



August 9, 2023

Antonio F. Salazar  
Commissioner of Financial Regulations  
Maryland Department of Labor & Licensing Regulations  
1100 North Eutaw Street, Suite 611  
Baltimore, MD 21201

Dear Commissioner:

On behalf of the American Fintech Council (AFC) and its members<sup>1</sup>, we are writing to express some concern about the Department's recently issued *Guidance on Earned Wage Access Products* and request the opportunity to meet with you at your earliest convenience. As the trade association representing the largest earned wage access (EWA) providers, we believe in a strong standard and have supported the creation of regulatory frameworks around the country for EWA products that ensure key consumer protections.<sup>2</sup> We would like to work with the Department on some clarifications in order to preserve key EWA product features that are highly beneficial to Maryland workers.

AFC's mission is to promote an innovative, transparent, inclusive, and customer-centric financial system by fostering innovation in financial technology (fintech) and encouraging sound public policy. AFC members are at the forefront of advancing competition in consumer finance and pioneering ways to better serve underserved consumer segments and geographies. Our members are also lowering the cost of financial transactions helping meet demand for high-quality, affordable products. Many AFC members that provide EWA services proudly operate in the State of Maryland, partnering with over 1,000 businesses and enabling over 60,000 workers in the state to access their earned wages.

### **EWA enables financial wellness of Marylanders**

Amid increasing inflation and persistent workforce disruptions, thousands of Marylanders face acute financial challenges. It is estimated that a half million Maryland residents live below the poverty line.<sup>32</sup> Without an emergency fund to weather a financial shock, an unexpected expense – like a medical bill or emergency car repair – it can be devastating for workers and their families.

By enabling Maryland workers to access their own wages that have already been earned at little or no cost prior to an arbitrary payday, EWA provides employees a critical lifeline and serves as a valuable alternative to payday and predatory lenders.

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<sup>1</sup> AFC's membership spans technology platforms, non-bank lenders, banks, payments providers, loan servicers, credit bureaus, and personal financial management companies.

<sup>2</sup> AFC supported recent legislation in Nevada and Missouri that requires state licensing of EWA providers, enacts key consumer protections, but clarifies that EWA products are not credit or a loan.

<sup>3</sup> United for ALICE review of U.S. Census Surveys, available at: <https://www.unitedforalice.org/maryland>



## Regulating EWA as credit creates adverse outcomes for consumers

EWA is not a lending or credit product. Unlike the provision of credit or a loan, EWA is non-recourse and does not require a credit check; underwriting; base fees on creditworthiness; charge a fee in installments; charge interest, late fees or penalties; or impact a user's credit score. If the employee receives their pay early, then it will be reflected in their paycheck. Unlike a lender, responsible EWA providers cannot and do not pursue collections of EWA payments if it is not reimbursed.

If EWA were to be regulated as a credit product and subject to an APR cap, it would:

- **Transfer the downside risk from providers to consumers.** Currently, EWA providers bear all of the legal and financial risks of non-repayment. If one were to treat EWA as credit, and providers became licensed as lenders, customers would have a legal obligation to repay. This would greatly increase the costs of non-payment by making EWA recipients vulnerable to debt collection, and increasing the risk of adverse credit reporting which could follow them for years.
- **Undermine accessibility of EWA products.** Higher fees, including mandatory fees, interest, and late fees would make the product less accessible and more expensive to consumers, furthering cycles of debt with higher cost and less consumer-friendly options. Further, given users may need to access their earned wages within a few days of their upcoming payday, an APR cap could effectively force users to take out more earned wages than needed or available – potentially up to several hundred dollars. The service would become virtually inaccessible in Maryland.

*EWA is a far better and more affordable option than other alternatives in the marketplace.* Industry survey data demonstrates that EWA, for example, helped consumers avoid and replace payday loan fees, bank and credit union overdraft fees, bill late fees, and loan payment late fees.<sup>4</sup> EWA offers important savings, low fees and costs compared to other traditional products.

### Further clarity is needed

We are requesting the opportunity to meet with the Department to share our concerns with the Guidance as well as offer meaningful alternatives consistent with the Maryland law for the Department to consider. We support the state's goal of establishing strong regulatory standards that balance innovation with consumer protections. With some clarifications, the Department can ensure that Maryland consumers continue to have access to their earned wages in times of need.

Sincerely,

A handwritten signature in black ink, appearing to read 'Phillip Goldfeder', with a horizontal line extending to the right.

Phillip Goldfeder,  
CEO  
American Fintech Council

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<sup>4</sup> See Leslie Parrish, Aite-Novarica, DailyPay Use and Impacts: A Summary of Survey Findings (Aug. 2021), available at: <https://www.daily pay.com/wp-content/uploads/dailypay-use-and-outcomes-aite-report.pdf>