January 30, 2026

DISB – Office of the Commissioner
Attn: Earned Wage Access Comment
1050 First Street, NE, Suite 801
Washington, DC 20002
By Email: disb.publiccomments@dc.gov

RE: Response to Earned Wage Access Request for Public Comment

Dear Commissioner Woods,

Thank you for the opportunity to respond to the Earned Wage Access Request for Public Comment on behalf of the National Consumer Law Center (NCLC) and the thousands of District of Columbia residents with lower incomes served by Tzedek DC and Legal Aid DC.

NCLC uses the tools of advocacy, education, and litigation to fight for economic justice for low-income and other vulnerable people who have been abused, deceived, discriminated against, or left behind in our economy.

Tzedek DC's mission is to safeguard the legal rights and financial health of DC residents with low incomes dealing with the often devastating consequences of abusive debt collection practices and other consumer related issues.

Legal Aid DC is the oldest and largest general civil legal services program in the District of Columbia. The largest part of our work is comprised of individual representation in housing, domestic violence/family, public benefits, and consumer law. We also work on immigration law matters and help individuals with the collateral consequences of their involvement with the criminal legal system. From the experiences of our clients, we identify opportunities for court and law reform, public policy advocacy, and systemic litigation. For more information, visit www.LegalAidDC.org.

So-called "earned wage access products" are new forms of 300% APR payday loans, which have long been illegal in the District of Columbia. They present many of the same problems as traditional payday loans and are properly covered by the District of Columbia's lending laws and interest rate limit. As discussed in more detail below:

- Courts and regulators **have seen through disguises and recognized these loans as loans**. All seven courts to have ruled on the issue to date have found that state and federal credit laws apply. So too have legislatures, regulators or attorneys general in DC as well as in California, Connecticut, Maryland, Maine, New York. The Consumer Financial Protection Bureau in 2024 similarly found these were loans. States that claim loans are not loans are almost uniformly those that allow high-cost payday loans and have poor consumer protection track records.
- Data is clear that despite claims that advances are free, **90% of transactions carry fees** and those fees routinely cost **$300 a year and as much as $1400 over two years**.
- **Loan stacking** from multiple lenders is common and may make total costs understated.
- Lenders manipulate people into more and more small loans, multiplying fees, with many taking out **over 100 loans a year and even multiple loans with multiple fees per day.**
- Instead of helping with liquidity, these loans put people in a **debt trap** where they are forced to reborrow to fill the gap in their paycheck but still often end up with **increased overdraft fees**.

Industry proffered definitions of "earned wage access" are so broad, with no tie to employers or actual earned wages, that traditional payday lenders will adapt and move into DC. DC protects borrowers from the harms of traditional payday lending and it should do the same for new forms.

Payday Loan Whack-a-Mole

"Earned wage access products" are the latest gambit in a long game of regulatory whack-a-mole by payday lenders to evade existing state regulations. In the 1990s, for instance, payday lenders convinced legislators in many states to create loopholes by claiming they were not making loans, just charging a "deferred check cashing fee." Fortunately, DC has not allowed that evasion.

Now, pushing a model bill from the American Legislative Exchange Council (ALEC), a new breed of payday lenders is trying to exempt themselves from DC's interest rate limits and other protections. Payday loan apps that claim not to be loans and that seek exemptions include:

- DailyPay, which is being sued by the New York Attorney General (NY AG) for issuing illegal high interest loans;
- MoneyLion, which is being sued by the NY AG and the Baltimore Mayor;
- EarnIn, which the District of Columbia has sued for similar reasons and several courts have recognized as a loan;
- Albert, Cleo and Grant, which have also faced adverse court decisions; and
- FloatMe and Brigit, which the Federal Trade Commission has sued.

Earned wage payday lenders have been ignoring the law, hoping that their presence on the ground pushes legislators to legalize them.

These payday loan apps assert that their loans are not loans, but they make advances ahead of payday and are repaid on payday. In the past year, seven courts have unanimously rejected arguments that these advances are not loans covered by state and federal lending laws, including the Military Lending Act.[1]

While claiming that repayment is voluntary, lenders require consumers to authorize bank account debits or payroll deduction and secure repayment 97% or more of the time.

Workers just end up paying to be paid and with empty paychecks. The apps have multiple methods to make most people pay, incurring costs that, <u>on average</u>, routinely exceed 300% APR and hundreds of dollars a year, and for some much higher.

Earned Wage Payday Loan Apps Push Borrowers into a Debt Trap

Payday loan apps use a variety of techniques to lure people into a debt trap where they take out multiple loans per week or even per day, paying a never-ending cascade of fees and "tips." A review of several government enforcement actions[2] shows:

- 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 can cost on average $300 a year and as high as $1400 over two years.
    - 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 make free options illusory and 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.

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[1] Russell v. Dave Inc., ___ F. Supp. 3d ___, 2025 WL 3691977, at *6–8 (C.D. Cal. Dec. 12, 2025) (rejecting argument that Dave does not offer credit covered by Truth in Lending Act (TILA) and Military Lending Act (MLA); Revell v. Grant Money, --- F.Supp.3d ---- 2025 WL 3167318 (N.D. Cal. Nov. 5, 2025) (Grant Money is credit under TILA and MLA, so MLA's ban on forced arbitration applies to claims under TILA, MLA and Georgia Payday Loan Act); Vickery v. Empower Finance, Inc., 2025 WL 2841686 (N.D. Cal. Oct. 7, 2025) (Empower); Moss v. Cleo AI, --- F.Supp.3d ----, 2025 WL 2592265 (W.D. Wash. Sept. 8, 2025) (Cleo); Golubiewski v. Activehours, 2025 WL 2484192 (M.D. Penn. Aug. 28, 2025) (EarnIn); Johnson v. Activehours, 2025 WL 2299425 (D. Md. Aug. 8, 2025) (EarnIn); Orubo v. Activehours, 780 F.Supp.3d 927 (N.D. Cal. 2025) (EarnIn) (federal and Georgia law).

[2] Patrick Crotty, National Consumer Law Center, Picking Workers' Pockets: Unfair, Deceptive and Abusive Practices by Earned Wage Payday Lenders (Jan. 12, 2026).

- 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 afford to repay without further loans, leading to a cycle of dependence on new earned wage payday loans with additional fees.

For example, the New York Attorney General (NY AG) sued DailyPay for violating its usury laws, finding that DailyPay promotes its product to employers at "a price tag of $0 to the business," but tells investors that its "Powerful Business Model" generates an average of $300 a year in fees from the employer's low-wage workers. New York found one DailyPay borrower with over 450 loans and nearly $1,400 in fees over two years.

The NY AG also sued MoneyLion, which advertises "Get Up to $500 Fast" but limits individual loans to $100 or even $25. So people had to take out back-to-back loans within minutes of each other, paying multiple fees, to obtain the advertised amount. New York found nearly 2 million loans within minutes of a previous loan. MoneyLion was also recently sued by the Baltimore mayor.

The District of Columbia, through its Attorney General, has already alleged in still pending litigation that EarnIn lured consumers in with **false claims of free advances** for loans within minutes, while hiding fees needed to get the instant loans promised and artificially limiting loan size to increase fees. The average interest rate on Earnin's instant loans is over 300%.[3] NCLC reviewed a video of the EarnIn app and found that a borrower trying to avoid a tip was subjected to **17 messages about the importance of tipping and needed to make 13 additional clicks to remove the tip.**

The Center for Responsible Lending (CRL) analyzed the deposit accounts of people using earned wage payday loan apps and found:

- Repeat borrowing: Roughly 1 in 4 took out 25+ advances in a year
- Loan stacking: Roughly 1 in 4 used 3+ apps in the same month
- Increased overdrafts: 2 in 3 had more overdrafts after the initial advance
- More payday loans: 58% of payday lenders increased their payday borrowing.

Nationally, CRL found that **overdrafts increased 56%** on average after people began using a cash advance app. Users who had not been overdrafting previously started to overdraft 2.3 times on average, and as many as 35 times, in the next three months.[4] Another CRL study found that over time, earned

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[3] Complaint for Violations of the Consumer Protection Procedures Act, District of Columbia v. ActiveHours Inc.d/b/a EarnIn (D.C. Sup. Ct. filed Nov. 19, 2024); see also DC Attorney General, Press Release, Attorney General Schwalb Sues "Pay Advance" Company EarnIn for Deceiving More Than 20,000 DC Borrowers (Nov. 19, 2024).

[4] Lucia Constantine, et al, Center for Responsible Lending, Not Free: The Large Hidden Costs of Small-Dollar Loans Made Through Cash Advance Apps at 6 (April 2024).

wage payday loan app users borrow more and more frequently, use multiple apps, and pay higher and higher costs. Heavy users paid $421 in total loan and overdraft fees.

This cycle of repeat borrowing and increased financial distress, evidenced by overdraft increase, is exactly what policymakers expect to see with a payday loan product. As with payday loans, using next week's pay for this week's expenses leaves a hole in the next paycheck that triggers chronic reborrowing. Fees quickly snowball, and workers end up paying to be paid week after week, with less money rather than additional liquidity.

Adopting Industry Proposals Would Open Up the Wild West of Payday Lending in Exchange for Illusory Protections

Currently in DC, small loans are limited to 24% interest. Proposals that would purport to "regulate" payday loan apps would completely exempt earned wage payday loans from this rate cap. They would declare that fees and purportedly voluntary tips, gratuities, or other "donations" are not interest and that the loans are not loans.

Exempting these loans from cost limits is the entire and evident purpose of their proposals. The supposed consumer protections they offer are sleight of hand and illusory. The "protections" offered by industry proposals simply codify existing business practices that already lead people into paying hundreds of dollars a year:

1. Providers claim to offer a no-cost option, but those options are slow (delaying the advance), inconvenient (not into the consumer's own bank account) and hard to access in apps. New York found that **9 out of 10 advances** from DailyPay and MoneyLion had added fees. The nature of small dollar loans is based on urgency. That's why the vast majority of consumers pay for expedited funds.
2. Lenders claim not to deny loans to people who do not tip but they use a myriad of **dark patterns and psychological tricks** to push people into tipping, make it hard to undo a tip, and retaliate in other ways against those who do not. Most people using apps that push tips pay them.
3. Requiring lenders to repay overdraft and NSF fees in limited circumstances does not cover all the overdraft, NSF or late fees that people will incur. Pledges to repay those fees do not work as people cannot get through to customer service or are often rebuffed when they do.
4. The prohibition of credit reporting is meaningless, as payday lenders do not use or report to traditional credit bureaus today.
5. The claim that earned wage payday loans are not loans because they are supposedly "non-recourse" – and will not use debt collectors, lawsuits or debt buyers – is a red herring. Loans can be non-recourse, as are reverse mortgages. Payday loan apps also have recourse to collect their loans from the paycheck or bank account and collect 97-99.99% of the time.

DC's Lending Laws Apply

The opinion of the DC AG that the District's interest rate cap applies to earned wage payday loans is well supported and consistent with the reasoning of the seven unanimous court decisions to date involving similar statutes other states.

Earned wage lenders argue that they do not offer loans because the advances are purportedly "non-recourse" and they pledge not to use third-party debt collectors or to sue. However, loans can be nonrecourse yet are still loans, just as reverse mortgages are. Earned wage lenders do not need to use aggressive collection methods because they have recourse to payroll or bank accounts. They require borrowers to authorize automatic repayment and collect 97% to 99% of the time.
Even if lenders insert fine print in contracts to purportedly disclaim an obligation to repay, courts regularly look behind the form of a transaction to the substance to prevent evasions.[5] Earned wage payday lenders require borrowers to authorize repayment through payroll deduction, bank account debit or a similar mechanism. That is sufficient to show an obligation to repay. Borrowers clearly expect that they need to repay and lenders take multiple steps to ensure that they will be repaid. *See* Complaint for Violations of the Consumer Protection Procedures Act, District of Columbia v. ActiveHours Inc. d/b/a Earnin, at 8 (D.C. Sup. Ct. Nov. 19, 2024) ("Because it has established all these methods of ensuring repayment, Earnin has only a 1% risk of loss on its loans, as it boasts to its investors."). As one court explained:

> Here, plaintiffs allege that both EarnIn and its users understand that users are expected to repay any advances, that EarnIn implements several requirements to ensure that repayment will occur in nearly all circumstances, and that EarnIn's disclaimer of any legal repayment obligation is therefore a sham, illusory, or at the very least lacking in any real-world significance.

Orubo v. Activehours, Inc., 780 F. Supp. 3d 927 (N.D. Cal. 2025); *accord* Johnson v. Activehours, Inc., 2025 WL 2299425, at *4 (D. Md. Aug. 8, 2025) (quoting *Orubo*, and finding allegations that the EWA lender expected to be repaid, that it communicated this to the borrower, that it ran a credit check on the borrower, and that it required the borrower to grant it access to the borrower's bank account to be sufficient to make out a claim that state lending law applied); *cf*. Ruth v. Cherokee Funding, L.L.C., 820 S.E.2d 704, 710–711 (Ga. 2018) ("It is easy to imagine an agreement with a sham contingent repayment provision that reflects an attempt to evade the usury laws. And a court properly presented with a claim that a contingent repayment provision is a sham should look beyond the text of the agreement to penetrate to the substance and perhaps find an unlawful loan, notwithstanding the contingency.").

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[5] *See* Scott v. Lloyd, 34 U.S. 418, 448 (1835) (appeal from the circuit court for the District of Columbia) ("The ingenuity of lenders has devised many contrivances by which, under forms sanctioned by law, the [usury] statute may be evaded. … Yet it is apparent, that if giving [the claimed] form to the contract will afford a cover which conceals it from judicial investigation, the [usury] statute would become a dead letter. Courts, therefore, perceived the necessity of disregarding the form, and examining into the real nature of the transaction. If that be in fact a loan, no shift or device will protect it."); Browner v. District of Columbia, 549 A.2d 1107, 1114 (D.C. 1988) (sale-leaseback was "transparent sham which masked an unlawful loan").

It would be a travesty to find that a loan is not a loan based on a purported lack of obligation to repay when the lender mandates consent to a highly effective repayment method and in fact has designed a system that ensures that 97% to 99.99% of loans are repaid.

DC's Interest Rate Cap is the Best Way to Protect Borrowers.

Enforcing DC's interest rate cap is the best way to protect borrowers from debt trap loans. States that have created separate regimes for earned wage payday loans are not appropriate models

The states that have adopted legislation declaring that loans are not loans are virtually all states with weak consumer protection laws that allow high-cost payday loans. States with strong consumer protection laws like Connecticut and Maryland have recognized that these loans are loans, though they have allowed fees that are too high. Connecticut comes the closest to strong protections by adopting an all-inclusive monthly fee cap, albeit one that allows up to $360 in fees a year and more with loan stacking from other lenders. Maryland is also in the midst of eliminating loopholes in its earned wage fee cap and potentially adopting a monthly cap.

But DC's approach of applying its interest rate cap is more protective. Not only does it reduce costs, but it reduces the harms of loan stacking from different providers, which can result in costs above monthly dollar costs at individual lenders. No matter how many lenders a consumer turns to, the aggregate cost would not be more than 24% APR.

Lenders can operate under DC's rate cap. They can charge interest at the allowable rate, or better yet offer services for free to the worker. Some in the industry are pushing to eliminate fees for workers,[6] and employers and payroll providers have plenty of incentives to offer early access to pay as a benefit that is free to the worker.[7] Third parties offering payday loan apps should be treated no differently than other payday lenders.

Allowing out-of-state payday lenders who claim that they are paying "earned wages" to make themselves wealthy by extracting wealth from people struggling to get by is not the answer for working families in DC. If you have any questions, please contact Lauren Saunders, lsaunders@nclc.org, Melissa Millar, mm@tzedekdc.org, or Johanna Schmidt, jschmidt@legalaiddc.org.

Respectfully,

Legal Aid DC
Tzedek DC
National Consumer Law Center

[6] Jason Lee, Chime, Employees Shouldn't Have to Pay to Access Their Pay: The Next Evolution in Financial Equity (Sept. 29, 2026).
[7] *See* DailyPay, The Hidden Benefits of On-Demand Pay for Employers (June 30, 2025).