State Recommendations for Earned Wage Advances and Other Fintech Cash Advances

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States are grappling with how to regulate earned wage advances (EWAs) and other fintech cash advances that purport not to be credit. These loans often closely resemble payday loans, with fees that multiply into rates **above 300%** and cycles of reborrowing that result in workers paying to be paid. State legislatures and regulators should not adopt industry-backed approaches, like those recently passed in Missouri and Nevada, that carve these loans out of state credit laws, including rate caps, and lack any meaningful substitute consumer protections.

Instead, at the state level, **the best policy approach is to enforce existing credit laws and, if necessary, clarify that they cover earned wage advances and other fintech cash advance loans**.

- Many if not most state small dollar loan laws are broad enough to cover EWAs and other cash advances, as well as evasions through "voluntary" payments, such as "tips." State financial regulators should consider enforcement actions under existing laws.
- If desired, additional clarity regarding the definition of a "loan" under a state's credit laws could be provided through guidance, regulations or legislation to expressly cover these loans. A sample loan definition is:

  > 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.

- Any clarifying measure should also specify that all payments, whether "voluntary" or not, are finance charges subject to the state's interest rate cap. Here is sample language:

  > 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].

If legislators are nevertheless considering a regulatory regime specific to earned wage and other cash advances, **for the protections to be meaningful they must treat those advances as credit and include strict cost caps and other measures**. **The following are the bare minimum protections that must be in any such legislation**.

- **Employer-integrated only.** At most, the only types of advances that should be given special treatment distinct from existing categories of loans are employer-integrated earned wage advances that access time and attendance systems. These advances have the employer as a gate check, have a closer connection to actual earned wages, tend not to debit bank accounts, and are more distinct from traditional payday loans. By contrast, direct-to-consumer cash advance lenders are nothing more than a payday loan through the consumer's phone.
- **Strict cost cap.** Cap the total amount lenders can collect from users at a nominal fee of a few dollars per month or a couple of dollars per pay period. An overall, low cost cap is essential to prevent evasions of interest rate limits and to protect users from the snowballing costs of multiple advances over the course of the month.
- **Cover all costs, including "tips."** Expressly state that all payments, whether "voluntary" or not, are charges that count toward this cost cap. Crediting all payments toward the cost cap is the best way to protect users from the various pressure tactics and hidden tricks that companies use to push users to pay expedite fees or to "tip." This method of regulation is far more effective than trying to police whether these payments are in fact "voluntary," as companies continue to alter their practices and implement new ways to evade restrictions on pressuring users to pay "voluntary" fees.
- **Default tip of $0.** For any "voluntary" payments like "tips," require that the default amount be set to $0. Otherwise, product design can make it difficult or cumbersome not to "tip."
- **Repayment only directly from the employer, not bank accounts.** Permit advances to be repaid only through payroll deduction or another method that is direct from the employer. Expressly bar debiting a user's bank or prepaid account, which can trigger overdraft and nonsufficient fund fees.
- **Require licensure and data reporting to regulators.** Require lenders to be licensed by the state, to collect data on the advances they make, and to report that data to state regulators. The data should include information such as the total cost of advances, the size of the advance, time to repay, how frequently users are taking advances, how often advances are not repaid on time, and other key information showing how these products affect consumer welfare. Licensure and data reporting of this sort are needed so that state regulators can continue to monitor these products for possible consumer harm.
- **No late fees or debt collection.** Bar late fees, use of debt collectors or collection lawsuits, sales to debt buyers, and reporting unpaid loans to credit bureaus. These rules, which lenders generally comply with voluntarily as part of their business model, are not sufficient protections for EWAs and other cash advances. Nevertheless, it makes sense to include them in any EWA-specific legislation.
- **Include a sunset date.** Any new regime should have a sunset date so that it can be reevaluated in light of the data collected to ensure that it is not facilitating a new form of predatory lending.