June 12, 2025

Superintendent Linda Conti
Maine Department of Professional & Financial Regulation
Bureau of Consumer Credit Protection
35 State House Station
Augusta, Maine 04333

Re: Advisory Ruling #121 regarding Earned Wage Access products

Dear Superintendent Conti:

On behalf of the American Fintech Council (AFC), we write to request that you exercise your discretion to withdraw Advisory Ruling #121 (AR 121) for the reasons set forth below.

AFC is the premier industry association representing responsible fintech companies, innovative banks, and the largest number of responsible Earned Wage Access (EWA) providers. Our mission is to promote a transparent, inclusive, and customer-centric financial system by supporting responsible innovation in financial services. Our members are improving access to financial services and increasing overall competition in the financial services industry and serving families long forgotten by traditional financial institutions.

We recognize that your purpose in issuing AR 121 was to provide non-binding guidance that would apply during the interim period between its posting and when LD 1915 is passed and signed into law. Contrary to advancing that purpose, however, AR 121 will create unnecessary confusion for EWA providers regarding orderly compliance with Maine laws. Even more important, it will also create unnecessary confusion and harm to Mainers, who face the prospect of AR 121 eliminating or reducing their access to EWA services and the potential for successive rounds of changes in EWA product terms or characteristics. This will disrupt access to the critical marketplace of essential and innovative EWA products that currently exists for Mainers—to date, more than 45,000 Mainers have used EWA and at least 450 companies in the Pine Tree State offer EWA as a benefit to their employees.

Unless withdrawn, AR 121—which states that it was effective immediately upon posting to the Bureau's website yesterday—will harm Maine consumers and EWA providers in at least the following ways:

- To comply with AR 121, EWA providers will need to seek licenses or file notifications under Articles 2 and 6 of the MCCC. Before licenses are issued or notifications are filed, some providers are likely to conclude they must suspend EWA services in Maine to avoid enforcement risk from the Bureau. As you know, the licensure process often takes months, so during that period Mainers' access to EWA products would be severely, if not entirely, disrupted and limited.

- Some EWA providers may suspend services in Maine even before deciding whether to seek licenses or file notifications to provide time to evaluate the impact of AR 121's provisions on the feasibility and cost of offering EWA products in the State, including increased compliance requirements. They may also evaluate whether to pursue legal challenges to AR 121.

- Some EWA providers may elect to modify terms or characteristics of their EWA products in response to AR 121. If this occurs, and LD 1915 then passes, consumers would face at least two rounds of product changes in quick succession.

Critically, the uncertainty and confusion that AR 121 introduces for consumers and providers are readily avoidable. The Maine Legislature is actively considering how EWA—a new and distinct financial product which does not fit within Maine's existing laws—should be regulated in the State. Indeed, the Joint Health Coverage, Insurance and Financial Services Committee held a public hearing on LD 1915 just 3 weeks ago, on May 20, 2025, and is considering the testimony provided from supporters and opponents of the bill, including your own. The Legislature is the appropriate place for this debate. The ongoing work of Mainers' elected representatives should not be usurped by AR 121, especially to install an inherently stop-gap and disruptive solution.

As explained in AFC's testimony in support of LD 1915, EWA providers have no objections to licensing requirements or new statutory standards and guardrails for EWA products. But AR 121 goes far beyond adopting a new regulatory framework for EWA products; it instead concludes that, even though the Maine Consumer Credit Code (MCCC) does not define "debt" or "obligation," EWA products are "credit" subject to the MCCC's interest and finance charge requirements.[1] And it does so in a ruling that not only offers no support for this conclusion but, most important for present purposes, provides no period during which providers could assess and facilitate orderly compliance.

Adopting this harmful "interim regime" is fundamentally unnecessary considering the Legislature's pending action on LD 1915. And, even if it were appropriate for the Bureau to adopt an "interim regime" for EWA regulation prior to LD 1915, we respectfully submit that it is inappropriate to do so through a nonbinding advisory ruling issued without input from

[1] We disagree with AR 121. EWA services do not create a debt or an obligation to repay, fees that consumers can choose not to pay are not "finance charges" and, as a result, the existing licensing regime in Maine does not make sense for EWA providers. But we do not write today to engage with you about those legal disagreements.

consumers who will be impacted, as well as the EWA providers who have invested in creating a new industry in Maine that consumers want and value.

For these reasons, we respectfully submit that AR 121 should be withdrawn at least temporarily so that we can meet with you in good faith to discuss in detail our concerns and provide suggestions for an "interim regime" that would not disrupt access to EWA products or harm Maine consumers and providers.

Sincerely,

Phil Goldfeder
Chief Executive Officer
American Fintech Council