

EXECUTIVE SUMMARY

Financial exploitation of low-income borrowers is not new, but the disguises applied to exploitative loans are constantly changing. New forms of payday loans – so-called “earned wage access products” – are offered through cash advance apps. These loans are intentionally designed to evade legal definitions of “loans” and “interest” to avoid usury limits and other borrower protections. Like traditional payday loans, earned wage payday loans extract disproportionately high fees and can trap people in an incessant cycle of borrowing.

"Earned wage access" loans are intentionally designed to evade legal definitions of “loans” and “interest” to avoid usury limits and other borrower protections.

Whether or not these lenders are offering loans or charging interest as a legal matter, they must comply with state and federal statutes prohibiting unfair, deceptive, or abusive practices (UDAP laws). Earned wage payday lenders have engaged in many practices that deceive borrowers, trick them into incurring excess fees, and make it difficult to escape an escalating cycle of indebtedness. Borrowers, government enforcement authorities, and regulatory agencies may be able to use UDAP laws to pull off the masks and halt destructive practices regardless of whether transactions are considered loans with prohibited interest rates or finance charges. In jurisdictions without rate caps or where these novel financial products are not subject to usury and other lending laws, UDAP laws may be a viable way to rein in damaging behavior.

[Recent public enforcement actions](#) by state attorneys general, the Federal Trade Commission (FTC), the Consumer Financial Protection Bureau (CFPB), and the City of Baltimore contain useful illustrations of practices that may support claims under UDAP laws.¹ Practices that these agencies have cited include:

- Deceptive and manipulative practices regarding costs, including:
 - Disclosing 0% APR, “no interest” or “interest free” even as up to 90% of users pay costly fees that frequently add up to \$300 a year or more.
 - Promoting “instant” or “fast loans,” while hiding high “expedite” fees that almost all borrowers pay.
 - Delaying disbursement or exaggerating the amount of time needed for delivery if the borrower does not pay an “expedite” fee.
 - Obscuring costs by hiding them on websites and apps or not fully disclosing them until the borrower is deep into the sign-up process for the loan.

- Dark patterns that are unfair or abusive tricks to coerce purportedly voluntary “tips” and “donations,” including:
 - Using default options that include costs automatically.
 - Deceptive and manipulative user interfaces that steer users towards accepting advances with costs or make it difficult to avoid tips.
 - Repeated requests for tips and interfaces that require multiple steps to avoid a tip.
 - Deception around the purpose of a tip or amount of funds being donated.
 - Psychological manipulations and guilt, including implied threats of consequences for borrowers who do not tip.
- Advertising large loans that few borrowers receive and limiting loan size or pushing smaller loans to multiply fees.
- Creating obstacles to prevent borrowers from canceling.
- Lending regardless of whether borrowers can repay without further loans, leading to a cycle of dependence on new earned wage payday loans with additional fees.

The following discussion, after background and a brief review of legal standards, identifies common practices that may give rise to UDAP claims against earned wage payday lenders and other companies offering novel high-cost loans. The prevalence of unfair, deceptive and abusive practices in this industry is also reason for legislators to be wary about exempting these loans from their lending laws.