



August 29, 2024

The Honorable Rohit Chopra
Director, Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Proposed Interpretive Rule on Truth in Lending (Regulation Z); Consumer Credit Offered to Borrowers in Advance of Expected Receipt of Compensation for Work (Docket No. CFPB-2024-0032)

Dear Director Chopra,

Consumer Reports¹ appreciates the opportunity to comment on the Consumer Financial Protection Bureau's (CFPB) proposed interpretive rule on earned wage products. CR strongly supports efforts to ensure that earned wage access (EWA) products are designed and delivered in a responsible manner that enables, rather than harms, consumers and does not evade existing consumer protection laws.

EWA products pose both benefits and risks to consumers. EWA companies provide consumers with access to a portion of their earned wages before payday. The product can be beneficial for low-income consumers living paycheck-to-paycheck who are in need of easily accessible short-term liquidity and face difficulties accessing more mainstream financial services. The two main models of EWA are employer-integrated, where the EWA product is offered by an employer or a company contracted with an employer and repaid via payroll deduction, and the third-party or direct-to-consumer model, under which EWA companies draw directly from users' bank accounts for repayment of the advance.

Despite its potential benefits to consumers, many features of current models of EWA offerings pose risks to consumers. In particular, the pricing of EWA can be quite opaque. EWA products are often marketed as products with no interest or mandatory fees. However, in reality, consumers end up incurring a range of different fees that add up to a relatively substantial cost.

EWA companies may charge subscription fees (ranging from \$5-\$10 per month)² or fees per transaction. In addition, optional fees may be incurred by consumers for expediting advances or in the form of tips.

¹ Founded in 1936, Consumer Reports (CR) is an independent, nonprofit and nonpartisan organization that works with consumers to create a fair and just marketplace. Known for its rigorous testing and ratings of products, CR advocates for laws and company practices that put consumers first. CR is dedicated to amplifying the voices of consumers to promote safety, digital rights, financial fairness, and sustainability. The organization surveys millions of Americans every year, reports extensively on the challenges and opportunities for today's consumers, and provides ad-free content and tools to 6 million members across the U.S.

² Lux, Marshall and Cherie Chung. "Earned Wage Access: An Innovation in Financial Inclusion?" Harvard Kenney School, June 2023.
https://dash.harvard.edu/bitstream/handle/1/37376263/214_AWP_final.pdf?sequence=1&isAllowed=y#:~:text=EWA%20products%20address%20employees'%20need,bank%20debits%20or%20payroll%20deductions

Expedited delivery fees range from \$2 to receive funds within a day to \$10 to receive funds within an hour.³ These ‘optional’ fees turn out to be not so optional in reality. Analysis by the California Department of Financial Protection and Innovation (DFPI) of 5.8 million transactions completed by tip-based EWA companies found that EWA companies received tips 73% of the time, with an average tip amount of \$4.09 (on advances between \$40-\$100).⁴ Similarly, the National Consumer Law Center found that 90% or more workers pay expedite fees in order to receive advances more quickly.⁵

The ‘tip’ model is itself fundamentally problematic. A business model that relies on soliciting tips as its main source of revenue but avoids presenting it as clear, straight-forward pricing poses obvious issues of transparency. Consumers are unaware of all-in pricing at the outset and are unable to compare products across providers, and thus are not able to accurately gauge which products are appropriate for their circumstances.

These fees add up to significant costs for EWA users. DFPI calculated annual percentage rates (APRs) on EWA products, including in its formula mandatory fees as well as tips and other optional fees. It found an average annual APR of 334% for EWA companies that solicit tips and 331% for EWA companies that do not.⁶ A recent study from Harvard Kennedy School (HKS) found examples of even higher APR for EWA products, going up to 578%.⁷ These rates are similar to payday loans and are in sharp contrast to how EWA products are typically promoted to consumers. On top of these fees, consumers also run the risk of incurring unexpected overdraft or non-sufficient funds (NSF) fees under the third-party EWA model, including potentially incurring multiple fees for multiple failed attempts to debit consumers’ bank accounts.

Such high fees are likely to have a greater negative impact on EWA customers given the particular profile of EWA users. Research by the Government Accountability Office found that EWA users are typically hourly, relatively low-wage workers. These include low- and moderate-income workers, including many on-call and gig economy workers, are disproportionately workers of color. Many are frequent users of EWA products, with users of the direct-to-consumer EWA model obtaining advances 26 to 33 times a year.⁸ An HKS survey of low-income EWA users found that 40% of survey respondents use EWA once a week, while also concerningly finding that 29% of survey respondents had taken out

³ Ibid.

⁴ California Department of Financial Protection and Innovation. “2021 Earned Wage Access Data Findings.” Q1 2023. <https://dfpi.ca.gov/wp-content/uploads/sites/337/2023/03/2021-Earned-Wage-Access-Data-Findings-Cited-in-ISOR.pdf>

⁵ https://www.nclc.org/wp-content/uploads/2022/10/EWA-letter-to-CFPB_Oct-4-2021.pdf

⁶ These calculations did not include subscription fees, which would presumably result in average APRs being even higher. See California Department of Financial Protection and Innovation. “2021 Earned Wage Access Data Findings.” Q1 2023. <https://dfpi.ca.gov/wp-content/uploads/sites/337/2023/03/2021-Earned-Wage-Access-Data-Findings-Cited-in-ISOR.pdf>

⁷ Lux, Marshall and Cherie Chung. “Earned Wage Access: An Innovation in Financial Inclusion?” Harvard Kenney School, June 2023. https://dash.harvard.edu/bitstream/handle/1/37376263/214_AWP_final.pdf?sequence=1&isAllowed=y#:~:text=EWA%20products%20address%20employees%20need,bank%20debits%20or%20payroll%20deductions

⁸ United States Government Accountability Office. “Financial Technology: Products Have Benefits and Risks to Underserved Consumers, and Regulatory Clarity Is Needed.” March 2023. <https://www.gao.gov/assets/gao-23-105536.pdf>

more than one loan at a time using multiple EWA apps.⁹ High costs per advance can therefore add up quickly and pose a very real financial burden for consumers who are least able to afford it. These statistics also point to a concerning cycle of ongoing dependency and the potential for becoming overextended. These concerns are only likely to increase given the financial strain U.S. consumers currently face, many of whom are struggling to pay bills and make ends meet.

EWA products currently fall into a legal grey area. Despite essentially operating like a loan, EWA products are not clearly classified as such and a patchwork approach is developing state by state that creates inconsistent protections for consumers as well as uncertainty for industry. Consumers therefore do not benefit from disclosure requirements, interest rate caps, and other core protections that apply to loan products and should similarly apply to EWA products.

CR therefore commends the CFPB for providing clarity that EWA products are considered consumer credit for purposes of the Truth in Lending Act (TILA) and Regulation Z based on commonsense and existing definitions of debt. The proposed interpretive rule also makes clear that fees for expedited delivery and ‘tips’ meet TILA’s standard for being finance charges given they are incident to or a condition of the extension of credit, and hence must be properly disclosed to consumers. Clear, upfront disclosure of such fees, including in a total cost indicator such as annual percentage rate (APR), will significantly assist consumers in understanding the costs they are incurring when utilizing such products and help them to comparison shop across EWA providers.

While the interpretive rule addresses several key concerns regarding EWA products, additional clarifications and safeguards are needed to ensure that consumers can use EWA products safely, particularly on the following issues:

- Calculating a representative finance charge and APR
- Potential challenges due to de minimis fee standards in TILA
- Pricing structures leading consumers to incur more fees
- Preventing the use of deceptive designs
- Providing employees with better alternatives to EWA

Calculating a representative finance charge and APR

Further guidance may be useful to ensure that EWA providers calculate finance charges and APR in a consistent manner, particularly with respect to expedite fees and tips. Leveraging the “representative APR” or “representative example” approach for marketing and pre-contractual materials would be fitting in this scenario. The EU Consumer Credit Directive requires that creditors disclose a representative APR and total cost of credit (i.e. finance charge) that reflects the average duration and total amount of credit granted for the particular product.¹⁰ The UK Financial Conduct Authority (FCA) further elaborates that representative APR and representative total cost of credit in advertising and promotions should reflect the credit agreements a financial institution reasonably expects to enter into as a result of the promotion, and must reflect at least 51% of business expected to result from an

⁹ Lux, Marshall and Cherie Chung. “Earned Wage Access: An Innovation in Financial Inclusion?” Harvard Kenney School, June 2023.

https://dash.harvard.edu/bitstream/handle/1/37376263/214_AWP_final.pdf?sequence=1&isAllowed=y#:~:text=EWA%20products%20address%20employees'%20need,bank%20debits%20or%20payroll%20deductions

¹⁰ Directive (EU) 2023/2225 on credit agreements for consumers. European Parliament and the Council of the European Union, October 2023.

advertisement.¹¹ The intent is that representative examples of APR and total cost of credit accurately reflect the typical consumer profile of the particular product being advertised.

A similar approach could be applied for EWA products. Where the majority of customers are expected to incur expedite fees as well as to provide tips, which has proven to be the case for many EWA products, then these fees as well as the average size of such fees should be included in representative APR and finance charge calculations that are disclosed to consumers on a pre-contractual basis. Representative examples of EWA transactions should reflect the reality of an EWA provider's average user and be clearly conveyed to prospective customers so they have accurate expectations for what the product will likely cost and the components that make up these costs and can plan their actions accordingly.

De minimis fee standards in current TILA represent potential challenge

Current TILA rules do not require disclosure of an APR rate unless a fee is more than \$5.00 for loans up to \$75, and more than \$7.50 if the loan is above \$75. We are concerned that these thresholds may present a challenge for fairly presenting the cost of EWA products to users. The CFPB should think carefully about how the full costs of competing products can be fairly presented under the existing law, and/or require upfront disclosure of those smaller fees separately and in addition to APR. A potential drawback of this approach would be that users may be confused why some fees are included in APR and others are not.

The CFPB should also consider any the impact of this section of the law on incentives providers may have to cap loan amounts and charge a larger volume of exempt fees on smaller payroll advances, in order to avoid disclosure requirements. This could inhibit effective disclosure of the comprehensive and comparative costs of individual products.

Pricing structures leading consumers to incur more fees

The complex presentation of the fee structure for many paycheck advance products raises concerns about the transparency, understandability and comparability of the pricing model for users. For example, when trying to decide whether to pay a monthly subscription fee for a direct-to-consumer paycheck advance, users may not be able to easily determine in advance how much of an advance they can actually qualify for. With some products, the amount of the advance is conditioned on a variety of factors, such as a review of deposit activity in user's checking account. Some products mention using algorithms and scores to measure a user's ability to repay before determining the advance amount.

Further, some plans structure their pricing models to only allow users to request smaller advances of \$100 or \$250 at a time, forcing users to pay additional fees to get access to a higher amount of eligible earned pay or to break up their requests into multiple advances, again incurring additional fees as a result (particularly with respect to fixed fees). For example, EarnIn allows an advance of \$100 per day up to a \$750 total per paycheck. Brigit and Cleo have a maximum advance of \$250 and FloatMe has a maximum advance of \$50.

We urge the CFPB to investigate structural problems in the pricing model for paycheck advance apps that may force users to pay higher fees than necessary for recurring advances when they could qualify for a larger advance in a single transaction. The example of Walmart and Amazon payroll advances listed

¹¹ Section 3.5, Consumer Credit Sourcebook, FCA Handbook.

below (up to 50% or 75% of eligible earned pay) show that it is possible to give better access to earned wages in a single transaction at lower cost, without requiring workers to take out multiple advances in each pay period.

The CFPB should also consider ways to develop clear standardized disclosures for fees and charges similar to those developed for prepaid cards, so that users can consistently and reliably compare prices and pricing structures between competing products and better understand how the product works before using it. Such disclosures should also include clear disclosure of the key risks related to EWA products.

Preventing the use of deceptive designs

The interpretive rule's inclusion of tips in finance charge calculations to be clearly disclosed to consumers represents a big step forward in providing consumers with transparency, while also creating disincentives for EWA providers to solicit tips. However, broader concerns still remain regarding EWA providers (and other fintechs and financial institutions more generally) employing deceptive designs when soliciting tips that are specifically designed to exploit consumers' behavioral biases.

Not all EWA providers solicit tips. But those providers who do often use deceptive designs and manipulative measures to induce consumers to tip. The DFPI identified multiple strategies that lenders employ to encourage tipping, including: (1) disabling a service if a borrower does not tip, (2) setting default tips and using other user interface elements to make tipping hard to avoid, (3) making it difficult to set a \$0 tip or not advertising that a particular payment is optional, and (4) claiming that tips are used to help other vulnerable consumers or other charitable contributions.¹² In one instance, the tip screen of a EWA provider actually states that *"The APR for this cash out is 0%. Your tips help support us."*¹³ The type of language and imagery employed to appeal for tips and the use of pre-selection of recommended tip amounts are all designed to exploit consumers' behavioral biases (such as default bias, i.e. going with the pre-set option), while other design elements are employed to make it hard not to tip. These techniques are clearly successful in compelling consumers to provide tips and to tip in larger amounts as DFPI data shows that consumers tip 73% of the time,¹⁴ despite the fact that tips are ostensibly optional.

Such practices are clearly manipulative, deceptive, and unfair. Soliciting tips should ideally be prohibited, in EWA as well as for any fintech loans or other financial products or services. Tipping is inappropriate for the financial sector as it is not a service industry and there is a fundamental imbalance of power and information between companies and consumers that places consumers in an inherently vulnerable position.

¹² Initial Statement of Reasons for the Proposed Adoption of Regulations Under the California Consumer Financial Protection Law and the California Financing Law, California Deferred Deposit Transaction Law, and California Student Loan Service Act PRO 01-21. DFPI, March 2023. <https://dfpi.ca.gov/wp-content/uploads/sites/337/2023/03/PRO-01-21-ISOR.pdf>

¹³ Kushner, Andrew, Monica Burks, and Yasmin Farahi. *Paying to be Paid: Consumer Protections Needed for Earned Wage Advances and Other Fintech Cash Advances*. Center for Responsible Lending, October 2023. <https://www.responsiblelending.org/research-publication/paying-be-paid-consumer-protections-needed-earned-wage-advances-and-other>

¹⁴ California Department of Financial Protection and Innovation. "2021 Earned Wage Access Data Findings." Q1 2023. <https://dfpi.ca.gov/wp-content/uploads/sites/337/2023/03/2021-Earned-Wage-Access-Data-Findings-Cited-in-ISOR.pdf>

More broadly, the CFPB should take proactive measures to prevent the use of deceptive designs industry-wide. The CFPB has already taken recent action by suing SoLo Funds, an online lending platform, for employing similar deceptive practices by advertising 0% APR loans but employing deceptive designs to successfully compel almost all its users to make tips or donations.¹⁵ SoLo Funds has been subject to enforcement actions across multiple states as well for its deceptive practices and masking of fees.

The CFPB also previously issued a circular in January 2023 stating that deceptive designs used by companies to confuse and deceive consumers into enrolling in subscription services via negative option marketing may constitute an unfair, deceptive, and abusive acts and practices (UDAAP) violation in certain instances.¹⁶ Similarly, a recent Federal Trade Commission (FTC) enforcement action found that many users of the Brigit paycheck advance app were inadvertently trapped in monthly subscription plans but were unable to obtain the promised advances of \$250, or to cancel the service. According to the FTC, the app also utilized manipulative design practices to make it harder for users to cancel their subscriptions. The FTC obtained \$18 million in refunds for users and required the company to stop misleading consumers about how much was available through the paycheck advances, and to stop using the manipulative practices to impede cancellation of subscriptions.¹⁷

We urge the CFPB to continue to take strong action against the use of deceptive designs through both enforcement action and issuing clear guidance. Case-by-case enforcement action should be complemented with explicit guidance that clearly states the types of deceptive designs that are considered violations of existing laws and regulation, in order to provide clarity across the entire market on what practices are considered unacceptable and a UDAAP violation. In the past, the FTC has highlighted categories and examples of deceptive designs¹⁸ and indicated that the use of deceptive designs may be in violation of the FTC Act, as well as other statutes and regulations. Providing similar guidance that covers the broad range of deceptive designs specifically observed in the financial sector that are considered UDAAP violations would be beneficial. Establishing greater clarity on a proactive basis will help to prevent harm to all consumers on an ex ante basis, before harm can occur.

¹⁵ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-solo-funds-for-deceiving-borrowers-and-illegally-extracting-fees/#:~:text=The%20CFPB's%20lawsuit%20against%20SoLo,the%20CFPB's%20victims%20relief%20fund.>

¹⁶ Consumer Financial Protection Circular 2023-01, Unlawful Negative Option Marketing Practices. CFPB, January 2023. www.consumerfinance.gov/compliance/circulars/consumer-financial-protection-circular-2023-01-unlawful-negative-option-marketing-practices

¹⁷ Federal Trade Commission, *FTC Action Results in \$18 Million in Refunds for Brigit Consumers Harmed By Deceptive Promises about Cash Advances, Hidden Fees and Blocked Cancellation*, 11/2/23, available at: <https://www.ftc.gov/news-events/news/press-releases/2023/11/ftc-action-leads-18-million-refunds-brigit-consumers-harmed-deceptive-promises-about-cash-advances>

¹⁸ The categories include the following: (1) Endorsements (aka “social proof”)—e.g., false activity messages, deceptive consumer testimonials, deceptive celebrity endorsements, parasocial relationship pressure; (2) Scarcity—e.g., false stock message, false high demand message; (3) Urgency—e.g., baseless countdown timer, false limited time message, false discount claims; (4) Obstruction—e.g., price comparison prevention, roadblocks to cancellation, immortal accounts; (5) Sneaking or information hiding—e.g., sneak-into-basket, hidden information, hidden costs, drip pricing, hidden subscription or forced continuity, intermediate currency; (6) Interface interference—e.g., misdirection, false hierarchy or pressured upselling, disguised ads, bait and switch; (7) Coerced action—e.g., unauthorized transactions, auto-play, nagging, forced registration or enrollment, pay-to-play or grinding, friend spam/social pyramid schemes/address book leeching; and (8) Asymmetric choice—e.g., trick questions, confirm shaming, pre-selection, subverting privacy preferences. See Federal Trade Commission, Staff Report, “Bringing Dark Patterns to Light,” September 2022, www.ftc.gov/reports/bringing-dark-patterns-light.

CFPB Should Continue To Examine the Larger Wage-Payment Ecosystem for Paycheck Advances, To See If There Are Additional Policy Options That Would Benefit Workers and Consumers

As mentioned in the draft interpretive rule, employers generally pay workers on a bi-weekly, monthly or semi-monthly wage cycle. “Nearly three-quarters of non-farm payroll employees remain paid biweekly or even less frequently, and the remainder are generally paid their wages weekly.” The draft rule also notes that “...[e]mployers have a strong incentive to delay payment [of wages], since these delays reduce working capital needs.” As a consequence, workers who have financial needs between paydays may turn to third-party financial service providers for “a liquidity product” to pay emergency or recurring expenses.

As the CFPB considers the wage payment ecosystem that have given rise to the growth of third-party paycheck advance products, we urge the CFPB to also investigate the prospects for employers to: 1) increase frequency of wage payment to improve employee recruitment and retention; 2) offer a fee-free EWA service as an employee benefit; and 3) offer additional employee benefits such as matching emergency savings funds and/or financial budgeting and coaching, to help employees stay on track with expenses and bill payment obligations.

In its Data Spotlight published in July 2024, the CFPB notes that few employers currently cover the fees for earned wage advances. Employers in the data sample covered less than 5% of the fees incurred by users.¹⁹ This situation suggests that employers either may not be aware of the potential upside of helping employees to manage liquidity challenges, or the potential downside of allowing worker paychecks to be drained by third-party paycheck advance apps that charge high fees and create a recurring cycle of use. Employer “information failure” may be leading to a situation that will create sub-optimal outcomes for workers.

Worker liquidity needs can potentially be addressed more efficiently and effectively by employers adjusting the amount and frequency of pay, offering EWA as a free employee benefit, expanding financial literacy and coaching programs, and/or creating additional tools such as matching workplace savings programs that would help employees weather short-term liquidity needs for emergencies and unexpected expenses.

Employers that operate or contract with payroll services also likely have superior bargaining power for negotiating lower fee costs for their workforces as a whole, when compared to individual workers who have basically no ability to negotiate fees for individual paycheck advance products on their own. If employers do not exercise appropriate responsibility in this area, workers as a group will experience a substantial collective welfare loss because wage payment has been effectively “outsourced” to third-party paycheck advance providers who charge higher fees to the most vulnerable segments of the workforce.

By electing not to change the frequency of pay or to absorb the fees for paycheck advances, employers are in effect opening the door to requiring the most vulnerable workers in the ecosystem to “pay to get paid.” Why should individual workers be asked to pick up the tab for something that arguably could be

¹⁹ Consumer Financial Protection Bureau. *Data Spotlight: Developments in the Paycheck Advance Market*, July 18, 2024, available at: <https://www.consumerfinance.gov/data-research/research-reports/data-spotlight-developments-in-the-paycheck-advance-market/>

a workplace benefit rather than a lucrative fee-based fintech service? Don't employers who pay low wages and often structure shifts to be unpredictable or on-call have a responsibility to provide employees with greater flexibility in pay options?

These solutions are not far-fetched. Several major employers already offer a fee-free earned wage advance service, including Walmart and Amazon. The Walmart One@Work app allows employees to get a free wage advance of up to 50% of their pay every week.²⁰ The Amazon Anytime Pay service allows workers to receive up to 75% of their eligible earned wages anytime they need it.²¹

Analysis of the larger wage-payment ecosystem is also important because paycheck advance products do not solve the underlying economic challenges that create continuing financial challenges for users. Access to EWA simply delays consumers' financial strain from one day to the next, while further adding to their financial burden with non-transparent fees and charges. As the National Consumer Law Center points out, "a worker who cannot afford an expense from this week's pay and borrows from next week's will have a hole, triggering another loan. Most workers who use EWAs do so nearly every pay period..."²² The high frequency of use of EWA implies that liquidity is a chronic, ongoing need for many workers. For example, the workers in DFPI's report used an average of 9 advances per quarter, or 36 per year.²³ High patterns of usage will result in higher accumulated subscription, transaction, and expedite fees and tips over the course of the year, reducing workers' net income.

According to a report by the Financial Health Network:

...Despite these benefits (of being able to pay day-to-day expenses and reduced stress), EWA was not able to solve the underlying factors that caused users to have short-term liquidity challenges. For many participants, income was simply insufficient to cover their bills and any large emergency expenses that came up. Indeed, there are still emergency expenses that are too significant for EWA to make a difference.

One participant explained, "Having access to on-demand pay doesn't change what I think about having to cover an unexpected \$500 expense. To me, that is an impossible amount for me to have to cover no matter what I do. I would still panic and it's a huge source of anxiety to live from paycheck to paycheck."

Participants reported that these unexpected expenses were still incredibly challenging to manage, particularly in light of their cost of living. Participants wished they had more cushion in their budgets, and others wished they didn't have to draw down from their future paycheck to cover it.

²⁰ One@Work app description, Apple Store. According to the description, the app does not charge fees to workers "whose employers have configured this benefit within the app." <https://apps.apple.com/us/app/one-work-formerly-even/id1147769190>

²¹ Amazon Anytime Pay, description available at: <https://hiring.amazon.com/promotions/anytime-pay#/>

²² National Consumer Law Center, *Earned Wage Advances and Other Fintech Payday Loans: Workers Shouldn't Pay to Be Paid*, Issue Brief, April 20, 2023, available at: <https://www.nclc.org/resources/earned-wage-advances-and-other-fintech-payday-loans-workers-shouldnt-pay-to-be-paid/>

²³ "2021 Earned Wage Access Data Findings," California Department of Financial Protection and Innovation, 2023, available at: <https://dfpi.ca.gov/wp-content/uploads/sites/337/2023/03/2021-Earned-Wage-Access-Data-Findings-Cited-in-ISOR.pdf>

“Even with access to these services, I would not be able to cover an unexpected \$500 expense. My rent has literally doubled in the past two years while my job only gave me a \$1 raise. We have no savings.”

Because the majority of participants were living paycheck to paycheck, most were not focused on long-term savings. Some participants reported that they would use EWA rather than dipping into any savings to cover expenses, but largely felt there was limited impact on their long-term savings outside of avoiding late fees.²⁴

Some employers have established matched workplace savings programs to help workers accumulate savings in a rainy day fund for unexpected expenses. In 2020, UPS announced that it was creating an emergency savings fund option in its retirement plan for 90,000 non-union workers, allowing them to earmark up to 5% of pay for the fund. Brightside, Etsy, and Mastercard have developed similar programs in a partnership with Commonwealth, a Massachusetts-based nonprofit.²⁵ In addition, the Secure Act 2.0 of 2022 authorizes employers and plan sponsors with defined contribution accounts to set up new pension-linked emergency savings accounts (PLESAs).²⁶ These initiatives suggest that other factors and tools can be developed that would benefit workers by addressing deeper-rooted issues and providing greater options for managing liquidity problems that do not compel recurring use of expensive fee-based products that are short-term fixes at best.

Conclusion

In conclusion, CR strongly supports the proposed rule on EWA as an important first step to bring greater transparency to the EWA sector. We would encourage the CFPB to take steps to ensure that the rule is effectively implemented and expand its efforts to address other key risks posed by EWA products as well as the underlying structural issues that are driving demand for EWA products.

Sincerely,

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²⁴ Berdie, Lisa and Patil, Riya. *Exploring Earned Wage Access As A Liquidity Solution: Findings From a Study of Earned Wage Access Users*, Financial Health Network, November 2023, p. 18, available at: <https://finhealthnetwork.org/wp-content/uploads/2023/12/EWA-Users-Report-2023.pdf>

²⁵ Brooks, Khristopher J., *More Companies Pushing Employees To Build A Rainy Day Fund*, CBS News, October 23, 2020, available at: <https://www.cbsnews.com/news/ups-employees-personal-finance-retirement-emergency-fund/>

²⁶ U.S. Department of Labor, *FAQS: Pension-Linked Emergency Savings Accounts*, available at: <https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/faqs/pension-linked-emergency-savings-accounts>

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