



Center for Responsible Lending

House Committee on Commerce and Economic Development  
Public Hearing Regarding H. 87  
February 13, 2023

Dear Members of the House Committee on Commerce and Economic Development:

We are writing to express our opposition to H.87, an act relating to regulating earned wage access services.

My name is Yasmin Farahi, and I am Deputy Director of State Policy and Senior Policy Counsel with the Center for Responsible Lending (CRL), a non-profit, non-partisan policy and research organization dedicated to building family wealth through the elimination of predatory lending practices. 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.

For twenty years, the Center for Responsible Lending has been involved in research and policy regarding payday lending and other high-cost lending products. In the past few years, we have seen more “fintech” products entering the market, offering similar products but in a different form.

We are concerned because H.87 would erode Vermont’s strong consumer protections by enabling repeat high-cost lending, skirting Vermont’s sound usury protections, when such lending occurs through an “earned wage access” provider. No state has done what Vermont is proposing to do in this legislation, authorizing earned wage access products and carving them out from state credit and usury laws – the very laws designed to protect consumers from predatory products, regardless of their form.

We urge the legislature to move forward carefully and with thorough deliberation regarding early wage access products and any “fintech” solution that purports to solve a problem for consumers facing financial challenges. Too often, these purported “solutions” subject consumers to new forms of predatory products. In this case, companies that offer loans directly to consumers against their next paycheck are a technology-based form of payday loan, a harmful product that Vermont and other states have appropriately prohibited.

While true earned wage access loans that are offered through the employer, integrated into the employer’s payroll system, and repaid only via deduction from future pay without providing the lender access to the borrower’s bank account are preferable to payday loans, they still pose risks and should not be given a regulatory free pass to evolve outside of the regulation of credit.

Direct to consumer “faux earned wage access” loans – where the lender repays itself from the borrower’s checking account – are, for all intents and purposes, payday loans and should be regulated as such.

The proposed legislation provides a legal framework for both traditional employer-integrated EWA and “direct to consumer” models, where a user receives a “payroll advance” that is later repaid through a debit of the user’s bank account. Direct to consumer EWA is akin to payday lending gussied up with a fintech veneer. In states like Vermont with strong usury limits and laws protecting consumers from predatory lending, it could create a huge loophole for fintech companies and may open the door for other “innovative” methods to evade interest rate caps.

The legislation permits EWA companies to charge express fees for rapid delivery of funds and to solicit tips from users and calls both of these charges “non-mandatory fees” provided that there is some method (no matter how slow) for users to receive an EWA advance free of charge. We know EWA companies use these tactics to try to portray their products as “free” but this is misleading. The overwhelming majority of users pay express fees when paying such fees is necessary to get immediate access to cash (after all, that is the entire purpose of getting an EWA advance). And companies use a whole host of techniques, psychological and otherwise, to induce users to tip for a product that is advertised as “free.” While this version of the model bill would prohibit false or deceptive statements as to the terms and conditions of the EWA products, there are no guidelines for what conduct or descriptions might be deemed misleading. Significantly, this bill provides no limit of any kind on the amount of non-mandatory payments that can be collected.

[As the National Consumer Law Center has noted](#), most EWA models charge fees of \$1 to \$2 per advance, plus 90% or more of workers also pay \$1 to \$2 “expedite” fees to receive the advances quickly. These fees equate to 365% APR or more. A worker who took three advances a week at \$3 per advance would pay more than \$36/month – likely several hours wages – a lot for someone already teetering on a financial precipice.

Additionally, the proposed legislation provides that EWA advances are not credit and expressly states that “non-mandatory fees” are not finance charges subject to existing state laws regulating credit. CRL’s position is that EWA is an extension of credit and should be regulated as such. Tips and express fees are finance charges and should similarly be regulated as such. This is especially the case for non-employer integrated EWA models, where the company is providing money to be repaid later through the employee’s bank account. This type of EWA is nothing more than a payday loan yet, the proposed legislation says it is not a credit product and would exempt it from Vermont’s existing credit laws that govern small dollar loans.

Finally, as noted above, the legislation permits EWA advances to be repaid through withdrawals from a user’s bank account. EWA companies are only required to notify users before the first attempt to collect payment, but not subsequent attempts. This is a major issue that can lead to overdraft fees for users caught in a cycle of debt caused by EWA borrowing. EWA loans should be repayable only through a payroll deduction.

If Vermont is interested in creating a clear regulatory scheme for earned wage access products, we urge the General Assembly to consider legislation which clarifies that earned wage access products are a form of credit and are subject to Vermont lending laws. Additionally, earned wage access providers should be subject to supervision - including requirements to register and report the number and terms of loans and consumer outcomes such as delinquency, default, and imposition of NSF fees- and to enforcement authority. For more information about EWA and CRL's recommendations for reasonable guardrails against abuses by EWA providers, please review our [one pager](#), Earned Wage Access: States Should Regulate as Credit, Protect Consumers.

In a letter to the Consumer Financial Protection Bureau (CFPB) in October 2021, 96 consumer, labor, civil rights, legal services, faith, community and financial organizations and academics noted:

Treating earned wage access products as credit does not mean that they should not exist. Free or very low-cost programs that are repaid entirely through payroll deduction or otherwise without debiting bank accounts or delaying receipt of wages may be a better alternative to high-cost payday loans. But these products are not without risks. They lead to the same cycle of repeat reborrowing as other balloon payment loans, and may lead to difficulties meeting future expenses or large bills such as rent or other monthly expenses. Programs that charge fees are particularly concerning, and the trend is for employers to offer earned wage access for free, making it especially inappropriate to carve loopholes for fee-based products in consumer protection laws covering credit. Even nominally low fees can add up due to the cycle of reborrowing and the frequent addition of expedite fees. In the end, consumers may simply end up in a situation where they are routinely paying to be paid.<sup>i</sup>

In 2019, the New York Department of Financial Services, joined by 10 other states and Puerto Rico, including New Jersey's Department of Banking and Insurance, launched an investigation to determine if these fintech companies engaging in payroll advances are doing so in violation of state banking laws, including usury limits and laws regulating payday lending and other consumer protections. In announcing the investigation in 2019, the New York Department of Financial Services noted that "some of these firms appear to collect usurious or otherwise unlawful interest rates in the guise of "tips," monthly membership and/or exorbitant additional fees, and may force improper overdraft charges on vulnerable low-income consumers."<sup>ii</sup> This investigation is fortunately ongoing and will provide additional insight into the practices of these companies. Before the General Assembly takes action on this matter, it should await the outcome of this investigation to ensure that any actions taken are appropriate in light of what is discovered. While the investigation is ongoing, we continue to see concerning patterns that suggest that regulators and legislators should proceed carefully in addressing these products.

Furthermore, in a statement when terminating an order that had previously granted special regulatory treatment for Payactiv, the CFPB indicated that more guidance is forthcoming regarding the treatment of EWA products and the definition of “credit” under federal law.<sup>iii</sup>

I commend the Committee for considering the needs of Vermont residents who are struggling financially, but I hope you will take the time to ensure that any steps taken to address these challenges are thoroughly considered. We are awaiting the results of a multi-state investigation that we anticipate will provide valuable information about how these products operate and how they interact with state banking laws as well as further guidance from the CFPB. As such, we encourage the General Assembly to postpone further consideration of this matter and strongly oppose passage of the proposed bill.

Thank you for your consideration.

Sincerely,

Yasmin Farahi  
Deputy Director of State Policy and Senior Policy Counsel  
Center for Responsible Lending  
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<sup>i</sup> October 2021 letter to CFPB from 96 consumer, labor, civil rights, legal services, faith, community and financial organizations and academics, [Coalition Comments Urging CFPB to Rescind Earned Wage Access Advisory Opinion and Sandbox Approval - NCLC](#)

<sup>ii</sup> Press Release - August 6, 2019: Superintendent of Financial Services Linda A. Lacewell Leads Multistate Investigation of the Payroll Advance Industry | Department of Financial Services (ny.gov), [Press Release - August 6, 2019: Superintendent of Financial Services Linda A. Lacewell Leads Multistate Investigation of the Payroll Advance Industry | Department of Financial Services \(ny.gov\)](#).

<sup>iii</sup> Press Release – June 30, 2022: CFPB Rescinds Special Regulatory Treatment for Payactiv, [CFPB Rescinds Special Regulatory Treatment for Payactiv | Consumer Financial Protection Bureau \(consumerfinance.gov\)](#)