in this analysis, but includes tips in its APR calculations herein to help compare EWA products to other credit products like payday loans.

Subscription-based companies

A subscription-based company charges a fixed monthly fee and may accept optional charges for faster service.

In this analysis there were five transaction-based companies, of which three had a tip-based model and two had a non-tip-based model. In addition, there were two companies that had a subscription-based model. All seven companies are included in this analysis, except for the APR section. Monthly subscription-fee-based companies were excluded from APR calculations, as discussed further below.

METHODOLOGY & DATA

Data was collected using a standard template that was provided to companies upon signing the MOU. As a result of varying MOU start dates, complete calendar data is unavailable for some companies. The template included a request for summarized quarterly data, transaction level data and complaint data. However, transactional data did not always exactly match summarized quarterly and annual year to date numbers. This analysis uses transaction data when possible and, when necessary, quarterly reported data is utilized. Furthermore, transactional averages are weighted by the number of transactions. Data averages are based on simple non-weighted averages.

This analysis focuses on the following numeric data:

- Advance Payment Amounts
 - Advanced Payment Amounts by Model Type
- Annual Percentage Rates
 - Tip and Non-Tip models
 - Average APR by Advanced Amount
 - Amount Paid by Consumers
- Average Days to Repay
- Frequency of Use
- Number of Missed Payments
- Percent of Paycheck

A qualitative analysis is also carried out to highlight key trends within complaint data provided by

companies, as discussed further below.

NUMERIC DATA KEY FINDINGS

Advance Payment Amounts

In 2021, seven companies⁵ provided a total of approximately \$765 million⁶ in advance payments to California consumers. Across companies, there was a 60% increase in advanced amounts from Quarter 1 to Quarter 4, or approximately \$91 million worth of advanced amounts.

Figure 1: 2021 EWA Advanced Payment Amounts⁷



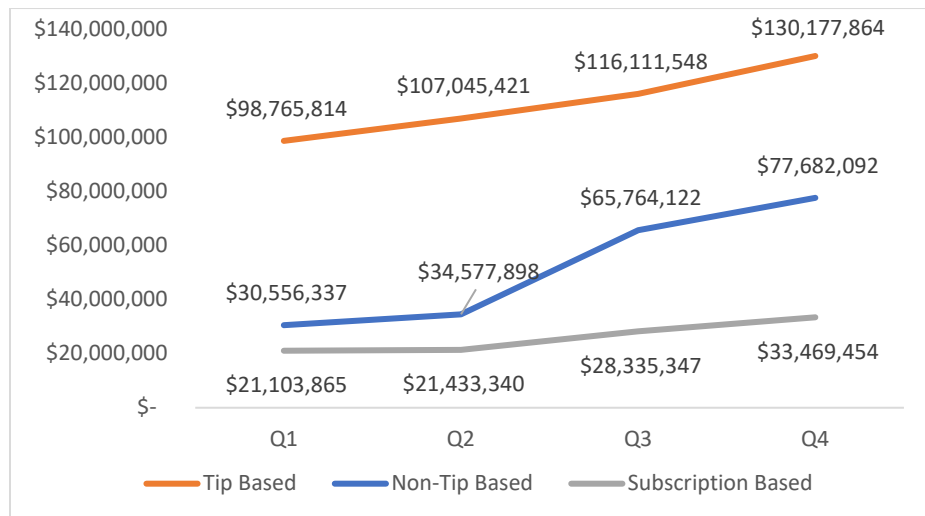
Advanced Payment Amounts by Model Type

In 2021 companies using transaction fee structures advanced \$660,681,096 in funds to consumers. Of those, companies using tip-based models advanced \$452,100,647 and non-tip models advanced \$208,580,450. Companies with subscription fee structures advanced \$104,342,006 to consumers. For the seven companies combined, the average growth rate in advanced payments across quarters was 17%. The increase in advanced amounts is partially due to a 15% average quarterly increase in the transaction count growth rate.

⁵ Five companies included transactional data for all four quarters. Two of the companies reported transactional data for Quarters 3 and 4 only, but reported summary data for Quarters 1 and 2. For those two companies, the DFPI used their summarized quarterly reports for Quarters 1 and 2 to determine the Advanced Amounts for those quarters because transactional data was not available.

⁶ The numbers in this analysis are rounded to the nearest million, where applicable.

⁷ Based on a total of 8,372,087 number of transactions, of which, 7,818,068 are from all 7 company transaction level data plus Q1 and Q2 EWA Reports for the non-tip companies. Those with zeros or blank number of days to repay were removed for this report.

Figure 2: 2021 EWA Advanced Payment Amounts⁸

Annual Percentage Rates

The Annual Percentage Rate (APR) is the total cost of credit, including interest, fees, and other charges, expressed as an annual rate. The Annual Percentage Rate (APR) is the standard way to compare the annual cost of credit across loan products.⁹ In some cases, APRs can also reflect the interest rate, points, fees, and other charges paid.¹⁰

The DFPI includes mandatory fees, tips, and other optional fees¹¹ in the 2021 Annual Percentage Rate calculations discussed below to aid policy analysis and allow better comparisons with other forms of financing. DFPI applies a single advance, single payment transaction APR formula¹² used for financial products to understand total consumer costs for EWA products.

Both tip and non-tip companies under transaction-based fee structures are analyzed in this section. Subscription-based companies are excluded as further discussed in this document.

The APR formula utilized in this analysis is represented below.

⁸ Based on a total of 8,372,087 number of transactions, of which, 7,818,068 are from all 7 company transaction level data plus Q1 and Q2 EWA Reports for the non-tip companies. Those with zeros or blank number of days to repay were removed.

⁹ Department of Financial Protection & Innovation. (2002, June 1). *Glossary of Financial Terms*. The Department of Financial Protection and Innovation. Retrieved March 16, 2023, from <https://dfpi.ca.gov/glossary-of-financial-terms/>.

¹⁰ Consumer Financial Protection Bureau. (2020, September 4). *What is the difference between a mortgage interest rate and an APR?* Consumer Financial Protection Bureau. Retrieved March 16, 2023, from [https://www.consumerfinance.gov/ask-cfpb/what-is-the-difference-between-a-mortgage-interest-rate-and-an-apr-en-135/#:~:text=An%20annual%20percentage%20rate%20\(APR\)%20is%20a%20broader%20measure%20of,higher%20than%20your%20interest%20rate.](https://www.consumerfinance.gov/ask-cfpb/what-is-the-difference-between-a-mortgage-interest-rate-and-an-apr-en-135/#:~:text=An%20annual%20percentage%20rate%20(APR)%20is%20a%20broader%20measure%20of,higher%20than%20your%20interest%20rate.)

¹¹ Expedited access to advance.

¹² Consumer Financial Protection Bureau. (n.d.). *Appendix J to Part 1026 — Annual Percentage Rate Computations for Closed-End Credit Transactions*. Consumer Financial Protection Bureau. Retrieved March 16, 2023, from <https://www.consumerfinance.gov/rules-policy/regulations/1026/j/>.

Figure 3: APR Formula

$$\text{APR} = \left(\frac{\left[\frac{\text{Tips + Mandatory Fees + Optional Fees}}{\text{Advanced Amount}} \right]}{\text{Number of Days Taken to Repay}} \right) \times 365 \times 100$$

Annual Percentage Rates are calculated for five companies with transaction-based fee structures where they collect mandatory charges based on advance wage access transactions, accept tips, and/or may charge optional fees for faster service. Two of the five companies did not report days to repay for Quarters 1 and 2, and those quarters have been excluded from all APR calculations. Subscription Fee Structures are also excluded from the analysis section, as it is difficult to include subscription fee costs when making APR calculations. For this reason, APR calculations for subscription fee models would have understated the cost of subscription-based EWA programs if those calculations were included in the DFPI's analysis. This issue may warrant further study.

Tip and Non-Tip Models

The figure below identifies APRs for companies with tip-based transactions and those with non-tip transactions. Calculations are weighted based on the total number of transactions across all five companies in which APRs could be calculated. Tip models include three companies that accept tips and optional fees. Non-tip models include two companies that did not accept tips but charged transactional fees.

Below are some key findings:

- In 2021, for the 5,827,120 transactions completed by tip-based companies, providers received tips 73% of the time.
- The average APR for the three tip-based fee structure companies was 334%.¹³
 - o The tip-based company APRs ranged between 328% and 348% (weighted quarterly average).
 - o Tips generated a total of \$17.55 million in revenue, and optional fees generated \$6.24 million.
 - o When a tip was provided by the consumer, the average tip amount was \$4.09.
 - o Most advance amounts (80%) are between \$40 and \$100, with 51% between \$80 and \$100.
- The average APR for the two non-tip fee structure companies was 331%.¹⁴
 - o Non-tip company APRs for Quarter 3 and Quarter 4 ranged between 315% and 344% (weighted quarterly average).¹⁵

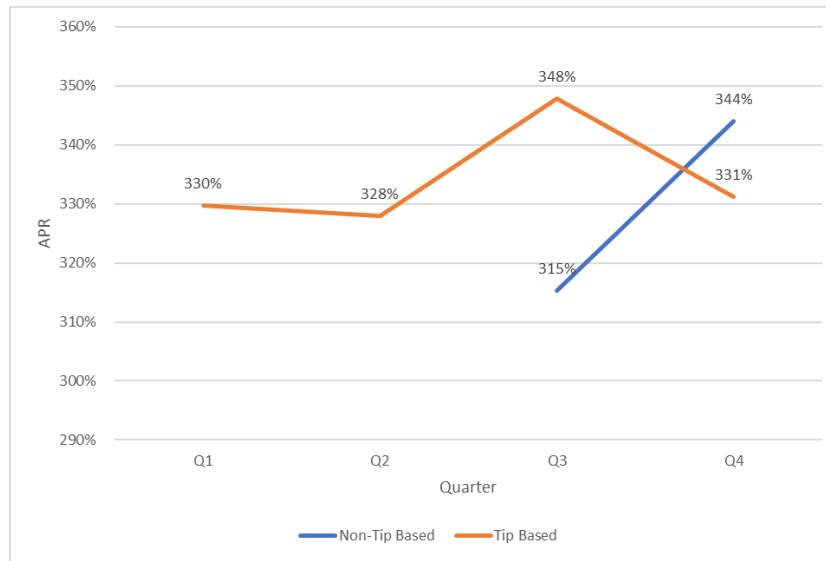
¹³ Based on a total of 5,827,120 transactions, across five companies (3 tip and 2 non-tip companies). Those with zeros or blank number of days to repay were removed for this report.

¹⁴ Does not include non-tip APRs for Q1 and Q2 because appropriate transaction level data was not available.

¹⁵ Fee Based APRs for Quarter 1 and Quarter 2 could not be calculated because transaction level data was not available.

- o Fees generated a total of \$4.31 million in revenue.¹⁶

Figure 4: APRs by Model Type¹⁷



The APRs for both tip-based companies and non-tip company advances for EWA services are comparable to the average APRs for licensed payday lenders in California.¹⁸

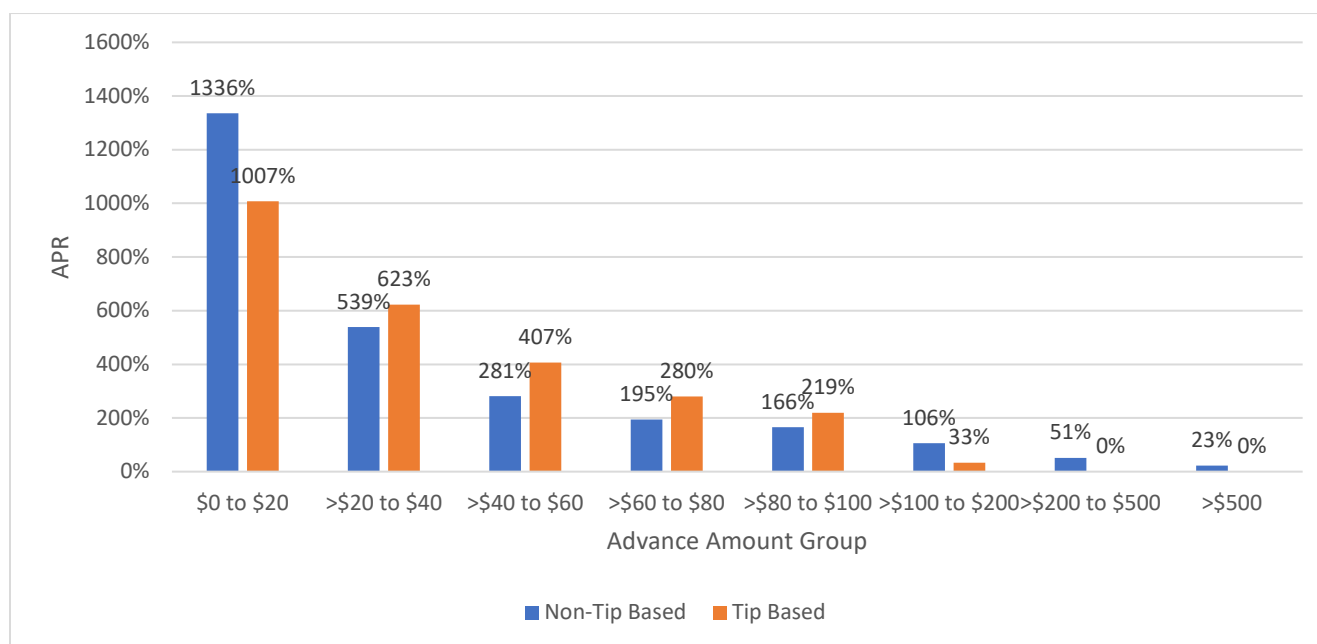
Average APR by Advanced Amount

The figure below displays how consumers of both tip-based and non-tip-based companies who receive small advances (\$0-\$20) pay a higher APR than those that receive larger advances. In fact, those with advances larger than \$200 do not pay tips. Only 504 tip-based transactions were over \$200, and none of them tipped or had a fee. There were 167,991 non-tip-based transactions over \$200. However, the fee-to-advanced amount ratio decreases as the amount advanced increases.

¹⁶ Fees generated includes Q1 and Q2 fee amounts for non-tip models reported in the EWA reports plus Q3 and Q4 transactional data.

¹⁷ Based on 7,148,673 transactions across five transaction-based fee structure companies. Tip-based models account for 5,827,120 transactions. Non-tip models account for 1,321,553 transactions that did not include tips but may include other transactional fees. Non-tip company data was unavailable for Q1 and Q2. One company did not report days to repay and as result, APRs could not be calculated. Another did not begin reporting transactional data until Q3.

¹⁸ Department of Financial Protection & Innovation. (2022, July) *Annual Report of Payday Lending Activity Under the California Deferred Deposit Transaction Law*. Department of Financial Protection & Innovation. Retrieved March 16, 2023, from https://dfpi.ca.gov/wp-content/uploads/sites/337/2022/07/DFPI_AnnualReport_CDDTL-2021.pdf.

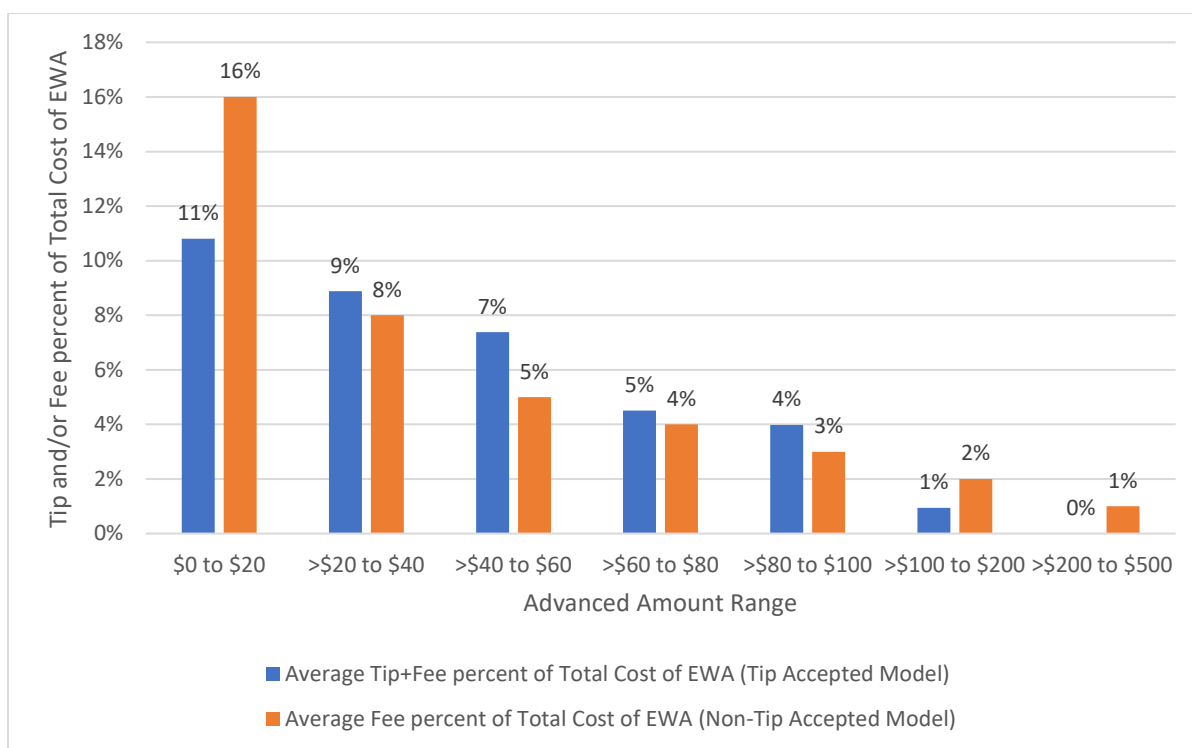
Figure 5: Tip-based and Non-Tip APRs by Advanced Amount¹⁹

Both tip-based and non-tip-based companies average high APRs for smaller advanced amounts; however, non-tip-based companies average higher APRs on advanced amounts less than \$20 and tip-based companies have significantly higher APRs for ranges between \$20 and \$100. Further information may be required to understand the marketing, operations, and strategic decisions behind these figures.

Amount Paid by Consumers

The figure below displays the average percent paid in tips and fees in relation to the total amount repaid to EWA companies ((Tip + Fees) / (Tip + Fees + Advanced Amount)). Similar to the high average APRs for those consumers receiving smaller advances, as a whole, those with smaller advance amounts (less than \$20) are paying proportionately higher amounts (average tip + fee) across tip and non-tip models.

¹⁹ Based on 7,148,673 transactions across five transaction-based fee structure companies. Tip-based models account for 5,827,120 transactions. Non-tip models account for 1,321,553 transactions that did not include tips but may include other transactional fees. Non-tip company data was unavailable for Q1 and Q2. One company did not report days to repay and as result, APRs could not be calculated. Another did not begin reporting transactional data until Q3.

Figure 6: Amount Paid by Consumers²⁰

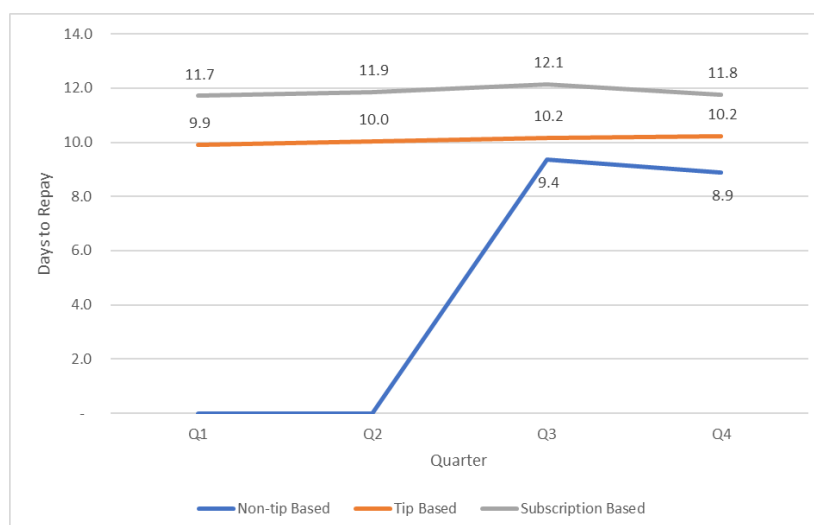
Average Days to Repay

The average days to repay advances²¹ ranged from 8.9 to 12.1 days, with an average of 10.07 days. Average days to repay was based on the average of all transactions reported by companies for each quarter.

Subscription companies' customers averaged 11.9 days to repay, while tip and non-tip companies' customers averaged 10.1 and 9.1 respectively. For tip-based companies, one possible reason for longer repayment numbers may be less ability for these companies to recoup repayments from bank accounts that are not directly linked to payroll systems.

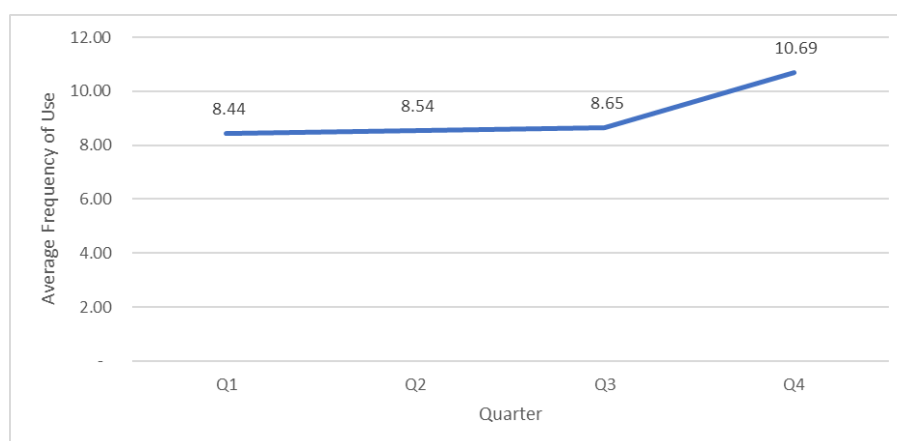
²⁰ Based on 7,148,673 transactions across five transaction-based fee structure companies. Tip-based models account for 5,827,120 transactions. Non-tip models account for 1,321,553 transactions that did not include tips but may include other transactional fees. Non-tip company data was unavailable for Q1 and Q2. One company did not report days to repay and as result, APRs could not be calculated. Another did not begin reporting transactional data until Q3. EWA Costs Percentages are calculated using the Formula $(\text{Tip} + \text{Fee}) / (\text{Tip} + \text{Fee} + \text{Advanced Amount})$. For example if Tip = \$10, Fee = \$10, and Adv Amt = \$100, the calculation would be: $(\$10 + \$10) / (\$10 + \$10 + \$100) = .1666$ or 16.66%.

²¹ The average calculation of all advances reported and repaid throughout the quarter. Or the time from the advance date to the time the EWA company obtained reimbursement.

Figure 7: 2021 EWA Average Days to Repay by Tip/Non-Tip/Subscription²²

Frequency of Use

The average number of times a consumer used advances per quarter was nine and ranged from 1 to 25 times. Companies with higher transaction amounts have a higher frequency of use.

Figure 8: 2021 EWA Frequency of Use²³

Two companies had significant increases in consumer use frequency over the course of the year. One company had a two-fold increase, and the second had an eight-fold increase. Additional data and analysis may be required to explain the trends.

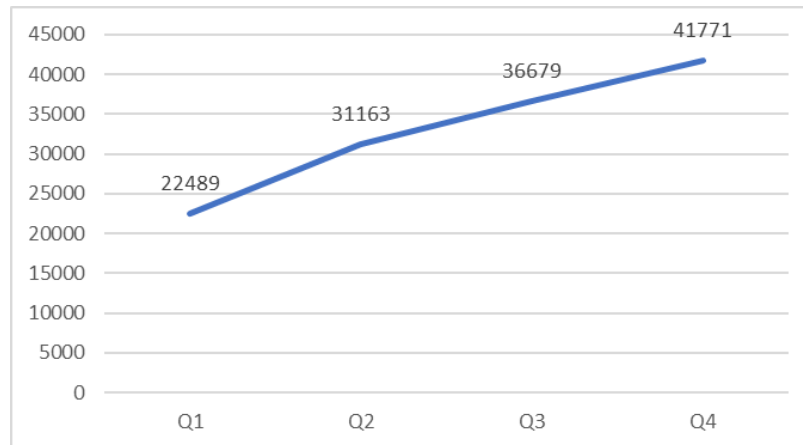
²² Based on 7,818,067 transactions across seven companies. Tip-based models account for 5,827,120 transactions. Non-tip models account for 1,321,553 transactions that did not include tips but may include other transactional fees. Non-tip company data was unavailable for Q1 and Q2. Subscription models account for 669,394 transactions.

²³ Based on company calculated data for six companies. One company did not provide Frequency of Use data.

Number of Missed Payments

The number of missed payments²⁴ ranged from 5 to 16,921 throughout the year, with the average being 5,504 across companies. Three companies had the highest number of missed payments in 2021. This may have been due to their D-to-C business models. The B-to-B model's integration with payroll systems allows companies to be repaid automatically and may more accurately calculate consumers' earned wages.

Figure 9: 2021 EWA Number of Missed Payments²⁵



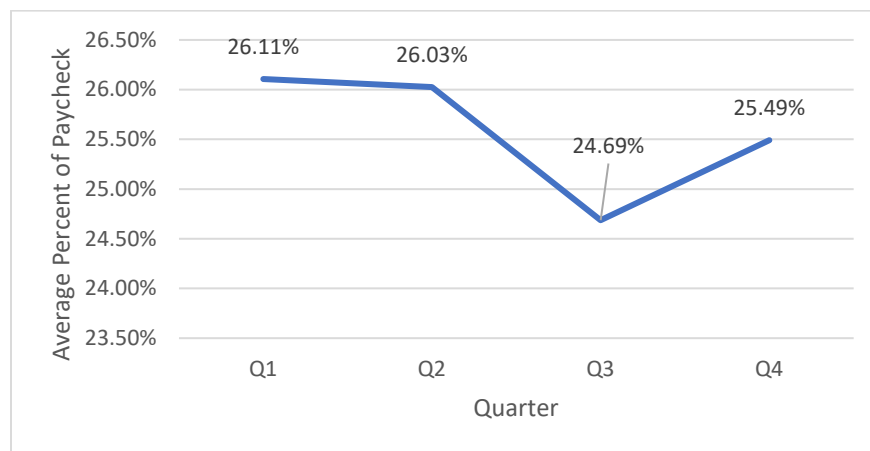
Percent of Paycheck

This metric, intended as a ratio, was described on the EWA template as “Money Advanced from Paycheck.”²⁶ The seven companies reviewed had various ways of reporting this metric. Three companies reported this metric as a percentage, while four companies reported this metric as a dollar amount. Percent of Paycheck among the three companies that reported this data point as a ratio ranged from 6% to nearly 50%.

²⁴ Missed payments refers to times when the provider does not collect a payment on the date originally scheduled for collection. Includes company-reported delinquent, default, and no payments.

²⁵ Based on company calculated data for six companies. One company did not provide Missed Payment data.

²⁶ One of the companies has a limit on the amount of money that can be advanced, \$250.

Figure 10: 2021 EWA Percent of Paycheck²⁷

COMPLAINT DATA

As part of the MOUs, companies were asked to provide information regarding complaints received and their resolutions. Reporting companies may have had different criteria for what they classified as a complaint. For this reason, the information reported below may not reflect a complete picture of the issues or concerns raised by EWA customers during the reporting period. In this section, a total of 345 complaints across six companies that responded to the requested MOU information were analyzed for trends.

Companies' consumer complaints occasionally entailed more than one issue. Issues were interlinked and not mutually exclusive. For example, an advance problem where a customer did not receive an advance could also be classified as a settlement problem when the customer experienced a reduction in their direct deposit because of the missing advance. In those cases, DFPI assigned the most appropriate or prominent category to the complaint or inquiry – or in this case, it would be coded as an advance issue.

Complaint/Inquiry Data Key Findings

Fund Transactions

The transaction point of receiving and repaying funds accounted for 67% of complaints and inquiries from those who used the service. Approximately 34% of complaints concerned settlement issues including claims that a consumer was overcharged for a repayment or the payment amount exceeded the advance amount.

Advance²⁸ payment issues accounted for 33% of claims that the advance was never issued, that a consumer was unable to receive a requested advance due to reaching their advance limit, or that the consumer was unable to access the advance request due to a technical or password problem.

²⁷ The above chart only displays companies that presented the metric, "Money Advanced from Paycheck" as listed in their quarterly EWA Summary as a ratio.

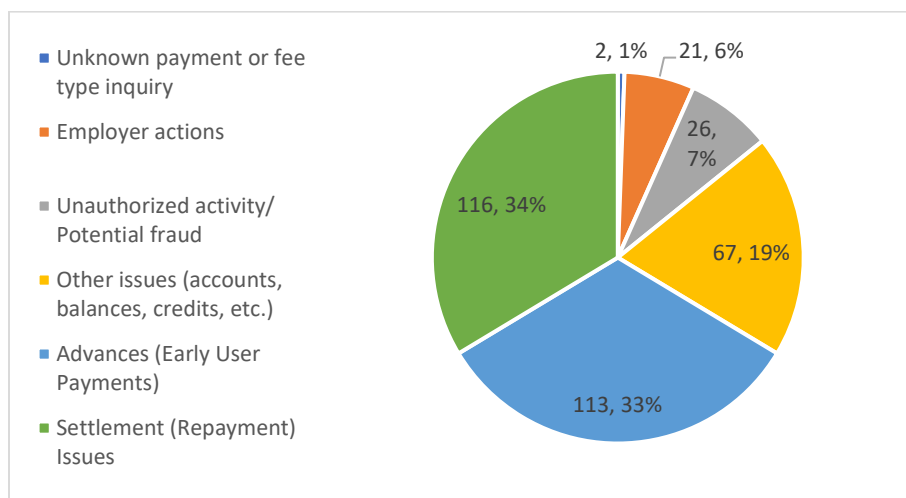
²⁸ Advances to workers or consumers prior to their normal pay cycle.

Other issues accounted for 19% of complaints and included incidents surrounding company-specific products, rewards, and EWA services, such as referral bonuses or bonuses to link a new account to the company's advance payment application. In the case of one company, the EWA feature is part of a suite of products that may be directly or indirectly impacted by an EWA transaction.

Unauthorized activity and potential fraud accounted for 7% of consumer complaints or inquiries. Customers claimed to have unauthorized advance requests on their statements or that they did not set up an account. The DFPI review of both the claims and resolutions indicates that most of these customer claims were valid and the companies reimbursed repayments for fraudulent advances or closed accounts. In a few cases, the EWA company worked with customers to verify transactions, and the customers withdrew the fraud allegations. Further reporting may be required to clearly distinguish between unauthorized activity and potential fraud (for security risk).

Employer-related issues accounted for 6% of consumer inquiries. Complaints included employer actions such as notifying the EWA company of an employee's leave, yet not informing the employee that they would no longer be able to use the advanced access feature of the EWA application. Another example would be if the employer neglected to inform an EWA company of a changed payroll date initiating settlement prior to a user's payroll deposit, thus resulting in an overdraft. All the employer-related complaints occurred in companies with B-to-B business models. Problems for low-wage workers who work variable hours or may have extensive periods of leave warrant additional research.

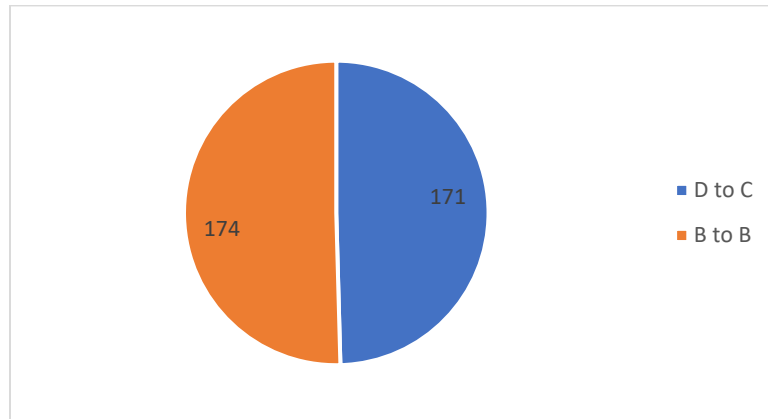
Figure 11: 2021 EWA Complaint or Inquiry Types²⁹



²⁹ Based on 345 complaints reported by six companies.

Complaints or Inquiries by Business Model

Complaints were nearly evenly split between B-to-B models (174) and D-to-C (171) models.

Figure 12: 2021 EWA Provider Complaints or Inquiries

CONCLUSION

These findings highlight early trends of earned wage access company practices in California based on data from several prominent market actors. However, further study is needed to understand full impacts to consumers. Additional consumer-level data on out-of-pocket costs, motivations for increased frequency of use, and the consumer demographics in EWA use (i.e., age, race, income, credit score, geography, etc.) would help the DFPI assess trends and risks.

EXHIBIT B



Not Free: The Large Hidden Costs of Small-Dollar Loans Made Through Cash Advance Apps

Lucia Constantine, Researcher, CRL

Christelle Bama, Senior Researcher, CRL

Sara Weiss, Vice President and Research Director, CRL

April 2024



www.responsiblelending.org

About The Center for Responsible Lending (CRL)

The Center for Responsible Lending (CRL) is a non-partisan, nonprofit research and policy advocacy organization working to promote financial fairness and economic opportunity for all, end predatory lending, and close the racial wealth gap. CRL's expertise gives it trusted insight to evaluate the impact of financial products and policies on the wealth and economic stability of families of color, rural, women, military, low-wage, low-wealth, and early-career workers and communities. CRL is an affiliate of Self-Help, one of the nation's largest nonprofit community development financial institutions. We work in partnership with national and local consumer, faith, and civil rights organizations.

About the Authors

Lucia Constantine is a researcher at the Center for Responsible Lending. Prior to working with CRL, Lucia was a senior policy analyst at the North Carolina Housing Finance Agency, where she performed data analysis and research to understand gaps in affordable housing across the state and inform the use of state and federal funds. Before her work in affordable housing, she spent her early career in nonprofits and higher education, focused on issues related to immigration, civic engagement, and economic development. She graduated with a bachelor's degree in human biology from Stanford University and a master's degree in city and regional planning from the University of North Carolina at Chapel Hill.

Christelle Bamona is a former senior researcher at the Center for Responsible Lending. Prior to CRL, Christelle was an associate at Vega Economics, where she specialized in data analysis for financial security litigation involving investment banks. She received a master's degree in economics from the University of San Francisco and a bachelor's degree in economics from the Catholic University of Congo.

Sara Weiss directs CRL's research team and advances the organization's policy objectives through timely, rigorous, and impactful research products. Prior to CRL, Sara was an applied researcher in both university and private consulting settings. She has led teams to execute research and produce actionable products for state and federal policy stakeholders. Sara holds a doctorate in public policy from Duke University and was a Fulbright Fellow in South Korea.

Acknowledgments

The authors express their gratitude to SaverLife for their collaboration on this project and for their invaluable assistance in facilitating our engagement with their transactions data. The authors also thank the team at BSP Research for borrower recruitment, focus group moderation, and analysis of the diaries. We are grateful to the 18 participants who took part in the diaries project. Their open and willing participation provides invaluable insight that can and should be used to inform future policy.

Finally, the authors would also like to acknowledge Monica Burks, Yasmin Farahi, Ellen Harnick, and Andrew Kushner, each of whom supported the creation of this report.

Table of Contents

Executive Summary.....	1
Background.....	2
Research Objectives.....	3
Data and Methodology	4
Findings.....	6
Overdrafts on Consumers' Checking Accounts Increased 56% on Average After Use of an Advance Product.....	6
Consumers Are Taking Out Advances Repeatedly, and Using Multiple Lenders Is Common. Three Quarters (75%) Took Out at Least One Advance on the Same Day or Day After Making a Repayment	7
Consumers Taking Out Small Amounts of Cash Paid a High Price. Average APR for an Advance Repaid in 7 to 14 days was 367%, Nearly as Much as the Typical APR on a Payday Loan (400%).....	10
Many Low- to Moderate-Income Consumers Are Already Struggling to Meet Their Expenses and Repaying Advances Makes It Harder to Catch Up or Save.....	12
Conclusion.....	13
Appendices	14
Endnotes	17

Executive Summary

Earned wage advances (EWA) and cash advance products are small, short-term loans that are typically repaid on the consumer's next payday either directly from a bank account or as a payroll deduction. Consumers access these products using an app on their smartphone by linking their bank accounts or by enrolling through their employer. The costs of these very short-term loans are not always transparent to consumers, who often pay fees and leave tips to access money and run the risk of unexpected overdraft fees. Workers who are already living paycheck to paycheck may frequently find themselves pulled into a cycle of reborrowing that depletes their net earnings and further erodes their financial stability. Through a mixed-methods approach, this research aims to better understand the costs and risks of using EWA and cash advances as well as their impacts on the financial lives of low- and moderate-income consumers.

Key Findings Include:

- 1 Overdrafts on consumers' checking accounts increased 56% on average after use of an advance product.
- 2 Consumers are taking out advances repeatedly, and using multiple lenders is common. Three quarters (75%) took out at least one advance on the same day or day after making a repayment.
- 3 Consumers taking out small amounts of cash paid a high price. The average APR for an advance repaid in 7 to 14 days was 367%, nearly as much as the APR on a typical payday loan (400%).
- 4 Many low- to moderate-income consumers are already struggling to meet their expenses and repaying advances makes it harder to catch up or save.

Background

EWA and cash advance products are small-dollar, short-term loans that borrowers access via smartphone apps and typically repay on their next payday, either directly from a bank account or as a payroll deduction. Two types of companies offer advances: employer-integrated and direct-to-consumer. In employer-integrated EWA, companies contract directly with employers, using their timekeeping and payroll systems to determine advance eligibility. Loans are repaid through payroll deduction, leaving the user with a smaller paycheck on payday. Direct-to-consumer companies have access to users' bank accounts and rely on deposits, income history, spending habits, and in some cases, location tracking to determine projected pay and borrowing limits. A borrower repays advances directly from their bank account when they receive their next paycheck or at a scheduled date. Borrowing limits vary by company but can be up to \$750 or more per pay period or up to 100% of earned wages.¹ A 2021 report found that the average advance was \$120 across two employer-based and two direct-to-consumer companies.² In California, the Department of Financial Protection and Innovation (DFPI) found 80% of transactions were between \$40 and \$100.³

Companies market these loans as having no mandatory fees or interest and as a way to avoid overdrafting a checking account, but consumers often pay optional fees, leave "tips" when they take out an advance, and incur overdraft charges upon repayment, making advances costly. Employer-integrated and direct-to-consumer companies use different fee structures, which can include a combination of monthly subscription fees, transaction fees, and expedite fees.



Advance transactions typically carry one or more of the following fees:

Transaction fees: Fees charged for each loan transaction.

Expedite or fast-funding fees: Fees charged to provide instant access to funds that range from **\$0.49–\$25.00**, depending on the company and the desired speed.⁴ The cost of expediting payment for the cash advance company is less than \$.05 per transaction.⁵

Subscription or membership fees: Monthly fees to access advances range from **\$1.00–\$19.99**. In some cases, these fees provide access to other products like credit builder loans, credit monitoring, and budgeting apps.

Fees disguised as "tips": Additional fees the lender prompts the user to pay. Although optional, lenders often set a default amount or percentage at more than \$0. Tips range from **\$0–\$14.00** for the companies researched.

Companies advertise advances as a way to get cash “in minutes” but charge a fee to do so. Fast-funding fees are optional, but in practice, consumers in need frequently pay them to access cash immediately rather than wait one to three business days (the free option). Similarly, while tips are not mandatory, users often feel compelled to leave one due to applied pressure tactics like setting default tips greater than \$0 or claiming tips are used to support other vulnerable consumers or for charitable purposes.⁶ DFPI found that tip-based lenders received a tip on nearly three-quarters (73%) of all loans.⁷ In an online survey conducted by CRL, 70% of respondents reported leaving tips, with 62% doing so nearly every time. Nearly 8 in 10 respondents (79%) also typically paid expedite fees to receive funds faster, suggesting that fees and tips are common practice.⁸ Fees make these small advances costly for consumers, with annual percentage rates (APRs) averaging over 300%.⁹

Consumers take out advances with varying frequencies, from multiple times a year to every pay period. Some companies allow users to take out multiple advances before repayment, while others only allow one advance at a time. Research by the Government Accountability Office (GAO) estimated that users of one employer-sponsored EWA company used the service 10 to 24 times per year while users of a direct-to-consumer company did so more frequently, 26 to 33 times per year on average. Another study found more than 70% of users took advances in consecutive semi-monthly periods, with 10% of users taking out advances consecutively for at least five months.¹⁰ DFPI found consumers took out advances nine times a quarter on average for a total of 36 times a year.¹¹ The frequency of advances adds to the cost, especially if consumers are paying expedite fees and leaving tips with each advance. Some lenders restrict how much can be borrowed in a single advance while permitting multiple advances per pay period and even per day, to increase the number of advances and amount paid in fees. For example, one company allows consumers to take out \$750 per pay period but only up to \$100 per day.

Existing research suggests that low- and moderate-income consumers make up a significant percentage of the customer base for EWA and cash advance companies. The GAO found that the share of users earning less than \$50,000 a year ranged from 59% to 97% across four different advance companies that separately provided these percentages. One direct-to-consumer company reported 78% of its users made less than \$25,000 a year.¹² A survey of low-income workers receiving government benefits found that 51% had used or downloaded direct-to-consumer apps and 16% had used them once a week.¹³ Sold as a liquidity solution for consumers living paycheck to paycheck, advances may provide some relief to consumers in the short term but can cause a cycle of repeated borrowing in the long term, as consumers are continually borrowing against their own paycheck, often at a high cost.

Research Objectives

Despite the increasing public attention on advances, there remains a notable gap in our understanding of their usage by consumers, as well as the associated costs and impacts on consumers’ finances. To bridge this information gap, we conducted a mixed-methods research study, encompassing both a quantitative analysis of transactional data and a qualitative diary study. This report aims to understand the impact of fintech cash advances on consumers by addressing the following three research questions:

- 1 **What is the cost of using these products?**
- 2 **What do usage patterns look like for EWA and cash advance products?**
- 3 **What are the impacts on consumers’ financial health and goals?**

Data and Methodology

Transactions Analysis

CRL received anonymized financial transactions data from a panel of low- to moderate-income consumers affiliated with SaverLife. This nonprofit advocacy organization uses technology to improve the financial health of people living on low-to-moderate incomes across the county. SaverLife has a network of more than 600,000 members who engage with their financial product, research, or advocacy efforts.¹⁴ More than 160,000 consumers have chosen to connect one or more of their accounts to the SaverLife platform. The sample provided to CRL included anonymized data for U.S. consumers who shared their transaction-level activity from one or more financial institutions with SaverLife's financial product. The consumers in this sample were "active" on the platform, with "active" being defined as having a transaction on record in the 30 days before November 13, 2023.

SaverLife works with a subset of American consumers that is younger and lower income than the U.S. population as a whole based on self-reported demographic information obtained through intake surveys. The majority of SaverLife members (91%) have a household income of \$75,000 or less compared to 50% of American households overall. Our dataset consisted of a sample of users with similar demographic characteristics as SaverLife's membership. The income distribution of the sample aligns with the income distribution of advance users reported in previous research by GAO and others. Detailed characteristics are available in Appendix 1.

The dataset included 14,514,724 transactions for 16,442 individuals over an 18-month period (May 2022 to November 2023). Variables included anonymized user ID, account type, transaction date, transaction description, transaction amount, and banking institution name. Because the data are account-level and consumers may hold multiple accounts, our findings may reflect only a portion of the consumer's transactions.

Identifying Cash Advance Users

We include five direct-to-consumer companies in the analysis, but they are not the entirety of the EWA and cash advance marketplace. One report identified at least nine direct-to-consumer companies.¹⁵ Although total market share is unknown, three companies (Brigit, Dave, and EarnIn) in our report have a combined reported user base of 14 million.¹⁶ Employer-integrated companies were visible in the transactions data but were not reflected in the analysis because repayment was done through payroll and not a separate, identifiable transaction. Because the analysis does not include all companies, our findings likely underestimate frequency and usage of EWA and cash advance.

Of the five advance companies included in this analysis, two used a tip-based model and three used a subscription-based model with no tips. Consumers using advances were identified by creating filters for transactions containing company names for each direct-to-consumer company (Brigit, Cleo, Dave, EarnIn, and FloatMe). These consumers had advances that could be matched to repayments. Of the 16,442 consumers included in the sample, 1,938 (12%) had transactions associated with at least one of the five companies listed above:

Link Advances to Repayments

Although advances are the main line of business, EWA and cash advance companies offer other ancillary products and services like credit builder loans, credit monitoring, savings accounts, and debit cards. To isolate advances and repayments, we first identified them by removing any transactions associated with other company products using keyword filters; this left advances, repayments, and monthly subscription fees. We organized the remaining transactions into three distinct datasets based on their nature: advances, repayments, and (when applicable) membership fees.

In cases where companies permit only one advance at a time, we matched advances to repayments, using the transaction date. We assumed the repayment date occurred after the advance date and identified repayment amounts that were within \$20 of advance amounts. We also included monthly membership fees in the dataset. This procedure enabled advances to be aligned with their respective repayments and fees to be calculated.¹⁷

In cases where companies allow users to take out multiple advances before repayment, we conducted a merge operation between advances and repayments to ascertain the timeframe during which each advance transaction was both initiated and repaid.¹⁸

Ultimately, we matched 37,826 advances for 1,938 unique users across five direct-to-consumer companies.

Table 1: Total Advances and Users by Company

Company	All Five Lenders	Brigit	Cleo	Dave	EarnIn	FloatMe
Number of Advances	37,826	7,133	2,966	5,992	19,561	2,174
Number of Users	1,938	909	719	873	706	444

Note: Number of users in this table is greater than 1,938 because some users used more than one company.

Diaries

On behalf of CRL, BSP Research implemented a diary study of 18 EWA and cash advance users. All participants use EWA or cash advance products regularly, with some using several apps multiple times a week. Participants discussed their experiences with more than seven companies, including the five companies included in the transaction analysis. Participants logged onto an online discussion platform (QualBoard) several times a week over the course of three weeks. From August 28, 2023 through September 15, 2023, participants answered a series of questions about their experiences with and concerns about using EWA and cash advance products.

The study recruited from among people aged 18 to 55 years old who are employed and have a personal income of no more than \$50,000. In total, 14 participants completed the study in English, and four completed the study in Spanish. Most respondents (11 out of 18) identified as people of color and slightly more identified as female than male. Participants lived across the country, in 13 different states. A detailed description of the sample is available in Appendix 2.

In partnership with BSP Research, CRL researchers analyzed diaries to identify themes related to advance use, ability to meet expenses, impacts of using advances, and planning for financial goals. Some of the most salient themes, along with direct quotes that support them, are presented in the findings section below.

Findings

Overdrafts on consumers' checking accounts increased 56% on average after use of an advance product.

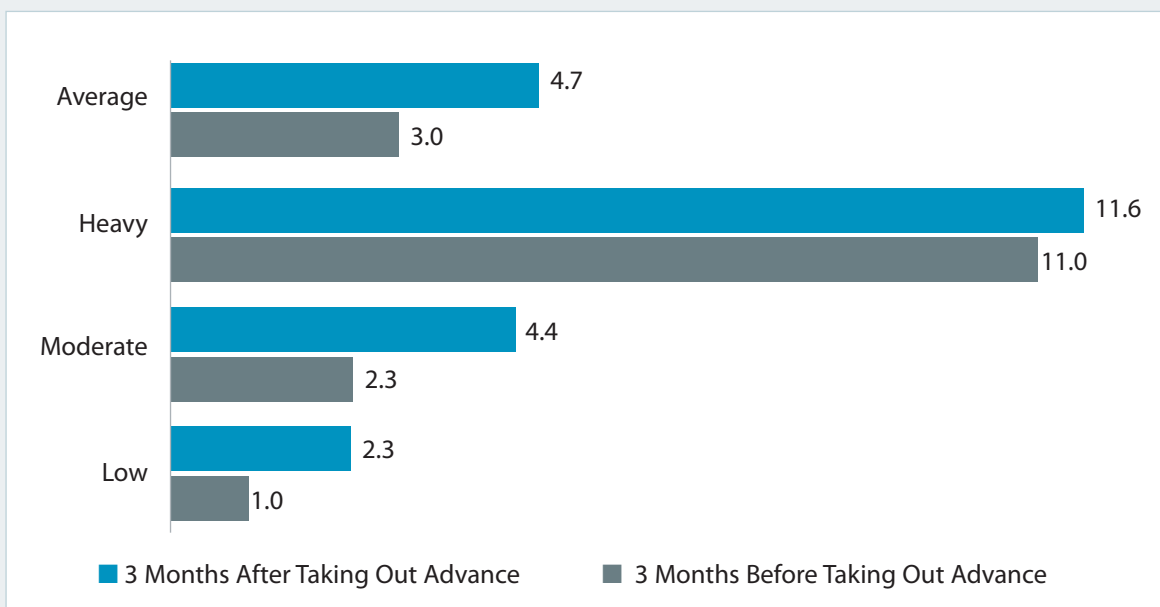
Companies providing advances often tout their product as a way for consumers to avoid overdrafting their checking accounts and incurring associated fees. However, this claim is inconsistent with past evidence that demonstrates how high-cost credit products may compound other financial costs, such as overdraft fees. For example, a Consumer Financial Protection Bureau (CFPB) study that reports on other deposit advance products issued by banks found that borrowers were substantially more likely to overdraw their accounts when they used these products. Even when banks discontinued these deposit advance products, there was not an increase in overdraft use.¹⁹ In other words, the availability of the high-cost credit products was associated with more overdrafts, and the elimination of this loan program did not appear to lead to an increase in overdrafts as a replacement.

Direct-to-consumer lenders recoup funds and subscription fees directly from users' bank accounts through ACH authorizations. If the user does not have enough funds at the time of repayment, lenders will make multiple attempts to collect repayment, resulting in overdraft fees.²⁰ Though the price varies by bank, an overdraft fee often costs \$35.

To evaluate whether the use of advances changed the frequency of overdraft fees, CRL looked at the change in overdraft fees before and after a customer started using advance products.²¹ We identified the first advance transaction associated with a consumer and then looked at the number of overdraft fees incurred three months prior to advance use and three months post use to evaluate the change in overdraft activity. We used four categories to define frequency of overdraft fees in those three months: "heavy" users had four or more overdrafts over three months, "moderate" users had two or three overdrafts over three months, and "low" users had one overdraft every three months.

In our transaction analysis, we found that users experienced more overdraft fees after an initial advance. The average number of overdraft fees increased from 3.0 in the three months leading up to borrowers first advance use to 4.7 overdrafts in the three months following advance use. Assuming a common overdraft fee of \$35, advance users paid about \$60 more in overdraft fees in the three months after using advances. Half of advance users had zero overdrafts in the three months prior to using advances. These users newly started to overdraft on average 2.3 times, and as many as 35 times, in the three months after taking their first advance.

In fact, all consumers, regardless of overdraft frequency, saw their overdraft activity increase. Over three months, the number of overdrafts for low and moderate users more than doubled, rising from 1.0 to 2.3 (and up to 19) and from 2.3 to 4.4 (and up to 20), respectively. Meanwhile, heavy overdraft users saw their activity increase from 11.0 overdraft transactions to 11.6 (and up to 53).

Figure 1. Counts of Overdrafts Preceding and Following Three Months of Advance Use

Source: CRL analysis of SaverLife data.

The increase in overdraft fees in conjunction with use of advances is similar to the relationship observed between overdraft fees and payday lending. Notably, consultants selling bank payday loan software have promised banks that providing payday lending would result in little to no “overdraft revenue cannibalization” because payday lending would increase total borrowing by consumers, resulting in higher fee generation.²² Advance products appear to be operating in a similar pattern and users seem unlikely to be able to reduce overdraft fees because of their use.

Consumers are taking out advances repeatedly, and using multiple lenders is common. Three quarters (75%) took out at least one advance on the same day or day after making a repayment.

Lenders impose restrictions on how much can be borrowed in a single advance, but some allow borrowers to take out more than one advance per pay period, in some cases within the same day. (See Table 2 below.) As a result, lenders collect more fees as consumers take out consecutive advances or take out advances from multiple lenders to access more money. Consumers are left with less money on payday and increased risk of overdraft as they repay multiple advances at once. In our analysis, 37% of advance product users had at least one month where they took out advances four times or more. Additionally, 17% of users heavily relied on advances, using it four times or more in a month, for three consecutive months.

Table 2. Advance Limits and Fee Structure by Company

	Brigit	Cleo	Dave	EarnIn	FloatMe
Maximum Advance	\$250	\$250, \$100 for first-time users	\$500	\$100 per day \$750 per pay period	\$50
Monthly Fee	\$ 9.99 or \$14.99	\$5.99 or \$14.99	\$1.00	-	\$3.99
Expediting Fees	\$0.99–\$3.99 with the \$9.99 monthly option	\$3.99	3% of advance (\$3–\$15)	\$1.99 to \$3.99	\$3 for advance of \$10–\$20 \$4 for advance of \$20–\$30 \$5 for advance of \$30+
	free with the \$14.99 monthly option		5% of advance (\$5–\$25)		
Tipping	-	-	Up to 25% of advance solicited	Up to \$13 solicited	-

Source: CRL review of company websites.

We found that almost half of users (48%) accessed advances from multiple companies, sometimes simultaneously. While 52% of users exclusively depended on a single lender, 24% utilized two lenders, and 24% had engaged with at least three lenders within the studied period. Among the consumers using multiple lenders, most (51%) engaged with multiple lenders within the same month for at least half of the time they took out advances. Taking out multiple advances simultaneously increases fees paid and the risk of overdraft upon repayment.



Among the consumers using multiple lenders, most (51%) engaged with multiple lenders within the same month for at least half of the time they took out advances.

Although advances may initially serve as an emergency resource, consumers are reducing their own paycheck each time they borrow and creating a cycle of borrowing and repayment that is difficult to break. In our transactions analysis, we found 12.0% of users took out new advances on the same day they repaid another from the same company and another 62.8% took out an advance one day after making their repayment. We found that 36.5% of users took out a new advance from any of the five companies on the same day they made a repayment for an advance from any of the five companies. And 38.7% took out their next advance just one day later. In total, this means 75.2% of users took out an advance on the same day or next day they made a repayment.

Users took out advances over several months, not just on a single occasion or sporadic basis. Seventy-six percent of individuals who began the use of an advance product continued to use the product at least once over the next six months.²³ Among those who kept using these advances, over half (51%) used the product at least once per month, 30% used it on average at least twice per month, over one-fifth (22%) took out advances an average of at least three times per month, and 10% of users averaged at least five advances per month over the six-month period. Users who took out at least six advances in one or more months (ranging from a single-month maximum of 7 to 22 times) accounted for 17% of all users and nearly half (49%) of all advances.



Users who took out at least six advances in one or more months accounted for 17% of all users and nearly half (49%) of all advances

Most diary participants reported trying more than one lender, and several had taken out advances from multiple companies within the same period. Some used a combination of employer-integrated and direct-to-consumer lenders while others relied on multiple direct-to-consumer lenders.

"Since last week, I have only used EarnIn. But, last payday I used EarnIn, Cleo, Empower, and Brigit, all once except for EarnIn, I used them twice." –Shaylene

"I usually use them every time I get paid because they take out their payment and usually my check is short because I use the apps and I have to go back and re-borrow almost every time I get paid." –Ayanna

"They're predatory, they get you stuck in a cycle, and you're basically getting money that you already are having a hard time managing... They purposely advertise to people with low income, typically people that use these end up getting stuck in a vicious cycle." –Cody

Consumers taking out small amounts of cash paid a high price. Average APR for an advance repaid in 7 to 14 days was 367%, nearly as much as the APR on a typical payday loan (400%).

When using these advances, consumers are borrowing small amounts of cash and typically repaying them in less than two weeks. The average advance amount for users in our transaction dataset was \$79 but varied from \$20 to \$133 depending on the company. The minimum advance amount in our sample was \$10 and the maximum was \$500, reflecting the variation in borrowing limits across companies. Consumers repaid advances within 10 days on average.

Table 3. Average Advance Amounts and Days to Repay by Lender

Company	All Lenders	Brigit	Cleo	Dave	EarnIn	FloatMe
Average Advance Amounts	\$79	\$58	\$39	\$133	\$83	\$20
Minimum Advance	\$10	\$25	\$20	\$20	\$10	\$10
Maximum Advance	\$500	\$280	\$250	\$500	\$300	\$50
Average Days to Repay	10.0	10.8	10.3	10.5	8.8	9.0

Source: CRL analysis of SaverLife data.

To compare the cost of advances relative to other financial products, CRL calculated the rate (APR), which represents the total cost of credit including fees and tips. We used the same APR formula as the California Department of Financial Protection and Innovation.²⁴ Monthly membership fees were included in the calculation by dividing the fee by the number of advances a consumer took out in each month.

Our calculations show that the cost of these advances can be comparable or more costly than traditional payday loans because of the high fees paid to borrow small amounts for a short period of time. **The average APR on advances repaid in 7 to 14 days was 367% (compared to 400% for a typical payday loan) but ranged from 284% to 956% by company.** Cleo and FloatMe showed higher average APRs due to the high fees for low advance amounts. Average fees represented 12% of the average advance amount but for Cleo and FloatMe were 18% and 26% respectively.

Table 4: Costs of Advance Compared to a Typical Payday Loan

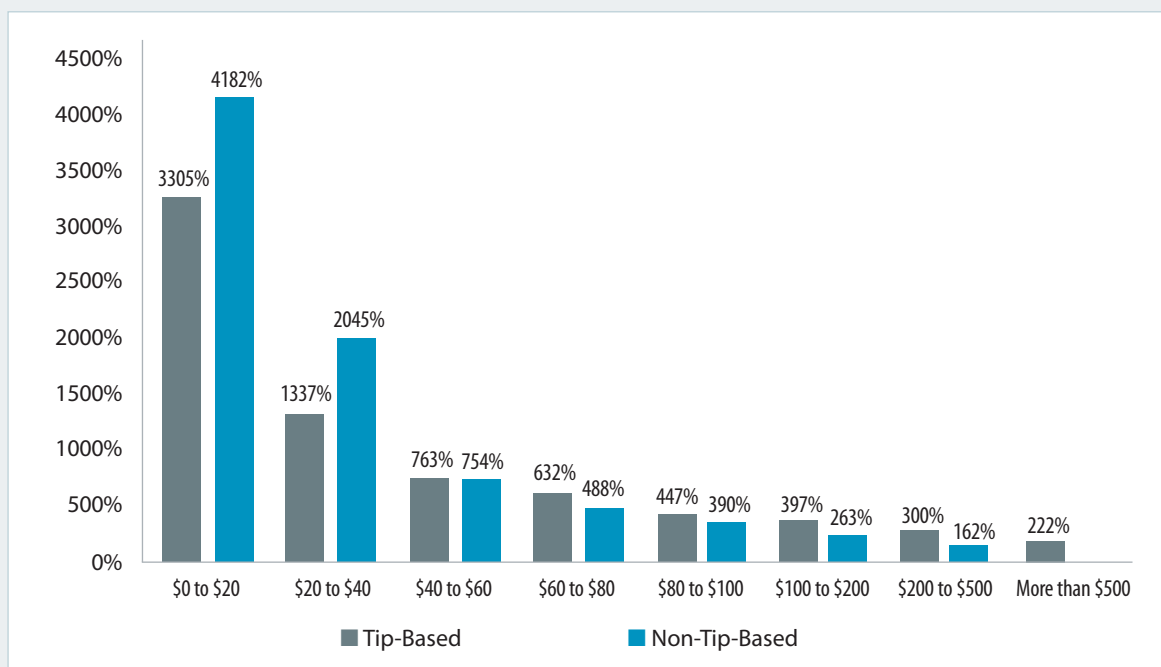
Cost Metrics	All Five Lenders	Brigit	Cleo	FloatMe	Dave	EarnIn	Payday Loan
Average APR on Advances Paid in 7 to 14 Days	367%	439%	652%	956%	329%	284%	400%
Average Fee to Advance Amount	12%	12%	18%	26%	10%	8%	15%
Cost per Advance	\$7	\$7	\$6	\$5	\$10	\$5	\$15

Note: Share of advances repaid within 7 to 14 days was 58%.

Source: CRL's calculations using SaverLife Data. The cost of a typical payday loan is taken from <https://www.consumerfinance.gov/ask-cfpb/what-is-a-payday-loan-en-1567>.

Consumers taking out small amounts of cash paid a high price. Over half of the transactions (51%) in our dataset were for less than \$80, especially among non-tip providers (see Appendix 3). Both tip-based and non-tip-based companies have exorbitant average APRs for advance amounts below \$40, with non-tip-based companies showing notably higher average APRs for these smaller advances. Advances ranging between \$40 and \$60 exhibit nearly identical average APRs across both tip-based and non-tip-based companies. Conversely, tip-based companies present significantly higher APRs for amounts of \$60 and above, which suggest consumers are leaving more in “tips,” which makes advances more costly.

Figure 3: APRs by Advanced Amount and Lender Type



Source: CRL's calculations using SaverLife data.

Diary participants' understanding of fees, tipping, and the costs associated with taking out an advance varied. Some users seemed to be unaware they were paying fees while others kept track of the changes in fees. Most participants reported regularly paying fees with some estimating they spent between \$30 to \$50 in fees per month. The lack of transparency around fees was concerning to some customers.

"I would say it's close to \$5–6 per advance except with Brigit I know it's only .99 cents. I would say each month I probably spend close to \$40 just on fees." –Zachary

"The tips I have not paid. I think they are ridiculous because they are already getting a fee. Most make you pay the expedite fee because if not it can take 3 business days and most people simply can't wait. I do feel the fee plus the monthly fee a lot are now doing is really starting to take advantage of people like \$6.99 a month and then \$6–7 expedite then want \$3–4 tip for 50 is a lot. This is one of the reasons I am trying my best not to use them." –Heather

Participants expressed mixed feelings about paying fees and confusion about leaving tips. Some felt fees were just the cost of doing business while others felt they were “paying to get paid” and that fees were unnecessary. Most felt they had no choice but to pay extra fees to receive money when they needed it. Some users described being charged for fees and tips that they hadn’t agreed to pay and expressed a desire for greater transparency around charges.

“I have been charged additional fees along with tips I never agreed to giving that amount. You can decline a tip one time and as you’re going through the process it adds another tip, but you have to catch it before you agree to the terms.” –Ayanna

“It has made it harder to save money, having to pay extra fees. That money could be going to my savings. I would say it (fees) is around \$50 a month, I would save that for an emergency fund.” –Jason

Many low- to moderate-income consumers are already struggling to meet their expenses and repaying advances makes it harder to catch up or save.

Diary participants were frustrated to find themselves in precarious financial situations despite how much they work and try to stay on top of their financial obligations. They expressed common financial goals—to build an emergency fund, open a savings account, own a home—but these goals were out of reach in their current situation. They were instead focused on getting by each week. Advances offered them quick access to money but at a high cost that puts them further behind and makes it difficult for them to save money. Most would prefer not to use advance apps in the future and are hopeful they will stop using them once they are more financially stable. They feel, however, that this is unlikely in the immediate future due to their pressing financial needs.

“It has been harder to save money, because I often find myself paying back more than what I borrowed every time and that sets me back for paying off other things.” –Ayanna

“Until I get a raise unfortunately, I feel I will be having to use it just as regularly as I have been.... I hope for there to come a day where I may not need to use a EWA where I will be financially stable enough to not have to rely on EWA or other means to pay bills on time.” –Brian

“I believe I will continue to use it at least for a while, but I would like to cut down on how frequent I’m using it, I’d like to get more ahead and get a savings built up so I don’t have to rely as much on the apps.” –Cayden

“My future financial goals are just to be stable to be honest without the need for these extra services. It’s frustrating because once you pay something there’s something else that pops up that you need to pay. I think it’s affecting my future financial goals because when you use these apps, you’re using money you’re already having a hard time balancing.” –Cody

Borrower Story: Zachary



Regular User of Cash Advance Apps

LOCATION:
Mississippi

AGE:
35

EMPLOYMENT:
Line cook, full-time

INCOME RANGE:
\$25–50K

HIGHEST LEVEL OF EDUCATION:
High School

ADVANCE LENDERS:
Brigit, Cleo, Dave, EarnIn

Relies on multiple lenders to make ends meet:

"I believe the first time I just needed extra money because I wasn't getting many hours at work, and now I'm in a perpetual state of borrowing every check because I can't afford to give up the amount till next pay period. . . . I consistently use EarnIn, Dave, Cleo and Brigit. I use them every paycheck."

Pays fees regularly but wants greater transparency:

"I always pay the fee to get it as soon as possible, it's usually not too big of a fee. I forget which app it was but they wanted you to pay for a subscription to the service with no guarantee you'd even get an advance which is ridiculous. I think the fees for the service should be made clear upfront because most of the apps make it seem like everything's free."

Trapped in a cycle of borrowing and repayment:

"My finances are horrible I hate it, I've been living paycheck to paycheck for a while now it's really hard to save up money for anything. I budget around these advances every month, I can't come up with the extra money to get out of the cycle. . . . Save money, own a home would be the most critical to me. I'm just trying to survive how it is right now honestly so I don't really have a plan set in place. It doesn't help having to forfeit half or more of my check every payday and then borrow it back, so yeah that affects my finances."

Conclusion

As the qualitative and quantitative findings in this report emphasize, the frequent use of advance products combined with their high cost make earned wage advance harmful for consumers who in many cases are already living paycheck to paycheck. Eroding their own paychecks each time they take out an advance, consumers are becoming trapped in a cycle of borrowing and repayment similar to payday loans. Another form of high-cost credit is not the solution to the income insufficiency faced by American workers whose wages have lagged behind the rising costs of everyday expenses like rent and food. Lawmakers and regulators addressing these products should impose meaningful guardrails on their use by regulating them under existing credit regulations or, if that is not feasible, implementing minimum consumer protections, such as treating advances as credit and including strict cost caps.²⁵

Appendix 1:

Demographics of Users by Sample Compared with Membership and U.S. Populations

Household Income	Advances Sample (n=814)	Transactions Sample (n=7,067)	SaverLife Membership (n=321,086)	ACS 2022, One-Year estimates
Less than \$15,000	12%	15%	31%	9%
\$15,000 to \$24,999	14%	14%	15%	7%
\$25,000 to \$34,999	14%	14%	13%	7%
\$35,000 to \$49,999	23%	22%	18%	11%
\$50,000 to \$74,999	20%	19%	13%	16%
\$75,000 to \$99,999	8%	8%	5%	13%
\$100,000 or more	8%	8%	5%	38%
Age	Advances Sample (n=876)	Transactions Sample (n=7,641)	SaverLife (n=321,086)	ACS 2022, One-Year estimates
18–24	7%	6%	6%	12%
25–44	48%	46%	42%	34%
45–64	33%	38%	43%	32%
65+	11%	10%	9%	22%

Note: Not all users in transactions sample reported income or age information, which is why n differs for each category and from the total users reported in the data section.

Appendix 2:

Focus Group Participants Demographics

Gender	
Men	8
Women	10
Race/Ethnicity	
Asian	2
Black	1
Hispanic	7
White	7
Other Race	1
Age	
18–25	4
26–35	7
36–45	4
46–55	3
Diary Language	
English	14
Spanish	4
Employment Status	
Full-Time	10
Part-Time	5
Self-Employed	3
Personal Income	
Less than \$25,000	2
\$25,000–\$50,000	16
Educational Attainment	
HS Diploma or GED	7
Some College, No Degree	5
Four-Year Degree	6
EWA Apps Used	
EarnIn	9
Dave	8
Chime	7
Brigit	5
MoneyLion	4
Daily Pay	3
PayActiv	2
Other	3

Appendix 3:

Distribution of Advance Amount by EWA Provider

	All Advance Providers	Non-Tip-Based Providers	Tip-Based Providers
\$0 to \$20	1.36%	1.51%	1.30%
\$20 to \$40	15.78%	34.90%	6.53%
\$40 to \$60	27.52%	47.52%	17.90%
\$60 to \$80	6.02%	7.02%	5.53%
\$80 to \$100	2.03%	3.54%	1.31%
\$100 to \$200	43.02%	5.30%	61.21%
\$200 to \$500	4.25%	0.22%	6.20%
>=\$500	0.01%	0.00%	0.02%

Endnotes

¹ What Is Earned Wage Access?, NerdWallet

² Final Copy EWA & D2C Advance Usage Trends (cfsi-innovation-files-2018.s3.amazonaws.com)

³ 2021 Earned Wage Access Data Findings (ca.gov). <https://dfpi.ca.gov/wp-content/uploads/sites/337/2023/03/2021-Earned-Wage-Access-Data-Findings-Cited-in-ISOR.pdf?emrc=08148f>

⁴ 8 Cash Advance Apps That Cover You 'Til Payday, NerdWallet

⁵ https://www.theclearinghouse.org/-/media/new/tch/documents/payment-systems/rtp_-_pricing_02-07-2019.pdf

⁶ <https://dfpi.ca.gov/wp-content/uploads/sites/337/2023/03/PRO-01-21-ISOR.pdf>

⁷ 2021 Earned Wage Access Data Findings (ca.gov). <https://dfpi.ca.gov/wp-content/uploads/sites/337/2023/03/2021-Earned-Wage-Access-Data-Findings-Cited-in-ISOR.pdf?emrc=08148f>

⁸ Survey Summary of Earned Wage Advance and Cash Advance Apps, Center for Responsible Lending

⁹ 2021 Earned Wage Access Data Findings (ca.gov). <https://dfpi.ca.gov/wp-content/uploads/sites/337/2023/03/2021-Earned-Wage-Access-Data-Findings-Cited-in-ISOR.pdf?emrc=08148f>

¹⁰ Earned Wage Access and Direct-to-Consumer Advance Usage Trends, Financial Health Network (finhealthnetwork.org)

¹¹ 2021 Earned Wage Access Data Findings (ca.gov). <https://dfpi.ca.gov/wp-content/uploads/sites/337/2023/03/2021-Earned-Wage-Access-Data-Findings-Cited-in-ISOR.pdf?emrc=08148f>

¹² GAO-23-105536, FINANCIAL TECHNOLOGY: Products Have Benefits and Risks to Underserved Consumers, and Regulatory Clarity Is Needed

¹³ 214_AWP_final_2.pdf (harvard.edu)

¹⁴ About Saverlife

¹⁵ Final Copy EWA & D2C Advance Usage Trends (cfsi-innovation-files-2018.s3.amazonaws.com)

¹⁶ 214_AWP_final_2.pdf (harvard.edu)

¹⁷ For example, a user took out an advance of \$80 on March 2, and the next repayment occurred on March 14 for \$84.99. We linked those two transactions and the corresponding amounts and consider this transaction to have a \$4.99 fee for the advance.

¹⁸ After linking advances and payments, certain transactions were excluded. First, some transactions lacked full payment coverage for the advance, likely due to additional payments processed from unlinked accounts. Second, repayments made without any advances issued likely indicated payments for products other than EWAs. Third, the dataset spans from May 2022 to November 2023. However, for certain repayments processed in May 2022, there is missing information regarding the advances taken out before May 2022.

¹⁹ Supplemental findings on payday, payday installment, vehicle title loans, and deposit advance products, Consumer Financial Protection Bureau, June 2016. https://files.consumerfinance.gov/f/documents/Supplemental_Report_060116.pdf

²⁰ [crl-ewa-brief-oct2023.pdf](https://responsiblelending.org/crl-ewa-brief-oct2023.pdf) (responsiblelending.org)

²¹ To do this analysis required restricting the sample to individuals with at least 90 days of transactions data prior to their first use of an EWA advance product to identify their propensity to overdraft before using one of the advance products in this analysis. This includes 604 individuals.

²² Fiserv, Relationship Advance program description, retrieved from <http://www.relationshipadvance.com/> in August 2011, on file with the Center for Responsible Lending.

²³ We restricted the sample to individuals who had not used an EWA advance in the prior three months and who had at least six additional months of subsequent transaction records.

²⁴ 2021 Earned Wage Access Data Findings (ca.gov)

²⁵ [crl-ewa-brief-oct2023.pdf](https://responsiblelending.org/crl-ewa-brief-oct2023.pdf) (responsiblelending.org)



Center for Responsible Lending

www.responsiblelending.org

The Center for Responsible Lending (CRL) is a non-partisan, nonprofit research and policy advocacy organization working to promote financial fairness and economic opportunity for all, end predatory lending, and close the racial wealth gap. CRL's expertise gives it trusted insight to evaluate the impact of financial products and policies on the wealth and economic stability of families of color, rural, women, military, low-wage, low-wealth, and early-career workers and communities. CRL is an affiliate of Self-Help, one of the nation's largest nonprofit community development financial institutions. We work in partnership with national and local consumer, faith, and civil rights organizations.

North Carolina

302 West Main Street
Durham, NC 27701
Ph (919) 313-8500
Fax (919) 313-8595

California

1970 Broadway
Suite 350
Oakland, CA 94612
Ph (510) 379-5500
Fax (510) 893-9300

District of Columbia

910 17th Street NW
Suite 500
Washington, DC 20006
Ph (202) 349-1850
Fax (202) 289-9009

EXHIBIT C

BILLING CODE: 4810-AM-P

CONSUMER FINANCIAL PROTECTION BUREAU

12 CFR Part 1026

[Docket No. CFPB-2024-0032]

Truth in Lending (Regulation Z); Consumer Credit Offered to Borrowers in Advance of Expected Receipt of Compensation for Work

AGENCY: Consumer Financial Protection Bureau.

ACTION: Notice of proposed interpretive rule; request for comment.

SUMMARY: The Consumer Financial Protection Bureau (CFPB) is charged with promoting competition and innovation in consumer financial products and services. After careful study of emerging offerings in the paycheck advance marketplace, including those marketed as “earned wage advances” and “earned wage access,” the CFPB is proposing this interpretive rule to help market participants determine when certain existing requirements under Federal law are triggered. The proposed interpretive rule would also address certain costs that are in substantial connection with extensions of such credit, such as expedited delivery fees and costs marketed as “tips.”

DATES: Comments must be received by August 30, 2024.

ADDRESSES: You may submit comments, identified by Docket No. CFPB-2024-0032, by any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* 2024-Paycheck-Advance-Interpretive-Rule@cfpb.gov. Include Docket No. CFPB-2024-0032 in the subject line of the message.

- *Mail/Hand Delivery/Courier:* Comment Intake—2024 Paycheck Advance Interpretive Rule, c/o Legal Division Docket Manager, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552. Because paper mail in the Washington, DC area and at the CFPB is subject to delay, commenters are encouraged to submit comments electronically.

Instructions: The CFPB encourages the early submission of comments. All submissions must include the document title and docket number. In general, all comments received will be posted without change to <https://www.regulations.gov>. All submissions, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Submissions will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: George Karithanom, Regulatory Implementation & Guidance Program Analyst, Office of Regulations, at 202–435–7700 or at: <https://reginquiries.consumerfinance.gov/>. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION:

I. Background

One major source of demand for consumer credit is derived from the mismatch of when American workers receive compensation for their labor and when they incur expenses. While there have long been sources of credit for consumers to pay expenses in advance of receiving their compensation, there are a number of new offerings that seek to provide additional choices for consumers.

Instead of being paid daily or upfront, American workers generally provide services before employers pay for those services some time later—typically on a biweekly or semi-monthly wage cycle.¹ Employers have a strong incentive to delay payment, since these delays reduce working capital needs. Nearly three-quarters of non-farm payroll employees remain paid biweekly or even less frequently, and the remainder are generally paid their wages weekly. To address liquidity challenges, many consumers therefore turn to third-party credit products, such as payday loans, personal installment loans, and credit cards. In recent years, American consumers have significantly expanded their use of products sometimes marketed as “earned wage access” or “earned wage advance.”² As these paycheck advance products generally have features that make them subject to the CFPB’s jurisdiction, the CFPB has sought to understand these and other products, particularly those offered online, by engaging in ongoing monitoring of the market, including, for example, collecting and analyzing data, engaging with stakeholders (e.g., market participants, consumer groups, and States), tracking and studying market developments, and conducting market research, among other things.

While many of these products have similarities to payday loans, there are important distinctions. The CFPB has found that there are two emerging models of earned wage products: employer-partnered and direct-to-consumer.

For “employer-partnered” products, providers contract with employers to offer funds in amounts not exceeding accrued wages. Those funds are recovered via one or more payroll deductions, lowering the consumer’s paychecks accordingly, with other recourse options

¹ While the terms “employer” and “employee” are used throughout, the proposed interpretive rule would apply more broadly to situations where consumers receive payment for work performed.

² A CFPB report, also issued today, describes rapid recent growth in one part of this developing market. *See* CFPB, *Developments in the Paycheck Advance Market*, at 3 (July 2024) (hereinafter *2024 Paycheck Advance Report*).

generally unavailable to the third-party provider. In contrast, “direct-to-consumer” products provide funds to employees in amounts that they estimate to be below accrued wages; funds are then recovered via automated withdrawal from the consumer’s bank account,³ and generally without limit to the provider’s ability to seek further recourse as necessary.⁴

Some of the significant differences between these two types of earned wage products, however, are starting to erode. For example, some direct-to-consumer providers are now connecting directly to payroll records and recouping funds from payroll deductions, and ongoing State legal developments may cause them to limit their recourse options as well.⁵

Before the CFPB’s market monitoring of these products intensified, the CFPB issued an advisory opinion in November 2020,⁶ that described how one particular type of earned wage product does not involve the offering or extension of “credit” as that term is defined in Regulation Z and the Truth in Lending Act (TILA).⁷ The opinion explained that an earned wage product is not TILA or Regulation Z credit if it meets *all* of several identified conditions, including: providing the consumer with no more than the amount of accrued wages earned; provision by a third party fully integrated with the employer; no consumer payment, voluntary or

³ This includes, without limitation, e.g., prepaid and payroll card accounts.

⁴ As described, direct-to-consumer products lie outside the scope of the “wage advance” (12 CFR 1041.3(d)(7)) and “no cost advance” (12 CFR 1041.3(d)(8)) exclusions from the CFPB’s 2017 Payday Rule. Employer-partnered products, however, may be (but are not necessarily) within the scope of one exclusion or both, with their revenue model particularly relevant to that determination. *See* 12 CFR 1041.3(d)(7)(ii)(A), 1041.3(d)(8).

⁵ *See 2024 Paycheck Advance Report*, *supra* note 2, at 4 n.7. Several recently enacted State laws prohibit providers of earned wage products, including direct-to-consumer products, from compelling consumer repayment of earned wage amounts and fees through various means, such as lawsuits or third-party debt collection. *See, e.g.*, 24 Mo. Rev. Stat. sec. 361.749(5)(6); Wis. Stat. sec. 203.04(2)(f); *cf.* Montana Op. Att’y Gen., Vol. 59, Op. 2 (Dec. 22, 2023) (finding earned wage products do not meet the state law definitions of “consumer loan” or “deferred deposit loan” when they are “fully non-recourse,” among other criteria).

⁶ CFPB, *Truth in Lending (Regulation Z); Earned Wage Access Programs* (Nov. 2020), https://files.consumerfinance.gov/f/documents/cfpb_advisory-opinion_earned-wage-access_2020-11.pdf (hereinafter *2020 Advisory Opinion*).

⁷ Regulation Z defines credit at section 1026.2(a)(14).

otherwise, beyond recovery of paid amounts via a payroll deduction from the next paycheck, and no other recourse or collection activity of any kind; and no underwriting or credit reporting.

The 2020 advisory opinion was silent about whether earned wage products that do not meet all of these conditions are credit under TILA and Regulation Z.⁸ The opinion did not address what counts under TILA and Regulation Z as a finance charge with respect to any such product that is credit. As the CFPB has acknowledged, the 2020 advisory opinion appears to have caused significant regulatory uncertainty.⁹

⁸ The opinion stated that it had no application to such products. *See 2020 Advisory Opinion, supra* note 6, at 3-7.

⁹ *See, e.g.,* Nat'l Consumer L. Ctr., Ctr. for Responsible Lending, *Concern About Prior Leadership's Finding that Certain Earned Wage Access Products Are Not "Credit" Under TILA*, NAT'L CONSUMER L. CTR., CTR. FOR RESPONSIBLE LENDING, at 36-37 (Oct. 12, 2021), <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-ncle-ewa-letter-to-cfpb-oct2021.pdf> (noting "chaos" and "further questions" caused by advisory opinions); U.S. Gov't Accountability Off., *GAO-23-105536, Financial Technology: Products Have Benefits and Risks to Underserved Consumers, and Regulatory Clarity is Needed*, at 36-37 (Mar. 2023), <https://www.gao.gov/assets/gao-23-105536.pdf> (citing industry requests for clarification). The CFPB has acknowledged the need for clarification in this area. *See, e.g.,* Letter from CFPB Director Rohit Chopra (Feb. 13, 2023) in U.S. Gov't Accountability Off., *supra*, at 51; Letter from CFPB Acting General Counsel to N.J. Citizen Action, *et al.*, at 2 (Jan. 18, 2022).

Problematically, the 2020 advisory opinion has been widely cited in support of legal conclusions that it did not reach. For example, it has erroneously been cited for the general propositions that no-fee earned wage products are not credit, *see, e.g.,* Ariz. Op. Att'y Gen. No. I22-005 (Dec. 16, 2022), <https://www.azag.gov/sites/default/files/2022-12/I22-005.pdf>, and that employer-partnered earned wage products are also not credit, *see, e.g.,* ZayZoon, Comment Letter on Cal. Dep't of Fin. Prot. & Innovation re: Notice of Proposed Rulemaking [PRO 01-21], at 4 (May 17, 2023), https://dfpi.ca.gov/wp-content/uploads/sites/337/2023/08/46-PRO-01-21-ZayZoon-US-Inc.-5.17.23_Redacted.pdf; Innovative Payments Ass'n, Comment Letter on Cal. Dep't of Fin. Prot. & Innovation re: Notice of Proposed Rulemaking [PRO 01-21], at 4 (May 11, 2023), https://dfpi.ca.gov/wp-content/uploads/sites/337/2023/08/10-PRO-01-21-Innovative-Payments-Association-5.11.23_Redacted.pdf. Some regulatory uncertainty may have resulted from the near-contemporaneous issuance of a "Sandbox Approval Order" that gave one provider a temporary safe harbor from liability under TILA and Regulation Z with respect to a specific product that did not satisfy all the conditions that the 2020 advisory opinion identified as taking such a product outside the reach of TILA and Regulation Z. *See* CFPB, *Payactiv Approval Order*, at 5 (Dec. 30, 2020), https://files.consumerfinance.gov/f/documents/cfpb_payactiv_approval-order_2020-12.pdf. The 2020 advisory opinion applied only to products that had all of a number of characteristics, including that they were free to consumers. In contrast, the approval order encompassed earned wage transactions in connection with which the consumer incurred fees. *See id.* The approval order was issued under a CFPB policy that is no longer in effect. *See generally* CFPB, *Statement on Competition and Innovation* (Sept. 30, 2022), https://files.consumerfinance.gov/f/documents/cfpb_statement-on-competition-innovation_2022-09.pdf. However, that approval order was never of general interpretative applicability, *see Payactiv Approval Order, supra*, at 4 n.15, and was terminated even before its temporary status expired, CFPB, *CFPB Rescinds Special Regulatory Treatment for Payactiv* (June 30, 2022), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-rescinds-special-regulatory-treatment-for-payactiv/>.

The CFPB is taking a number of steps to spur greater competition in markets for consumer financial products, including to address the credit needs of households who incur costs due to a mismatch in the timing of their income and expenses. In addition, some market participants and investors seek to better understand the applicability of existing federal law in these emerging business models. To provide greater clarity, the CFPB is proposing to replace the 2020 advisory opinion with a new interpretive rule. In light of the uncertainty caused by the 2020 advisory opinion as noted above and the fact that the CFPB is proposing to overturn and replace that opinion, the CFPB is opting to publish this proposed interpretive rule to solicit public comment. The proposed interpretive rule is informed by the CFPB's extensive study of this market, including data collection, continuous monitoring, investigation, coordination with states, and engagement with market participants. The CFPB is seeking comment on any aspect of this this proposed interpretive rule. The CFPB intends to publish a final interpretive rule after considering comments received.

II. Proposed Interpretive Rule

The text of the proposed interpretive rule is as follows.

A. Coverage

1. Earned wage products

This interpretive rule applies to products that involve both: (1) the provision of funds to the consumer in an amount that is based, by estimate or otherwise, on the wages that the consumer has accrued in a given pay cycle; and (2) repayment to the third-party provider via some automatic means, like a scheduled payroll deduction or a preauthorized account debit,¹⁰ at

¹⁰ This includes repayment via ACH, check, or any other preauthorized repayment.

or after the end of the pay cycle. Many payday loans would also meet this definition where the lender or State law restricts the amount of the loan based on accrued wages.¹¹

2. *Other products and other laws*

This interpretive rule only addresses the application of certain Regulation Z and TILA provisions; it does not address the application of any other laws that concern “credit.” Because the rule explains the applicability of Regulation Z, the rule may be useful to designers and creators of other financial products, including those relying on “tips” and other related payment mechanisms.

B. Legal Analysis

1. *The Truth in Lending Act and Regulation Z cover products where there is an obligation to repay debt.*

Section 1026.2(a)(14) of Regulation Z defines “credit” as “the right to defer payment of debt or to incur debt and defer its payment.”¹² TILA defines “credit” virtually identically as “the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.”¹³ As described further below, earned wage products are consumer credit for purposes of TILA and Regulation Z.

TILA and Regulation Z do not define “debt.” Used infrequently in the statute and the regulation, “debt” for the most part only appears in the definition of “credit.” The term “debt” in ordinary usage means simply “something owed,” without any obvious limitation.¹⁴ Legal

¹¹ This interpretive rule does not apply to an employer’s actual payment of wages. Note that while the terms “employer” and “employee” are used throughout, this interpretive rule applies more broadly to situations where consumers receive payment for work performed.

¹² 12 CFR 1026.2(a)(14).

¹³ 15 U.S.C. 1602(f).

¹⁴ *Debt*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/debt> (last updated Jan. 30, 2024).

dictionaries, including those dating to the enactment of TILA,¹⁵ similarly describe debt as a “sum of money due by certain and express agreement” or “a financial liability or obligation owed by one person, the debtor, to another, the creditor.”¹⁶ If Congress had intended to substantially narrow the types of transactions that could constitute “debt,” it could have done so by defining the term in TILA.¹⁷ In light of this precedent, and the context in which the term “debt” appears in TILA, “debt” in TILA and Regulation Z includes any obligation by a consumer to pay another party.

This commonsense understanding of debt is reflected in State laws¹⁸ defining the term, which also tend to use very broad language to describe debt to mean an obligation by the consumer to pay.¹⁹ Bankruptcy law also uses a broad definition—“liability on a claim,” where a

¹⁵ See *New Prime Inc. v. Oliveira*, 586 U.S. 105, 113 (2019) (“It’s a fundamental canon of statutory construction that words generally should be interpreted as taking their ordinary meaning at the time Congress enacted the statute.”) (cleaned up).

¹⁶ *Debt*, Black’s Law Dictionary (4th ed. 1968) (defining debt as “[a] sum of money due by certain and express agreement; as by bond for a determinate sum, a bill or note, a special bargain, or a rent reserved on a lease, where the amount is fixed and specific, and does not depend upon any subsequent valuation to settle it.”); *Debt*, Wex, <https://www.law.cornell.edu/wex/debt> (last updated Sept. 2021).

¹⁷ As the Court observed in *Whitman v. Am. Trucking Ass’n*s, “Congress, we have held, does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions — it does not, one might say, hide elephants in mouseholes.” 531 U.S. 457, 468 (2001).

¹⁸ See 12 CFR 1026.2(b)(3) (providing interpretive guidance with respect to undefined terms). As the Board of Governors of the Federal Reserve System noted when it first proposed section 1026.2(b)(3), the provision and its fellow rules of construction “are intended to assist in understanding the regulatory language.” 45 FR 29702, 29705 (May 5, 1980).

¹⁹ See, e.g., Cal. Civ. Code sec. 1788.2(d) (“The term ‘debt’ means money, property, or the equivalent that is due or owing or alleged to be due or owing from a natural person to another person.”); Colo. Rev. Stat. Ann. sec. 5-16-103(8)(a) (“‘Debt’ means any obligation or alleged obligation of a consumer to pay money arising out of a transaction, whether or not the obligation has been reduced to judgment.”); D.C. Code Ann. sec. 28-3814(b)(2) (“‘Consumer debt’ means money or its equivalent, or a loan or advance of money, which is, or is alleged to be, more than 30 days past due and owing, unless a different period is agreed to by the consumer, as a result of a purchase, lease, or loan of goods, services, or real or personal property for personal, family, medical, or household purposes.”); Fla. Stat. Ann. sec. 559.55(6) (“‘Debt’ or ‘consumer debt’ means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.”); Haw. Rev. Stat. Ann. sec. 480D-2 (“‘Debt’ means any obligation or alleged obligation of a person to pay money arising out of any transaction, whether or not the obligation has been reduced to judgment.”); Me. Rev. Stat. tit. 32, sec. 11002(5) (“‘Debt’ means any obligation or alleged obligation of a

“claim” is “the right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.”²⁰

The only enumerated consumer financial law identified in the Consumer Financial Protection Act²¹ that defines “debt,” the Fair Debt Collection Practices Act (FDCPA), broadly states that debt encompasses “any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or

consumer to pay money arising out of a transaction in which the money, property, insurance or services that are the subject of the transaction are primarily for personal, family or household purposes, whether or not the obligation has been reduced to judgment.”); N.H. Rev. Stat. Ann. sec. 358-C:1(VI) (“‘Debt’ means any obligation or alleged obligation arising out of a consumer transaction.”); N.M. Stat. Ann. sec. 61-18A-2(F) (“‘[D]ebt’ means an obligation or alleged obligation of a debtor to pay money arising out of a transaction in which the money, property, insurance or services that are the subject of the transaction are primarily for personal, family or household purposes, whether or not such obligation has been reduced to judgment.”); N.Y. Gen. Bus. Law sec. 600(6) (“‘Debt’ means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.”); N.D. Cent. Code Ann. sec. 13-05-01.1(6) (“‘Debt’ means an obligation or alleged obligation to pay money arising out of a transaction, regardless of whether the obligation has been reduced to a judgment.”); Or. Rev. Stat. Ann. sec. 646.639(f) (“‘Debt’ means an obligation or alleged obligation that arises out of a consumer transaction.”); 19 R.I. Gen. Laws Ann. sec. 19-14.9-3(4) (“‘Debt’ means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services that are the subject of the transaction are primarily for personal, family, or household purposes, whether or not the obligation has been reduced to judgment.”); Tex. Fin. Code Ann. sec. 392.001(2) (“‘Consumer debt’ means an obligation, or an alleged obligation, primarily for personal, family, or household purposes and arising from a transaction or alleged transaction.”); Utah Code Ann. sec. 12-1-11(1)(b) (“‘Debt’ means an obligation or alleged obligation to pay money arising out of a transaction for money, property, insurance, or services.”); Wash. Rev. Code Ann. sec. 6.01.060(2) (“‘Consumer debt’ means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes.”); Wyo. Stat. Ann. sec. 33-11-101(a)(vii) (“‘Debt’ means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family or household purposes, whether or not the obligation has been reduced to judgment.”).

²⁰ 11 U.S.C. 101(5)(A), (12). Bankruptcy law defines “consumer debt” as “debt incurred by an individual primarily for a personal, family, or household purpose.” 11 U.S.C. 101(8).

²¹ 12 U.S.C. 5481(12).

not such obligation has been reduced to judgment.”²² The main limiting feature in the definition of “debt” in the FDCPA is that it is limited to transactions for personal, family, or household purposes, a limitation already imposed elsewhere in TILA.²³ The FDCPA definition, therefore, also supports a broad reading of “debt” under TILA and Regulation Z in this context, consistent with ordinary usage that includes all obligations to pay another.

In an earned wage transaction, the consumer incurs an obligation to pay money at a future date. For some earned wage products, the specific amount of money that the consumer is obligated to pay at a future date has an element of contingency; for example, the obligation may be limited by whether funds available from the next payroll event (or events) are sufficient to cover the amount of earned wage funds the consumer received. But that is still an obligation to pay money at a future date. TILA has long been understood to cover contingent obligations.²⁴

Earned wage products provide consumers with “the right to defer payment of debt or to incur debt and defer its payment” because they incur a “debt” when they obtain money with an obligation to repay via an authorization to debit a bank account or using one or more payroll

²² 15 U.S.C. 1692a(5); *see also* 12 CFR 1006.2(h); *Pollice v. Nat’l Tax Funding*, 225 F.3d 379, 410 (3d Cir. 2000) (“Although [TILA] does not contain a definition of the term ‘debt,’ we believe the term as used in [TILA] should be construed as it is defined in the FDCPA.”). Like TILA, the Consumer Financial Protection Act and Equal Credit Opportunity Act, for example, use the term “debt” in their definitions of “credit” without defining it. *See* 12 U.S.C. 5481(7); 15 U.S.C. 1691a(d).

²³ 15 U.S.C. 1602(g), (i).

²⁴ *See, e.g., Madewell v. Marietta Dodge, Inc.*, 506 F. Supp. 286 (N.D. Ga. 1980) (retail installment contract for purchase of automobile subject to TILA even though contingent on seller’s ability to arrange financing); *Bailey v. Comm’r of Internal Revenue*, 993 F.2d 288, 292 (2d Cir. 1993) (discussing “[n]onrecourse debt”); 12 CFR 1026.33(a) (reverse mortgages—where repayment is contingent on future home value at the time of a termination event, such as the death of the borrower—subject to TILA as credit); *cf.* Small Business Lending Under the Equal Credit Opportunity Act (Regulation B), 88 FR 35150, 35163 (May 31, 2023) (explaining that merchant cash advances—under which a provider offers a merchant a lump sum in exchange for a specific portion of the merchant’s proceeds from future sales of goods and services—are credit, notwithstanding that the repayment obligation may be contingent on the merchant’s future sales); Consent Order, *In re Better Future Forward, Inc.*, Admin. Proceeding No. 2021-CFPB-005 (Sept. 7, 2021) (identifying as credit income share agreements, which “finance postsecondary education” whereby “[i]n exchange for money up front, students agree that once their income exceeds an income threshold, they will make payments based on a percentage of their income until either: (i) they meet a payment cap or (ii) a period of years elapses.”).

deductions.²⁵ It does not matter that the obligation to repay is sometimes satisfied via payroll deduction.²⁶ It is still an act of repayment. In contrast, when an employer pays wages, no later act of repayment is required, by deduction or otherwise.

This interpretive rule replaces the advisory opinion the CFPB issued in November 2020, which stated that some earned wage products are not “credit” because they would not constitute a “debt.”²⁷ A primary justification for this statement, based on a legal dictionary definition of “debt” requiring a “liability,” was that the narrow type of earned wage products covered by that opinion—which, among other characteristics, were administered through the employer and cost-free to the consumer—were “effectively” providing earned wages to consumers early and, therefore, were not debts. Per the analysis above, the 2020 advisory opinion—narrowly focused as it was on one unique type of product—did not consider the full scope of available precedent and definitions in common legal usage when reaching its narrow conclusion.²⁸ Many credit products are used to gain liquidity in advance of receipt of a paycheck and thus will have some *de facto* resemblance to early payment of wages, but that does not take them outside the

²⁵ Earned wage products are offered or extended to consumers primarily for personal, family, or household purposes, so they also meet the Regulation Z definition of “consumer credit.” 12 CFR 1026.2(a)(12).

²⁶ It is not uncommon for credit providers to compel repayment of debt using wage garnishment automatically deducted from consumer paychecks. Payday lenders are sometimes repaid through court-ordered wage garnishment. *See* CFPB, *Ask CFPB: Can a Payday Lender Garnish My Bank Account or My Wages?* (last reviewed Sept. 23, 2022), <https://www.consumerfinance.gov/ask-cfpb/can-a-payday-lender-garnish-my-wages-en-1609/>. Consumers may pay some lenders directly by paycheck allotment. *Cf.* 12 CFR part 1026, comment 2(a)(14)-2 (“Credit includes a transaction in which a cash advance is made to a consumer . . . in exchange for the consumer’s authorization to debit the consumer’s deposit account, and where the parties agree . . . that the consumer’s deposit account will not be debited, until a designated future date.”).

²⁷ *See 2020 Advisory Opinion*, *supra* note 6.

²⁸ The 2020 advisory opinion stated that there would not be a “liability.” That word is not used in all dictionary definitions of the term “debt,” and regardless, the earned wage product did require repayment.

definition of credit. Earned wage products, as distinct from an employer’s actual payment of wages, are no exception.²⁹

Moreover, because the 2020 advisory opinion only addressed one particular type of product, its analysis does not shed light on how TILA and Regulation Z apply to new offerings on the market. The 2020 advisory opinion found that the products it addressed “functionally operate[] like an employer that pays its employees earlier than the scheduled payday,” but earned wage products in which, for example, consumers make a payment in connection with receiving funds do *not* leave consumers in the same position that they would be if their employer just paid them earlier. While the 2020 advisory opinion emphasized the absence of fees or charges to support its conclusion that covered products were different in kind from the credit covered by TILA and Regulation Z, except on a small number of employer-specific products, the vast majority of earned wage transactions involve consumer payment.³⁰

²⁹ The CFPB also noted that the 2020 advisory opinion would be consistent with comment 2(a)(14)-1.v to Regulation Z. *See 2020 Advisory Opinion, supra* note 6, at 9. However, that comment was promulgated as an exclusion from the definition of “credit” after notice and comment, which suggests that the product would be subject to TILA and Regulation Z but for the exclusion. Products similar to products in the exclusion, but not covered by the exclusion, should therefore be presumed to be “credit.”

In the 2020 advisory opinion, the CFPB also noted that its interpretation was consistent with certain statements in the CFPB’s 2017 Payday Lending Rule. However, the Payday Rule did not make a determination as to whether earned wage products are credit, stating only that some product constructs “may not be.” The CFPB declined to perform the more detailed analysis necessary to come to a considered conclusion on the boundaries of TILA and Regulation Z at that time because that was not necessary for the rulemaking exercise. It is performing that analysis now, in this interpretive rule. Some earned wage products may not be covered by the Payday Rule because of its “wage advance” and “no cost advance” exclusions. *See* 12 CFR 1041.3(d)(7), 1041.3(d)(8). However, these exclusions can only apply to earned wage products to the extent that such products are TILA and Regulation Z credit. As a result, the CFPB’s earlier decision to exclude certain earned wage product constructs from the Payday Rule has no impact on the credit status of such products under TILA or Regulation Z.

³⁰ *See, e.g., 2024 Paycheck Advance Report, supra* note 2, at 11 (“Without employer subsidization, across both years in our [employer-partnered earned wage] sample, around 90% of workers paid at least one fee and approximately 82% of transactions incurred a fee.”); Cal. Dep’t of Fin. Prot. & Innovation, *2021 Earned Wage Access Data Findings*, at 7 (2023), <https://dfpi.ca.gov/wp-content/uploads/sites/337/2023/03/2021-Earned-Wage-Access-Data-Findings-Cited-in-ISOR.pdf> (“In 2021, for the 5,827,120 transactions completed by tip-based companies, providers received tips 73% of the time.”). To the extent the interpretation underlying the 2020 Payactiv approval order articulated a different rationale regarding fees or charges for earned wage transactions, the CFPB no longer believes that interpretation is correct.

2. *Finance charge disclosures include consumer payments that are made incident to the extension of credit and imposed by the creditor directly or indirectly on the consumer.*

a. General

In general, the obligations of Regulation Z apply to any credit provider that regularly offers or extends consumer credit subject to a finance charge.³¹ The finance charge is “the cost of consumer credit as a dollar amount.”³² Unless specifically excluded by the regulation, this includes “any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit.”³³ If providers do not disclose finance charges properly, they violate Regulation Z.

Neither Regulation Z nor TILA further explains the meaning of “incident to the extension of credit.” The statute’s history and context indicate that Congress intended this term to be interpreted expansively. When TILA was enacted in 1968, Black’s Law Dictionary defined “incident” to mean “anything which is usually connected with another, or connected for some purposes, though not inseparably.”³⁴ The phrase “incident to the extension of credit” thus did not require that the degree of connection be significant. The Supreme Court, in a unanimous decision by Justice Thomas, noted in the context of TILA’s finance charge provision that while “the phrase ‘incident to or in conjunction with’ implies some necessary connection between the

³¹ See 12 CFR 1026.1(c)(1)(iii). Note that finance charges are not a necessary precondition for the obligations of Regulation Z to apply to a provider of Regulation Z credit. For example, the requirements of Regulation Z will apply where the provider regularly offers or extends consumer credit that is payable by a written agreement in more than four installments, even if the credit provided is not subject to finance charges. *See id.* As another example, certain Regulation Z requirements apply when the offering or extension of consumer credit involves a credit card, even if the credit is not subject to a finance charge. *See* 12 CFR 1026.1(c)(2). This interpretive rule does not state any view about grounds on which an earned wage provider of Regulation Z credit might be subject to Regulation Z obligations other than due to their provision of credit subject to a finance charge.

³² 12 CFR 1026.4(a).

³³ *Id.*

³⁴ *Incident*, Black’s Law Dictionary (4th ed. 1968).

antecedent and its object . . . the phrase ‘incident to’ does not make clear whether a substantial (as opposed to a remote) connection is required.”³⁵ Thus, while a substantial connection may not be the minimum degree of connection required under Regulation Z and TILA for a payment to be part of the consumer’s cost of credit, as an interpretive matter, any payment exacted by the creditor that *is* substantially connected must be part of the finance charge.³⁶

In addition, a payment may be “imposed directly or indirectly by the creditor” and hence part of the finance charge even if the credit can be obtained without making such payment. Regulation Z includes in the cost of credit payments imposed by the creditor that are “conditions of” the extension of credit and that are “incident to” it.³⁷ By the same token, a creditor can “impose” a cost on a consumer—in the sense of exacting it from them—“directly or indirectly” even if that payment is not required for the extension of credit.³⁸ The non-exhaustive list of

³⁵ *Household Credit Servs., Inc. v. Pfennig*, 541 U.S. 232, 240–41 (2004). In *Pfennig*, the Supreme Court held that an overlimit fee was not unambiguously imposed as an incident to the extension of credit because it could reasonably be seen as a penalty for violation of the credit agreement instead. *See id.* at 239–41. The Court recognized that “regardless of how the fee is characterized,” there was “at least some connection” between the fee and credit extension, but that was not enough to conclude that the fee was necessarily imposed as an “incident to” credit because the term “does not make clear whether a substantial (as opposed to a remote) connection is required.” *Id.* at 241.

³⁶ This interpretive rule does not seek to establish the degree of connection required beyond interpreting “incident to” to cover charges that are substantially connected to a particular extension of credit.

³⁷ TILA’s definition of finance charge only references charges imposed “as an incident to the extension of credit.” 15 U.S.C. 1605(a). The Board’s implementing regulation then interprets the statutory term “incident to” as encompassing—while not being limited to—payments that are conditions of the extension of credit. *See* 12 CFR 1026.4(a). This interpretation has been in uninterrupted effect since the Board first adopted TILA regulations on point.

³⁸ TILA’s history and context indicate that Congress intended the word “imposed” to be interpreted broadly to encompass a variety of charges the creditor might seek to have a consumer pay in connection with the extension of credit. The finance charge definition uses parallel language: the charges are “payable directly or indirectly by” the consumer, and “imposed directly or indirectly by” the creditor. The structure of the provision thus uses “imposed” as a counterpoint to “payable,” so as to identify the party doing the charging as opposed to the party being charged. Similarly, the 1968 Black’s Law Dictionary definition of “impose”—“to levy or exact as by authority; to lay as a burden, tax, duty, or charge”—emphasizes the deployment of power by the party doing the imposing. *Impose*, Black’s Law Dictionary (4th ed. 1968). As the Board previously noted, “the term ‘imposed’ is understood broadly, to include any cost charged by the creditor (unless otherwise excluded).” 60 FR 66179, 66180 (Dec. 21, 1995). *See also, e.g., Impose*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/impose> (last updated Feb. 9, 2024) (defining “impose” with a range of meanings, from “to establish or apply by authority” to “to establish or bring about *as if* by force” to simply “pass off” (emphasis added)).

finance charges provided in Regulation Z includes consumer payments that, even when they are not a condition of the extension of credit, are nonetheless finance charges because the creditor exacts them in connection with the extension of credit.³⁹

Two costs that consumers may incur in connection with particular extensions of earned wage credit are “tips” (and other similarly labeled payments, like “gratuities”) and expedited funds delivery fees. When incurred, these payments are substantially connected to the extension of credit. Each happens because of the associated extension of credit, and the connection between each type of payment and that extension is close and clear. Thus, each is incident to the extension of credit. Expedited funds delivery fees are also “imposed directly or indirectly by the creditor” and so should be included as part of the “cost of consumer credit as a dollar amount.” Under certain circumstances, discussed further below, “tips” and similarly styled consumer payments may similarly be “imposed directly or indirectly by the creditor” such that they are a part of the finance charge.

b. Expedited funds delivery fees

Speed of access to funds is an integral and defining aspect of earned wage products. They are designed to address—and marketed as addressing—the liquidity problem that arises between the accrual of wages and their actual payment. That problem necessarily occurs in a very short period,⁴⁰ so the value of this type of credit to the consumer includes the rapid availability of funds. Thus, when earned wage product providers offer two speeds for delivering

³⁹ See 12 CFR 1026.4(b); *see also* 61 FR 49237, 49239 (Sept. 19, 1996) (explaining that payments for services that the creditor does not require can still be finance charges when the payment is “imposed as an incident to that particular extension of credit”); *cf. Incident*, Black’s Law Dictionary (11th ed. 2019) (defining “incident” as “[d]ependent upon, subordinate to, arising out of, or otherwise connected with (something else, usu. of greater importance)”).

⁴⁰ To obtain earned wage credit, consumers must first accrue wages within a given pay period. Repayment then occurs at or very shortly after the conclusion of that same pay period. As a result, the duration of any particular earned wage credit extension has to be very brief.

funds (which they typically do), consumers predominantly opt for the faster.⁴¹ That option typically involves direct imposition of an expedited delivery or “instant funds” fee that the creditor does not impose on the slower form of credit.

Availability of a slower speed does not control the cost of credit for the faster form of credit. Though consumers may not have to opt for faster funds, when they do so, the resulting speed is a feature of the credit extended, so the resulting fee is part of the cost of credit. As observed by the Board of Governors of the Federal Reserve System, “even though a lender may not require a particular loan feature, the feature may become a term of the credit if it is included.”⁴² The speed with which earned wage credit provides liquidity to the consumer is an integral feature of such credit, which is why consumers tend to opt for faster delivery when it is available. Thus, when the consumer pays for that faster delivery, the associated fee is immediately and directly connected to the particular extension of credit. That substantial connection makes this “a fee imposed as an incident to that particular extension of credit,” and accordingly one that must be disclosed as part of the finance charge.⁴³

⁴¹ See 2024 Paycheck Advance Report, *supra* note 2, at 11. For the sample of employer-partnered providers covered in the CFPB’s 2024 Report, expedited delivery fees accounted for more than 96.6 percent of all consumer-paid fee revenue by dollar value. See *id.* Public data also indicates that earned wage advance providers relying on a tipping revenue model obtain more than 25 percent of the dollar value of consumer payments as expedited delivery fees. See Cal. Dep’t of Fin. Prot. & Innovation, *supra* note 30, at 6 n.11, 7.

⁴² 61 FR 49237, 49239 (Sept. 19, 1996). The expedite fee at issue here differs in kind from the two types of expedite fees previously considered by the Board of Governors of the Federal Reserve System in the context of credit cards accessing home equity lines of credit: a fee for expediting delivery of the physical card, and a fee for expediting a consumer’s payment. See 12 CFR part 1026, comments 6(a)(2)-2(ix) and (x). The Board determined that fees for those services did not need to be included in account opening disclosures as “other charges” or “finance charges.” See 68 FR 16185, 16186-87 (Apr. 3, 2003). Neither of those services—faster possession of a physical card or faster payments of amounts outstanding—are as closely and integrally connected to the extension of credit as faster funds access is to obtaining an earned wage product.

⁴³ *Cf.* 61 FR 49237, 49239 (Sept. 19, 1996) (noting with respect to debt cancellation fees that “[a]lthough the same loan may be available without that feature, with respect to a loan that has been structured in this manner, the ... fee is one that has been imposed as an incident to that particular extension of credit”). Before this clarification from the Board, the Eleventh and Seventh Circuits had held that charges for optional services should not be considered finance charges because the consumer assumed their payment voluntarily. See *Veale v. Citibank*, 85 F.3d 577, 579-

Regulation Z also covers expedited delivery fees as finance charges because such a fee is a “condition” of an extension of credit. As noted above, when an earned wage product provider offers a slower and faster loan, and the faster loan requires payment of an expedited delivery fee, the expedited delivery fee is a “condition” of the extension of that type of credit.

c. “Tips” and similarly labeled payments

In connection with the extension of earned wage credit, some providers solicit consumers for what they variously describe as “tips,” “gratuities,” “donations,” “voluntary contributions,” or the like. The CFPB is aware of a wide range of practices used by credit providers to solicit these kinds of payments from consumers, including: default “tip” amounts that the consumer must remove each time to avoid being charged; suggesting particular “tip” amounts or percentages; suggesting or stating that “tips” serve to ensure the future supply of credit to the individual or other users; and including multiple prompts to “tip” throughout the process of receiving credit.

Whatever the exact practice used, when such “tip” payments are solicited and then paid in connection with the extension of credit, there is a clear and close connection between the “tip” and the associated extension of credit. In such circumstances, consumers pay the “tip” for the credit extended, and the credit is the direct and proximate cause of the “tip.”⁴⁴ That substantial connection between payment and associated extension of credit means that the payment is “incident to . . . the extension of credit.”⁴⁵ Indeed, as a practical matter, tips are a central source

81 (11th Cir. 1996); *McGee v. Kerr-Hickman*, 93 F.3d 380, 381-86 (7th Cir. 1996). The CFPB sees no textual basis in the regulation (or statute) to disagree with the Board’s considered 1996 position on payment for voluntary services. As the Board discerned, it does not matter that it is possible to obtain credit without the relevant service if the service is a feature of the loan affecting the total price paid for the credit.

⁴⁴ Such payments are not tips or gratuities in any traditional sense. Consumers generally pay tips to individual workers in the service industry, not to firms (whether partnered with the employer or otherwise) for lending them money. Providers should exercise care in ensuring that the language they use here is not deceptive.

⁴⁵ See *supra* note 35.

of revenue for the earned wage product providers that solicit them. For such providers, public data shows that consumers made “tip” payments in connection with about 73 percent of all such credit extensions, with such payments representing roughly the same share of consumer-side revenue for these providers.⁴⁶

As explained above, a payment may be “imposed directly or indirectly by the creditor” and hence may be part of the finance charge even if the credit can be obtained without making the payment.⁴⁷ Under certain circumstances, “tips” and similarly styled consumer payments may be “imposed directly or indirectly by the creditor” such that they are part of the finance charge. A provider using its authority—real or implied—to exact a “tip” from a consumer in connection with an earned wage transaction has “imposed” the resulting consumer payment.⁴⁸ Relevant considerations when determining whether a “tip” or similar payment is imposed by the creditor as part of the finance charge include but are not limited to: soliciting a “tip” before or at the time of a credit extension (rather than some significant time after it); labeling the solicited payment with a term (such as “tip”) that carries an expectation that the consumer will make such a payment in the normal course; setting default “tip” amounts or otherwise making it practically more difficult for the consumer to avoid leaving a “tip”; suggesting “tip” amounts or percentages to the consumer; repeatedly soliciting “tips,” even in the course of a single transaction; and

⁴⁶ See Cal. Dep’t of Fin. Prot. & Innovation, *supra* note 30, at 1, 7.

⁴⁷ As explained above, payments that are not required as a condition of the credit but are nonetheless incident to it can be “imposed directly or indirectly by the creditor.” Including only “conditions of” the extension of credit in the finance charge would improperly read “incident to” out of Regulation Z’s definition of finance charge, and a creditor can “impose” a cost on a consumer even if the cost is not required for the extension of credit.

⁴⁸ A consumer’s reasonable understanding that a provider expects a “tip” in connection with a transaction is evidence that the provider exacts it as if by authority. This kind of reasonable understanding does not depend on whether “tipping” impacts the supply of credit to the consumer now or in the future.

stating or otherwise implying, directly or indirectly, truthfully or otherwise, that “tipping” may impact subsequent access to or use of the product.⁴⁹

III. Regulatory Matters

This is a proposed interpretive rule issued under the CFPB’s authority to interpret TILA and Regulation Z, including under section 1022(b)(1) of the Consumer Financial Protection Act of 2010, which authorizes guidance as may be necessary or appropriate to enable the CFPB to administer and carry out the purposes and objectives of Federal consumer financial laws.⁵⁰

While not required under the APA, the CFPB is soliciting comments on the proposal and may make revisions when it issues a final interpretive rule as appropriate in light of feedback received.

By operation of TILA section 130(f), no provision of TILA sections 130, 108(b), 108(c), 108(e), or section 112 imposing any liability would apply to any act done or omitted in good faith in conformity with the final interpretive rule, notwithstanding that after such act or omission has occurred, the final interpretive rule is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.⁵¹

The CFPB has determined that this proposed interpretive rule, if finalized, would not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act.⁵²

⁴⁹ The presence or absence of one or all of these considerations may not be determinative. The importance and relevance of these and other considerations will vary in the context of a particular product and how it is offered or provided to consumers.

⁵⁰ 12 U.S.C. 5512(b)(1).

⁵¹ 15 U.S.C. 1640(f).

⁵² 44 U.S.C. 3501-3521.

Rohit Chopra,

Director, Consumer Financial Protection Bureau.