January 30, 2026

The Honorable Karima M. Woods
Commissioner
DISB – Office of the Commissioner
Attn: Earned Wage Access Comment
1050 First Street, NE, Suite 801
Washington, DC 20002

Re: Response to Request for Public Comment Regarding the Regulation of Earned Wage Access Services in the District of Columbia

Dear Commissioner Woods,

On behalf of the American Fintech Council (AFC),[1] the largest and most diverse trade association representing financial technology companies and innovative banks, including the largest number of Earned Wage Access (EWA) providers, I submit this comment letter in response to the Department of Insurance, Securities and Banking's (DISB) Request for Information (RFI) regarding the regulation of EWA services in the District of Columbia (D.C. or the District).

On behalf of more than 150 member companies and partners, AFC offers these comments to directly address the specific areas of inquiry identified by DISB, including: the benefits and risks of EWA products for District consumers; appropriate licensing, registration, and oversight requirements for EWA providers; disclosure standards, fee structures, and consumer protections; employee rights and the voluntary nature of EWA; the role of employers in facilitating or offering EWA; the relevance of other jurisdictions' regulatory approaches; fee caps and no-cost access requirements; the treatment of voluntary tips and gratuities; limits on the frequency and amount of advances; the treatment of interchange fees; and whether EWA transactions should be structured as recourse or non-recourse. The perspectives offered in this comment letter draw on, and are informed by, AFC's leading role in advancing responsible innovation and evidence-based policymaking across the financial services industry and particularly on EWA issues.

AFC advocates for regulatory frameworks that recognize the realities of modern pay practices and support workers' ability to access compensation they have already earned in a safe, transparent, and responsible manner. EWA addresses short-term cash liquidity challenges that many workers experience between pay periods, particularly when faced with unexpected or non-discretionary expenses. Even modest timing mismatches between income and expenses can create financial distress and force reliance on higher-cost alternatives. EWA mitigates this

[1] American Fintech Council's (AFC) membership spans banks, non-bank lenders, payments providers, EWA providers, loan servicers, credit bureaus, and personal financial management companies.

pressure by allowing workers to draw upon wages they have already earned, thereby smoothing cash flow without introducing new debt obligations or credit-based repayment structures.

Empirical research has consistently shown that when workers have access to earned wages on demand, they are less likely to resort to overdraft services, or other fringe financial products that carry disproportionate fees relative to the dollar amounts involved in those transactions.[2] Notably, academic analysis has found that EWA transactions are substantially less expensive than payday loans and overdraft fees, resulting in meaningful consumer savings while preserving access to liquidity when it is most needed. These dynamics are particularly salient for District residents operating in a high cost-of-living environment. Based on our analysis, thousands of D.C. Residents have already benefited from EWA services provided by the responsible EWA providers that constitute AFC's membership.

In the District, timely access to earned wages can meaningfully assist workers in managing everyday financial demands. A stable and clearly defined regulatory environment is also essential to employer participation in EWA programs. When employers have regulatory certainty regarding their limited and facilitative role, they are more likely to support EWA offerings, which in turn directly expands availability and access for employees.[3] This foundational distinction informs AFC's broader policy recommendations and is further developed throughout this comment letter. Upon submission of this letter, we welcome the exchange of any additional dialogue that will serve to enrich and guide DISB's EWA regulatory structure.

I. AFC Supports Classifying EWA as a Distinct, Non-Loan Product Under District and Federal Law

EWA should be recognized and regulated as a non-loan, non-bank issued, wage-based financial service. DISB's RFI appropriately raises questions both about how EWA should be classified and about the consumer impacts that may flow from different regulatory approaches. Accordingly, Section A) first addresses the need for a tailored licensing, registration, and oversight framework that reflects the distinct nature of EWA services, and then B) explains why categorizing EWA as a loan would constitute regulatory misapplication by importing credit-based concepts that do not align with the economic reality or operational mechanics of EWA, with severely negative consequences for innovation, competition, and consumer access. Together, these subsections demonstrate why accurate classification of EWA as a non-credit product is essential to both sound regulation and effective consumer protection.

A) AFC Supports a Tailored Licensing, Registration, and Oversight Framework for EWA Providers That Recognizes the Distinct Nature of the Service

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[2] Todd H. Baker and Snigdha Kumar, The Power of the Salary Link: Assessing the Benefits of Employer-Sponsored FinTech Liquidity and Credit Solutions for Low-Wage Working Americans and Their Employers, M-RCBG Associate Working Paper Series No. 88 (Cambridge, MA: Mossavar-Rahmani Center for Business and Government, Harvard Kennedy School, May 2018), accessed January 27, 2026, https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/working.papers/88_final.pdf.

[3] Jeff Clabaugh, "DC's Cost of Living Is 53% Higher than the National Average, but Housing Takes the Cake," *WTOP* (April 3, 2023), accessed January 27, 2026, https://wtop.com/business-finance/2023/04/dcs-cost-of-living-is-53-more-than-average-but-housing-takes-the-cake/ (reporting that Washington, D.C.'s overall cost of living is 53 percent higher than the national average and housing costs are approximately 144 percent higher); Olympia Moving & Storage, "The Real Cost of Living in Washington, DC (And What It Means for Your Move)," accessed January 27, 2026, https://olympiamoving.com/the-real-cost-of-living-in-washington-dc/.

EWA providers should be subject to regulatory oversight that is commensurate to its consumer risk profile. Effective oversight requires clear expectations regarding provider conduct, transparency, and accountability. To that end, AFC established standards from which pragmatic EWA regulation should be derived.[4]

A registration-based framework is the most appropriate mechanism for overseeing EWA providers. Such a framework would allow the District to identify entities offering EWA services, establish supervisory authority, and enforce compliance with EWA specific requirements, without importing existing, ill-suited licensing regimes designed for credit products. Registration promotes regulatory visibility while avoiding the operational and conceptual mismatch that would arise from applying existing lending licenses to noncredit services.

It is our view that any regulatory oversight pursuit by DISB should focus on ensuring that providers operate consistently with core EWA principles, including limits tied to earned and verified wages, non-recourse structures, prohibitions on interest and debt collection, data safeguards, and voluntary employee participation. Regulators should also have authority to examine providers for compliance with disclosure, recordkeeping, and consumer complaint handling obligations that are specific to EWA services. Importantly, oversight requirements should be structured to support market participation by responsible providers while deterring abusive practices.

Excessive licensing burdens or requirements that presume underwriting, repayment enforcement, or credit risk management would not meaningfully enhance consumer protection and would instead reduce access by driving compliant providers from the market. In contrast, a registration framework that recognizes the nuances of EWA services as non-credit, non-loan services, avoids these outcomes while preserving the Department's ability to supervise and enforce its regulatory requirements.

Several states that have adopted EWA specific statutes have successfully implemented registration or notice-based oversight models that align with AFC's EWA Standards.[5] These approaches provide regulators with sufficient supervisory tools while recognizing that EWA differs fundamentally from consumer lending products. Aligning the District's oversight framework with these models would promote consistency, reduce regulatory fragmentation, and ensure that District residents continue to benefit from responsible wage-based access services.

B) EWA Is Not Credit, and Misclassification Would Undermine Innovation, Competition, and Consumer Access

Fundamentally, Earned Wage Access cannot properly be characterized as a debt instrument or extension of credit. EWA transactions are grounded in the economic reality that workers have

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[4] American Fintech Council, Earned Wage Access (EWA) Standards for Responsible Providers (Washington, D.C.: American Fintech Council, December 2023), accessed January 27, 2026, https://www.fintechcouncil.org/our-mission#standards (establishing industry best practices for responsible wage-access services, including that (1) earned wage access must not be treated as credit or a loan (no credit checks, interest, late fees, or credit reporting), (2) a no-cost access option must be offered to users, (3) clear, transparent fee and tip disclosures are required if applicable, (4) withdrawals cannot exceed earned wages, and (5) providers must maintain consumer protections and appropriate regulatory transparency).

[5] American Fintech Council, "Earned Wage Access," Policy Priorities, accessed January 28, 2026, https://www.fintechcouncil.org/policy-priorities/ewa (identifying the following states as having either enacted earned wage access regulation or legislation: California, Nevada, Utah, Kansas, Missouri, Arkansas, Louisiana, Wisconsin, Illinois, South Carolina, Maryland, and Connecticut).

already earned the wages they access, and they lack the defining features of lending under established credit principles. Treating EWA as credit would elevate payroll timing mechanics over substance and impose regulatory constructs ill-suited to wage-based payment services.

EWA allows workers to access a portion of compensation already earned through completed labor, rather than advancing funds against future income. A worker's legal entitlement to wages arises independently of the EWA transaction, and access is conditioned on verification of accrued wages, typically through payroll and timekeeping systems. Amounts available are limited to earned but unpaid wages. A transaction that begins only after wages have been earned and verified cannot meaningfully be analogized to a loan, which by definition involves the extension of funds accompanied by an obligation to repay money that was not previously owed to the consumer.

The defining attributes of debt are absent from EWA. Traditional lending products involve a personal obligation to repay interest or finance charges as compensation for credit risk and the time value of money, and creditor remedies to enforce repayment. EWA products are non-recourse. If reconciliation does not occur, providers have no right to pursue workers for repayment, engage in collections, initiate lawsuits, or report to credit bureaus. Workers face no interest, late fees, penalties, or adverse credit consequences. These structural features are fundamentally incompatible with the concept of debt.

EWA providers likewise do not engage in credit underwriting or assume credit risk in the manner characteristic of lenders. Access decisions are not based on credit scores or repayment capacity, but on the existence of an employer's wage obligation arising from completed work. Fees, where charged, are optional and typically associated with expedited delivery services and are not tied to the amount accessed or the passage of time. Many providers offer at least one no-cost option. These fees do not function as interest or finance charges.

Misclassifying EWA as a loan would not enhance consumer protection. Instead, it would subject these services to regulatory regimes designed for credit products, increasing compliance burdens and would likely force EWA providers to remove the fundamental qualities that make EWA a distinct non-credit service. In practice, the categorization of EWA as a credit product would upend the market District and leave D.C. workers with no viable alternatives to high-cost, predatory payday lending products. Such regimes that presume underwriting, interest rate regulation, and repayment enforcement do not align with the fundamental aspects of EWA services and are therefore ill-suited for regulating EWA in a pragmatic manner. Experience in jurisdictions that have applied small-dollar lending frameworks to EWA shows that providers often exit those markets rather than fundamentally alter their products to resemble loans.[6] For example, in January 2024, the State of Connecticut pursued policy changes that treated EWA services in a similar manner as loans. As a result, responsible EWA providers removed their services from the state. According to a University of Connecticut study consumers in Connecticut, particularly liquidity constrained consumers, were made far worse off by the State of Connecticut's policy changes related to EWA services.

[6] Kerri M. Raissian, Jennifer Necci Dineen, Katie Fitzpatrick, and Andrew Pixley, Connecticut Earned Wage Access User Impact Study (Storrs, CT: University of Connecticut, April 2025), accessed January 28, 2026, https://publicpolicy.media.uconn.edu/wp-content/uploads/sites/3091/2025/04/CT_EWAUserStudy_UConn_Raissian_04072025.pdf (examining the effects of Connecticut's regulatory change on EWA users).

Provider exits do not eliminate demand for short-term liquidity; they redirect workers toward higher-cost and higher-risk alternatives, including payday loans, overdraft services, and revolving credit products that carry interest, penalties, and long-term credit consequences. By contrast, jurisdictions that have adopted EWA-specific frameworks have demonstrated that tailored regulation can preserve access while establishing appropriate guardrails, including transparency, limits tied to earned wages, prohibitions on interest, and preservation of non-recourse structures.

Regulatory clarity is therefore essential to responsible innovation and market participation. When providers, employers, and workers are certain that compliant EWA services will not be reclassified as loans all parties benefit. Specifically, EWA providers are better positioned to invest in compliance, employer integrations, and consumer education. Avoiding the misclassification of EWA as credit supports competition, innovation, and continued access to safe, affordable, and transparent services for District residents to access the wages they have already earned.

II. Accurate Classification of EWA Prevents Consumer Harm and Preserves Access to Lower-Cost Alternatives

Misclassifying EWA services as a loan or credit product would not advance consumer protection. It would instead undermine the very objectives that consumer financial regulation is designed to serve by reducing access to responsible EWA services, distorting consumer understanding of the product's costs, and pushing workers toward higher cost, riskier financial products. Ensuring consumer protections are properly established for EWA providers is best addressed through a framework that reflects the product's actual features, rather than through the imposition of credit-based constructs that presume debt, interest, and repayment liability where none exist.

This section explains why treating EWA as credit would be counterproductive from a consumer protection perspective. Section A) addresses how misclassifying EWA services as credit would limit access to short-term, wage-based liquidity that workers rely on; B) explains how reasonable limits on EWA transactions can support responsible use when grounded in earned wages and payroll mechanics, without importing credit-based constraints; C) next describes why applying existing credit disclosure frameworks to a non-debt product would mislead consumers about costs rather than enhance transparency; and D) explains the importance of affirming core employee rights to ensure that EWA remains voluntary, non-coercive, and consistent with its wage-based design."

A. Misclassifying EWA as Credit Would Limit Access to Short-Term, Wage-Based Liquidity

Clear, accurate, and appropriately tailored disclosures are central to effective consumer protection in the EWA space. Because EWA is a wage-based payment timing service rather than a form of borrowing, disclosure requirements should be designed to reflect the product's actual structure and operation. Applying existing credit-centric disclosure frameworks to EWA would

not enhance transparency and would instead risk misleading consumers about costs, risks, and their legal obligations.

Traditional credit disclosures, such as annual percentage rate, finance charge, and repayment schedule, are premised on the existence of debt, interest, and a borrower's obligation to repay money advanced against future income. These concepts do not map onto EWA transactions, which involve access to compensation already earned, but not yet paid, and do not impose interest, late fees, or personal repayment liability. Requiring EWA providers to frame disclosures using credit-based metrics would therefore create a false equivalence between EWA and lending, potentially leading consumers to believe they are incurring debt or paying interest when they are not.

Consumers generally understand EWA as a mechanism for accessing wages already earned, not as a loan. Introducing credit-style disclosures risks distorting this understanding and undermining informed decision-making by injecting terminology that implies borrowing, repayment risk, and long-term financial obligation. Rather than clarifying costs, such disclosures could obscure the absence of debt and the non-recourse nature of EWA products, contrary to the objectives of consumer financial disclosure regimes.

Effective EWA disclosures should instead explain, in plain language, how wage access works and what consumers can expect when using the service. This includes clearly describing how available amounts are determined based on earned wages, how and when funds are delivered, how reconciliation occurs through payroll or account settlement, and what fees, if any, may apply depending on the delivery option selected. Disclosures should emphasize that access to earned wages does not create a personal obligation to repay, does not result in interest or penalty-based charges, and does not give rise to debt collection activity or adverse credit reporting.

Providers should be required to disclose all fees clearly, to offer at least one no-cost access option, and to explain the voluntary nature of any tips, gratuities, or expedited delivery fees. These requirements focus on the information consumers actually need to make informed decisions about EWA use, without reframing the service as borrowing or importing disclosure constructs designed for credit products.

Aligning disclosure requirements with EWA's wage-based structure promotes transparency while avoiding consumer confusion. Plain-language disclosures that accurately describe product mechanics and costs reinforce consumer understanding and trust, whereas credit-centric disclosures risks obfuscating and mischaracterizing the service. A disclosure framework tailored to EWA therefore better advances consumer protection by ensuring that workers understand both their rights and the true nature of the service they are using.

B. Reasonable Limits on EWA Transactions Support Responsible Use Without Importing Credit Constraints

Reasonable limits on the frequency and amount of EWA transactions are an important component of responsible program design. Since EWA allows employees to access wages they have already earned, appropriate limits should be tied to earned compensation and payroll timing rather than to repayment capacity or credit-based metrics. Most EWA programs already

incorporate structural limits that align access with wages earned to date. Available amounts are typically capped at a portion of accrued but unpaid wages, and access is reconciled through regular payroll cycles. These design features naturally limit both the size and frequency of transactions, since access is constrained by hours worked and pay period progression rather than by revolving balances or rollovers.

Regulatory frameworks should recognize and reinforce these wage-based limits rather than impose rigid numerical caps that fail to account for differences in pay frequency, work schedules, or income patterns. Limits that are overly prescriptive may inadvertently restrict access for workers who are paid less frequently or who experience variable hours, even when wages have already been earned. At the same time, guardrails that prevent continuous or unrestricted access beyond earned wages are appropriate and consistent with consumer protection goals. EWA programs should not permit access to future or unearned compensation, nor should they allow repeated access that bypasses payroll reconciliation. Aligning access limits with earned wages and pay periods helps ensure that EWA functions as a payment timing tool rather than as a substitute for credit. By grounding frequency and amount limits in earned compensation and payroll mechanics, regulators can address concerns about overuse without imposing credit-based constraints that are ill suited to wage access services. This approach preserves flexibility for workers while maintaining clear boundaries that support responsible use and financial stability.

C. Applying Existing Credit Disclosures to EWA Would Mislead Consumers About Costs

AFC strongly advocates for ensuring consumers are provided with clear and conspicuous disclosures when engaging with EWA services. However, applying existing credit disclosure requirements to EWA would risk misleading consumers about the nature and cost of the product. Metrics such as annual percentage rate and finance charge are designed to describe the cost of borrowing money over time. They assume the existence of principal, interest, repayment schedules, and creditor remedies. None of these concepts accurately describe an EWA transaction, which involves access to earned wages without interest and without an obligation to repay.

Requiring EWA providers to present disclosures framed in the language of credit could create the false impression that workers are incurring debt or paying interest when they are not. Studies indicate that consumers generally do not view EWA as a loan and understand it as a tool for accessing wages already earned.[7] Simply put, consumers' financial lives center on dollars and cents. Conveying to a consumer that they selected an optional expedite fee of $3.49 is much clearer and easily understandable than providing a percentage calculated through a formula that requires multiple iterations of division and multiplication. Introducing loan style disclosures would therefore risk confusing consumers and undermining informed decision making, contrary to the stated goals of consumer financial disclosure regimes. Clear, plain language disclosures that explain how EWA works, what wages are available, how reconciliation occurs, and what fees, if any, apply are the proper disclosures to promote transparency and understanding.

[7] Financial Health Network, Exploring Earned Wage Access as a Liquidity Solution: Findings From a Study of Earned Wage Access Users (November 2023), accessed January 27, 2026, https://finhealthnetwork.org/wp-content/uploads/2023/12/EWA-Users-Report-2023.pdf (finding that most users do not view earned wage access as a loan and understand it as access to wages already earned).

D. Affirming Core Employee Rights Ensures EWA Remains Voluntary and Non-Coercive

An effective regulatory framework for EWA should expressly recognize and preserve the fundamental rights of employees who choose to use these services. Since EWA operates as a mechanism for accessing earned compensation rather than as a credit product, employee protections should focus on autonomy, fairness, and freedom from adverse consequences, rather than on borrower-style obligations.

As noted in AFC's standards for EWA services, employees should retain the right to decide whether to use EWA and their frequency of use.[8] Participation should be entirely voluntary, and employees should be able to discontinue use at any time without penalty. Use of EWA should not affect compensation, work schedules, performance evaluations, or continued employment, and employers should not require participation as a condition of employment.

Employees should also retain the right to be free from personal financial liability arising from EWA transactions. Accessing earned wages should not create a personal obligation to repay funds, subject employees to collection activity, or result in negative credit reporting. Where reconciliation cannot occur due to employment separation or payroll disruption, the appropriate outcome should be the suspension of future access rather than the imposition of financial penalties.

In addition, employees should retain the right to understand the terms under which EWA operates in a manner that is accurate and not misleading. Workers should receive clear explanations of how access is determined, how reconciliation occurs, and what options are available, so they can make informed decisions about whether and when to use EWA.

Accurate classification of EWA as a non-loan product supports financial stability and consumer choice by preserving access to a diverse set of financial tools with varying risk profiles. When workers have access to liquidity through EWA services—which do not involve interest or debt—they are better positioned to avoid cascading financial consequences such as repeated overdrafts, compounding interest charges, and cycles of re-borrowing. Users of EWA are less likely to rely on payday loans and overdraft services, resulting in meaningful consumer savings and reduced financial stress. Ultimately, these consumers are able to take control of their financial lives more easily and save money that would have been lost to the high-cost financial products that EWA providers compete against in the market.

Conversely, when EWA is constrained or eliminated through misclassification, workers are more likely to turn to products that carry higher costs and greater long-term risk. As previously noted, this displacement effect has been documented in jurisdictions where EWA providers exited the market following adverse regulatory treatment.[9] From a consumer protection perspective, preserving access to lower cost, wage-based options while establishing appropriate guardrails is preferable to driving consumers toward more harmful alternatives. A regulatory framework that recognizes EWA's non loan nature therefore aligns consumer protection with market realities and promotes better outcomes for District residents.

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[8] American Fintech Council, EWA Standards for Responsible Providers.

[9] Raissian et al., Connecticut Earned Wage Access User Impact Study.

EWA should properly be understood as a wage-based payment timing mechanism rather than a loan or extension of credit. The preceding analysis was intended to demonstrate that EWA does not create debt, impose interest, or allocate credit risk to workers, but rather enables access to compensation already earned through completed labor. It further explained that treating EWA as credit would amount to regulatory overbreadth, distort consumer understanding, and impede responsible innovation while reducing access to low- or no-cost cost alternatives to high-risk financial products, such as payday loans. Accurate classification of EWA as a non-loan product is therefore foundational to effective consumer protection and provides the necessary predicate for evaluating appropriate disclosure and fee frameworks addressed in the following section.

III. Preserving Flexible and Transparent Fee Structures Supports Consumer Access Without Transforming EWA Into Credit

Flexible, transparent, and optional fee structures are a defining feature of responsible EWA models and an essential component of consumer choice. Preserving these structures, including the availability of voluntary tips and optional expedited delivery fees, ensures that consumers have the optionality they need in the market. Consistent with EWA's non-loan structure, fee regulation should focus on transparency, voluntariness, and guaranteed no-cost access rather than credit-style price controls. Recent federal guidance has similarly emphasized that the consumer protection analysis of earned wage access products turns on product structure and conditioning, rather than on the mere presence of optional fees. In particular, the Consumer Financial Protection Bureau (CFPB) focused on whether access to earned wages is contingent on payment of a fee, whether consumers are provided a clear and reasonable no-cost option, and whether any charges function as compensation for the time value of money or credit risk.[10] Within its recently issued Advisory Opinion—which constitutes the CFPB's official position—optional fees, such as tips and expedite fees are not considered finance charges. Given the significant legal and policy analysis underpinning the CFPB's assessment of optional fees, it is prudent for DISB to pursue regulation that would align with the CFPB's perspective on this issue.

As DISB considers whether to impose fee caps or mandate no-cost access requirements for EWA services, it is important that any such provision be calibrated to preserve both consumer protection and continued access to responsible wage-based liquidity. Properly structured EWA products already incorporate meaningful cost safeguards that distinguish them from high-cost credit, including the widespread availability of at least one no-cost option and the absence of interest, finance charges, or time-based pricing. Requiring EWA providers to offer a reasonable no-cost access option is an appropriate and effective consumer protection measure. Such requirements ensure that workers are able to access earned wages without paying mandatory fees, while still preserving the flexibility for providers to offer optional expedited delivery services for those who value faster access.

By contrast, rigid fee caps that fail to account for the operational realities of EWA risk producing unintended consumer harm. Unlike lending products, EWA does not generate revenue through

[10] Consumer Financial Protection Bureau, Truth in Lending (Regulation Z); Non-application to Earned Wage Access Products, 90 FR 60069 (December 23, 2025), accessed January 27, 2026, https://www.federalregister.gov/documents/2025/12/23/2025-23735/truth-in-lending-regulation-z-non-application-to-earned-wage-access-products.

interest or repayment-based pricing. Providers must instead conduct business activities, such as supporting payroll integration, real-time wage verification, operation of robust compliance systems as well as customer support infrastructure. Artificially constraining permissible fees beyond ensuring access to a no-cost option may undermine the sustainability of compliant providers, reduce competition, and lead to market exits—outcomes that historically have resulted in workers being redirected to higher-cost and higher-risk alternatives.

Importantly, fee caps designed for credit products are ill-suited to EWA's wage-based structure. Since EWA fees are not tied to the amount accessed or the duration of use, they do not function as finance charges and should not be evaluated through the same lens as interest rate limitations. Consumer protection is better advanced through transparency, voluntariness, and guaranteed free access, rather than through the imposition of price controls that risk eliminating the very options they are intended to regulate.

Accordingly, AFC supports a framework in which EWA providers are required to offer a no-cost access option, clearly disclose any optional fees, and are prohibited from charging interest or engaging in debt collection. This approach ensures meaningful consumer protection while preserving the flexibility necessary for providers to sustain operations and continue offering wage-based access services. Regulatory focus should remain on fees and costs borne directly by employees, rather than on back-end mechanisms that do not affect employee pricing or access.

Some EWA models make use of debit cards or payment rails that may generate interchange fees as part of standard card network operations. These interchange fees are set by card networks and paid by merchants or financial institutions as part of ordinary payment processing. They are not charged to employees as a condition of accessing earned wages and do not function as consumer pricing for EWA services.

Importantly, interchange fees are not determined by the EWA provider and are not tied to the amount of wages accessed, the frequency of use, or the timing of payroll reconciliation. Where debit cards are used, interchange revenue, if any, is incidental to the delivery mechanism and not a substitute for interest, finance charges, or mandatory consumer fees. Since interchange arises from general payment system rules rather than from the EWA transaction itself, it should not be treated as a consumer charge or a factor in evaluating the cost of earned wage access to employees. Regulating interchange in the EWA context would not enhance transparency or consumer protection and risks conflating back-end payment processing with front-end wage access services. Accordingly, any EWA regulatory framework should distinguish clearly between consumer-facing fees and network-level interchange mechanics. Focusing oversight on fees and charges borne by employees, rather than on payment system economics outside the employee relationship, will better align regulation with actual consumer impact.

Consistent with this approach, EWA fee models differ fundamentally from the pricing mechanisms of lending products. Fees associated with EWA are not tied to the amount accessed or the passage of time, do not compound, and do not function as consideration for the use of borrowed money. In alignment with AFC's EWA Standards, responsible providers in the industry offer at least one reasonable option through which consumers may obtain proceeds at no cost, while also offering optional expedited delivery services for those who value faster access.

In contrast to network-level interchange mechanics, some providers also allow employees to choose whether to pay voluntary tips or gratuities in connection with earned wage access, with access to wages not conditioned on the payment or size of any such amount and with a zero-dollar option always available. the CFPB similarly distinguished truly voluntary tips or gratuities from mandatory charges, emphasizing that such amounts do not constitute finance charges where access to earned wages is not conditioned on payment, suggested amounts do not affect availability or frequency of access, and consumers are clearly informed that a zero-dollar option is available.[11] These optional fees reflect consumer preference and service delivery choices, not credit risk or repayment duration.[12]

Voluntary tips and gratuities, when properly disclosed and entirely optional, further support consumer access without imposing mandatory costs. Empirical research shows that many consumers choose to use EWA without paying any fee or tip at all, while others elect to provide a voluntary amount based on perceived value or ability to pay. Crucially, access to proceeds, the amount available, and the frequency of use are not contingent on the payment or size of any tip. This structure preserves consumer autonomy and avoids the coercive dynamics associated with mandatory charges.[13]

The AFC advocates for legislation that enables providers to offer at least one no cost option, to disclose all fees clearly, and to make conspicuous that tips, gratuities, or donations may be zero and are voluntary. Fees and voluntary tips should not be considered interest or finance charges and should reinforce the distinction between wage access and credit. This statutory clarity ensures that transparent fee structures are preserved without triggering the application of credit based regulatory regimes.

Treating optional EWA fees as finance charges or otherwise equating them with interest would have adverse consumer consequences. If providers were required to recover costs solely through mandatory charges or credit style pricing, access to no cost options would likely diminish. Such outcomes would disproportionately affect workers with limited financial flexibility, undermining the very consumer protection goals that fee restrictions are often intended to advance.

By contrast, preserving flexible and transparent fee structures allows EWA providers to balance sustainability with access, innovation with accountability, and consumer choice with clear guardrails. When paired with robust disclosure requirements, prohibitions on interest and collections, and non-recourse structures, these fee models support a regulatory framework that protects consumers without distorting the economic substance of EWA. Maintaining this balance is critical to ensuring that EWA remains a safe, non-credit alternative to high-cost credit for District residents.

IV. Leveraging Other Jurisdictions' Recognition of EWA as a Non-Loan Promotes Regulatory Consistency

[11] Consumer Financial Protection Bureau, Truth in Lending (Regulation Z); Non-application to Earned Wage Access Products, 60072
[12] Consumer Financial Protection Bureau, Truth in Lending (Regulation Z); Non-application to Earned Wage Access Products (concluding that bona fide expedited delivery fees and subscription fees associated with covered earned wage access products are not finance charges)
[13] Financial Health Network, Exploring Earned Wage Access as a Liquidity Solution: Findings From a Study of Earned Wage Access Users (November 2023), accessed January 27, 2026, https://finhealthnetwork.org/wp-content/uploads/2023/12/EWA-Users-Report-2023.pdf (finding that most consumers either pay no fee or view tips as voluntary expressions of value rather than mandatory charges).

As the District considers an appropriate regulatory framework for EWA, it does so against the backdrop of a rapidly developing body of state law that has already grappled with many of the same classification and consumer protection questions. As previously noted, a growing number of jurisdictions have concluded that EWA, when structured as non-recourse access to earned but unpaid wages and subject to tailored safeguards, is not a loan or extension of credit. Leveraging these frameworks promotes regulatory consistency, reduces fragmentation, and advances consumer protection by aligning oversight with economic reality.

States that have enacted EWA specific statutes have done so with a clear understanding of the product's distinctive characteristics. Rather than force EWA into preexisting consumer lending regimes, these jurisdictions have adopted bespoke frameworks that expressly exclude EWA from the definition of loans or credit while simultaneously imposing meaningful guardrails. Arizona, Missouri, Montana, and Nevada, among others, have codified that EWA products meeting specified conditions are not consumer loans, do not involve interest or finance charges, and may not give rise to debt collection or credit reporting.[14] These determinations reflect a deliberate policy choice to regulate EWA on its own terms.

Importantly, these state approaches demonstrate that clarity on classification enhances, rather than weakens, consumer protection. By affirmatively stating that compliant EWA products are not loans, legislatures have reduced uncertainty for consumers and providers alike, while directing regulatory attention to issues that actually matter for worker outcomes, such as fee transparency, data protection, and the preservation of non-recourse structures. This clarity allows regulators to enforce EWA specific requirements without the distortions that arise when credit-based concepts are superimposed on wage access models.

Consistency across jurisdictions mitigates regulatory arbitrage, uneven consumer access, and provider withdrawal from certain markets. Further, regulatory consistency encourages responsible innovation, as well as the continued development of the market by allowing EWA providers to scale efficiently and easily offer their services nationally. Fragmented classification regimes increase compliance costs, discourage entry by innovative firms, and reduce the availability of responsible wage-based tools. Recognizing the convergence across jurisdictions around core principles that EWA is wage access rather than borrowing, and that consumer protection is best advanced through tailored disclosures, non-recourse structures, transparent fees, and regulatory clarity, allows the District to align with prevailing state consensus without wholesale adoption of another state's statute. This approach supports a durable framework that protects consumers, promotes consistency, and reinforces the District's role as a thoughtful regulator of modern financial services.

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[14] Arizona Attorney General, Op. No. I24-002 (concluding that non-recourse, no-interest earned wage access products fall outside Arizona's consumer loan statute); Mo. Rev. Stat. §§ 408.700–408.707 (establishing earned wage access requirements and prohibiting interest, credit reporting, and debt collection); Mont. Code Ann. §§ 31-1-101 et seq. (excluding qualifying earned wage access products from the definition of consumer loans); Nev. Rev. Stat. ch. 604D (establishing licensure requirements for earned wage access providers while expressly providing that compliant services are not credit or money transmission).

AFC respectfully submits that DISB's continued engagement with stakeholders is essential to developing an Earned Wage Access regulatory framework that is analytically sound, operationally durable, and responsive to the financial realities facing District workers. As detailed throughout this letter, EWA functions as a wage-based payment timing tool rather than a form of credit, and consumer protection is best advanced through a tailored framework that preserves non-recourse structures, ensures transparent disclosures, and preserves access to wage-based liquidity that reduces reliance on higher-cost, higher-risk financial products. We appreciate the Department's thoughtful approach to soliciting broad public input and its commitment to balancing consumer protection with access to safe, innovative financial services. DISB should continue this work through tailored regulatory action. To the extent that the DC city council is engaging on this issue, AFC recommends that DISB assists with the legislation to craft it in accordance with the views offered in this letter. AFC welcomes continued dialogue with DISB as it considers and refines an EWA regulatory structure that reflects economic reality, aligns with emerging state consensus, and promotes financial stability, worker autonomy, and equitable access to earned wages for District residents.

Sincerely,

Ian P. Moloney
Chief Policy Officer
American Fintech Council