

# Strengthening Protection for Consumers of Alternative Financial Services – Phase One

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Summer 2017

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## Introduction

This consultation paper proposes ways to strengthen protections for consumers using payday loans and other alternative financial services. Alternative financial services are financial services provided outside of traditional financial institutions like banks and credit unions. The alternative financial services considered by this paper include payday lending, cheque cashing, rent-to-own, and instalment loans.

This consultation paper is divided into two sections. The first section includes proposed draft regulatory language focused on payday lending and cheque cashing services. Your input on the proposed regulatory changes will help inform decisions on whether and how those regulations should change. The second section includes broader questions focused on instalment loans, rent-to-own, and disclosure-related elements of payday lending. Your input on these matters will inform the development of draft regulations, which will, in turn, be posted for public comment in a phase 2 consultation paper planned for fall 2017. It is proposed that the first phase of regulations would come into effect in early 2018 and the second phase in early 2019.

This consultation paper is one of several consultation papers that support the implementation of the Putting Consumers First Act (Consumer Protection Statute Law Amendment), 2017. That Act, which received Royal Assent on April 13, 2017, addressed home inspections, door-to-door sales, debt collection, and alternative financial services, such as payday loans.

You can provide input in several ways.

1. Regulatory registry email link titled “Comment on this proposal via email” at the bottom of the regulatory registry page for this consultation (insert URL).
2. Email your comments to [consumerpolicy@ontario.ca](mailto:consumerpolicy@ontario.ca) with “Consumer financial protection regulations – phase 1” as a subject line.
3. Mail your consultations to:

ATTN: Consumer Financial Protection regulations  
Consumer Policy and Liaison Branch  
Ministry of Government and Consumer Services  
56 Wellesley Street West – 6th Floor,  
Toronto, ON, M7A 1C1

We look forward to receiving your input. Thank you for taking part in this consultation to improve consumer protection.

When responding, please provide your name and contact information such as an email or mailing address.

Brian Dijkema, Program Director, Work and Economics, Cardus

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Please also check a box to indicate whether you comment primarily as a:

- Business
  - Business Association
  - Consumer
  - Consumer Association
  - Academic
  - Other – Think Tank
- 

Thank you for taking the time to review these proposals. If you have any questions about this consultation, please email [consumerpolicy@ontario.ca](mailto:consumerpolicy@ontario.ca).

## Privacy Statement

Please note that unless agreed otherwise by the Ministry of Government and Consumer Services, all submissions received from organizations in response to this consultation will be considered public information and may be used, disclosed, and published by the ministry to help the ministry in evaluating and revising its proposal. This may involve disclosing any response received to other interested parties. An individual who provides a response and indicates an affiliation with an organization will be considered to have submitted the response on behalf of that organization.

Responses received from individuals who do not indicate an affiliation with an organization will not be considered to be public information. Responses from individuals may be used and disclosed by the ministry to help evaluate and revise the proposal. The ministry may also publish responses received from individuals. Should it use, disclose, or publish individual responses, any personal information such as an individual's name and contact details will not be disclosed by the ministry without the individual's prior consent unless required by law. Contact information you provide may also be used to follow up with you to clarify your response.

If you have any questions about the collection of this information, please contact by email - [consumerpolicy@ontario.ca](mailto:consumerpolicy@ontario.ca).

## I. Draft Regulations

The proposals below contain draft regulatory language. This language is subject to change. Your input will help inform government on whether to proceed to implement these proposed regulations or if changes are needed. If these proposals are accepted, there may be additional amendments to the payday loan disclosure requirements to reflect these new requirements.

### A. Payday Lending

Payday lenders provide money in exchange for a future payment like a post-dated cheque or pre-authorized debit. Payday loans are typically short-term and high cost loans for small amounts of money. A payday loan's term typically begins on the date the agreement is entered into and ends the date after the borrower receives income; although they can be longer. The average length of a payday loan agreement in Ontario is 16 days.

Payday loans are typically the most expensive form of consumer credit. On January 1, 2017, the maximum cost of borrowing a payday loan in Ontario was lowered from \$21 per \$100 borrowed to \$18 per \$100 borrowed. It will be lowered again on January 1, 2018 to \$15 per \$100 borrowed. The annual percentage rate (APR) of a 16 day payday loan at a rate of \$15 per \$100 borrowed is 342%.

Payday loans are for smaller sums than many other loans. Between July and December of 2015, the average amount of a payday loan was \$479.

The high cost and short term of payday loans are believed to create financial risks for vulnerable consumers. Throughout consultations in 2014 and 2015, the Ministry of Government and Consumer Services heard that payday loans could be an important source of credit but that some consumers were unable to manage the costs and ended up in a cycle of repeat borrowing. The risks of repeat borrowing are supported by multiple pieces of evidence:

- Ministry data indicates that over 35% of payday loan borrowers borrowed six or more loans in the last six months of 2015 and that over half of the loans were taken out by borrowers on the same day as they paid off a previous payday loan.
- Surveys of payday loan borrowers indicate that payday loans are often used to cover expected recurring expenses. This suggests that borrowers are relying on payday loans as their regular source of credit despite the relatively high cost of payday loans.
- These patterns of use are not limited to Ontario, but appear to be common in jurisdictions with similar payday loan products.

The Payday Loans Act, 2008 includes several measures to address the risks of repeat borrowing, including a waiting period between loans, prohibition of concurrent loans, and mandatory disclosures about the costs of payday loans. The Putting Consumers First Act (Consumer Protection Statute Law Amendment), 2017 amended the Payday Loans Act, 2008 to provide stronger authority to address the financial risks of repeat borrowing of payday loans.

These proposals would enhance the information provided to consumers, improve the affordability of payday loans, and directly address the frequency of borrowing.

## 1. Extended Payment Plans

The affordability of repaying a loan is influenced both by the cost of that loan and the time required to repay it. Stakeholders have indicated in past consultations that borrowers find the short-term and lump sum payment of payday loans difficult to manage. Ontario is proposing to address such difficulty through the creation of an optional extended payment plan for repeat borrowers.

Under this proposal, a payday loan company lending money to a borrower for the third time in 100 days would be required to allow borrowers to repay the loan in multiple instalments. The number of instalments would be determined by the length of a borrower's pay period. This would spread out the cost of a payday loan over more time, giving consumers the option to repay the loan gradually. Borrowers who prefer the short-term and lump sum model could end their extended payment plan loan at any time by repaying the loan in full. This would give repeat borrowers more options in addressing their financial needs.

### **The proposed regulatory language is:**

- “A ‘pay period’ means the greater of
  - (a) the period from the date on which the payday loan is entered into until the day on which the borrower next receives his or her pay or other income, and
  - (b) a period from the day on which a borrower receives his or her pay or other income until the day on which the borrower next receives his or her pay or other income.”
- “A payday lender who enters into a third or subsequent payday loan agreement with the same borrower in a 100-day period shall:
  - (a) if the borrower is paid or otherwise receives income on a bi-weekly, semi-monthly or more frequent basis, provide in the loan agreement that repayment is to be spread over at least three of the borrower's pay periods, or
  - (b) if the borrower is paid or otherwise receives income on a less frequent basis than that referred to in clause (a), provide in the loan agreement that repayment is to be spread over at least two of the borrower's pay periods
- If the repayment plan [above] exceeds a total of 62 days, the lender shall amend the payday loan agreement to reduce the cost of borrowing, when converted to an annual percentage rate, to be less than the rate of interest permitted under the Criminal Code.”

- “A payday lender must not require a repayment at the end of each of the pay periods under a payday loan agreement:
  - (i) for a borrower referred to in clause (a) [above], greater than 35% of the sum of the principal and the cost of borrowing in relation to the loan, or
  - (ii) for a borrower referred to in clause (b) [above], greater than 50% of the sum of the principal and the cost of borrowing in relation to the loan.”
- “Notwithstanding any language in the payday loan agreement described above, borrowers may make partial prepayments at any time and the payday lender shall adjust future scheduled repayments accordingly so that future repayments are spread equally over the remaining term of the extended payment plan, unless otherwise requested to do so by the borrower.”
- “A borrower may exit the extended payment plan at any time by paying the amount owing in full without any additional charge, fee or penalty.”

**Question 1: Do you agree with the proposed approach to require payday lenders to offer extended payment plans?**

**Yes**

**No**

**Other – Please Explain Below**

**Explanation and Additional Comments:**

This is a good step towards reducing the cash-flow shock induced by the reliance of payday lenders on “balloon payments” as the primary method of securing repayment, and is in line with the approach recommended by Cardus.

## 2. Responsible Lending Standards

When determining the amount and term of the loan, responsible payday lenders consider how affordable it is to the borrower. Prior to entering into an agreement, many lenders will determine the borrower’s net income. However, stakeholder input and the high incidence of repeat borrowing have shown that many borrowers find their payday loans unaffordable and end up borrowing repeatedly.

The affordability of payday loans can be addressed in several ways. Reducing the maximum cost of borrowing, as Ontario has done, can make payday loans more affordable to borrowers. However, if too much money is lent to a consumer, repaying the loan may be unaffordable,

regardless of the cost of borrowing. That's why Ontario is proposing to require payday lenders to take each borrower's circumstances into account when determining the size of a payday loan.

Similar to approaches taken in British Columbia, Saskatchewan, and Manitoba, the proposed change would require payday lenders to calculate the borrower's expected net pay over the term of the loan and lend only a portion of that amount. Ontario is proposing to limit the loan amount to 40% of the borrower's net pay.

**The proposed regulatory language is:**

- "In advance of entering into a payday loan agreement, the payday lender shall determine the borrower's net pay. The borrower's net pay shall be determined anew for each payday loan."
- "The lender under a payday loan agreement shall not enter into an agreement that is greater than 40% of the borrower's net pay."
- "A person's net pay is to be determined according to the following formula:  
Net pay = (MNIx12)/(the number of pay periods in a year)."
- "In the formula [in the above provision], MNI is the borrower's net income for the previous calendar month."
- "For greater certainty, the proceeds of a payday loan or any other type of loan or form of credit are not to be considered income for the purpose of this section."

Explanatory note: "MNI" stands for monthly net income. In the above proposed regulatory language, the "number of pay periods in a year" would be 26 for a person paid every two weeks, 24 for a period paid twice per month, 12 for a person paid monthly, 52 for a person paid weekly, and another amount for a person paid in a manner not just described.

**Question 2: Do you agree with the proposed approach to require payday lenders to limit the amount of the payday loan to 40% of the borrower's net pay?**

**Yes**

**No**

**Other – Please Explain Below**

**Explanation and Additional Comments:**

This too is a good step, and is in line with the approach recommended by Cardus.

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### 3. Waiting Periods

Considering a wide range of options can help consumers choose the best product for their needs. As half of all payday loans are taken out on the same day that the borrower repays a previous loan, the opportunity for consumers to consider lower cost options may be brief. A waiting period between payday loans can help consumers consider a wider variety of options.

Since its introduction in 2008, the Payday Loans Act, 2008 has included a waiting period between loans. Payday lenders can only enter a new payday loan agreement with a borrower if seven days have passed since the borrower has paid off the full outstanding balance of the first loan or if the borrower has provided proof of repaying the first loan. This requirement, in effect, allows a borrower to take out another loan the same day as repaying it. The Putting Consumers First Act (Consumer Protection Statute Law Amendment), 2017 amended this provision to a period set out in regulation.

It is proposed that the waiting period between payday loans be six days and that the provision that enables a borrower to receive another loan when he or she provides proof of repayment be eliminated. A six day waiting period is short enough that an individual being paid weekly would still have access to payday loans every pay period. The demonstration of proof of repayment would be eliminated as it has little impact on the consumer's evaluation of their options.

#### **The proposed regulatory language is:**

- “The lender under a payday loan agreement shall not enter into a new payday loan agreement with the borrower before at least six days have passed since the borrower has paid the full outstanding balance under a previous payday loan agreement.”

#### **Question 3: Do you agree with the proposed rule requiring a six day waiting period between payday loans?**

Yes

No

Other – Please Explain Below

#### **Explanation and Additional Comments:**

A cooling off period of 6 days seems arbitrary in a regulatory situation where steps have been taken to ensure that loans do not make up more than 40% of net income. The key concern here is not the loan itself, but the ability to make payments, and the ability of the consumer to service their bills etc. that necessitate the loan. If those necessities remain, a forced waiting period may unduly affect consumers' ability to manage their bills etc.. Preventing people from accessing cash so that they can “consider their options” assumes a low opinion of the consumer that is not warranted, and is not a prudent or sound way to ensure that people will “consider a variety of options.” This will simply not achieve its goal and should be removed.

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## 4. Improving Existing Disclosures

The Payday Loans Act, 2008 and its regulations require the cost of borrowing to be displayed on posters and the payday loan agreement. The cost is typically expressed as how much the consumer would have to pay per \$100 borrowed. However, surveys of borrowers indicate that this cost may be confusing to borrowers. Only a minority of surveyed borrowers knew that the cost of a payday loan exceeded the cost of borrowing a similar amount through a credit card.

The Registrar under the Payday Loans Act, 2008 has taken action to address confusion about the cost of borrowing. Payday lenders in Ontario must display a poster comparing the cost of a payday loan to a credit card cash advance.

Consumer advocates have suggested that the annual percentage rate be included in disclosures of the cost of borrowing for a payday loan. The annual percentage rate (APR) is a commonly used tool for comparing the cost of credit. APR allows consumers to easily compare the relative cost of different forms of credit regardless of the term length. It is proposed that the transparency of the cost of a payday loan be further improved by adding APR to existing cost of borrowing disclosures.

It is therefore proposed that all existing disclosures of the cost of borrowing of a payday loan shall be accompanied by the annual percentage rate (APR) calculated as per section 55 of O. Reg. 17/05 under the Consumer Protection Act, 2002. Additionally, where the cost of borrowing is to be used for illustrative purposes such as the maximum cost of borrowing for a payday loan agreement or the cost of an example amount, the lender shall assume the term of the loan to be 14 days and the example loan amount to be \$500.”

Due to the length and technical nature of this proposed regulatory language, please refer to the Appendix.

**Question 4: Do you agree with the proposed approach to require payday lenders to disclose the annual percentage rate of the payday loan, and that the example loan to be \$500?**

- Yes
- No
- Other – Please Explain Below

### **Explanation and Additional Comments:**

Our research suggests that disclosure is a good step in assisting consumers make good decisions and we believe this approach to be sound in general. It may be worth considering behavioural economics studies on how disclosure affects behavior before confirming the 14

day/\$500 examples. It may be that consumers would respond better to different disclosure amounts.

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## 5. Credit Counselling

Surveys of borrowers suggest that many payday loan users have outstanding debts from other credit products. Not-for-profit credit counselling can help consumers manage their debts. Consumer advocates have recommended requiring payday lenders to refer borrowers to credit counselling. Some payday lenders in Ontario have supported this recommendation.

It is proposed that the payday lenders be required to provide the following information regarding credit counselling to borrowers:

- “Not-for-profit credit counselling can help consumers manage debt. You can learn more and find local not-for-profit credit counselling services online at [www.oaccs.com](http://www.oaccs.com) or [www.creditcounsellingcanada.ca](http://www.creditcounsellingcanada.ca), or by phone at 1-866-398-5999.”

**Question 5: Do you agree with the proposed approach to inform borrowers of credit counselling services? How could this information be most effectively conveyed to borrowers (e.g., poster, pamphlet, agreement, etc.)?**

**Yes**

**No**

**Other – Please Explain Below**

### **Explanation and Additional Comments:**

This is an excellent proposal. Though again, the language used should attempt to personalize the message as much as possible. Most people do not think of themselves as “consumers” and do not see “debt” as the issue that is of most concern. Our research has shown that those in debt are affected less by the math of what they owe (they are usually aware of it), and much more by the psychological issues that arise because of debt, and that the latter is the larger influence on their behaviour. The biggest concern is stress, and anxiety other factors. A referral should humanize this referral in ways that are most likely to move the reader to act in ways that will address those concerns. Credit counselling agencies will likely have stronger suggestions for how to move people than this generic message.

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## 6. Exempting Lower Cost Loans

The definition of payday loans in the Payday Loans Act, 2008 is broad. The Act and the regulations aim to protect consumers from risks associated with high-cost payday loans. The

broad definition of payday loans may capture some lower cost loans. This could raise issues for any lender offering such loans as they would need to, for example, be licensed and provide information about the cost of a payday loan despite charging significantly less than the typical payday loan's cost. The Ministry of Government and Consumer Services will be examining how to best protect consumers using lower cost loans that fall within the definition of a payday loan.

In the interim, it is proposed that credit unions be exempted from the requirements of the Payday Loans Act, 2008 and its regulations. Consumer protection would be unaffected by this exemption as credit unions are required by law to operate on a co-operative basis for the primary purpose of benefiting the credit union's members. This principle is already recognized in the Payday Loans Act, 2008's regulation of prescribed loans, which exempts credit unions from the existing requirements for those prescribed loans.

**The proposed regulatory language is:**

- "Credit unions subject to the Credit Unions and Caisses Populaires Act, 1994 or to comparable legislation of another province or territory of Canada are exempted from the requirements of the Payday Loans Act, 2008 and its regulations."

**Question 7: Do you agree with the proposed approach to exempt credit unions from the requirements of the Payday Loans Act, 2008 and its regulations?**

**Yes**

**No**

**Other – Please Explain Below**

**Explanation and Additional Comments:**

Removing barriers to those who are trying to build and offer sound alternatives to payday loans is excellent policy.

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## B. Cheque Cashing

Ontarians receiving funds through a cheque generally access those funds through their bank or credit union. However, some Ontarians use an alternative financial service provider to access these funds. Typically, the cheque is exchanged for cash. Consumers may choose to use alternative financial service provider cheque cashing services for a number of reasons, such as: location, hours, identification requirements, the lack of a hold period, or a poor relationship with their traditional financial institution.

Alternative financial service provider cheque cashing services come at a cost. This cost is typically a combination of a flat fee and a percentage of the face value of the cheque. These costs are significantly higher than the cost of similar services at traditional financial institutions. If the consumer is financially vulnerable this cost may have a significant impact on his or her ability to afford basic necessities.

Alternative financial service providers have noted that the use of cheque cashing services is in decline. This can be attributed to a variety of factors, such as increasing use of direct deposit and social assistance being delivered through reloadable prepaid cards. However, it is expected that physical cheques and the availability of cheque cashing services will remain important to many Ontarians.

The Putting Consumers First Act (Consumer Protection Statute Law Amendment), 2017 amended the Consumer Protection Act, 2002 to allow for a maximum fee to be set for cashing government-issued cheques and require cheque cashing service providers to provide information to consumers. These rules would apply to alternative financial service providers, not banks and credit unions.

### 1. Limits on fees for government-issued cheques

Consumers cashing government social assistance cheques are more likely to be financially vulnerable. Setting the maximum fees for cashing government cheques can protect and assist consumers.

In developing a maximum fee, Ontario considered practices in other jurisdictions such as Manitoba, which sets a cap of \$3 and 3% of the face value of the cheque, and Québec, which prohibits fees on cashing government cheques. The proposed maximum fee aims to strike a balance of improving affordability while retaining access. Setting a fee too high may result in cheque cashing service providers raising their rates, while setting a fee too low may result in a reduction in the availability of cheque cashing services.

The Ministry of Government and Consumer Services is proposing to set maximum fees for cashing government cheques, with exceptions. The proposed maximum fee would be the lesser of either the sum of \$2 plus 1% of the face value of the cheque, or \$10. There would be an exception for cheques on which a hold is placed, where the maximum fee would be the lesser of either the sum of \$2 plus 1% of the face value of the cheque, or \$4. Also, where a supplier

requires that the consumer purchases goods or services worth 10% or more of the cheque's value, the supplier would not be permitted to charge any fee for cashing a government cheque.

**The proposed regulatory language is:**

- “Suppliers shall not charge a consumer for cashing a government issued cheque more than the lesser amount of:
  - (a) the sum of \$2 and (plus) 1% of the face value of the cheque, and
  - (b) \$10.”
- “[the provision above] does not apply for:
  - (1) cheques on which a hold is placed and cash not then provided, where the supplier shall not charge more than the lesser amount of
    - (a) the sum of \$2 and 1% of the cheque's face value, and
    - (b) \$4.
  - (2) cheques cashed with a concurrent requirement that the person purchase goods or services worth in total 10% or more of the cheque's value, where the supplier shall not charge any fee.”

**Question 8: Do you agree with the proposed rule limiting fees for cashing government cheques?**

- Yes**
- No**
- Other – Please Explain Below**

**Explanation and Additional Comments:**

If the policy is an accurate representation of the true costs to the provider of cash, then it is appropriate. And, given the security of government cheques, those costs should be low. The government should look, as much as possible, to minimize transaction costs for consumers looking to access money which is already theirs.

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## 2. Mandatory Disclosures

If a maximum fee for cashing government-issued cheques is set out in regulation, cheque cashing service providers may charge a different price for cashing other (non-government) cheques. Accordingly, it is proposed that cheque cashing service providers be required to provide consumers with a receipt that breaks down the cost for the service.

**The proposed regulatory language is:**

- “A supplier under part VII.1 shall provide consumers with a receipt for cashing cheques. Receipts shall include:
  - (1) The face value of the cheque,
  - (2) The fee charged for cashing the cheque,
  - (3) Deductions for other services provided (e.g., goods or services purchased),
  - (4) Balance paid to the consumer,
  - (5) Date of the transaction,
  - (6) Whether the cheque is a government-issued cheque
  - (7) Name, address, telephone number and information respecting other ways, if any, in which the consumer can contact the supplier, such as facsimile number and e-mail address, and
  - (8) Information for contacting the Ministry, including e-mail address, telephone number, as well as toll free number, if any.”

Explanatory note: in this section, “supplier” refers to the cheque cashing service provider.

**Question 9: Do you agree with the proposed approach to require cheque cashing service providers to provide consumers with a receipt?**

- Yes**
- No**
- Other – Please Explain Below**

**Explanation and Additional Comments:**

This is a good step towards reducing unsavory and black/market type activities in cheque cashing.

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## II. Future Regulatory Development

The Ministry of Government and Consumer Services is considering how to make disclosures to consumers more effective and how to better regulate other alternative financial services. The proposals below are topics currently under consideration. Your response to the questions will help inform development of draft amendments to regulations under the Consumer Protection Act, 2002 and the Payday Loans Act, 2008 that will be posted for consultation at a later date.

### A. Payday Lending

The Putting Consumers First Act (Consumer Protection Statute Law Amendment), 2017 amends the Payday Loans Act, 2008 to add regulation-making authority for requirements for advertising or signage in any medium with respect to a payday loan or a payday loan agreement. Improving how lenders display and communicate information to consumers supports consumers in making more informed choices and increases protection of vulnerable consumers.

#### 1. Advertising

Under the Payday Loans Act, 2008, payday lenders must display the following information if an advertisement mentions the cost of borrowing, amount advanced, repayment of the loan or the term of a payday loan agreement:

- Information about the cost of borrowing:
- The maximum allowable cost of borrowing
- The actual cost of borrowing the lender is charging for \$100 advanced
- The cost of borrowing applied to \$300 advanced for a term of 14 days
- The cost of borrowing expressed as a total amount
- The term of the agreement expressed in days
- The amount of the advance under the agreement
- The total amount the borrower is required to pay

The ministry wants to ensure borrowers are provided with the best information, in the most effective form and at the right time to ensure the borrower is making the best decision.

#### **Question 10: What changes to the advertising requirements can be made to support consumer decision making?**

This would be fine. The biggest issue with payday lending advertising tends to be the ads which advertise lost leaders. As our research shows, some lenders will offer lower rate loans on the first use which diminish the customers' ability to see the true cost of the loan. Focus should be placed there. In most cases, however, our research shows that increased disclosure has diminishing returns on the goal of affecting consumer behavior.

## 2. Signage

Payday lenders are required to display a poster at each office that is visible to borrowers immediately upon entering the office. The poster must contain information about the maximum allowable cost of borrowing, the payday lenders' cost of borrowing and a calculation of these amounts for a \$300 loan. Payday lenders are also required to display educational materials that compare the cost of a payday loan against another consumer credit product. These posters are found below.

Ontario wants to improve the impact of the required signage. This improvement will help consumers make informed decisions. Redesigns under consideration would simplify the phrasing of the posters, use visual design to convey information where possible, and provide more information about other potential ways to address financial concerns.

**Question 11: How do you think the information could be conveyed more effectively to consumers?**

**Question 12: Should different information be displayed?**

**Question 13: Are there more effective ways of providing information to consumers?**

See response to Question 10 above.

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## 3. Website Design

Consumers can enter into payday loan agreements online. Online payday lenders must disclose the same information as physical storefronts. However, the means of those disclosures are different. For example, a physical storefront must make the required poster on the cost of borrowing visible to borrowers immediately upon entering the office. An online payday lender is required to communicate the information in that poster before providing information about payday loans to the borrower, as well as at the business office location on their licence.

The Ministry of Government and Consumer Services is considering how disclosures could be improved in online payday lending through more specific or different requirements. This could include specifying where information is displayed in relation to any application for a payday loan or requiring the use of hover ads.

**Question 14: How could the design of payday loan websites be improved to better provide borrowers with information to support financial decision making?**

**Question 15: What is the best information to provide to potential borrowers online?**

The response to Question 10 above also applies to websites.

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## 4. Contract Design

O. Reg. 98/09 under the Payday Loans Act, 2008 outlines the information that payday lenders must include in a payday loan agreement. These requirements are related to both content and formatting. For example, the first page of the agreement must include a table outlining the details of the agreement and not include anything else.

**Question 16: How could the design of payday loan agreements be improved to better provide borrowers with information to support financial decision making?**

**Question 17: What is the best information to include in a payday loan agreement?**

The test should be clarity and simplicity, with an emphasis on simplicity.

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## B. Instalment Loans

The Putting Consumers First Act (Consumer Protection Statute Law Amendment), 2017 amended the Consumer Protection Act, 2002 to provide additional regulation-making authority for credit agreements.

High-cost instalment loans are a credit product of particular interest to the Ministry of Government and Consumer Services. The interest on these loans can be more than 35% and in some cases as high as 59.9%. The higher end of these rates approach the criminal interest rate (an effective annual rate of interest greater than 60% is an offence under the Criminal Code) and these loans are often marketed with optional insurance that can further add to the cost of the loans. While the interest charged on instalment loans is significantly less than the annual percentage rate of standard payday loans, instalment loans are typically for larger amounts and for longer periods of time. As such, and as demonstrated by stakeholder feedback, high-cost instalment loans may put consumers at risk of financial harm.

Based on market research, instalment loans are only one example of high-cost instalment credit products. Stronger regulations should take as many of these products into consideration as possible.

If Ontario were to strengthen the regulation of high-cost credit products, it would require amending the regulations under the Payday Loans Act, 2008 and the Consumer Protection Act, 2002. First, regulations under the Payday Loans Act, 2008 would be amended to clarify what is regulated by that Act and its regulations. Some high-cost credit products that are not typically considered payday loans, such as instalment loans, could currently be interpreted to fall within the definition of a payday loan. Clarifying the application of the Payday Loans Act, 2008 would allow Ontario to ensure that new regulatory requirements are applied as intended. Second, regulations under the Consumer Protection Act, 2002 would clearly define what constitutes a high-cost instalment loan and set out stronger regulations for these products.

### 1. Addressing Other High-Cost Credit Products

Stakeholders have noted that high-cost instalment loans are increasingly popular and can create risks for financially vulnerable consumers. Properly regulating high-cost instalment loans requires a clear definition of these loans.

An instalment loan is a loan that is scheduled to be repaid in substantially equal instalments at equal periodic intervals. They are commonly referred to as consumer loans or personal loans. Instalment loans may differ from typical payday loans as they can be repaid over a longer term (e.g. more than two weeks or the borrower's next payday), are not repaid in a lump sum and may be secured by the borrower's personal property.

**The proposed exemption from the Payday Loans Act, 2008 is:**

Loan agreements are exempted from the requirements of the Payday Loans Act, 2008 and its regulations if (a) the amount of money advanced is greater than \$1,500 or (b) the term of the agreement is more than 62 days.

**Question 19: Other provinces that regulate payday loans limit their regulation of payday loans to those that are for \$1,500 or less and 62 days or less. This definition aligns with the definition of payday loans in the Criminal Code that are exempt from the criminal rate of interest. Should the application of Ontario's Payday Loans Act, 2008 be amended to clarify that it applies only to those products that are typically considered payday loans?**

The efficacy of such an amendment is unclear.

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**The proposed definition of high-cost instalment loans is:**

A high-cost instalment loan is a loan of money with an annual interest rate that exceeds 35%.

**Question 20: Does this definition adequately capture instalment loans? Is it too broad or too narrow?**

The efficacy of such a definition in shaping industry or consumer behavior is unclear.

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## 2. Minimum lending standards

Financially vulnerable consumers may be harmed if they use a high-cost credit product to borrow more than they can afford. High-cost credit instalment loans pose a greater risk because they are often offered to financially distressed consumers and have higher interest rates. Responsible lending standards aim to reduce the likelihood of consumers entering into a high-cost instalment loan that they cannot afford to repay.

### 1. Responsible Lending Standards

Requiring lenders to evaluate a borrower's ability to repay the loan may lead to better loans for consumers. Possible options include:

**Option 1:** Detailed requirements for factors lenders to consider

One approach is to limit the loan amount and/or largest instalment payment to the difference between a borrower's net income and prescribed expenses. These prescribed expenses could include:

- Rent or mortgage payments
- Insurance premiums

- Anticipated debt repayments
- Reasonable food expenses
- Transportation costs for employment
- Child, elder and/or spousal support payments
- Health care expenses

**Question 21: What additional expenses should lenders consider when determining the maximum amount of the loan?**

Ensuring the ability to repay is important and this seems like a more than sufficient list. Though given the nature of accurately assessing some of these (health care expenses for instance, can fluctuate), there is a danger of introducing regulations that cannot be followed properly – or even accurately – without great expense. There is a danger in undermining the authority of the laws and regs by placing those which cannot be followed.

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**Option 2:** Limit loan payment amounts to a fixed proportion of net income

Another approach is to limit the loan payment amounts, and the amount of the loan, to a fixed proportion of net income. This approach is simpler than option 1.

**Question 22: What percentage would be recommended to balance a consumer's ability to repay with supporting access to credit? How should net income be calculated? What evidence do you have to support your recommendation?**

This is a better option than the previous. And, if the gov't sees term loans as similar vehicles to payday loans (though it would be worth identifying and clarifying evidence on how they are used and in what ways they are similar and different to payday loans), it would seem prudent to follow an approach that is proportionate to that of payday loans.

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**Option 3:** General requirement for lenders to consider borrower's ability to repay

Imposing a general requirement for lenders to consider a borrower's ability to repay without prescribing the specific factors provides lenders with greater flexibility to conduct their assessments.

**Question 23: Which of these forms of responsible lending standards would best serve Ontario's consumers?**

This is a better solution yet, in that it allows for methods to emerge out of practice and use by those closest to the issue. The government could, however, still do proper diligence in ensuring that just standards are made by asking various actors to disclose their standards to government.

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## **2. Cost of borrowing cannot be collected if lender fails to comply with lending standards requirements**

In order to encourage lenders to comply with the regulations, limiting a lenders' ability to collect the cost of borrowing when they do not comply with Consumer Protection Act, 2002, requirements would deter non-compliance. Borrowers would not have to repay the cost of borrowing, which would eliminate the lender's profits and ability to cover their costs. This approach is consistent with the Payday Loans Act, 2008 and with other provisions in the Consumer Protection Act, 2002.

### **Question 24: Should the same approach be used for instalment loans?**

The penalty should fit the severity of the failure.

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## **3. Prohibiting contact to solicit refinancing**

Refinancing an instalment loan may unnecessarily extend the indebtedness of the consumer, resulting in higher borrowing costs to consumers. For example, there may be fees associated with refinancing, as well as higher total interest costs. This risk could be reduced by prohibiting instalment lenders from initiating contact with consumers for the purpose of offering refinancing.

### **Question 25: Are there other options to minimize the risk of unnecessary loan refinancing?**

You may enter any comments here

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## **4. Limits on costs outside of interest**

The cost of borrowing does not include the cost of purchasing optional services. Lenders of high-cost instalment loans may offer consumers optional insurance. Optional services such as this insurance may fall outside of the definitions of interest and cost of borrowing, yet can greatly increase the cost of an instalment loan. Stakeholders have raised concerns that consumers are often unaware of the cumulative cost of this insurance and the option to forego the insurance coverage. In some cases, if the added cost of such optional services was considered interest, the instalment loan would have a criminal interest rate.

### **Question 26: What type of limits should be placed on optional services?**

### **Question 27: Should there be a prescribed maximum cost of optional services and if so, what should the maximum be?**

## **Question 28: Should there be disclosure requirements specific to optional services?**

Again, transparency, and simplicity should rule. If lenders are using the sale of these products and not properly communicating the risks to consumers, then penalties should be put in place. But if insurances do genuinely act as a means of mitigating consumer risk, they should not be unduly limited or capped.

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## **5. Mandatory Disclosures**

The credit agreement disclosure requirements in the Consumer Protection Act, 2002 and its regulations apply to most instalment loans. For example, the initial disclosure statement is required to include information related to costs of borrowing, such as:

- The cost of borrowing.
- For each element of the cost of borrowing, other than interest, the nature of the element and amount payable by the borrower.
- The interest rate payable by the borrower under the credit agreement.
- The annual percentage rate for the credit agreement.
- The total of all payments the borrower is required to make in connection with the credit agreement and the timing and amount of each payment.
- The optional services accepted by the borrower, the charge for each optional service, the borrower's right to terminate an optional service of a continuing nature and the manner of exercising that right.
- The prepayment rights, charges and penalties that apply to the credit agreement.
- The default charges under the credit agreement.

Additional credit agreement disclosure requirements can also be found in subsection 79(2) of the Consumer Protection Act, 2002 and subsection 63(1) of O. Reg. 17/05.

## **Question 29: Do the disclosure requirements in the Consumer Protection Act, 2002 and its regulations provide sufficient information to borrowers? Is there additional information about the cost of borrowing that instalment lenders should be required to disclose to borrowers?**

See answer to Question 28 above.

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## C. Rent-to-Own

Rent-to-own agreements (sometimes referred to as lease-to-own agreements or rental purchase agreements) are different from typical lease agreements. The agreement provides consumers with immediate access to household goods and the option to purchase the goods. Some consumer protection issues associated with this type of agreement include:

- The cumulative cost of payments can be several times higher than the cost of purchasing the good outright.
- Consumers may not have sufficient information about the terms and conditions of the agreement prior to entering into the agreement.
- Consumers who fail to make one or more payments on time could face repossession of the goods.

### 1. Definition of rent-to-own agreements

Putting Consumers First Act (Consumer Protection Statute Law Amendment), 2017 amendments to the Consumer Protection Act, 2002, provide regulation-making authority for requirements specific to rent-to-own agreements. Lessors would have to comply with these requirements in addition to the requirements for lease agreements under the Consumer Protection Act, 2002.

#### **Proposed definition:**

“A rent-to-own agreement:

- (a) is for the use of personal property by an individual for personal, family or household purposes, and excludes any lease or rental for agricultural, business or commercial purposes;
- (b) is for an initial term of four months or less;
- (c) is automatically renewable with each payment after the initial term;
- (d) permits the consumer to continue leasing or using the property beyond the initial term;
- (e) should the consumer pay a total amount agreed to in advance, permits the consumer to become the owner of the property; and
- (f) excludes any lease or rental of a motor vehicle.”

“Initial term” means the minimum period for which the consumer is obligated to make payments under the agreement.”

**Question 30: Do you agree with the proposed definition of a rent-to-own agreement? Should there be other inclusions and/or exclusions from the definition?**

You may enter any comments here

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## 2. Price tags and Disclosures

Rent-to-own consumers may make purchasing decisions when examining items in a store or on a website prior to entering into the agreement. Consumers may not view the agreement until after they have already decided to purchase the good and may not have sufficient information to make an informed decision. In addition, rent-to-own agreements can be very complex. For example, they can include an unclear description of the good, multiple means of payment, multiple means of acquiring permanent ownership of the good, cancellation rights, and reinstatement rights.

Past consultations by the ministry on strengthening consumer financial protection indicated a need to improve the information provided on the price tags of rent-to-own goods.

One solution is to provide consumers with more information on the price tag. Several US jurisdictions have requirements for label content regarding rent-to-own agreements. Some requirements could include:

- (a) whether the product is new or used
- (b) the minimum period for which the consumer is obligated to make payments under the agreement
- (c) the duration of the agreement if all regularly scheduled periodic payments are made
- (d) the amount of each periodic payment
- (e) the total amount of payments and the total number of periodic payments necessary to acquire ownership of the property if the renter makes all regularly scheduled periodic payments
- (f) the cash price of the property subject to the agreement
- (g) the cost of rental, which is the difference between the total amount of all periodic payments necessary to acquire ownership under the rental-purchase agreement and the cash price of the rental property that is subject to the agreement.

**Question 31: What information should be disclosed on the price tag to provide consumers with sufficient information to make a purchasing decision before entering into a rent-to-own agreement?**

**Question 32: What would be the most effective way to provide such information?**

You may enter any comments here

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### 3. Grace period

If a consumer fails to make a payment when it is due, under some current practices, the lessor may impose a late fee, terminate the agreement and/or repossess the good, regardless of how many payments the consumer has already made toward owning the good. Rent-to-own lessors may offer grace periods for late payments, where consumers can avoid these penalties if they make payments within a certain number of days after the payment was due. There is no existing requirement in Ontario for lessors to offer grace periods for rent-to-own agreements. Financially vulnerable consumers can benefit from measures that limit additional fees and reduce the likelihood that consumers will lose the value of the payments they have already made toward ownership.

**Question 33: What would be an appropriate grace period on late fees for rent-to-own agreements? For example, would a grace period of seven days for monthly payments and three days on weekly payments be helpful to consumers without being too burdensome on lessors?**

**Question 34: Should there be a limit on how many times a grace period can be used over the course of a rent-to-own agreement?**

You may enter any comments here

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### 4. Reinstatement rights

Rent-to-own lessors may also offer consumers a right to reinstate the agreement after consumers have not made payments on time. Reinstatement allows a consumer to resume progress toward ownership following a consumer-initiated break in the agreement, with credit given for the payments already made.

Most US states currently require rent-to-own lessors to reinstate terminated agreements if the consumer returns the property to the company but then makes a new payment within a limited number of days (e.g., from 21 to 180 days). There is no existing requirement in Ontario for lessors to offer reinstatement rights.

Upon reinstatement, the lessor would also be required to provide the consumer with the same property leased prior to reinstatement or substitute property that is of comparable quality and condition.

**Question 35: What are some of the things a consumer can do to help facilitate reinstatement of an agreement?**

**Question 36: In what circumstances should a consumer not be able to reinstate an agreement?**

You may enter any comments here

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In addition to requiring a consumer to pay all past-due rental payments, lessors may also charge consumers various fees for reinstatement of the agreement, such as a reinstatement fee or a re-delivery charge. Most US states have a statutory limit of \$5. Reinstatement fees for Ontario suppliers range from \$10 to \$12.

**Question 37: Should there be a limit on the type and amount of reinstatement charges? If yes, what is a reasonable limit?**

You may enter any comments here

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## 5. Termination of rent-to-own agreements

Consumer Protection Act, 2002 regulations require lessors to provide a disclosure statement that includes the following information about terminating the lease:

- The circumstances, if any, in which the lessor or the lessee may terminate the lease before the end of the lease term.
- The amount (or how to determine the amount) any payments the consumer is required to make on early termination of the lease.

**Question 38: Do consumers have enough information to understand their rights and obligations when a lease is terminated early? Are you aware of any issues associated with termination of rent-to-own agreements, such as high early termination penalty charges?**

You may enter any comments here

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## Appendix – Proposed Regulatory Language

### Improving Existing Disclosures – amendments to O. Reg. 98/09

- Section 14(3)(2)(ii) [of the regulation] is revoked and replaced with the following:
  - ii. the total cost of borrowing per each \$100 advanced under the agreement in 144 point font, expressed as a dollar figure, and as expressed as an annual percentage rate calculated as per section 55 of the O. Reg. 17/05 under the Consumer Protection Act, 2002, immediately below subparagraph i.
- Paragraphs 3, 4, 5, and 6 of subsection 14(3) [of the regulation] are revoked and replaced with the following:
  - 3. A subheading in 54 point font with the words “Example: Your \$500 loan for 14 days”.
  - 4. The following in 54 point font:
    - i. the words “Amount Advanced \$500.00”, and
    - ii. the words “Total Cost of Borrowing” followed by the total cost of borrowing per each \$500 advanced under the agreement, and as expressed as an annual percentage rate calculated as per section 55 of the O. Reg. 17/05 under the Consumer Protection Act, 2002, immediately below subparagraph i .
  - 5. A horizontal line extending across the width of the text on the poster immediately below the text described in paragraph 4.
  - 6. The following in 54 point font: the words “Total You Repay” followed by the total of \$500 plus the total cost of borrowing per each \$500 advanced under the agreement.
- Paragraphs 1, 2, and 3 of section 15(2) are revoked and replaced with the following:
  - 1. The actual cost of borrowing per each \$100 advanced under the payday loan agreement that the licensee offers or that the licensee offers to assist the borrower in obtaining.
  - 2. The cost of borrowing described in paragraph 1 applied to \$500 advanced for a term of 14 days, and as expressed as an annual percentage rate calculated as per section 55 of the O. Reg. 17/05 under the Consumer Protection Act, 2002, immediately below subparagraph i.
  - 3. The cost of borrowing under the agreement mentioned in paragraph 1, expressed as a total amount.
- Where the cost of borrowing is displayed for the borrower’s actual agreement, the lender shall use the actual term of the loan and the actual loan amount to calculate the annual percentage rate.

- The table required by section 18 (1) of O. Reg. 98/09 is amended to revoke the last row in the table and to substitute the following:

Estimated Cost of Default	H
Borrower's Signature	I

- The words below the table in s. 18 (1) of O. Reg. 98/09 are amended to delete "H = the borrower's signature" and to substitute the following:

H = the estimated cost of defaulting on a payday loan as composed of (a) the maximum charges that the lender shall charge because a cheque or other instrument of payment given by the borrower under the agreement has been dishonoured; followed by the words "default charge +"; and (b) the interest rate that the payday lender shall charge for payday loans in default expressed as an annual percentage rate, followed by the words "APR," but such an amount does not include reasonable charges in respect of legal costs incurred by the lender in collecting or attempting to collect a required payment by the borrower.

For example '\$50 default charge + interest on the outstanding balance of 59.99% APR').

I = the borrower's signature