

# Strengthening Ontario's Payday Loans Act

## Payday Lending Panel Findings and Recommendations Report

May 2014

Prepared by Deloitte on behalf of the Payday Lending Panel

# Transmittal letter

In January 2014, the Ministry of Consumer Services asked us, a volunteer panel of stakeholders with expertise in the payday lending industry, to discuss how to improve financial protection for payday loan borrowers. In particular, we were asked to recommend changes to the Payday Loans Act, 2008 and the regulations made under the Act.

Payday loans are typically short-term loans of less than \$500 that are repaid in a lump sum and made in exchange for a post-dated cheque or pre-authorized debit.

Ontario first regulated payday lending in 2008. The regulations include a maximum price that lenders can charge for payday loans (\$21 per \$100 advanced, including all fees and charges) as well as other consumer protections. For example, lenders must disclose the price and terms of their products in a specific format and cannot issue a payday loan to a consumer until they have repaid their previous loan.

The payday lending market has changed since 2008. Online payday lending has grown and new loan products have been introduced into the Ontario marketplace. It is in this context that we came together to discuss how the Payday Loans Act should change to ensure that legislation is responsive to changes in the industry and that Ontario consumers are protected today and in the future.

Our panel was asked to take a close look at five issues in particular:

- Online and mobile payday loans;
- New / alternate loan products;
- Concurrent loans and rollovers (high frequency repeat borrowing);
- Data requirements, monitoring and enforcement; and
- Maximum total cost of borrowing (price cap).

In discussing these issues we realized that two more topics needed to be added to the list: how to ensure that payday lending legislation keeps pace with changes in the industry and how to strengthen financial education and awareness.

These issues were discussed over about three months in early 2014. We met on six occasions, discussing the challenges that we needed to solve, the range of options available and which of those options would be most effective.

By the end of our discussions, we had identified a wide range of recommendations to help protect consumers. The goals of those recommendations include:

- How to reduce the risks posed by unlicensed lenders and loan brokers;
- How to ensure that online borrowers receive the information they need to make informed decisions;
- How to create a “safe landing” for borrowers who have taken out several loans in a short period of time; and
- How government can keep the legislation and regulations working for consumers in the years ahead.

This report reflects our discussions. In addition to laying out the areas where the panel reached consensus on recommendations, we also present the issues where panel members had differing views.

In illustrating this range of perspectives, we hope to encourage further discussions, not only within government but also with all Ontarians. With that in mind, the panel encourages the government to release this report in support of further public consultations.

Signed by:

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# 1. Executive summary

## 1.1 The Payday Lending Panel and review of the Payday Loans Act

The Ministry of Consumer Services announced a review of the Payday Loans Act in September 2013. The purpose of the review was to strengthen consumer protection in the context of Ontario's changing payday loan market. As an important part of the review, the Ministry invited expert stakeholders to form a panel and provide advice to government. The 14 members of the Payday Lending Panel included payday lending businesses, community agencies, consumer advocates and credit counselling experts. It met on six occasions from mid-February to early May 2014.

The panel's discussions focused on seven topics: 1) online and mobile payday loans, 2) new / alternative loan products, 3) concurrent loans and rollovers (high-frequency repeat borrowing), 4) data requirements, monitoring and enforcement, 5) maximum total cost of borrowing, 6) financial education and awareness, and 7) future reviews of legislation and regulation. These topics were selected to reflect the key priorities of both the Ministry and the panel members.

This report summarizes the advice of the expert stakeholder panel and provides a window into their thinking and discussions. All panel members share a strong commitment to protecting payday loan consumers, and the panel hopes that this report will encourage further discussion and debate amongst Ontarians on this important issue. The panel also urges government to move quickly in implementing the recommendations made in this report. In particular, the panel stresses the importance of obtaining more data on Ontario's payday lending industry.

## 1.2 Payday lending in Ontario

Payday loans are typically short-term loans of less than \$500 that are repaid in a lump sum and made in exchange for a post-dated cheque or pre-authorized debit. Definitive data is not available, but Deloitte estimates that approximately 3 per cent of Ontarians took out a payday loan over the last 12 months. Payday loans generally cater to individuals who are unable to access traditional sources of credit like bank loans or credit cards due to a poor or limited credit history (Statistics Canada, 2007; Maximum Total Cost of Borrowing Advisory Board, 2009).

Ontario's payday lending industry is composed of a mix of several large lenders with many storefronts and a large number of small lenders. Overall, there are 796 licensed payday

### Payday Lending in Ontario: Quick Facts

- Each year, approximately 400,000 Ontarians take out a payday loan
- There are 796 payday loan licensed locations in Ontario, operated by 249 different businesses
- Approximately \$1.1 - \$1.5 billion in payday loans are issued each year
- The average payday loan is \$460 and has a two-week term

Sources: Estimates developed by Deloitte and Ministry of Consumer Services payday lending licensee database

lending storefronts, which are operated by 249 different businesses. Deloitte estimates that together, these lenders issue loans worth approximately \$1.1 – \$1.5 billion annually.

The practices of this industry are structured by, among other things, Ontario's Payday Loans Act and the regulations under the Act.

### 1.3 Summary of consensus positions

The table below summarizes the consensus advice of the panel to government. The advice is organized by discussion topic.

**Table 1: Summary of Payday Lending Panel Recommendations**

Topic	Recommendations
Online and mobile payday loans	Enhance the content, usability and awareness of the Ministry of Consumer Services' searchable database of all payday loan licensees.
	The Payday Loans Act should include protections for consumers against lead generators.
	Encourage licensed lenders and loan brokers to report all unlicensed lenders or loan brokers that come to their attention.
	Increase cooperation with other jurisdictions to facilitate prosecution of unlicensed lending activity.
	Ontarians who take out a payday loan online or on a mobile device should automatically receive the information that in-person borrowers receive in a format that recognizes the differences between in-person and online channels.
	Require online lenders and loan brokers to include a link to a list of licensed, non-profit credit counselling agencies that are registered charities.
New / alternative loan products	Encourage lenders, loan brokers, industry associations and credit counsellors to report new loan products that may violate the Payday Loans Act when such products come to their attention.
	Review the existing spectrum of enforcement tools and consider new tools to address the development of new loan products that may have been designed to avoid the Payday Loans Act.
High-frequency, repeat borrowing	Introduce a requirement for lenders to offer a voluntary extended payment plan to borrowers; the requirement should be triggered by a period of repeat borrowing.
	Require licensees to provide customers with a list of licensed, not-for-profit credit counselling agencies that are registered charities.
Data requirements, monitoring and enforcement	Authorize the Registrar to inspect unlicensed lenders and loan brokers.
	Consider how to facilitate access to compensation for borrowers who have been harmed by violations of the Act.

Topic	Recommendations
	<p>Obligate lenders to provide the Registrar with data (at least at the aggregate level) on their lending activities. The data request should be developed and issued in a timely manner.</p> <hr/> <p>A payday loan data working group should be formed to provide advice on data requirements and analysis.</p>
<p>Maximum total cost of borrowing (price cap)</p>	<p>The maximum total cost of borrowing (price cap) should reflect the cost of lending and a balanced approach to maintaining industry viability and affordability for consumers.</p> <hr/> <p>Introduce a requirement that the price cap be reviewed every five years or less, concurrent with the full review of the Payday Loans Act.</p> <hr/> <p>In setting the price cap, receive external advice from a broad range of stakeholders (including industry, consumer advocates, community agencies and credit counsellors).</p>
<p>Financial education and awareness</p>	<p>Strike a working group to study opportunities for enhancing the provision of financial literacy and education to payday loan borrowers, including the future of the Payday Lending Education Fund.</p> <hr/> <p>Until the working group has completed its study, maintain the clauses establishing the Ontario Payday Lending Education Fund and designating the Ontario Payday Lending Education Fund Corporation.</p>
<p>Future reviews of legislation and regulation</p>	<p>Establish an advisory committee of payday loan industry representatives, consumer protection associations, community organizations and the Registrar or their designate that meets regularly.</p> <hr/> <p>Review the Payday Loans Act every five years or less.</p>

# 2. Background

## 2.1 Purpose

The Ministry of Consumer Services (“the Ministry”) announced a review of the Payday Loans Act in fall 2013 to determine whether Ontario’s protection for payday borrowers can be strengthened. To inform this review, the Ministry formed a panel of expert stakeholders to provide advice to government. The membership of this panel represented a wide range of stakeholders in order to provide advice that was rich in a range of expertise and experience.

The panel examined seven topics, the five topics listed in the fall 2013 announcement and two that they believe are essential to strengthening consumer protection:

- Online and mobile payday loans;
- New / alternate loan products;
- Concurrent loans and rollovers;
- Data requirements, monitoring and enforcement;
- Maximum total cost of borrowing (price cap);
- Financial education and awareness; and
- Future reviews of the Act.

This report summarizes findings and advice of the expert stakeholder panel, as well as the considerations that led to that advice. The report also includes a record of the discussion of options that were considered by the panel but did not lead to a consensus position.

All panel members share a strong commitment to protecting payday loan consumers. The panel hopes that this report will serve as the basis of broader consultation with Ontarians on this important issue and inform government decisions about amendments to the Payday Loans Act and its regulations.

## 2.2 Report structure

The Background section of this report provides information on the panel, including its members, mandate, process and scope. Background information on Ontario’s payday lending industry is also provided.

The body of the report is divided into seven sections – one for each of the topic areas.

Each section provides a short background, following which the section is further broken down into more specific issues that the panel sought to address. Under each challenge or issue, the options considered by the panel are described as well as the recommendations developed by the panel. The considerations for this recommendation and alternative options are also included. Several areas of discussion did not lead to consensus; in those instances, the various views of panel members are presented.

The Conclusion summarizes the recommendations and findings of the panel as well as advice on the next steps government should take in enhancing consumer protection for payday loan borrowers.



## 2.3 The payday lending stakeholder panel

The 14 members of the Payday Lending Panel included payday lending businesses, community agencies, consumer advocates and credit counsellors.

**Table 2: Payday Lending Panel Members**

Panel Member	Organization
Mark Bettioli	Managing Director, Zaplo (4finance)
Laurie Campbell	CEO, Credit Canada Debt Solutions
Judy Duncan	Head Organizer, ACORN
Mel Fruitman	Vice-President, Consumers Association of Canada
Tony Irwin	Director of Government Relations, Money Mart
Stan Keyes	President, Canadian Payday Loan Association
Michelynn Laflèche	Director of Research, Public Policy & Evaluation, United Way Toronto
John Lawford	Executive Director and General Counsel, Public Interest Advocacy Centre
Amir Mahmoudzadeh	Owner, Cash 4 You
Henrietta Ross	CEO, Canadian Association of Credit Counselling Services
Mark Ruddock	CEO, Wonga Canada
Janet Tufts	Director of Community Partnerships and Investment, United Way London & Middlesex
Patricia White	Executive Director, Credit Counselling Canada
Ken Whitehurst	Executive Director, Consumers Council of Canada

The panel was guided by its Terms of Reference, which set out the scope of the panel's work, the roles and responsibilities of panel members (as well as those of the Ministry and Deloitte) and the panel process. The Terms of Reference also included considering the public interest and striving for consensus in making recommendations to government. The full Terms of Reference can be found in Appendix A.

The panel met six times from mid-February to early May. Panel members were provided with information packages prior to each meeting; the materials were prepared by Deloitte based on publically available reports from governments, industry and other organizations (e.g., consumer advocacy organizations). The background material addressed a number of topics including the characteristics of Ontario's payday lending industry, the profile of payday loan borrowers and the approaches to payday loan regulation adopted in Ontario and other jurisdictions.

In addition to the background information, Deloitte conducted a survey of lenders to estimate the cost of making payday loans in Ontario. Surveys were sent to 164 identified potential respondents. Responses were ultimately obtained from six lenders who operate a total of 111 of Ontario's 796 payday loan locations (not including online operations). Deloitte also conducted two focus groups with approximately 15 payday loan borrowers in order to obtain qualitative insights into borrower decision-making. Panel members also benefitted from each other's experience and knowledge, sharing information and research both during and between panel meetings.

## 2.4 Payday lending and borrowing in Ontario

### ***What are payday loans?***

Payday loans are typically short-term loans of less than \$500 that are repaid in a lump sum and made in exchange for a post-dated cheque or pre-authorized debit. Based on a 2014 survey of payday lenders in Ontario conducted by Deloitte, the typical payday loan in Ontario is approximately \$460 and has a two-week term.

### ***Payday loan borrowers in Ontario***

Payday loans are a niche financial product. Definitive data is not available, but Deloitte estimates that approximately 3 per cent of Ontarians (400,000 individuals) took out a payday loan over the last 12 months.

Payday loans generally cater to individuals who are low to moderate income and unable to access traditional sources of credit like bank loans or credit cards due to a poor or limited credit history (Statistics Canada, 2007). While they may have other loan products, they tend to have exhausted their available credit when they take out the payday loan (Statistics Canada, 2007; Maximum Total Cost of Borrowing Advisory Board, 2009; Bhutta, Skiba and Tobacman 2013). As a result, payday loan borrowers are more likely to be in financial distress than non-borrowers. A 2007 study of Canadian borrowers indicates that they are more likely to be behind in mortgage or rent and are also more likely to have less than \$500 in their bank account (Statistics Canada). Men and women are equally likely to borrow (Environics Research Group, 2005) and payday loan borrowers have similar levels of educational attainment than non-borrowers (Statistics Canada, 2007). However, payday loan customers appear to be younger than the general population (Statistics Canada, 2007; Environics Research Group, 2005).

### ***Ontario's payday lending industry***

Ontario's payday lending industry is composed of a mix of several large lenders with many storefronts and a large number of small lenders. Overall, there are 796 payday loan licensed locations in Ontario, operated by 249 different businesses. Together, the four largest businesses operate 57 per cent of storefronts.

Deloitte estimates that together these lenders issue loans worth approximately \$1.1 – \$1.5 billion annually. While authoritative data is not available, several estimation methods return a similar range of results.

Similarly, little data is available regarding the rate of growth of the payday lending industry in Ontario. Two estimates that were developed based on the growth in storefronts and the growth in loan volume of Ontario's largest lender (Money Mart, which is a public company) suggest a recent growth rate of 1 – 2 per cent annually.

There are several recent developments impacting the payday lending industry in Ontario. Since the Payday Loans Act was introduced in 2008, online and mobile payday loans have become a more prominent feature of the market. A recent study found that approximately 25 per cent of all payday loans in the United States are made online (Pew Research Center, 2012), but panel experts suggest that the current proportion in Ontario may be substantially lower. Some panel members estimated that online loans represent only 10 per cent of Ontario's market. However, stakeholders agree that payday loans are increasingly moving online and that this trend is likely to continue.

Another issue that recently surfaced in Ontario is the development of new loan products to avoid government regulation. One major Ontario lender began offering a line of credit product that appeared to resemble a payday loan. The Ontario Superior Court of Justice subsequently ruled that the line of credit product constituted a payday loan. In 2013, Ontario amended the general regulation under the Act to broaden the scope of loan products covered by the Act to protect consumers against harms from other potential high-interest loan products.

### ***Ontario's payday loans legislation and regulations***

Ontario's Payday Loans Act (and its regulations) is consumer protection legislation that governs the practices of licensees including the maximum allowable cost of borrowing for payday loan agreements. For payday loan agreements of \$1,500 or less and for a term of 62 days or less, the maximum allowable cost of borrowing is \$21 per \$100 advanced. For payday loan agreements for more than \$1,500 or with terms longer than 62 days, the criminal rate of interest applies and it prohibits charging an effective annual interest rate of more than 60 per cent.

Set out below are examples of consumer protection provisions in the current Payday Loans Act and its general regulation. Please refer to the legislation and regulation for the complete wording.

**Table 3: Sample Consumer Protection Provisions of the Payday Loans Act and Regulation**

<b>Category</b>	<b>Consumer Protection Provision</b>	<b>Reference</b>
Restrictions on borrowing	Lenders may not rollover the balance on an existing payday loan agreement into a new payday loan agreement.	Payday Loans Act s. 35
	Lenders may not offer concurrent payday loans (maximum of one outstanding loan per customer).	Payday Loans Act s. 35
Agreement and advance	The borrower must receive a copy of the payday loan agreement and the payday loan advance immediately / no later than upon entering into the agreement.	Payday Loans Act s. 29.
Other goods or services	Licensees are prohibited from offering or providing other goods or services in connection with a payday loan agreement.	O. Reg. 98/09, ss. 27(3)
Price cap	Lenders may charge a maximum of \$21 per \$100 advanced (e.g., the fee on a \$300 loan cannot exceed \$63).	O. Reg. 98/09, s. 23
Disclosure requirements	Lenders must disclose certain information about the payday loan agreement on the first page of the agreement. The information that must be disclosed includes the amount of the loan, the loan term and the total cost of borrowing.	O. Reg. 98/09, s., 18
	Licensees must display a poster at their premises that sets out information such as the regulated maximum cost of borrowing and	O. Reg. 98/09,

Category	Consumer Protection Provision	Reference
	the amount that the lender charges.	s. 14 4
No repeat processing charges	Lenders are prohibited from processing a pre-authorized debit (or other instrument) more than once if subsequent processing attempts results in a charge to the borrower.	O. Reg. 98/09, s. 31
Prohibited contacts	No licensee may contact, in respect of a payday loan, a member of the borrower's family, or a relative, friend or acquaintance. Employers may only be contacted to verify employment details or with the prior consent of the borrower.	O. Reg. 98/09, s. 26
Collection practices	No licensee may communicate with a consumer in a manner or with a frequency that constitutes harassment.	O. Reg. 98/09 s. 32

## 2.5 The consumer protection challenge

Payday loans are one means for individuals with limited credit to address immediate financial needs. In the absence of other readily available credit options, payday loans may be more attractive to borrowers than options such as informal borrowing from friends or family, pawning or selling possessions, deferring non-discretionary spending (e.g., rent) or reducing spending. Access to payday loans may also reduce the risk of borrowers going to unlicensed lenders or loan brokers. However, frequent use of payday loans generally adds to borrowers' financial hardship.

Research in a variety of jurisdictions demonstrates that the typical payday loan borrower takes out multiple loans in the course of a year (Consumer Financial Protection Bureau, 2013). Where these borrowers are using loans to pay for recurring expenses, they face difficulty in repaying the loan and fee while still covering those recurring expenses. Payday loan borrowers face a risk of entering a "debt cycle" of continuous payday loan borrowing.

# 3. Online and mobile payday loans

## 3.1 Background

Payday loans have traditionally been a storefront-based product. A borrower will go to a retail location, provide identification and proof of income, then enter into a loan agreement and receive their funds. Ontarians are also able to take out a payday loan online. The borrower provides their information through an online portal, accepts the terms of the loan agreement, and then receives the funds directly into their bank account. As with many other services, payday loans are increasingly available online.

Online payday lending is a growing industry in Ontario. As described above, while panel members estimate that the current proportion in Ontario may only be as high as 10 per cent, it is generally thought that the share of payday loans made online is growing.

One unique feature of the online marketplace is the presence of “lead generators,” who set up websites to attract potential borrowers and then sell those “leads” to online lenders for a fee.

Online and mobile payday loans pose several unique issues for consumer protection.

First, unlicensed lending is simpler to offer online than through a physical location. Given the low cost of establishing a website and the ability to host their website offshore, persons seeking to offer loans without a license face fewer risks and costs online. Due to the underground nature of unlicensed lending, no data is available regarding unlicensed lending. However, panel members and other experts agree that unlicensed online lenders are making loans in Ontario.

Second, borrowers may consider the information received online differently from that provided in brick and mortar stores. The Payday Loans Act requires lenders to disclose certain information to borrowers in their loan agreement. Online lenders are required to have the same information disclosed as bricks and mortar locations. Beyond the payday loan agreement, when online and bricks and mortar locations are required to make information available to borrowers, the method of communication differs. The panel considered whether the differences between physical and online information required changes to current legislative and regulatory provisions.

Third, there is concern that the growth of online and mobile borrowing may lead to more spontaneous or impulsive borrowing. Because online services may be easier to access than a physical store, borrowers may be less likely to consider other options before taking out a loan (e.g., identifying lower cost credit options, deferring or reducing expenses).

## 3.2 Protecting payday loan consumers from unlicensed online lenders and loan brokers

To address the threat to consumer protection posed by unlicensed lenders and loan brokers, the panel recommends a multi-pronged strategy to address a number of related challenges:

- Helping Ontario consumers to easily determine whether a given online lender or loan broker is licensed;

- Ensuring that lead generators are licensed and do not sell Ontario borrowers' leads to unlicensed payday lenders and loan brokers; and
- Enhancing the Ministry's awareness of unlicensed lenders and loan brokers and their ability to pursue effective enforcement actions against unlicensed lenders or loan brokers.

### ***Helping payday loan customers know which online lenders and loan brokers are licensed***

The panel observed that Ontarians who borrow payday loans online may be unaware of whether or not their lender or loan broker is licensed in Ontario. This may be due to general unfamiliarity with the consumer protection benefits of the Payday Loans Act's licensing regime. While the Act currently requires online lenders or loan brokers to communicate information required to be on their certificate of license (including the license number), borrowers may not be aware of the importance of the license number. Anecdotal evidence suggests that some unlicensed lenders or loan brokers may be putting a fake license number on their website to deceive borrowers.

#### **Consensus Position**

- Enhance the content, usability and awareness of the Ministry of Consumer Services' searchable database of all payday loan licensees.

#### **Considerations**

The Ministry of Consumer Services' website currently hosts a searchable database of all payday loan licensees.<sup>1</sup> However, panel members note that the database could be made significantly more useful to loan borrowers. It is not easily found on the Ministry website, it is not sortable by field and it is not exclusive to payday loan licensees (the same search function is shared with a wide variety of other licensees). Further, the default display is a search form rather than a list of lenders and loan brokers within which one could search. A list format would help borrowers search for a licensed lender or loan broker as well as confirm whether a lender or loan broker they have already identified is licensed.

A list of licensed lenders and loan brokers would best serve the needs of consumers and minimize market distortion if it had the following characteristics:

- *Prominent*: seek opportunities to raise the prominence and visibility of the list to payday loan borrowers.
- *User friendly*: users should be able to enter a lender's URL, website name, business name or license number into a search field to see whether they are licensed and the status of that license. Currently, the database can be searched by file number (license number), name, address, city and postal code.
- *Informative*: the panel suggests that the list could indicate how long a given lender or loan broker has been licensed.
- *Fair*: some consumers may use the list to find a licensed payday lender or loan broker (not just to determine whether an online lender they have found is licensed); consider randomizing the order of licensees that appear on the website list to address potential concerns regarding fairness.

The panel observed that introducing a regulatory or legislative requirement to establish, maintain and regularly update a list of payday loan licensees could promote the maintenance and accuracy of the list.

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<sup>1</sup> The website can be accessed at <http://www.consumerbeware.mgs.gov.on.ca/eseach/search.do?eformsId=0>.

## ***Ensuring that lead generators are licensed and do not sell leads to unlicensed lenders or loan brokers***

One of the unique features of the online payday loan marketplace is the presence of “lead generators.” While definitive information on lead generation activity is not available, panel members (and reviews of internet search results) confirm that there are lead generators facilitating loans for Ontario borrowers. The activities of lead generators appear to include the collection of information about prospective borrowers (e.g., through websites offering payday loans) in order to sell that information to interested lenders. Lead generators play a substantial role in the online payday loan market in the US, and panel members (as well as other experts) indicate that their role in Ontario may grow as the online payday lending market expands. While lead generators are most prominent in the online market, the extent of their other data gathering activities is worth investigating and considering when considering a regulatory approach.

Lead generators’ role in the payday loan market may pose a number of consumer protection issues as it appears that they may be undertaking loan broker-like activity without a payday loan license and they may be selling leads to unlicensed lenders or loan brokers.

### **Consensus Position**

- The Payday Loans Act should include protections for consumers against lead generators.

### **Considerations**

To help address the risks posed by lead generators, the panel recommends that the Payday Loans Act require lead generators to be licensed and consider additional protections for consumers who deal with lead generators. Lead generators may already be defined as loan brokers under the Act, and loan brokers must be licensed. The Payday Loans Act defines loan brokers as “a corporation, partnership, sole proprietor, association or other entity or individual that assists a borrower in obtaining a payday loan or that holds oneself out as available to provide such assistance.” While this definition may appear to encompass lead generators, the panel believes that clarifying their applicability to lead generators would avoid confusion and increase consumer protection.

Several options could be considered when determining how to capture lead generators:

- The definition of loan brokers could be amended to ensure that lead generators are captured;
- Legal analysis could determine that the current definition already captures lead generators (in which case an amendment would not be required); or
- A new class of licensee could be established for lead generators.
  - If a new class of licensee is established, this form of licensee should be required to only deal with licensed lenders and, similarly, licensed lenders should be prohibited from dealing with unlicensed lead generators. These requirements would mirror existing provisions for loan brokers.

In the view of the panel, there are several related requirements that would support the recommended clarification on the application of the Payday Loans Act to lead generators:

- Require licensed lenders to notify the Registrar when they are approached by unlicensed lead generators;
- Review the current penalties for lenders who deal with unlicensed loan brokers to determine whether they are appropriate in the context of lead generators;
- Review the approach to monitoring compliance with these provisions of the Act;
- Ensure that lead generators, once licensed, are included in the list of licensed lenders and loan brokers; and
- Communicate to the public the risks posed by unlicensed lead generators.

These actions would help estimate the scale of the issues posed by lead generators, ensure that effective deterrents are in place, enforce compliance and raise public awareness.

### ***Enhancing the Ministry's awareness of unlicensed lenders or loan brokers and their ability to pursue enforcement actions against them***

One of the most significant challenges in protecting consumers from unlicensed lenders or loan brokers is the ability of government to identify who those lenders and loan brokers are. Government cannot take action to alert consumers about unlicensed lenders or loan brokers or pursue enforcement activities against them until they have been identified. Once identified, if the unlicensed lender or loan broker is in another jurisdiction, enforcement can prove difficult.

Unlicensed lenders or loan brokers have a vested interest in avoiding detection and identification can pose a challenge. The panel considered a variety of potential approaches for the government to enhance its ability to identify unlicensed lenders or loan brokers.

While the panel urges the Ministry to pursue multiple avenues in enhancing its awareness of unlicensed lenders or loan brokers, they believe that the most promising approach would be to encourage licensed lenders and loan brokers to report unlicensed ones to the Ministry.

#### **Consensus Position**

- Encourage licensed lenders and loan brokers to report all unlicensed lenders or loan brokers that come to their attention.

#### **Considerations**

Panel members believe that licensed lenders are the most likely stakeholders to be aware of unlicensed lending activity as a result of their interest in understanding the competitive landscape of the industry. Comparatively, consumers may be unable to determine whether lenders are licensed or not, and may be less motivated to take the time to notify the Ministry if they do encounter an unlicensed lender.

Licensed lenders and loan brokers should be encouraged to report unlicensed lenders and loan brokers and noncompliant activity, but the reporting mechanism must preserve the anonymity of "whistleblowers" and ensure that they cannot be held liable for damages to any businesses that they report.

To make it easy for lenders to report unlicensed lending activity, a secure, simple electronic form that ensures anonymity should be developed. Licensed lenders would access the form online.

There are two aspects to the challenge presented by unlicensed lenders or loan brokers. In addition to improving its ability to identify unlicensed lenders or loan brokers, there must be a capacity to enforce the provisions of the Payday Loans Act against them. This challenge is exacerbated by the fact that many unlicensed lenders or loan brokers are operating offshore, in other jurisdictions.

#### **Consensus Position**

- Increase cooperation with other jurisdictions to facilitate prosecution of unlicensed lending activity.

#### **Considerations**

The panel believes that a focus on inter-jurisdictional cooperation could improve the enforcement of payday loan regulations. However, the panel also recognizes that working bilaterally with other jurisdictions may not be time- or cost-effective. The Province should continue to work collaboratively with other provincial governments and with the federal government to establish and execute a joint strategy for cracking down on unlicensed, offshore lenders. For example, a Memorandum of Understanding with other



provinces could be developed to assist with identification and prosecution. These efforts should build on existing inter-governmental initiatives related to the regulation of payday lending.

### 3.3 Ensuring that online borrowers have the information they need to make informed decisions

In the view of the panel, online and mobile borrowing may pose specific challenges with regard to disclosure of information to borrowers. Current disclosure rules in Ontario include the following:

- O. Reg. 98/09 s. 5 states that licensees must display and provide “educational materials about the payday lending industry, financial planning, the Act and the regulations.” For online lending, the licensees must communicate that the materials are available and provide them upon request.
- O. Reg. 98/09 s. 14 requires licensees to display a poster that is “visible to borrowers immediately upon entering the office.” Online licensees are required to communicate the same information on the poster to borrowers before “discussing” anything about payday loans with the borrower. While the format for providing the information in-person is strictly defined,<sup>2</sup> the format for online lenders is not.
- O. Reg. 98/09 s. 18 requires that payday loan agreements disclose certain information to borrowers, including the cost of the loan per \$100 advanced and their cancellation rights. The same disclosure is made whether in person or on-line.

The panel held the view that these provisions do not explicitly take into account the differences in receiving information over a computer or mobile phone screen compared to taking out a loan in-person.

#### Consensus Position

- Ontarians who take out a payday loan online or on a mobile device should automatically receive the information that in-person borrowers receive in a format that recognizes the differences between in-person and online channels.

#### Considerations

The panel suggests providing specific direction to online lenders on a format for presenting required information that will ensure that borrowers benefit from this information. For example, the design of a digital “poster” could be specified and lenders and loan brokers could be required to include that image on their home page (or on all pages of their website). The Ministry could also require that online lenders and loan brokers provide the educational information to borrowers as part of their user interface, rather than having borrowers request that information and then provide it.

In specifying how online lenders and loan brokers must structure their user interface, a balance must be struck between flexibility and specificity to allow for changes in technology and online media.

Panel members believe greater awareness of credit counselling services to be particularly important in promoting consumer protection. These services can help payday loan borrowers improve their financial management skills, review their financial options and, ultimately, get out of debt.

#### Consensus Position

- Require online lenders and loan brokers to include a link to a list of licensed, non-profit credit counselling agencies that are registered charities.

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<sup>2</sup> O. Reg. 98/09 specifies the size and font of the poster.

## Considerations

To promote awareness of credit counselling services, the panel recommends requiring online lenders to prominently display a link to a list of non-profit, registered charity credit counselling agencies. This requirement could indicate where and when in the online or mobile borrowing process the link would appear.

Panel members note that there are some businesses that claim to provide non-profit credit counselling but are not truly charitable organizations. To address this issue, require online lenders and loan brokers to provide a link to a list of *licensed*, non-profit credit counselling agencies that are registered charities<sup>3</sup>.

The panel also considered whether this recommendation could overwhelm the current capacity of credit counselling organizations by increasing the number of Ontarians seeking their services. Representatives of credit counselling organizations who are on the panel suggest that this is not an issue.

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<sup>3</sup> Non-profit credit counsellors in Ontario are licensed under the Collection Agencies Act, 1990.

# 4. New / alternative loan products

## 4.1 Background

In Ontario and other jurisdictions, some lenders have sought to offer products that appear similar to payday loans or that may give rise to similar consumer protection considerations. Once a product is beyond the scope of the payday loan legislation, protections in the legislation are not available to consumers.

Responding to such products can be challenging. First, regulators must identify new products and assess whether they are sufficiently similar to regulated products and so, a cause for concern (not all new products will pose risks to consumers). If the new product does pose risks, government must respond appropriately. The response may include engaging in effective enforcement activity.

Deloitte conducted a scan of the range of payday loan-like products currently being offered in the Ontario market, and panel members provided input based on their experience. Overall, the Ontario payday loan marketplace is dominated by traditional payday loans and, at the time of this writing, no new or alternative high-cost, short-term credit products have been identified.

Analysis was also conducted on the attributes of payday loans and other loan products in order to understand the potential forms that a new loan product designed to avoid regulation could take. This analysis suggests that the greatest potential risk may be the development of small-dollar value instalment loans.

## 4.2 Identifying new and alternative loan products designed to avoid regulation

Panel members agreed that there is no simple and effective way to identify new products as they emerge, but suggested ways to improve detection. The panel noted that a complaint-based enforcement process may be insufficient as it is unlikely that consumers are familiar enough with the Payday Loans Act to identify issues. To complicate matters, borrowers may not always feel comfortable with or know how to bring those issues to the attention of the Ministry.

### Consensus Position

- Encourage lenders, loan brokers, industry associations and credit counsellors to report new loan products that may violate the Payday Loans Act when such products come to their attention.

### Considerations

Instead of relying largely on consumer complaints, the panel recommends that government expand its efforts to make use of information from lenders, industry associations (the Canadian Payday Loan Association) and credit counselling organizations.

In considering the implementation of this recommendation, panel members emphasized that the anonymity of stakeholders reporting potentially non-compliant products must be safeguarded, and “whistleblowers” must be protected from liability if the lender who is reported takes legal action to sue for damages.

Enhanced information collection could be supported through a secure online reporting form. A similar electronic form could potentially be used for reporting unlicensed lenders or loan brokers (see section 3.2), given the similar requirements to ensure anonymity and avoid potential liability.

The panel has identified several other avenues for increasing the Registrar's awareness of new loan products that may have been designed to avoid the Act. Discussions regarding new loan products should be central to the work of the advisory committee recommended in section 9. While advisory committee members may not wish to name specific lenders and products in that forum, more general discussions could be held regarding new products that are emerging in Ontario and other jurisdictions. Given the tendency of issues and trends in the market to cross borders, the panel also recommends that new loan products be discussed regularly in the inter-jurisdictional discussions recommended in section 3.2 of this report.

### **4.3 Addressing the consumer risks posed by new and alternative loan products effectively**

Once new/alternative loan products have been identified and assessed as products designed to avoid regulation and pose a risk to consumers, the government takes enforcement action. The panel noted that the process for dealing with such matters may be lengthy and can involve the courts.

#### **Consensus Position**

- Review the existing spectrum of enforcement tools and consider new tools to address the development of new loan products that may have been designed to avoid the Payday Loans Act.

#### **Considerations**

The panel recommends that the Ministry consider new enforcement tools against lenders who develop products to avoid the Payday Loans Act. A progressive enforcement regime could provide for more robust enforcement. For example, the first action may include a notice to the lender who has developed the product, warning them to cease offering the product or arranging a meeting to discuss their product with the Registrar of Payday Loans. The second stop could be a formal citation, indicating the potential fine for continuing to sell the product. The citation could also play a role in licensing decisions by the Registrar.

The introduction of a range of escalating measures could allow the Ministry to protect consumers from new loan products designed to circumvent the Act without the need to go through a lengthy court process. Lenders may decide to voluntarily withdraw their product more quickly than such activity would be stopped by the courts. The exact nature of the various enforcement activities would require legal analysis and advice beyond the scope of the panel's work.

# 5. High-frequency, repeat borrowing

## 5.1 Background

Governments have introduced a variety of restrictions on borrowing patterns in order to reduce the likelihood that consumers will enter a “debt cycle,” where they are dependent on multiple or repeat payday loans to meet their basic needs.

Ontario’s Payday Loans Act prohibits concurrent loans and rollovers. It does so by prohibiting lenders from making (and loan brokers from facilitating) a loan to a borrower when they already have a loan outstanding with that borrower. Loan brokers are prohibited from facilitating two or more payday loans at the same time between the same borrower and different lenders. Also, because the Act requires that one payday loan has to be paid off before another payday loan agreement is entered into, the Act prohibits the balance of one payday loan being *rolled* over into a second payday loan. Borrowers can, however, independently seek concurrent payday loans from different lenders. For example, borrowers can use a payday loan from one lender to pay off a payday loan from a different lender. Borrowers can also immediately take out a new payday loan from the same lender after paying off the previous payday loan. Current enforcement tools do not enable government to monitor the behaviour of borrowers across different lenders, focusing instead on individual licensees.

### Definitions

**Concurrent loans** refer to when a borrower has two or more payday loans outstanding

**Rollovers** refer to when a borrower extends the term (length) of a payday loans in exchange for a fee, without repaying the original payday loan

All Canadian jurisdictions, like Ontario, ban concurrent loans from a single lender and most ban rollovers. Ontario also prohibits loan brokers from facilitating multiple loans from different lenders at the same time. Restrictions on borrowing patterns and frequency are also in place in virtually all US states that regulate payday loans. The most common approach, like Ontario’s, is to ban or limit rollovers and concurrent loans at a single lender. A number of US states go further and prohibit borrowers from taking out multiple loans from different lenders at the same time or limit the number or value of loans they can have outstanding across lenders. For example, Florida and Virginia prohibit concurrent loans altogether, while Oklahoma allows a maximum of two concurrent loans and Delaware limits the total value of loans outstanding to \$1000 (regardless of how many loans are borrowed)

Many US states have also introduced a waiting period between the time a borrower pays off one loan and is able to take out a new loan. Waiting periods have been introduced in Illinois, Indiana, Alabama, Oklahoma and other states. The nature and length of the waiting period varies from state to state. In most cases, such restrictions are triggered by repeat borrowing. For example, Indiana’s seven-day waiting period is “triggered” after five consecutive small loans have been made to a borrower after the borrower’s initial small loan.

## 5.2 Potential approaches to high-frequency borrowing

Panel members considered a range of alternative options for helping borrowers avoid using payday loans in ways that could negatively impact their financial wellbeing including:

- An extended payment plan for borrowers;
- The promotion of referrals to licensed, registered charity, non-profit credit counsellors;
- A waiting period between loans;
- A limit on the number of loans a borrower can take out annually;
- The introduction of a maximum loan size provision; and
- A requirement for lenders to disclose the cost of lending in the APR format.

### ***Voluntary extended payment plan***

The panel considered whether borrowers who meet a certain “trigger” in their borrowing history should have the option of repaying their loan in instalments rather than a lump sum. This approach has been introduced in BC, where if a borrower takes out a 3<sup>rd</sup> loan in a 62-day period, they are automatically put into an extended repayment plan and the loan is repaid over the borrower’s next 2-3 pay periods (depending on how frequently the borrower is paid).

### **Consensus Position**

- Introduce a requirement for lenders to offer a voluntary extended payment plan to borrowers; the requirement should be triggered by a period of repeat borrowing.

### **Considerations**

Panel members believe that introducing an extended payment plan option for repeat payday loan borrowers could help create a “soft landing” for borrowers by stretching out the period in which they repay their loan.

The panel considered whether all borrowers who meet the trigger (i.e., they have taken out multiple payday loans within a set time-period) should be *required* to repay in instalments rather than a lump sum, or whether borrowers should have the *option* of repaying the loan in instalments. Panel members noted that there may be some situations where borrowers would prefer to repay in a lump sum in order to better manage their finances and avoid the late fees and penalties associated with missing payments. This is supported by views heard in borrower focus groups. While many borrowers in the focus groups were in favour of the idea of an extended payment plan, some preferred to repay their loans as soon as possible in a lump sum. It is important to note that under a voluntary extended payment plan, borrowers would have the option of choosing an extended payment plan or not but lenders would be obligated to provide them with the option.

The group agreed that when implementing a voluntary extended payment plan, consideration should be given to BC’s model, where the trigger is three loans within a 62-day period (although other potential triggers should also be discussed). In addition, government should reflect on how to best ensure that consumers are aware of their ability to request an extended payment plan (when they have reached the trigger).

### ***Referral to credit counselling***

The panel believes strongly in the ability of credit counsellors to help Ontarians improve their financial management skills and get out of debt. Credit counsellors can help customers manage their entire range of financial commitments, and the experience of credit counsellors on the panel indicates that borrowers of payday loans who are in financial difficulty often have multiple debt obligations of which payday loans are one component.

## Consensus Position

- Require licensees to provide customers with a list of licensed, not-for-profit credit counselling agencies that are registered charities.

## Considerations

The panel believes that encouraging more borrowers to obtain the services of credit counsellors may be an effective avenue for helping borrowers gain the skills required to use payday loans responsibly and avoid the risk of entering a debt cycle.

In implementing this recommendation, government should consider how the contact information for these agencies could be more prominent for borrowers. For example, lenders could be required to have a poster with credit counselling contact information or include such information on the first page of the loan agreement. While current regulatory requirements obligate lenders to display and provide prescribed information to borrowers upon entry (including information about credit counselling), focus groups of borrowers indicated that they were largely unaware of those educational materials during their borrowing experience.

## *Concurrent loan restrictions across lenders*

The panel considered whether measures should be put into place to completely prevent or restrict concurrent borrowing across lenders.

## Consensus Position

- Ontario-specific data on the frequency and impact of concurrent loans across lenders is needed to provide advice on whether to restrict concurrent loans across lenders.

## Considerations

Panel members were unable to come to a consensus recommendation on restricting concurrent loans across lenders. In particular, Ontario-specific data on the prevalence of concurrent borrowing across lenders and on the impact of concurrent loans would provide a fact base to support future decision-making. There are several topics discussed in this section where the panel believes that further information is required to arrive at a consensus position. For a discussion regarding how the data could be obtained, see section 6.3 of this report.

Some panel members were in favour of a ban or restriction on concurrent loans across lenders (given the data currently available). These panel members noted that payday loan customers are borrowing against the value of their future paycheque, and that if a borrower takes out several loans against the value of that paycheque, they may be unable to successfully manage and repay all their obligations. Panel members representing credit counselling agencies indicated that many credit counselling clients have multiple payday loans outstanding from different lenders, and that having taken out multiple payday loans contributed to their overall financial difficulties.

Panel members who were in favour of restrictions also noted that lenders currently do not know whether customers have taken out a payday loan with another lender. As a result, the lenders cannot account for those obligations when assessing the credit risk of a customer.<sup>4</sup>

On the other hand, panel members who opposed restrictions noted that borrowers may not be able to access as much credit as they need if restrictions on concurrent borrowing across lenders are introduced. These panellists suggested that borrowers who are unable to access payday loans may turn to

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<sup>4</sup> It is important to note that payday loan obligations represent only a piece of the total credit risk of a given borrower.

unlicensed lenders or loan brokers. They also noted that customers who are restricted from payday loans may face financial repercussions. For example, a borrower may wish to access a loan in order to avoid charges for dishonoured cheques (non-sufficient funds) or disconnection and reconnection charge for cable or phone service. In some cases, these charges can be greater than the cost of a payday loan. In addition, some payday lenders offer discounts on loans and consumers may be able to reduce fees by accessing multiple lenders.

The question of how borrowers respond when they are restricted from accessing payday loans cuts across many of the regulatory options discussed in this section. Borrowers who are unable to access payday loans can 1) find another source of funds to cover their shortfall, 2) reduce their expenses or rethink the need for the loan, or 3) increase their income. Based on consultations with borrowers, potential alternative sources of credit where traditional sources have been exhausted include pawning or selling possessions, going to an unlicensed lender and borrowing from friends or family.

Panel members did not have definitive data on the extent to which borrowers pursue these options. While some participants highlighted the risks of borrowers going to unlicensed lenders or loan brokers, others focused on the potential for borrowers to sell or pawn possessions, reduce expenses or borrow from friends or family.

The introduction of restrictions on borrowing across multiple lenders would require lenders to be informed of all the payday loan obligations of potential customers. For further discussion on how a capability to track payday loans could be implemented if determined to be necessary, see section 6.3 of this report.

### ***Waiting period and annual limit on number of loans***

The panel discussed whether Ontario should mandate a waiting period between loans. This would mean that after repaying a payday loan, a borrower would have to wait a set period of time before they could take out another loan. A waiting period could apply to all loans, or it could be triggered by a period of repeat borrowing.

The panel also considered the option of introducing a limit on the number of loans that an individual borrower can take out in a set period of time (e.g., annually).

### **Consensus Position**

- Ontario-specific data on borrowing patterns and borrowing frequency is needed to provide advice on whether to introduce a cooling off period or an annual limit on the number of loans that a borrower can take out.

### **Considerations**

As with the introduction of restrictions on concurrent loans across lenders, the panel felt that consensus advice on these two options could not be provided without further, Ontario-specific data on borrowing patterns and frequency. The panel felt that more data was needed on the extent to which high-frequency, repeat borrowing occurs and how it impacts the financial wellbeing of borrowers.

Based on the data available to them, some panellists were in favour of a waiting period and annual limit on the number of loans. These panel members noted that:

- A waiting period provision could help encourage borrowers to improve their budgeting skills and rely less on payday loans (and other high-interest credit products);
- The ability for borrowers to take out a new loan immediately upon repayment of the previous loan limits the effectiveness of Ontario's policy to ban rollovers, which a waiting period could address; and
- A limit on the number of loans that a borrower may take out annually could help reduce the likelihood of borrowers entering debt cycles.

Panel members who opposed the introduction of a waiting period and an annual limit on the number of loans noted that:



- Borrowers in a waiting period or who have reached their loan limit would be unable to access payday loans and may turn to unlicensed lenders or loan brokers (as discussed above);
- A limit on the number of loans a consumer can take out in a year could negatively impact Ontarians who have the financial means to borrow frequently.

Either of these two regulatory options could apply at a single lender or across lenders. However, some panel members note that the provisions would be more effective if they applied across lenders (which would require a loan tracking capability, as discussed in section 6.3).

Panel members agree that additional data would be helpful when considering these options. In particular, data on how often borrowers take out a new loan immediately after a previous loan would inform the discussion on a waiting period, and data on what proportion of borrowers take out a high number of loans per year would inform discussions on an annual limit on the number of loans that can be borrowed.

### ***Maximum loan size***

The panel considered whether the introduction of a cap on the size of payday loans could help ensure that borrowers do not take on obligations that they cannot repay. Borrowers who take out loans that they cannot repay are at greater risk of entering a debt cycle (a period of sustained, repeat borrowing).

Regulatory provisions that cap the size of payday loans are common in North American jurisdictions. For example, payday loans greater than \$1500 are subject to the Criminal Code rate cap of 60 per cent APR. This has the practical result of capping the size of payday loans to \$1500 or less. In the US, states have introduced loan size caps at a variety of levels, with the most common cap at \$500 (Kaufman, 2013).

The examples cited above are *absolute* size caps. Some jurisdictions have introduced size caps that are *relative* to borrower income. For example, Saskatchewan and British Columbia cap the size of a payday loan at 50 per cent of the borrower's net pay during the term of the loan. Manitoba has limited the size of payday loans to 30 per cent of net pay.

### **Consensus Position**

- No consensus position was reached.

### **Considerations**

Some panel members felt that introducing a maximum loan size requirement based on borrower pay would ensure that borrowers are able to repay their loans. However, other panel members felt there is no need for such a provision, as lenders have an interest not to loan more than can be recovered from a borrower. The panel members opposed to a size cap also noted that borrowers unable to obtain the funds they are looking for may seek out unlicensed lenders or loan brokers.

### ***Requirement to disclose cost of borrowing in annual percentage rate format***

Annual percentage rate (APR) is an annual rate charged for borrowing expressed as a percentage number that represents actual yearly costs of funds over the term of a loan. It includes fees associated with the transaction and provides borrowers with a number to compare against rates charged by other potential lenders. Currently, licensed lenders in Ontario are obligated to disclose the cost of payday loan products in dollars per \$100 advanced (e.g., \$63 for a \$300 loan). In the United States and most Canadian provinces, lenders are obligated to disclose payday loan costs in both the dollars per \$100 advanced and as an APR.

Panel members considered whether a similar requirement in Ontario might improve borrowers' understanding of the cost of payday loans and lead to a decrease in the types of borrowing behaviour that can lead to financial difficulties.

## Consensus Position

- No consensus position was reached.

## Considerations

A number of panel members argued in favour of requiring lenders to disclose the cost of payday loans in an APR format as well as the current format. They noted that the cost of other loan products (e.g., mortgages, credit card interest) are disclosed in APR, so having payday loans in an APR format would enable borrowers to better understand the cost of payday loans and compare them against other credit products. These panel members also noted that some borrowers use payday loans frequently and that the APR format may better indicate the long-term costs of sustained loan use.

Other panel members did not support disclosure in the APR format, noting that the payday loan product is designed as a short-term, small-dollar loan while APR presents the annual cost of the loan.

# 6. Data requirements, monitoring and enforcement

## 6.1 Background

This section focuses on two related issues: 1) the tools that government needs to effectively monitor and enforce compliance with regulation and 2) the data required to inform monitoring and enforcement activities and policy development.

Under the Payday Loans Act, the Registrar for Payday Loans<sup>5</sup> receives and collects data from licensees through several avenues:

- Applicants for a licence under the Payday Loans Act make certain disclosures, including the identification of persons owning or controlling 10 per cent or more of the voting shares (Payday Loans Act, 2008, c.9, s. 20[1]).
- The Registrar may at any time require a licensee to provide copies of any documents that the licensee uses in the course of conducting business; for example, the Registrar may request copies of brochures and payday loan agreements (Payday Loans Act, 2008, S.O. 2008, c. 9, s. 23).
- If the Registrar receives a complaint about a licensee, the Registrar may request information in relation to the complaint from any licensee (Payday Loans Act, 2008, S.O. 2008, c. 9, s. 46 [1]).
- Licensees are required to submit financial statements in respect of the activity for which they are licensed to the Registrar each year (O. Reg. 98/09, s. 13 [3]). The format for the financial statements is not specified or uniform.
- “The Registrar may require licensees to provide information to the Registrar about their business, including financial information, within the time and in the manner that the Registrar specifies” (O. Reg. 98/09, s. 13 [4]).

The Registrar receives and collects data from licensees for two primary purposes: to review and process license applications and to monitor regulatory compliance.

Two potential issues related to monitoring and enforcement were discussed by the panel. First, the Registrar does not have the authority to inspect unlicensed lenders or loan brokers, which may limit the Ministry’s ability to protect consumers. Second, monitoring of borrowing patterns is limited by current enforcement tools, which focus on the behaviour of a single lender or loan broker. With current enforcement capacity, any potential restrictions on lending practices that span more than one lender or loan broker would impose unfair expectations on the lending industry (lenders and brokers do not know if a borrower has loans outstanding) and would be unenforceable, as there is no way of tracking an individual borrower’s transactions. To address these issues, a capability to collect information on individual transactions would need to be in place.

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<sup>5</sup> The Registrar of Payday Loans administers the Payday Loans Act. He or she is appointed by the Deputy Minister of Consumer Services.

A number of US states have developed payday loan databases (also referred to as “deferred presentment transaction systems” or tracking systems) in order to monitor and enforce regulations across lenders.

The first jurisdiction to adopt this approach was Florida, in 2001. Today, there are 14 states with a loan database or tracking system. In these jurisdictions, all lenders enter the details for each loan into the state-wide database. The databases are funded by payday lenders based on a fee per transaction. In addition to enabling regulatory restrictions that apply across lenders, the database can assist regulators in monitoring compliance with other regulatory provisions such as price caps.

Several panel members also identified the need for more *public* disclosure of information regarding Ontario’s payday lending industry. Aggregated data on the industry (e.g., the size of the market, average loan size, term and fees, etc.) would support the development of evidence-based policy, but it would also support the research efforts of a wide range of stakeholders including community agencies, academic researchers and consumer advocacy organizations. In sharing any information publicly, protections would need to be in place to prevent disclosure of commercially sensitive or private information.

## 6.2 Improving the effectiveness of enforcement tools

### ***Inspection of unlicensed lenders or loan brokers***

The Registrar’s authority to inspect payday lending operations is confined to licensed payday operations. As discussed above, unlicensed lenders or loan brokers pose a significant threat to consumer protection and to the fairness of the payday lending marketplace.

#### **Consensus Position**

- Authorize the Registrar to inspect unlicensed lenders and loan brokers.

#### **Considerations**

To address the current gap in inspection and enforcement powers, the panel recommends that government introduce a legislative amendment giving the Registrar the authority to inspect unlicensed payday lenders.

The expansion of this mandate would require consideration of the need for additional enforcement resources.

### ***Compensating borrowers harmed by noncompliant lending***

Panel members also considered whether legislative or regulatory amendments could help provide compensation to borrowers who are negatively impacted by borrowing from an unlicensed lender or loan broker (or from a noncompliant licensee).

The panel noted that the length and complexity of addressing borrower concerns may discourage potential complainants from taking action. Clarifying and improving these processes could help consumers assert their consumer rights and manage their financial obligations and ensure that their basic needs are met.

#### **Consensus Position**

- Consider how to facilitate access to compensation for borrowers who have been harmed by violations of the Act.

## Considerations

Further analysis is needed to determine whether legislative or regulatory amendments to the Payday Loans Act could facilitate access to compensation for borrowers who have been harmed by violations of the Act. In considering options, review the approach taken in British Columbia, where Consumer Protection BC (a not-for-profit corporation) can order restitution for an entire class of borrowers.

### 6.3 Increasing the data available regarding payday loan use in Ontario

Throughout the panel meetings, participants identified the need for better data regarding Ontario's payday lending industry. The panel believes that more accurate and complete data would support a wide range of goals including:

- Improving regulatory monitoring and enforcement;
- Supporting evidence-based policy development;
- Enhancing transparency and public understanding of the industry; and
- Supporting the research of other groups with an interest in consumer financial protection and related government priorities (e.g., poverty reduction and social inclusion).

The panel explored ways to track payday loans and ensure that licensees are compliant with existing regulations. In particular, the panel considered whether a loan tracking capability should be introduced.

All panel members agreed that more data regarding payday loans in Ontario should be obtained, but the panel felt that it would be premature to recommend either in favour of or against the introduction of a loan tracking capability.

Instead, the panel has recommended a process to determine whether the introduction of a loan tracking capability would be worthwhile or whether other options for data collection would be preferable.

## Consensus Position

- Obligate lenders to provide the Registrar with data (at least at the aggregate level) on their lending activities. The data request should be developed and issued in a timely manner.
- A payday loan data working group should be formed to provide advice on data requirements and analysis.

## Considerations

The panel recommends the development of a data request to obtain information from all licensees in Ontario. This approach has been adopted in other Canadian provinces; both British Columbia and Nova Scotia request data from licensees in their jurisdictions.

There was a difference of opinion amongst panel members on how the data request should be developed. Some members of the panel believe that the data request form from BC should be used without further study, while others suggested that an expert working group be formed to study the BC and NS examples and determine whether they capture a sufficient level of data. As a third option, government could issue an initial data request based on the BC model while the expert working group studies whether additional information should be collected.

If a data request is to be developed by a working group, the panel has the following advice for the working group:

- Data requirements should be determined based on the purposes that the data would serve. As outlined above, there are four primary goals in obtaining more and better data. Those goals should serve as a framework for determining specific data requirements.

- Potential pieces of data that could be requested include: borrower characteristics (e.g., gender), total loan volume (number of loans and value of loans), the cost of lending, loan properties (e.g., average loan value, average loan term) and differences between online/mobile and storefront-based borrowing.
- The data requested should provide insight on the three topics discussed above where the panel felt that more data was required: concurrent loans across lenders, a waiting period and a limit on the number of loans a borrower can take out annually.

Regardless of whether a working group is formed or not, the data request should be developed and distributed in a timely manner – the panel recommends a timeline of no more than six months after this report is submitted to government.

After the request is issued and data are obtained from lenders, the data should be analyzed and provided to the working group (which should be formed at this point if it is not already) with the intent of making it publically available. The working group would provide advice on a range of issues including:

- Whether the data obtained was sufficient for the required purposes (if not, the working group should provide recommendations on a more appropriate data collection methodology for future information gathering);
- How the data should be publicly disclosed (including how to ensure that no commercially-sensitive, competitive information is shared); and
- How the data could inform the Ministry’s approach to the payday lending industry.

### ***Other considerations regarding data needs and data collection approaches***

A data request issued to lenders will provide aggregated data on lending activities, but depending on the information requested it may not provide transactional data on each loan. Some degree of transactional data would be necessary for certain purposes, including determining the borrowing patterns of individual consumers (e.g., how many consumers borrow concurrently from multiple lenders, the length of time borrowers are indebted for).

Transactional data would also be required in order to monitor and enforce regulatory restrictions that apply across lenders. Several such potential restrictions were discussed in section 5, including restrictions on concurrent loans and a limit on the number of loans a borrower can take out annually. The transactional data would need to be available in (near) real-time, which suggests that a loan tracking capability would need to be in place.

### **Consensus Position**

- No consensus achieved

### **Considerations**

The panel did not arrive at a consensus position on whether transaction-level data are required or whether a loan tracking capability should be implemented. As described in section 5, some panel members believe strongly that regulatory provisions requiring a loan tracking capability should be introduced, while other panel members argue that those provisions could harm borrowers and the industry. This latter group also noted the costs that the implementation of a loan tracking capability would impose on government and lenders.

The panel believes the question regarding the need for transactional data should be revisited by the working group after the data requested from lenders is collected, analyzed and reviewed. However, panel members would like to share their analysis regarding the considerations that should be taken into account in determining whether a loan tracking capability should be implemented.

**Table 4: Considerations Regarding the Introduction of a Loan Tracking Capability**

Pros	Cons	Other Considerations
<ul style="list-style-type: none"> <li>• Would support research, policy development, and enforcement.</li> <li>• A loan tracking capability could provide comprehensive, transaction-level data on payday loans in near real time.</li> <li>• A capability could enable the implementation of regulatory provisions that apply across lenders.</li> <li>• Lenders would have information regarding whether borrowers have other payday loans outstanding and may be able to make more informed credit risk assessments as a result (although payday loan obligations represent only a portion of the credit risk presented by a borrower).</li> <li>• May reduce bad debt costs for lenders.</li> </ul>	<ul style="list-style-type: none"> <li>• There would be costs in implementing the tracking tool</li> <li>• The requirement to enter all payday loan transactions would impose an administrative and cost burden on lenders, which might disproportionately impact smaller companies and dissuade potential new entrants to the market.</li> <li>• There would continue to be a need for traditional inspections to ensure that data is being entered accurately.</li> </ul>	<ul style="list-style-type: none"> <li>• Government would need to examine who would bear the costs of the loan tracking capability. If lenders bear the costs, those costs should be considered in determining the appropriate maximum total cost of borrowing for payday loans (see section 7 of this report).</li> <li>• The privacy of borrowers' information should be prioritized in designing the capability and determining which users would have access to what data.</li> <li>• There may be an opportunity to leverage the capabilities and infrastructure of credit reporting agencies or bureaus to track loans.</li> </ul>

# 7. Maximum total cost of borrowing (price cap)

## 7.1 Background

Ontario's payday loan general regulation came into effect in 2009 and included a price cap on the maximum total cost of borrowing, which was set at \$21 per \$100 advanced. The most that a lender can charge for a \$300 loan is \$63. The price cap has not subsequently been revised.

Government established the maximum total cost of borrowing on the basis of advice received from a specially constituted advisory body called the Maximum Total Cost of Borrowing Advisory Board for the Ontario Payday Lending Industry. The Advisory Board recommended the \$21 per \$100 advanced price cap that was ultimately put in place; they recommended that rate based on the principle that "borrowing costs to consumers should be kept as low as possible, consistent with the existence of a competitive industry" (Payday Lending Advisory Board 2009).

### Payday Loans in Quebec, Newfoundland and Labrador, and New Brunswick

Three Canadian provinces have minimal to no regulation of the payday lending industry

Quebec has introduced a lower interest cap of 30 per cent, which applies to all lenders. Newfoundland and Labrador do not have relevant legislation, so the federal interest cap of 60 per cent applies.

While New Brunswick has developed payday loan legislation, a maximum total cost of borrowing has not yet been established. As a result, there is no exemption from the Criminal Code interest rate cap.

Figure 1: Provincial Payday Loan Price Caps

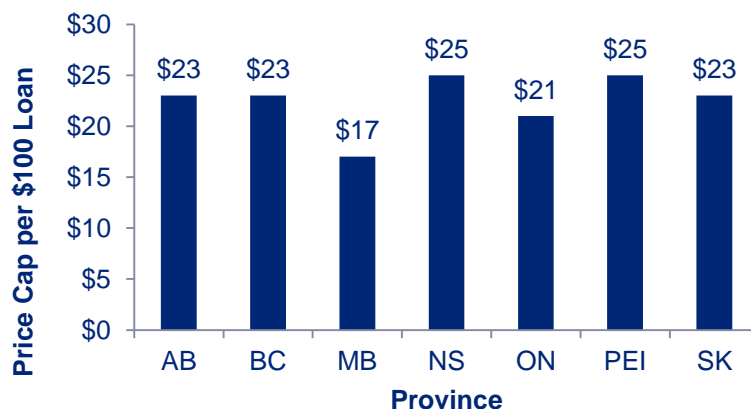




Figure 1 presents the price cap for all Canadian provinces that regulate payday loans. Price caps in the United States are generally somewhat lower, with a median value of \$17.50 per \$100 loan. Twenty-six US states have a price cap (six states allow payday loans but do not have a price cap, while payday loans are not available in the remaining states).

### 7.2 Identifying the factors that should be considered in setting a price cap

Panel members developed advice on a wide range of issues related to the setting of a price cap for payday loans in Ontario, including the factors that should be considered in setting the cap. The factors were organized into three categories of stakeholders: consumers, industry and communities. The table below captures the key considerations that government should take into account regarding each stakeholder group.

**Table 5: Factors to Be Considered in Setting the Price Cap**

Stakeholders	Factors
Consumers	<ul style="list-style-type: none"> <li>• <b>Affordability:</b> prices should be set at a rate that enables borrowers to repay their loans while still having enough money to meet their basic needs.</li> <li>• <b>Fairness:</b> consumers should not be charged fees that generate an excessive rate of return for lenders.</li> <li>• <b>Access:</b> consumers should continue to have access to payday loans from licensees.</li> </ul>
Industry	<ul style="list-style-type: none"> <li>• <b>Cost of lending:</b> <ul style="list-style-type: none"> <li>– Government should obtain high-quality data on the cost of providing a payday loan in Ontario in order to understand the point at which industry viability may be threatened.</li> <li>– The government may wish to focus more on the cost components that are generally outside the control of lenders. For example, some types of operating costs (e.g., rent) may be relatively consistent across lenders, while bad debt expenses, for example, may depend on the level of risk that lenders are willing to take.</li> <li>– Government may also wish to consider predictable changes to the cost of lending over time. For example, it may wish to factor in inflation, anticipated productivity gains and other cost trends (e.g., an announced increase in Ontario’s minimum wage).</li> <li>– In considering the cost of lending for Ontario’s licensed payday lenders, the government should adopt a price cap that creates an opportunity for lenders to make fair profits, but does not guarantee them.</li> <li>– A low price cap may lead lenders to exit the marketplace. If a large number of lenders exit, potential impacts include restricted access to payday loans from licensees, reduced competition in the industry and increased risk of illegal lending.</li> <li>– In considering an appropriate profit ceiling, the government should consider profit margins in other financial services industries.</li> </ul> </li> </ul>
Communities	<ul style="list-style-type: none"> <li>• The economic wellbeing of individuals has an impact on communities, including demand for social services and local economic development. If price caps are set at a rate that harms the economic wellbeing of</li> </ul>

Stakeholders	Factors
	<p>individuals, communities will also be impacted.</p> <ul style="list-style-type: none"> <li>• In particular, the panel urges the government to consider the long-term impact that payday loans may have on key social outcomes. For example, financial security is an important social determinant of health, and regulation that negatively affects or fails to protect financial security can be expected to have a negative impact on the health of communities.</li> </ul>

### 7.3 Setting the price cap based on the identified factors

After identifying the factors that should be considered in setting the price cap, the panel identified the outline of a formula that could be used to set the price cap.

#### Consensus Position

- The maximum total cost of borrowing (price cap) should reflect the cost of lending and a balanced approach to maintaining industry viability and affordability for consumers.

#### Considerations

The panel has also summarized a potential process for setting the price cap, which provides further detail on the formula and advice on the data required:

1. Determine the cost of making a payday loan in Ontario through a statistically significant assessment of lender costs. In executing this study, balance the administrative burden imposed on lenders (especially smaller lenders) with the need for accurate and representative data.
2. After establishing the current cost of lending in Ontario, consider how costs can be expected to change over time.
3. Identify an appropriate “profit ceiling” for the industry. A profit ceiling refers to the difference between the average industry cost of advancing a loan and the price they are allowed to charge. The panel recommends that in establishing the profit ceiling, government consider affordability for consumers (and the relevant effects on communities) in addition to industry viability. Therefore, while the government will clearly wish to examine profit ceilings in similar financial services industries, it should also consider the specific characteristics and needs of payday loan borrowers.

Panel members also considered whether there should be a single price cap for all borrowers or whether a separate, lower price cap should be introduced for social assistance recipients. This option was strongly supported by some panellists, who argued that given the fixed, limited income of social assistance recipients, a reduced rate would substantially improve their financial security and ability to meet their basic needs. They also suggested that social assistance recipients may be less likely to default on their loans, given that government benefits payments are certain and predictable (i.e., government payments will come on time and will not bounce).

Other panel members held an equally strong view that a single price cap should be applied to all borrowers, including social assistance recipients. They noted that lenders may become unwilling to lend to social assistance recipients as a result<sup>6</sup> and that based on their experience, these customers do not have lower default rates. No consensus was reached on this issue.

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<sup>6</sup> Panel members noted that some Ontario lenders already have a policy of not lending to benefits recipients.

## 7.4 Determining the price cap-setting process

In Ontario and most other Canadian provinces the government sets the price cap through regulation. The process for doing so varies. Ontario used a special purpose advisory board, while Manitoba's government receives recommendations from a utility board, and Nova Scotia delegates the price cap setting to a utility board. The panel considered whether Ontario should use processes similar to those of Manitoba and Nova Scotia. While the panel did not reach consensus on who should have cap-setting authority, the panel agreed on principles regarding regular review of the price cap and the role of stakeholders in providing input and advice.

### Consensus Position

- Consensus was not reached on whether or not to delegate price cap-setting authority to a regulatory body.

### Considerations

The panel discussed the potential costs and benefits of delegating cap-setting authority to a regulatory body. Those considerations are presented in the table below.

**Table 6: Approaches to Setting the Price Cap**

Option	Description	Considerations
Price cap set by government	Under the current approach, government sets the price cap directly through regulation.	<ul style="list-style-type: none"> <li>• Cost: This option is likely to be less costly to government and stakeholders (in terms of both time and resources) than the delegation of authority to a regulatory body.</li> <li>• Transparency and openness: This option may be less transparent to the public and less open to stakeholders than a regulatory body. However, the government could take steps to increase transparency through public consultation or other measures. Organizations or individuals with minimal funding may have limited capacity to contribute to this process.</li> <li>• Timelines: Government could set the price cap at regular intervals or on an ad hoc basis.</li> <li>• Advice: Government could make the price cap decision without external consultation or it could convene an advisory body to support its decision-making. In 2009, the Ontario government convened an Advisory Panel to make a recommendation on the price cap.</li> </ul>
Price cap set by regulatory body	The government would delegate authority to set the price cap to a regulatory body such as a utility board. The regulatory body would hold hearings and receive submissions and deputations	<ul style="list-style-type: none"> <li>• Cost: The establishment of a regulatory body and the execution of hearings could be more costly than direct setting of the price cap by government. This cost of establishing a body could be mitigated by delegating price-cap setting authority to an existing organization.</li> </ul>

Option	Description	Considerations
	from stakeholders before coming to a decision.	<p>The hearing process may also take up more stakeholder time and resources than the alternative approach.</p> <ul style="list-style-type: none"> <li>• Transparency and openness: Hearing processes are generally open to the public and transparent. All interested parties put forward their information and analysis, as well as their proposals. Further, the decision of the regulatory body is public and a rationale is generally provided. As a result, this option may be more transparent to the public and more open to participation by stakeholders (regardless of resources).</li> <li>• Timelines: A regulatory body could set the price cap at regular intervals or on an ad hoc basis.</li> <li>• Advice: The hearing process would provide advice on how the regulatory body should set the price cap.</li> </ul>

### Consensus Position

- Introduce a requirement that the price cap be reviewed every five years or less, concurrent with the full review of the Payday Loans Act.
- In setting the price cap, receive external advice from a broad range of stakeholders (including industry, consumer advocates, community agencies and credit counsellors).

### Considerations

Regardless of whether government maintains authority for setting the price cap or delegates that authority to a regulatory body, the panel believes that the price cap should be reviewed every five years or less, to ensure that it continues to balance industry viability with affordability for consumers. The price cap review should be concurrent with the broader review of the Payday Loans Act recommended in section 9 of this report. This will help reduce demands on stakeholder time and lead to more coordinated regulatory policy.

If government continues to set the price cap directly, it should receive advice from a broad range of stakeholders. These stakeholders will be able to provide insight and advice on how changes in the price cap may impact both borrowers and lenders.

# 8. Financial education and awareness

## 8.1 Background

Ensuring that payday loan borrowers understand the payday loan product is fundamental to the goal of consumer protection. Borrowers should be making informed borrowing decisions based on a clear understanding of the cost of the products they purchase and their rights as a borrower.<sup>7</sup> More informed decisions may reduce the risk of borrowers entering a debt cycle.

The Payday Loans Act contains a number of provisions designed to enhance borrower awareness and education. The following table summarizes some of those provisions in plain language and includes references to the relevant legislation or regulation.

**Table 7: Financial Education and Awareness Provisions under the Payday Loans Act**

Category	Provisions	Reference Act (Payday Loans Act) Reg (O. Reg. 98/09)
Disclosure	<ul style="list-style-type: none"> <li>Licensees (licensed lenders and loan brokers) are obligated to display a poster in each office indicating the maximum total cost of borrowing (\$21 per \$100 borrowed), the lender’s cost of borrowing per \$100 loan, and the lender’s cost of a 14-day, \$300 loan.</li> </ul>	Reg s. 14
	<ul style="list-style-type: none"> <li>The first page of payday loan agreements must have a table detailing the amount borrowed, the term of the loan, the total cost of borrowing, the maximum allowable cost of borrowing, the cost of the loan on a per \$100 basis, the total amount due, the date on which payment is due and the borrower’s signature.</li> </ul>	Reg s. 18 (1)
	<ul style="list-style-type: none"> <li>The loan agreement must also include notices regarding the high cost of payday loans and the borrower’s cancellation and refund rights.</li> </ul>	Reg s. 18 (2)
Advertising	<ul style="list-style-type: none"> <li>Advertisements by payday licensees that mention certain details of the payday loan offered must also disclose other information including, the actual cost of borrowing per each \$100 borrowed and the cost of borrowing for a 14-day, \$300 loan.</li> </ul>	Reg s. 15

<sup>7</sup> For example, borrowers in Ontario have the right to cancel their payday loan without fees or penalties within two business days of borrowing.

Category	Provisions	Reference Act (Payday Loans Act) Reg (O. Reg. 98/09)
	<ul style="list-style-type: none"> <li>If the Registrar believes that a licensee is making false, misleading or deceptive statements in published materials, he may order the licensee to stop using the materials or order a retraction or correction.</li> </ul>	Act s. 53 (1)
Education	<ul style="list-style-type: none"> <li>As a condition of licence, licensees must display and provide educational materials about the payday lending industry, financial planning and the Payday Loans Act and its regulation that the Registrar approves.</li> <li>If the loan is remote (e.g., made over the internet), the licensee must communicate that the educational materials are available and provide them on request.</li> </ul>	Reg s. 5
Payday Lending Education Fund	<ul style="list-style-type: none"> <li>The Act established the Ontario Payday Lending Education Fund. The purposes of the Fund are to promote the education of persons respecting the rights and obligations of persons under the Act and respecting financial planning, where education is done through the use of publications, training, advertising and similar initiatives, including by making grants and transfer payments. The Fund is to be financed primarily through payments from licensed payday lenders and brokers.</li> </ul>	Act s. 66-67
	<ul style="list-style-type: none"> <li>A non-profit corporation called the Ontario Payday Lending Education Fund Corporation was designated to administer the Fund.</li> </ul>	Act, s. 68

## 8.2 Advancing the financial literacy and education of payday loan borrowers

All panellists felt strongly about the importance of financial education and awareness in protecting consumers, which is why the issue was added to the list of topics for discussion by the panel (as described in section 2.1, the other topics were identified by the Ministry).

Panel members reviewed the current disclosure and financial education provisions and discussed potential options for enhancing the financial literacy and education of payday loan borrowers. They also noted that the independent Board of the Payday Lending Education Fund Corporation (PLEFCO) was inactive, following the decision of the Board to dissolve. The panel considered whether PLEFCO should be re-established, and if so, whether its purpose should be updated. The panel agreed that more time was required to study how to enhance financial literacy and education to ensure that new approaches reflect the specific needs of payday loan borrowers and to prevent duplication of existing supports and resources.

### Consensus Positions

- Strike a working group to study opportunities for enhancing the provision of financial literacy and education to payday loan borrowers, including the future of the Payday Lending Education Fund.

- Until the working group has completed its study, maintain the clauses establishing the Ontario Payday Lending Education Fund and designating the Ontario Payday Lending Education Fund Corporation.

## Considerations

The panel recommends that a working group be formed to determine how best to support the goal of enhancing the financial literacy and education of payday loan borrowers. As part of their mandate, the working group should consider whether to re-activate PLEFCO. Panel members agreed that there may be value in reconstituting PLEFCO<sup>8</sup>, but that they had insufficient information to determine whether or not that is the case. Until the working group completes its study, the panel recommends that the clauses providing for PLEFCO be maintained. The panel recommends that the working group have access to available background regarding PLEFCO.

Some panel members also noted that the current stated purpose of the Fund could be amended to better reflect the needs of payday loan borrowers. Currently, the purpose of the Fund focuses on financial planning; these panellists recommend that the stated purpose of the Fund focus on financial literacy, money management, budgeting and use of credit products.

Panel members agreed that the working group should take a broad, fresh look at the goal of enhancing the financial education of payday loan borrowers. Key questions for the working group to consider include:

- What information would be most valuable to the various segments of payday loan borrowers?
- What channels are most effective in reaching various segments of payday loan borrowers?

For example, panel members note that brochures and handouts are insufficient and that a more creative approach to providing financial education is desirable. For example, resources could be directed to community-based financial education programs and licensed, non-profit, registered charity, credit counselling agencies. The working group could also consider the most appropriate, effective mechanism for disbursing funds to these organizations.

Panel members also recommend that the working group focus on coordinating with organizations and institutions delivering financial awareness and education programs and initiatives. Ensuring alignment across organizations will help reduce duplication and ensure that new initiatives are filling gaps in existing resources.

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<sup>8</sup> Some panel members took a stronger position, suggesting that PLEFCO was a fundamentally important aspect of the Payday Loans Act.

# 9. Future reviews of legislation and regulation

## 9.1 Background

The payday lending industry is continuously changing in response to new technology and changes in consumer demand, among other factors.

This dynamism goes beyond the growth of online and mobile lending, and may pose a challenge to effective regulation unless that regulation is equally dynamic and broad. While the panel has identified a variety of actions that will help government enhance consumer protection today, the government will need to continue monitoring and responding to changes in the marketplace.

## 9.2 Effectively addressing future changes in the payday lending market

### Context

The panel recommends three key actions to assist government in adapting regulation to emerging trends and issues in the payday lending industry:

- Establish an advisory committee that meets regularly;
- Mandate a formal review of the Payday Loans Act every five years or less; and
- Obtain better data regarding the industry.

### Consensus Position

- Establish an advisory committee of payday loan industry representatives, consumer protection associations, community organizations and the Registrar or their designate that meets regularly.

### Considerations

Stronger communication with stakeholders would allow government to respond nimbly to changes in the payday lending industry. It could also provide a sounding board for the Ministry as it considers regulatory or operational reforms.

The panel recommends that an advisory committee should meet at least twice per year, and should also be convened as needed (e.g., the consideration of a regulatory amendment). The advisory committee would provide advice to government (and Registrar) on the Payday Loans Act, regulations and operational issues (e.g., communications by the Ministry regarding the industry, implementation of new regulatory provisions, etc.). In particular, the advisory committee should provide a sounding board for implementation of the recommendations made in this report.

### Consensus Position

- Review the Payday Loans Act every five years or less.



## **Considerations**

To promote the capacity of the Payday Loans Act to protect consumers in a changing market, the panel recommends that the Act be comprehensively reviewed every five years at a minimum. If there is a significant change in the industry, the government should accelerate that schedule.

More data would be essential to the work of the advisory committee and the reviews of the Act. In considering trends and issues in Ontario's online and mobile payday lending marketplace, the panel identified significant gaps in available data. For example, it is unclear what proportion of payday loans in Ontario are made online and whether borrowers of online loans have different characteristics or borrowing patterns than those who borrow in a store. The panel recommends that the Ministry enhance its data collection. For a full discussion of current data gaps and how they might be addressed, see section 6.3 of this report.

# 10. Conclusion

The panel's report to the Minister of Consumer Services is intended to inform the government's review of the Payday Loans Act, 2008. The panel recognizes that regulating the payday lending industry presents a complex challenge. Careful, thoughtful analysis is required to improve protections for payday loan borrowers while maintaining a viable payday lending industry. Although panel members sometimes differed on how to best arrive at an appropriate balance, the consensus positions set out in this report reflect the best advice of the panel.

In considering the panel's specific advice and recommendations, the panel urges the government to act quickly on the recommendations laid out in the report. More broadly, the panel hopes that the government will also consider several key themes that arose consistently in panel discussions:

- The need for better data on payday lending in Ontario to support evidence-based regulatory policy;
- The importance of thinking broadly and creatively in promoting the responsible use of credit products, including the importance of financial education; and
- Strategies for keeping up with the high rate of change in the industry to ensure that government is responsive to the needs of payday loan borrowers.

The panel was encouraged by the government's recognition of the benefits of consulting with a broad set of stakeholders in conducting its review of the Payday Loans Act. With this in mind, the panel urges the government to consider further public consultations. Panel members hope that this report will be made public in support of those further consultations.

While the panel believes that amendments to the Act and its regulations can play an important role in enhancing consumer protection, the panel encourages all industry stakeholders to consider the role that they can play. In particular, panel members want to highlight the importance of strong communication between lenders, credit counsellors, community agencies that serve borrowers and consumer advocates. Working together, these groups can identify key gaps in consumer protection and develop grass-roots strategies to address them.

Dated: May 2014

# Appendix A: Terms of reference

## Payday Lending Panel

### Terms of Reference

#### Payday Lending Panel

In September 2013, the Ontario government announced its intention to review the Payday Loans Act in order to strengthen protections for payday loan customers. The review will:

- Assess the ability of the current legislation to protect consumers using new online and mobile apps to access short-term payday loans
- Explore ways to track payday loans and ensure companies are compliant with existing regulations
- Study stronger protections for consumers against multiple loans and roll-over loans
- Review the maximum total cost of borrowing, which is currently capped at a \$21 fee for every \$100 borrowed
- Examine the impact on customers of new short-term, high-cost loan products that have recently entered the marketplace

In response to this government commitment, the Ministry of Consumer Services (“the ministry”) is establishing a Payday Lending Panel (“panel”) to provide independent advice to government on how to strengthen protections for payday loan customers. The findings and recommendations of the Panel will be delivered to the government through a report, which will be used to inform future government decision-making.

Deloitte has been engaged to facilitate panel meetings and prepare the Report on behalf of the panel.

#### Payday Lending Panel Composition

The panel includes 14 members with expertise and an interest in payday lending legislation. This includes payday and other lenders, credit counsellors, consumer advocates and others.

#### Panel Member Responsibilities

- Attend panel meetings and provide input based on experience
- Work cooperatively with the meeting facilitator
- Review materials that may be distributed in advance of panel meetings
- Engage and participate in panel discussions
- Strive for consensus on recommendations to government

- Consider the public interest in making recommendations to government
- Maintain a respectful environment where all are welcome to share their views
- Contribute to the development of a Findings and Recommendations Report that will be written by Deloitte and delivered to the Ministry.

### **Deloitte's Responsibilities**

- Develop the panel work plan, for the panel's approval
- Prepare meeting agendas and materials
- Facilitate panel meeting discussions and take notes
- Engage expert stakeholders to support panel discussions, as required
- Draft a Findings and Recommendations report to government, based on panel discussions and for the panel's approval

### **Payday Lending Panel Proceedings**

The panel will meet for six workshops over the period from February to May, 2014. Guiding principles for developing the Findings and Recommendations Report with advice on strengthening protections for payday loan customers through a review of the Payday Loans Act, 2008 include:

- Be reflective of stakeholder expertise and advice
- Be understandable to the general public
- Contain enough detail and rationale to provide a window into the panel's deliberations
- Anticipate what would be acceptable to the public and government

Deloitte will prepare meeting agendas based on input from panel members. Pre-meeting packages including background materials supplied by panel members, Deloitte, the ministry, or other sources, will be distributed in advance of each panel meeting. Deloitte will inform panel members of any pre-meeting requirements such as research and readings.

The panel may also seek additional support to assist with the panel's deliberations from an informal pool of expert stakeholders from the payday lending and related sectors.

### **Public Service and Confidentiality**

Participation as a member of the panel requires a commitment to the broader public interest. Panel members are expected to provide impartial advice for the benefit of all Ontarians, rather than necessarily advocating on behalf of any specific interest.

Panel members agree to share information and collaborate, while respecting each other's opinions, upholding the privacy of the discussions, and representing the views and interests of the people of Ontario.

The names of all panel members will be included in the report and posted on the ministry's website to ensure public transparency.

Meetings will be conducted under the Chatham House Rule:

- *When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed.*

The panel report will aim to achieve consensus on recommendations. Where consensus is not reached, the various points of view will be represented in the report, but not attributed to those who expressed them.

# Appendix B: Works cited

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