



An Update on Earned Wage Access Regulation NCOIL

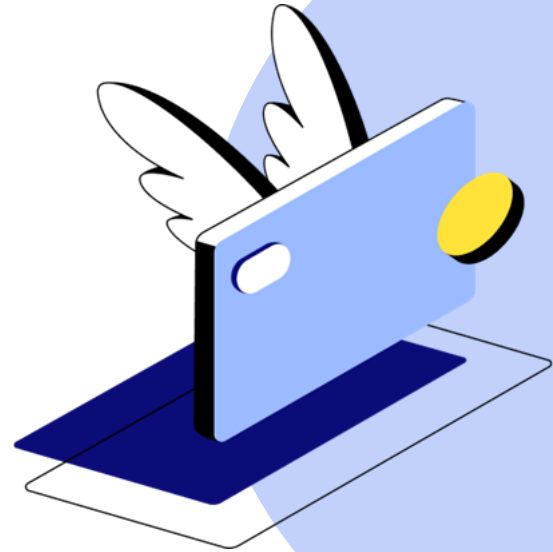
November 17, 2023



Proprietary and highly confidential. Not for circulation.

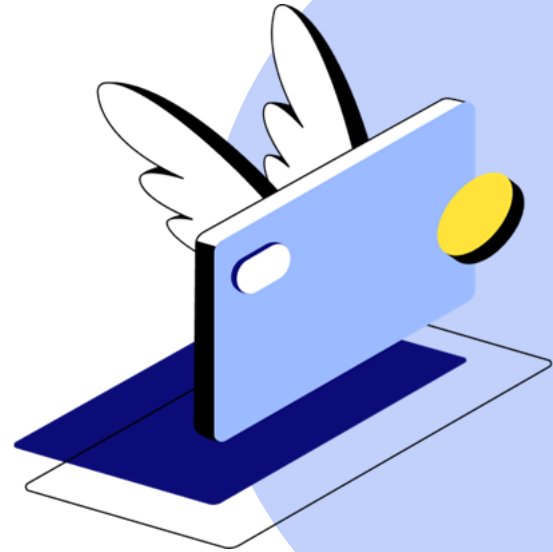
What is Earned Wage Access (EWA)?

- Once you have earned wages, you have legal right to those funds, but your employer keeps possession of those funds until payday.
- EWA providers allow employees to access that store of value on their own terms.
- Wages are estimated and advanced by providers.
- Funds are paid to workers at a worker's request, and providers are repaid on payday.
- Service contracts are either directly with workers (D2C), or a combination of worker and employer (B2B).



EWA Benefits

- Allows a faster connection between work and reward, incentivising work and smoothing consumption.
- Access to your own money - similar to transferring from an ATM
- Freemium model: base service is free with small upcharges for premium services.
- Non-recourse: no collections, no credit rating process or reporting
- No interest, no finance charges
- No selling of data



How do we make money?

- “Freemium” model: base service is free, generally ACH transfer or payroll card; fees for premium services for instant transfers (\$3-\$5); some - tip (EarnIn average tip ~\$2); some - monthly subscription
 - Tip models are *“likely to be beneficial for consumers across the spectrum.”* CFPB Payday Rule
- How do we not make money? No interest, no late fees, no selling data
- We make money when our customers succeed. We do not make money when they fail.

Why do we want to be regulated?

- Bring EWA in line with other financial services to reduce business risk and ambiguity for future regulation
- Proactive good regulation to avoid reactive bad regulation
- Increase comfort of investors and business partners to grow the business
- Ensure consumer protections and robust competition
- More certain regulatory structure allows for more robust internal compliance systems



Innovation and Competition as Consumer Protection

Liquidity Option	Initial cost	What happens if you don't pay it back
EWA	\$0-\$5 per \$100	Lose access to the EWA provider's service
Overdraft	\$35 per transaction	Lose access to your bank account
Credit Card	\$0 if paid on time	\$40 late fee per month, plus compounding interest, credit ruined
Late fee on bills/rent	\$10 - \$15 per day	Loss of service or home, potentially ruined credit
Payday Loan	100% of principle borrowed	Late fees, interest, rollovers that compound



Legal Considerations

Don't force new technologies into old buckets

EWA is not a loan, and EWA companies are not lenders because:

- There are no finance charges and no interest paid by consumers. Customers are not required to make any mandatory payments to obtain EWA
- EWA is non-recourse. Providers have no right to repayment and cannot report to credit reporting agencies or engage in collection activities.

“An EWA product that is “non-recourse” and does not charge any interest or other fees to access wages is not a “loan” as defined in A.R.S. § 6-601(7). Thus, a provider of such an EWA product is not required to obtain a license as a “consumer lender” under the CLA.”

Arizona Attorney General, Mark Brnovich, 2015-2023

“Further, the proposal would amend sections 3102, 3111, and 3301 of the Code to clarify that on-demand pay arrangements are not loans.”

Biden Administration Treasury Dept. calling for clarification of “On-Demand Pay Arrangements”



Public Policy History

CFPB Payday Rule - 2017 “Earned Wage Access” and “Direct to Consumer Advance” providers exempted from rule if non-recourse and no mandatory payments.

State Legislative and Regulatory Activity:

- 2019 - 2020 First state bills - industry fractured and no action
- 2021 - CA DFPI MOUs and Proposed Rulemaking
- 2022 - ALEC passage of a model bill
- 2023 - Legislation introduced in several states, first bills signed into law in NV (SB 290) and MO (SB 103). Significant differences from ALEC Model bill

Advisory Opinions:

- 2020 CFPB Advisory Opinion
- 2020 CFPB Compliance Sandbox Approval Letter (Rescinded in 2022)
- 2022 AZ AG Brnovich Advisory Opinion



2023 Session

State Legislative and Activity:

- Bills introduced in GA, KS, MO, VT, MS, NJ, NY, NC, SC, TX, VA, NV, WI
- 7 States passed at least 1 House
- 2 States passed 2 Houses
- 2 bills signed into law - MO, NV
- California DFPI Rulemaking - third draft released Nov 6th. Final rule expected in 2024

Federal Legislative Activity:

- Federal bill to be introduced that clarify treatment under federal credit regulation such as ECOA and TILA, and would give CFPB clear authority to regulate EWA, but maintain the state/federal distinction common in Financial Services, with no pre-emption.



What is in the 2023 bills?

- Clear definitions of terms and for providers based on existing state law, tweaked for the properties of EWA
- Creates a new category for EWA providers with exemptions from lending and money transmission laws
- Explicitly defines non-recourse in the EWA context
- Requires a free options with clear and transparent disclosures for all fees and tips
- If a provider debits a bank account, it must comply with EFTA and reimburse overdrafts if it debits on the wrong day or in the wrong amount.
- Generally requires registration or licensing
- Fees on operators to cover the cost of regulation
- Can include data sharing with state regulator

