

Payday Loans Review 2016 – Consumers Coalition Recommendations
April 18, 2016

The Consumers Coalition makes the following recommendations to the PUB in this 2016 Payday Loans Review:

- 1. Manitoba should reduce the cap on payday loan fees to 15% of the initial principal amount, which in this industry is often stated as \$15 per \$100 loan.**
- 2. Manitoba should amend the payday loan regulations to require lenders to offer borrowers the option to convert a payday loan into an installment loan on the first due date.**
 - a.* An examination of best practices regarding installment loans from other jurisdictions should be undertaken to determine the best installment option for Manitoba. The criteria in making this determination should include consumer protection, consumer choice and industry sustainability. Consultation should be done with the industry and with consumers.
 - b.* Dr. Robinson noted in his evidence that the installment period could be the borrower's option but not to exceed six months. Sections 13.1(2) and 13.1(3) of the Regulations now specify that a replacement or extended loan may be charged no more than an additional 5% of the principal amount. The fee for the payday loan due at the first due date would be calculated under the rate cap regulation and the total to be repaid on the installment loan would be the principal plus the original fee plus 5% of the original principal.
 - i.* Note that since this loan is not covered under the exemption to payday lending from the Criminal Code, all combined fees must be annualized and be limited to 60% APR.
 - c.* CPLA recommendation to Alberta (Exhibit 12)
 - i.* Optional extended payment plan
 1. Where a borrower takes out three or more successive loans [which can be defined as third or subsequent payday loan taken within a 62 day period] then for that and each subsequent loan [that would qualify as a third or subsequent loan in 62 days], the lender must offer and the borrower has the option to accept repayment terms for that loan spread over at least three payment periods where no payment exceeds 35% of the sum of the principal and cost of borrowing.
 - d.* Current BC regulation on installment loan:
 - i.* 23(2) A payday lender who enters into a third or subsequent payday loan agreement with a borrower in a 62-day period must,
 1. (a) if the borrower is paid or otherwise receives income on a bi-weekly, semi-monthly or more frequent basis, provide in the loan agreement that repayment is to be spread over at least 3 pay periods, or
 2. (b) if the borrower is paid or otherwise receives income on a less frequent basis than that referred to in paragraph (a), provide in the loan agreement that repayment is to be spread over at least 2 pay periods.
 - ii.* 23(3) A payday lender must not require a repayment under a loan agreement referred to in subsection (2) that is more than,

1. (a) for a borrower referred to in paragraph (a) of that subsection, 35% of the sum of the principal and the cost of borrowing in relation to the loan, or
 2. (b) for a borrower referred to in paragraph (b) of that subsection, 50% of the sum of the principal and the cost of borrowing in relation to the loan.
- e. Current model in Washington:
- i. **BORROWERS' RIGHTS TO INSTALLMENT PLANS** Borrowers are entitled to an installment loan at any time prior to default. Borrowers do not have to pay a fee for the installment plan and have from 90 to 180 days (depending on the original loan amount) to repay the loan in a series of installments. (Washington, 2014, pp 4, online at:<http://www.dfi.wa.gov/sites/default/files/reports/2014-payday-lending-report.pdf>)

3. Manitoba should not change the maximum percentage of pay that may be borrowed (currently at 30%).

- a. A change will have little effect on the debt trap problem. The option to convert to an installment loan is a more effective method to deal with that problem.

4. Collection of data on payday lenders in Manitoba should be improved.

- a. All licensed payday lenders in the province of Manitoba should be required to report annually aggregated loan data.
- b. The information reported should include:
 - i. the number of loans granted, the average size of loans granted, the number of transactions, loan duration, the number of defaults on loans granted, the average size of loans defaulted, the number of borrowers who have been granted more than one loan, the number of repeat loans granted, the total number of borrowers who have been granted repeat loans, the number of borrowers who have been granted repeat loans 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, etc. (no categories), and the number of default loans that are to repeat borrowers.
- c. This information should be made publicly available on the Consumer Protection Office website.
- d. The Coalition notes that data relating to payday loan borrowers demographics could be reported, such as average income and source of income used for a payday loan. However, there are concerns relating to privacy of consumers and extensive pressure on the industry.
- e. In British Columbia, s. 4(2)(b) and 4(3) of the Payday Loans Regulation require all payday lenders licensed in the province to annually report aggregated loan data. According to the Regulation, an applicant for a payday loan license must provide
 - i. “aggregate data from the last completed fiscal year of the applicant, in a form and containing the information required by the director”¹; and
 - ii. “Without limiting paragraph (b) of subsection (2), the aggregate data submitted under that paragraph must include data respecting the number of loans, number of transactions, loan amounts, loan duration and number of default charges.”²
 - iii. The BC regulator, Consumer Protection BC, makes an Aggregate Data Form available on its website that is filled out by licensees to provide information on

¹ Payday Loans Regulation, BC Reg 57/2009, s 4(2)(b).

² *Ibid*, s 4(3).

the most recently completed fiscal year.³ In addition to the information specifically listed in the Regulation, information on the number of individuals who were given multiple loans is also collected by the regulator. Aggregate data is then reported publicly on the regulator's website.⁴

- f. In Nova Scotia, s. 5 of the Payday Lenders Regulations stipulates that payday lenders must provide information on loans granted from the location specified in their permit for the 12-month period from July 1 to June 30 immediately before the date of the permit renewal.⁵ Form A, attached to the Regulations, must be filled out by the payday lender. Form A collects information regarding the number of loans granted, the average size of loans granted, the number of defaults on loans granted, the average size of loans defaulted, the number of borrowers who have been granted more than one loan, the number of repeat loans granted, the total number of borrowers who have been granted repeat loans, and the number of borrowers who have been granted repeat loans 1, 2, 3, 4, 5, 6, 7 and 8 or more times.⁶ This information in aggregate form is available from the regulator.⁷
- g. For Ontario standard reporting requirements, please see CPLA Exhibit 13.

5. The licensing fee for payday lenders should be changed to a percentage of their total loan value that maintains the current volume for the Financial Literacy Fund and adjusts for inflation.

- a. Reporting on the Financial Literacy Fund should be more transparent by including details on the process to apply for a grant, research objectives and the criteria for selection of grant recipients.

6. Disclosure of information by payday lenders to borrowers should be improved.

- a. The Coalition attaches its recommendations from the 2007-2008 hearing regarding disclosure to consumers. The Coalition recommends that the requirements for printed materials provided to payday loan borrowers by lenders should be revisited, which could include the establishment of a Standard Form Contract, such as the one suggested by the CPLA. In revisiting the printed materials, the following should be used:
 - i. A Plain Language consultant
 - ii. User testing
 - iii. Stakeholder working group
- b. Payday lenders should be required to provide verbal explanation of information to consumers where the consumer has limited literacy skills.
- c. Manitoba regulations should be changed to reflect the Ontario regulations where payday lenders present fees for payday loans next to equivalent fees for credit cards (see Exhibit 38 of the Coalition for an example).

7. Payday lenders should not be allowed to pass on the charge for debit or cash cards to their consumers.

3 Payday Loan Aggregate Data Form, Consumer Protection BC, online: http://www.consumerprotectionbc.ca/images/pdl_aggdata_paperform.pdf.

4 See Appendix 1 to Dr. Robinson's Report, Tab 3.

5 Payday Lenders Regulations, NS Reg 84/2015, s 5.

6 *Ibid.*

7 See Appendix 7 to Dr. Robinson's Report, Tab 3.

8. **The following research should be undertaken:**
 - a. Increased research is required to carefully assess the economic and social consequences of payday loans on individuals and communities to inform the next payday loan review in Manitoba. Particular attention should be assigned to issues such as repeat and internet borrowing.
 - b. Research should also focus on the use and potential for new communications technologies to be used by mainstream financial institutions in providing alternatives to payday loans.
 - c. A review of best practices relating to payday loans in other jurisdictions should be undertaken to inform future payday loans review in Manitoba.

9. **Ways to engage mainstream financial institutions in the small loans market and more generally in the area of financial inclusion should be identified.**
 - a. Additional recommendations were made within the Small Loans Workshop filed by the Coalition. The Coalition intends to use these recommendations and findings in working with mainstream financial institutions towards the development of alternatives to payday loans.

10. **A low-cost or no-cost universal identification option be established that would eliminate the requirement for a SIN as identification.**
 - a. This option should not include a requirement for photo identification.
 - b. Consideration should be given to the work of community organizations in this area, such as SEED Winnipeg and Citizens Bridge.

11. **Continued effort is required to investigate and regulate the internet payday loan industry, including the issues of licensing and lead generators.**

12. **Regarding online lending, the following recommendations should be made to government and industry:**
 - a. Inform the public about privacy safeguards and requirements when using an online payday lender.
 - b. Inform the public about their online privacy rights (including the kind of information that they do not have to provide to online payday lenders).
 - c. Inform the public about the risks of providing personal information to lead generators and unlicensed lenders.
 - d. Require online lenders to implement discernible measures to ensure that their privacy policies are read and understood by consumers.
 - e. Encourage licensed lenders to report unlicensed lenders and lead generators.
 - f. Encourage cooperation between jurisdictions to enable prosecution of lead generators and non-compliant online lenders.
 - g. Recommend to the federal government that PIPEDA regulations should prohibit online lenders from requiring borrowers to provide their Social Insurance Number for identification purposes. If lenders are allowed to collect a borrower's Social Insurance Number an explanation of why it is needed and how it will be used should have to be provided.
 - h. Restrict online lenders from obtaining consent to disclose the borrower's personal

- information to unidentified third parties, except in keeping with the PIPEDA exceptions.
- i. Require online lenders to inform borrowers of their right to access their personal information, to challenge its accuracy, and to have inaccurate information amended.
- 13. Consideration should be given to a one-year notice for payday loan review hearings to allow sufficient time for research to be conducted.**
- a. Payday loan reviews are different from other types of PUB hearings given that there is no applicant.
- 14. Consumers should be protected from other high-cost credit products that are not currently regulated.**
- a. Although there is new legislation regarding licensing of high-cost credit products, disclosure of information and loan cancellation rules, permission should be requested from the federal government to regulate fees and charges for these products.
 - b. Companies offering high-cost credit products other than payday loans charge unacceptably high rates and provide inadequate disclosure (e.g. rent-to-own and pawn loans). Consumers using these services should be better protected.
- 15. The Coalition supports the CPLA recommendations contained within CPLA Exhibit 12 as follows:**
- a. Optional Extended Payment Plan – please see Recommendation 2 above.
 - b. Restrictions on Discounts and Promotions of First Time Loans – as is.
 - c. Standard Form Contract – please see Recommendation 6.a. above.
 - d. Job Loss Extension Program – as is.
 - e. Restriction on Default Fees and Interest Charged on Loans in Default – it is the Coalition's understanding that this is already addressed in the Manitoba *Payday Loans Regulation* in s. 15.4(1), where the maximum penalty that may be charged, required or accepted in relation to any default by a borrower under a payday loan is a penalty of 2.5% of the amount in default.
 - f. Mandatory Acceptance of Settlement Plans Proposed by Credit Councillors – as is.
 - g. Mandatory Referral to Credit Counseling Services – as is.

Recommendations presented and considered

1. The CPLA made reference to the Ontario seven-day cooling off period where a borrower can take a loan within this cooling off period if the borrower has paid the full outstanding balance under the first agreement (Ontario *Payday Loan Act*, s. 35(1)(b)).
 1. Although there was evidence presented during this hearing that demonstrates that there may be issues with the effectiveness of the seven-day cooling off period in the Manitoba payday loan legal framework, the Coalition believes there is still value in maintaining this requirement. Although it may not benefit all, it may still benefit a segment of consumers.