Barefoot Innovation Podcast: Live Episode - The Future of Earned Wage Access: Insights & Policy Considerations

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Jo Ann Barefoot: Welcome everyone. It's wonderful to be with you all today. I am Jo Ann Barefoot. I am CEO and co-founder of AIR, the Alliance for Innovative Regulation. I think most of you probably know us. We're a nonprofit working on modernizing the financial system and the financial regulatory system through responsible technology, and we're really excited to have you with us today to talk about earned wage access. When you think about the challenges that consumers have in their financial lives, I think one of the most intractable has been when people need short-term funding. And it has been a highly, highly regulated field through the years, honestly going back decades if not centuries, because it tends to be an area where people need to call on money one way or another because they are in need of it. And candidly, policymakers have a love-hate relationship with this. You want people to not face an emergency, but a lot of the products that have evolved over the years have been a high cost and some of them are high risk to the consumer.

And so there's been a struggle. Payday lending, overdraft lending credit cards, all of these are mechanisms that can cause the consumer to have problems. And as we've gone into the digital age, a lot of people have given a lot of thought to the question of, are there better alternatives? And one of the most exciting that has emerged is the concept of earned wage access. So last year we undertook a research project to take a look at the landscape, what's emerging on the products, what's emerging on the regulatory front, and we asked Daniel Gorfine to prepare the white paper that we're sharing with you today to give us the overview of that. So we're going to ask Daniel to give us a bit of an overview of the paper and then we're going to turn to discussing it in a panel. Daniel is the CEO and founder of Gattaca Horizons. And Daniel, let me turn it to you.

Daniel Gorfine: Fantastic. Well, thank you Jo Ann, and it's great to be on with you. It was great to collaborate on the EWA paper. As you noted, EWA or earned wage access services do mark a really large and growing area of the financial services industry. So the white paper that we embarked on aims to provide a comprehensive review of EWA services, their potential to mitigate harms associated with traditional financial products and the unique challenges that they pose. The ultimate objective of the paper is to inform ongoing policy discussions by evaluating the specific characteristics of EWA services, examining the regulatory objectives they implicate and analyzing the consequences of applying different regulatory frameworks to these new products. Essentially asking the questions, are there unintended consequences or gaps that arise by applying different frameworks? As you mentioned, Jo Ann, the rise of EWA addresses critical consumer pain points that arise when individuals face short-term cashflow challenges and need to make near-term payments.

The idea is to provide the consumer access to wages that he or she has already earned but has not yet been paid by an employer. EWA products can be offered directly to consumers or through an employer partnership. In both cases, EWA offerings have experienced rapid growth in recent years. With respect to employer-sponsored models, these can be offered as a benefit by an employer and either fully paid by the employer or subsidized. They can also be integrated in this format directly into payroll systems where obviously the employer or the provider has direct insight into wages. There are also direct to consumer models which may be useful for gig workers, freelancers, public sector workers, or any employee whose employer does not offer such a service. In this instance, it typically requires estimating wages and you will typically see debits directly from a bank account. So while EWA has a similar use case to other more traditional forms of short-term access, including payday and overdraft, it has really significant differences that the CFPB has acknowledged.

And I'll just boil it down to saying one of the largest is the non-recourse nature of the product. So in terms of the structure of the white paper, we organized it in the following way, and I'll give a very brief summary of each of these sections. So first, the paper explores the different types of EWA and key features and characteristics, including as I just mentioned, the non-recourse nature, which means the event of default, a provider cannot pursue legal recourse. You don't go to court, you can't garnish wages, any of the traditional things that you would typically see with credit products. There are no credit checks, nor is there credit reporting. With EWA, repayment mechanisms differ and costs can differ. Notably, bona fide EWA services will include a no-cost option, and in many states where they're creating tailored frameworks, it's actually mandatory to have a no-cost option, though providers may encourage things like voluntary tips or charge fees for expedited delivery.

The second section of the paper looks at the benefits and risks of EWA as well as compares it to overdraft and traditional credit products. Some of the notable benefits that we found include the help EWA can provide in covering short-term liquidity problems. EWA can be lower cost than traditional credit or overdraft. As I mentioned, there is no legal recourse in the event of default. And based on the consumer surveys that we've reviewed, EWA products do appear to be very popular with consumers. Consumers have expressed that these products and services can help with financial wellness and help support employee retention. We did also find risks involved with the services. That includes potential confusion and a lack of transparency, especially regarding the nature of voluntary tips. There are potential dependency risks, risks of triggering overdraft, especially in the direct-to-consumer model.

And there are risks associated with inaccurate wage estimations or just general and broader confusion around fees. Overall, the lack of recourse in the event of default in the potential for no-cost options did stand out as compelling distinctions from traditional credit options. Next, the paper considers, and I won't go into great detail here, but the paper considers overall regulatory

objectives and how EWA implicates those various objectives. And finally, the paper considers the unintended consequences or gaps of applying various regulatory frameworks to EWA, including credit laws, proposed overdraft regulations and bespoke EWA frameworks. I'll save some for discussion in a few more minutes, but I think a few things stood out to us in drafting the paper. Most notably, I would say it's very important that we don't lose some of the most beneficial aspects of EWA to consumers through the application of ill-fitting regulations. So as an example, traditional credit laws do allow for lender recourse in the event of default and credit laws typically expect there to be a cost for a product.

Bespoke or tailored EWA rules could effectively codify or embed no recourse as a required feature of EWA and require things like a true no-cost option be offered. Disclosure, transparency and clarity are also important, especially with respect to voluntary tips. This is an area where there is some work ongoing within the industry within certain states and at the federal level to make sure that consumers can fully understand the nature of tipping. Third, I do think there's an opportunity to expand open banking frameworks to better incorporate payroll and related data. This can help improve the accuracy of wage estimation, especially in the context of direct-to-consumer models. And finally, I think we have a bit of a real-world experiment playing out where different states are regulating EWA differently.

That gives us an opportunity to study the impact carefully to see how consumers are faring in various states, either with potentially losing access to services as well as looking at the impact of these products on their financial wellness. So let me stop there. I'll turn it back to you, Jo Ann, and happy to join the discussion.

Jo Ann Barefoot: Perfect. Thank you so much. And thank you for laying out, again, the similarities and differences and the policy trade-offs and questions that arise around that. What we want to do now is bring in our panel. We will save time for questions at the end. If people have questions, please put them in the question box in the webinar and we will answer as many of them as we can. But I want to introduce Jeff Stoltzfoos, who is the Vice President for Government and Public Affairs at Chime. And Chime has introduced an EWA product that's very interesting, and also Penny Lee, the CEO of the Financial Technology Association. So welcome both of you. And Daniel is going to stay with us for the panel discussion. So Penny, let me start with you. Can you give us a little bit of a breakdown of what you're seeing in the landscape in this emerging product area and the kinds of EWA products that are starting to emerge?

Penny Lee: Yes, and Jo Ann, thank you for hosting this today. It's a pleasure to be with you. And Dan, congratulations on the white paper. For those listeners or those on the webinar, if you haven't read it, it's an excellent paper giving a a great overview on the products and the regulatory landscape and where the US should be positioned going forward. So we are starting to see a lot of activity and a lot of adoption on either both from the employer-based and the direct-to-consumer.

Those are the two most prominent forms of which you will find, and they vary in differences, as Dan was alluding to. You do have those that is embedded directly into the employer, but you do have a large swath of the United States that it isn't covered through their employee. For example, in the US House of Representatives, the employees are paid once a month and obviously the federal government is not paying for this.

It's not directly embedded into their employee benefits. And so they oftentimes will turn to an earned-wage product, a direct-to-consumer product that allows them to flex or have that flexibility to be able to gather or to be able to take their pay that they've already earned. They've already paid a certain amount of time into the program, and so therefore they can then receive money in advance. As Dan was alluding to, this is a non-recourse. This is usually just debited right out of their own account into it, but it allows for especially those that are either being paid once a month or less, or less frequent to be able to have that liquidity. Because we have seen a real, there's always that tension right now, and we've seen it for a while, is whether or not where there is a living wage, whether or not what is the adequate wages we need as cost of living has gone up, as the expenses have continued to go up.

Needing that ability to be able to manage over a month, oftentimes you need to be able to have for an emergency or for everyday life to be able to ensure that you have the liquidity you need to be able to manage your finances correctly. So we've seen it in, their use case is varied. Various people use it for whatever it is that they need it for. So that's something that we're just seeing though, the increased need for consumers to be able to manage their funds in a way that is outside of the normal two-week, every two weeks payday or once a month payday.

Jo Ann Barefoot: Yeah. Jeff, let me turn to you. If you could talk to us a bit about Chime's product and how you designed it to navigate the opportunities that you want to be sure that your customers can get.

Jeff Stoltzfoos: Thank you, Jo Ann. I second Penny's comments about the paper and the effort. I think two things are unique about Chime as we come to this. One, we're proud to be America's most loved banking app, so we have a primary account relationship with millions of Americans. And as we've developed our products over the years, we started with things like selling ACH, faster free overdraft capacity. We've always really been focused on in a way what EWA is about, which is access to funds on a short-term basis. And for a segment for us, we focus on individuals that earn less than $100,000, and in that sense a lot of folks living paycheck to paycheck. And so we came to this with that mindset and that track record. We also came to it right in the firestorm of when EWA was boiling to the surface, particularly in DC.

And then the final thing I'd say is we come to this as a FinTech that partners with two national banks that are supervised and all of our programs are heavily

scrutinized by those same regulators. So we didn't have maybe as much flexibility as some other providers, and we had an orientation to very much stay in a place of alignment with the regulatory framework. And so for us, that meant pivoting to a credit product. And the product ultimately that we launched a little less than a year ago really is what I think a lot of folks have think of as a D2C product.

The way we think about it is that the question around earned wage access is, do you have line of sight on actual wages? Are you settling with those wages or by way of those wages? And as Dan mentioned, is there recourse? And so for us, we were able to do that with our product. Just a few things about our product in particular. Essentially, up to $500 per pay period. If you wait one day, it's free and if you need it instantly it's $2. So we were able to come to market with something that is we consider low cost relative to other providers, and because of our primary relationship we were able to build in some features that I think differentiate, which we can talk more about. So maybe I'll leave it there. There's some other aspects of this in terms of future plans, but I can come to that later in the discussion, Jo Ann.

Jo Ann Barefoot: Great, thank you. I should say the paper is available at AIR's website, which is regulationinnovation.org, and we hope all of you will read it. Let's turn to the regulatory landscape. I think everyone on this panel, I'll speak for myself anyway, I have a lot of sympathy for the regulators trying to keep pace with the emerging changes in financial services driven by technology and figuring out how to get it right. And sometimes there's a temptation to put everything in the old boxes and apply the old rules even if they might suboptimize for the consumer. And sometimes there's just difficulty. And if it's not that, then what should it be, and how do we keep up? So Daniel, let me turn to you first to give us a little bit of the regulatory landscape at the federal and state level. You touched on it earlier, but what are we starting [inaudible 00:17:15]?

Daniel Gorfine: No, that's great. I think Jeff, you've actually foreshadowed this very well and I can think that what I'm about to walk through highlights the challenge of trying to navigate a fairly ambiguous legal and regulatory environment. While I agree with you, Jo Ann, it's difficult for regulators, I think it's also difficult for providers who are looking at a myriad set of approaches at the state and federal level. So let me walk through that. We'll start with the federal side. And I'll go to 2020, which is when the CFPB had issued an advisory stating that certain covered EWA programs do not constitute the offering or extension of credit, and therefore do not fall under the purview of Reg Z, which is what implements TILA. This exemption though applied to certain employer-sponsored EWA services but was not explicitly covering direct-to-consumer models. There was still a fair amount of ambiguity though as to what the extent of that advisory opinion would be and how that would be interpreted. In July 2024 though, towards the end of the Biden administration, the CFPB proposed an interpretive rule that would replace this prior 2020 advisory opinion.

The proposed interpretive rule would classify many products, including certain EWA models as consumer loans subject to TILA. Now, that proposal was never finalized. That proposed interpretive rule was not finalized. But EWA models where consumers do not incur any fees such as those fully subsidized by employers may remain outside the rule's scope. The proposal does not however specifically discuss the treatment of subscription-based models, which I would say is a bit of an omission given the prevailing exclusion of subscription fees as being considered finance charges under TILA. But I'm going down maybe into too much detail there. So look, at this stage, it's a bit unclear what the Bureau's posture is and what it will be. Most likely the Bureau would revert back to the 2020 advisory opinion and perhaps even broaden that interpretation. But we do have some ambiguity at the CFPB level.

I will also note that at the agency level, the US Treasury Department has previously suggested that certain types of on-demand payment arrangements are not to be considered loans. The Federal Reserve also has some prior rulemakings where they determine that expedited credit card and payment delivery fees are not finance charges. So some of what we've seen at the federal agency level, members of Congress have been proposing tailored frameworks for EWA services. There was a proposed bill from Congressman Steil, I believe last year, HR 7428, that would effectively create a comprehensive but bespoke and tailored federal framework for EWA services similar to what we've been seeing at the state level. So we would not treat EWA as credit. Now, states have pursued a number of different avenues. There are some states that through regulatory action have been clarifying or moving to define EWA as credit.

Other states have taken a legislative approach and many have created tailored or bespoke laws that explicitly define EWA as not credit, but they apply certain specific disclosures and requirements on providers including things like codifying the non-recourse nature, lack of credit reporting, and some will add language that providers need to take reasonable steps to verify employment or income. That may sound a bit confusing, and it is. This does create the risk of confusion for consumers, potentially, and the industry. There's an open question of a, could you comply with both? If at the federal level, the Bureau's interpretive rule would suggest something's credit, how can it be credited at the same time as at the state level, it's not credit? Maybe I'll just end on a more optimistic note though. One of the positives that I mentioned at the outset is that we do have a bit of an experiment playing out in the country where various states are treating this differently. So we will generate data and some empirics as to the impact, but I'll stop there.

Jo Ann Barefoot: Yeah. That is always one of the benefits of our 50-state approach is that we do get the state-level experimentation, but it is challenging. Jeff, let me start with you and then go to you, Penny, as well. When you look at that from the standpoint of a provider and the question of whether you can take a uniform approach, and if not, how easy or difficult it is to customize for different expectations, what should the audience have in mind about those challenges?

Jeff Stoltzfoos: Yeah. I'll put some fun facts to Dan's points. We see six states having implemented and 16 that are considering. And as well, you had the CHOPRA team at the CAPB come close to credit, and of course we are where we are. And so all that is uncertainty, and uncertainty costs money. And also, uncertainty, I think in some sense costs access from a consumer perspective. So we see for example with a credit product that there are eight states that we cannot get into, and when we look at those states and we measure financial distress in our members compared to those states where they have access to the product, we see 25% greater financial distress. So there is a real on-the-ground dynamic that's playing out across the country, as Dan said.

So I guess at a threshold level, I think certainty would be a great outcome. As policymakers think about what that could be, Jo Ann, you mentioned the term box. It is interesting that once you create a box for EWA, you really get to get specific about what the protections are in that box. And actually, the protections in that box go beyond the protections that are in the credit box. And so things like recourse and even fee levels and other important things, bureau reporting, there's all these things that EWA typically doesn't carry with it from a potential for consumer harm perspective, but they're not in the credit box.

And so if we thought about it and we built a box just for EWA, we'd have that benefit. The other dynamic I want to point out is that credit comes with an additional cost. There is the cost of the eight states that I mentioned. There is also just, I said we offer our product on an instant basis for $2. Part of that $2 is credit compliance. And that $2 could be significantly less if you didn't have to do the credit compliance. And so again, if you had the box and you define the things for us, that may be substantially less as compared to where we are now.

Jo Ann Barefoot: Penny, what would you like to add on the challenges of compliance with varying requirements?

Penny Lee: Just to echo what Jeff was saying, 50 different state rules, the District of Columbia, territories does make it challenging on any business, whether it be EWA or any product that's in the marketplace, especially when you're across borders. So there is that difficulty. And having the pendulum swing from 2020 to 2024, fundamentally redefining what the product is and what it isn't, that is a massive pendulum hit or pendulum swing that, as you know, with technology companies to turn on a dime to make a product all of a sudden fundamentally changed is challenging and not something, but also one I would say that we would push back on in the sense that the 2024 proposed rule is an interpretation. What they went back through is tried to redefine from the 2020 advisory opinion and say, "Now we're considering it a credit product. We're considering various fees. Now finance charges. We're now consider..." Foundationally changing the nature of what EWA is.

And so the companies that we work with have built their companies based on what was interpreted at the federal level in saying that if you show no recourse,

if you have a no fee option, if you have various different characteristics, then you're an earned wage access. Anything else is not. So therefore if you stay in this, Jeff's box, if you stay in this box and in this lane, you're then considered an earned wage access and here are all the things associated with it. Now to have this gray area where the federal government is considering changing, because it's only a proposed rule, it is not final, and now you have a Trump administration coming in and probably examining that proposed rule, they obviously issued the 2020 advisory opinion, and so I would think that they will stand behind their own advisory opinion from 2020. So pendulum swings are never easy for industry.

It's very difficult, especially when you're in a dynamic industry such as financial technology, to make these shifts on blowing winds without that certainty. So I think Representative Steil with his federal bill codifying what it is that determines what an earned wage access product is, here's the definition, here's the type of disclosures that are required, here's the type of fee caps, here's the type of various different characteristics, would be incredibly helpful. Because as Jeff was saying, there's eight states that they can't play in. We also have members that cannot play in certain states because they deemed it differently than a Nevada or other states. So we would love to have that federal preemptive, if not federal preemptive, then we would love to have a harmony across the states as to what this product is and what it isn't and how it's regulated.

Jo Ann Barefoot: Do you have a view on how much support there is in the policy community for the point of view that this product can be superior for the consumer? Because there's always the temptation when there's a new product that is good. There's always a temptation though to layer on more regulatory requirements that can impact the value proposition for the provider. Do you think that there's a widespread view among advocates and policymakers that this product can be very good for the consumer in many cases, or jury's out?

Penny Lee: Say, obviously you're going to have probably a different opinion from advocates versus policymakers, but a large part of it is educating a lot of the policymakers and even working with the advocates for them to really understand there's oftentimes a knee-jerk reaction to anything coming into the marketplace that's new. Sounds too good to be true. How could this possibly work? How could this possibly benefit? Isn't it just payday lending wrapped up in a tech veneer? And so it's really important, and what we've really tried to do is educate what they are and the differences. And we've always said we want to ensure that US laws are modernized to fit what the risks and activities in which they do, not in which you suppose they do, but really understand. And so to Dan's earlier point, it will be great to have now data as the various states are regulating it differently, how consumers are interacting, what is actually the debt load, if anything, that they are covering? How frequent are they doing? What is the average amount that they're asking for? How is it being used?

All of those will go to inform. So I would say it's still in its early stage. I think there's a lot of support for this alternative product in the marketplace that it is a no-fee optionality, that there is no recourse, that you're not having a hard credit check pulled from you and negatively impacting your credit. I think everybody agrees, and you'll even hear from some of the consumer advocates say, "This is good for its stated purpose." Now, they'll have other issues for various other reasons on it, but they all understand that it was good. And I would say when you talk to the founders, and Jeff's founders in particular, what they saw was they were trying to solve something in the marketplace. They saw that there was alternatives to short-term liquidity, oftentimes required triple-digit interest rates or revolving debt that just got people in further debt. So what is an alternative? And that's what earned wage access came out of, was trying to put into the marketplace something that provide consumers a low cost or zero cost option to provide the net liquidity.

Jo Ann Barefoot: We're** recognizing that the pattern of a bi-weekly or monthly payday is really, it's an artifact of our old technology, not having any other way to do it, and now it's possible to be much more granular in how we approach things. Daniel and Jeff, do you want to add anything to that? I want to turn to open banking in a moment, but did you have anything first?

Jeff Stoltzfoos: I'll layer in one thought. Agree with everything that Penny laid out. I think part of what we've seen in the past is a little bit of a preference for an employer integrated model. And where I think we can make some progress, and we take it on to challenge policymakers and advocates to think about too, is that it really is more symbiotic, the two models, DD and D2C, whereas on an employer integrated model, there is a leading weakness, which is generally it's available only to employees of large employers and if you switch jobs or have multiple jobs or there's all, or work for a small business, there's all these reasons why DD doesn't do the thing that's needed, meet the need. And then on the, but it does from a strength perspective, you do have better access to wages. And so in some cases, that can have cost implications.

Likewise, on the D2C side, there's a core strength. You don't need to be at that certain employer. You can move around and you can have multiple jobs and you can change jobs. The weakness being in some cases in the marketplace, we've seen higher cost maybe because there are more losses. You've seen overdraft being caused, you've seen tipping, you've seen these different things. And so the preference that we bring is more just looking at the product and seeing how there are those strengths or weaknesses between the two.

The final point I make is just the point about the need for clarity. If we settle in on something, industry will fall in line.

Daniel Gorfine: I agree with everything that's been said. I would say back to that initial question of where could there be consensus, I think it's fairly, I'd be hard-pressed to believe that there are those that don't support a product that is no recourse, has

no or very low cost options, and where folks are comfortable with the wage estimation or verification part of the process. I think the question to me is, how do you best achieve that in the marketplace? But I think that those characteristics that we're laying out right now are substantially different than the alternatives in the marketplace.

So I think there's a reason, I do like to look at the survey work and there have been a lot of excellent organizations that have done this kind of consumer research and the numbers are very compelling. These products seem to be very well received by consumers and I could understand why relative to the alternatives that have traditionally been in the marketplace, and the product does look very differently if those things are true, in terms of no recourse, no or very low cost. And then it becomes a policy question of, how do you best achieve that?

Jo Ann Barefoot: Yeah, that's so helpful. We have great questions coming in, so keep them coming. We're going to turn to them in a couple of moments, but I do want to touch first on the impacts for EWA from open banking. The United States has been moving toward open banking later than some other countries have done, and we're in a little bit of a moment of flux with the new administration and so on, but how are you looking at the impacts on EWA from the likelihood of more data sharing and what might that open up, either on the plus side or the minus side for the consumer? Penny, do you want to go first?

Penny Lee: Sure. You're right, we are, US is a bit behind on the concept of open banking. But we're happy to see that the CFPB did finalize that rule, that they call the 1033 rule to codify that consumers do have the right to permission their data to the services and apps in which they want to use. And so with that, we expect to have just that more robust of information about the consumer to be able to better pinpoint exactly what their wages are, the time in which they're serving, the amount in which they should be eligible to receive.

So it's just the more accuracy, the more data you can have about the individual, the more accurate your services will be. And so that's, I think the open promise of it. There's still some things and there's still obviously implementation dates and compliance dates and all of that that still need to be worked through from the US, but that ability to have a more holistic view of the consumer will be beneficial to EWA.

Jo Ann Barefoot: Jeff or Daniel, do you want to add anything?

Jeff Stoltzfoos: I agree. Open payroll or payroll data is such a powerful, meaningful data set, and really, maybe the only meaningful data set that millions of individuals have and so that they don't control it just seems like the wrong answer. So would welcome progress on that front, as Penny described.

Daniel Gorfine: Yeah. I can only be the third person to agree wholeheartedly with that. And it's like what I said at the beginning where there's consensus on the positives of the product. How can you improve these products and services over time? It would be with this type of payroll data. And again, I actually agree with that view that Jeff shared on there's employer sponsored, which can be an excellent product for people, but there's going to be a huge percentage of the population that's not eligible or having access to that type of a service. So if you're in the direct-to-consumer world and you're looking for ways to improve these types of offerings and solve for one of the potential areas of concern, which is around the wage estimation, this is the way you would do it, is giving consumers better control over their personal financial data. Payroll data is very powerful. It can certainly unlock more in this space as well as I'm sure in many other areas of financial services.

Jo Ann Barefoot: Daniel, based on the work that you did on the paper and your general knowledge, what areas would you point to that maybe would benefit from further research or more data that policymakers may want to particularly pay attention to?

Daniel Gorfine: Yeah. So again, I'm really intrigued by the laboratory that we have going on around the country right now, and you can already anecdotally read cases of states where access has been restricted because of policy decisions, and it's worth listening to people and hearing what that does to their alternatives. That's always something that I think a lot about in the financial services space is, it's easy in a vacuum to assess products, but we should always be comparing it to the status quo and to what alternatives actually exist in the market. So we have an opportunity to do that. And any researchers or academics that are listening to the program today, I think it would be a very, very interesting thing to be able to measure financial wellness, financial impact in states that have taken various approaches to regulating EWA.

Generally speaking, just looking at consumer health and wellness or financial health and wellness, I think is worthwhile. I'm trying to think if there's anything else. The other area, whether it's research or just follow on, is that disclosures matter and making sure that people have access to clear information to make informed decisions is really important. One of the things I think struck us a bit just surveying the space is that there are a lot of different models in the marketplace, and making sure there's some consistency in the ways that providers are discussing their products and explaining fees, I think is really important, to the extent that there are tipping models in the market. Consumers need to very clearly understand when something is voluntary versus not. If it is voluntary, the voluntary nature needs to be real and apparent to the consumer. So I think really focusing on studying and assessing disclosure to make sure that consumers have proper understanding is also another rich area for us to explore.

Jo Ann Barefoot: On the tipping question, we do have a question in the webinar Q&A on it. Would any of you like to expand on your view on maybe how policymakers should look at tipping as a business model? What are the concerns? What are the merits?

Jeff Stoltzfoos: I can layer in here. We don't have tipping on our EWA product. Agree with what Dan was describing and what I think is, let's face it, a lot of this interaction is in an app, and how the app functions and what the consumer is understanding as he or she uses the app is critical. And so it really matters. Not related to the tipping, but in that zone of price and costs and trade-offs that consumers make. It's interesting that we see that you have this instant versus free and as you lower the cost, individuals are more likely to take the instant version, thereby driving down utilization of the free option, which some may think is important. So it's just these incentives that you have to be in the market, be testing it, be paying attention to what your user base is doing and to make the adjustments. But the clarity of the disclosure is critical to success here. Regulators no doubt will hold us all accountable when they find that what the user understands is not turning out to be the case.

Jo Ann Barefoot: The question, and go to you in a second, Penny, but the student in the app also includes, do we know what percentage of EWA uses the tipping model? Is that something that's known? Penny, maybe you have a sense of that.

Penny Lee: It just varies. It's a highly competitive marketplace, so there's a lot of different providers that are out there, some with a tip model, some without a tip model. So I don't know the exact percentage of how many companies are offering tip because it just varies so much product to product, company to company. But the main thing is to that point that it is a highly competitive space and so it's important for a company to succeed. It is in the continued use of the product or in repeated use of the product. And so having fees and disclosures that aren't transparent that make a consumer question or not understand is not helpful.

It is helpful for them to make sure that consumers understand the full fee, the full transparency, that they have the optionality to opt out of any fees whatsoever. And so that it's a good experience with the app, a good experience with the company so that if a situation arises again in which they need early access to their wages, that they've had a good experience on that. And hiding fees, not being transparent is not a good consumer involvement or not, a consumer wouldn't enjoy it. So I would say there's a lot of competition in the marketplace forcing these companies to be as transparent and to have a good customer experience.

Jo Ann Barefoot: Yeah, I'm not meaning to stay on the tipping issue, but another question came in which is, why do they call it tipping? And basically it's treated as a voluntary payment that the consumer can choose to pay and choose the amount of, and that, A, is confusing and can cause a higher payment than one might expect, and can also put the product in a different category in terms of how it's regulated potentially. One of the questions in the chat is what are we learning from other

countries? The questioner says other countries have used EWA more than we have in the states. Are there some lessons learned? Do we know?

Penny Lee: I'll defer to Dan. The research.

Daniel Gorfine: I was going to say we didn't look globally for the paper. I think that's an interesting question. My understanding was that a lot of the EWA innovation was starting out of the US. That was my impression. I may be wrong on that. I know that other jurisdictions might look to these models, but I'm not aware of the state of play globally.

Jo Ann Barefoot: Okay. Some of the questions have, I think we've already touched on, but a number of them are asking to hear more about... Here's one that says, can we elaborate more on the potential risks and benefits of defining EWA as a form of credit? And again, we've talked quite a bit about that, but is there anything you want to add on that front?

Daniel Gorfine: Jeff, I don't know if you were about to jump in. If not, I'm happy to.

Jeff Stoltzfoos: I would say, I guess a benefit would be clarity for sure. I think maybe a detriment would be that as I tried to say earlier, some of the protections may not be as sticky as providers go forward, meaning some providers may determine that it would be better if they took away some of the non-recourse elements of it, et cetera, and then cost. So I'll just describe in terms of Chime, we take all comers in terms of our product, which we call MyPay, yet we are doing fair lending analysis. So there's these things that have cost and thereby make the cost increased for the user that you wouldn't have, but you would have the benefit of clarity and there definitely are benefits to that.

Daniel Gorfine: Yeah, I was going to just agree with that. The credit law frameworks, they're well known, they're understood in that sense. But I agree that you may, and this is a problem if you lose some of the consumer-centric benefits of the product in the first place. And I do think, I tip my hat to companies like Chime that are keeping a very consumer-centric view of the product, but if everything were to be deemed credit, the question that I would have over time is, what happens in the marketplace? What prevents certain... Let's take folks in the payday space. What prevents them from starting to redefine the product as if it's EWA, but maybe it includes recourse? Maybe you lose the ability to codify a no-cost option because the credit laws generally assume that there's a price associated with a product. So I think that's where some of my own personal concern would be is that over time, would the marketplace evolve in a way that obliterates some of the distinctions?

Whereas when you do go more bespoke, you can codify the positive behaviors you want to keep. So if you want there to be valid, real no-recourse products in the space or options available to consumers, you can at least codify that through a tailored legislative framework. And I guess I'll just end on the point that where

I started. To me, the recourse aspect is just a really important distinction to think about all the way through the process of a product. The reality is when something's alone where there's recourse, there's very real consequences and ramifications for default for borrowers. Many providers in the credit context will sell defaulted loans. But the one thing I've always found in this space is that people don't like to think about what happens then. Then it goes to debt collectors. And debt collectors do pursue recourse. And that can have really serious consumer consequences. So that distinction does matter to me when I look at the products and to the extent you want to codify the non-recourse aspect, that may be worth differentiating on.

Penny Lee: Yeah. And I would just say, we should have the ability to define and codify those that are loans and those that are not, and those characteristics of it. One of the definitions of loans is that there is that force to having to repay something, and that's not what the case of an earned wage access as we define it is. It is you've already earned these wages and you're entitled to receive those wages already earned, no obligation, no recourse, no interest, a lot of different characteristics. So I would say there are already credit products that are under regulation, short term, low dollar credit products, and they are regulated as such. We also have an advisory opinion and obviously pushing for federal regulation and regulation in the various states to be able to codify what an earned wage access product is, which is a no credit, which is not deemed as a loan. So having those two, I think are beneficial to be able to go to the marketplace and determine which kind of product is in which with the various different characteristics.

Jo Ann Barefoot: If you put yourself in the consumer's shoes, Penny, what's our confidence that people will understand among those options and how do they get educated and how do they figure out what's best for them?

Penny Lee: I would say having signed up for an earned wage access to try the products, I would say it's very clear as to what this product is, meaning it will provide you up to X amount of dollars of your already wages, verifying your location, verifying your employer, verifying a lot of different aspects of it. And it's clearly stated no fee, no recourse. We will not... A lot of transparency about the product. So I would say, and I don't know what Jeff's research says or Dan's research is saying, but consumers are sophisticated. They understand and they will shop between different products. They will vote to see which ones maybe offer the lowest amount of, have the least amount of fees. So I assume they shop right now on what's maybe the lowest expedited fee, what's not. So I would say consumer... Having tried and having gone on and earned wage access, it's very clear.

They very much again want to make sure that the consumer sees value in these products and if at some other time they need to return back to the product to use again, that they've had a good experience for it. So always still more education to be done, always want to make sure that no one has fallen through the cracks. But I do know that a lot of these companies are very, very

transparent about what is considered a fee, what is not considered, how they're going to be treated through their journey on the product.

Jeff Stoltzfoos: Yeah.

Jo Ann Barefoot: [inaudible 00:53:39]-

Jeff Stoltzfoos: Oh, sorry, Jo Ann. If I could just layer in there. Dan used the word alternatives earlier, and I think consumers that we see are very sophisticated in understanding their alternatives. And overdraft is an alternative. Payday is an alternative. Borrowing from friends and family is an alternative that we see quite often. And there's an element of that people you can understand don't appreciate having to do. So when they stack those alternatives, we think accessing what they've already earned makes a lot of sense and we think they do understand that it is in some sense already theirs. And I'd point out finally that EWA probably doesn't have an infinite shelf life because at some point, payable processors and employers are going to come around and do what some have already done, which is provide the pay. Until then, we all have a job to do, is our point of view.

Jo Ann Barefoot: Yeah, that's a great insight. We've only got a few minutes left. There's a question as to whether any of you would like to comment on the profitability for the industry, given that prices have come down. The questioner says that in 2019, it was common to have $5 of disbursement and now the numbers have come down from there. From the provider's standpoint, what's fueling the growth that we're seeing and what's the profitability model looking like? And if you want to comment on that.

Jeff Stoltzfoos: I'm happy to start. We have, and maybe this is hopefully part of what we bring to the market that's differentiating. We more or less view what we're doing in the earned wage access space as contributing to the suite of things that we offer our members. Our business model is interchanged, revenue based and other things too, but primarily we bring this to our membership as a way to meet their needs as compared to if you are some of our competitors, which are only providing earned wage access. And so the monetization is different, and so that helps us drive down costs and I think helps us meet a need maybe and drive folks forward. But that's all premised on being the primary account provider.

Daniel Gorfine: And I would just say, look, hard to know exactly for specific providers, but that looks like evidence of what Penny was describing, which is robust market competition. It's what you'd expect to see if losses are low. And so I'm assuming that some of that is evidence of products working well, where if this is being done right, tied to earned wages, losses should be low. And with competition in the marketplace, you would imagine seeing prices come down to a very competitive level. Again, I look at that and if that's where we are compared to the status quo before EWA, that's a meaningful move for millions of Americans. So that's very interesting, that data point. I guess whoever posted it, if you can

also provide sources, that'd be helpful because that's an interesting data point that was shared.

Jo Ann Barefoot: We've got a few minutes left. I'd like to ask each of you to just give us one or two sentences on the primary takeaway that you hope the audience will leave with today if they are a policymaker or if they are a provider trying to navigate these uncertainties and stay on the good side of the risk picture and benefiting their customer. Daniel, I'll start with you.

Daniel Gorfine: Well, I've probably belabored my points to this, but I think the paper was a great exercise to be able to go through and really consider different frameworks, consider the pros and cons. I would just encourage folks to think about trade-offs and to think about unintended consequences or gaps when we apply traditional frameworks to newer products. While you can't always do that, and I'm also, I accept that that's a fair argument to say, "Well, wait a minute now. [inaudible 00:58:13] something we create that's [inaudible 00:58:14] bespoke for every new financial innovation," well, of course you can't do that, but if there is something that seems distinguishable and I keep pointing at the recourse aspect, or lack of recourse, then it's worth asking the question. And I don't think we should just be beholden to traditional approaches If over time we start finding maybe they're not capturing new innovations and new products. So I know, Jo Ann, you started us off by making that point, so maybe I'll end by echoing it.

Jo Ann Barefoot: That's a great answer. I'm going to ask the other panelists to be very pithy because we're just about out of time. Jeff, do you have one takeaway either for providers or policy makers out of all the things we've talked about?

Jeff Stoltzfoos: Yeah, just an opportunity to really make a difference by bringing clarity to the space, and so that clarity would manifest in a lot of benefits for consumers.

Jo Ann Barefoot: Penny?

Penny Lee: Sure. I would just say harmonization between the state and federal to ensure, to Jeff's point, that there is clarity on what the product is and to keep an open mind as you look at this, and not take assumptions from what you think it might be and what it isn't.

Jo Ann Barefoot: I'll just add one quick observation myself. Maybe it's obvious, but this is a great example of, I think, of the fact that new technology is enabling the whole financial services space to have more data, more information that can enable us to do things that we didn't used to be able to do. And I hope that regulators will keep their eye on that because very, very often, more accuracy translates into less risk. Less risk translates into better pricing and more access and opportunities. So something to think about. I want to thank you all for joining us. Again, the paper is at regulationinnovation.org, written by Daniel Gorfine, and I want to thank the audience for joining us. It's been wonderful. Thank you.

Penny Lee: Thanks, Jo Ann.

Jeff Stoltzfoos: Thank you.