Alternative Financial Services: High-Cost Credit Consultation Paper (Proposal Number 21-MGCS002)

A Submission from the Public Interest Advocacy Centre

PUBLIC INTEREST ADVOCACY CENTRE
LE CENTRE POUR LA DÉFENSE DE L'INTÉRÊT PUBLIC

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Introduction

The Public Interest Advocacy Centre ("PIAC") is a national non-profit organization and registered charity that provides legal and research services on behalf of consumer interests, and, in particular, vulnerable consumer interests, concerning the provision of important public services. PIAC has been active in the field of consumer protection for over 40 years.

PIAC welcomes this opportunity to comment on the Ministry of Government and Consumer Services (ministry) consultation on "Alternative Financial Services: High-Cost Credit."[1] While we remain extremely concerned about the use of these alternative financial services, we note that in the absence of access to traditional financial institutions for many low-income consumers and other financially underserved groups, including those with no or weak credit history, these services continue to play a role in the market and till that time, it is best to ensure that these services are subject to strong regulations to protect borrowers.

We are pleased to see the ministry's efforts to introduce protections for borrowers of other high-cost credit, besides payday loans, and hope that this leads to greater transparency and more clarity for consumers. We seek to provide a consumer perspective on the various issues raised by this consultation and hope that our comments will assist the ministry in its inquiry.

[1] Ontario's Regulatory Registry, "Alternative Financial Services: High-Cost Credit Consultation Paper," Proposal Number: 21-MGCS002 (29 January 2021), online: <https://www.ontariocanada.com/registry/view.do?postingId=36067&language=en>. Also see the Consultation paper, High-Cost Credit in Ontario, Strengthening Protections for Ontario Consumers (January 2021).

PIAC's Responses

Question # 1: Do you agree that Ontario borrowers need stronger regulation of high-cost credit agreements?

☒ **Agree**

☐ **Disagree**

☐ **Other – Please Explain Below**

Explanation and Additional Comments:

You may enter any additional comments here

1. We agree that Ontario borrowers need stronger regulation of high-cost credit agreements. These agreements often place borrowers in continuous cycles of debt and lead to significant debt accumulation, which takes a long time to pay off. Strong regulations would offer some important protections to borrowers, particularly, mandating stringent disclosure requirements could discourage borrowers from taking these loans, unless absolutely necessary, and protect them from spiralling in further debt.

2. Notably, not all borrowers who take payday loans are in crisis or need emergency funds. For instance, the Financial Consumer Agency of Canada (FCAC) found in its 2016 report that while majority of its survey respondents, 45% said they typically used payday loans for unexpected necessary expenses, such as car repairs, but nearly 41% said they typically used payday loans for recurring and therefore expected necessary expenses, such as rent or utility bills.[2] There was also a small percentage of 7% and 2% that used payday loans for buying something special and other expenses, respectively.[3] Whereas a 2012 Pew survey found that most borrowers use payday loans to cover ordinary living expenses over the course of months, not unexpected emergencies over the course of weeks.[4] The average borrower is indebted about five months of the year.[5]

3. Likewise, not all users of instalment loans and other high-cost credit agreements might be in crisis or in need of emergency funds. Better disclosure can be helpful in encouraging

[2] Financial Consumer Agency of Canada, "Payday Loans: Market Trends," (October 25, 2016), online: <https://www.canada.ca/en/financial-consumer-agency/programs/research/payday-loans-market-trends.html#toc10>, see section 4.5 (Reasons for loans)
[3] *Ibid.*
[4] PEW Charitable Trusts, "Payday lending in America: Who borrows, where they borrow, and why," (July 2012), online: <https://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2012/pewpaydaylendingreportpdf.pdf> at p.13
[5] *Ibid.*

many borrowers like these to look for alternatives rather than resort to high-cost credit agreements.

Question # 2: Do you agree with the proposal to establish new requirements for high-cost credit agreements, defined as credit agreements with an APR that exceeds the Bank Rate of the Bank of Canada by 25 per cent or more? If you recommend an alternative approach to defining high-cost credit agreements, please explain.

☐ **Agree**

☐ **Disagree**

☒ **Other – Please Explain Below**

Explanation and Additional Comments:

You may enter any additional comments here

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4. We strongly support any measures that limit the total cost of borrowing of such high-cost credit agreements, and suggest that these must be clearly identified in law. We agree with defining high-cost credit agreements, as credit agreements with an APR that exceeds a defined limit. The proposal defines a high-cost credit agreement as one with an APR that exceeds the Bank Rate of the Bank of Canada by 25 percent, we note that even though this is not an absolute limit as followed in Alberta of 32 percent,[6] it still identifies a specific threshold that would bring about the proposed protections associated with high-cost credit agreements.

5. We support following a similar approach though we suggest placing some floor in this respect. We recommend that high-cost credit agreements should be defined as credit agreements with an APR that exceed the lesser of a) 25% + the Bank Rate set by the Bank of Canada or b) 30%. Identifying a floor would ensure that an agreement charging an interest rate of 30% would automatically be defined as a high-cost credit agreement. This would provide clarity and ensure that borrowers understand that in all cases, an agreement charging an interest of 30% and beyond is high-cost credit and that the protections associated with these high-cost credit agreements would apply. Though note that we suggest that the lesser of the two options a) and b) above, should amount to high-cost credit agreement. The 30% floor is intended to ensure agreements are defined as high cost even when interest rates rise substantially.

6. We note that credit cards and various other products and services have an interest rate attached to them (such as late payments on certain bills), which can be higher than the

[6] Ontario Ministry, Consultation paper, High-Cost Credit in Ontario, Strengthening Protections for Ontario Consumers (January 2021) at p.8.

rate proposed in this paper. Some of these items have separate laws and regulations (such as banking laws), we would encourage the ministry to consider whether there would be any conflicts and/or overlaps in applying the proposed rate and the rate applicable to other services, and ensure that the law and any regulatory frameworks applied to these services and those applied to high-cost credit agreements do not result in any confusion or uncertainty.

Question # 3 (a): Do you agree that businesses that offer high-cost credit agreements should be required to be licensed? Why or why not?

☒ **Agree**

☐ **Disagree**

☐ **Other – Please Explain Below**

Explanation and Additional Comments:

You may enter any additional comments here

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7. We agree that businesses that offer high-cost credit agreements should be required to be licensed. Licensing measures can play an important role in ensuring that consumers are protected through the application of specifically defined standards. We understand that licensing by itself does not provide absolute protection against predatory lending practices, but it could serve as an important shield by requiring lenders to meet certain standards to be able to provide lending services.

8. Having a licensing regime in place can also make it easier for the ministry to monitor these lenders and the services they offer, ensure compliance and administer its enforcement powers.

9. Additionally, licensing measures must also require lenders to meet reporting requirements that can be useful in protecting borrowers. For instance, licensed lenders should be required to report on the number of borrowers they had per month or quarter, number of repeat borrowers-if any, what was the amount borrowed, how many borrowers defaulted, and other issues. The ministry should also take measures against any unlicensed lenders by introducing monetary penalties in the law with the specifics of such penalties prescribed by a regulation.

10. Many borrowers of payday loans do not know that their lenders have to be licensed[7] and also do not understand the implications of dealing with non-licensed lenders. Similar issues could arise in relation to other high-cost credit. To address this issue, we would encourage the ministry to consider mandating better disclosure practices. This could entail requiring lenders to place their licensing status prominently in their stores and on their websites. So, when borrowers find that no such status is posted, they can either question the lender about it or deal with another lender. At the same time, it is important that the ministry does more to educate borrowers about their rights.

Question # 3 (b): Should a licensing framework for high-cost credit businesses be integrated with the licensing framework for payday lenders? Why or why not?

You may enter any comments here

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11. The licensing framework for high-cost credit businesses could be integrated with the licensing framework for payday lenders to ensure easier administration and monitoring of these lenders and the services they offer. However, issues with the payday lenders' licensing framework, such as its limited awareness and enforcement should be definitely addressed going forward to ensure that these issues are not repeated and a better and stronger licensing regime is put in place.

Question # 4 (a): Would high-cost credit agreements benefit from new disclosure requirements to ensure greater clarity, transparency and simplicity? Please describe any requirements that you think are necessary to ensure that all costs and key loan terms are clearly presented to the borrower at the beginning of a high-cost credit agreement.

☒ **Agree**

☐ **Disagree**

☐ **Other – Please Explain Below**

Explanation and Additional Comments:

You may enter any additional comments here

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12. We agree, high-cost credit agreements would benefit from new disclosure requirements to ensure greater clarity, transparency and simplicity. A recent CBC Marketplace

[7] Tahira Dawood, "Enhancing Protection for Payday Loan users in Canada," (2019) Public Interest Advocacy Centre, online: <https://www.piac.ca/wp-content/uploads/2019/03/PIAC-Report-LFO-Grant-ATJ-115-16-Enhancing-Protection-for-Payday-loan-users-in-Canada-Final-March-2019.pdf> at p.15-16.

investigation shed light on the misleading practices of lenders.[8] This hidden camera investigation into CashMoney, Easyfinancial, Fairstone Financial and Money Mart revealed confusing and misleading representations, and a lack of transparency and documentation.[9] According to Goeasy Ltd, owner of Easyfinancial, roughly nine-million Canadians with lower credit ratings use these borrowing services.[10] The amounts being borrowed are quite significant. Notably, CashMoney is offering up to $10,000 and Money Mart is offering loans of up $15,000 with multi-year repayment plans.[11] Whereas Easyfinancial and Fairstone Financial offer instalment loans up to $45,000 and $35,000, respectively.[12]

13. The investigation also revealed that misleading information was being provided regarding the interest rates, as some sales agents downplayed rates by providing a monthly interest that appears much less than an annual rate.[13] The report also notes that an agent at CashMoney repeatedly expressed the rate as 3.9% which was clarified as 46.93% annual interest by a colleague.[14]

14. Considering the high risks of using such loans, we strongly support mandating comprehensive disclosure requirements. The contents that should be disclosed must include the principal amount being borrowed, the interest rate (with details on how its calculated, provided in simple and plain language), any additional fees and charges, time frame for making the payments, late payment fees and charges, cooling-off period, and any other optional services and products that are included along with their complete costs.

15. Along with considering the contents that must be disclosed- that is the costs and key loan terms and other information, the ministry should also identify and mandate methods on how this information is to be disclosed.

16. PIAC discussed similar issues in relation to payday lending in its response to the ministry's consultation in 2015 regarding, "Strengthening Financial Consumer Protection,"[15] which are relevant and worth considering for other high-cost credit agreements. Broadly, we found that adding layers of dense or even simplified written description may not assist borrowers as much as graphics, provided they are actually provided or displayed to

[8] Jeannie Stiglic, Jenny Cowley, and Charlsie Agro, "'Canadians deserve better': Experts decry 'outrageous' interest rates by alternative lenders," *CBC Marketplace* (30 January 2021), online: <https://www.cbc.ca/news/canada/alternative-lenders-marketplace-1.5891676>.
[9] *Ibid.*
[10] *Ibid.*
[11] *Ibid.*
[12] *Ibid.*
[13] *Ibid.*
[14] *Ibid.*
[15] Jonathan Bishop, John Lawford and Cynthia Khoo, Strengthening Financial Consumer Protection- A Submission from the Public Interest Advocacy Centre, (August 2015), online: <http://www.piac.ca/wp-content/uploads/2015/08/PIAC-Comments-ON-Consumer-Financial-Protection.pdf>.

borrowers.[16] We also referred to our earlier recommendations to the ministry from 2003 that suggested FCAC and provincial regulators to undertake campaigns to increase financial literacy of payday borrowers, with specific emphasis on cost of this form of credit and alternative credit sources, and payday lenders to help fund consumer borrowing education either through license fees or particular education levies.[17]

17. Our 2019 report on payday loans, that involved six (6) focus groups found that many groups were not aware of their rights, with many participants calling for better disclosure practices.[18] As a part of our 2019 project, we designed a sample user-friendly guide for payday loans (please see below).[19] We would encourage the ministry to consider designing a similar guide on high-costs credit products and specifying how it is to be displayed and shared with users. We suggest that the ministry should require these guides to be displayed clearly and prominently in the stores and on the websites, and should also be presented separately to the borrowers before they sign any paperwork. This is to ensure that users have access to key information before they make a decision.

[16] Jonathan Bishop, John Lawford and Cynthia Khoo, Strengthening Financial Consumer Protection- A Submission from the Public Interest Advocacy Centre, (August 2015) at p.39
[17] Jonathan Bishop, John Lawford and Cynthia Khoo, Strengthening Financial Consumer Protection- A Submission from the Public Interest Advocacy Centre, (August 2015) at p.39-40.
[18] Tahira Dawood, “Enhancing Protection for Payday Loan users in Canada,” (2019) Public Interest Advocacy Centre, at p.3-5, and 13-14.
[19] See online: <https://www.piac.ca/wp-content/uploads/2019/03/PIAC-Sample-User-Guide-Before-you-get-a-payday-loan-What-you-need-to-know.pdf>.

WHAT ARE PAYDAY LOANS?

PAYDAY LOANS ARE TYPICALLY:

- Short term loans (2 weeks or less)
- Determined based on your net pay until your next payday
- Have very high interest rates, fees, and charges

CONSIDER CHEAPER ALTERNATIVES TO PAYDAY LOANS

PAYDAY LOANS SHOULD BE A LAST RESORT

Try Approaching:	Try Asking For:
Family / Friends	Personal loan
Bank or credit union	Line of credit
	Overdraft protection
Credit card company	Cash advance
Your billing companies	Extension on your bill payment due dates
Your employer	Pay advance
	Cash instead of vacation
Financial Advisor	Options they may have to address your specific financial situation
Accredited Credit Counselor	
Licensed Insolvency Trustee	

IF YOU MUST TAKE OUT A PAYDAY LOAN

MAKE SURE YOU:

- Borrow from a licensed lender
- Borrow the least amount possible
- Know the total cost of your loan and ask questions to clarify any confusion
- Read the loan agreement before signing
- Keep a copy of your loan agreement

KNOWLEDGE IS POWER. KNOW YOUR RIGHTS.

WHAT IS THE LAW IN ONTARIO?
THE *PAYDAY LOANS ACT, 2018*

YOUR PROTECTIONS:

- You can't be charged more than $15 for every $100 you borrow
- You can't be sold or offered any products or services in connection with a payday loan
- You have 2 business days to cancel a payday loan agreement and give back the loan without paying a penalty or giving a reason
- You can't get a second payday loan from the same lender until you repay the first loan (i.e. NO rollover loans)

PAYDAY LENDERS MUST:

- ✓ Have a provincial license
- ✓ NOT lend more than 50% of your net income per loan
- ✓ Never ask for or accept loan repayment by automatically deducting from your paycheck (i.e. NO assignment of wages)
- ✓ State on the first page of the agreement:
  - ✓ The amount borrowed
  - ✓ The length of the loan
  - ✓ The cost to borrow
- ✓ Display a poster and provide a flyer explaining the cost of a loan over time
- ✓ Display the loan cost as an Annual Percentage Rate (APR)
  **NOTE: see reverse to learn more*

NOTE: this pamphlet contains general financial information and is NOT intended as legal advice.

PAYDAY LOANS ARE HARD TO REPAY. HERE'S WHY.

THE DURATION OF THE LOAN AFFECTS THE COST

Consider this example:
Suppose you need $100 for a medical emergency.
Lender A says it will cost $15 for a 2-week loan.
Lender B says it will cost $21 for a 1-month loan.
Which $100 loan is cheaper?

Lender A: $15 per $100 for 2 weeks = 391% APR*	
$15 2-week period	$15 2-week period
Lender B: $21 per $100 for 1 month = 252% APR*	
$21 1-month period (4 weeks)	

**NOTE: see reverse for more about APR.*

Lender B is *cheaper* because the loan term is *longer*. The shorter the term, the more expensive the loan will be.

THE TIME CONSTRAINTS ARE UNREALISTIC

Illusion	Reality
Payday lenders want you to think you can reasonably repay your loan within 2 weeks	Payday loans are designed to distort your perception of time and to profit from late payments & repeat borrowing

How Payday Lenders Trick You & Make Money

1.	The standard time frame to calculate interest for **non-payday loans** is **1 year**.
2.	In contrast: the time frame to calculate interest for **payday loans** is **2 weeks**. This means you have to come up with the money to repay payday loans ***26x faster*** than you would for non-payday loans (1 year = 52 weeks = 26 two-week time periods).
3.	Payday lenders want you to ***incorrectly assume*** that payday loans are calculated and repaid over 1 year (since 1 year is the standard time frame non-payday lenders use) rather than **2 weeks**.
4.	Payday lenders know **2 weeks is too short:** they expect to **profit from late payments** (via interest on the loan) **and repeat borrowing. This is how they run their business and trap you in debt.** For you: quick money = quick debt. For them: late payments and repeat loans = more profits.

Source: PIAC project, "Enhancing Protection for Payday Loan Users in Canada," (2019), sample user-friendly guide.

HOW TO CALCULATE THE INTEREST RATE FOR A PAYDAY LOAN

INTEREST is the cost of your loan. Interest includes all fees and charges EXCEPT NSF or insurance charges.

"ANNUAL PERCENTAGE RATE" (APR)
is the interest rate you pay on a loan per year. Knowing how to calculate APR will let you compare interest rates for different types of loans, so you can pick the cheapest option available to you.

How to calculate APR:

$$\frac{\text{\$ charge (interest)}}{\text{\$ loan amount (principal)}} \times \frac{\text{365 days in a year}}{\text{\# days your loan is for}} \times \text{100 (to turn the value into a \%)} = \text{APR (\%)}$$

A simpler *but less accurate* calculation will give you an *approximate* APR:

$$\text{\$ cost per \$100 borrowed} \times \text{maximum \# of loans you could fit in a month} \times \text{12 months in a year} \approx \text{APR (\%)}$$

Consider this example:
Suppose you need $300 to repair your car. The payday lender says a 2-week loan will cost $15 for every $100 you borrow. What is the interest rate?

Using the proper APR calculation:

$$\frac{\text{\$45 charge (\$15 per \$100 borrowed)}}{\text{\$300 loan}} \times \frac{\text{365 days in a year}}{\text{14 day loan}} \times \text{100 (to turn the value into a \%)} = \text{391\% APR}$$

Using the *approximate* calculation:

$$\text{\$15 (cost per \$100 borrowed)} \times \text{2 (maximum \# of 2-week loans you could fit in a month)} \times \text{12 months in a year} \approx \text{360\% APR}$$

NOTE: the approximate calculation is intended to give you a quicker way to determine the APR and is NOT intended to replace the proper calculation.

RESOURCES TO HELP YOU

CONTACT YOUR CONSUMER AFFAIRS OFFICE:

Alberta: 1-877-427-4088
www.servicealberta.ca/payday-loans.cfm

British Columbia: 1-888-564-9963
www.consumerprotectionbc.ca

Manitoba: 1-800-782-0067
http://www.gov.mb.ca/consumerinfo/initiatives/money-matters/payday-loan-regulations.html

New Brunswick: 1-866-933-2222
http://fcnb.ca/what-is-a-payday-loan.html

Newfoundland and Labrador: 1-877-968-2600
https://www.servicenl.gov.nl.ca/consumer/consumer_affairs/index.html

Northwest Territories: 867-767-9161 ext 21022
www.maca.gov.nt.ca/en/services/consumer-affairs

Nova Scotia: 1-800-670-4357
www.novascotia.ca/sns/access/individuals/consumer-awareness/consumer-loans-credit/payday-loans.asp

Nunavut: 1-866-223-8139
www.gov.nu.ca/community-and-government-services/information/consumer-affairs

Ontario: 1-800-889-9768
www.sse.gov.on.ca/mcs/en/

Prince Edward Island: 902-368-4580
www.princeedwardisland.ca/en/information/justice-and-public-safety/payday-loans-consumer-rights-and-responsibilities

Quebec: 1-888-672-2556
www.opc.gouv.qc.ca/en/consumer/

Saskatchewan: 306-787-6700
http://fcaa.gov.sk.ca/consumers-investors-pension-plan-members/consumers/payday-loan-borrowers

Yukon: 867-667-5111
www.community.gov.yk.ca/consumer/cp.html

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BEFORE YOU GET A PAYDAY LOAN

WHAT YOU NEED TO KNOW

The Law Foundation of Ontario

Source: PIAC project, "Enhancing Protection for Payday Loan Users in Canada," (2019), sample user-friendly guide continued.

18. Just mandating these disclosure requirements by itself won't suffice, we urge the ministry to also undertake review of these disclosure practices to ensure that all the required information is being shared by the lenders and in the prescribed form as required by the law and/or regulation.

Question # 4 (b): Do borrowers of high-cost credit need greater clarity and transparency that they cannot be obligated to purchase optional products and services from a lender in order to enter into a credit agreement? Please describe any disclosure and information requirements that you think are necessary.

☒ **Agree**

☐ **Disagree**

☐ **Other – Please Explain Below**

Explanation and Additional Comments:

You may enter any additional comments here

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19. We strongly agree, borrowers of high-cost credit need greater clarity and transparency regarding optional products and services from a lender. Many borrowers don't even know that these products and services are optional and assume that they are either a part of the high-cost credit and/or are required to be purchased to be able to acquire the high-cost credit. These optional products and services often significantly increase borrower costs and abuse borrowers' vulnerability. As aptly noted in the consultation paper that a high-cost instalment loan could have a monthly loan repayment of $350, a monthly credit insurance premium of $120 and a $20 monthly charge for credit monitoring.[20]

20. With respect to disclosure, the fact that these products and services are "optional" needs to be clearly mentioned. This should be provided in writing, in clear and simple language in the loan documentation that borrowers must receive before they sign any paperwork. At the same time, when consumers are making this transaction in-person, lenders should be required to inform orally that these products and services listed and/or advertised are optional and getting them is not necessary. When applying online, these optional services should appear separate from the main application and should be clearly and prominently marked as optional so that consumers know that purchasing them is not mandatory.

21. Other key information that should be mentioned is these products and services' total costs and any associated charges, any cooling-off period and the process of cancellation. The regulation should provide for a cooling-off period of at least five (5) business days, and a clear and simple cancellation process for these optional products and services as well.

22. The ministry should also consider including stringent provisions that prevent lenders from placing misleading advertisements in store and online, which often mislead and manipulate consumers into buying these optional services.

[20] Ontario Ministry, Consultation paper, High-Cost Credit in Ontario, Strengthening Protections for Ontario Consumers (January 2021) at p.13.

Question # 4 (c): Do borrowers of high-cost credit agreements need clearer and more prominent disclosures about the total cost, and cost per payment, of any optional products and services in a high-cost credit agreement? Please describe any requirements that you think are necessary.

☒ **Agree**

☐ **Disagree**

☐ **Other – Please Explain Below**

Explanation and Additional Comments:

You may enter any additional comments here

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23. Yes, borrowers of high-cost credit agreements need clearer and more prominent disclosures about the total cost and cost per payment of any optional products and services in a high-cost agreement. Additionally, lenders should also be required to disclose any fees and charges that would apply in case of any missed payments, and how these are calculated and applied. This all should be disclosed before the consumer decides to take the optional product so they can make a well-informed decision.

Question # 5: Do you agree with the ministry's proposal to establish a cooling-off period of at least two business days for high-cost credit agreements? Would you recommend a cooling-off period of longer than two business days and, if so, why?

☐ **Agree**

☐ **Disagree**

☒ **Other – Please Explain Below**

Explanation and Additional Comments:

You may enter any additional comments here

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24. The ministry should definitely establish a cooling-off period but instead of two (2) business days, which is too short, the ministry should provide a mandatory ten (10) day cooling-off period. We note that Quebec's *Consumer Protection Act* provides a 10 day cooling-off period for high-cost credit contracts,[21] and Ontario should follow the same approach.

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[21] Quebec, Bill 134 (2017, chapter 24), "An Act mainly to modernize rules relating to consumer credit and to regulate debt settlement service contracts, high-cost credit contracts and loyalty programs," online: <http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=5&file=2017C24A.P

Question # 6: The ministry is proposing to strengthen protections against harassing, misleading or abusive collection practices for borrowers of high-cost credit. Do you agree that the requirements and prohibitions for lenders should be similar to those that are currently in place for payday lenders and collection agencies? Why or why not?

☒ **Agree**

☐ **Disagree**

☐ **Other – Please Explain Below**

Explanation and Additional Comments:

You may enter any additional comments here

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25. We agree that the requirements and prohibitions for lenders in relation to collection practices for high-cost credit agreements should be similar to those that are currently in place for payday lenders and collection agencies. That said, better consumer awareness and stronger enforcement of these practices is needed. Our 2019 report on payday loans revealed that many focus group participants seemed unsure about their rights when it came to collection matters.[22] Many participants did not know that there were regulations limiting the frequency, time and who can be contacted by the collections agency.[23]

26. Likewise, PIAC highlighted issues regarding the debt collection industry in its response to the ministry's consultation in 2015, and referred to our report (from March 2015) that raised concerns of questionable practices by collection agencies and the need for enhanced communication methods by government agencies.[24] Among the recommendations, we advocated for the distribution of a notice from government consumer protection agencies explaining to consumers their rights when they are contacted by a debt collection agency.[25] The report suggested calls between debt collectors and consumers be recorded, and the relevant consumer affairs agency review random samples of these recordings for the protection of all parties and to ensure industry best practices.[26] Moreover, PIAC proposed that debt collection industry regulators consider introducing annual transparency reports related to debt collection complaints, which could highlight the number of complaints brought against each collection agency as well as against each

DF>, see section 214.16(o). Also see: Annick Demers and Elizabeth Sale, "Take Two: Quebec Introduces Bill 134 to Modernize the Consumer Protection Act," *Blakes* (10 May 2017), online: <https://www.blakes.com/insights/bulletins/2017/take-two-quebec-introduces-bill-134-to-modernize-t#:~:text=If%20the%20credit%20is%20considered,%2Dday%20cooling%2Doff%20period>.

[22] Tahira Dawood, "Enhancing Protection for Payday Loan users in Canada," (2019) Public Interest Advocacy Centre, at p.37.

[23] *Ibid.*

[24] Jonathan Bishop, John Lawford and Cynthia Khoo, Strengthening Financial Consumer Protection- A Submission from the Public Interest Advocacy Centre, (August 2015), at p.5

[25] *Ibid.*

[26] *Ibid.*

original creditor.[27] Our earlier report also suggested introducing a universal standard as to the provision of a written notice of a debt before debt collection calls start.[28] We would encourage the ministry to consider including our earlier recommendations in the legal and/or regulatory framework for high-cost credit agreements.

Question # 7 (a): Is there a need to consider new limits on the cost of borrowing of certain high-cost credit agreements? What would be the costs and benefits of establishing limits?

You may enter any comments here

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27. We believe there may be a need to establish a tiered limit system for loans of certain sizes. For example, loans with principal values under $500 can be charged higher interest rates within defined limits, but the maximum allowed interest should decrease as the principal value increases. This is because at low principal levels, the dollar amount owed with respect to the high interest rate would not be as burdensome for the borrower as would be with higher principal levels. Having a flat rate of interest at high loan values causes the borrower to experience high financial burden as the interest payments become very large. For example, a 35% interest rate on $500 is $175/year vs a 35% interest rate on $3,000 would be $1,050 per year.

28. In addition, the ministry should consider eliminating or at least limiting loan fees which may be used to undermine the interest rate cap, in particular, loan insurance. It is our understanding that while such insurance is referred to as optional, it is added by default and that credulous borrowers are unaware that it is optional. Adding such insurance or similar fees permits offering of instalment loans, for example, with effective interest rates well above the criminal interest rate.

29. The ministry should also consider other issues, such as the application of any balloon payment provisions, interest only payments, and excessively long-terms. We encourage the ministry to ensure that these issues are either subject to stringent limits and/or prohibited. As noted, the ministry should also consider prohibiting credit insurance, which serves only to increase the cost of borrowing and largely benefits the lender, rather than the borrower, similar to pricey credit card insurance.[29]

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[27] *Ibid.*
[28] *Ibid.*
[29] Eric Szeto, Tyana Grundig, David Common, "Hidden camera reveals how bank employees mislead and upsell on pricey credit card insurance," *CBC Marketplace* (6 November 2018), online: <https://www.cbc.ca/news/business/credit-card-balance-protection-hidden-camera-marketplace-1.4892961>. Also see: Yvonne Colbert, "Check your credit card statement. You may be entitled to a refund," *CBC News Nova Scotia* (3 February 2020), online: <https://www.cbc.ca/news/canada/nova-scotia/banks-insurance-credit-cards-unauthorized-charges-1.5444303>.

Question # 7 (b): Should there be limits on interest and fees that lenders may charge on high-cost credit agreements that are in default? If yes, would limits similar to those currently in place for payday loans be appropriate?

☒ **Agree**

☐ **Disagree**

☐ **Other – Please Explain Below**

Explanation and Additional Comments:

You may enter any additional comments here

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30. We agree there should be limits on interest and fees that lenders may charge on high-cost credit agreements that are in default. Yes, the limit recently placed for payday loans in Ontario i.e. a maximum rate of 2.5% per month, which may not be compounded on the outstanding principal, unless otherwise prescribed[30] would be appropriate for high-cost credit agreements.

Question # 7 (c): Is there a need to consider limits on the costs of some optional products and services, e.g., credit insurance, offered in association with high-cost credit agreements? If so, are there any optional products and services of particular concern? What would be the costs and benefits of establishing limits?

You may enter any comments here

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31. The ministry should consider prohibiting the use of many such optional products and services that often involve manipulating borrowers into getting these products and services that result in high consumer costs and provide limited to no benefit to borrowers. If these products and services are to remain in the market, then the ministry should certainly prescribe limits on their costs. The benefits of establishing limits would be that the ministry can mandate specific standards and limit what is being charged. This would also prevent the lenders from charging arbitrary costs and fees.

32. At the same time, this will provide clarity and allow borrowers to know the costs of these products and services. If the borrowers are being charged more, they can file a complaint with their lender and/or get guidance from the ministry and also file a complaint with the ministry.

[30] *Payday Loans Act*, 2008, S.O. 2008, c. 9, s.32.1(3)

Question # 8: Is there a need to consider more stringent protections, limits and disclosure requirements for high-cost auto title loans? Please describe any requirements that you think are necessary.

You may enter any comments here

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33. Yes, there is a need to consider more stringent protections, limits and disclosure requirements for high-cost auto title loans. A recent media story shares details regarding heightened interest in these auto-title loans, which notes that number of searches involving car title loans almost tripled in Canada in the March-to-September period this year to 16,900 per month, compared with about 5,900 searches per month at the same time a year earlier, according to SEMrush.[31] A car title loan works like a home equity loan, its billed as short term affairs, secured by a lien on the vehicle.[32] In the event of nonpayment or default by the borrower, the lender can repossess the vehicle in order to recover their money.[33] The high interest rates, additional fees, late payment fees and losing of vehicle are all significant risks, which must be addressed by placing adequate consumer safeguards.

34. In this regard, the ministry could set a limit on the interest charged as noted in question 2 and also place limits on any additional fees and costs associated with auto-title loans. At the same time, the ministry should mandate better disclosure requirements so that the borrowers can make better informed decisions.

Question # 9: Is there a need to consider additional or different borrower disclosures and protections for remote lending (online or by phone)? Why or why not? Please tell us about any requirements that you think the ministry should consider.

You may enter any comments here

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35. There is a need to consider additional borrower disclosures and protections for remote lending (online or phone) as borrowers do not have the benefit of in-person services and cannot seek immediate explanation and/or clarity regarding any issue like they would if they were borrowing in-person.

36. As noted earlier, the ministry should consider mandating specific disclosure requirements that should be posted online along with the loan application. This could be in the form of

[31] Dan Healing, The Canadian Press, "Canadians show increased interest in high-interest car title loans amid recession," *BNN Bloomberg* (10 December 2020), online: <https://www.bnnbloomberg.ca/canadians-show-increased-interest-in-high-interest-car-title-loans-amid-recession-1.1534684>.
[32] *Ibid.*
[33] *Ibid.*

a user-friendly guide containing all key information regarding the loan, including but not limited to the licensing status of the lender, principal amount being borrowed, the interest rate applicable and how is it being calculated (explained in simple and plain language), the time frame for repayment, costs of default, any additional fees and charges and the accepted method of payment.

37. For those transactions that are being completed over the phone, the ministry should mandate all the details that would be included in a guide to be explained over the phone, clearly and in simple, plain language along with the requirement to send the same in writing by mail or electronically, as preferred by the borrower. The costs of sending these materials should be borne by the lender and these should be sent before the borrower signs any paperwork.

Question # 10: New and emerging consumer credit products and services such as buy now pay later services can have many advantages for consumers, yet they also pose risks. Please tell us about any requirements that you think the ministry should consider for these services.

You may enter any comments here

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38. Buy now pay later services (BNPL) are relatively new in the market and quickly gaining popularity, especially among the younger demographics. For instance, Forbes reports that attracting younger customers and impulsive buying are the real drivers behind such services.[34] It reports that nearly half of consumers said they spend anywhere from 10% to over 40% more when they use the buy now and pay later plan versus when they use a credit card, according to a survey released by Cardify, a data firm that tracks consumer spending.[35] According to the survey, two-thirds of BNPL users said they are buying jewelry and other "want" items that they might not otherwise get.[36]

39. These buy now pay later services certainly carry risks for consumers that must be watched out for and addressed through mandating regulatory standards. The consumer risks related to these services, include the variable interest rates charged, the cost of borrowing, non-sufficient funds fee, potential late fees and debt collection activities. In the absence of any clearly defined standards, the retailers can charge variable fees and/or interest that can result in significant consumer costs and also take a while to pay off depending on the amount of purchase.

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[34] Andria Cheng, "Why Retailers Are Embracing 'Buy Now, Pay Later' Services This Holiday Season," *Forbes* (16 December 2020), online: <https://www.forbes.com/sites/andriacheng/2020/12/16/why-retailers-are-embracing-buy-now-pay-later-service-this-holiday-season/?sh=ad4257739c82>.
[35] *Ibid.*
[36] *Ibid.*

40. For instance, MoneySense reports that PayBright, a Toronto-based service that launched in Canada in 2017 and has partnered with over 7,000 merchants, from Wayfair and Endy to Sephora and Hudson's Bay, was recently bought out by Affirm, an American BNPL for $340 million and the U.S. company Sezzle also launched here in mid-2019 has over 1,000 retails partners, including brands with online shops.[37] Notably, PayBright, charges interest rates between 0% and 29.95% APR, depending on the retailer, and some of their plans include a processing fee with each payment, and while Sezzle charges no interest, they charge a fee for a missed payment, failed payment or if you have rescheduled your payments for the second or third time.[38]

41. A Consumer Reports article identifies more risks associated to these services. It notes that depending on the type of plan used, you may be subject to fees and interest charges if you don't make the payments on time.[39] Also, you may have trouble getting a refund for something, even if the purchased item is defective or otherwise unsatisfactory.[40] And there's the danger of getting carried away and buying much more than you can afford.[41] The article notes that consumers might find these payments hard to track as well. As it cites a study by Cornerstone Advisors, a banking consulting firm in Scottsdale, Ariz., finding that over the past two years, 43% of those who used BNPL services were late on making a payment and of those, two-thirds said the reason for this was that they simply lost track of the payments, not because they did not have the money.[42]

42. Considering the above, it is clear that buy now pay later plans carry significant consumer risks and need to be regulated to ensure that consumers are adequately informed and protected. We recommend that the ministry consider introducing disclosure requirements as noted above, and require the retailers to disclose whether and what interest rate would apply, what is the time-frame for making the payments, what are the late fees, and whether any additional fees apply, if so, what are these fees.

43. The retailers should also be required to send a complete payment schedule online and/or by mail as preferred by the consumer to ensure better tracking and management of the required payments.

44. Additionally, the ministry should also include a cooling-off period in relation to such services. This is because as noted above many consumers who are using these services might do so on an impulse and may realize later that either the item is too expensive

[37] Courtney Reilly-Larke, "Buy now, pay later: Are installment plans a budget win or finance fail?" *MoneySense* (18 December 2020), online: <https://www.moneysense.ca/spend/buy-now-pay-later/>.
[38] *Ibid.*
[39] Penelope Wang, "The Hidden Risks of Buy-Now, Pay-Later Plans," *Consumer Reports* (14 February 2021), online: <https://www.consumerreports.org/shopping-retail/hidden-risks-of-buy-now-pay-later-plans/>.
[40] *Ibid.*
[41] *Ibid.*
[42] *Ibid.*

and/or not something they want or need. Consumers should be given a cooling-off period to back off from such deals and get their money back.

Other suggestions

The government welcomes any further suggestions you wish to make concerning the potential regulation of high-cost credit agreements. Please feel free to comment on any additional issues that you feel the government should consider.

Explanation and Additional Comments:

You may enter any additional comments here

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45. One specific matter we would like to bring to the ministry's attention is the lack of easily accessible public data regarding payday loans and other high-cost credit usage, borrower complaints, processing times and resolutions. We noted a similar concern in our 2019 report and suggested that the current complaint processes and tools need to be better publicized and made easy to access and use.[43] We also recommended creation of a consumer complaints database, as done in different jurisdictions for the purposes of transparency and accountability.[44] The database maintained by the CFPB could be referred to as a prototype, and which should primarily include data on the nature of complaints, number of complaints and their outcomes.[45] We suggested that this data could be collected and maintained by the consumer protection offices in each province and territory, and provided to the FCAC for annual publications.[46] We would urge the ministry to consider following these recommendations for all high-cost credit agreements, including payday loans and make such data easily accessible on their websites and in any other form as requested by the consumers.

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[43] Tahira Dawood, "Enhancing Protection for Payday Loan users in Canada," (2019) Public Interest Advocacy Centre, see recommendation 6 at p.v-vi, and p.53-62.
[44] *Ibid.*
[45] *Ibid.*
[46] *Ibid.*