AMERICAN PAYROLL ASSOCIATION

Understanding Earned Wage Access and Payroll

Understanding Earned Wage Access and Payroll

Table of Contents

Overview

Introduction

Recent studies have found that almost one in five households report that their expenses regularly exceed their income,[1] and over two in five report worrying about and having difficulty paying their bills.[2] Nearly 80% of workers live paycheck to paycheck.[3] An essential problem common to all workers is that expenses do not align with paydays, which drives people to high-cost payday loans.

According to the Federal Reserve Bank, in April 2020, 72% of adults were either "doing okay" financially (43%) or "living comfortably" (29%). This is down from the 75% of adults who were at least doing okay financially in the fall of 2019 and the 36% who were living comfortably.[4]

Bankrate's January 2020 Financial Security Index survey revealed that only 41% of adults would be able to cover the cost of a $1,000 emergency using savings and just 18% of Americans say they could live off their savings for at least six months.[5]

Recent advances in technology have made possible the ability of employees to access their earned wages prior to their regular payday. These new alternatives are known as earned wage access, early wage access, accrued wage access, on-demand pay, same-day pay, and instant pay (collectively EWA).

Purpose

Today, EWA programs have moved from the early adoption phase to become a more established business practice and part of the benefits package offered to employees. When EWA programs are used effectively, employees can gain greater financial security. These programs can help employees with the misalignment of expenses between paydays but are not a complete solution to employees' financial problems.

Policymakers are beginning to consider EWA technologies and consumer financial stability, seeking to determine whether there is a role for government.

The American Payroll Association (APA) set out to understand the advantages and disadvantages of EWA technology and potential impacts on payroll management.

Established in 1982, the APA is a not-for-profit association serving the interests of about 20,000 payroll professionals nationwide. APA's primary mission is to educate its members and the payroll industry about the best practices associated with paying America's workers while complying with applicable federal, state, and local laws and regulations.

APA members are directly responsible for calculating wages and tax withholding for their employers. Therefore, this paper is intended to:

1. Assist payroll professionals as they consider EWA options for their employers,

2. Best position the APA to respond to proposed laws and regulations on behalf of its members, and

3. Provide government policymakers with background information about EWA and how it is used.

This paper does not identify nor does the APA endorse any particular technology or management approach. The APA is concerned about employers and employees but does not represent them. Therefore, APA is not positioning itself with any specific business, employer, or consumer group.

The APA does pursue information on quality innovation and execution in the financial services marketplace and payroll management space to promote the ability of payroll professionals to best serve their employers and employees.

The EWA models that are the subject of this report involve employers in the process. Other early payment models, such as direct-to-consumer options, are mentioned but regulatory considerations are different than EWA.

Some employers may consider offering early payment of wages to employees through internal payroll operations and not a service provider. While this is possible, regulators may not distinguish these payments from a one-day payroll. Considerations for employers between a one-day payroll and EWA program are not the subject of this report.

The Decision Process

Introduction

Before an employer selects an EWA service provider, it must first decide whether to offer this benefit to employees. Today, employers typically consider employee benefits as a package along with wages that make up employees total compensation. The EWA benefit should be considered in this context. Additional considerations may include an employer's understanding of its culture and workforce, whether an EWA program will improve its employees' financial security, and the ability to offer an EWA program to its employees fairly.

Employers are also interested in whether employee benefits will help them attract and retain talent. There is evidence that a thoughtfully implemented EWA program can lead to a measurable improvement in employee retention. Employees who take advantage of EWA programs indicate that they find it helpful to meet expenses.

Financial Awareness and Wellness

A well-designed EWA program can be a successful tool to provide employees with financial awareness and wellness.

Wellness refers to the overall health of employees' financial life, meaning the ability to pay expenses and save for retirement, but also the ways in which finances intersect with employees' physical, mental, and social well-being.

The Financial Health Network states that "financial health considers whether individuals are spending, saving, borrowing, and planning in a way that will either contribute to, or detract from, their resilience in the face of unexpected events and ability to thrive in the long term."[6]

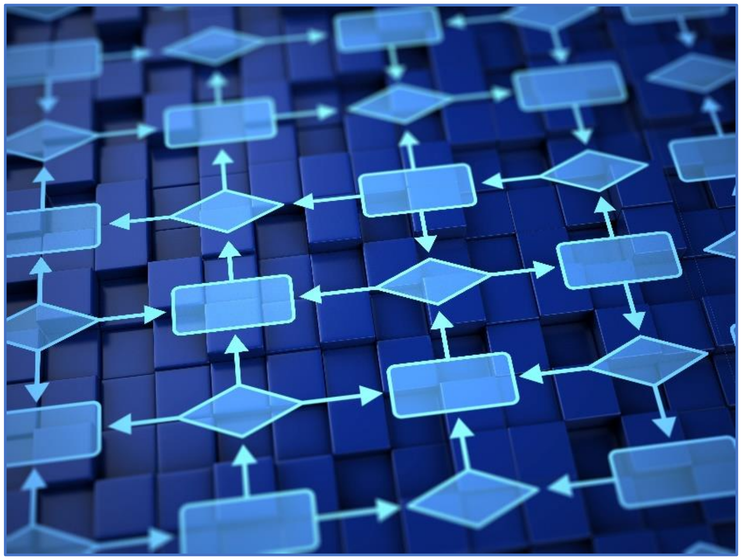
Former President Obama's Advisory Council on Financial Literacy defined awareness as "the ability to use knowledge and skills to manage financial resources effectively for a lifetime of financial well-being."[7] The Journal of Sociology and Social Welfare takes a step further by considering access to and the ability to engage with financial institutions, products, and markets.[8]

The federal Consumer Financial Protection Bureau (CFPB) defines financial awareness as financial security and choice. For example, control over daily and monthly finances, ability to absorb a financial shock, capability to meet financial goals, and the financial freedom to enjoy life.[9] Thus, financial well-being is different for each individual.

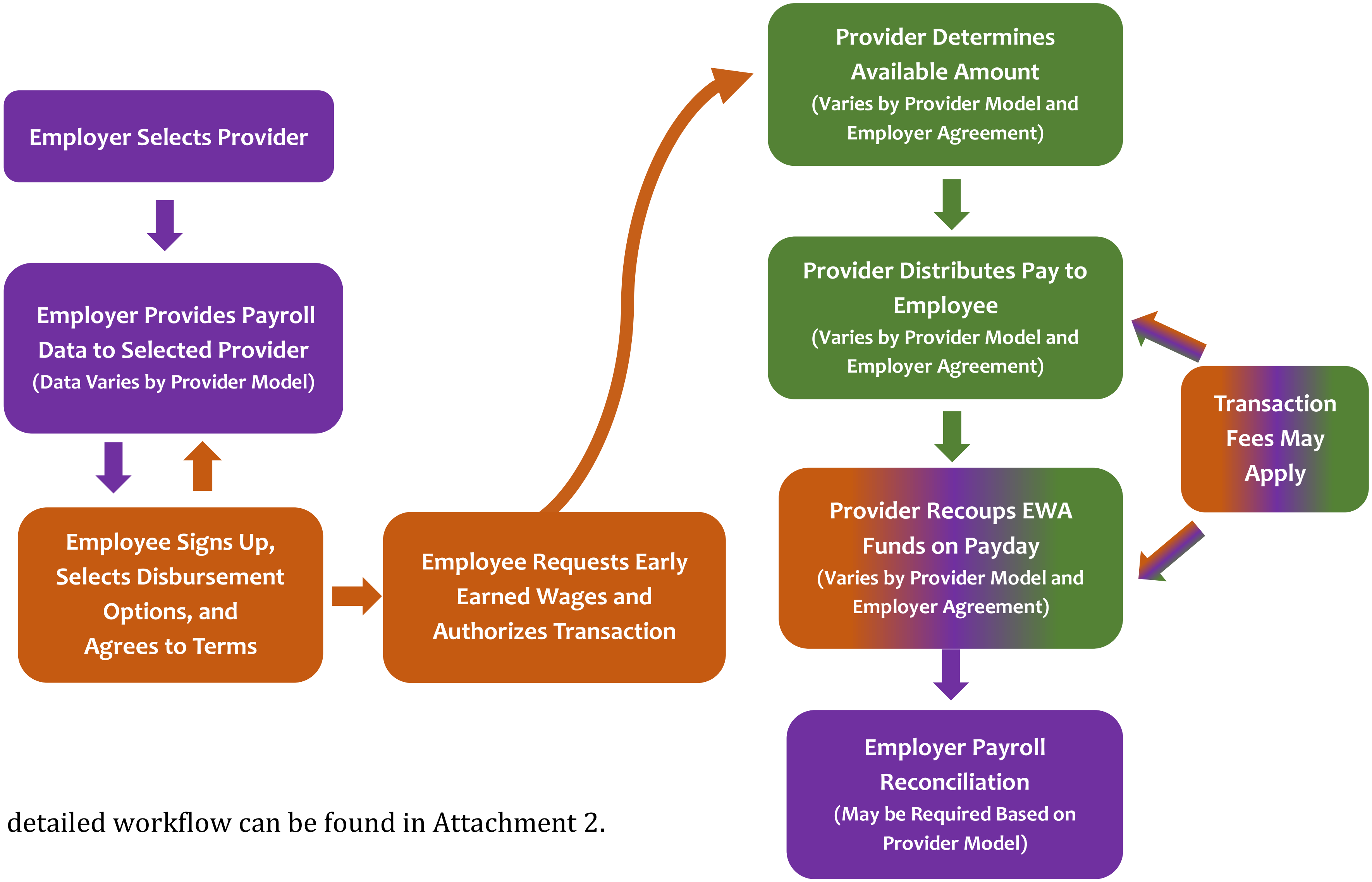
Workflow of the EWA Process

On the next page is a chart with a general workflow of the EWA decision process showing the role of the employer, employee, and EWA service provider. The workflow provides a basic understanding; however, EWA providers differ in their processes and product offerings. A more detailed explanation follows the chart.

This report describes the process with some detail. Despite the detail provided, once the program is established, the process flow from the employer sharing payroll data through to payment of early wages is quick because it is managed electronically. How quick depends on the EWA model.



General Workflow of Earned Wage Access



A detailed workflow can be found in Attachment 2.

Employer Selects the EWA Provider[10]

The following are business considerations to assist payroll professionals and their employers when selecting an EWA service provider.

Account Options. Employees receiving EWA generally direct their EWA payments to their existing bank accounts but may be offered options where their deposit can be made. These include bank accounts, prepaid debit cards, payroll cards, digital platforms, cash applications on a mobile device, and cash pickup at retail outlets. EWA providers may offer a payroll card or a traditional bank account as a part of their solution on where funds can be sent. Some providers may require use of their payroll cards and financial account services.

Employers should consider the available options and the percentage of employees already receiving wages through direct deposit to a bank account or payroll card to determine the number and type of account options needed.

Funding. The funding relationship offered by EWA providers may vary. A provider is likely to use its own funds to pay employees. However, an EWA provider may require employer funds in advance of paying employees. Employers should consider the advantages and disadvantages of these options, including cash flow, payroll administration, fraud avoidance, and liability. For example, in an unfortunate instance in which an employee receives EWA greater than net pay, does the employer or provider accept the cost?

Percentage of Available Pay. This refers to the percentage of earned wages the EWA program allows to be forwarded to a worker. Flexibility in establishing the percentage without danger of creating an overpayment (i.e., allowing for tax and other required withholding) to an employee is key. Some providers approximate full net pay from existing individual elections and deductions. Others cap access at a certain percentage of gross pay to approximate net pay. An employer also may place a cap on the percentage.

Employee Support. Digital applications are a critical component for wage access adoption. The apps alert employees when pay is available, how much is available, and when funds have been deposited. An app should be easy for employees to understand and use. Some apps help workers to budget their money and encourage savings. These options can be very helpful and are often in addition to financial wellness solutions offered to employees by the employer, such as retirement plans and budget support.

Provider Fee Models. An employer should be aware of all potential fees and exactly how they will be clearly communicated to employees.

There are several fee models by which service providers offer the early pay, including:

- A fee is charged to the employee to allow transactions per pay period or month.
- A per-transaction fee is charged to the employee (typically, $1 to $5 per transaction).
- No charges are made to employees as long as the employer has purchased a payroll service provider package that includes an EWA option.

A combination of fee models may be used and a provider may offer alternative plans, such as if the employer pays for part of the EWA program, enabling a certain number of free EWA transactions and additional transactions that are fee-based. A hybrid model with a two-tiered structure provides employees with instant payouts at potentially higher fees than next-day payouts.

Payment Options. For many employees, the option of getting their funds quickly is critical. Most EWA providers offer participating employees the option of instant access to funds for a fee and less costly next-day access to funds. These fees may be in addition to provider fees to participate. Access fees are generally modest, though they can add up, especially when combined with participation fees. Some employers may decide to pay some or all of these fees for their employees. Employers should consider the importance of instant or near instant payment options.

Employer Costs and Liabilities. Today, EWA providers generally do not pass integration or operational costs onto employers. Some providers may charge fees to the employer for administering the EWA program or to cover the cost of a complex or customized integration process. Costs also may be associated with programs requiring employer funds in advance of EWA payments to employees.

Employers also may be responsible for overpayments to an employee and insufficient funds on payday for withholding of garnishments and taxes. If overpayments are not recovered, employers may be held accountable.

Customer Base. This refers to the number of users and clients, an indicator of the provider's success, and the longevity of the provider's solution. Relevant references from existing clients can be helpful, especially if at least one of the clients is in a similar situation. They may provide some insight into the practical aspects of launching and maintaining a program with a specific provider.

Employer Provides Payroll Data

Payroll data is provided following an employer's selection of an EWA provider or after an employee signs up to participate. Thus, two opposing arrows on the flow chart regarding payroll data.

Employers should consider data sharing integration at the beginning of the process. How a provider collects payroll data to determine the amount available to an employee is important for data security and to prevent fraud. This includes the level of digital integration the provider will conduct into the payroll platform, time and attendance system, payment networks, and other related information.

Employers may be asked to provide payroll data files with information on all employees or just participating employees. The EWA provider may require the employer to provide requested payroll data each pay period or to enable secure electronic access (i.e., to verify earned wages upon request).

An employer that outsources some or all of its payroll operations should determine potential integration issues if the EWA provider is different than the payroll service provider. The greater the electronic integration, the more accurate the data.

Employee Signs Up and Agrees to Terms

Typically, an employer will notify employees about its selected EWA benefit, including information about the program and how an employee can sign up. EWA providers often develop their own employee information that should include descriptions about all fees, program opportunities and limits, time parameters between when an employee requests EWA and receipt of payment, how and when the EWA will be paid back, and privacy policies. Some programs offer employees additional program features which can help with budgeting and saving.

Generally, to participate employees must agree to the terms of the EWA program. Some EWA providers will require an employee to sign a legally binding contract to participate. Others may require employees to acknowledge that they have read the terms. The agreement to terms may be viewed as a type of contract between the employee and EWA provider in addition to the relationship between the provider and the employer.

Employee Requests EWA

In general, employees can request EWA through an employee portal with the employer, payroll service provider, or EWA provider, depending on program design.

Provider Determines Available Amount

Typically, the service provider determines the amount available to each participating employee by verifying actual wages earned to date in the current payroll period. The amount is often limited to a percentage of net earnings to allow for tax and other withholding, which occurs with the next regularly scheduled payroll.

Provider Distributes Pay to Employee and Employee Repays Provider

There are two basic approaches to the employer-integrated EWA process:

1. **Payroll Deduction Approach – Employer Payroll Managed.** The provider distributes a percentage of earned pay to an employee's account (i.e., bank account, payroll card) and on the next payday, the employer deducts the early pay amount from the employee's payday amount and distributes it to the provider.[11]

2. **Payroll Settlement Approach – Provider Managed.** The provider may require a participating employee to have a settlement account with the provider or to use a provider's payroll card. Any wages accessed early are deposited by the provider to the employee's existing personal bank account or card. On the next regularly scheduled payday, the employee's wages are directly deposited to the employee's settlement account by the employer and the provider then deducts any early wage amount already paid to the employee, and instantly credits the balance to the employee's existing personal bank account or card.

Employer Payroll Reconciliation

Depending on the approach of the EWA program, an employer or employer's payroll service provider should reconcile pay records. Reconciliation is the process of making sure that the employer's ledger matches what has been distributed to employees.

Reconciliation also is used to verify that the correct amount was provided to employees in every paycheck, including but not limited to satisfying deductions for federal, state, and local income taxes, social security and Medicare taxes, healthcare benefit insurance, retirement plan benefits, workers' compensation insurance, and wage garnishments.

The Law and Compliance

Regulatory considerations will differ depending on the EWA model. These considerations are in some instances unresolved and evolving because EWA technology and services are relatively new and existing financial and consumer protection laws and regulations have yet to address EWA programs.

The primary question regarding the regulatory impacts for payroll professionals is: What role do payroll professionals play in their employers' EWA decision-making process?

- Are payroll managers part of employer teams to investigate EWA options?
- Are payroll professionals asked by their employers to examine consumer opportunities and protections for employees?
- What payroll processes are involved in EWA and can potential burdens be minimized, whether payroll operations are managed internally or outsourced?
- What should payroll professionals consider for payroll operations to maintain full compliance when an EWA benefit is provided to employees?

Wage and Hour Requirements

When the EWA decision model is based on a three-way relationship among employers, EWA providers, and employees, and is based on wages employees have already earned, employers remain responsible for compliance with wage and hour laws and regulations. These include, but are not limited to, minimum wage and overtime requirements, reporting, and recordkeeping. These requirements do not change in an EWA program but can impact the amount of earned employee wages.

The federal Fair Labor Standards Act (FLSA)[12] classifies the time worked by nonexempt employees for the benefit of their employer as hours worked for the purpose of minimum wage and overtime compliance. An employer is required to pay its employees for all hours worked, including "work not requested but suffered or permitted."[13] State and local wage and hour laws also apply. Employers must ensure that the combination of EWA payments and pay period wages equals the full amount of employees' earned wages.

Pay Statements

The FLSA requires employers to keep records on how many hours employees have worked and the amount of money they were paid. The federal law does not require that this information be provided to employees.

Pay statement requirements differ among states ranging from no requirements to very detailed information about employees' pay. Common elements include gross and net pay, and a list of all applicable deductions for taxes, healthcare benefits, retirement contributions, and garnishments.

Existing laws and regulations do not specify requirements for records or pay statements specific to EWA. However, pay statement requirements are based on transparency for employees to understand their pay. At minimum, the EWA provider should offer participating employees a complete record of payments and fees.

Legal Basis

The legal structure for employer-integrated models and agreements between an EWA provider and an employee may vary.

Grant of Interest in Funds Flow. An EWA provider may obtain an interest in or right to receive a specified portion of an employee's earned but unpaid wages, and the employee pays a fee for the early access to such wages.

This approach is similar to accounts receivable factoring in which a company sells its accounts receivable to a finance company (third party) that buys the receivables at a discount (called a factor). The factor collects the payments on the receivables from the company's customers. In EWA, the factor is the EWA provider, the company is the employer, and the customers are employees who agree to participate.

Accounts receivable factoring is not considered a loan because neither the company nor the factor issue or go into debt. Thus, this type of EWA model also may not be considered a loan.

Wage Advancements. An EWA provider may advance wages to employees with the employees' instructions to their employer to deduct those wages from the employees' next pay amounts. This could appear similar to a payday loan and subject the EWA provider to the requirements found in the Truth in Lending Act (TILA).[14]

However, because the wages are already earned, EWA may not be viewed as lending. In addition, payday lending is often managed direct-to-consumer in which an employee and payday lender form an agreement and the employer is not involved or even aware of the arrangement. The EWA models that are the focus of this report involve employers.

The CFPB issued an advisory opinion[15] and compliance assistance sandbox (CAS) approval order[16] that identified certain characteristics for EWA that impact a credit determination under TILA. The opinion and order were issued strictly in response to the facts presented in the individual requests regarding the applicability of TILA, Regulation Z, but the CFPB appears to favorably recognize the consumer protections offered by employer-integrated programs. Attachment 3 includes a listing of the criteria from the advisory opinion.

In addition, the CFPB issued a final rule, *Payday, Vehicle Title, and Certain High-Cost Installment Loans* rule.[17] In the rule, the CFPB said:

> The Bureau notes that some efforts to give consumers access to accrued wages may not be credit at all. For instance, when an employer allows an employee to draw accrued wages ahead of a scheduled payday and then later reduces the employee's paycheck by the amount drawn, there is a quite plausible argument that the transaction does not involve ''credit'' because the employee may not be incurring a debt at all. This is especially likely where the employer does not reserve any recourse upon the payment made to the employee other than the corresponding reduction in the employee's paycheck.[18]

The CFPB excluded certain EWA models from the rule and acknowledged that EWA does not trigger the same high-level risks that payday loans involve.[19]

Payroll Cards

A payroll card is a prepaid card arranged by an employer through a third party (financial entity) for the purpose of paying its employees' wages or salaries. An employee's net pay is loaded by the third party directly onto the payroll card rather than directly deposited into an employee's bank account or paid by paper check.

Employees using payroll cards may use their cards for EWA payments. Some EWA providers offer or require the use of the provider's payroll card to participate. Some EWA providers offer reduced or even zero fees if employees use the providers' payroll cards.

Under wage payment laws, an employer cannot mandate the method of wage payments. Generally, state laws require an employer to offer at least one alternative to a payroll card. Several states restrict permissible methods of wage payments. The majority of states allow the use of payroll cards with appropriate disclosure, consent, and other employee protections.

If EWA is offered via a payroll card, state laws on payroll cards may apply, for example, fee restrictions, disclosures, consent forms, and a minimum number of free ATM withdrawals per pay period. Some states (e.g., New York, Connecticut, and Illinois) prohibit payroll cards from being linked to any form of credit, including advances on future earnings. If EWA is not considered a form of credit because the pay is already earned, these state laws may not restrict use of payroll cards for EWA payments.

Employment Tax Withholding and Remittance

Employee Withholding. Normally, employers withhold taxes from employees' earnings at the end of each pay period when net wages are distributed to employees. Withholding includes income taxes, social security and Medicare taxes, as well as state and local taxes. Generally, if employers are not involved in EWA requests and fulfillment and are unaware of them, such payments are not considered a payment of wages by the employer, and no withholding by the employer would be possible. Currently, employer-integrated EWA models generally handle all taxes during regularly scheduled payroll processing. Conversely, if an employer is involved in EWA requests and fulfillment and is aware of them (e.g., engaged in the transaction), such payments would generally be considered a payment of wages by the employer and withholding would be required.

A significant question regarding federal taxes is the rule of "constructive receipt" and whether the rule gives rise to tax withholding and remittance when employees request EWA or EWA payments are distributed to employees. Consistent with the longstanding position of the Internal Revenue Service (IRS), absent statutory authority, an employer may not simply delegate or contract away its taxing responsibilities. The IRS considers employment tax withholding obligations to attach when wages are actually paid or "constructively paid" to the employee.[20]

The general rule on constructive receipt says:

> Income although not actually reduced to a taxpayer's possession is constructively received by him in the taxable year during which it is credited to his account, set apart for him, or otherwise made available so that he may draw upon it at any time, or so that he could have drawn upon it during the taxable year if notice of intention to withdraw had

been given. However, income is not constructively received if the taxpayer's control of its receipt is subject to substantial limitations or restrictions.[21]

Consumer Protections

Early access to earned wages may help consumers to successfully meet unexpected fluctuations in expenses without adding to debt or paying the high costs of bank overdrafts, late payment fees, or payday loans.

In general, state legislatures have put forth laws to prohibit predatory practices, encourage savings, and place restrictions on financial institutions and offerings, such as payday lending laws that control fees, rate limits, and require appropriate disclosures.

Consumer perspectives on EWA and measures, if any, that would protect employees are divergent. There are some basic consumer concepts regarding wages that payroll professionals and their employers may wish to consider:

- Ensure that employees are paid a "living wage."[22]

- Create regular employee work schedules well in advance and minimize changes.

- Offer employees professional assistance with financial management and budgeting.

Consumer and benefits groups have raised several issues:

- If employee access to EWA is unlimited or allowed frequently, the fees charged could become significant over time. For example, a $5 fee to access $200 of earned wages 7 days prior to payday would equate to a 130% annual percentage rate (APR).[23]

- Costs expressed as an apparently high annual percentage may raise concerns. On the other hand, employees may view a fee approximately equal to an ATM fee to be very advantageous, especially if the alternative is a $35 bank non-sufficient funds (NSF) fee or even higher costs of a payday loan.

- If EWA providers do not have information about all deductions from an employee's paycheck, such as retirement, healthcare, and garnishments, the result could be insufficient wages to pay all deductions on the regularly scheduled payday.[24]

Vendor Perspectives

Comparing a flat-dollar, one-time, nominal fee charged by EWA providers to fees collected by payday lenders and the payback consequences for failure to pay back the payday loan with added interest is indirect and unreasonable, say EWA providers.

According to the CFPB, “Earned wage access products have recently emerged in the marketplace as an innovative way for employees to meet short-term liquidity needs that arise between paychecks without turning to more costly alternatives like traditional payday loans."[25]

Child Support and Garnishments

EWA benefits may pose employer concerns for employees who owe child support, back taxes, student loans, and creditor garnishments for which a withholding order requires the employer to withhold and remit payments. An EWA model may account for such amounts before distributing payments to employees to ensure sufficient funds on payday. However, if an EWA model does not account for garnishments or an error is made and funds are insufficient, an employer may find itself liable for the payments even if the EWA provider funds the program.

The U.S. Department of Labor’s Wage and Hour Division says that garnishments should be computed based on the disposable earnings on a pay period basis. Wages paid through EWA programs are considered earned and should be included in the garnishment computations for the pay period in which the wages were earned. This should not change the regular garnishment amount for each pay period.[26]

Payroll Administration

The administrative burden on payroll will largely be determined by the program the employer chooses to implement. Employers that implement an EWA program in which the EWA provider (or the payroll service provider) offers an employee portal for requesting an early wage payment will have less of a burden administering a program than employers that handle the requests through their own employee portal. The level of burden on payroll will depend on the manner by which payroll data is shared with the EWA provider.

EWA programs may take advantage of other tools available to payroll to provide faster payments to employees. These tools are already used by employers to make payments before regularly scheduled paydays, including termination pay, severance pay, or correcting errors from a previous payroll.

Two tools for faster payment are Same Day ACH (automated clearing house) and Real-Time Payments. Another tool, FedNow, is expected to be available soon.

Same Day ACH. In 2016, Nacha[27] began implementing a new rule to allow for same-day settlement of ACH transactions, which include payroll direct deposits. The rule was implemented in three phases and, as the need for enhanced capabilities became clear, has already been expanded. Currently, there are three submission windows with same-day settlement times. They are:

- A morning submission deadline at 10:30 a.m. ET, with settlement occurring at 1:00 p.m. Funds must be available to customers by 1:30 p.m. (local time).
- An afternoon submission deadline at 2:45 p.m. ET, with settlement occurring at 5:00 p.m. Funds must be available to customers by 5:30 p.m. (local time).
- A later afternoon submission deadline at 4:45 p.m. ET, with settlement occurring at 6:00 p.m. Funds must be available to customers by the end of the banking day.

Note: Originating Depository Financial Institutions and payroll service providers may have earlier deadlines for their customers so they can submit files timely.[28]

Real-Time Payments (RTP® Network). The RTP Network was launched by The Clearing House in 2017 and is designed to allow consumers and businesses to send and receive payments from accounts at federally insured depository institutions immediately. The network operates 24 hours a day and 7 days a week. According to The Clearing House, the network is currently accessible to financial institutions that hold 70% of U.S. demand deposit accounts, and the network currently reaches 56% of those accounts.[29]

FedNow. The FedNow℠ Service, which is expected to launch in 2023, is a new instant payment service that the Federal Reserve Banks are developing. The service will operate 24 hours a day and 7 days a week and will allow businesses and individuals to send and receive funds instantaneously through banks that participate in the network in amounts up to $25,000.[30]

Attachment 1 – History of Pay Advances

Employer Pay Advances. Employers have responded to employee requests for advances for hundreds of years; often informally, although many employers have set up more formal systems including promissory notes and request forms. Employers have typically not charged for such advances but tended to discourage them because of the administrative cost.

Payday Loans. Payday loans are usually short-term, high-cost advances to employees by third parties, generally for $500 or less. Arrangements between payday lenders and employees typically provide that loan amounts are due to be paid back on the next payday following loan distribution.

Payday lenders usually charge interest of $15 to $20 for every $100 borrowed. The finance charges are calculated on an APR basis, explained as the sum of the interest rate plus extra fees — the same as is used for credit cards, mortgages, and auto loans. For payday loans, the APR ranges from 391% to more than 521%.[31]

Depending on state law, payday loans may be available through storefront payday lenders (physical locations) or online (website). Currently, 12 states — Arizona, Arkansas, Georgia, Maryland, Massachusetts, New Jersey, New Mexico, New York, North Carolina, Pennsylvania, Vermont, and West Virginia — ban payday loans. Among those that allow payday lending, 16 states and the District of Columbia have implemented provisions capping interest rates at 36%, while other states have put various lending restrictions on payday loans. Currently, 32 states allow small dollar lending without major restrictions.

Recent studies[32] show the following:

- 12 million Americans use payday loans each year.
- The typical payday borrower is in debt five months out of the year.
- 7 in 10 borrowers use payday loans for regular recurring expenses such as utility bills and rent payments.
- The average loan size of a payday loan is $375.
- On average, payday borrowers pay $520 in principle, interest, and fees to borrow $375.
- Each year, $9 billion is paid in payday loan fees.
- 80% of payday loans are obtained within 2 weeks of paying off a previous payday loan.

Example: A borrower accepts a two-week payday loan in the amount of $300. The lender charges a $45 fee. The APR is calculated as follows:

- $45/$300 = 0.15
- 0.15 x 365 (days in a year) = 54.75
- 54.75/14 days = 3.91
- Move the decimal two places to the right and add the percent sign: 391% APR on this loan.

Overdraft Protection. Overdraft protection is an option offered by financial institutions to their customers that prevents check, ATM, or debit card transactions, as well as wire and electronic transfers, from causing an account's balance to fall below zero and trigger an overdraft fee or an NSF fee. With overdraft protection, the institution covers for the shortfall and charges an overdraft fee to ensure that the transaction goes through successfully.

Generally, overdraft protection is offered to customers with two accounts at a financial institution (e.g., a checking and savings account) and the fee is triggered by the transfer between accounts to cover the shortfall. Overdraft protection lines of credit range from $250 to $5,000, and sometimes more.

Bank Insufficient Funds Fees. NSF transactions are not automatically covered by financial institutions and can be expensive and disruptive. When not preauthorized or protected, NSF transactions are returned unpaid, referred to as bouncing. Financial institutions charge significant overdraft and NSF fees, usually between $30 and $35, for accounts with insufficient funds. These fees can be charged for each transaction each day a customer's account remains in shortfall. In addition, the financial institution may refuse payment and still charge the account holder an NSF fee. A penalty or fee is generally also charged by the merchant for the failed transaction.[33]

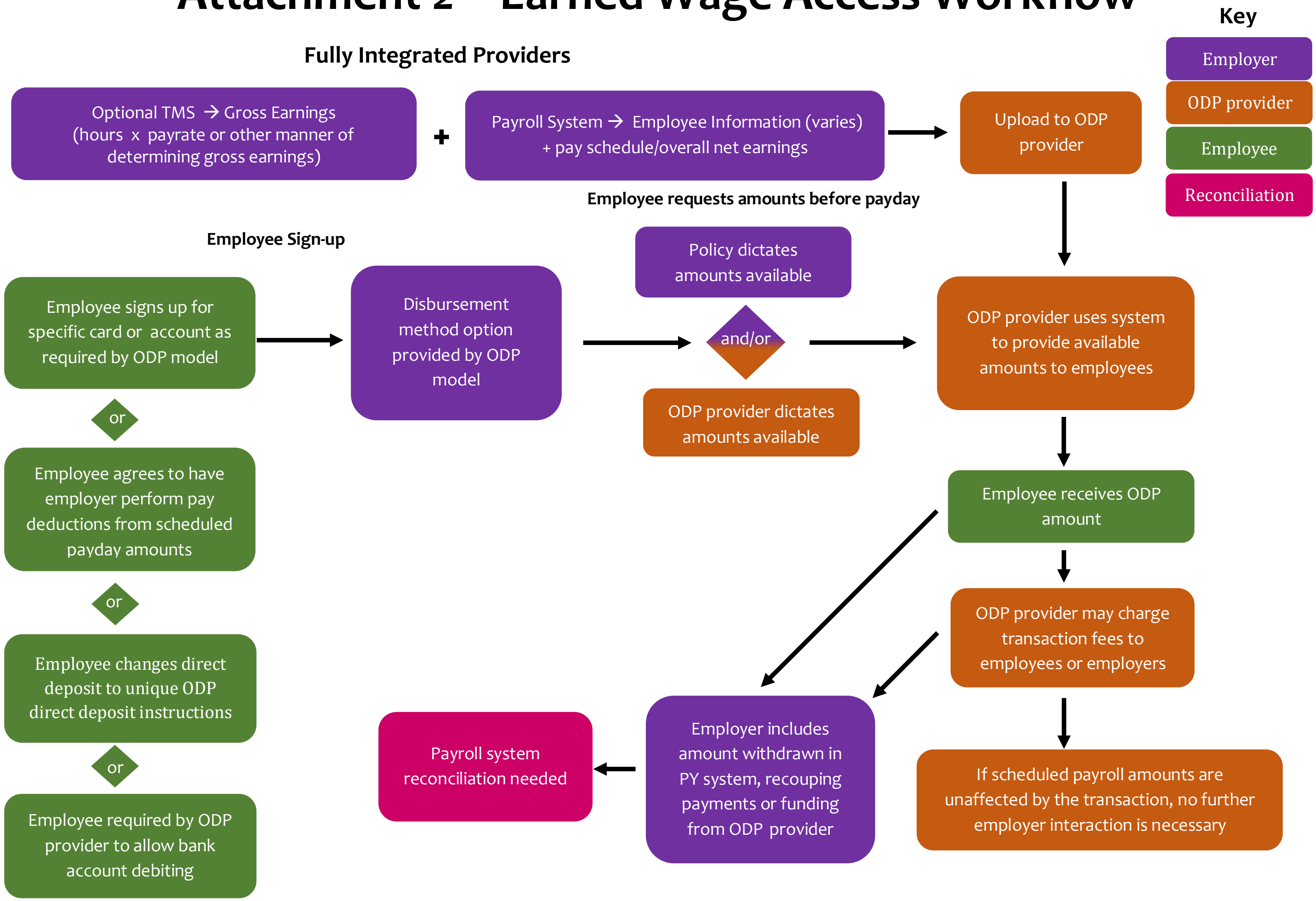
In 2019, the most common overdraft fee was $35, with an average of $33.36, according to a Bankrate survey of 10 banks and thrifts in 25 large U.S. markets. These fees have risen steadily since 1998 when the average fee was $21.57.[34] Charges for NSF transactions in 2019 amounted to $11 billion.[35]

Title Loans. A title loan is a loan that requires an asset as collateral. They are popular with consumers because they do not require a credit review and amounts can be as little as $100. On average, these loans range from $100 to $5,500, but they can be for $10,000 or more. The cost of a title loan is extremely high with APRs as much as 300% and usually above 100%.[36] Because of the high rate, a consumer who is in financial difficulty can end up in a never-ending repayment cycle on a loan's principal.

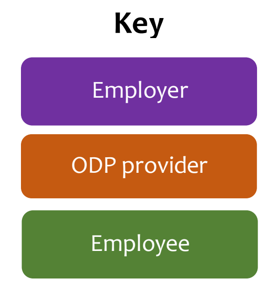
The most common title loan uses a car as collateral. According to the Federal Trade Commission, a car title loan is a loan for a small amount of money and for a short time.[37] This requires the consumer to own the car free of liens and to turn the car title over to the lender pending full repayment of the loan. The consumer also pays the lender a fee to borrow the money. Interest rates on these types of loans are very high and can average 25% or more. The average repayment period is 30 days. The CFPB reports that 20% of consumers who take out a short-term, single-payment car title loan will have their cars repossessed.[38]

Pawn Shops. A pawn shop loan is seen as a quick way to get money because it does not involve credit. Instead, a pawn shop (pawnbroker) takes possession of a borrower's valuable item, giving cash for the appraised value of the item.[39] Borrowers can get their valuable item back from the pawnbroker if they pay back the loan plus interest charges. Interest rates can vary depending on the amount and item used as collateral. The interest rates can be as high as 200%.[40] The Pawn Brokers Association reports that the national average loan amount is $150 with 30 million unbanked and underbanked consumers accepting pawn loans. In 85% of pawn loans, consumers redeem their collateral.[41]

Attachment 2 – Earned Wage Access Workflow

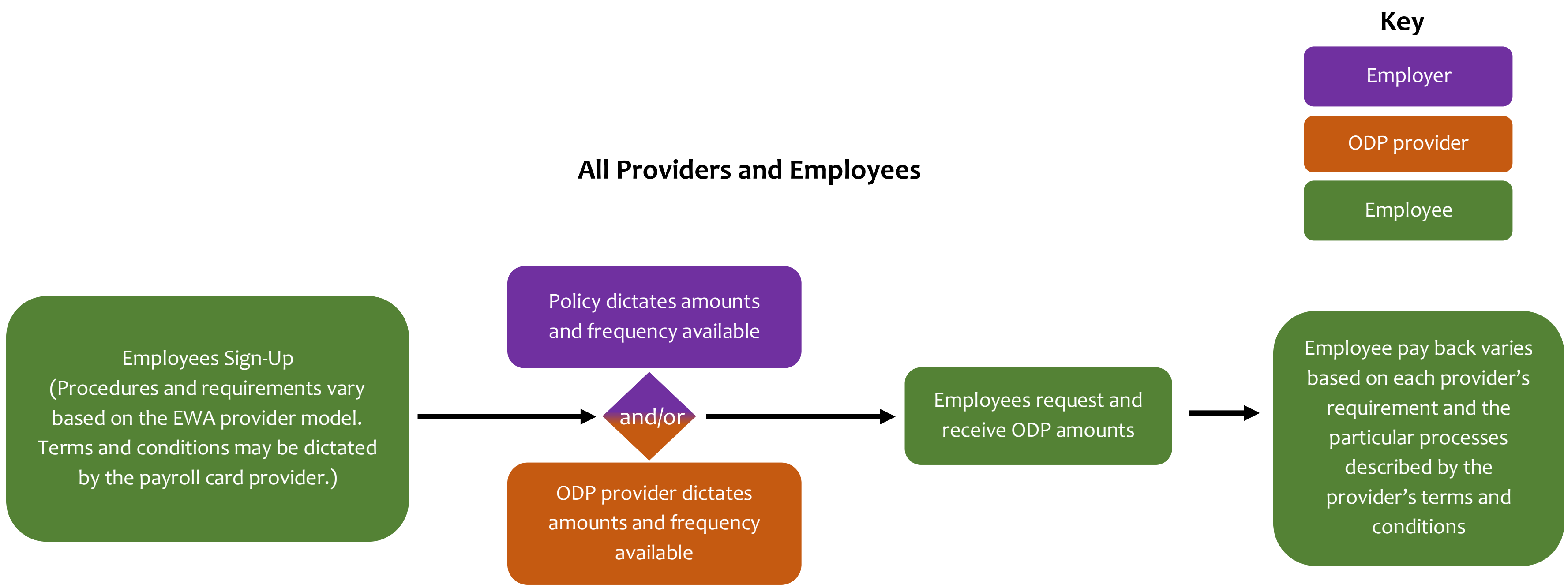


Earned Wage Access Workflow



All Providers and Employers

Earned Wage Access Workflow



Attachment 3 – Consumer Financial Protection Bureau Opinion

The CFPB's advisory opinion only applies to EWA models that integrate with an employer and is narrowed to the model described. However, the advisory opinion does introduce a framework by which the CFPB will consider a safe harbor to TILA, Regulation Z .

The safe harbor framework in the advisory opinion includes the following characteristics:

1. The provider of the EWA model contracts with employers to offer and provide covered EWA transactions to its employees.

2. The amount of each EWA transaction does not exceed the accrued cash value of the wages the employee has earned up to the date and time of the transaction, which is determined based upon timely information provided by the employer to the provider.

   The provider may not rely upon information provided by the employee or on estimates or predictions of hours worked or hourly wage rates.

3. The employee makes no payment, voluntary or otherwise, to access EWA funds or otherwise use the program, and the provider does not solicit or accept tips or any other payments from the employee.

   The provider must provide EWA funds to an account of the employee's choice and cannot charge fees for the delivery of EWA funds to that account.

4. If the employee chooses a prepaid account that is managed, issued, or facilitated by the provider, the provider cannot charge fees for opening the account and employees must have reasonable use of that account at no charge.

5. The provider recovers the amount of each EWA transaction only through an employer-facilitated payroll deduction from the employee's next paycheck.

6. In the event of a failed or partial payroll deduction, the provider retains no legal or contractual claim or remedy, direct or indirect, against the employee, although the provider may stop offering the employee additional EWA transactions.

7. Before entering into an EWA transaction, the provider clearly and conspicuously explains to the employee that it will not require the employee to pay any charges or fees in connection with the EWA transaction; has no legal or contractual claim or remedy, direct or indirect, against the employee in the event the payroll deduction is insufficient to cover the full amount of an EWA transaction; and will not engage in any debt collection activities related to an EWA transaction.

8. The provider will not directly or indirectly assess the credit risk of individual employees.

Acronym List

ACH	Automated Clearing House	FLSA	Fair Labor Standards Act
APA	American Payroll Association	IRS	Internal Revenue Service
APR	Annual Percentage Rate	NSF	Non-Sufficient Funds
ATM	Automated Teller Machine	ODP	On-Demand Pay
CAS	Compliance Assistance Sandbox	PY	Payroll Accounting System
CFPB	Consumer Financial Protection Bureau	RTP	Real-Time Payment
ET	Eastern Time	TILA	Truth in Lending Act
EWA	Earned Wage Access	TMS	Time Management System

Acknowledgements

The APA is grateful to the following for their support in preparing this report.

The APA members participating in the Government Relations Task Force, in particular on the Early Wage Access / On-Demand Pay Workgroup:

Peter Isberg, Chair
Karen Settembrino, CPP, Chair
Michael Baer, CPP
Michael Brown
Nancy Fletcher, CPP
Corrinne Flores
Donna Gettings, CPP
Rebecca Harshberger, CPP
Patricia Kerekes
Carlanna Livingstone, CPP
Paula Meyers, CPP
Stephen Middlebrook, Esq.
Carl Morris
Bruce Phipps, CPP
Jon Schausten, CPP
Brian Slowik

Assistance was also provided by:

Sarah Grotta
Director of Debit and Alternative Products
Mercator Advisory Group

Ben Jackson
Chief Operating Officer
Innovative Payments Association

Devina Khanna
Manager, Policy
Financial Health Network

Jason Lee
Chief Executive Officer
DailyPay

Jeanette Quick, Esq.
Lead Counsel for Financial Services
Gusto

Chris Ruppel
General Manager, Wage and Corporate Disbursements
Green Dot Corp.

Acknowledgements

Lauren Saunders, Esq.
Associate Director
National Consumer Law Center

Corey Stone
Entrepreneur in Residence
Financial Health Network

William Sullivan
Senior Director and Group Manager
Government and Industry Relations
Nacha

For the American Payroll Association:

Alice Jacobsohn, Esq.
Director, Government Relations
ajacobsohn@americanpayroll.org

Robert Wagner, Esq.
Senior Director
Government Relations, Public Relations,
IT, and Certification

End Notes

[1] *U.S. Financial Health Pulse: 2019 Trends Report*, Financial Health Network (2019); *Report on the Economic Well-Being of U.S. Households in 2019, Featuring Supplemental Data from April 2020,* Board of Governors of the Federal Reserve System (May 2020); *The State of U.S. Financial Capability: The 2018 National Financial Capability Study*, FINRA Investor Education Foundation (June 2019).
[2] "Most Americans Say the Current Economy Is Helping the Rich, Hurting the Poor and Middle Class," Pew Research Center (Dec. 11, 2019).
[3] "Living Paycheck to Paycheck is a Way of Life for Majority of U.S. Workers," CareerBuilder (Aug. 24, 2017).
[4] *Report on the Economic Well-Being of U.S. Households in 2019, Featuring Supplemental Data from April 2020*, Board of Governors of the Federal Reserve System (May 2020).
[5] "A Growing Number of Americans Have No Emergency Savings Whatsoever," Bankrate (July 1, 2019).
[6] "FinHealth Score® Methodology," Financial Health Network (July 2020): https://finhealthnetwork.org/score/score-methodology/.
[7] *2008 Annual Report to the President*, Advisory Council on Financial Literacy (Jan. 6, 2009).
[8] Johnson, Elizabeth and Sherraden, Margaret S., "From Financial Literacy to Financial Capability Among Youth," The Journal of Sociology & Social Welfare: Vol. 34: Issue 3, Article 7 (2007). Available at: https://scholarworks.wmich.edu/jssw/vol34/iss3/7.
[9] *Financial Well-Being: The Goal of Financial Education*, Consumer Financial Protection Bureau, Pub. 201501 (Apr. 2015).
[10] Information collected from APA members and through a discussion between Sarah Grotta, Director, Debit and Alternative Products Advisory Service, Mercator Advisory Group, and Alice P. Jacobsohn, Esq., Director of Government Relations, American Payroll Association (July 21, 2020). Recently Mercator Advisory Group conducted a review of several on-demand wage access providers in the U.S. The capabilities that were measured in the review can be a guide for processors and employers to consider when looking for the right partner with differentiating features to meet an employer's environment.
[11] A provider may access an employee's bank account on payday to recuperate the early pay amount instead of through payroll management. However, states may have laws that do not allow this type of process.
[12] 29 USC § 203 *et seq*.
[13] See 29 CFR § 785.11-12. The term "suffered or permitted" covers all types of work whether voluntary or assigned. The reason is not relevant.
[14] The Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.*, was enacted on May 29, 1968, as Title I of the Consumer Credit Protection Act (Pub. L. 90-321).
[15] 85 *Fed. Reg.* 79404 (Dec. 10, 2020).
[16] Payactiv, Inc. submitted to the CFPB a formal application for an approval, pursuant to section 130(f) of the Truth in Lending Act (TILA), under the Policy on the Compliance Assistance Sandbox (CAS Policy): https://files.consumerfinance.gov/f/documents/cfpb_payactiv_approval-order_2020-12.pdf (Dec. 30, 2020).
[17] 82 *Fed. Reg.* 54472 (Nov. 17, 2017).
[18] 82 *Fed. Reg.* 54472 at 54547 (Nov. 17, 2017).
[19] Employers and EWA providers should review the CFPB's Payday Loan Rule carefully because the excluded models are identified by specific characteristics.
[20] IRS Reg. §§ 31.3402(a)-1(b), 31.3121(a)-2), and 31.3301-4.
[21] 26 CFR § 1.451-2(a), Constructive Receipt of Income – General Rule.
[22] "A living wage refers to a theoretical income level that allows an individual or family to afford adequate shelter, food, and the other basic necessities. The goal of a living wage is to allow employees to earn enough income for a satisfactory standard of living and to prevent them from falling into poverty." Kagan, Julia, *Living Wage*, Investopedia (Oct. 2, 2019), https://www.investopedia.com/terms/l/living_wage.asp.
[23] Kilby, David, President of FinFit, "Views: Is early wage access a benefit or just another loan?," Employee Business News (EBN) (Jan. 31, 2020). Because EWA is short-term for a nominal fee, measuring on an annual basis may not be appropriate.

[24] Alcazar, Julian, and Bradford, Terri,"In the Nick of Time: The Rise of Earned Wage Access, Payments System Research Briefing," Federal Reserve Bank of Kansas City (Sept. 23, 2020).
[25] 85 *Fed. Reg.* 79404 (Dec. 10, 2020).
[26] American Payroll Association, Congress Xstream 2020, Forum on Federal Payroll Issues session with speaker Robert Vaden, Community Outreach and Resource Planning Specialist, U.S. Department of Labor, Wage and Hour Division.
[27] Nacha governs the ACH Network: www.nacha.org.
[28] For more information, see Nacha's Same Day ACH Resource Center: www.nacha.org/resource-landing/same-day-ach-resource-center.
[29] The Clearing House, The RTP® Network: For All Financial Institutions: www.theclearinghouse.org/payment-systems/rtp/institution.
[30] For more information, see the Federal Reserve's *About the FedNow℠ Service* webpage at www.frbservices.org/financial-services/fednow/about.html.
[31] "The True Cost of Payday Loans—And Some Borrowing Alternatives," Forbes (Oct. 27, 2019); "What are the Costs and Fees for a Payday Loan?," Consumer Financial Protection Bureau (June 5, 2017); "Payday Loan Consumer Information," Consumer Federation of America - https://paydayloaninfo.org.
[32] "Fast Cash and Payday Loans," Page One Economics, Federal Reserve Bank of St. Louis (Apr. 2019); "What are the Costs and Fees for a Payday Loan?," Consumer Financial Protection Bureau (June 5, 2017); "What is a Payday Loan?," Consumer Financial Protection Bureau (June 2, 2017).
[33] "Overdraft Protection," Investopedia (May 27, 2020).
[34] *Survey: Rising ATM and Overdraft Fees Leave Consumers Paying Much More Than They Did 20 Years Ago*, Bankrate (Oct. 2, 2019).
[35] "Overdraft Fees: Banks Must Stop Gouging Consumers During the COVID-19 Crisis," Center for Responsible Lending (June 2, 2020).
[36] "Title Loan," Investopedia, May 6, 2020; *Written Testimony by the University of Utah, S.J. Quinney College of Law, and Consumer Federation of America*, United States House of Representatives, Committee on Financial Services, Subcommittee on Consumer Protection and Financial Institutions Hearing, "Ending Debt Traps in the Payday and Small Dollar Credit Industry" (Apr. 30, 2019).
[37] "Car Title Loans," Federal Trade Commission – www.consumer.gov.
[38] "CFPB Finds One-in-Five Auto Title Loan Borrowers Have Vehicle Seized for Failing to Repay Debt," Consumer Financial Protection Bureau (May 18, 2016).
[39] "Is a Pawn Shop Loan a Good Idea for Quick Cash?*,"* Credit Karma (July 16, 2020).
[40] "Is a Pawnshop Loan Ever a Good Idea?," Nerdwallet (June 8, 2018).
[41] *Pawn Industry Statistics*, Pawn Brokers Association - https://nationalpawnbrokers.org/pawn-industry-faqs.