

My Thoughts Regarding the Regulation of Earned Wage Access (EWA) Products

As we continue our work on the proposed policy regarding Earned Wage Access (EWA) products, I wanted to share my thoughts and recommendations in writing, as I am unable to be present for our committee discussion. I am supportive of the committee's efforts to regulate EWA products. I believe these products can be beneficial to Vermont workers, providing access to earned wages in a timely manner. However, I also believe that strong regulatory oversight is essential to ensure fairness, transparency, and consumer protection.

Observations and Considerations:

I found DailyPay's approach, with its rate cap and connection to financial literacy counseling, to be a positive example. The fact that at least one provider has already secured a lender license in Vermont underscores the need for a clear and consistent regulatory framework. I also want to reiterate the value of the Payday Alternative Loan (PAL) model already in place at credit unions like EastRise within our state. This program provides a responsible framework for short-term, small-dollar lending, and I believe it offers valuable lessons for our approach to EWA regulation.

CFPB Guidance and Considerations:

The Consumer Financial Protection Bureau's (CFPB) July 2024 proposed interpretive rule on paycheck advance products provides valuable guidance that we should carefully consider. While I acknowledge that CFPB leadership and priorities can shift with presidential administrations, and I disagree with the current appointee's pause on enforcement and investigations, the core principles outlined in their proposal are relevant to our work. Specifically, the CFPB's proposal (<https://www.consumerfinance.gov/about-us/newsroom/cfpb-proposes-interpretive-rule-to-ensure-workers-know-the-costs-and-fees-of-paycheck-advance-products>), highlights several key points that reinforce the need for strong consumer protections and transparency in the EWA market:

1. **Paycheck Deductions as Loans:** The CFPB clarifies that if workers obtain money and are required to repay it through a paycheck deduction, this constitutes a loan under existing federal law. This means lenders must disclose an accurate interest rate, consistent with established lending regulations. This transparency will facilitate comparison shopping and benefit providers offering truly free products.
2. **Worker Access to Financial Data:** The CFPB is working to enhance workers' access to their payroll and financial records. The upcoming finalization of rules in October regarding consumer data access and permissioning for bank accounts, credit cards, and more is a significant step. This could open up new, more affordable avenues for credit and other services.

3. **Collaboration with Partners:** The CFPB intends to collaborate with federal and state partners to ensure EWA providers adhere to regulations. They have indicated a willingness to take enforcement actions against those who violate the law.
4. **Employer Responsibility:** The CFPB will work with employers to prevent them from inadvertently facilitating predatory lending through their EWA partnerships. They aim to promote fee-free access and discourage kickbacks from EWA providers.
5. **Collaboration with the Department of Labor:** The CFPB is deepening its collaboration with the Department of Labor on issues related to employer-driven debt, the future of payments, and retirement savings. This joint effort underscores the interconnectedness of consumer and worker financial well-being.

Specific Recommendations:

Based on the above considerations, and my review of the EWA landscape, I'd like to propose the following specific recommendations for our consideration:

1. **Employer-Integrated:** I would prefer to see us only allow employer-integrated models at this time in order to help mitigate the stacking of direct-to-consumer loan products. Additionally, a payroll deduction would be preferred over direct ACH withdrawal from consumer accounts.
2. **Rate Cap:** I strongly support a rate cap aligned with Vermont's existing standards for small loans. This is crucial to prevent predatory pricing and ensure affordability.
3. **Clear Fee Disclosure:** We must require a clear, comprehensive, and easily understandable disclosure of all fees associated with EWA products. The EastRise PAL disclosure serves as an excellent model. To reiterate, their disclosure reads: *"The 18% interest rate and an automatic \$20 processing fee included in the required loan amount result in a 32% APR. Payment Example: a \$520 loan for 5 months will result in a \$109.50 monthly payment. A maximum of two loans are allowed per 180-day period. Payment by automatic transfer from an EastRise account is required."* This level of transparency should be our benchmark.
4. **Tipping Included in Fee Disclosure:** I appreciate that tipping is no longer allowed to be a default value. If we are expecting clear disclosures, tips should be included in the fee disclosure and limited to the state rate cap.
5. **New Regulatory Term and Placement:** I propose creating a new, specific regulatory term for EWA products under the Department of Financial Regulation (DFR). This new term should closely mirror the structure and consumer protections of the PAL model, ensuring appropriate oversight.
6. **Placement under Title 8:** I recommend that any EWA language remain under Title 8, Banking and Insurance. The Private Right of Action is relevant to Title 9, Consumer Protection. Title 8, covering banking, is the appropriate location for these regulations.

7. **Data Sharing with DFR:** We should mandate data sharing between EWA providers and the DFR. This is essential for effective monitoring, compliance tracking, and early identification of any potential consumer harm.
8. **Data Privacy Definitions:** I have serious concerns about the current data privacy definitions in the proposal. This seems to highlight potential data privacy issues that we do not have enough information on at this time. At the very least, these definitions must be aligned with those in the draft comprehensive data privacy legislation.
9. **Remove EWA as a Financial Institution:** I believe it is inappropriate to classify EWA providers as "financial institutions." A distinct and separate regulatory category is needed to avoid unintended consequences and ensure proper oversight.
10. **Remove "Non-Recourse":** The term "non-recourse" should be removed from the definition and regulations. This term is potentially confusing and could weaken consumer protections. We need to ensure clarity and accountability in these transactions.
11. **Eligibility Requirements:** I strongly advocate for adopting eligibility requirements similar to those used by EastRise for their PALs. Specifically:
 - a. Applicants should have been employed for at least five consecutive months with the same employer.
 - b. Applicants should not have taken out more than two EWA products (or PALs) within a 180-day period.
 - c. Applicants seeking a second EWA product within a 180-day period should be required to provide proof of participation in financial counseling.
12. **Fee Caps:** If we do not institute the provisions similar to EastRise's PAL product by limiting the number of transactions in a set period of time, we should in the very least institute a per-transaction fee cap (suggested \$2) and a monthly fee cap (suggested \$4).
13. **Mandatory Financial Literacy/Education:** EWA providers should be required to offer, or facilitate access to, financial literacy education and counseling through a credit counseling agency approved under 11 U.S.C. § 111. This is crucial for empowering consumers to make informed choices and avoid debt traps. A list can be found here: <https://www.justice.gov/ust/list-credit-counseling-agencies-approved-pursuant-11-usc-11>

Conclusion:

I believe that with careful regulation, EWA products can be a valuable resource for Vermont workers. The CFPB's recent guidance further underscores the importance of our work in this area. By incorporating these recommendations, we can create a framework that promotes responsible lending practices, protects consumers, and fosters a healthy financial environment.