

A Look At State AGs' Focus On Earned Wage Products

By **Manisha Sheth and Jack Robbins** (November 10, 2025, 5:40 PM EST)

Earned wage access, or EWA, products enable employees to receive advances on wages they have already earned before their scheduled payday.

EWA products have emerged as a rapidly growing segment of the consumer finance market, with major providers like DailyPay, PayActiv and EarnIn serving millions of employees who need funds between pay periods. These products operate through two primary models: employer-sponsored programs integrated with payroll systems, and direct-to-consumer platforms that connect to employees' bank accounts and employment information.

Once an employee enrolls, they can receive an advance on their future paycheck. Rather than charging traditional interest, EWA providers typically generate revenue through expedited delivery fees for instant transfers and voluntary tips that users can pay to support the service. Thus, from the perspective of the providers, EWAs are interest-free and not loans.

EWA providers are at increased risk of state and local enforcement actions. Most recently, on Oct. 1, the city of Baltimore sued provider MoneyLion, alleging its EWA product violates state usury laws because its expedited delivery fees and voluntary tips constitute excessive interest.

This lawsuit follows a similar action brought by New York Attorney General Letitia James, who filed suit against MoneyLion on April 14, likewise alleging that its expedited delivery fees and voluntary tip structures are usurious. James also brought a similar lawsuit against provider DailyPay on the same day.

These actions build on earlier enforcement efforts, including a Nov. 19, 2024, lawsuit by District of Columbia Attorney General Brian Schwalb against provider EarnIn, alleging that the company's expedited delivery fees and tip solicitations amount to illegally high interest rates.

In this article, we analyze these developments, including an overview of the current regulatory landscape, the increased enforcement risk by state attorneys general, the legal issues at play, and some steps EWA providers may consider to mitigate risk.

Fragmented Regulatory Landscape Creates Compliance Challenges



Manisha Sheth



Jack Robbins

State legislatures have taken different approaches to EWA products. Nevada, Missouri, Wisconsin, Kansas, South Carolina, Arkansas and Utah have enacted safe harbor frameworks explicitly exempting compliant EWA products from lending laws.[1] Other states have moved toward strict loan classification standards.

For example, California finalized regulations effective Feb. 15, classifying direct-to-consumer EWA products as loans under the California Financing Law, requiring registration and subjecting providers to potential rate restrictions.[2] Connecticut similarly treats EWA products with annual percentage rates exceeding 12% as small loans requiring licensing under its Small Loan Act.[3]

Meanwhile, in 2024, federal legislation was introduced in the 118th Congress — the Earned Wage Access Consumer Protection Act — that would have excluded compliant EWA products from Truth in Lending Act classification while imposing some consumer protection requirements. The bill died in the House of Representatives, and no new EWA legislation has yet been proposed.[4]

Likewise, federal regulatory action has remained limited and fragmented. The Federal Trade Commission pursued enforcement actions at the end of the Biden administration against individual providers, reaching settlement agreements with Brigit (\$18 million) and FloatMe (\$3 million) for deceptively advertising programs as "instantaneous" and without additional fees.[5]

The Consumer Financial Protection Bureau has similarly shifted its position. In July 2024, it proposed an interpretive rule that would rescind past guidance and subject all EWA products to Truth in Lending Act requirements.[6] Previously, the CFPB provided a narrow safe harbor for employer partnership EWA programs that do not charge a fee.[7]

Under the new proposed rule, all EWA products would fall under the Truth in Lending Act because consumers are obligated to pay back advances at a future date, with financial charges such as tips and expedited delivery fees requiring heightened disclosures.

However, it remains uncertain under the Trump administration whether the CFPB will continue to support the proposed interpretive rule.

Enforcement Actions Target Core Business Model

In contrast, companies offering these products are at risk of enforcement actions by state regulators.

On April 14, James filed lawsuits against MoneyLion and DailyPay, in State of New York v. MoneyLion Inc. and State of New York v. DailyPay Inc., in the Supreme Court of the State of New York, County of New York. On Nov. 19, 2024, Schwalb sued EarnIn in District of Columbia v. Activehours Inc. dba EarnIn, in the Superior Court of the District of Columbia, Civil Division.

All three complaints allege that the EWA products in question violate state usury laws because the expedited delivery fees and voluntary tips are the functional equivalent of interest charges that are far in excess of what is legally permissible.

These complaints allege effective APRs exceeding 300% in some cases. These enforcement actions have the potential to fundamentally reshape how these products operate because they directly challenge the industry's central premise that EWA products are not loans subject to traditional lending regulations.

These high-profile cases underscore the increasing willingness of state attorneys general to regulate emerging consumer finance products — particularly now — when there has been a rollback of federal enforcement.

In its lawsuits against MoneyLion and DailyPay, James alleged that such fees and tips are interest, and as such, the amounts charged violate state usury laws.[8] In its lawsuit against EarnIn, Schwalb has taken the same position.[9]

The city of Baltimore is the latest challenger, filing a similar suit on Oct. 1 against MoneyLion, in *Mayor & City Council of Baltimore v. MoneyLion Technologies Inc.*, in the Circuit Court for Baltimore City, Maryland.

The theory of liability is the same across all lawsuits: The delivery fees and tips are characterized as interest charges rather than service fees; the APRs are calculated over the pay period, often 10 to 15 days; and the resulting high-effective interest rates are alleged to violate state usury caps, often by substantial amounts.

For example, James alleged that one provider's most common amount advanced was \$50 with a \$4.99 expedited fee, plus a \$2 suggested tip, to be repaid in 10 days. Treating the fees and tips as interest, James calculated an effective APR exceeding 350%, well above New York's 16% civil usury cap and 25% criminal usury threshold.

A Loan or Not a Loan — That Is the Question

The threshold legal question is whether these EWA products are loans. EWA providers argue their products are not loans, and thus, not subject to state usury laws.[10]

In determining whether a product is a loan, courts often apply a multifactor test examining whether repayment is absolute under all circumstances, whether there are reconciliation provisions allowing for payment adjustments and whether the agreement has finite terms.[11]

In support of their argument that EWA products are not loans, EWA providers rely on the fact that the employee's obligation to repay the loan is not absolute. First, the EWA provider has contractually agreed not to seek recourse against employees who have taken out advances. Second, the EWA provider assumes the risk that the employee cancels their direct withdrawal or leaves their employer before their next payday, leaving the EWA provider with nothing.[12]

Montana Attorney General Austin Knudsen concluded that fully nonrecourse EWA products are not loans, noting they avoid abuses in the payday loan marketplace like collection practices and credit reporting.[13] Likewise, Arizona Attorney General Mark Brnovich similarly concluded that nonrecourse EWA could be characterized as an acceleration of funds already earned, rather than a loan.[14]

In contrast, state regulators and other critics argue in response that the economic reality of EWA products is not contingent and mirrors short-term lending, where providers utilize direct withdrawal to ensure the advance is always repaid.[15] State attorneys general point to sophisticated algorithms predicting direct deposit timing and amounts as functionally guaranteed repayment, positioning EWA providers first in line for collection regardless of formal nonrecourse provisions.

Even if EWA products are loans, there is still a question of whether fees for expedited transfers and

voluntary tips are considered interest. Courts and regulators look at multiple factors, including whether charges are incident to or a necessary condition to credit, and whether fees are solicited before credit extension.

Compare the Sept. 14, 2024, decision of *Golubiewski v. Activehours Inc.*, in the U.S. District Court for the Middle District of Pennsylvania, in which a motion to dismiss was granted because voluntary tips were not alleged to be "necessary condition to credit," with the ruling in *Golubiewski v. Activehours Inc.* on Aug. 28, also in the Middle District of Pennsylvania, denying a motion to dismiss a second amended complaint where fees were alleged to be necessary to provision of credit.

In the second decision, the court held that interest rate caps may "apply to all credit-related charges, whether they are labeled interest or not."

Ultimately, the specific wording of each state's usury laws will determine the boundaries of what constitutes interest and whether noninterest charges can nonetheless trigger usury prohibitions. The CFPB's proposed interpretive rule explicitly characterizes such charges as finance charges subject to Truth in Lending Act disclosure requirements.

And actions by state attorneys general have taken a similar position.[16]

One further consideration, as it relates to tips, is whether manipulative interface designs and psychological pressure to encourage tipping potentially undermine the voluntary characterization of fees or tips.[17]

Considerations in Mitigating Regulatory Risk

This regulatory divide forces national EWA providers to operate under fundamentally different legal frameworks depending on the state, creating operational complexity and legal uncertainty.

Below are some factors EWA providers may want to consider to reduce regulatory risk. None of these is dispositive on its own, but should be viewed under the totality of circumstances.

EWA providers may want to consider conducting state-by-state operational reviews to ensure compliance with varying registration, licensing, and fee-cap and disclosure requirements in each jurisdiction.

To reduce the risk that a regulator or court determines that their product is a loan, EWA providers should make clear that their EWA products are fully nonrecourse. This means that there should be no legal or contractual right to repayment from employees, no debt collection activities or referrals to third-party collection agencies, no assignment or sale of unpaid balances, no credit reporting of nonpayment to credit bureaus, and no litigation to compel repayment.

They may also consider limiting the amount of the advance to earned, but unpaid, wages. Factors include whether the amount of the advance is based on: actual hours worked using employer-verified data, employee estimates or predictions of future work, or accrued cash value of wages, meaning what the employee would receive if separated from employment today.

In addition, EWA providers may consider implementing real-time or near-real-time payroll integration to verify earned wages.

They may consider eliminating mandatory fees. To the extent that is not feasible, EWA providers may consider offering a completely free option for standard delivery. This is now required in many states, including Maryland, which requires at least one reasonable no-cost option.[18]

EWA providers should ensure that tips are not considered finance charges by making sure that they are not solicited in a way that creates an expectation of payment.

To minimize the likelihood that a regulator or court will view a tip as a finance charge, EWA providers may consider setting the default tip to \$0; avoid implying that tips affect approval, access or credit terms; avoid repeatedly soliciting tips during a single transaction; avoid making it logistically difficult to not tip; soliciting tips after the advance if possible; and avoid language suggesting tips are expected in the normal course.

They may consider structuring expedited delivery fees as fees for ancillary services. To support this argument, providers may consider offering free standard delivery; charging for optional expedited delivery, such as instant or same-day; describing the fee as a delivery or disbursement service fee as opposed to a credit-related charge; and ensuring that the fee is a flat fee as opposed to a percentage-based fee.

EWA providers should endeavor to avoid the following practices that make it more likely that a court or regulatory agency will find that the product is a loan:

- Underwriting employees or performing credit checks;
- Charging interest on the advance;
- Charging late fees for nonpayment;
- Conditioning access on employer fee-sharing arrangements; and
- Allowing multiple advances on the same wages, or failing to implement controls to prevent users from accessing the same earned wages from multiple providers.

EWA providers should ensure that documentation exists and is complete, including policies that show that they do not engage in collection activities.

They may consider making adequate disclosures in the event that the EWA product is determined to be a loan. These disclosures include clearly disclosing all fees up front, explaining how the no-cost option works, explaining the nonrecourse nature of the product, and disclosing that nonpayment has no credit reporting consequences.

EWA providers should also review marketing materials to remove potentially misleading claims about cost, speed or availability, particularly representations describing advances as free or instantaneous when fees may apply.

Companies should maintain comprehensive records of all compliance efforts, including fee disclosures and marketing practices, as this documentation will be valuable for demonstrating good faith compliance efforts during regulatory inquiries.

Looking Ahead

The state enforcement actions against MoneyLion, DailyPay, EarnIn and others represent a critical moment for the EWA industry. These cases will likely determine whether EWA products can continue operating under current business models, or if they must fundamentally restructure as licensed lending products subject to comprehensive usury regulations.

Settlements in these high-profile cases could also establish industrywide standards for fee structures, disclosure practices and operational procedures. Companies that proactively address the legal vulnerabilities highlighted in these complaints — particularly around manipulative user interfaces and misleading marketing — will be better positioned to navigate the present regulatory uncertainty and an increasingly hostile state regulatory environment.

Manisha M. Sheth is a partner and co-chair of the government and regulatory litigation practice, and the state attorney general practice, at Quinn Emanuel Urquhart & Sullivan LLP. She previously served as an executive deputy attorney general for the Division of Economic Justice at the New York Attorney General's Office.

Jack Robbins is an associate at Quinn Emanuel.

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[1] Earned Wage Access: A Loan by Any Other Name? 20 NW. J. L. & SOC. POL'Y. 35 (2024); Emmanuel Elone, Arkansas Becomes Seventh State to Regulate Earned Wage Access, Bloomberg Tax (Mar. 21, 2025), <https://news.bloombergtax.com/payroll/arkansas-becomes-seventh-state-to-regulate-earned-wage-access>; Utah Becomes Eighth State to Regulate Earned Wage Access, DailyPay (Mar. 26, 2025), <https://www.dailypay.com/press-center/press-releases/utah-becomes-eighth-state-to-regulate-earned-wage-access/>.

[2] California Consumer Financial Protection Law: Information for New Registrants, Cal. Dep't of Fin. Prot. & Innovation, <https://dfpi.ca.gov/rules-enforcement/laws-and-regulations/california-consumer-financial-protection-law/ccfpl-registration/>.

[3] Department of Banking Issues Industry Guidance Regarding Public Act 23-126, Conn. Dep't of Banking (Sept. 11, 2023), <https://portal.ct.gov/-/media/dob/consumer-credit-division/09-11-23-department-issues-industry-guidance-reg-pa-23-126.pdf>.

[4] H.R. 7428, 118th Congress (2023-2024): Earned Wage Access Consumer Protection Act.

[5] F.T.C. v. Bridge It, Inc., No. 1:23-cv-09651 (S.D.N.Y. Nov. 2, 2023); F.T.C. v. FloatMe Corp., No. 5:24-cv-00001-XR (W.D. Tex. Jan. 22, 2024).

[6] 2024 CFPB Proposed Interpretive Rule, "Truth in Lending (Regulation Z); Consumer Credit Offered to Borrowers in Advance of Expected Receipt of Compensation for Work", 12 C.F.R. Part 1026 (July 2024).

[7] 2020 CFPB Advisory Opinion, "Truth in Lending (Regulation Z); Earned Wage Access Programs."

[8] New York v. MoneyLion Inc., Index No. 451303/2025 (N.Y. Sup. Ct. Apr. 14, 2025); New York v. DailyPay Inc., Index No. 154851/2025 (N.Y. Sup. Ct. Apr. 14, 2025).

[9] District of Columbia v. Activehours Inc. d/b/a EarnIn, Case No. 2024-CAB-007303 (D.C. Super. Ct. Nov. 19, 2024).

[10] Providers also argue that workers cannot "borrow" money they have already earned — the EWA simply provides access to the worker's own property. Cf. 12 C.F.R. Part 1026, Supp. I, comment 2(a)(14)-1 (rule implementing the Truth in Lending Act) ("[b]orrowing against the accrued cash value of an insurance policy or a pension account, if there is no independent obligation to repay" is "not considered credit for purposes of the regulation.").

[11] See, e.g., LG Funding, LLC v. United Senior Props. of Olathe, LLC, 181 A.D.3d 664, 666 (2d Dep't 2020); Veale v. Citibank, F.S.B., 85 F.3d 577, 579 (11th Cir. 1996).

[12] Cf. Harmon v. Fifth Third Bancorp, 2020 WL 2512820, at *9 (S.D. Ohio May 15, 2020) (holding that a bank's "Immediate Funds Service" that provided immediate access to check deposits was not a credit transaction because depositor had "no liability for losses," meaning the customer could not "incur debt or become obligated to repay" even if their subsequent check later bounced); see also Cash4Cases, Inc. v. Brunetti, 167 A.D.3d 448, 449 (1st Dep't 2018) (holding that an advance of money to a plaintiff in exchange for a portion of potential personal injury settlement was not repayable absolutely because repayment was entirely contingent on the success of the underlying personal injury lawsuit).

[13] Earned Wage Access Providers Do Not Need to Be Licensed by the Montana Division of Banking and Financial Institutions Under the Montana Consumer Loan Act and Montana Deferred Deposit Loan Act to Provide Earned Wage Access Products, 59 Op. Mont. Att'y Gen. No. 2, at 9 (Dec. 22, 2023), <https://dojmt.gov/wp-content/uploads/Vol.-59-No.-2-arm.pdf>.

[14] Earned Wage Access Products, Ariz. Att'y Gen. Op. No. I22-005 (R22-011), at 10 (Dec. 16, 2022), <https://www.azag.gov/sites/default/files/2025-06/I22-005.pdf>.

[15] See Lugli v. Johnston, 78 A.D.3d 1133, 1135 (2nd Dep't 2010) ("In determining whether a transaction is usurious, the law looks not to its form, but its substance, or 'real character.'"); see also CFPB 2024 Proposed Interpretive Rule (explaining that EWA products are within the plain meaning of debt and that several statutes and regulations would consider EWA a debt); cf. 12 C.F.R. Part 1026, Supp. I, comment 2(a)(14)-2 ("Credit includes a transaction in which a cash advance is made to a consumer in exchange for the consumer's personal check, or in exchange for the consumer's authorization to debit the consumer's deposit account.").

[16] See *supra* note 1.

[17] See e.g. New York v. MoneyLion Inc., Index No. 451303/2025, Petition ¶¶ 75-86 (N.Y. Sup. Ct. Apr. 14, 2025).

[18] Commercial Law, Credit Regulation, Earned Wage Access and Credit Modernization, 2025 Md. Laws ch. 847, § 1 (enacted May 25, 2025) (to be codified at Md. Code Ann., Com. Law § 12-1503(A)(3)).