

Strengthening Consumer Financial Protection

A discussion of potential approaches to strengthening consumer protection for consumers of alternative financial services and consumers with debts in collections

Purpose

The Ministry of Government and Consumer Services is consulting on how to strengthen consumer financial protection for consumers of certain financial services offered outside of the mainstream banking system and those with debts in collections. This paper outlines potential approaches that could be used to minimize risks to these consumers.

We are seeking input from consumers, from consumer advocates and agencies that work with Ontarians using these services, the firms providing alternative financial services and collecting debts, the financial services sector, and more generally from municipalities, and the general public. Questions throughout the paper highlight considerations for potential approaches. We are interested in your views on these approaches. For example:

- if you are a consumer of these services, whether an approach will help you;
- if you are an agency working with low-income Ontarians who may use these services, whether an approach will help your clients; and
- if you are a provider of alternative financial services or collecting debts, what impact an approach will have on your business.

Your input is important to us. Send us your feedback and responses on the discussion questions included throughout this paper. You can provide your input in various ways:

Regulatory Registry: Send your comments by visiting: <http://www.ontariocanada.com/registry/> by August 14, 2015.

Email: Send your response by email with “Consumer Financial Protection Consultations” in the subject line to consumerpolicy@ontario.ca

Regular mail:

Consumer Policy and Liaison Branch
Ministry of Government and Consumer Services
777 Bay St, 5th Floor
Toronto, ON M7A 2J3

If you have any questions on how to participate, please email consumerpolicy@ontario.ca with “Consumer Financial Protection Consultations” in the subject line. After this consultation is complete, the comments will be reviewed to inform advice to government.

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Introduction

The Ministry of Government and Consumer Services is exploring opportunities to improve protection for consumers using alternative financial services and with debts in collections. The primary focus of this paper is on legislative / regulatory reforms which govern businesses that market services and products to consumers with constrained income and limited access to traditional credit. The Ministry is also interested in learning about the other measures that could achieve the objective, including education, awareness and community partnerships.

This paper focuses on debt collection and the financial services offered outside of banks and credit unions – alternative financial services. These services include instalment loans, payday loans, money transfers (remittances), cheque cashing, pawnbroking, and rent-to-own. These alternative financial services are offered at a high cost compared to similar services at traditional financial institutions.

Provincial law provides some protection to consumers using alternative financial services in Ontario. For example, a consumer borrowing money through a credit agreement regulated by the province must be provided with certain information including the cost and length of the credit agreement. A payday loan borrower is protected from loans being rolled over, additional goods or services being provided thereby increasing the cost of the loan, and from payday loan agreements with a cost of borrowing exceeding \$21 per \$100. As well, consumers with accounts in collections are protected from harassment from collection agencies collecting the debt on behalf of another party. These are only a few examples about how the current law protects Ontarians.

While this paper outlines a number of potential reforms primarily to the [Payday Loans Act](#); it also considers reforms to the [Collection and Debt Settlement Services Act](#) (CDSAA) along with education, awareness and partnership approaches. The potential approaches are informed by the work of a Payday Lending Panel that met in 2014, the Ministry's research, and ongoing discussions with stakeholders. The Panel's report is available on the [regulatory registry](#). Some of the proposals outline general approaches to a potential risk, while others suggest specific responses to a well-understood issue.

The Need for Consumer Financial Protection

Alternative financial services consumers may be at risk if they do not have enough information to make a decision, are pressured into making a decision, or are making a decision from a limited number of choices. Consumers may also be at risk if they have limited ability to redress harms, or their financial circumstances make the harm worse. For example, the potential harm of a \$20 overbilling depends on the circumstances of the consumer.

The Ministry is aware that the sources of these risks may include matters such as security of employment, housing, language barriers, access to traditional financial institutions, and recent immigration to Canada. Addressing these matters goes beyond this paper's focus on consumer protection. However, the Ministry is interested in knowing what Ontarians see as the sources of these risks.

Questions:

1. What can you tell us about the risks faced by consumers using alternative financial services or with debts in collections?

Alternative Financial Services

Financial services offered outside of traditional financial institutions include: instalment loans, payday loans, cheque cashing, pawnbroking, and rent-to-own agreements. They typically cost more than comparable services offered by banks or credit unions. They are also marketed primarily to financially vulnerable consumers. Their services are often provided in locations with limited access to banks and credit unions are available at times when traditional financial institutions are closed. Based on a survey of Ontario payday loan borrowers, the majority of borrowers have accounts with banks or credit unions, but fewer have lines of credit, overdraft protection or investments to draw from.

Using alternative financial services can be risky for consumers. The full costs of these services and how they compare to traditional financial services can be unclear. Consumers may also have limited ability to absorb the high cost of these products. In some cases, the high cost of using these services may create new burden rather than easing an existing one.

The Consumer Protection Act provides general protection to consumers. For example, it prohibits unfair practices and requires specific disclosures for credit agreements and lease agreements. To learn more about the Consumer Protection Act, please visit:

<http://www.ontario.ca/consumers/your-rights-under-consumer-protection-act>.

Questions:

2. What do you think is driving the use of alternative financial services?

3. What alternative financial services should be considered for legislative / regulatory reform? Which services are adequately regulated today?

Proposals

1. Specifically regulate alternative financial services.

As stated, the Consumer Protection Act already sets out general protections for Ontario's consumers. Specific legislative / regulatory reform could address features specific to alternative financial services. This could include uniform disclosures of pricing, establishing price regulation for some of these services, and / or a new licensing regime.

Other jurisdictions have regulated some elements of this sector. Quebec licenses money lenders while Manitoba has passed a law to allow for the licensing of all high-cost lenders. Licensing can set standards for these services and help consumers choose services that meet these standards. The objective would be to minimize risks to users of currently unregulated alternative financial services.

Questions:

1.1 Which alternative financial services do you think require specific regulation in Ontario? Are general consumer protection rules that cover all services sufficient?

1.2 What kinds of additional protections are needed?

2. Regulate cost of a broader range of alternative financial services.

Consumers using alternative financial services generally have limited options for financial services. The cost of these services can add an additional financial burden that, depending on the consumer's income, may create a need for additional borrowing. This can create dependency on alternative financial services. Some jurisdictions have addressed this issue by regulating the prices of some of these services.

Examples of regulating the price of alternative financial services include:

- Limiting both the percentage and the dispensing fee of cheque cashing services (e.g., Manitoba sets a maximum charge allowed for cashing a government cheque at \$3.00 plus 2% of the face value of the cheque);
- Setting the maximum total cost of payday lending (already set through the Payday Loans Act); and
- Limiting the price that rent-to-own dealers can charge to a multiplier of the dealers wholesale cost (e.g., set a maximum cash price that dealers can charge as a multiplier of the dealer's wholesale cost and vary according to product category.)

Such regulation could reduce the cost to consumers but could also result in some businesses leaving the market altogether. This could reduce consumer access to these services.

Questions:

2.1 Should Ontario regulate the cost of some alternative financial services? Why?

Payday Lending

Payday lenders provide money in exchange for a future payment like a post-dated cheque or pre-authorized debit. Ontario's average payday loan is estimated to be \$460 for a two-week term.

The current payday lending sector started in Canada almost 20 years ago. Since then, it has grown rapidly. In 2014, it was estimated that the Canadian payday lending market holds \$2.5 billion in loan volume annually, and consists of 1.8-2.5 million customers. In Ontario, it is estimated that approximately 3% of Ontarians have used payday loans in the last year.

Until 2007, the main restriction on payday lending was the federal Criminal Code's prohibition of charging interest in excess of an effective annual rate of 60%. By 2007, several civil court decisions across Canada found that some payday lenders were exceeding this limit. Similarly, class action suits against payday lenders were underway in several provinces. A 2007 change to the federal Criminal Code allowed provinces to set a maximum total cost of borrowing for payday loan agreements that was not bound by the 60% criminal rate.

Ontario's payday lending law, the Payday Loans Act ("Act"), took effect in 2009. The Act protects consumers by:

- licensing payday lenders and payday loan brokers,
- preventing licensees from engaging in prohibited practices,
- establishing a maximum total cost of borrowing, and
- providing means of enforcement.

Since 2009, Ontario has enforced its Act and monitored payday lending in Ontario and elsewhere. As other governments responded to payday lending, Ontario has sought to learn from their experiences.

As part of the Payday Loans Act review announced in 2013, the province gathered a panel of experts who understood the payday lending industry to provide advice. The panel included community agencies, credit counsellors, consumer experts, and the payday lending industry. The panel made several recommendations in a report submitted to government in 2014. This report is available on Ontario's regulatory registry (<http://www.ontariocanada.com/registry/>). The panel's review included consideration of operational approaches and ongoing discussions on data collection and financial education. The payday lending proposals below serve a different purpose, reviewing a range of potential legislative / regulatory approaches to specifically address repeat borrowing and the costs of borrowing based on research in other jurisdictions.

Cost of borrowing

Payday lending is an expensive form of borrowing. Ontario caps the cost of payday loans at \$21 per \$100 borrowed. This is the second lowest cost among the provinces that regulate payday lending. If a \$100 loan was taken out every 14 day pay period for a year, the costs paid at the

end of the year would be \$546 or 546% of the value of the loan. The effective annual rate of interest of payday loans in Ontario is significantly higher than this figure. Ontario consumers are aware of the \$21 per \$100 cost of borrowing cap on payday loan agreements. However, Ontario recently surveyed borrowers and found that they are unclear about how this cost of borrowing compares with other credit products – only 7% of borrowers were aware that the effective annualized rate of interest for payday loan agreements exceeds 500%.

Payday Loans Across Canada

Eight provinces regulate payday lending, taking a roughly similar approach. Each sets the total cost of borrowing, licenses payday lenders, and includes consumer protection measures, such as those that restrict repeat borrowing. Many limit how much can be lent and restrict how much can be charged in the event of default. A wider range of approaches is seen internationally.

Jurisdiction	Maximum value of principal lent	Cost per \$100 lent	Default Fee	Maximum Charges on Arrears
Alberta	N/A	\$25	\$25	2.5% per month (i.e., 30% per annum)
British Columbia	50% of net income	\$23	\$20	30% per annum
Manitoba	30% of net income	\$17	\$20	2.5% per month (i.e., 30% per annum)
Nova Scotia	N/A	\$22	\$40	Criminal code
Ontario	N/A	\$21	Reasonable charges in respect of legal costs of collecting and cost of dishonoured payment. (Default charge is not inclusive of interest)	Criminal Code
Prince Edward Island	N/A	\$25	Reasonable charge	Criminal Code
Saskatchewan	50% of net income	\$23	\$20	30% per annum

International approaches

Payday lending has attracted government attention wherever it has emerged. For example, the United States (US), United Kingdom (UK) and Australia regulate payday lending. Each has recently revised their laws or is in the process of proposing amendments.

Some US states take similar approaches to Canada by licensing lenders, setting a maximum cost of borrowing per \$100 lent, and setting restrictions on repeat borrowing. Based on Pew Charitable Trust research, of the 36 states that allow some form of payday lending, 29 set rates

lower than Ontario. The Pew research suggests that US states that allow payday lending but do not regulate costs have an average cost of borrowing between \$20 and \$23 per \$100.

Several states, such as Florida, Alabama, Michigan, Washington, and Illinois have implemented transaction tracking systems to better enforce restrictions on concurrent loans and repeat lending. These systems track each loan that a borrower receives. Payday lenders must check the tracking system when considering offering a loan to a potential borrower to ensure the loan would not contravene certain restrictions on payday lending.

Examples of restrictions on repeat lending include:

- Washington limits the number of loans a borrower can take out at eight per year.
- Alabama limits the amount that can be lent at any one time to \$500.
- Illinois and Indiana have a 14 day cooling off period between loans.

Repeat borrowing

It appears that repeat borrowing is the norm. The US Consumer Financial Protection Bureau found that only 15% of borrowers take out only one payday loan a year. Canadian data has roughly similar results: payday lenders reported that 25% of borrowers take out only one loan from a payday lender in a year, and a survey of Ontario payday loan users found that 30% of persons borrowing in the last year took out only one payday loan.

Canadian data demonstrates that the majority of payday loan borrowers borrow repeatedly.

- In 2013, more than 25% of the payday loans in Nova Scotia were taken out within 24 hours of paying off a previous loan.
- In 2014, 15% of British Columbia's payday loan borrowers took out 11 or more loans, which made up more than 40% of that province's payday loan volume.
- Ontario's survey of payday loan borrowers found that 18% of these borrowers took out 10 or more payday loans in the last year and that those who borrowed the most frequently borrowed the largest amounts.

Payday Loan Dependency

Repeat borrowing may put consumers at risk if a payday loan creates the need for a future loan. If a consumer has an unexpected expense, a short term credit product can help pay the bills until the next paycheque. However, if consumers' expenses consistently exceed their income, short term loans like payday loans can create another expense which consumers cannot afford to repay. This can drive future payday loan use. Some critics of payday lending call this dependency the "debt trap". A recent study of Ontario's borrowers found that 50% used payday loans to cover recurring expenses such as rent, mortgage, or regular bills. US data indicates the majority of payday loans in a sequence see no decrease in the principal until the loan is paid off and that the longer a sequence goes on the more likely it is that the loan size will increase.

Proposals

3. Confirm assumptions underlying regulation of the payday lending industry

The ministry is interested in views on whether the current form of payday lending is necessary for consumer credit or if a more fundamental reform of the sector is justified.

Ontario and seven other provinces chose to comprehensively regulate payday lending. These laws license payday lenders, establish various consumer protections, and set a maximum total cost of borrowing.

Studies of the impact of payday lending find mixed results. Surveys of the available literature have concluded that there is no large-scale alternative to payday lending for low-income consumers and that access to payday loans helps consumers in times of crisis, but that consumers can be harmed by repeat borrowing.

Several jurisdictions have instead addressed the potential risks of payday lending by prohibiting high cost payday lending. For example, 14 US states and the District of Columbia prohibit high cost payday lending or have price caps low enough to result in the near elimination of the payday loan market. Eliminating payday lending has not been shown to eliminate all demand for short term credit. While some borrowers may reduce expenses in the absence of payday lending, other consumers seek out other borrowing options. In a recent survey of payday loan borrowers in Ontario, over 20% reported having other options such as: borrowing from friends or family, pawning goods, and increased credit card use.

Questions:

3.1 How would you describe the impact of payday lending on individuals and on communities?

3.2 What other alternatives exist for persons using payday loans?

3.3 What does a better alternative look like? Could it succeed if it was in competition with payday lending?

3.4 Are there similar consumer protection concerns with potential substitutes?

3.4 Are there other fundamental changes that should be made to how the industry operates in Ontario or regional differences in the need for the industry?

Proposals 4-16 examine ways to improve consumer protection through provincial laws.

4. Base a review of the maximum total cost of borrowing on specified factors

The Payday Lending Panel identified key factors for such a review, including:

- Reflecting the cost of lending,
- Balancing industry viability and affordability for consumers,
- A five year review cycle, and

- Seeking external advice from a wide range of stakeholders.

Questions:

4.1 Are these the right factors for a review of the maximum total cost of borrowing? Should some be dropped or modified? Are there missing factors?

5. Restrict how consumers can use payday loans through a transaction tracking system.

Ontario recognizes the potential harm when borrowers take out many loans at the same time or borrow frequently. That is why the Act already prohibits “rolling over” existing loans and prohibits individual payday lenders from making concurrent loans. Similarly, payday loan brokers cannot help a borrower get loans from different lenders at the same time. However, these restrictions only apply to a single lender or loan broker. If borrowers want two loans at the same time, they can seek loans from two different businesses.

Another approach to protecting consumers from the risk of debt traps would be to focus on how a borrower interacts with the payday loan marketplace rather than a single lender or loan broker. A centralized system that tracks payday loans could accomplish this.

These tracking systems work by recording all payday loan transactions, including borrower information, in a centralized database. If a payday loan to a borrower would violate specified statutory criteria, the payday loan cannot be issued. In the UK, payday loans are more frequently reported to their credit reference agencies than North American payday loans are reported to consumer reporting agencies. In the US, several US jurisdictions have mandated the use of a dedicated payday loan transaction tracking system provided by a third-party. In these jurisdictions, the cost of administering the system is recovered on a fee paid by the payday lender on each transaction, which is approximately \$0.50 - \$1.50 per loan, depending on the volume of payday loans. A loan payday tracking system would be required to implement several of the proposals outlined below -- such as limits on frequency or how much a borrower can borrow in year or a waiting period between loans -- as payday lenders currently have no way of knowing if a borrower has outstanding loans with other payday lenders.

Questions:

5.1 Should the Act restrict borrowers from seeking simultaneous loans from multiple payday lenders?

5.2 Would a central tracking system strengthen protections for payday borrowers? What would the impact be on the payday lending industry?

6. Require payday lenders to take the borrowers’ ability to repay into account.

Several jurisdictions have limited the amount that payday lenders can lend to prevent borrowers from obtaining more money than they can afford to pay back. The UK requires lenders to undertake an assessment of the creditworthiness of the customer before offering a loan (this includes how the loan will affect the consumer’s financial situation and the ability of the

consumer to repay the loan). British Columbia, Saskatchewan, and many US states prohibit payday lenders from lending more than 50% of the borrower's net pay. Manitoba prohibits payday lenders from lending more than 30% of the borrower's net pay.

The US Consumer Financial Protection Bureau has recently proposed rules that include a requirement that lenders must verify income, major financial obligations, and lending history to determine that a borrower can afford interest and all fees. If lenders do not undertake this verification, the rules would limit the value, term, and frequency of payday loans.

These approaches try to minimize the risk of payday lenders offering borrowers more money than they can afford to pay back.

Questions:

6.1 Should payday lenders be required to limit how much they lend to reflect borrowers' circumstances?

6.2 Is a proportion of net income an appropriate means of restricting the amount lent?

6.3 If general lending standards are set, what should they consider (e.g., rent, groceries, utilities)?

7. Waiting periods between payday loans.

In Ontario, if a payday loan borrower waits seven (7) days after fully repaying a payday loan, the borrower may take out another payday loan. Also, if a payday loan borrower can demonstrate proof of repaying the previous payday loan, the borrower can immediately take out a new payday loan. Nova Scotia's payday lending data indicates that a large portion of repeat payday loans are taken out within 24 hours of previous payday loans.

Several US jurisdictions have implemented waiting periods between loans, ranging from a day to as long as 45 days. In some states, these waiting periods apply to all loans, while in other states they apply when certain conditions are met, such as a period of repeat borrowing.

Questions:

7.1 Should Ontario rely only on a waiting period between payday loans? If so, how long?

8. Restrict the number of payday loans a borrower can take out in a year.

One of the simplest ways to address repeat borrowing is to limit how many payday loans a borrower can take in a year. Several jurisdictions have taken this step. According to research conducted by the Center for Responsible Lending on payday loan intervention in the U.S., Washington's model of limiting the number of loans a payday loan borrower can take out at eight in one year has reduced how long payday loan borrowers are in debt for and the number of payday loan borrowers.

Questions:

8.1 Should there be a restriction on the number of payday loans a borrower can take out in the year?

9. Require payday lenders to provide an extended payment plan to frequent borrowers.

The Payday Lending Panel recommended providing repeat payday loan borrowers with more time to repay their loans. Research in the United States illustrates that having more than one pay period to repay a short-term loan helps borrowers repay the entire loan. Based on comments received during recent consultations, many payday lenders are already offering such extensions as part of their regular service.

In British Columbia, for payday borrowers taking out their third loan within 62 days, the repayment of the loan must be phased in over two or three pay periods. Borrowers have the option to opt-out of this repayment schedule by repaying their loan in cash prior to the end of the loan term.

Questions:

9.1 Should payday lenders be required to provide an extended payment plan to frequent borrowers?

9.2 If yes, when should an extended payment plan be required (e.g., when the borrower has received more than X number of loans in Y number of periods)? Why?

10. Lower the total cost of defaulting on a loan.

When a borrower defaults on a payday loan, lenders may charge the borrower interest and other fees associated with the default. Many jurisdictions control the total cost of defaulting. Ontario could do so as well.

Questions:

10.1 Should Ontario control the total cost of defaulting on loans?

11. Increase the information available to the consumer.

Ontario's Payday Loans Act requires certain information to be made available in advertisements and in communication with borrowers. This is intended to give consumers the information they need to understand payday loans and make informed choices.

If an advertisement for payday loans mentions the cost of borrowing, the amount advanced, the repayment of the loan or the term of the payday loan agreement, additional information is required in the advertisement, including: the maximum allowable cost of borrowing, the actual cost of borrowing charged, and the cost of borrowing \$300 for a term of 14 days.

At payday lender / loan broker offices, educational materials approved by the Registrar must be displayed and be provided by licensees to borrowers. These materials must be visible to

borrowers immediately upon entering the office (online lenders and loan brokers must make borrowers aware of these materials as soon as the borrower makes contact and immediately provide them when requested.) The approved materials consist of a poster and handout that compare the cost of a payday loan with the cost of a credit card.

The Act also requires payday lenders and loan brokers to display a poster setting out the cost of a payday loan and requires that certain information be in the payday loan agreement. This information includes:

- the amount borrowed;
- the term of the agreement;
- the total cost of borrowing;
- the maximum allowable cost per \$100 borrowed;
- the cost per \$100 borrowed;
- the total amount due under the payday agreement,
- the payment due date,
- the date of the agreement;
- the legal name of the lender and of the loan broker, if any;
- the signature of the lender;
- the business name and contact information of the lender and of the loan broker, if any; information about the “device” used to deliver or provide access to the payday loan;
- how the borrower can make payments to the lender;
- a statement on the borrower’s right to a copy of the agreement, upon request;
- contact information for the Registrar;
- the website address of the ministry; and
- three mandatory statements (one concerning the high cost of payday loans, one setting out the cancellation rights of borrowers and the last about refunds under the Act).

Comprehensive disclosures may allow borrowers to better understand their rights, and better understand the impact of borrowing on their budget over time. Additional information may further assist borrowers. This could include the Panel’s recommended information about the availability of credit counselling services.

Questions:

11.1 Would you add anything to the information that currently must be provided?

11.2 Is too much information currently being provided?

12. Increase the effectiveness of disclosures

While Ontario’s Payday Loans Act requires a significant amount of information to be made available to the borrower, there may be opportunities to provide this information more effectively. For example, the Payday Lending Panel recommended that the information provided by online lenders recognize the differences between in-person and online channels. They took

the position that the current provisions do not account for the information needs of persons accessing payday loans through the internet.

Other stakeholders have indicated that the quantity of the information is less important than the design of that information.

Ontario could set more specific requirements about how information is displayed to help make disclosures more useful to consumers.

Questions:

12.1 Do you think information could be provided more effectively to consumers?

12.2 Are fewer words and more information graphics preferred?

13. Limit price escalation from promotional rates

Payday lenders often offer a promotional rate on a borrower's first loan. For example, the first loan is free, or a fraction of the maximum total cost of borrowing. This portrays a payday loan as a cheap form of credit and encourages initial use of the product. However, research in the US indicates that the average payday loan borrower can typically only afford to pay back a portion of the amount they borrow. Therefore, even at a cheaper rate, consumers face the risk of repeat borrowing. On the second loan, consumers face the full cost of borrowing. To limit the likelihood that consumers will face a steep jump in the cost of borrowing between first and second loans, increases in the cost of sequential loans could be capped at a portion of the initial cost. For example, the total cost of sequential loans could be limited to 30% higher than the cost of a preceding loan. In this case, after borrowing \$300 for a promotional rate of \$20, the next loan for \$300 would be \$26 instead of the \$63 currently allowed by the Payday Loans Act. This may discourage the use of promotional rates, but would also provide borrowers with more certainty of their future obligations.

Questions:

13.1 Do promotional rates create risks for consumers?

13.2 If promotional rates create risk, what is the appropriate means to reduce this risk?

14. Prohibit payday lenders from purchasing gift cards.

Some charitable organizations and community agencies use gift cards to assist their clients meet their daily needs. These cards offer their clients with choice in the services they need. If the recipients of these gift cards want to sell these cards for cash, there are many ways to do so, including selling them to payday lenders. Some payday lenders in Ontario offer to purchase gift cards at a steep discount such as 50% of the face value of the gift cards. Payday loans cater to consumers in immediate need of cash. This may lead customers to be willing to accept below market rate for gift cards.

Prohibiting payday lenders from purchasing gift cards from consumers would reduce the likelihood that consumers using services offered by a payday lender would sell their gift cards on impulse to payday lenders. Gift card purchasing may be only one example of a service which payday lenders should not be offering.

Questions:

14.1 Should payday lenders be permitted to buy gift cards from consumers? If not, why?

14.2 Should payday lenders be restricted in the types of services they can offer?

14.3 Are consumers better served by having fewer services at an alternative financial service provider like a payday lender?

14.4 Is a gift card purchase different from purchasing gold, money transfer, and other services offered by some payday lenders? Do all services offered by payday lenders require additional scrutiny because their clients are likely under financial strain?

14.5 Should payday lenders be under an obligation to provide the regulator with advance notice of other services they propose to offer? Should their ability to provide other services be subject to approval?

15. Relax the requirement to make funds accessible within an hour of granting a payday loan online.

Several lenders have raised concerns about the requirement to make the loan accessible to the borrower within one hour of entering into an online payday loan agreement. These lenders assert this is not possible due to bank transfers being unpredictable. In the United Kingdom, online loans are provided within 48 hours by the lender.

Questions:

15.1 How would consumers be affected by amending the legislation to permit a delay in making the loan available in online payday transactions?

16. Expand inspection authorities to include unlicensed payday lenders and loan brokers.

In Ontario, the inspection powers under the Payday Loans Act allow for the inspection of licensees.

Questions:

16.1 Should Ontario's inspection authorities under the Payday Loans Act be expanded to include unlicensed payday lenders and loan brokers?

Remittances

Money transfer (remittance) services are sought out by consumers wishing to send funds from Ontario to another locale within the province or to another province or country. These services are used by migrants and newcomers to send hard earned dollars to families in their country of origin.

In order to send money, most consumers in Ontario rely on money transfer agencies (e.g. versus a bank). Transparency in these transactions is important because many consumers using remittance services are often low-income migrants or newcomers to Ontario and may have difficulties in understanding English / French, or in providing adequate identification to open a bank account, or lack the time and financial literacy to search out and compare different remittance services in the province. Therefore, relevant information about the transfer service in an easily accessible and understandable format may help the Ontario consumer.

In any market, full information – i.e., transparency - is important because it enables individuals to make informed decisions about which services to use and helps to make the market as a whole, more efficient. The World Bank suggests that transparency of prices and service features is crucial to the ability of consumers to make informed choices and to the creation of a competitive market.

Proposals

17. Transparency and Disclosure.

Price transparency and broad consumer understanding, awareness and choice in this area of the marketplace can promote greater competition in the Ontario marketplace and assist Ontario consumers in retaining better value in funds transferred. International best practices support raising awareness and increasing financial education and financial inclusion for remittance service users and promoting best practices among businesses.

In this area, enhanced disclosure would include disclosure of fees payable in respect of the provision of the service and currency exchange. In addition, increased transparency would include money transfer/remittance services in Ontario posting notice of remittance fees in a conspicuous place in their business premises in clear, plain language to further facilitate consumer knowledge, awareness and choice.

18. Broad Partnerships.

Broad partnerships that focus on education and awareness, coupled with strategic partnerships appear to be an effective approach to addressing the issue at a local level. Examples of existing partnerships include those led by the World Bank in collaboration with local and regional stakeholders that consider a geographic area of focus to establish remittance “champion cities” (e.g., Turin, Italy; Montreuil, France; Frankfurt, Germany; London, England).

Questions:

17.1 Would requirements for transparency and disclosure around fees related to money transfer (remittance) transactions help or harm Ontario consumers? Why?

17.2 What information would be beneficial for a consumer when selecting a money transfer service and using these services in Ontario?

18.1 Should Ontario consider engaging in partnerships at the national and international level or focus on an “Ontario” only approach? Why?

Debt Collection

When debts are not paid, a debt collector usually gets involved to try to get the money owed to creditors.

This section of the paper proposes improvements to Ontario’s rules protecting debtors from overly aggressive collection practices.

19. Apply debt collection rules to purchasers of overdue debts.

Under the Collection and Debt Settlement Services Act (CDSAA), companies that collect debts on behalf of creditors must be registered and comply with rules to protect against harassment and unfair collection practices.

Original creditors, such as lenders and retail businesses billing for goods or services are not subject to the Act. These businesses deal directly with the public and have a relationship with their customers. The ministry receives very few inquiries or complaints about the collection practices of original creditors.

The credit market is now more sophisticated than when the CDSAA was originally created. It is increasingly common for creditors with overdue debt to sell that debt to a third party who then becomes the creditor. When the debt is purchased by such a third party, the Act does not apply.

Such third parties do not have a retail relationship with the debtors and are not concerned with keeping them as a client. The Ministry sees reports of second-hand creditors threatening legal action for which they have no authority and other such practices.

A review of the ministry’s inquiry and complaint data finds that in 2014, 70% of all complaints and inquiries about collection activity not covered by the Act are about third parties who have purchased debt.

The ministry proposes that the Act be amended to apply to the collection of purchased or assigned debts that are in arrears. Anyone who acquires overdue debts and wants to collect on them would then be required to register as a collection agency and comply with the existing rules, or use a registered collection agency.

Alberta, Newfoundland and Labrador and the US have all expanded their laws to include companies that purchase overdue debts.

Requiring purchases of overdue debt to register is not expected to be onerous since many of these purchasers are already registered collection agencies and are fully aware of existing rules.

The Act would be reviewed in order to ensure there were no inadvertent consequences of expanding the definition of regulated businesses (e.g., if the collector is the creditor, provisions about putting monies into trust appear unnecessary).

Questions:

19.1 Do you agree with the proposed expansion of the CDSAA to include any person who has purchased a debt or debts that is or are in arrears?

19.2 What additional exemptions may be required to avoid capturing situations that arise in the course of various normal business transactions? Would the following be sufficient?

- a business that purchases a debt or debts through acquiring or merging with a business in a transaction that includes the transfer of accounts receivable,
- a business that enters contracts and then assigns rights to payments under them to a third party, when it continues to collect payments on behalf of that third party,
- a business that acts as a billing service through which third parties bill for goods or services provided (e.g., as is done on the Enbridge billing service and by many wireless suppliers),
- a business that acquires a debt or debts through the seizure of accounts receivable under a security agreement, or
- a person to whom the contract that gave rise to the debt was assigned for the purpose of financing the transaction.

19.3 What provisions of the CDSAA regulation should be adjusted if the proposed amendment is made?

20. Adjust the timing and content of the initial notice sent at the start of collection activity.

Currently, a collector must send debtors an initial notice before starting other collection activity.

This notice must include the name of the creditor to whom the debt is owed, the balance owing, the identity of the collection agency or collector who is demanding payment of the debt and the authority of the collection agency or collector to demand payment of the debt. A collector must not call the debtor until six days after mailing this notice.

The ministry believes this notice requirement could be improved to address the following concerns:

- As the “first contact” with a debtor, a collector may not have been able to verify that the address they have for the debtor is current and the current notice may go to the wrong address.
- If debts have been sold, the notice is not required to provide enough information for the debtor to know what the debt is about, since the current creditor is not the original creditor.
- The notice provides no other information that might assist a debtor. When debtors call the Ministry with questions they are often asking questions about their basic rights against collectors. This information might be useful as part of the initial contact.

The ministry proposes changes to the initial notice requirement to address these concerns:

- Adopting the approach taken under the US Fair Debt Collection Practices Act, the notice would be required once contact with the correct individual was established. This means permitting limited initial contact to verify the debtor’s contact information/address by means reasonable for that purpose. This approach is similar to the recent changes to the British Columbia Business Practices and Consumer Protection Act.
- The initial contact could verify not only that the right address information is used to send notices but confirm if a debtor agrees to receive electronic notice to an email account.
- Notice should include the name of the original creditor if different than current creditor.
- Notice should include basic advice regarding the payment of debts and debtor’s rights.

The ministry suggests this initial information should include balanced information that is supportive of a debtor being responsible and honouring obligations while at the same time advising of options if they cannot, and of their rights when dealing with collection agencies.

Questions:

20.1 Do you agree with the proposal to adjust the timing and content of initial notices?

20.2 Do you have suggestions for the information that would be useful for debtors to receive in initial notices?

21. Allow debtors to require contact by a collection agency continue only in writing.

Verbal communication is useful to engage a debtor and work out a payment solution, but continued verbal contact can be stressful to debtors who are unable to work out such a solution.

Ontario could adopt a rule that a collector must not continue to communicate with a debtor except in writing, if the debtor requests it and gives their mailing or e-mail address. Collectors could still talk with debtors who called them.

The question is whether the value of verbal contact can be maintained while protecting debtors against continued calls if there is not point to them. A possible way to do this is to require some number of calls to have taken place or some period of time to have passed.

Questions:

21.1 Do you agree with the proposal debtors be able, at some point, to require contact continue only in writing?

21.2 What period of time or number of verbal contacts should be given before invoking this requirement, in order to give collection agencies a reasonable opportunity to engage in negotiation?

22. Add the ability to use Administrative Monetary Penalties to the Collection and Debt Settlement Services Act.

The CDSAA would have provisions similar to those in the Payday Loans Act, 2006 added into it. This would allow the use of absolute liability penalties to promote compliance with the CDSAA and its regulation. A regulation would set out particular provisions for which an administrative penalty could be invoked and set amounts.

Conclusion

Thank you for taking the time to read this paper and consider various potential approaches to alternative financial services, payday lending, money transfer services, and debt collection. After this consultation is complete, the comments will be reviewed to inform advice to government.