

August 30, 2024

Rohit Chopra, Director
Consumer Financial Protection Bureau (CFPB)
1700 G Street NW
Washington, DC 20552

Re: Comments on the Consumer Financial Protection Bureau's Proposed Interpretive Rule on Regulation Z. Docket No. CFPB-2024-0032.

Dear Director Chopra,

On behalf of UnidosUS, we respectfully submit the comments below in response to the Consumer Financial Protection Bureau's (CFPB) proposed interpretive rule on earned wage access products.

UnidosUS is a nonprofit, nonpartisan organization that serves as the nation's largest Hispanic civil rights and advocacy organization. Since 1968, we have challenged the social, economic and political barriers that affect Latinos through our unique combination of expert research, advocacy, programs and an Affiliate network of over 300 community-based organizations across the United States, including Puerto Rico.

The Consumer Financial Protection Bureau's (CFPB) interpretive rule clarifies that earned wage access products are considered credit and addresses how to treat fees, like expedited fund delivery fees and tips, associated with earned wage access products. Our recent poll found that:*

- Over half of Latino Earned Wage Access (EWA) users utilize it for regular recurring expenses, with 40% using it as an alternative to payday loans and other short-term borrowing options.
- Latino workers generally value EWA products, with over half of users reporting an overall positive impact on their financial well-being.
- Direct-to-consumer EWA products are used more than employer-provided options. Seven percent of Latinos reported using pay advance loans from non-bank providers (e.g. Brigit, Dave, EarnIn), compared to 5% using employer-provided pay advances.

* We note that while the funding for the poll came from Oportun, a consumer lender, the UnidosUS team exercised complete substantive control over every aspect of the survey, including the topics covered and the wording of every question presented in the survey. We also presented the survey publicly in a complete form with no omissions in the data.

- Nationally, EWA usage rates were similar across income bands, though those earning over \$30,000 annually were more likely to use employer-provided pay advances than those earning \$29,000 or less.

Our comments outline the economic landscape that Latino consumers face today, highlighting the increasing importance of earned wage access products as financial tools for lower- and middle-income workers. We generally support the CFPB's interpretive rule, as finance charge disclosures will facilitate more informed consumer decision-making. However, we also emphasize the importance of balancing consumer guardrails with ensuring access to credit in future rulemakings regarding earned wage access. We also recommend that the CFPB conduct research to predict how a future rulemaking may affect access to credit for Latino and lower-income consumers, as we see from polling data that there is a need for such products, and that Latino consumers value them. Future rules should set out rules that ensure earned wage access services remain a safe, accessible tool for workers who use these services.

Rising costs and insufficient income push Latinos to consider a wide array of short-term financial options

Over the past few years, Latinos made significant economic strides, largely recovering economically from the pandemic-related harms to the U.S. economy. A [July 2024 UnidosUS report](#) spotlights the many important pandemic relief programs that reduced poverty and bolstered jobs and income for working-class Latinos.

Additional gains in homeownership among middle-class Latinos boosted the median wealth of Hispanic households by 47% from 2019 to 2022. Similarly, an [Economic Policy Institute \(EPI\) analysis](#) of Current Population Survey (CPS) data found that since 2019, real wages (wages adjusted for inflation) have grown at a historic pace, with the lowest-income workers (10th percentile) seeing the highest wage growths (at 13%), and workers in the lower-middle income bucket (20th to 40th percentiles) experiencing a 5% growth in wages. This growth is particularly meaningful for workers who are overconcentrated in occupations characterized by low pay, fewer workplace protections and less access to benefits. According to the [Institute of Assets and Social Policy](#), nearly two-thirds of Latino workers fall into this category.

Despite robust gains, Latinos remain particularly vulnerable to high living costs and unexpected financial emergencies. The [EPI analysis](#) finds that although wages for Latinos increased at unprecedented rates in the post-pandemic years, when compared to the previous four decades, Latino workers' wages continue to lag that of their white counterparts. Additionally, the wage gap for Latinas, many of whom are single heads of households, has only decreased by [five cents in the last thirty years](#).

An [UnidosUS 2024 Banking and Financial Health survey](#) of 1,200 Latinos across Arizona, California and Texas found that Latinos are concerned about lack of income and rising cost of living, citing both as a top economic concern. Latinos making less than \$29,000 were especially more likely to cite insufficient income as a top concern.

To counter income shortfalls and rising expenses, Latinos use various short-term financial solutions, with income levels serving as a reliable indicator of which options are available to them. Across the board, Latino respondents reported a high reliance on personal networks, with 28% of respondents choosing to borrow from family or friends. But Latinos making less than \$50,000 per year resorted to alternative financial services, like pawn shops and payday loans, at higher rates than did Latinos earning more than \$50,000.

Latinos' use of earned wage access is small but is increasingly used to meet essential needs

A growing number of Latino consumers are turning to earned wage access services to meet essential needs. In 2024, UnidosUS conducted a [Banking and Financial Health survey](#)^{*} of over 1,200 Latinos across California, Texas and Arizona. It found that:

- Over half of Latinos that reported using earned wage access used it to cover regular recurring expenses. And 40% of Latinos that used EWA leveraged these services as an alternative to payday loans and other short-term borrowing options.[†]
- Latino workers value earned wage access products generally and rate them higher than expected. Over half of Latinos that reported using EWA believed the product had an overall positive impact on their financial well-being.
- Where payday lending is less available, there may be an increase in usage of alternatives like EWA: For example, although Latinos' use of earned wage access is comparatively small, its use by low- and middle-income workers in Arizona, where payday lending is much more restricted, is higher than the national rate.
 - Interestingly, Arizona respondents earning less than \$50,000 were much more likely than respondents in California and Texas to report using earned wage access services. For respondents in Arizona, earned wage access through a non-bank provider was one of the top five income sources previously used in the past 12 months.
 - State-level findings in California and Texas track those at the national level, with respondents relying on more familiar sources of income like their personal network, pawn shops and personal loans.
- Direct-to-consumer EWA products are used at higher rates than employer-offered options. When asked which of the following income sources or options had respondents used over the past 12 months, more Latinos reported using a pay advance loan from non-bank providers like Brigit, Dave or EarnIn (7%) than a pay advance loan through their employer (5%).
 - At the national level, these rates were similar across different income bands, though respondents earning more than \$30,000 were more likely to report using pay advance loan from an employer than respondents earning \$29,000 or less.

^{*} Given a small sample size, we caution these data may be indicative, but not robust enough to draw conclusions with certainty.

[†] Respondents in this survey selected all uses that applied to their situation so some totals may add up to more than 100.

Our survey's findings are corroborated by other research, which also points to the growing importance of earned wage access services among Latino consumers. A [2021 report by Plaid](#) found that Latino usage rates of earned wage access products was almost triple the rates than Black and white consumers combined. A more comprehensive [2021 American Banker survey](#) on the use of earned wage access found that Latinos were more likely to use these services, were the heaviest users of on-demand pay and were almost twice as likely than white users to use funds received to purchase groceries. The survey also found that Latino users were more likely than their Black and white counterparts to delay payment of a bill, take out a payday loan or bounce a check if earned wage access services were unavailable.

The CFPB's interpretive rule can enhance consumer choice through comprehensive disclosures

Data shows that Latino consumers are increasingly turning to earned wage access products as a strategic financial tool: [40% of users leverage these services as an alternative to payday loans and other short-term borrowing options.](#)

Given the potentially severe consequences of these alternatives—such as late payment penalties on credit cards and missed payments that can snowball into derogatory marks on consumers reports to costly non-sufficient funds fees—it is easy to understand the appeal of earned wage access for consumers. For Latinos particularly, these products appear to be helping consumers sidestep more dire financial pitfalls.

The CFPB's new interpretive rule classifies earned wage access products as credit and mandates finance charge disclosures under Regulation Z. Additional transparency in the form of disclosures would likely facilitate the analysis that consumers perform when choosing financial tools to meet their needs and could help to mitigate confusion around cost comparisons for products that fill the same financial gaps. For example, the U.S. Government Accountability Office (GAO) finds that [the range of fees for earned wage access are lower than the range of typical payday loan fees.](#) With a growing number of models and competitors in the credit marketplace, consumers need easy-to-use and comprehensive information on cost.

The Bureau's interpretive rule to classify earned wage access products as credit is an important step to address the evolving array of options available to cash-strapped consumers. To ensure truly informed decision-making and facilitate comparison shopping for consumers, we support the CFPB's interpretive rule to mandate finance charge disclosures. This approach will arm consumers with a more holistic view of their financial choices and foster a more transparent financial landscape.

Future rulemaking must protect consumers without cutting off financial lifelines for vulnerable Americans

Looking forward, we strongly urge the Bureau to consider how future rulemaking on EWA may impact options available to lower-income and Latino consumers. Future rulemaking must strike a delicate balance: protecting consumers from unfair practices while not exacerbating the short-term liquidity challenges that millions of Americans face today. There is a need for new protections. [Data show](#) that lower-income users are more likely to use EWA to meet immediate needs, like paying their rent or mortgage. And they are among the most vulnerable to predatory practices by market players. For example, lower-income consumers might be the first to accept [offers from earned wage access providers that promise a temporary increase in accessible wages](#), provided these consumers either refer others in their network (who likely face similar financial circumstances) to use the service or ask an existing user to vouch for them.

At the same time, lower-income consumers stand to lose the most if access to credit through earned wage providers is curtailed, given the value of the product for consumers as demonstrated in the data and the high cost of credit alternatives or of missing bills.

We also urge the CFPB to conduct thorough research on how specific regulatory approaches may affect access to credit for Latino consumers with regard to access to EWA. This research should focus on how consumers of color and lower-income consumers interact with earned wage access products. For example, probative data could include information on the frequency of use, average transaction amounts, primary reasons for accessing funds early, average days to repay, number of missed payments, etc. The research could also differentiate between direct-to-employer and direct-to-consumer models of earned wage access products, as well tip and non-tip models. And, as the [California Department of Financial Protection and Innovation](#) concludes, more research is needed to understand the unique situations of lower-wage workers that may work variable hours or have extensive periods of leave as they might be particularly vulnerable to service disruptions that can lead to financial hardship.

Overall, the Bureau should act with forethought to avoid unforeseen consequences. There is at least some evidence that certain state regulatory approaches could push providers to leave the marketplace altogether, potentially limiting the options available to consumers. For example, the Connecticut Department of Banking released [guidance](#) in 2023 that brought earned wage access products under the purview of the Small Loan Lending and Related Activities Act. While this decision was intent to extend credit-related consumer protections to users of these products, it also effectively capped fees, including “voluntary tips,” that earned wage access providers could charge, as Connecticut small loans are subject to a 36% APR limit. Consequently, EarnIn, a provider serving 20,000 Connecticut customers, [withdrew from the market](#). Although the regulation enhanced consumer protections in some important ways, the exit of a significant player has potentially reduced consumer choice and access to a financial tool some have come to rely on.

Conclusion: The Bureau must protect consumers while preserving access to key financial tools

We support the CFPB's move to classify earned wage access products as credit. This important step enhances transparency at a time where millions of Americans are looking to make ends meet.

As the Bureau considers future rulemaking, we urge a balanced approach that safeguards consumers without inadvertently restricting access to vital financial lifelines. We recommend thorough research on how regulations might impact access to credit for vulnerable populations.

When some alternatives available to consumers are proven to be so much worse, the Bureau should carefully consider how regulations on earned wage access products can protect consumers while maintaining the benefits of these essential products.

For questions or additional dialogue on these issues, please contact Susana Barragán, Economic Policy Analyst, at sbarragan@unidosus.org.