TO: MINISTRY OF GOVERNMENT AND CONSUMER SERVICES

AUGUST 14TH 2015

THE CONSULTATION: STRENGTHENING CONSUMER FINANCIAL PROTECTION

SUBMISSION FROM: ACORN CANADA

BELOW IS ACORN CANADA'S COMMENTS ON RISKS AND CONSUMER PROTECTION POLICY RECOMMENDATIONS UNDER THE FOUR TOPIC AREAS:

1) **Alternative Financial Services**
2) **Payday Lending**
3) **Money Transfer Services (MTS)**
4) **Debt Collection**

ALTERNATIVE FINANCIAL PRODUCTS

- The term "alternative financial services" could be interpreted as having a positive connotation. The term should be replaced with "predatory or high interest/high cost financial services".

POLICY RECOMMENDATIONS ON INSTALLMENT LOANS:

- ***Specifically on the rapidly growing industry of installment loans. Regulation on installment loans would be most effectively done federally.*** It is critical that the current interest rate captured by section 347 of the criminal code does not get relegated to the provinces. This federal rate, although out of the scope of the province, should be lowered from 60% to 30%. The below policy recommendations would best be done federally:

    - Make loan flipping and excessive refinancing illegal, and require the signature of the borrower for all changes to the terms of the loan
    - Give consumers the right to cancel a credit application within 7 days of signing
    - Require lending agencies to show the true cost of borrowing; no hidden fees or charges
    - Make it easier to report predatory lenders through a formal complaint process
    - Institute government mandated registrations for all loans
    - Require all companies that provide loans and financing in Canada to register with the government

- We recommend the provincial government do a scan on the entire industry to ensure that all predatory products (car loans, title loans, etc.) are reviewed from a consumer protection framework. (See chart below. Source: **Brenda SpottonVisano,** PhD | University Professor | School of Public Policy & Administration; Department of Economics | 130 McLaughlin College Building | York University).

Type of Loan	**Characteristics**	**Fringe Financial Services, examples**	**Mainstream Retail Finance, examples**

Unsecured Loans Open-ended	Minimum payment required each month, amount typically covers at least interest costs Default implications: money owed sent to a collection agency	Rollover Payday Loans are essentially open-ended loans	Credit Cards, Cash Advances, Lines of Credit (Unsecured), Overdrafts on chequing accounts
Unsecured Loans Close-ended	One lump sum payment is made when the loan is due, typically in 2-4 weeks Can be renewed for a fee Default implications: collateral cheque cashed (for PDLs); money owed sent to a collection agency	Payday Loans (PDLs) Cheque Cashing Loans	
Secure Loans	Close-ended Short-Term: 6 months – 2 years Fixed monthly payments Lender may be required to purchase credit insurance *(is this legal in Canada/Ontario?)* Default implications: collateral security is repossessed	Pawn broking (secured by jewelry, consumer electronics, musical instruments, other portable consumer goods) Title Loans (secured by a car) Installment Loans (secured by a car, consumer electronics, jewelry, etc)	Secured Lines of Credit, Medium and Long-Term Secured Loans, Real Estate Loans (Mortgages), Car Loans
Rent-to-Own	Not a loan since the supplier owns the item until paid in full Default implications: goods returned to owner/supplier	Rent-to-Own furniture and consumer electronic Loans	Car leasing offers option to purchase car at end of lease Some housing in US offered this way…in Canada?

KEY RISKS:

- Consumers pay more than they are aware of, especially over the longer term. Use of these products has a high risk of further indebting vulnerable consumers.
- They create a cycle of debt that can be difficult to get out of.
- Total cost of loan (including interest, fees and insurance) above Criminal Code Limit of 60%; often total costs expressed as a yearly cost of the loan expressed as a percentage of the amount borrowed exceeds 400%.
- Annual Percentage Rate quoted may or may not include all fees and insurance. Transparency in lending costs is lacking.
- May exploit consumers' lack of familiarity with financial products and low level of debt literacy.

2). PAYDAYLENDING

- In Canada, primary users of PDLs are young families, lower income, lower wealth households, unlikely to own their home, have been refused a credit card, be past due on bills, and have no other source of financial assistance. (Wendy Pyper, 2007, "Payday Loans" *Perspectives*, Statistics Canada).
- Strategic Communications did a research report for ACORN Canada in 2005, https://www.acorncanada.org/resource/survey-payday-loan-users-toronto-and-vancouver. "In Toronto, the reported frequency of use is very high, with 44% saying they have taken out a payday loan 6 times or more in the past 12 months."
- "[T]here is insufficient evidence to know whether consumers are better off with or without access to high-interest loans…but there is sufficient evidence to conclude that conventional lump-sum payday loans harm consumers compared with loans that have affordable payments. It is clear that the lump-sum payday loan has inherent structural flaws that make it unaffordable and dangerous for consumers, and that new policies to eliminate this failed product are warranted," (Pew Charitable Trusts, 2013, "Payday Lending in America").

ACORN Canada continues to stand by the policy recommendations submitted as a result of the payday lending government consultations with the submission to Ministry of Government and Consumer Services in regards to the payday lending panel in February 2015.

KEY RISKS AND POLICY RECOMMENDATIONS:

- Lenders, government and community stakeholders don't know how many loans borrowers are taking out since many borrowers seek loans from multiple locations.
- Policy recommendation: Concurrent loan restrictions across lenders
- Policy recommendation : A waiting period between loans
- Policy recommendation : A limit on the number of loans a borrower can take out annually
- ***Critical:****A real time national tracking system is critical because it prevents borrowers from taking out too many loans, and provides a good source of data on payday loans.*
- New, safer loan and financial products for low-income people are badly needed and the Ontario Government should consider how to lead this thinking into action. For example, alternative institutions could be supported or created, like credit unions and postal banking, to offerlow-cost, short-term loan products at much lower interest rates. This is already happening in other Canadian jurisdictions. VanCity in BC offers a product that is much fairer to the consumer, where a borrower can borrow $100, and if they pay it back in two months, they pay only $2.38 on the loan.
- Fees need to be lower. We believe that the cost of borrowing should be determined on the affordability for consumers, fairness and access for consumers, and taking into account the relationship of the economic wellbeing of individuals to communities and the long-term impact that payday loans may have on key social outcomes.
- We recommend that the price cap be set by a public board such as the utility board, not by cabinet. It is critical to fairness and transparency to ensure that industry costs are robustly analyzed, and reflect the majority of lender practices that may affect costs – previous research that led to the current price cap of $21 on $100 was based on a very small sample size of lenders – and takes into consideration evidence from other Canadian jurisdictions to assess how effective lower price caps have been in other provinces, to

providing consumer protection. In other jurisdictions, like Manitoba, the utility board set the rate. This is a more transparent way of setting the rate and ensuring a robust analysis. Manitoba has a strong payday lending business with the rate of $17 on $100.

BELOW IS ACORN CANADA'S FULL SUBMISSION TO THE MINISTRY OF GOVERNMENT AND CONSUMER SERVICES IN FEBRUARY 2014

2 February 2015

RE: Payday Lending Panel Findings and Recommendations Report – Consultation feedback including feedback on the proposed Loan Activity Report

ACORN Canada thanks you for inviting us to participate in the Payday Lending Panel.

Although we were members of the panel, and we agree with the consensus recommendation reached, we are submitting additional feedback to reinforce our support for those recommendations, and more importantly to emphasize the importance of our views on the areas where consensus was not reached.

We understand it is important for the government to hear the lenders' perspective, but if the Ministry of Government and Consumer Services is trying to protect consumers from predatory practices, it needs to take seriously input that was not agreed to by the payday lenders, and take ita step further. We feel the Government needs to look beyond the consensus positions to effectively protect vulnerable consumers. The damage to families and communities that occurs from the high priced repeat use of payday loans is far greater than hardship enhanced regulations may cause the payday lending industry. The Government needs to make the tough decisions on how to improve consumer protections through more traditional means. We submit our feedback today to inform this future decision-making.

Further, the government cannot expect groups representing the vulnerable communities to have the same level of resources as the payday lending industry. The panel discussion was not a level playing field. For example, Money Mart is owned by Dollar Financial, a US Bank with very deep pockets.

1. **Online and mobile payday loans**
   We believe that the five consensus recommendations of the Panel will help establish needed protections for consumers in relation to online and mobile payday loans practices; in particular, ensuring that online borrowers receive all of the same levels of protection and consumer information from the lender that storefront borrowers are legislated to receive. Our bigger concerns include borrowing frequency, roll-over loans, concurrent loans, loan terms and total cost of borrowing, and resolutions to these concerns will also need to be equally applied to the online and mobile environment. Especially since this market is expected to grow significantly, this parity of protection for consumers is critical now and in the future.

2. **New/Alternative loan products**
   The loan product environment is rapidly changing. We support the two consensus recommendations of the panel.

Until there is a real alternative to high fee payday loans these high cost loans will continue to harm our communities, our families and ultimately the entire economy. There is an urgent need to find real solutions. The government needs to take a leadership role.

While out of the scope of the panel's mandate, and involving federal legislation and collaboration, new, safer loan and financial products for low-income people are badly needed and the Ontario Government should consider how to lead this thinking into action. For example, alternativeinstitutionscould be supported or created, like credit unions and postal banking, to offerlow-cost, short-term loan products at much lower interest rates. This is already happening in other Canadian jurisdictions. VanCity in BCoffers a product that is much fairer to the consumer, where a borrower can borrow $100, and, if they pay it back in two months, they pay only $2.38 on the loan.

3. **High-frequency repeat borrowing**
   Our experience is that people are most often repeat borrowers. There is an urgent need to study the current environment of repeat borrowing and roll-over loans.

ACORN Canada supports both consensus positionsin relation to high-frequency repeat borrowing: the introduction of a requirement for lenders to offer voluntary extended payment plans triggered by a period of repeat borrowing; and a requirement for licensees to provide customers with a list of licensed, not-for-profit credit counseling agencies.

To avoid high-frequency repeat borrowing we believe that other essential protections for vulnerable low income families are urgently needed. They include:

- Concurrent loan restrictions across lenders
- A waiting period between loans
- A limit on the number of loans a borrower can take out annually

The panel agreed that more data was necessary to determine if and how such provisions should be enacted in the Ontario market. We believe that this should be an urgent priority for the government.

Our experience shows that concurrent loans across lenders are common and equally as problematic as rollovers by a single lender. The lack of a restriction on concurrent loans across lenders also nullifies any effect of invoking waiting periods or limiting the number of loans annually.

A very common situation is: 1st stop Money Mart, 2nd stop, smaller lenders.

The solution to across industry concurrent loans is the creation of a real-time database that enables lenders to check outstanding loan status with all lenders (not just within their own business) of applicants prior to approving loans. The proposed Loan Activity Report form will not meet this need, nor will it provide sufficient baselinedata about borrowing patterns to inform this decision. Alternative means of gathering baseline borrowing patterns data is therefore needed urgently, and should be seen as a first step towards an eventual real-time data system, if deemed appropriate based on the objective evidence related to both borrowing and lending patterns.

- A requirement for lenders to disclose the cost of lending in the APR format: We believe that this is a simple and effective step that would benefit borrowers. Most other Canadian provinces require this information be provided in clear and easy to understand ways, as do most jurisdictions in the United States and Europe. Ontario payday lenders who operate in other jurisdictions therefore already provide this information to their customers outside of Ontario. There is no evidence to show that this has harmed their business. We believe this should be required in Ontario.

4. Data requirements, monitoring, and enforcement

We support the panel consensus recommendations to authorise the Registrar to inspect unlicensed lenders and loan brokers; and, to consider how to facilitate access to compensation for borrowers who have been harmed by violations of the Act.We strongly urge the Government of Ontario to proceed with these recommendations at the earliest possible time.

We also support the panel consensus recommendation to obligate lenders to provide the Registrar with data on their lending activity; and to establish a payday loan data working group to provide advice on data requirements and analysis.

There should be a real-time loan tracking system established ASAP! We believe it needs to be a priority that is implemented ASAP.

Proposed Loan Activity Report: The panel recommended that four purposes for data inform the data collection framework: 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 draft proposed Loan Activity Report represents a first step in the data collection process.

We believe, however, that there needs to be enhancements to this first attempt at a tool to collect baseline aggregate data, particularly if it is to be used to inform policy development. All lenders ask a range of socio-economic and demographic questions of borrowers in their application forms. A number of these information items that are asked almost universally already by lenders (based on a review on online forms) would enhance the data and improve its application to the four purposes recommended above. These could be reported for unique individual clients, which the lenders have the capacity to do, and presented at an aggregate level, as is proposed in questions relating to loan activity (i.e. 3.2; 3.18; 3.19; 3.20):

- **forward sorting postal code:** to enable us to see where borrowers live and triangulate that information with other information related to social/health/economic conditions

- **year of birth:** to assess the age groupings of borrowers and consider how that impacts patterns, effects and interactions with other economic and social policy
- **source of income:** to inform a profile of borrowers; for example, are they employed, self-employed, receiving benefits?
- **net or gross pay:** to assess the proportions of low-income, middle-income and high-income borrowers
- **banking institution:**to assess the banked-status of borrowers, for example, are they banked or unbanked, do they use banks or credit unions or other institutions? (the actual bank names would not be necessary)

Other data that is commonly collected by lenders, and which could potentially be required, which would also help fill out the profile of borrowers and borrowing patterns at an aggregate level include: home owner or renter; mortgage or rent commitment; duration at employer.

5. **Maximum total cost of borrowing**
   We agree that the cost of borrowing should be determined on the affordability for consumers, fairness and access for consumers, and taking into account the relationship of the economic wellbeing of individuals to communities and the long-term impact that payday loans may have on key social outcomes.

We support the consensus recommendation that a requirement to review the price cap every five years or less, concurrent with the full review of the Payday Loan Act; and, that in setting the price cap, external advice be received from a broad range of stakeholders, including industry, consumer advocates, community agencies and credit counsellors.

It will be critical to fairness and transparency to ensure that industry costs are robustly analyzed, and reflect the majority of lender practices that may affect costs – previous research that led to the current price cap of $21 on $100 was based on a very small sample size of lenders – and takes into consideration evidence from other Canadian jurisdictions to assess how effective lower price caps have been in other provinces to providing consumer protection.

In other jurisdictions, like Manitoba, the utility board set the rate. This is a more transparent way of setting the rate and ensuring a robust analysis. Manitoba has a strong payday lending business with the rate of $17 on $100.

6. **Financial education and awareness**

We support the government to act on the recommendation that a working group be struck 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.

We believe that financial literacy and education is essential, and although the Payday Lending Education Fund Corporation (PLEFCO) was inactive - indeed made a decision to dissolve - the need for this fund remains critical. Consideration of how best to use the fund in the future must be undertaken and must take into consideration of a broad range of stakeholders, not least consumer advocates, community agencies serving vulnerable populations at risk of falling into payday lending indebtedness cycles and not-for-profit credit counselling agencies.

We believe that the mandate for the fund needs to be modernized to meet the current social and economic conditions of our citizenry and to complement and/or enhance the existing financial literacy and education services available to Ontarians through other non-governmental and governmental programs. As such, we also strongly urge the government to act on the consensus recommendation of the panel to maintain the clauses establishing the Ontario Payday Lending Education Fund and designating the Ontario Payday Lending Education Fund Corporation.

7. **Future review of legislations and regulation**
   We support the consensus recommendation to establish an advisory committee of payday loan industry representatives, consumer protection associations, community organizations and the Registrar - or their delegates - that meets regularly.

3). REMITTANCES

CONTEXT AND POLICY RECOMMENDATIONS

- Every year, millions of foreign-born Canadians send money to family members overseas. Many of the companies that process these remittances charge enormous, predatory fees, often over 20% of the money sent. Money transfer companies and banks are making enormous profits at the expense of many people living in Canada who are sending money to friends and family living in some of the world's poorest regions.

- A recent survey by ACORN Canada showed on average people who send $100 or less are charged 13.26% compared to people who send over $500, who are charged on average 1.84%. Of the 186 survey participants who reported how much they sent per transaction:
    - 60 reported they sent $100 or less (32%)
    - 106 reported that they sent $200 or less (57%)
- The World Bank and the G8 promote a plan called "5x5". The goal was to reduce the price of transferring money via remittances from an average currently of 10% to an average of 5% and do so in 5 years by the target date of 2014.
- Policy Recommendation: That the total charges for sending remittances through money transfer organizations be capped at 5%.
- Policy Recommendation: Money transfer organizations be required to disclose the full cost of the remittances they offer. ***Critical: the exchange rate be disclosed.***

DEBTCOLLECTION

POLICY RECOMMENDATIONS AROUND DEBT COLLECTION

- Provincial governments should consider amending debt collection laws and regulations to ensure a collection agency includes a 1-2 page memo explaining to consumers their rights in these unique circumstances. The memo would be drafted and supplied by the relevant provincial/territorial consumer affairs agency in the jurisdiction where the consumer resides.
- Amending provincial debt collection laws and regulations so collection agencies must provide written notice before collection calls commence in every Canadian jurisdiction.
- Amending provincial debt collection laws and regulations so once it is known a consumer contacted is not the debtor, attempts at collection must end in every Canadian jurisdiction. - All Along the Watch Tower Page 8
- Amending provincial debt collection laws and regulations so consumers have the right to stop collection calls and request subsequent communication by other means in every Canadian jurisdiction.
- Every call between debt collector and consumer should be recorded, for the protection of all parties and to ensure industry best practices.
- The relevant provincial/territorial consumer affairs agency should implement random "spot checks" on collection agency telephone conversations by obtaining recordings from agencies. Any tampering would result in large administrative monetary penalties up to an immediate license suspension.
- Provincial governments should consider amending debt collection laws and regulations to amend or remove the exemption now enjoyed by lawyers.
- Provincial governments should consider amending debt collection laws and regulations to introduce annual transparency reports related to debt collection complaints. These reports would publicly outline how many complaints were brought forward against each individual collection agency, as well as against each original creditor, during the previous year.

- Provincial governments should consider exploring the opportunity for debt collection agencies to contact clients by email, once the debtor’s identity and the validity of the overdue account have been verified.