Payments System Research Briefing

As Earned Wage Access Grows, Oversight Tries to Catch Up

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Earned wage access (EWA) services have grown in popularity as more providers offer them and more businesses and consumers use them. However, the complex fee structures and high costs of EWA, as well as some users' heavy reliance on these services, have raised concerns. Regulatory and legislative bodies have begun to respond to these concerns, with states taking the lead in proposing or passing EWA legislation.

Earned wage access (EWA), which enables workers to access a portion of their paychecks before payday, gained popularity during the COVID-19 pandemic and subsequent period of high inflation. Although EWA services can benefit consumers, they also come with risks (Alcazar and Bradford 2020). Regulatory and legislative bodies have begun to react to those risks, though the response has lagged. This *Payments System Research Briefing* examines the growing popularity of EWA services, rising concerns for consumers, and emerging regulatory and legislative responses.

Types of EWA services

EWA services fall into two primary types, employer-sponsored (also called employer-integrated) and direct-to-consumer. In employer-sponsored EWA services, the employer partners with an EWA service provider to deliver proceeds from wages earned to an employee prior to the scheduled payday. The employee's earnings and the amount available to be accessed early (for example, 50 percent of earned wages) are calculated based on the employer's payroll data; the employee's subsequent paycheck is then reduced by the corresponding amount (Alcazar and Bradford 2020). In direct-to-consumer EWA services, the consumer does not go through their employer but instead directly engages with a third-party EWA service provider. The service provider determines the consumer's EWA limit by analyzing transaction data from the consumer's checking accounts to forecast their income over a pay period. On the next regularly scheduled payday, the EWA provider directly debits the amount accessed early by the consumer from the consumer's checking account (Tescher and Silberman 2024). In both types of EWA services, providers may assess a fee to the consumer depending on how quickly the funds are disbursed. Typically, fees for immediate access are lower for employer-sponsored EWA services than for direct-to-consumer EWA services. Moreover, some employers who provide EWA services subsidize their employees' costs of using the service. In contrast, some direct-to-consumer EWA service providers solicit tips from consumers, even when the disbursement option is fee-free (GAO 2023; Tescher and Silberman 2024).

Some businesses have evolved from offering employer-sponsored EWA programs to offering more flexible pay cycles—for example, allowing employees to access their earned wages every day or every week (Everee 2021). Unlike the two primary types of EWA programs, in which only a portion of earned wages can be accessed, flexible-pay services typically disburse 100 percent of an employee's daily or weekly earned wages. Further, some employers, particularly in the construction, delivery services, and temporary staffing industries, have started offering instant (or daily) payroll as the default (Pierce n.d.).

In addition, many financial institutions, neobanks, prepaid card providers, and nonbank digital payment service providers also offer their eligible accountholders access to 100 percent of their paycheck up to two days earlier than a regularly scheduled payday (SouthJamaica 2018; Tierney 2024).[1] These institutions make paychecks accessible to their accountholders right after the institution receives an automated clearinghouse (ACH) clearing instruction about payroll disbursements but before the interbank settlement of funds occurs. Although these are not EWA services per se, they offer similar benefits.

Growing popularity of EWA

In recent years, EWA services have grown across several dimensions. First, service providers have expanded from fintech startups (such as DailyPay, Earnin, and Payactiv) to payroll providers, employee benefits providers, and gig platform providers. In addition, financial institutions U.S. Bank and PNC Bank have partnered with EWA providers Payactiv and DailyPay, respectively, while Citizens Bank offers EWA itself to its corporate customers and their employees (Pinwheel 2022). Further, EWA services are poised to become more widely available and more quickly accessible as more financial institutions adopt instant payments, including the Federal Reserve's FedNow service and The Clearing House's (TCH's) Real-Time Payments (RTP) (ICBA 2023). Instant payroll and EWA are already the fastest growing uses of RTP (TCH 2022).

Second, many businesses perceive that offering EWA provides recruitment and retention advantages. A 2022 survey of 200 middle-market companies by Citizens Bank revealed that 71 percent already offer EWA services and another 24 precent expect to do so in the future (Kurella 2022). According to payroll provider ADP's 2022 survey of 600 employers (300 employers with 151–999 employees and 300 employers with 1,000 or more employees), 96 percent of employers that offer EWA believe it helps with recruitment (ADP 2022). For example, as of April 2024, a job search on Indeed.com using EWA as a filter yielded nearly 20,000 results. The same ADP survey shows that 93 percent of employers also believe EWA services help improve employee retention, a belief supported by responses in another 2022 ADP survey of 1,000 employees. About three-quarters of employees surveyed said EWA was important for their employer to offer, with younger employees driving this result (82 percent of Gen Z and 91 percent of millennials stated EWA was important versus 57 percent of Gen X and boomers). Based on Harris Poll data, U.S. workers age 18–44 expect to have access to EWA or flexible-pay services:

- 83 percent believe they should have access to earned wages at the end of each day or shift,
- 80 percent would prefer to have wages automatically deposited as they earn them,
- 78 percent said free access to on-demand wages would increase their loyalty to their employer, and
- 81 percent would take a job with an employer that provides free access to on-demand wages over an employer who does not (Segal 2021).

Third, consumers with access to EWA services are using them multiple times a year. A 2023 Government Accountability Office (GAO) report found that EWA users are generally lower-income consumers, and those consumers tend to use EWA services multiple times in a year (GAO 2023). According to a 2022 Financial Health Network study, 43 percent of respondents whose employers offer EWA services have used them, and 75 percent of those users accessed the services at least once a month (Greene and others 2023). Among the reasons EWA services are attractive to consumers are that they provide a potentially lower-cost alternative to payday loans or overdrawing a bank account, they have no effect on credit reporting, and they do not get sent for debt collection, as the EWA provider bears the risk of nonpayment (Doorley and Kaplan 2020).

More EWA providers entering the market, along with more businesses and consumers adopting EWA services, have resulted in a significant increase in the value and number of EWA transactions in the last several years. According to Aite-Novarica Group, the value of EWA transactions tripled from $3.2 billion in 2018 to $9.5 billion in 2020, with the number of transactions rising from 18.6 million to 55.8 million over the same period (PYMNTS 2024). In 2023, DailyPay, one of several EWA providers, reported serving over 900 business clients, providing access to over 4 million employees, and transferring over $6 billion on its platform alone (DailyPay 2024).

Concerns about EWA

Concerns about EWA have come into sharper focus over time. One concern is the complexity of fee structures, particularly among direct-to-consumer providers. Depending on the EWA provider, users may be charged per-transaction fees or subscription fees, and either fee structure may also include tips. Transaction fees are typically not assessed for three-business-day delivery, but when an employee/consumer opts to receive their wages sooner, the fees range from $0.49 to $13.99 depending on the provider and how quickly the employee/consumer receives their wages. Monthly subscription fees range from $1.00 to $9.99. In addition, several EWA providers encourage users to leave tips from $1 to $14, or up to 25 percent of the EWA amount, to help them offer the service for free (Lux and Chung 2023). Some users of EWA services have indicated that they repeatedly selected fee-based payment options because they were not aware that a free option was available (AP 2024). Other users report feeling pressured to tip for EWA services even when the provider purports to offer the service for free.

The cost of using EWA services has also become a concern. Although EWA transaction fees may seem low at face value, they can be exorbitant when converted to an annual percentage rate (APR). California's Department of Financial Protection and Innovation (DFPI) analyzed data from EWA companies that operate either via transaction fees—which may include optional fees for faster service and tips—or monthly subscription fees. The DFPI found that the transaction fees charged by EWA companies were equivalent to a 331 percent APR, while subscription fees charged by EWA companies were equivalent to a 334 percent APR (DFPI 2023). Although these costs are lower than the 400 percent APR of an average payday loan, they are still substantial (Consumer Federation of America 2024).

Another concern is that consumers are becoming reliant on EWA services, particularly direct-to-consumer EWA services. The GAO's 2023 report found that EWA users are accessing EWA services several times a year; users of one employer-sponsored EWA company used the service on average 10 to 24 times per year, while users of one direct-to consumer EWA company used the service on average approximately 26 to 33 times per year (GAO 2023). Considering consumers' lack of clarity about the fees and costs, repeated use of EWA services could adversely affect consumers' financial well-being.

Although consumer concerns are most prominent, some businesses also have concerns about EWA services. ADP's 2022 survey found compliance concerns to be one of the biggest perceived obstacles to employer adoption. The uncertain regulatory environment in which EWA providers have been operating may cause some businesses to defer offering EWA until there is more regulatory clarity. Businesses also fear reputational risk from EWA services; any negative effects employees experience from using EWA services could reflect on their employers (Lux and Chung 2023).

The National Consumer Law Center, a nonprofit organization that advocates for consumer rights and protections, especially for low-income and vulnerable populations, has also voiced concerns that EWA products are loans that will lead workers to becoming trapped in debt and cycles where they are paying to be paid. As such, the National Consumer Law Center has urged that EWA providers be subject to supervision and that their products be treated as credit (NCLC 2021).

Emerging regulatory and legislative responses to EWA

Since the introduction of EWA services, providers have been operating in a regulatory gray area, and calls for regulatory clarity have come from all stakeholders. In 2020, hearing concerns from consumer groups and providers alike, the Consumer Financial Protection Bureau (CFPB) published an advisory opinion in which it stated that EWA programs that meet certain requirements are not an extension of credit and are not within the scope of the Truth in Lending Act (TILA) or Regulation Z (CFPB 2020). However, whether EWA is an application of the TILA's definition of "credit" is a contentious issue. In a 2023 report, the GAO recommended that the CFPB issue clarification. In January 2024, the CFPB signaled that it would do so, but that guidance is still forthcoming.

The U.S. Treasury Department has also provided some guidance, proposing that the Internal Revenue Code (IRC) be amended to clarify that EWA arrangements (which the Treasury refers to as "on-demand pay arrangements") are not loans. The Treasury would also add a definition of on-demand pay arrangements to the IRC, defining them "as an arrangement that allows employees to withdraw earned wages before their regularly scheduled pay dates" (Guerrero and Culhane 2022).

Congress has also gotten involved. In April 2024, the U.S. House of Representative's Financial Services Committee advanced a bill that would set up federal guidelines for EWA companies offering workers access to their paychecks before their regularly scheduled paydays.[2] The legislation would regulate both employer-sponsored and direct-to-consumer EWA offerings, provide a fee-free option for workers, and ensure that EWA companies do not use debt collectors. However, the bill does not have bipartisan support because it exempts all forms of EWA products from the TILA (Pothen 2024).

While awaiting federal remedies, nearly two dozen states have begun to undertake regulatory action. Thus far, the newly passed and proposed laws establish regulatory structures calling for the registration of EWA service providers that are outside the reach of existing lending laws. Under these laws, only the EWA provider—not the employer—will be subject to oversight. The laws also require key consumer protections, such as the availability of a fee-free option; disclosure of all associated fees; policies and procedures to address consumer questions or complaints; compliance with all local, state, and federal privacy and information security laws; and prohibitions against credit checks and reporting. However, one notable area of difference—and contention—is whether the laws, as enacted or proposed, treat EWA services as credit products. Thus far, the EWA laws enacted in Nevada, Missouri, Wisconsin, and Kansas, as well as those proposed by more than a dozen other states, clarify that EWA services provided by a registrant are not loans or money transmission and are not considered violations of laws governing the sale or assignment of, or an order for, earned but unpaid income.[3] They also clarify that fees and tips are not considered interest or finance charges. As of this writing, only four states—California, Connecticut, Hawaii, and Maryland—have taken an approach that subjects EWA payments to lending laws that have provisions for policing interest rates and transparency (Marek 2024; Cooley and Doorley 2024).

Conclusion

As the popularity of EWA services grows, concerns are coming into sharper focus. Complex fee structures, high transaction costs, and EWA users' heavy reliance on the services may pose risks for consumers' financial well-being. As a result, stakeholders have called for regulatory action, and both regulatory and legislative bodies have begun to respond.

Although federal regulators have made efforts at oversight, concrete results are still forthcoming. In the interim, states have taken the lead. Thus far, four states have enacted EWA laws, and more than a dozen others are considering legislation. Although various states have taken similar approaches, one area of contention is whether EWA providers and their services are subject to lending laws; in the laws enacted thus far, they are not.

Because of the risks involved with EWA services, employer adoption of flexible and daily pay options may ultimately offer consumers a better alternative to accessing their earned wages early. The adoption of instant payments may be integral to shifting toward these types of services.

Endnotes

[1] Examples of each type of EWA provider include Wells Fargo Bank and Navy Federal Credit Union, Chime and Current, NetSpend and Avid, as well as PayPal and Cash App, respectively.

[2] H.R. 7428 – Earned Wage Access Consumer Protection Act was introduced in the House on February 20, 2024.

[3] These states include Arizona, Florida, Georgia, Kentucky, Mississippi, Montana, New Jersey, New York, North Carolina, South Carolina, Texas, Utah, Vermont, and Virginia.

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