



Center for Responsible Lending

November 15, 2024

Financial Services & Multi-Lines Issues Committee
National Conference of Insurance Legislators
616 5th Avenue, Suite 106
Belmar, New Jersey 07719

Re: NCOIL Earned Wage Advance Model Act

Dear Chair Felzkowski, Vice Chair Grayson, and Members of the Committee:

The Center for Responsible Lending (“CRL”) appreciates the time and attention that members of this Committee have devoted to considering how best to regulate earned wage advances (“EWA”), and likewise appreciates the many opportunities to participate in the Committee’s consideration and drafting of an EWA model act. The current version of the model act contains some provisions that are an improvement over the EWA industry’s desired regulatory approach for their products. Nevertheless, consumer advocates do not believe that the model act sufficiently protects consumers from these loans that can trap borrowers in an expensive cycle of reborrowing. Accordingly, CRL urges the Committee not to adopt the model act in its current form at its 2024 NCOIL Annual Meeting.

CRL is a non-profit, non-partisan policy and research organization dedicated to building family wealth through the elimination of predatory lending and debt collection practices that push families further into poverty. CRL is affiliated with Self-Help Credit Union, a national community development financial institution that provides access to safe, affordable financial services to low-income communities and borrowers.

Because EWA loans are a relatively new financial product, reliable data about their impact on consumers is only beginning to emerge. Just last month, CRL released a research report titled *A Loan Shark in Your Pocket: The Perils of Earned Wage Advance*.¹ The report is based upon a dataset of actual transaction data by EWA users that shows worrying rates of reborrowing, loan stacking, and overdraft fees by people borrowing from EWA and other cash advance apps. Specifically, the report’s main conclusions are:

1. **Many cash advance app borrowers are trapped in a debt cycle and the heaviest users drive the business model.** Repeat use of advances is common and high-frequency users accounted for 38% of users and 86% of advances. Many users borrowed from

¹ Available at <https://www.responsiblelending.org/research-publication/loan-shark-your-pocket-perils-earned-wage-advance>

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multiple apps simultaneously. Nearly half of all borrowers had used multiple companies in the same month.

2. **App use is associated with increased overdraft fees and payday loan use.** For users with overdraft fees or payday loans, the majority saw the number of times they used these high-cost products increase after taking out an advance for the first time.
3. **Consumers across states are experiencing similar harms.** The eighteen states we analyzed had similar patterns of repeat borrowing, overdraft use, and loan stacking.

This most recent report builds upon earlier research from CRL that showed similar harms from these products.²

Because currently available research demonstrates that use of EWA and other cash advance apps harms, rather than helps, users living on the economic margins, robust consumer protections are needed. Unfortunately, the model act falls short in a few key areas, which prevents consumer advocates from supporting the model. Among our concerns are:

- **The model act exempts EWA loans from state credit laws, including crucial cost caps, without providing a strong, all-in fee cap alternative.** The model act provides that transactions governed by the model act “shall not be subject to usury laws.” Usury laws principally regulate the amount that borrowers pay to access credit. They are crucial because, unlike with most products, loans are nearly always subject to cost caps because those products can effectively create their own demand and trap users in a cycle of debt and reborrowing. The model act should not adopt the industry fiction that EWA loans are not credit products that should be subject to usury laws, especially because research from CRL and others demonstrates that EWA loans *do* lead to a cycle of debt and reborrowing.

To make matters worse, the model act’s proposed alternative “earned income access rate cap” will not protect consumers from the high cost of these products. The model act provides that the cap does not apply to so-called “tips” or “donations.” These disguised finance charges must be included in any cost cap because EWA lenders use a host of behavioral economics pressure tactics to induce users to tip.³ It is because of these pressure tactics that the federal Consumer Financial Protection Bureau (“CFPB”) recently

² CRL, *Not Free: The Large Hidden Costs of Small-Dollar Loans Made Through Cash Advance Apps*, available at <https://www.responsiblelending.org/research-publication/not-free-large-hidden-costs-small-dollar-loans-made-through-cash-advance-apps>

³ Screenshots of EWA apps showing these pressure tactics may be viewed on page 5 of the following research report from CRL: <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-ewa-brief-oct2023.pdf>

issued a proposed interpretive rule affirming that “tips” are finance charges subject to the federal Truth in Lending Act.⁴ And the California Department of Financial Protection and Innovation (“DFPI”) found that, due to these tactics, companies that solicit tips receive a tip for nearly 75% of transactions.⁵

- **The model act does not restrain pressure tactics to solicit “tips.”** Consumer advocates strongly supported the language, in earlier versions of the model act, that prohibited EWA lenders that solicit “tips” from pre-selecting any “tip” amount. Such a rule may help distinguish between truly voluntary “tips,” as the industry is eager to describe them, from disguised charges that consumers feel pressured into paying. Unfortunately, that rule has been significantly weakened to require only that \$0 be among the options presented. That will not protect consumers from being misled and pressured into paying “tips.”

For the above reasons, CRL is unable to support the model act in its current form, and urges the Committee to reject it at the upcoming NCOIL Annual Meeting. Regardless, we appreciate the time and effort that the Committee has put into this endeavor and the opportunities given to consumer advocates to weigh in during the process. CRL looks forward to continuing to work on these issues with state legislators, whether on this Committee or not, in the future.

Sincerely,



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⁴ CFPB, Truth in Lending (Regulation Z); Consumer Credit Offered to Borrowers in Advance of Expected Receipt of Compensation for Work, *available at* https://files.consumerfinance.gov/f/documents/cfpb_paycheck-advance-marketplace_proposed-interpretive-rule_2024-07.pdf

⁵ Cal. DFPI, 2021 Earned Wage Access Data Findings (March 2023) at 7, *available at* <https://dfpi.ca.gov/wp-content/uploads/sites/337/2023/03/2021-Earned-Wage-Access-Data-Findings-Cited-in-ISOR.pdf>.