PICKING WORKERS' POCKETS

UNFAIR, DECEPTIVE AND ABUSIVE PRACTICES BY EARNED WAGE PAYDAY LENDERS

National Consumer Law Center
Fighting Together for Economic Justice

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ABOUT THE NATIONAL CONSUMER LAW CENTER

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services; and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state governments and courts across the nation to stop exploitive practices, help financially stressed families build and retain wealth, and advance economic fairness.

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EXECUTIVE SUMMARY

Financial exploitation of low-income borrowers is not new, but the disguises applied to exploitative loans are constantly changing. New forms of payday loans – so-called “earned wage access products”– are offered through cash advance apps. These loans are intentionally designed to evade legal definitions of “loans” and “interest” to avoid usury limits and other borrower protections. Like traditional payday loans, earned wage payday loans extract disproportionately high fees and can trap people in an incessant cycle of borrowing.

> **"Earned wage access" loans are intentionally designed to evade legal definitions of “loans” and “interest” to avoid usury limits and other borrower protections.**

Whether or not these lenders are offering loans or charging interest as a legal matter, they must comply with state and federal statutes prohibiting unfair, deceptive, or abusive practices (UDAP laws). Earned wage payday lenders have engaged in many practices that deceive borrowers, trick them into incurring excess fees, and make it difficult to escape an escalating cycle of indebtedness. Borrowers, government enforcement authorities, and regulatory agencies may be able to use UDAP laws to pull off the masks and halt destructive practices regardless of whether transactions are considered loans with prohibited interest rates or finance charges. In jurisdictions without rate caps or where these novel financial products are not subject to usury and other lending laws, UDAP laws may be a viable way to rein in damaging behavior.

Recent public enforcement actions by state attorneys general, the Federal Trade Commission (FTC), the Consumer Financial Protection Bureau (CFPB), and the City of Baltimore contain useful illustrations of practices that may support claims under UDAP laws.[1] Practices that these agencies have cited include:

- Deceptive and manipulative practices regarding costs, including:
  - Disclosing 0% APR, “no interest” or “interest free” even as up to 90% of users pay costly fees that frequently add up to $300 a year or more.
  - Promoting “instant” or “fast loans,” while hiding high “expedite” fees that almost all borrowers pay.
  - Delaying disbursement or exaggerating the amount of time needed for delivery if the borrower does not pay an “expedite” fee.
  - Obscuring costs by hiding them on websites and apps or not fully disclosing them until the borrower is deep into the sign-up process for the loan.

- Dark patterns that are unfair or abusive tricks to coerce purportedly voluntary “tips” and “donations,” including:
  - Using default options that include costs automatically.
  - Deceptive and manipulative user interfaces that steer users towards accepting advances with costs or make it difficult to avoid tips.
  - Repeated requests for tips and interfaces that require multiple steps to avoid a tip.
  - Deception around the purpose of a tip or amount of funds being donated.
  - Psychological manipulations and guilt, including implied threats of consequences for borrowers who do not tip.
- Advertising large loans that few borrowers receive and limiting loan size or pushing smaller loans to multiply fees.
- Creating obstacles to prevent borrowers from canceling.
- Lending regardless of whether borrowers can repay without further loans, leading to a cycle of dependence on new earned wage payday loans with additional fees.

The following discussion, after background and a brief review of legal standards, identifies common practices that may give rise to UDAP claims against earned wage payday lenders and other companies offering novel high-cost loans. The prevalence of unfair, deceptive and abusive practices in this industry is also reason for legislators to be wary about exempting these loans from their lending laws.

I. BACKGROUND ON EARNED WAGE PAYDAY LOANS

Earned wage payday loans fall into two broad categories: those offered through employers, and those offered directly to borrowers.

Employer-based earned wage payday loans are offered through an arrangement with the borrower’s employer. The lender can see wages that have been earned to date but are not yet due to be paid and can recoup advances on payday through a payroll deduction or a similar method. Some lenders require the employee to redirect their entire paycheck to the lender, who skims off some amount and sends the remainder to the employee.

Larger companies offering employer-based loans are PayActiv and DailyPay. Others include Branch, Clair, FlexWage, Grit, Immediate, Instant, Juice, Payfare, Rain, Rellevate, Tapcheck, and ZayZoon. In addition, some payroll providers, including ADP, Dayforce (fka Ceridian), and UKG (Kronos), offer access to earned wage payday loans, either their own or those of a third-party provider. Most employer-based lenders, with the exception of Clair, claim not to be making loans.

Most workers who use employer-based loans pay fees, typically fees for instant access,[2] and sometimes required fees. Although the lenders offer a free option, those options are slow, up to several days, or inconvenient, often through a particular debit card that may require fees to transfer the funds to the borrower's regular account. The loans are rarely free, and employers or payroll providers generally only cover approximately 5% of total fees.[3]

Most workers who use employer-based loans pay fees, typically fees for instant access, and sometimes required fees.

The second category of earned wage payday loans are offered directly to borrowers and have no direct connection to the employer or wage records. Some lenders may ask the borrower to provide login information to the borrower's employee portal or may use a payroll application programming interface (API) to attempt to connect to the payroll provider. Others may have an arrangement through which the employer promotes use of the app without integrating it into the employer's time and attendance system. However, most have no agreement with the employer at all. Advances are repaid through debiting the worker's bank account or by collecting funds when they are deposited to an affiliated debit card. Some of the bigger direct-to-borrower companies are Dave, Activehours – doing business as EarnIn – and Chime. Others include Albert, Brigit, Empower, FloatMe, MoneyLion, and Possible. Additionally, OnePay offers both employer based and direct to borrower loans. Walmart created OnePay and is the majority owner. Initially, OnePay offered loans to employees of Walmart and others under the name One@Work, but is now also piloting a direct-to-borrower loan for users of its banking app.

Direct-to-borrower lenders vary in their revenue models. Theoretically, many have a free option, but as with employer-based lenders, most borrowers end up paying fees. Those fees include expedited fees; purportedly voluntary "tips" and "donations;" and subscription fees that may be required to have access to the loans.

Most direct-to-borrower companies, with the exception of Chime, claim they are not offering loans and that the various fees and revenue they collect are not interest. Other companies like SoLo Funds (a peer-to-peer payday loan platform) do not claim to be offering earned wages but have used similar fee and tip models to disguise interest. Dave and OnePay use a somewhat different model from the others in which the loan is technically structured as an overdraft to attempt to evade lending laws.[4]

II. LAWS AGAINST DECEPTION, UNFAIRNESS, AND ABUSIVENESS

The most hotly debated topics concerning earned wage payday loans are whether they are “loans” and whether their various costs are “interest” or “finance charges” under federal and state lending statutes. That legal debate is playing out in courts and legislatures. To date, at least seven courts have found that plaintiffs plausibly alleged that these cash advances are loans.[5]

But earned wage payday lenders are generally subject to state or federal laws against unfair, deceptive and abusive practices regardless of their status under lending laws. For example, while Arkansas, Indiana, Kansas, Louisiana, Missouri, Nevada, South Carolina, Utah, Wisconsin – all of which, except Arkansas, also allow high-cost payday lending – have recently exempted earned wage payday loans from their lending laws, most if not all have UDAP statutes that apply. Although UDAP laws are not an adequate substitute for clear, more easily enforceable cost caps, such as interest rate limits,[6] they are important statutes that consumer advocates, government enforcement authorities, and state regulators should consider when confronted with troubling practices by earned wage payday lenders.

The Federal Trade Commission Act (FTC Act)[7] and the Consumer Financial Protection Act (CFPA)[8] both prohibit “unfair” and “deceptive” acts or practices. The CFPA also prohibits “abusive” practices. Neither statute is directly privately enforceable, but both may inform the interpretation of state UDAP statutes or may be enforceable as *per se* UDAP violations or through common law claims such as the implied warranty of good faith and fair dealing.[9] State attorneys general and regulators may enforce the CFPA against nonbank entities.[10] All 50 states have collectively participated in about 50 total actions using their CFPA authority across the country, regardless of the political party of state officials.[11]

Virtually all state UDAP statutes prohibit deception; most prohibit unfair practices; and three specifically prohibit abusive practices.[12] Abusiveness may also be unfair or may constitute unconscionability under the common law.

A. Deceptive Practices

The FTC and the CFPB both define deception as a material representation, omission, act, or practice that misleads or is likely to mislead a consumer whose interpretation is reasonable under the circumstances.[13] To show deception under this standard, it is unnecessary to establish intent, scienter, actual reliance or damage, or and even actual deception.[14] While reliance and damages are generally not elements of deception, they are relevant to whether a private litigant has a cause of action to enforce their state

UDAP statute.[15] All that is required under the federal standard is proof that a material representation, omission, or action is likely to deceive at least a significant minority of consumers or especially vulnerable consumers.[16] The representation, omission, act, or practice is "material" if it involves information that is important to consumers and, hence, likely to affect their choices about a product or service. In many cases materiality is presumed, such as where lenders make express claims, make intentional implied claims, or make any claims involving the cost of the loan.[17]

Virtually all state UDAP statutes prohibit deceptive practices. However, state statutes vary as to the precise requirements of a deception claim. When interpreting deception for purposes of a state UDAP statute, some courts adopt the FTC's definition. However, even for courts that do not adopt the FTC definition, or adopt only parts of it, UDAP statutes clearly provide more flexible remedies for consumer abuse than were previously available under common law, because deception liberalizes the traditional elements for the torts of fraud or deceit. The essence of deception is not evil intent, negligent behavior, or even breach of an agreement, but misleading consumers by statements, silence, or actions.[18]

B. Unfair Practices

Next, states may enforce the CFPA's unfairness prohibition and many state UDAP statutes prohibit unfair trade practices. Courts and agencies have developed varied formulations to define which practices are unfair. The FTC and the CFPB use an unfairness standard that the FTC adopted in 1980 and that Congress codified in 1994. Specifically, an unfair trade practice is one that: (1) causes or is likely to cause substantial injury to consumers; (2) is not reasonably avoidable by consumers themselves; and (3) is not outweighed by countervailing benefits to consumers or to competition.[19] A few states adopt this standard when applying their UDAP statute.[20] The question is whether a "reasonable" consumer could avoid the injury, not whether the perfect consumer could do so.[21]

Most state courts, however, use some version of the "S&H" standard in interpreting unfairness under their state UDAP statutes.[22] This standard is described in the landmark 1972 U.S. Supreme Court case, *Federal Trade Commission v. Sperry and Hutchinson Company* (S&H).[23] There, the court found unfairness to be a broader standard than deception. The court noted with approval the FTC's consideration of whether the practice offends public policy, is immoral, unethical, oppressive, or unscrupulous, or causes substantial injury to consumers. Evidence concerning just one of these considerations may be sufficient to show a practice is unfair.[24] For example, a lender may violate public policy by extracting what amounts to usurious interest. However, practices need not be prohibited by other laws to be unfair.

A more thorough discussion of unfairness is in NCLC's UDAP Treatise. The CFPA's unfairness standard is also discussed briefly in NCLC's treatise Federal Deception & Abuse Law at § 3.2.3.

C. Abusive Practices

Lastly, states may enforce the CFPA's ban on abusive conduct,[25] and three states, Indiana,[26] Maryland,[27] and New Jersey,[28] have recently added a prohibition of abusive acts and practices to their UDAP statutes. California's Consumer Financial Protection Law also prohibits abusive acts and practices.[29] Conduct that is abusive may also be considered unfair or may be unconscionable under state laws.[30]

The CFPA defines an abusive act as one that manipulates consumers in one or more of several ways. Specifically, abusive acts:

- Materially interfere with the ability of a consumer to understand a term or condition of a consumer financial product or service; or
- Take unreasonable advantage of:
  - A lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service;
  - The inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service; or
  - The reasonable reliance by the consumer on a covered person to act in the interests of the consumer.

Notably, unlike the definition of unfairness currently used by the FTC and the CFPB, the definition of "abusive" does not require that the injury be "reasonably avoidable" or that the harm to consumers outweigh the benefits to competition. Thus, practices can be abusive even if they are not unfair. The abusive standard is also better suited to analyzing conduct where its harms and benefits are not clearly quantifiable in a way that makes them easy to compare. Abusiveness also addresses conduct that inappropriately takes unreasonable advantage of consumers, even if there are some benefits.[31]

III. UNFAIR, DECEPTIVE OR ABUSIVE PRACTICES BY EARNED WAGE PAYDAY LENDERS

Earned wage payday lenders routinely engage in practices that are deceptive, unfair, or abusive under UDAP statutes. The following acts and practices identified in public enforcement actions are of particular concern.

A. Claiming "0% APR," "no interest", or "interest free" for costly loans, while obscuring costs and pushing borrowers to pay

As noted above, while most earned wage payday lenders offer free options, those options are typically slow, inconvenient, or not truly free. Lenders have a variety of practices and revenue models that count on most borrowers paying. For example, while expedite fees and "tips" are purportedly voluntary:

- The New York Attorney General (NY AG) analyzed years of transactions and found that DailyPay uses a "powerful business model" that collects over $300 a year per worker in fees and includes fees on nine out of every ten advances.[32]
- California's regulator found that 73% of advances from lenders that sought tips included a tip.[33]
- The Consumer Financial Protection Bureau (CFPB) collected data from eight employer-based lenders and found that roughly 90% of workers paid at least one fee.[34]

These statistics are not surprising. Earned wage payday lenders use a variety of advertising representations and techniques that imply that loans are free and hide the costs associated with their loans. Compounding the problem, details about fees and other costs are difficult to find on lenders' apps and websites; and, costs are often only disclosed late in the process of taking out a loan and even then may be obscured. Allegations in recent enforcement actions demonstrate several deceptive practices including misrepresentations about interest, omissions regarding charged fees, and false or deceptive statements about the cost of fast or instant access to funds.

Eight recent public enforcement actions[35] against earned wage payday lenders and similar products have alleged the defendant falsely claimed its loans have "no interest," "0% APR," or similar terms. These claims are often coupled with representations that funds are available instantly and with no mandatory fees or late fees.

App screenshots and the enforcement complaints describe these deceptive claims:

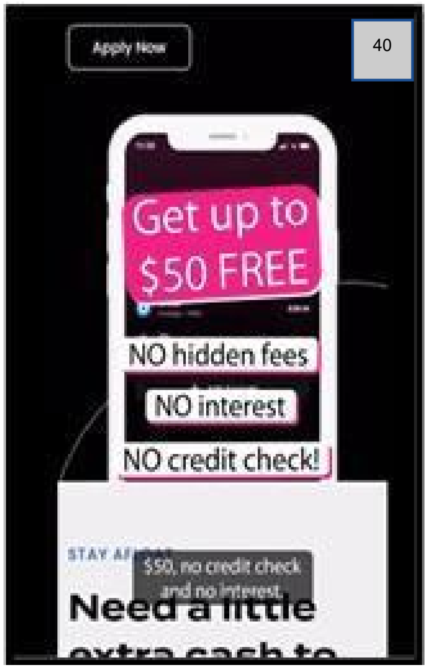
Deceptive "No Interest" Claims

"Earnin deceptively lures in Borrowers by advertising that the advances are not loans and that Borrowers can 'access [their] pay within minutes of earning it' with '***no mandatory fees***' and '***no interest***' (emphases added). None of this is true." [36]

DC v. Earnin

"FloatMe promises that its cash advances are 'free money' with 'no hidden fees' and 'no interest.'" [39]

FTC v. FloatMe



Deceptive "No Interest" Claims (cont.)

"Dave's ads emphasize that consumers can receive cash 'instantly,' 'on the spot,' 'now,' and 'in under 5 minutes,' telling consumers that '[a]ll you have to do is download this app,' and that they will pay 'no interest' and 'no hidden fees.'" [41]

FTC v. Dave

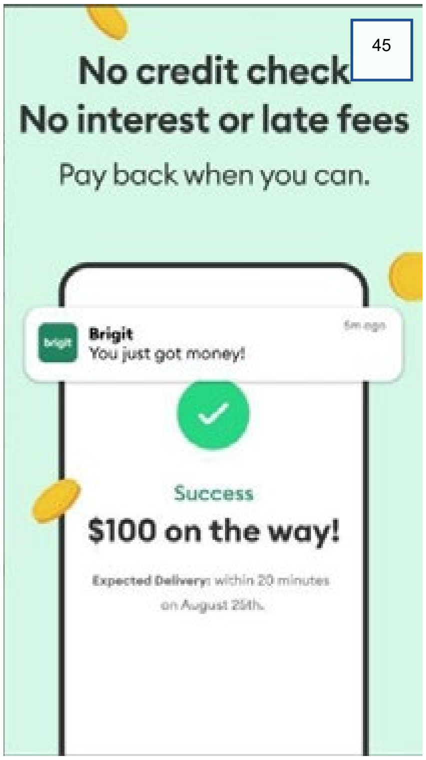
[42]

[43]

Deceptive "No Interest" Claims (cont.)

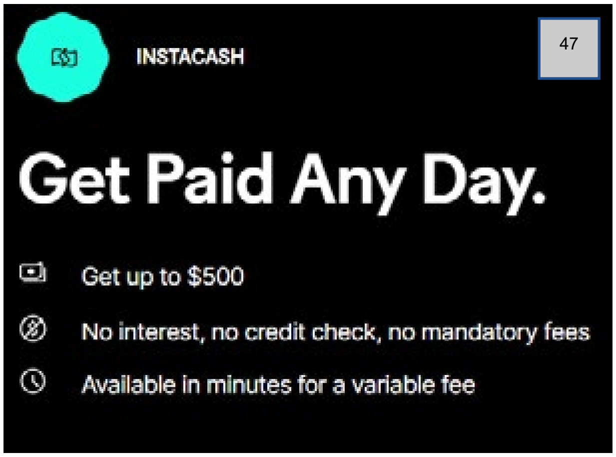
"Brigit also promises consumers they will pay 'no interest' and 'no late fees' for cash advances, and that they '[j]ust repay it next time you get paid.'"[44]

FTC v. Brigit

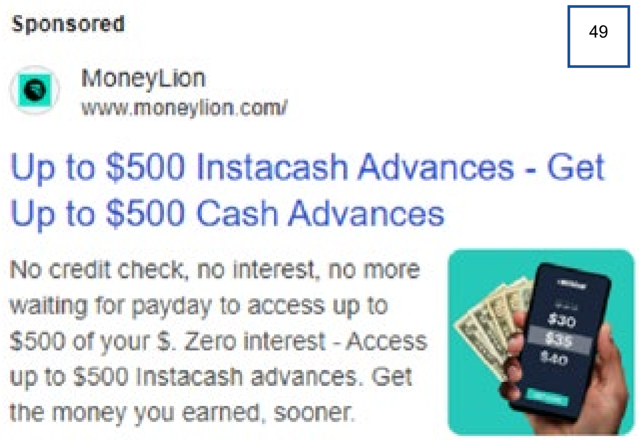


The "average cost of credit imposed by the Company's fees and tips was more than 800% APR, with more than 95% of these Paycheck Advances carrying APRs above 100%," but "[d]espite users' agreements to pay fees and tips, MoneyLion states that users paid '0% APR' ...."[46]

New York v. MoneyLion



> "At bottom, MoneyLion represents that Instacash Advances are not loans, are available instantly with no interest, and are available up to $500 at a time. In fact, Instacash Advances have every fundamental feature of loans and fees are effectively mandatory to access instant cash on demand. MoneyLion further misleads consumers by repeatedly and deceptively pushing consumers to provide "tips." After charging fees and tips, interest on Instacash Advances adds up to astounding, usurious APRs. All told, through its deceptive and predatory tactics, MoneyLion traps Baltimore consumers in a cycle of mounting debt."[48]
>
> *Baltimore v. MoneyLion*



These "no interest" representations are deceptive because they implicitly convey that the advances are free.[50] Yet lenders collect fees or other costs, such as so-called tips and donations, from the vast majority of borrowers.[51] Claiming that a 0% APR for an advance that almost always has costs is similarly deceptive.[52] Fees are required to obtain the "instant" advances advertised; some lenders require a monthly paid subscription; lenders have techniques to make it difficult to avoid tips, donations, and other purportedly voluntary charges (discussed in the following sections); and most borrowers end up paying substantial fees and tips. In fact, many earned wage payday lenders automatically include costs that borrowers must actively remove.

Whether or not various fees, tips, and other costs are technically "interest" or finance charges as a legal matter,[53] "no interest" and similar representations are deceptive because interest is generally understood by borrowers to be the extra cost that they must pay back in addition to a loan's principal. The fees, tips, and donations that earned wage payday lenders collect from borrowers are extra amounts taken in addition to repayment of the principal and are indistinguishable from interest from a borrower's perspective. Lenders' claims that the costs associated with their advances may not be "interest" as a legal matter are largely irrelevant in a UDAP analysis. Rather, the operative consideration is what a reasonable consumer in the advertisements' target audience would understand "0% APR" or "no interest" to mean.

Additionally, an advertisement's impact on a reasonable consumer is not assessed in isolation but is based on the net impression created by the advertisement given all the information available to the consumer. It is not unreasonable for a consumer to believe that the statement "no interest" means there are no fees or costs associated with the loan.

Advertising access to "fast" or "instant" loans – alongside claims of "no interest," 0% APR," or "no mandatory fees" – while obscuring the cost of instant access is also deceptive. Marketing typically highlights that loaned funds are available quickly to cover surprise expenses. This reflects that the timing of payments is a material term of the deal.[54] It is a material misrepresentation to state or imply that loans are free while failing to make the cost of fast access clear. The FTC's suit against FloatMe demonstrates this tactic:

> FloatMe tells consumers they can receive cash "instantly," "now," and "in minutes." FloatMe says its cash advances are delivered fast enough that consumers can rely on the advances for any "unexpected emergency." FloatMe promises that its cash advances are "free money" with "no hidden fees" and "no interest." FloatMe reinforces these claims on its website and again during the enrollment process, which consumers complete on the app. . . . Consumers who do get a cash advance have to pay an additional, undisclosed fee of $4.00 if they want their cash advance to be delivered within two hours. Consumers who do not pay the fee have to wait up to 3 days to receive the "free" funds that FloatMe promises "instantly," "now," and "within minutes."[55]

Other EWA lenders rely on this same tactic. For instance, the FTC notes in its Amended Complaint against Dave:

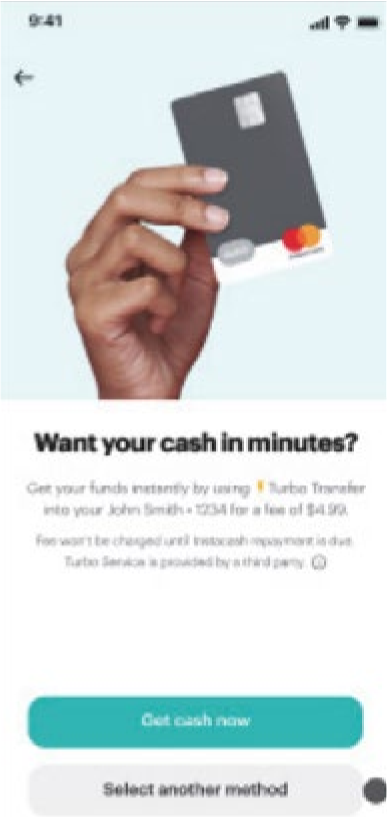
> [T]he advance is not "instant" as promised: those consumers who are offered an advance must pay an "Express Fee" of $3 to $25 to avoid a delay of two to three business days in receiving the funds.
>
> …
>
> While Dave prominently represents that consumers will receive funds "instantly," "on the spot," "now," and "in under 5 minutes," Dave's only references to Express Fees in its advertising or at the app stores typically appear in small print, are buried in block text, use vague or confusing language, and/or are found in obscure locations, and do not state that unless consumers pay an Express Fee, Dave will require them to wait two to three business days before receiving their advance.[56]

Similarly, MoneyLion's earned wage payday loan is called "Instacash," which it claims is "interest-free" and "0% APR"; the cost to MoneyLion of instant transfers is minimal--as low as 5 cents or nothing at all.[57] Yet borrowers must pay fees from $0.49 to $8.99 – increasing with the size of the loan like interest does – to obtain funds instantly. MoneyLion even "artificially slows deposits for no-fee Paycheck Advances sent to RoarMoney accounts, a process it describes as 'Delayed Deposits' or 'Delayed RM.'"[58] A "RoarMoney" account is a branded depository account offered in partnership with one or more banks, and which provides basic banking-like services to MoneyLion customers.[59]

Earned wage payday lenders also use dark patterns such as manipulative user interfaces to push borrowers to pay fees:

> (i) making immediate loan terms the default option; (ii) emphasizing the receipt of funds "within minutes"; (iii) highlighting the "Confirm" button in bright colors, in contrast to the grayed-out option to "Edit my options"; and (iv) requiring users to navigate to separate screens to alter the terms.[60]

Borrowers who manage to avoid these tricks and remove the fee "are met with resistance" and must take additional steps like navigating extra screens to reach slower disbursement options without fees, as shown below:



[61]

Even if a lender subsequently discloses fees and costs associated with its loans, this is generally not sufficient to correct earlier deceptive claims.[62] Furthermore, when the lender only discloses fees after the borrower has taken significant steps towards obtaining the loan and entrusted the lender with extensive sensitive information, this may be considered a separately actionable unfair trade practice. For instance, the District of Columbia (DC) Attorney General alleges:

> At the time that Borrowers sign up for Earnin, they have no information about the actual cost of Lightning Speed transfers. Earnin only informs Borrowers of the Lightning Speed fees once Borrowers, facing a need for fast cash, complete a number of intrusive steps required to set up an account. These steps include disclosing a significant amount of personal and financial information that Earnin uses to track Borrowers' earnings. . . . It is not until the Borrower has gone through over a dozen different screens in the app, has shared extensive personal and financial information with Earnin, and finally initiates a Cash Out that Earnin discloses to a Borrower that there is a mandatory Lightning Speed fee if the Borrower wants instant access to their wages, as Earnin has promised.[63]

Withholding information about fees until a borrower has invested time, energy, and information in a potential transaction, especially when that borrower is in need of funds to address an emergency, has a coercive character that likely falls within the broad scope of an unfairness claim.

B. Dark pattern tricks and negative option defaults to coerce purportedly voluntary "tips" and "donations"

Recent enforcement actions highlight practices that several earned wage payday lenders employ to extract additional money from borrowers in the form of "tips" and "donations." Lawsuits against Dave, MoneyLion, EarnIn, and peer-to-peer lending platform SoLo Funds each alleged deceptive practices related to tipping or donations. In particular, the suits document negative options (tips included by default that must be removed), user interfaces that obscure and complicate the necessary steps for declining to tip, manipulative statements designed to induce guilt and misrepresent the purpose of the tip, and other dark patterns[64] that make it difficult to avoid paying a tip.

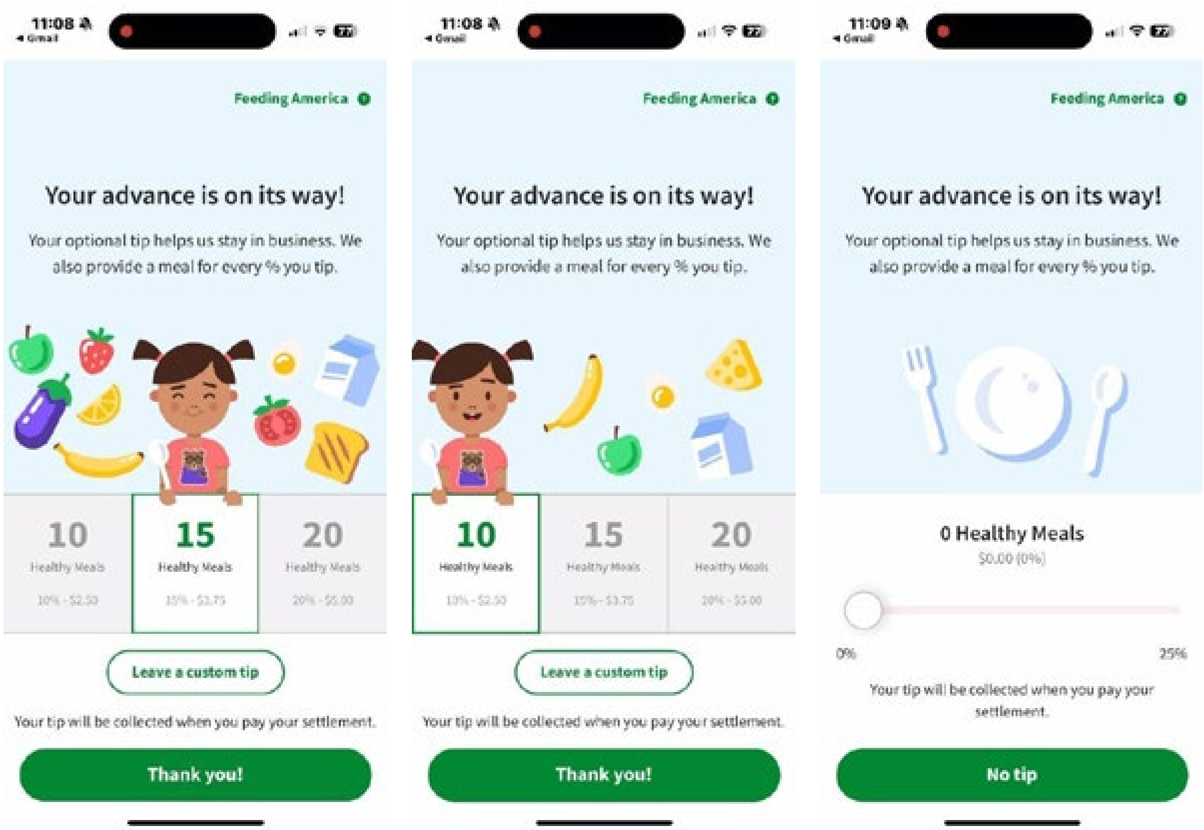
Allegations against Dave demonstrate several of these tactics. The FTC's Complaint against Dave describes how the company's app manipulates and misleads borrowers regarding tips. The district court recently found that the FTC had plausibly alleged that Dave's representations formed a net impression that was likely to mislead a reasonable consumer.[65]

The app includes a tip automatically by default (a negative option), which the consumer must affirmatively take action to remove:

> On many advances, Dave takes an additional charge—by default, 15% of the advance—that Dave refers to as a "tip." Due to the app's design, many consumers are either unaware that Dave is charging them or unaware that there is any way to avoid being charged.[66]

Borrowers who attempted to remove the default tip were confronted with manipulative imagery that equated failing to tip with depriving children of food.

> To avoid paying any tip, the consumer must move [a] slider fully to the left to reduce the count of "Healthy Meals" to zero. The slider then turns from green to red, the text of [a] large green button at the bottom of the screen changes from "Thank you!" to "No tip," and the image of the child is replaced by an image of an empty plate with a fork and spoon.[67]



Dave executives and internal documents cited by the FTC described the healthy meal content as using a “dark/guilt inducing design pattern” that drives revenue but is “very questionable” and has been called out as “manipulative and misleading.”[68] Dave ran experiments finding that without the “Healthy Meals” content, tips dropped.[69] These manipulations, together with obscuring the option to leave no tip, interfered with borrowers’ decision-making process which may have constituted an unfair trade practice and, according to the FTC, constituted a deceptive trade practice.[70]

Dave’s guilt-inducing imagery was also deceptive because the company donated only a small percentage of the tip to a hunger relief organization – far less than the cost of an actual healthy meal, as noted in the FTC’s Amended Complaint:

> In truth, Dave does not pay for or donate a specified number of meals to children in need based on its user ‘tips.’ Instead, for each percentage point of a ‘tip’ charged to a consumer, Dave donates only 10 cents and keeps the rest.[71]

That is, a tip equal to 15% of the advanced amount translated not to 15 healthy meals as promised but to a $1.50 donation to a hunger relief organization – not enough to pay for 15 healthy meals.[72] Moreover, the bulk of the tip – $13.50 in the case of a 15% tip on a $100 advance – went to Dave.[73] These allegations suggest the company’s misrepresentation of the purpose and use of tips was deceptive, and that the practice may also have been abusive within the scope of the CFPA, as misrepresenting how tip revenue is used materially interferes with borrowers’ ability to understand this term or condition of the financial service Dave offered.

The FTC’s Amended Complaint against Dave also included several quotes from borrowers upset at the hidden charges. For example:

- “Don’t hit ‘thank you’ on tip screen, you’ll see many ppl say this. It counts as agreeing to high tip & IS SNEAKY.”
- “The interface is set up to trick you into giving the tip. . . . I feel cheated/scammed by this whole process.”[74]

Dave’s representations of “no interest” and “no hidden fee” were seemingly especially deceptive given the elaborate lengths the company went to to manipulate borrowers into paying a significant percentage of their loans as tips. In February 2025, after the FTC’s lawsuit and borrower complaints, Dave announced that it was abandoning tips in favor of a flat fee on all transactions.[75]

Notwithstanding Dave’s changed business practices, on September 12, 2025, the court hearing the FTC’s case against Dave agreed with the agency that the company’s solicitation of tips was materially misleading, stating:

> [T]he more prominent elements on the example "tip" screen—the bold heading "Your advance is on its way!" and the large green "Thank you!" button—do not indicate that the screen is soliciting an additional charge. Notably, nothing on the screen informs the consumer that tapping the "Thank you!" button—the only clickable area on the screen that did not reference a tip or donation—would be taken as a consumer's consent to charge a "tip." In addition, the only way for a consumer to avoid that charge is by first counter-intuitively tapping the "custom tip" button, which is roughly half the size of the "Thank you!" button and colored white against a white background and then dragging the tip amount to zero. Further, the government cites numerous consumer complaints and internal Dave documents flagging consumer confusion surrounding the "optional" nature of the "tipping" feature. Such proof of actual deception is "highly probative to show that a practice is likely to mislead consumers acting reasonably under the circumstances."[76]

The court also agreed that the FTC plausibly alleged Dave's representations regarding healthy meals were materially misleading.[77]

Other lawsuits have also alleged that earned wage payday lenders included fees or tips as a default option and made it difficult to remove them. Although the CFPB dismissed the suit in 2025 after new leadership took over, the agency alleged that Solo Funds used defaults and other design elements in its platform that made it difficult for borrowers to avoid leaving a donation:

> The loan application process includes an additional step in which the borrower is prompted to select one of three default "donation" fees that goes directly to SoLo ("SoLo donation fee"). SoLo does not provide consumers with a "$0" SoLo donation fee option during the loan application process or even a way to click through to the next page without selecting a SoLo donation fee. Furthermore, Solo obscures the method by which consumers can opt for no donation fee, hiding it in another section of its mobile application and failing to provide readily available information to consumers about how to disable the donation fee.[78]

While not described in state enforcement actions, a video obtained by NCLC shows how an EarnIn borrower was subjected to 17 messages about the importance of tipping and needed to make 13 additional clicks to get an advance without a tip.[79]

Similarly, lawsuits have alleged that MoneyLion and EarnIn utilized deceptive and manipulative statements, psychological manipulation, and misrepresentation of the use of tips to encourage tipping, along with implied threats of the consequences of not tipping. Allegations in New York Attorney General's suit against MoneyLion include:

> “[MoneyLion] … designs and deploys manipulative tactics, guilts users into tipping, and implicitly threatens negative consequences for those users who do not…. MoneyLion tells users that ‘tips are what help us cover the high costs of administering Instacash at 0% APR for the large and growing MoneyLion community.’ In another message pushing users to tip, MoneyLion warns that ‘it takes money to keep 0% APR Instacash running, so please consider a tip to help keep it free.’ And in another in-app reminder, the Company suggests that users’ ‘participation will help us ensure that we can keep offering the product’— implying that a failure to tip regularly will lead to a loss of Instacash entirely.”[80]

> “MoneyLion, moreover, is relentless in charging fees and pressuring users for tips… The Company . . . employs sophisticated algorithms and dynamic models to pressure users to tip, designs and deploys manipulative tactics, guilts users into tipping, and implicitly threatens negative consequences for those users who do not.”[81]

Tipping creates a revenue stream for lenders but provides no benefit to the borrowers or competition. Particularly where lenders claim that tips are optional but make it difficult to avoid them and obfuscate or deceive about the purpose of tips and donations, this practice is likely to violate the unfairness prong, as well as the deception prong, of state and federal UDAP statutes.

C. Advertising large loans that few borrowers receive, and limiting loan size or pushing smaller loans to multiply fees

Earned wage payday lenders often claim in their marketing materials that borrowers can take out loans for amounts up to $500 or higher. However, lenders have various incentives to limit the size of individual loans and to push users towards multiple smaller loans.

Large loans are inherently riskier than small ones, but higher advertised amounts help convince borrowers to sign up for apps, apply for loans, and pay monthly subscription fees. Many borrowers, however, get far less than the advertised amount and sometimes no credit at all.

In addition, fees and tips associated with earned wage payday loans are paid per transaction, so lenders make more money if borrowers take out multiple small loans. As a result, lenders may deceptively advertise large maximum loan amounts that few borrowers receive or may impose strict transaction size limits that require taking out multiple, smaller loans that trigger additional fees to get the amount of credit advertised or even approved. In some cases, lenders may force borrowers to take out smaller loans within minutes of each other.

Enforcement actions identify several deceptive practices involving transaction limits. For example, the FTC noted in its suit against Brigit:

> "In reality, few consumers who have joined Brigit and paid its $9.99 monthly membership fee have received access to cash advance amounts anywhere close to the $250 Brigit promises, and many have not been able to get any cash advances at all."[82]

Similarly, in its suit against Dave the FTC stated:

> During the first 14 months after Dave began advertising advances of up to $500, when determining whether and in what amount to offer an advance to a new user, Dave offered a $500 advance only 0.002% of the time: a rate of less than 1 in 45,000. When Dave did offer an advance, its most common offer was $25. More than three-quarters of the time, however, Dave did not offer a new user any advance at all.[83]

Advertising a maximum loan amount but failing to disclose that only a vanishingly small number of borrowers can obtain that amount is at best likely to be considered a deceptive omission. Indeed, in resolving Dave's Motion to Dismiss the FTC's Amended Complaint, the court noted:

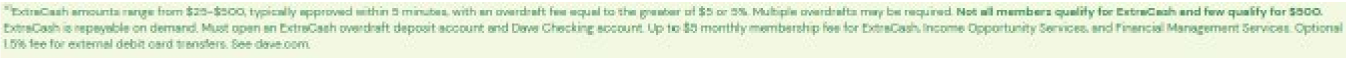
> "The government has plausibly alleged that it was exceedingly rare for Dave to offer the maximum amount of the cash advance advertised or even amounts approaching the maximum. Such representations can materially mislead a reasonable consumer, especially when consumers are given the added impression that the cash advance can help cover the cost of life emergencies such as home repairs and gas."[84]

Other enforcement actions also note explicit misrepresentations. In the case of Floatme, the FTC alleged overt false statements regarding transaction limits:

> Since launching its app in 2019, FloatMe has used misrepresentations to induce consumers to enroll in a subscription plan. FloatMe advertises that paying consumers can receive cash advances of up to $50 instantly upon request, and that consumers can receive this amount immediately after signing up. But consumers can actually receive only $20, at most. And, as one employee admitted in an internal communication, FloatMe "lie[s]" to consumers who ask how to receive greater advances: FloatMe tells consumers that their cash advance limit will increase over time pursuant to an automated process, but in fact, there is no such process, and the vast majority of consumers never receive increases.[85]

In the face of these charges, many earned wage payday lenders began adding fine print footnotes to their websites explaining that the average loan may be lower than the advertised amount. For example, Dave's website boldly states:[86]

The consumer would have to scroll far down to find a fine print footnote explaining that "few qualify for $500":[87]



Those disclosures in fine print may be insufficient if the net impression created by the advertisement is misleading to a reasonable consumer.

Some earned wage payday lenders also structure their business operations and user interfaces to push borrowers towards multiple smaller transactions and higher finance charges – even when borrowers are authorized for higher amounts. The DC Attorney General alleges unfair conduct by EarnIn surrounding its use of transaction limits:

> Because Earnin collects Lightning Speed fees on every instant Cash Out transaction, it is incentivized to encourage Borrowers to engage in as many transactions as possible.
>
> …
>
> Earnin structures its business model to require financially strapped Borrowers to repeatedly pay fees by imposing low loan limits on each Cash Out. Each transaction is subject to three different limits: a daily limit of up to $100, a pay period max of up to $750, and a limit based upon Earnin's calculation of available earnings. Earnin's website fails to explain what available earnings are, or how they calculate this amount, although it is less than the amount that the Borrower has earned.
>
> …
>
> Furthermore, many District Borrowers are unable to even get a loan of $100 in a single Cash Out, as Earnin sets lower daily limits for some Borrowers depending on their bank balance, spending behavior, repayment history, and earned income amount. Thousands of District Borrowers have paid Lightning Speed fees to receive loans of either under $25, $25-$50, or $50-$75 per Cash Out. Hundreds of District Borrowers

> have received loans of only $1. The average amount that District Borrowers have obtained through each individual Cash Out using Lightning Speed is only $84.[88]

New York alleged that MoneyLion limited advances to $100 despite advertising up to $500, and even allowing borrowers to take out back-to-back loans minutes apart (paying multiple fees) to get the amount they want. The New York Attorney General's Complaint against MoneyLion alleges:

> During the Data Period, nearly two million Paycheck Advances were by Instacash users who had previously obtained a Paycheck Advance minutes earlier. And Instacash users who engaged in these consecutive transactions paid millions of dollars in fees and tips on the subsequent Paycheck Advances as a result of MoneyLion's artificial transaction limits.[89]

The New York Attorney General's investigation of MoneyLion revealed that the company's goal was to push borrowers to take out even smaller loans to maximize the income generated from tips.

> [O]ne business plan outlining the Company's "Instacash Goals and Roadmap" stated a goal of reducing the average Paycheck Advance obtained through Instacash down to $50 from $60 because "our tip rate as a % of principal" would be "higher." To accomplish this goal, MoneyLion planned to offer more consumers "the $25 tier" for Instacash, thereby limiting maximum Paycheck Advances to that amount, and deploy "other UX mechanics to encourage smaller amounts."[90]

According to the New York Attorney General, under DailyPay's lending model the 10 percent of users with the highest average frequency of Paycheck Advances "are effectively taking out a new, 240% APR loan 5.7 times each week, with DailyPay extracting hundreds of dollars in wages from such workers annually."[91]

Arbitrary transaction limits that provide no benefit to borrowers merely maximize finance charges and exploit borrowers who seek liquidity. Transaction limits, particularly where they act as a bait-and-switch tactic by preventing borrowers from obtaining advertised loan amounts or as a vehicle for multiplying fees, are likely to violate state and federal standards for deception, unfairness and abusiveness.

D. Obstacles to prevent borrowers from canceling

Enforcement actions show that some earned wage payday lenders with a subscription-based business model have employed numerous deceptive and unfair business practices (and likely abusive practices) to prevent borrowers from cancelling. Enforcement actions brought against FloatMe, Dave, and Brigit alleged that the lenders misled borrowers and put unfair barriers in place to make it difficult to end subscriptions.

> "When consumers try to cancel their membership, FloatMe requires them to navigate faulty cancellation mechanisms that are steeped with friction and dark patterns designed to thwart consumers' attempts to cancel."[92]

> "Dave does not prominently inform consumers how to stop the recurring charge, including what options exist for stopping the charge, what rules apply to those options, or where any in-app processes for stopping the charge can be found. Instead, consumers are forced to hunt instructions on how to close their account. Even consumers who successfully figure it out do not necessarily succeed in ending their subscriptions, particularly because Dave may refuse to cancel the subscription unless the consumer's account is settled. . . Dave requires a consumer starting on the app's main screen to take at least nine separate steps to reach and complete Dave's current in-app cancellation process. In parts of this process, consumers are diverted from cancellation if they select the most prominent option on the screen."[93]

> "[D]espite Brigit's assurances that consumers can cancel anytime and will not pay late fees or interest charges, once consumers have taken a cash advance, Brigit locks them into its $9.99 monthly fee by blocking cancellation and further cash advances until the advance is paid in full. . . . Brigit has removed consumers' ability to cancel a membership within the mobile app to '[i]ncrease friction to delete;' has added a requirement for consumers to complete a survey before downgrading as part of a plan to 'reduce user churn' by '[a]dding [f]riction' to the deactivation flow; and has changed the font color of the text consumers had to click to downgrade to light gray to help 'stop leakage from recently implemented credit changes (users getting amounts lowered to $50).'"[94]

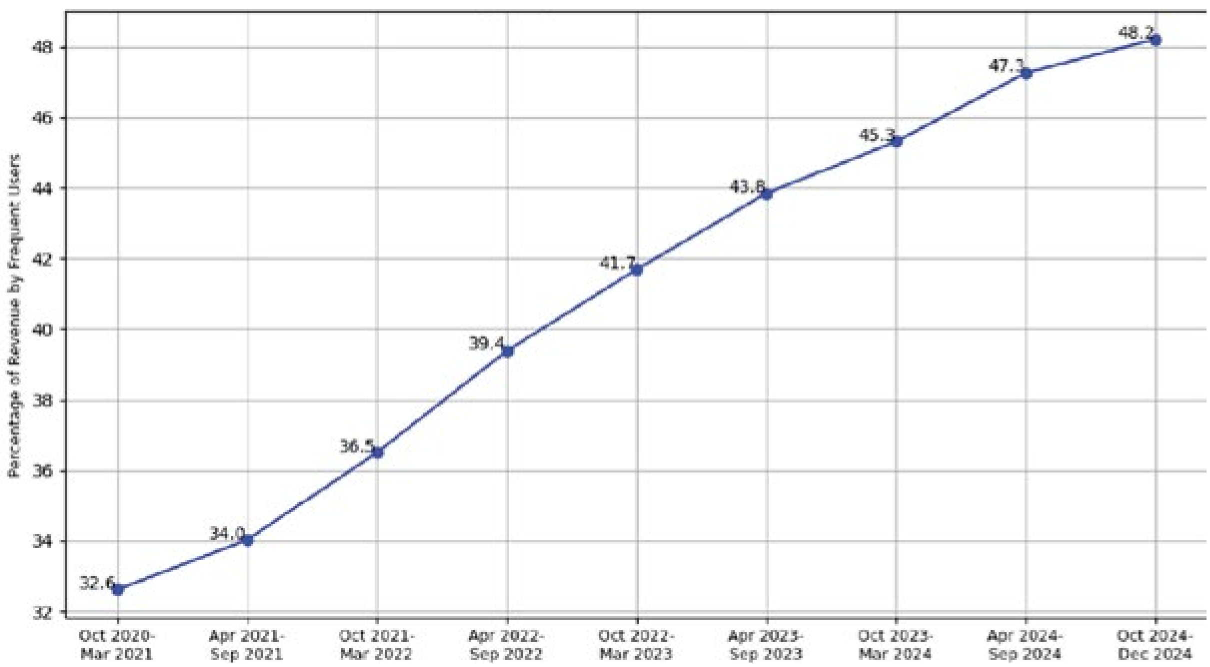
The hurdles lenders force borrowers to jump through to cancel memberships, or the outright prohibition on cancellations when borrowers have not yet repaid an advance, often render marketing representations such as "cancel anytime" deceptive. Additionally, inducing borrowers to pay unwanted subscription fees fits easily within most UDAP statutes unfairness provisions, as well as prohibitions on abusiveness.

E. Debt Traps

At bottom, the business model behind earned wage payday loans aims at pushing borrowers to take out new loans to cover paycheck shortfalls created by earlier loans, creating a debt trap – a cycle of dependency that cynically drives enormous profits. This is exactly the pattern seen in traditional payday loans.[95]

Data obtained by the New York Attorney General from employer-based lender DailyPay showed that “75 to 80 percent of the company’s revenue was extracted from workers who obtained Paycheck Advances at least twice per week.”[96] The company callously referred to these frequent users as its “long-term upsides,” showcasing the key role that trapping borrowers on a treadmill of repeat earned wage payday loans played in the company’s business model. The New York Attorney General found that the most frequent borrowers, those that took loans from DailyPay every other day or more frequently, made up an expanding share of the company’s revenues – up to almost half of DailyPay’s earnings.

Revenue by Frequent Users Over Six-Month Period



[97]

Data on MoneyLion’s Instacash loans showed similar trends, with the New York Attorney General alleging: “more than 44% of the Company’s fees and tips were extracted from users who obtained two or more Paycheck Advances weekly.”[98]

Lending without regard to borrowers’ ability to repay without reborrowing falls easily within the federal standards for an unfair and abusive trade practice.[99] Once borrowers are locked in a cycle of borrowing it can be almost impossible to stop, as demonstrated by the New York Attorney General’s allegations against DailyPay:

> A worker who takes one $77.99 Paycheck Advance for a $2.99 fee receives $75 immediately and then receives $77.99 less on pay day. During the next pay cycle, the worker requests a $80.98 Paycheck Advance to make up for that lost $77.99. But this new Paycheck Advance is not providing new funds—it is filling a hole left by the

> prior Paycheck Advance. And the fee incurred for this and each subsequent Paycheck Advance, which can amount to $100 or more, is solely attributable to the one-time benefit received from the first Paycheck Advance.[100]

Earned wage payday loans, far from benefiting borrowers, are a blight that steadily devours an increasingly large share of their paychecks.

IV. CONCLUSION

Financial products can exploit low-income borrowers' economic fragility and employ loan and app design to extract high fees from those who can least afford them. State enforcement authorities, regulators, and consumer advocates should be mindful of state and federal UDAP laws as options to address unfair, deceptive or abusive practices by earned wage payday lenders and other cash advance apps separate from the question of whether these products are considered loans. Maintaining strong, comprehensive fee and interest rate caps – including an overall monthly fee cap – also will help to restrain these practices.

ENDNOTES

1. National Consumer Law Center ("NCLC"), Selected Government Enforcement Actions Against Earned Wage Payday Lenders (Jan. 12, 2026) (collecting complaints) ("Selected Enforcement Actions").
2. *See* NCLC, DailyPay Extracts Hundreds of Dollars From Low-Wage Workers' Pay (May 8, 2025) (summarizing allegations in complaint by New York Attorney General).
3. Data Spotlight: Developments in the Paycheck Advance Market, Consumer Financial Protection Bureau, (Jul. 18, 2024). ("Few employers cover the cost of earned wage products on behalf of their workers. We estimate that employers in our sample subsidized less than 5% of total fees."). *Available at* https://wayback.archive-it.org/23481/20250103024555/https://www.consumerfinance.gov/data-research/research-reports/data-spotlight-developments-in-the-paycheck-advance-market/.
4. *See* NCLC et al., Comments in Support of CFPB's Proposed Interpretive Rule on Earned Wage Advances at 18-22 (Aug. 30, 2024).
5. *See* Russell v. Dave, Inc., --- F.Supp.3d ---, 2025 WL 3691977 (C.D. Cal. Dec. 12, 2025) (fees for Dave's ExtraCash advance as alleged are finance charges under TILA, not overdraft fees); Revell v. Grant Money, --- F.Supp.3d ---, 2025 WL 3167318 (N.D. Cal. Nov. 5, 2025) (TILA and MLA apply); Vickery v. Empower Finance, Inc., 2025 WL 2841686 (N.D. Cal. Oct. 7, 2025) (Empower's earned wage cash advances were credit and instant access fees were finance charges under TILA and the Military Lending Act, and therefore MLA's ban on forced arbitration applied); Moss v. Cleo AI, --- F.Supp.3d ----, 2025 WL 2592265 (W.D. Wash. Sept. 8, 2025) (plaintiff adequately pled that Cleo's advances are credit and its expedite fees and subscription fees are finance charges covered by TILA, as well as by the Military Lending Act's 36% rate cap and ban on forced arbitration); Golubiewski v. Activehours, 2025 WL 2484192 (M.D. Penn. Aug. 28, 2025) (plaintiff plausibly alleged that EarnIn offered credit covered by TILA and Pennsylvania usury statute); Johnson v. Activehours, 2025 WL 2299425 (D. Md. Aug. 8, 2025) (plaintiff plausibly alleged that EarnIn offered credit covered by TILA and Maryland law); Orubo v. Activehours, 780 F.Supp.3d 927 (N.D. Cal. 2025) (plaintiff plausibly alleged that EarnIn's advances were credit covered by TILA and by Georgia payday loan law). The CFPB has put out an advisory opinion claiming that certain advances that access payroll data and are repaid using payroll processes are not credit under TILA and that most tips and expedite fees are not finance charges. CFPB, Advisory Opinion, Truth in Lending (Regulation Z); Non-application to Earned Wage Access Products, 90 Fed. Reg. 60069 (Dec. 23, 2025). However, the federal decisions listed above have rejected similar claims. The CFPB acknowledged that the advisory opinion "does not have the force or effect of law." Courts have the final say as to the meaning of federal statutes. *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024).
6. *See* NCLC & Center for Responsible Lending, State Recommendations for Earned Wage Advances and Other Fintech Cash Advances (Oct. 11, 2023).
7. 15 U.S.C. § 45.
8. 12 U.S.C. § 5531.
9. *See generally* National Consumer Law Center (NCLC), Unfair and Deceptive Acts and Practices § 2.3.6, § 4.2.1, § 4.3, and § 4.5 (11th Ed. 2025), updated at library.nclc.org ("NCLC UDAP Treatise").

10. 12 U.S.C. § 5552(a)(1); *see generally* Lauren Saunders, NCLC, The Role of the States Under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dec. 2010).
11. *See* Rohit Chopra & Seth Frotman, State Enforcement As A Federal Legislative Tool, Harv. J. on Legis. (Jan. 15, 2025).
12. A state-by-state summary of state UDAP laws can be found in Appendix A of NCLC UDAP Treatise, *supra*. The laws and their weaknesses are also described in Carolyn Carter, NCLC, Consumer Protection in the States: A 50-State Evaluation of Unfair and Deceptive Practices Laws (Mar. 1, 2018), though some of the laws have been amended since that report.
13. NCLC UDAP Treatise § 4.2.3.1.
14. NCLC UDAP Treatise § 4.2.
15. NCLC UDAP Treatise § 11.4.2.
16. NCLC UDAP Treatise § 4.2.11.1.
17. NCLC UDAP Treatise § 4.2.12.2.
18. A more thorough discussion of standards for deceptive conduct in UDAP statutes is available in NCLC's UDAP Treatise at § 4.2. The CFPA's deception standard is also discussed briefly in NCLC's treatise Federal Deception & Abuse Law at § 3.2.2.
19. 12 U.S.C. § 5531 (CFPB); 15 U.S.C. § 45(n) (FTC); *see* NCLC UDAP Treatise § 4.3.
20. NCLC UDAP Treatise § 4.3.3.4.
21. NCLC UDAP Treatise § 4.3.2.3.2; *see generally id.* § 4.3.2.3.
22. NCLC UDAP Treatise § 4.3.3.4 to 4.3.3.5.
23. 405 U.S. 233 (1972).
24. NCLC UDAP Treatise § 4.3.3.3.1.
25. 12 U.S.C. § 5531(d).
26. Ind. Code § 24-5-0.5-3, *as amended by* 2014 Ind. Legis. Serv. P.L. 65-2014 (S.E.A. 394) (WEST) (statute now prohibits "unfair, abusive, or deceptive" acts, omissions, or practices).
27. Md. Code Ann., Comm. Law §§ 13-301 (providing that "unfair, abusive, or deceptive practices "include" a laundry list of specific practices), 13-303 (West) (prohibiting "any unfair, abusive, or deceptive trade practice"), *as amended by* 2018 Maryland Laws Ch. 731 (H.B. 1634).
28. N.J. Stat. Ann. § 56:8-2, *as amended by* 2022 NJ Sess. Law Serv. Ch. 96 (Assembly 1556) (effective Aug. 5, 2022).
29. Cal. Fin. Code §§ 90003(a)(1), 90009(c).
30. *See* NCLC UDAP Treatise § 4.4.2, § 4.4.4, and § 4.5.
31. A more thorough discussion of the CFPA's abusiveness standard is found in NCLC's treatise Federal Deception & Abuse Law at § 3.2.4. State statutes that address abusiveness are discussed in NCLC's UDAP treatise, § 4.5.
32. NCLC, DailyPay Extracts Hundreds of Dollars From Low-Wage Workers' Pay (May 8, 2025) (summarizing data from the NY AG's complaint against DailyPay).
33. NCLC, Data on Earned Wage Advances and Fintech Payday Loan "Tips" Show High Costs for Low-Wage Workers (Apr. 10, 2023) (summarizing data from study by California Department of Financial Protection and Inclusion).

34. Data Spotlight: Developments in the Paycheck Advance Market, Consumer Financial Protection Bureau, (Jul. 18, 2024)

35. These actions were brought by the FTC, the CFPB, the Attorney General for the District of Columbia, and the New York Attorney General. The complaint filed in each action is available in Selected Enforcement Actions, *supra*.

36. Complaint for Violations of the Consumer Protection Procedures Act, *District of Columbia v. ActiveHours Inc. d/b/a Earnin* at ¶ 2, No. 2024 CAB 007303 (Sup. Ct. of DC, filed Nov. 19, 2024) ("DC v. EarnIn").

37. Screenshot from: https://www.facebook.com/reel/1509828836614323, last accessed Sep. 11, 2025.

38. https://www.earnin.com/products/cashout, last accessed Sep. 23, 2025.

39. Complaint for Permanent Injunction, Monetary Judgment, and Other Relief, *Federal Trade Commission v. Floatme Corp. et al.* at ¶ 16, Case No. 5:24-cv-00001 (W.D. TX, Jan. 2024) ("FTC v. Floatme").

40. FTC v. Floatme at 10.

41. Amended Complaint For Permanent Injunction, Monetary Judgment, Civil Penalty Judgment, And Other Relief, *United States v. Dave, Inc.* at ¶ 15, No. 2:24-cv-09566-MRA-AGR (C.D. Cal. filed Dec. 30, 2024) ("U.S. v. Dave").

42. *U.S. v. Dave,* at 6.

43. https://apps.apple.com/us/app/dave-credit-cash-money-app/id1193801909 last accessed Sep. 23, 2025.

44. Complaint for Permanent Injunction, Monetary Judgment, and Other Relief, *Federal Trade Comm'n v. Bridge It, Inc.* at ¶ 10 No. 1:23-cv-09561 (S.D.N.Y. filed Nov. 2, 2023) ("FTC v. Brigit").

45. Image available at: https://play.google.com/store/apps/details?id=com.hellobrigit.Brigit, last accessed Sep. 12, 2025.

46. Complaint, *People of The State of New York by Letitia James v. MoneyLion Inc.* at ¶¶ 91, 95 (NY S.C., Apr. 14, 2025) ("NY AG v. MoneyLion") (regarding MoneyLion's Instacash product).

47. NY AG v. MoneyLion at 29.

48. Complaint for Civil Penalties & Injunctive Relief, *Mayor & City Council of Baltimore v. MoneyLion Technologies, Inc.* at ¶ 17, No. C-24-CV-25-008340 (MD Cir. Ct., Oct. 1, 2025) ("Baltimore v. MoneyLion").

49. Baltimore v. MoneyLion at 6.

50. A statement need not be false to be deceptive. It can be deceptive if the overall net impression is deceptive. *See* NCLC UDAP Treatise § 4.2.9, 4.2.13; *see also id*. § 4.2.12.2 (materiality is presumed under FTC Act when sellers intended to make implied claims).

51. The meaning a reasonable consumer would ascribe to the statement "no interest" is likely to be a point of contention in litigation or arbitration and the subject of expert testimony or other evidence. Widely circulated definitions demonstrate that the common usage of the term "interest" means anything paid in addition the amount loaned. *See* merriam-webster.com/dictionary/interest, defining "interest" in operative part as: "a charge for borrowed money generally a percentage of the amount borrowed" and "an excess above what is due or expected."

52. Even assuming that these various costs are not finance charges for purposes of calculating the APR under the federal Truth in Lending Act (TILA), TILA does not require any APR disclosure if there are no finance charges or if the charges do not exceed $5 to $7.50, depending on the size of the loan. 15 U.S.C. § 1638(a)(4). Thus, a 0% APR disclosure seems gratuitous and designed to deceive.

53. Some of these complaints allege that these costs are in fact "interest" (or "finance charges") under state law, and many state statutes support this view. *See generally* NCLC, Consumer Credit Regulation §§ 5.2.2, 10.10.4.8. Among other reasons, many state statutes define "interest" or related terms like "charge" to include any amount "received."

54. *See* Consumer Financial Protection Bureau, Notice of proposed interpretive rule; request for comment. Truth in Lending (Regulation Z); Consumer Credit Offered to Borrowers in Advance of Expected Receipt of Compensation for Work, 89 Fed. Reg. 61358, 61362 (Jul. 31, 2024) ("Speed of access to funds is an integral and defining aspect of earned wage products.")

55. FTC v. FloatMe at ¶¶ 16-17.

56. U.S. v. Dave at ¶¶ 16 and 45.

57. NY AG v. MoneyLion at ¶¶ 5, 60, 67, 68.

58. *Id.* at ¶ 68.

59. *Id.* at ¶ 19.

60. *Id.* at ¶ 61.

61. *Id.* ¶ 62.

62. *See* NCLC UDAP Treatise § 4.2.16.1.

63. DC v. EarnIn at ¶¶ 29-31.

64. *See generally*, Federal Trade Comm'n, Press Release, FTC Report Shows Rise in Sophisticated Dark Patterns Designed to Trick and Trap Consumers (Sep. 15, 2022).

65. Fed. Trade Comm'n v. Dave, Inc., No. 2:24-CV-09566-MRA-AGR, 2025 WL 2698698 at *11 (C.D. Cal. Sep. 12, 2025).

66. U.S. v. Dave at ¶ 3.

67. *Id.* at ¶ 61.

68. *Id.* at ¶ 65.

69. *Id.* at ¶ 66.

70. *Id.* at ¶¶ 54-69.

71. *Id.* at ¶ 64.

72. *Id.*

73. *Id.*

74. *Id.* ¶ 48.

75. https://investors.dave.com/news-releases/news-release-details/dave-completes-transition-simplified-fee-structure.

76. Fed. Trade Comm'n v. Dave, Inc., No. 2:24-CV-09566-MRA-AGR, 2025 WL 2698698, at *11 (C.D. Cal. Sep. 12, 2025).

77. *Id.* at *12.

78. CFPB v. SoLo Funds at ¶ 5.

79. *See* NCLC, The Tricks Cash Advance Apps Use to Coerce Borrowers to "Tip" (Apr. 23, 2025).

80. NY AG v. MoneyLion at ¶¶ 6, 71.

81. *Id.* at ¶ 6.

82. FTC v. Brigit at ¶ 11.

83. U.S. v. Dave at ¶ 2.

84. *Fed. Trade Comm'n v. Dave, Inc.*, No. 2:24-CV-09566-MRA-AGR, 2025 WL 2698698, at *10 (C.D. Cal. Sep. 12, 2025) (footnotes and citation omitted).

85. FTC v. Floatme at ¶ 3.

86. https://dave.com/about-extra-cash (last accessed Nov. 19, 2025).

87. *Id.*

88. DC v. EarnIn at ¶¶ 39, 40, 43.

89. NY AG v. MoneyLion at ¶ 104.

90. *Id.* at ¶ 80.

91. NY AG v. DailyPay at ¶ 108 (internal citation omitted).

92. FTC v. Floatme at ¶ 5.

93. U.S. v. Dave at ¶¶ 78, 84.

94. FTC v. Brigit at ¶¶ 11, 49.

95. *See* Leslie Parrish, Center for Responsible Lending, Phantom Demand: Short-term Due Date Generates Need for Repeat Payday Loans (Jul. 9, 2009).

96. NY AG v. DailyPay at ¶ 103.

97. *Id.* at 26.

98. NY AG v. MoneyLion at ¶ 110.

99. *See* NCLC UDAP Treatise § 6.3.3.

100. NY AG v. DailyPay at ¶ 107.

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