



December 22, 2021
Rohit Chopra, Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Dear Director Chopra,

We want to thank you for the opportunity to speak directly to you, and request immediate action by the CFPB: rescission of the Bureau's [advisory opinion](#), dated November 30, 2020.

The undersigned consumer protection advocates expect the New Jersey Legislature to vote on legislation by the end of the current legislative session in mid-January that will permit third-party early wage access (EWA) companies to operate in New Jersey free from the constraints of our usury laws (we have a 30% cap) and other legal protections that apply to consumer credit transactions. The bill allows a provider to charge a consumer for earned income access services two times in any week (potentially 104 times a year). However, there is no limit on options without fees, or on products with "optional" fees or "tips", meaning that employees may enter a perpetual cycle of shortfalls and borrowing with or without fees. As you are aware, even a small fee or "tip" would add up with such repeated use, and given the short duration of the advance/loan, result in a shockingly high APR.

Industry lobbyists and the bill sponsors justify this legislation, which undoubtedly will set national precedent, by citing the advisory opinion concerning early wage access products issued by the Bureau on November 30, 2020, in the final days of the Trump administration. The opinion is based on unsound reasoning and, if relied upon, will hurt consumers as discussed in an extensive letter, dated [October 12, 2021](#) making the same request to rescind the advisory opinion. This letter was sent to you by nearly 100 consumer, labor, civil rights, legal services, faith, community and financial organizations and academics, including the undersigned. As stated therein, we again respectfully request that you rescind that opinion immediately to avoid long-term damage in New Jersey and other states that will follow its lead.

The situation in New Jersey is urgent, because the bill, [S3611/A3450](#) has already unanimously passed our Assembly and will likely pass overwhelmingly in the Senate by the close of the current legislative session on January 11. It emerged from a Senate Committee with several amendments on December 16 by a unanimous vote and the Senate sponsor has just been chosen as the Senate President for the upcoming session so has substantial influence over fellow legislators.

The main points of the legislation are as follows:

- Provides that EWA products “shall not be considered a loan” and are not subject to NJ usury laws, other state laws applicable to credit or loan transactions and the federal Truth in Lending Act
- Covers EWA providers who operate “through integration with employers” with no clear definition of what that means
- Allows EWA companies to give employee loans with fees/charges up to two times per week and unlimited loans at no charge after that without verifying net earned wages
- Provides no guidelines or limits on how much EWA companies will charge employees per transaction
- Allows the advances/loans to be made based upon gross earned income rather than net earned income, which can result in shortfalls when the advance/loan is repaid
- Implicitly allows lenders to access the employee’s bank account on payday to recover the loan amount and provides no protections from overdraft fees.
- Includes minimal oversight by the Department of Banking and Insurance without any legislative directives and the Department of Labor is given no role in protecting wages

While our chief concern is the pending NJ legislation, the advisory opinion will be used by the EWA industry to push similar laws around the country. We are a bellwether and the enactment of S3611/A3450 here, a state with a (not always deserved) consumer-friendly reputation would only smooth passage of similar laws elsewhere and open the flood gates to undermining state rate caps and usury protections wherever they exist.

If you act swiftly, you can help us head this off at the pass in a way that will protect consumers not just in New Jersey but across the nation. As Americans struggle to regain and maintain financial security during a pandemic and in an era when wages too often fall short of what workers need to make ends meet, we look to the Bureau to provide firm protections for consumers as they enter into basic financial transactions. A third-party loan secured with earned wages and with fees attached, whether presented as "voluntary" express fees or "tips" or in another form, must be treated as credit, and should not be exempt from current financial and wage protections. We urge you to rescind the opinion saying otherwise as quickly as possible.

Sincerely,

Beverly Brown Ruggia
Financial Justice Program
New Jersey Citizen Action

Renee Steinhagen, Esq.
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