Before the
Vermont General Assembly
House Committee on Commerce and Economic Development

Regarding

H. 99 An Act Relating to Regulating Earned Wage Access Services

Statement on behalf of
Consumer Federation of America

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Submitted by:

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Dear Chair Marcotte, Vice Chair Graning, Ranking Member White, and committee members:

Thank you for the opportunity to comment on the legislation before your committee.

The Consumer Federation of America (CFA) is an association of non-profit consumer organizations established in 1968 to advance consumer interests through research, advocacy, and education. CFA works to advance pro-consumer policies on various issues before Congress, the White House, federal and state regulatory agencies, state legislatures, and the courts. We communicate and work with public officials to promote beneficial policies, oppose harmful ones, and ensure a balanced debate on issues important to consumers.

CFA opposes bills that permit earned wage access (EWA) services to evade classification as credit. The bill before the committee is similar to ones introduced in other states. It brings EWA products inside the regulatory perimeter but does not define these services as a form of credit. The distinction is not one of semantics but a factor that matters greatly for consumer financial protection laws. By omitting this critical provision, providers are not considered lenders, products are not classified as loans, and costs are not counted as finance charges. At one point, payday lenders made similar efforts to circumvent lending laws by describing loan costs as service fees for deferring the cashing of a check, “cash leases,” and “cash back on a check.” [1]

In November 2020, the Consumer Financial Protection Bureau (CFPB) issued an advisory opinion stating that employer-based (EB) EWA services do not extend credit for categorical definition to federal lending law.[2] In 2024, the CFPB issued an interpretive rule reversing this view and extending the treatment of EWA products as credit for both EB and direct-to-consumer (DTC) EWA services.[3] The directionally opposite nature of these two guidances reflects a key fault line in regulatory approaches for these products. They also underscore the centrality of the question of their definition of loans within the regulatory framework for short-term credit.

Vermont has wisely prevented payday lenders from issuing dangerous high-cost credit to its citizens. We commend the Vermont General Assembly for this accomplishment. Nonetheless, as a consumer interest organization, we are always worried when legislation weakens the line between safe and risky products. Critically, CFA is especially concerned when pro-industry EWA bills are presented in payday-free states.

I. Consumer use of EWA reflects a long-term reliance on advances. Evidence shows that earned wage access (EWA) products do not support the financial well-being of workers and their households, and in some cases, utilization of EWA could exacerbate financial distress.

Studies conducted by the state of California, the CFPB, and advocacy groups consistently show that people make repeated use of EWA loans.

In 2021, the California Department of Financial Protection and Innovation (DFPI) analyzed EWA usage over the year, using data collected through 11 MOU agreements with EWA companies. Seven completed the data requests. The DFPI's survey covered EB and DTC models. DFPI collected information on amounts, transactions, requests per customer, delinquencies, and costs. During the time surveyed, the seven companies advanced $765 million to California workers.[4] The report also noted variations in pricing structures within EB models – some charge subscriptions, others collect tips, and some have optional charges for faster service. A summary of some of their findings:

- From quarter 1 to quarter 4, the usage rate increased by 60 percent.
- For tip-based models, consumers give generous tips relative to the amount received. The average APR for tip-based models was 334 percent.[5] Most advances were for between $40 and $100, with

[1] Fox, Jean Ann. “Safe Harbor for Usury: Recent Developments in Payday Lending.” Consumer Federation of America, September 1999. https://consumerfed.org/pdfs/safeharbor.pdf.

[2] Consumer Financial Protection Bureau. “Truth in Lending (Regulation Z); Earned Wage Access Programs.” Interpretive Rule, November 30, 2020. https://files.consumerfinance.gov/f/documents/cfpb_advisory-opinion_earned-wage-access_2020-11.pdf.

[3] Consumer Financial Protection Bureau. “Truth in Lending (Regulation Z); Consumer Credit Offered to Borrowers in Advance of Expected Receipt of Compensation for Work.” Interpretive Rule, July 18, 2024. https://files.consumerfinance.gov/f/documents/cfpb_paycheck-advance-marketplace_proposed-interpretive-rule_2024-07.pdf.

[4] California Department of Financial Protection and Innovation. “2021 Earned Wage Access Data Findings,” March 2023. https://dfpi.ca.gov/wp-content/uploads/sites/337/2023/03/2021-Earned-Wage-Access-Data-Findings-Cited-in-ISOR.pdf.

[5] APR = [(tip + mandatory fee + optional fee) / amount advanced] / [number of days to repay] * 365

more than half between $80 and $100. The average tip was $4.09. In general, the proportion of the tip relative to the amount advanced fell as amounts grew larger.

- For non-tip models charging a fee: Average APRs over quarterly periods were between 315 and 344 percent.
- The most frequent duration between advance and repayment ranged from 9 to 12 days, with the average falling to 11 days. Subscription companies extended funds for slightly longer periods.
- The average frequency of use was 8.44, 8.54, 8.65, and 10.7 times during each of the four quarters. At one company, average use doubled; at another, it increased fourfold between the first and last quarters. This suggests that, on average, users took 36 advances per year, assuming they had the account for the full four quarters.
- Over the same period, the advance was 26.1, 26.0, 24.7, and 25.5 percent of the paycheck. These results underscore that borrowers take a significant share of their future earnings when they ask for an EWA loan.

These findings show that the EWA does not solve a once-in-a-while short-term liquidity challenge. Rather, it becomes a debt trap. Consumers begin to use the service but do not easily escape it. Indeed, the fundamental problem may not be the availability of short-term credit but the stubborn and unrelenting difficulties experienced by low-wage workers. The numbers suggest that many EWA users earn less than ten dollars per hour (an advance is for an average of $90 and constitutes 25 percent of pay).

Earlier this year, a national policy and advocacy group published a different report, using an entirely different data set, that also revealed how EWA does not enhance consumers' financial resiliency.[6]
The report used a unique data source to understand the impact on specific people who used these services. It relied on data from a personal financial management app, eliminating the risk that consumers might forget or misrepresent their financial actions. When using the app, consumers give the app access to their bank account information. The app tracks their spending and income to provide users with tools to manage their financial affairs.

While the report's findings mirrored those made in the California study years earlier, it captured additional data that further reinforced how EWA does not improve consumer financial health. For example, the report found that after account holders began to use EWA services, the number of overdrafts charged on their checking accounts increased by 56 percent. Given the demonstrated pattern of borrowers using EWA services frequently, many policymakers have raised concerns that people might use more than one service to take out multiple advances simultaneously. One survey of government benefits recipients found that the "vast majority" used more than one EWA app, with an overall average of 2.45 apps.[7] These concerns were borne out by evidence in checking account transactions.

[6] Kushner, Andrew, Monica Burks, and Yasmin Farahi. "Paying to Be Paid: Consumer Protections Needed for Earned Wage Advances and Other Fintech Cash Advances." Issue Brief. Center for Responsible Lending, October 2023. https://www.responsiblelending.org/research-publication/paying-be-paid-consumer-protections-needed-earned-wage-advances-and-other.

[7] Lux, Marshall, and Cherie Chung. "Earned Wage Access: An Innovation in Financial Inclusion?" M-RCGB Associate Working Paper Series. Harvard Kennedy School, June 2023. https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/214_AWP_final_2.pdf.

EWA providers tout their services as an alternative to payday loans. However, it turns out that even when consumers turn to an EWA service, they still use payday loan credit. In fact, the data revealed that their use of payday loans increased. For consumers who had used payday loans in the past, usage increased from 3.1 loans in the year prior to signing up for an EWA app to 4.5 times.[8] The report noted that not all respondents in the survey used a payday loan. This is a reasonable point. Many states no longer permit payday lending. However, even in states without payday lending, the findings are troubling. They show that EWA had a destabilizing effect on a user's financial health.

In July 2024, the CFPB published a research report examining EB services. Many industry groups tout EB services as superior to DTC alternatives, and as a result, the findings from the report are an important contribution to the policy conversation. It found that the APR for EB advances, which are usually less costly than DTC products, is still high. The CFPB's analysis of 8 companies in 2021 and 2022 found that the average APR for an EB advance was 109.5 percent. Other findings, such as that consumers used advances an average of 27 times per year, the average transaction size was $106, and 90 percent of workers paid a fee for an expedited payment, are consistent with other reports covering all product types. Ninety-six percent of fees paid by workers for an EB service were for expedited delivery of loan proceeds. [9] The consistency in research findings underscores why the distinction between EB and DTC is less than expected.

II. H. 99 Does Not Benefit Consumers

H 99 permits EWA products to avoid being defined as credit. As a result, consumers will not benefit from important protections provided by the Truth in Lending Act (TILA) and Regulation Z. In § 2307, "applicability of other state laws," H. 99 holds that EWA is not a loan. This privilege contradicts the interpretive rule recently issued by the Consumer Financial Protection Bureau that EWA services are loans, costs to use them are finance charges, and providers are lenders.

If EWA loans are not considered credit, it causes several meaningful differences for consumers.

It permits repeat account debiting. Under § 2305 (b) Section 2(a) Electronic Transfer, companies can debit an account four times. For consumers who cannot meet their obligation because they have an empty bank account, four debits will trigger four overdraft or non-sufficient funds (NSF) fees. The CFPB's payday loan rule holds payday lenders to a higher standard. Under this rule, they can unsuccessfully debit an account twice before seeking new permission to collect funds.

It eliminates disclosure requirements. Under federal lending laws and regulations, lenders must disclose the cost of credit. TILA mandates that interest rates are expressed in a clear and uniform structure. With a uniform framework for disseminating price information, consumers can better compare products and

[8] Wane, Candace, Lucia Constantine, Monica Burks, and Yasmin Farahi. "A Loan Shark in Your Pocket: The Perils of Earned Wage Advance." Center for Responsible Lending, October 2024. https://www.responsiblelending.org/research-publication/loan-shark-your-pocket-perils-earned-wage-advance.

[9] Consumer Financial Protection Bureau. "CFPB Proposes Interpretive Rule to Ensure Workers Know the Costs and Fees of Paycheck Advance Products." Consumer Financial Protection Bureau, July 18, 2024. https://www.consumerfinance.gov/about-us/newsroom/cfpb-proposes-interpretive-rule-to-ensure-workers-know-the-costs-and-fees-of-paycheck-advance-products/.

choose the service that is right for them. Because transparency helps to differentiate products offered by different companies, uniform disclosures benefit competition.

EWA companies claim that estimating APRs is difficult, but this is not honest. With an advance, the costs are known (tip, expedited service fee, other fees), the amount is clear, and providers have certainty on the number of days until repayment. EWA providers dislike APR disclosures because they reveal the true cost of credit, which in the case of the typical EWA service, may be more than 300 percent.

It does not advance consumer protections against debt collectors. Proponents of the bill may contend that it preserves the non-recourse nature of these products and, as a result, shields consumers from aggressive debt collectors. However, this claim ignores the fact that bill ensures providers have the right to debit consumer accounts. With this power, loan repayment rates on EWA services are very high.[10]

By classifying EWA as credit, the CFPB's interpretive rule gives borrowers protection under the Electronic Funds Transfer Act, which prohibits compulsory repayment of credit by preauthorized electronic funds transfers. Until the interpretive rule, EWA providers evaded EFTA by claiming that their services were just advances on wages.[11] H. 99 gives the force of state law to EWA providers to assert that loophole. The Vermont General Assembly should follow the CFPB’s lead to enshrine the standard that EWA is credit.

In recent years, bills have been introduced in Georgia, Kansas, Mississippi, Missouri, Nevada, New Jersey, New York, North Carolina, South Carolina, Texas, Virginia, and Wisconsin to evade definitions of EWA services as loans. Last May, South Carolina became the fifth state to enact a law regulating EWA providers but exempting them from lending laws. It joined Kansas, Nevada, Wisconsin, and Missouri.[12] California and Connecticut have passed laws confirming that EWA services are credit.[13]

Conclusion

We encourage the Vermont General Assembly to reject this legislation. Any law covering EWA should make clear that all fees charged for an advance, including voluntary tips and expedited fees, are a form of finance charge under TILA.

If desired, the state of Vermont could introduce guidance clarifying when a service meets the definition of a loan to cover these loans expressly. The Center for Responsible Lending has model language for defining loans:

[10] National Consumer Law Center. “Earned Wage Advances and Other Fintech Payday Loans: Workers Shouldn’t Pay to Be Paid.” Issue Brief, April 20, 2023. https://www.nclc.org/resources/earned-wage-advances-and-other-fintech-payday-loans-workers-shouldnt-pay-to-be-paid/.

[11] Hawkins, Jim. “Earned Wage Access and the End of Payday Lending.” *Boston University Law Review* 101, no. 705 (n.d.): 705–59.

[12] Marek, Lynne. “Earned Wage Access: Following States That Have Passed Laws, or Have Legislation Pending.” *Payments Dive*, August 30, 2024. https://www.paymentsdive.com/news/earned-wage-access-states-legislation-laws-consumer-financial-protection-bureau-rule/725545/.

[13] Sholinsky, Susan Gross, and Gretel Zumwalt. “Differing Approaches to Earned Wage Access Programs Lead to Regulatory Conflict.” *Epstein Becker Green Workforce Bulletin* (blog), November 21, 2024. https://www.workforcebulletin.com/differing-approaches-to-earned-wage-access-programs-lead-to-regulatory-conflict.

> "A loan subject to [state's credit laws] includes any sale, assignment, order, or agreement for the payment of unpaid wages, salary, commissions, compensation, or other income, or any portion or amount thereof, whether earned, to be earned, or contingent upon future earnings. Such a sale, assignment, order, or agreement is a loan without regard to the lender's means of collection, without regard to whether the lender has legal recourse against the borrower in the event of non-repayment, and without regard to whether the advance carries mandatory charges."[14]

As well, the Vermont General Assembly could clarify that any payment, whether voluntary or not, is a finance charge:

> "All payments made by the consumer in connection with the making of a loan, whether mandatory payments, voluntary payments such as a tip or gratuity, or optional payments for additional or enhanced services, such as an expedite fee for faster delivery of loan proceeds, are finance charges subject to the state's rate cap."[15]

Vermont has strict rules in place to protect consumers from high-cost short-term credit. As this letter has shown, H 99 will not help to improve the financial stability of workers, and it may even lead to harm for some. The legislation may be beneficial to providers, but it will expose workers to more high-cost debt, increase the chances they will fall into debt traps, and undermine the strong rules in Vermont against payday lending.

Thank you for the opportunity to comment. Please let me know if I can answer additional questions or clarify this testimony.

Sincerely,

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[14] Kushner, Andrew, Monica Burks, and Yasmin Farahi. "Paying to Be Paid: Consumer Protections Needed for Earned Wage Advances and Other Fintech Cash Advances." Issue Brief. Center for Responsible Lending, October 2023. https://www.responsiblelending.org/research-publication/paying-be-paid-consumer-protections-needed-earned-wage-advances-and-other.

[15] Ibid.