



Consumer Federation of America



December 30, 2021

The Hon. Phil Murphy, Governor  
State of New Jersey  
Office of Governor  
P.O. Box 001  
Trenton, NJ 08625

Re: Veto S. 3611 (Scutari), Earned Income Access Services

Dear Governor Murphy,

Americans for Financial Reform, the Center for Responsible Lending, Consumer Federation of America, Consumer Reports, National Consumer Law Center, Service Employees International Union (SEIU), United For Respect and U.S. PIRG write to urge you to veto S. 3611 (Scutari) regarding earned income access services. The bill would create a gaping loophole in New Jersey's strong interest rate limits for a form of payday advance with no fee cap or any other meaningful protection.

It is especially inappropriate to authorize a new class of fees on low-wage workers, disproportionately impacting communities of color, when there are a growing number of employers (both large and small) and payroll providers that allow early pay at no cost.<sup>1</sup> Enforcing New Jersey's strong lending laws without creating loopholes will encourage free programs and discourage those that are free to employers but push the costs on their low-paid workers.

The bill creates a vague category of "earned wage access services," which includes any advance before payday that a consumer has "represented" and the advance provider has "reasonably determined" represents "income." Although the service must be through an "integration with an employer," that phrase is not defined, and no duty of the employer to verify earned wages is included.

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<sup>1</sup> See Letter from National Consumer Law Center, Center for Responsible Lending to California Department of Financial Protection and Innovation at 24-25 (March 15, 2021), [https://www.nclc.org/images/pdf/high\\_cost\\_small\\_loans/payday\\_loans/CRL\\_CA\\_DFPI\\_EWA\\_Comments.pdf](https://www.nclc.org/images/pdf/high_cost_small_loans/payday_loans/CRL_CA_DFPI_EWA_Comments.pdf).

Advances could be repaid through any method, including bank account debiting. That is, the advances do not need to be repaid from payroll and could trigger overdraft and nonsufficient funds fees. While the bill requires refund of those fees “upon adequate notice and proof by the consumer,” that cumbersome process could still leave people hit with fees that may be difficult to recover.<sup>2</sup>

The bill declares that these payday advances are not loans and are exempt from New Jersey’s lending laws, including the state’s 30% interest rate limit. The bill imposes no limits whatsoever on the amount of fees that may be imposed for these payday advances. The only limit is that no more than two fees per week may be imposed, except that an unlimited amount of fees may be charged if the consumer has an option for funds delivery without a fee. This cryptic language appears aimed at legalizing fees on consumers who seek quick “expedited” access to their funds, which we have been told 90% of consumers do.

The bill requires a report, but allows earned wage access services to operate on an ongoing basis regardless of the findings of that report.

We believe that this bill would authorize a dangerous new category of payday loan without sufficient protections to ensure that consumers do not end up in a cycle of debt. In the end, workers may simply end up paying to be paid, with fees draining the earnings of the low-wage workers who need every dollar the most.

The deep concerns about loopholes in lending laws for earned wage access products are discussed in a recent letter that 96 consumer, labor, civil rights, legal services, faith, community groups, financial organizations and academics sent to the federal Consumer Financial Protection Bureau about actions taken in 2020.<sup>3</sup> Under former CFPB Director Kathy Kraninger, the CFPB deemed a limited class of earned wage access products not to be covered under the federal Truth in Lending Act. The groups said: “Viewing earned wage advances, especially fee-based ones, as something other than credit will lead to evasion of consumer protection and fair lending laws.”

The products permitted by S. 3611 are even more concerning than those addressed in the 2020 CFPB actions. Unlike the limited class of products covered by the CFPB interpretations, S. 3611 exempts loans with no fee or interest rate limits, no prohibition on debiting bank accounts, and no prohibition on re-submitting failed payroll deductions against future, unearned pay.

Our groups have fought attempts to evade consumer protection laws all over the country. We appreciate the concerns of those who seek better alternatives to payday loans. But creating

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<sup>2</sup> See *id.* at 11-12 (describing how, even after a lawsuit and settlement regarding failure to reimburse overdraft fees, one come is still sometimes refusing to reimburse overdraft fees triggered by its debits).

<sup>3</sup> See Letter from 96 consumer, labor, civil rights, legal services, faith, community groups, financial organizations and academics to CFPB Director Rohit Chopra (Oct. 4, 2021), [https://www.nclc.org/images/pdf/banking\\_and\\_payment\\_systems/fintech/CFPB-EWA-letter-coalition-FINAL2.pdf](https://www.nclc.org/images/pdf/banking_and_payment_systems/fintech/CFPB-EWA-letter-coalition-FINAL2.pdf).

loopholes in New Jersey's strong consumer protection laws for products with unlimited fees are not the way to do that. Consequently, we strongly urge you to veto S. 3611.

If you have any questions, please contact Lauren Saunders at [saunders@nclc.org](mailto:saunders@nclc.org).

Yours very truly,

Americans for Financial Reform  
Center for Responsible Lending  
Consumer Federation of America  
Consumer Reports  
National Consumer Law Center