Submission to the Ministry of Government & Consumer Services on Proposals to Regulate High-Cost Credit in Ontario

ACORN members are making a formal submission to the Ministry of Government & Consumer Services to ensure that the proposals to regulate high-cost credit in Ontario are informed by the perspective of low-to-moderate income people.

In addition to our responses to the questions laid out by the Ministry, we would like to underscore our top three priorities:

- People are forced to rely on high-cost credit because of lack of alternatives. We want the provincial government to create low-cost alternative credit options so that people don't have to rely on fringe lenders and end up in a debt trap.
- We don't want the interest rates on high-cost credit to **end up being higher** than what it is today, which is what happened in case of payday loans when provinces began regulating the payday loan industry. We believe that the best place to regulate high-cost credit is at the level of federal government and not provinces.
- Ensure that there are strong regulations so that optional products such as insurance are not pushed on to consumers.

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

☐ **Agree**

Comments:

ACORN Canada fully agrees that there needs to be much stronger regulation of high-cost credit agreements in Ontario. ACORN Canada undertook a survey last year to understand the experience of consumers with high interest loans. The survey findings are based on 376 responses out of which 63% of respondents were from Ontario.

For the detailed report, see here: https://acorncanada.org/resource/national-report-high-interest-loans

The key highlights of the study are:

- 70% of respondents stated taking out a high interest loan.
- While a majority of consumers i.e. 70% continue to take payday loans, there is a surge in people taking installment loans. In 2016, when we did a study, the proportion of people taking out installment loans was 11% which has **gone up to 45%** in the latest study.
- Notably, the study points out that either people take these loans only once or they are caught in a **vicious cycle of debt**. While 30% of respondents reported taking these

loans only once in the last 12 months, the second highest number of times reported was more than 10 times in a year by 13% of the respondents.
- To no surprise, 80% of respondents said that they took out a loan to meet everyday living expenses such as rent, groceries, hydro etc.

Therefore, it is amply clear that the predatory loan industry is swiftly moving to installment loans which means higher amounts of debt for a much longer period of time. Quebec set a precedent several years ago by significantly lowering the interest rates on an installment loan and effectively banning payday loans.

Further, while we agree that we need stronger regulations, we also know that in the absence of a ***low interest alternative credit option***, people don't have a choice but to rely on fringe lenders. Hence, unless the provincial government or the federal government steps in and creates alternatives, these lenders will continue to exploit low-income and other vulnerable people.

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**

Comments:
Lenders who were originally providing payday loans are now also providing installment loans without any regulations. We agree that it is important to define high-cost credit agreements.

Quebec's regime uses a floating rate to determine whether an agreement is a high-cost agreement. Any credit product that carries an interest rate 22 percentage points above the Bank Rate of the Bank of Canada is a high-cost credit product.

However, it is simplest to just set a firm rate. We believe **that Rate should be 25%.**

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**

Comments:
All high-cost credit agreements should be required to be licensed. As stated earlier, while lenders offering payday loans are required to be licensed, the same does not apply to installment loans and therefore the same lenders are potentially incentivized to push people

into larger installment loans that do not have as many protections leading to a larger debt with larger loans.

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?
There should be a licensing framework for high-cost credit businesses and it should be made as comprehensive as possible. The administrative penalties need to be much higher as compared to payday loans, given the risks involved. Alberta, BC, Manitoba and Quebec - are all in different stages with respect to high-cost credit product legislation - but all make it mandatory for high-cost credit lenders to be regulated.

The licensing framework for the payday loans as it exists lacks proper enforcement. Hence, even if the licensing regime is there, the enforcement question is equally important. The issue is lack of research with respect to whether the licensing regime that exists for payday loans is actually working.

Disclosure requirements
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**

Comments:
The lenders must be required to disclose and review important terms and conditions of high-cost credit agreements with borrowers. In the survey we did last year, 45% of respondents said that they were rushed to sign the loan agreement with the lender.

Some people who have to take these predatory loans are in a vulnerable position which is further exploited by these lenders. At the time of giving the loan, the lenders most often do not sit with the borrowers to explain to them the cost of borrowing which is why some people fall into a never-ending debt cycle. Many of our members were not aware of the rate of interest at the time they took out the loan. **Further, the fine print is deliberately created in a way that is not clear.** Many people aren't aware of how much exactly they will end up paying by the end of the loan term (if at all that ends!).

Also, it is important to understand the distinction between APR and EAR. Annual Percentage Rate or APR, or the "nominal interest rate" is the rate of interest that applies to a loan before compounding.

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Effective Annual Rate or EAR takes into account the impact of compounding to the interest rate given by the lender. Compounding is the practice of adding "interest on interest". It works by calculating interest on the initial amount you borrow plus all of the accumulated interest from previous periods on the loan. How often the lender charges this "interest on interest" is called the compounding frequency. The result is that EAR more accurately reflects what you will have to pay.

APR for a payday loan which is charged at a rate of $15 per 100 and is paid back in 14 days will have an APR of 391.07%. This means that a 14-day loan with a single repayment on the 14th day of the term that charges the maximum cost of borrowing will have an APR of 391.07%.

Instalment loans are regulated by the *Criminal Code of Canada*'s interest rate of 60% EAR. This means that lenders can legally charge 60% EAR interest on these loans.

Instalment lenders often advertise rates between 19.9% to 47% APR.

As per Section 347 of the Criminal Code of Canada, "criminal rate means an effective annual rate of interest calculated in accordance with generally accepted actuarial practices and principles that exceeds sixty per cent on the credit advanced under an agreement or arrangement (taux criminel)".

Instalment loans most often have continuous compounding, meaning interest is added to your loan every day, even if you make scheduled payments weekly, biweekly, or monthly.
The EAR takes into account the impact of compounding to the interest rate given by the lender. The result is an interest rate that more accurately reflects what the borrower will have to pay.

The result? That 47% interest rate quoted to you by the instalment lender is actually 59.99% EAR – just 0.01% shy of being considered criminal.

Pricing instalment loan interest rates "just below the line" is the most common practice we see from our members' agreements. This is highly misleading and therefore there needs to be proper disclosure on the cost of borrowing.

Hence, alongwith the APR, the EAR also must be stated in the agreement.

Sample of a loan agreement

LOAN DETAILS

1.	Date of Loan	17 Aug 2018
2.	Credit Limit	$2,000.00
3.	Minimum Payment	• Your Minimum Payment is the sum of: • the greater of $25.00 or 2.00% of the total cash advances that are outstanding at the end of the statement period up to a maximum of $50.00, plus • accrued interest for the statement period, plus • the Optional Loan Protection Premium, if selected. • Your Minimum Payment, along with any amount past due, will be shown on your statement.
4.	Minimum Payment Frequency	• Your Minimum Payments are due on the 20th day of each month. • Your next Minimum Payment due date will be shown on your statement.
5.	Statement Frequency	• Statements will be sent 7 days before the payment due date shown on your statement
6.	Annual Interest Rate	• 46.93%
7.	Date from which interest is charged	• We charge interest from the date we make a cash advance to you until you repay the advance in full. • There is no interest-free grace period. • See paragraph 6 of the Terms and Conditions for more information about how we calculate interest.
8.	Fees and charges	• NSF Fee $50.00. Charged each time a payment is returned unpaid for any reason
9.	Optional Loan Protection Premium	Your Optional Loan Protection Premium is calculated using the following formula: the Minimum Periodic Payment times 0.475, rounded up to the nearest cent. Please see Section 16 for details.

Optional Products: Furthermore, the cost does not include those related to optional products such as insurance, which is pushed by fringe lenders, even though people end up paying interest on the optional products.

Also, in case people fail to make payments or miss a payment or two, the loan gets refinanced again and again without explaining to the borrowers what the details of the refinancing are. Many of our members who paid their regular installments biweekly or monthly said that it did not make any dent on the principal amount even after paying for years together!

Hence, disclosure is important. It needs to be in simple language and not masked by legal jargons. And accurate. There should be fines for inaccurate disclosure including interest removed from people's loans when the lender misleads the client.

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**

Comments:

Pushing optional products such as insurance has become a very common tactic that high-cost credit lenders have been using to extract more money from people. Again, in our survey

we found that **12% respondents were never informed about optional products such as insurance until a large sum was debited from their account.** Many of our members got rid of the insurance when they got in touch with us and realised that they were paying extra money for some insurance that they weren't even informed about!

In fact, many of our members told us that they were pushed to buy insurance or the lenders used aggressive push tactics to get them to buy one. A member in London, ON could not even use her insurance when she needed it the most because of some "technicalities". Hence, despite paying for the insurance several hundreds of dollars every month, she was denied accessing any benefit.

Therefore, it is critical that the lender very clearly explains what these optional products are. More specifically, lenders should explain

- In exactly what circumstances, can people use it?
- What would be the **additional cost** if one takes it?
- What can people do if they at any point want to cancel it?

Further, the province needs to ban the lender from owning the insurance company. They must be mandated to use an external insurance company.

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**

Yes, this has been detailed in the previous question.

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**

In Ontario, the PLA sets out a mandatory cooling-off period of two business days. However, the complexity of a high-cost credit agreement is not comparable to that of a payday loan agreement and therefore the cooling-off period cannot be similar to that established for payday loans. High-cost credit agreements such as installment loans mean higher amounts of debt for a much longer period or sometimes forever! It's therefore critical that the cooling off period is longer than what it is for payday loans.

In Ontario itself, the Consumer Protection Act gives a 10-day cooling off period for most products.

Among all provinces, Quebec again stands out when it comes to the time a borrower has with respect to cancelling a high-cost credit agreement. The borrower may cancel within 10 days

after each party (lender and borrower) receives a copy of the credit agreement. Hence, Ontario should follow Quebec's lead and mandate high-cost credit lenders to allow for at least 10 days for the borrower to cancel the agreement.

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**

We strongly agree that there needs to be protections against harassing, misleading or abusive collection practices for borrowers of high-cost credit. Right now, in case of payday loans, there is a section on the website that consumers can go to in order to file a complaint. There is also a specific section on collection agencies and where consumers could file a complaint if they are being harassed. However, in the absence of any specific regulations on high-cost credit such as installment loans, it is nearly impossible for consumers to navigate this process. Moreover, the ministry needs to do a lot more to make people aware of the complaint process.

Even in case of payday loans, we have heard from our members that they are still being harassed by the lenders and collection agencies. The Alberta high-cost credit regime prohibits certain practices, including contacting a borrower's employer to collect an outstanding amount, using wage assignments to collect an outstanding amount and reporting a debt to a collection agency if the borrower has notified the lender that the debt is in dispute and wants to take the matter to court.

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?

Comments:

Setting a cap although will be an important step. However, **we don't want the interest rates on high-cost credit to end up being higher than what it is today, which is what happened in case of payday loans when provinces began regulating the payday loan industry. We believe that the best place to regulate high-cost credit is at the level of federal government and not provinces.**

Quebec set a cap did years ago and has successfully been able to rein in these lenders and has effectively banned payday loans.

However, in rest of the provinces, the situation is bad. As we are aware, because of provincial regulations, the APR in case of payday loans is now 390% in Ontario. It is a well-known fact that due to these predatory interest rates; people are caught in a vicious cycle of debt and it

is nearly impossible for any individual to come out of it without serious consequences. Many of our members have had to file a consumer proposal or bankruptcy because of these loans.

The pandemic is making even harder for low-to-moderate income people to make ends meet. With federal supports winding up in a few months and no support from the province especially for tenants, there are tens of thousands of people who will have to turn to these lenders in the absence of an alternative. Many tenants are already facing evictions or are at risk of eviction.

Hence, setting a cap although will be an important step, **we don't want the interest rates on high-cost credit to end up being higher than what it is today.**

But if at all the province of Ontario was to set a cap, it must ensure that it's set much lower than what it is today (not more than 30%). **Further, this cap should include all fees and costs for optional products (as detailed in the next question).**

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**

There should be limits on interest and fees that lenders can charge on high-cost credit agreements that are in default**.** It would be better if much stronger limits are set in case of installment loans because the debt is much higher than the payday loans. It might be worth looking into what other jurisdictions are doing in this case to offer strong protections to borrowers in case they default.

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?

We strongly believe that the total interest rate should include charges for optional products.

Insurance charges are excluded from the definition of criminal interest in the Criminal Code. That means that insurance charges do not count in the calculation of the 60% cap on interest rates. See section 347 of the Criminal Code, and the definition of interest: "interest … does not include any repayment of credit advanced or any insurance charge", where "insurance charge means the cost of insuring the risk assumed by the person who advances or is to advance credit under an agreement or arrangement, where the face amount of the insurance does not exceed the credit advanced".

Insurance is an optional service when it is provided alongside a consumer loan under the OCPA. Optional services accepted by borrowers aren't included in the cost of borrowing as it is calculated under the OCPA General Regulations. See section 56.(5) of the General Regulation, which states that "charges for optional services accepted by the borrower" are not included in the calculation of the cost of borrowing, and 63.(14), which doesn't require the total cost of optional services to be disclosed to the consumer. As a result, most high-cost lenders that we've encountered don't disclose the total cost of their insurance products over the lifetime of the loan. If they did, we believe most consumers would not take out these policies given their expense.

High-cost lenders therefore have every incentive to encourage their borrowers to take out insurance policies and other optional services with their loans. They know that the required disclosures and the cost of those products is minimally regulated (essentially unregulated in our view) and that they can charge rates for those services in conjunction with the loan that would otherwise be prohibited if they counted as interest or cost of borrowing.

We have viewed some loans where the cost of the insurance met or exceeded the amount of money borrowed, and most frequently it was equivalent to half or more of the interest charges over the lifetime of the loan. If the cost of these policies were added on to the cost of borrowing, they would easily exceed the criminal rate of interest.

In our view, it is long past time for legislative action to close these loopholes – Ontario needs to do a real consumer focused analysis on optional services, especially insurance products in order to create mandatory and effective disclosure requirements for the cost of these products and rules for how and when they can properly be charged to a consumer. Most importantly, the cost of these products needs to be included in the total interest rate.

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.

High-cost auto title loans have some of the same issues as installment loans and therefore should have similar protections to ensure that borrowers' rights are protected.

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.

When we conducted the national survey last year, we asked people if they had taken a high interest loan online. Almost 30% stated that they took out an online loan. Reasons for taking a loan online was primarily because people found them convenient and quick. With public health measures in several cities across the province and the pandemic far from over, more and more people would be taking out loans online.

Hence, it’s very important that there are regulations on online loans.

- First of all, all consumer protections that apply to storefront operating loans must apply to online loans.
- Given the increasing trend towards installment loans, it is critical that provinces make specific regulations relating to installment loans taken online.
- Another factor that makes online loans more susceptible for misuse is the extent to which lenders provide information on their website. Many people who end up taking high interest loans are not fully aware or have access to complicated information that must be verified before taking a loan. Hence, it’s extremely important for provinces to pass stringent regulations so that lenders share information transparently on their website, specifically about their license, location, cost of borrowing, cancellation of loans, optional products etc.
- If at all there are any optional products attached to the loan, the regulation must enable earlier disclosure of the presence and the cost of optional charges — i.e. not at the point of signing.
- Especially when an individual is taking an online loan, the regulations must ensure that there is someone available in person (and not just online) or there’s easy accessibility to answer any questions or doubts that the individual may have during or after taking the loan.
- There needs to be much more consumer education regarding illegal online loans.

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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.

- The provincial government should create an alternative low-cost credit option so that people do not have to rely on fringe lenders. Our study shows that 40% of respondents first applied to a bank or credit union and were denied.
- The borrowers should be allowed to cancel their insurance or any optional product at any time. Further, there needs to be a provision for the lender to refund the borrower for the payment made for the optional product if the same was miscommunicated or just pushed to the borrower without informing them about it.
- There needs to be remedy for borrowers in case the lender misinforms them that the loan will help them improve their credit score. In the study that we did, 22% respondents mentioned that they took it out to improve their credit rating as they were promised it would help them do so.
- The lenders should also be prohibited from offering the borrowers an incentive to enter a high-cost credit agreement.
- In addition to licensing fees, lenders are required to pay an annual levy of $500 to the Manitoba Borrowers' Financial Literacy Fund, which "funds programs and activities that improve the financial literacy of borrowers and potential borrowers of high-cost credit products and payday loans.
- There needs to be proper remedies for borrowers if the lenders fail to comply with any of the regulations.