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ACORN Canada would like to make a submission with reference to the feedback sought by the Department of Finance in relation to a proposed regulation-making authority to allow for certain types of loans to be exempt from the criminal rate of interest in future regulations.

ACORN Canada is a national community union of low- and moderate-income people with 24 chapters in 10 cities across the country. Many ACORN members are forced to rely on predatory lenders in times of financial crisis and to meet day to day expenses in the absence of fair credit options.

ACORN members are encouraged to note that the federal government announced changes to the *Criminal Code* to lower the criminal rate of interest to 35% APR in the Budget 2023. However, at the same time, we are deeply concerned that any exemptions from the criminal rate of interest in future regulations can undo the positive impact of the lowering of the criminal interest rate.

As brought out by the government, some stakeholders want certain commercial transactions to be excluded from the criminal rate, given potential negative impacts on economic development.

Please find below ACORN's submission on the specific questions the government is seeking feedback on in this regard.

1. **What types of loans should be considered for exemption, and what would be the rationale for doing so?**

a. ACORN strongly feels that the Criminal Rate of Interest must apply to all consumer credit in the market today or in the future (including those yet invented), be inclusive of all associated costs and fees (including insurance) and must be rigorously enforced. Otherwise, there is no effective maximum. There cannot be any exemptions for consumer loans/credit, including payday lending, which we recommend should move under the Criminal Code, Criminal Rate of Interest in the future.

b. The fringe lending, or high-cost credit, market is likely to move toward where it is most profitable, as we saw with increasing provincial restrictions on payday lending. Payday lenders began promoting installment loans more vigorously following changes to payday lending rules in Alberta and other provinces. All consumer credit must fall under the criminal rate of interest, be enforceable, and regularly and easily enforceable.

   Currently, it is nearly impossible for any borrower to challenge a predatory lender or take them to court if they are being ripped off. Two important technical changes must be made to section 347 of the Criminal Code to permit appropriate enforcement of violations by Crown prosecutors. The attorney general fiat requirement (subs. 347(7)) and the actuarial calculation requirement (subs. 347(4)) both must be removed. Both are considerable impediments to prosecution of criminal interest rate violations and effectively make prosecution under section 347 impractical and therefore non-existent. In this grey zone of non-enforcement is where the high-cost lending industry grows new products that violate the criminal interest rate.

c. Misleading and unhelpful "insurance" products are often associated with fringe lending and are an easy and successful way of driving up the cost of consumer lending. These "insurance" products are often aggressively sold or automatically included, are dubious at best and will remain a way of lending above the criminal rate of interest unless they are also addressed in legislation.

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2. How can these exemptions be clearly and precisely defined in regulation (e.g., loan size, loan term, type of legal entity borrowing, etc.)?

As stated earlier, the Criminal Rate of Interest must apply to all consumer credit in the market today or in the future, regardless of loan size, term, or type of legal entity lending, and be inclusive of all associated costs, including insurance.

Keeping in mind the government's stated policy objectives to "crack down on predatory lending", any exemptions will be predatory. An important part of lowering the rate is to close all the loopholes to avoid predatory products. This industry is harmful for the economic development of the country. In fact, people are ending up an endless debt trap by putting in hundreds of thousands of dollars to predatory lenders. This money can be put to productive use that can have a multiplier effect.

Illinois is one of the most recent states in the U.S. to cap interest rates for predatory loans. The Predatory Loan Prevention Act (SB 1792 - PLPA) established a 36% APR cap on consumer loans in Illinois. As per a report by Woodstock Institute (2021), based on the savings for fees paid for payday loans, installment payday loans, and auto title loans to both in-state and out-of-state lenders, the impact could be between \$638 million and over \$835 million. This estimate does not include savings in fees paid for small consumer loans, which are unsecured installment loans. Nearly 500,000 small consumer loans were made in 2019 at interest rates as high as 99% APR.

The best way for people to get out of a debt trap caused by high interest lenders and use any extra income on necessities such as paying rent, groceries etc. is by providing them with a credit product with fair interest. We aren't quite there yet with 35% APR but it's the right direction. Alongside lowering the interest rate to 35% APR and further, it is critical for people to have access to fair credit options.

Looking out for the long-term financial health of people is what is good for economic development, not exemptions to certain lenders that will allow these high interest lenders to get more money out of people who are in a financial crisis!

Thank you for considering our submission.

Yours sincerely,

Marva Burnett
President
ACORN Canada

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For any questions/clarifications, please contact the ACORN Canada office.
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