

# AMERICAN PAYROLL ASSOCIATION

December 14, 2021

The Honorable Nellie Pou  
Chair, Senate Commerce Committee  
New Jersey Senate  
State House  
125 W. State Street  
Trenton, NJ 08608  
[SenPou@njleg.org](mailto:SenPou@njleg.org)

The Honorable Nicholas P. Scutari  
Majority Whip  
New Jersey Senate  
State House  
125 W. State Street  
Trenton, NJ 08608  
[SenScutari@njleg.org](mailto:SenScutari@njleg.org)

Re: Senate Commerce Committee Amendments to S. 3611 regarding earned income access

Dear Senators Pou and Scutari:

The American Payroll Association (APA) supports with recommendations New Jersey Senate Commerce Committee Amendments to S. 3611, An Act concerning earned income access services and supplementing Title 17 of the Revised Statutes, as provided on December 8, 2021, by Bill Sponsor The Honorable Nicholas P. Scutari.

## **ABOUT THE APA AND EARNED INCOME ACCESS**

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. The APA does not endorse any particular earned income access technology or management approach. The APA is concerned about employers and employees but does not represent them. Therefore, APA does not position 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.

## DEFINITIONS

*“Earned income access service provider” or “provider” means any person that is engaged in the business of delivering earned but unpaid income to a consumer in New Jersey. **An earned income access service provider shall be employer-integrated** (emphasis added).*

The second sentence requires clarification for two reasons:

1. Some employers do not outsource or contract for earned income access services and provide the services to their employees using models internal to their operations. This definition on its face could include these internal models, yet the requirements that follow appear not to apply to internal employer programs.
2. Third-party providers are not necessarily employer-integrated. Instead, it is the earned income access service that is employer integrated.

## SECTION 2 REPLACEMENT

*a. An **earned income access service provider** shall offer earned income access services through a contractual arrangement with an obligor or a **service provider** to an obligor or a consumer... (emphasis added).*

### **Earned Income Access Service Provider and Service Provider**

The terms “earned income access service provider” and “service provider” are unclear, i.e., are these the same entity or is the second service provider intended to mean “payroll service provider?”

Earned income access service providers can operate through agreements with payroll service providers who then offer or make the earned income access services available to their clients and clients’ employees (consumer). However, if the earned income access provider and service provider are the same, the statement could read that a provider must form a contract with itself.

Some payroll service providers have created their own earned income access services that they offer to their clients. It is unclear whether payroll service providers would need a separate earned income access service contract with their clients (obligors) or whether they can offer the service bundled with other services offered to clients.

## Consumer

If the intent of S. 3611 is to allow only those earned income access programs that are employer integrated, then the “or a consumer” language that would allow an earned income service provider or payroll service provider to engage directly with consumers should be removed.

In practice, payroll service providers form agreements with employers. Employees can access information sites and opt in or out of the services made available through their employers. Once a program is established, participating employees can enter a portal to request early access to their income. The same is true for employers that contract with earned income access providers. Employees can opt in and out of the service arranged by their employers through a portal provided by the earned income access provider.

- e. If an earned income access service provider makes a withdrawal on a consumer’s account, prior to the deposit of the consumer’s wages in that account, that results in the imposition of fees on the consumer, the provider shall refund the fees to the consumer.*

If an earned income access provider is directly debiting employees’ bank accounts, the service would not be employer integrated. In employer-integrated models, there is no reason for direct debits to employees’ bank accounts. Instead, employers share payroll data with earned income access providers directly or through their payroll service providers, which creates visibility into employees’ account balances. Overdrafts should not occur. Therefore, subsection 2.e. would not occur.

- f. An earned income access service provider shall not provide earned income access services to an obligor or a consumer more than two times in any week.*

The APA supports provisions of S. 3611 to prevent potential risks to consumers through transparency and disclosure requirements, provider registration, and studies on predatory practices. We do not support provisions that restrict the use of earned income access services. The APA recommends that any consideration of restrictions be managed by the New Jersey Department of Banking and Insurance through a data driven process.

There is no financial technology or limitation that will protect consumers who poorly manage their financial resources and are not willing to change their behavior. Conversely, a financial tool used wisely by consumers can help them better manage their resources without high costs and a cycle of debt. An arbitrary limit on the number of times consumers

can request their earned wages before payday can prevent consumers from making good decisions with no effect on consumers that poorly manage their resources.

In addition, legislative restrictions on the number of uses of earned income access services can prevent employers from making appropriate decisions for their employees. Employers should be able to select the earned income access benefit they offer to employees for purposes of retention and to attract new talent.

If an employer operates in more than one state, the benefit of earned income access will apply unevenly to employees, making attracting employees who physically work in New Jersey undesirable. This is especially true today with the significant increase in remote work locations.

If APA can be of assistance to you on earned income access or other payroll-related issues, please contact me at [ajacobsohn@americanpayroll.org](mailto:ajacobsohn@americanpayroll.org) or 202-669-4001.

Sincerely,

A handwritten signature in cursive script that reads "Alice P. Jacobsohn".

Alice P. Jacobsohn, Esq.  
Director, Government Relations