

But Is It A Loan?

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Earlier this week, California' Department of Financial Protection & Innovation [announced](#) that it had entered into memorandums [sic] of understanding with five earned wage access companies. If you haven't heard of a "earned wage access company" until now, the DFPI's press release explains that these companies "give employees access to wages they have earned but haven't yet received through their employer payroll, a service that providers say can help employees pay their bills on time or cover unexpected expenses without overdraft charges or credit card fees, and can be an alternative to payday lending". According to the MOUs, employees do not get an advance of the full gross amount of their earned wages. Rather, employees receive a "limited to a portion thereof".

The MOUs require the companies to provide quarterly reports to the DFPI and to submit to examination by the DFPI. What I find interesting is that in entering into the MOUs, the DFPI does not take a position on whether the companies are subject to licensing under California's Financing Law, Cal. Fin. Code § 22000 *et seq.* Indeed, the MOUs provide:

"Nothing in this Memorandum shall prevent the Department from asserting at any time in the future that the advance pay product offered by Company to California consumers requires licensure or registration with the Department under any law under the Department's jurisdiction."

The California Licensing Law requires licensing of "finance lenders" which it defines as "'any person who is engaged in the business of making consumer loans or making commercial loans". Cal. Fin. Code § 22009. The CFL, however, does not bother to define "loan". In entering into these MOUs, the DFPI has apparently left the question open for another day or perhaps a lawsuit.

The Department's press release refers to "memorandums" rather than "memoranda". While I won't gainsay the correctness of the DFPI's spelling, I prefer the more Latinate "memoranda". See [Why Is Memoranda Plural And Agenda Singular?](#)

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