January 4, 2024

ACORN's submission

ACORN Canada is a national community union of low- and moderate-income people with 31 elected chapters in 14 cities across the country.

ACORN would like to take this opportunity to respond to the consultation on cracking down on predatory lending faster by further lowering the criminal rate of interest and increasing access to low-cost credit. The response is provided based on the questions raised.

Section 1: Access to Low-Cost, Small-Value Credit

1. What are the features of credit products that can help Canadians improve their financial positions?

Low- and moderate-income Canadians face systemic barriers in accessing fair credit products. Many Canadians fall into a vicious cycle of debt due to lack of access to fair credit options and this is mostly due to inability to meet basic needs such as groceries, rent etc. or unforeseen circumstances such as funeral costs or emergency car repairs.
Therefore, credit products need to be such that they meet the following aspects -

- Accessible to people, especially those who face systemic barriers such as people on low- and moderate-income, persons with disabilities, single women, racialized, indigenous and seniors, among others.
- **Low-cost**. The annual interest rate needs to be low. Unfortunately, there is no definition of "fair credit". ACORN's report divided it into these categories:
    - Low: 0-9%
    - Moderate: 10 -20%
    - Medium: 21 - 30%
    - High: 31-45%
    - Extremely high: More than 45%
- The access to fair credit needs to be not conditional on making profit! There should be some wrap-around services on financial counselling provided if requested BUT note that financial literacy or counselling without systemic changes has very LIMITED value!!
- Low-cost credit options need to be available as short-term small dollar-credit of $200-1,000 to meet certain immediate needs such as paying the rent or buying groceries as well as medium term loans in the range of $1,100-$5,000.
- Credit score should not be the basis for ascertaining the person's access to such credit as that is one of the key drivers of pushing people to take out predatory loans. In fact, this program should be designed on need, not on a for-profit financial model that aims to make profit.
- The product should disclose very transparently the amount the borrower needs to pay biweekly/monthly and the interest rate being charged and the total money the borrower will be paying by the end of the loan term.
- The product should be supplied by the government, or community development non-profit corporation or by the banks' non-commercial arm, or a non-profit. It should NOT be supplied by a financial entity focused on making money.

- The process of providing the loan needs to be convenient and fast enough so as to discourage people from going to predatory lenders.

The market caused this problem, it cannot solve this problem. This is a market failure!

2. What protections from unreasonable fees for credit products, including payday lenders, could help Canadian consumers?

Optional products such as insurance are often pushed by payday lenders in addition to the cost of the loan without the borrower being aware of it.

Capping the interest would be the most important protection inclusive of all fees and penalties and insurance.

Further, including accessible ways to complain if people think they are being charged anything extra or cheated. Currently, it's very difficult for people to even understand the interest they are being charged.

3. What marketing techniques target vulnerable Canadians into taking on high-cost debt, and what measures would protect Canadians from deceptive advertising?

There are several marketing techniques adopted by high-cost lenders to target vulnerable Canadians. One of the key tag lines used by these lenders is - easy, no checks and fast - to attract people in vulnerable situations as people are often left with no choice when the situation is desperate and money is needed fast. Often the payday lending stores are clustered in low- and moderate-income neighbourhoods and the process of getting the loan is convenient and fast. With increased digitisation, many of these lenders are available online and most of these loans are a click away.

Many of these lenders also encourage borrowers of short-term payday loans to go for higher amounts of loans such as installment loans which are much more expensive. Further, the full cost of borrowing is most often never explained. borrowers are only explained the amount of installment to be paid biweekly or monthly. There have also been instances when lenders entice borrowers to take out the loan to improve their credit score but that never happens.

Having a complaint mechanism for high-cost loans which is easily accessible can play an important role in ensuring that people can hold these lenders accountable. At present, very few provinces have such mechanisms and those that do are not effective. Also, just like payday loans where information is available to some extent, more information needs to be made available about the cost of borrowing and functioning of installment loans as they have become more common.

However, doing this without creating a low-cost alternative will have limited benefits.

4. How could all types of credit lenders better provide Canadians with information on the costs of credit products, including associated fees and interest?

- Transparently disclosing the cost of borrowing including cost of any optional products.
- Information about who the borrower can reach in case they wish to file a complaint.

5. What barriers do Canadian consumers face in accessing low-cost, small-value credit?

The system has failed low-and-moderate income people in this respect. It is beyond a problem with barriers. Very few products actually exist that would help the group of people that need these products most. The biggest barrier to the needed change here is the historic lack of will of the government to create effective solutions; and the desire of the government to rely on financial for-profit entities to solve this problem.

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ACORN conducted a survey focusing on the availability of and awareness about low-cost credit options among low- and moderate-income Canadians. With respect to credit options, following are the two key findings of the report:

- A vast majority i.e. 87% of respondents said that they were not aware of any medium or low interest credit options (annual interest less than 30%) or other sources of emergency funds for people with a low or moderate income who can't access credit from the major banks (it excludes credit cards and lines of credit from mainstream banks/credit unions). Hence, the main issue is the complete lack of any fair credit option that low- and moderate-income people can access.
- Further, respondents were asked if they applied for the different types of banking products and whether they received them. These included a line of credit, small loan, credit card, overdraft protection (OP), removing holds on cheques (RHOC), no fee accounts (NFA). The number of people who received a particular banking product is noticeably lower than those who applied for it. The difference was found especially pronounced in case of small loans, overdraft protection and credit card - all of which can be extremely helpful in case of a financial crisis.
- In fact, a previous rejection from the bank (46%) was cited as one of main reasons for not using regular banking/financial services.

6. What barriers do financial institutions, banks, and credit unions in particular, face in increasing their offerings for low-cost, small-value credit to a broader consumer base?

Desire to create a product that doesn't make profit. Banks are mandated to make profit for shareholders. Hence the government needs to backstop low or zero interest loans for low-to-moderate income people or the government needs to support community development or non-profit agencies to create low or zero interest products.

Credit unions try but the people who need these products rarely use credit unions. As one famous ACORN member once said "I bank with Money Mart".

7. What could various levels of government, including provincial governments, do to improve, promote, and support access to low-cost, small-value credit?

The federal government must create a federally funded Fair Credit Benefit so that all low-income people have access to low-cost credit options in case of emergency. This could be administered by the banks, backstopped by the government or delivered with a community development agency or non-profit agency.

Provincial governments need to explore creating government banks so they can create their own alternatives BUT the federal government should NOT wait for this.

Provincial and local governments should create rent banks that have options for it to be treated like a grant (similar to Toronto but with better eligibility).

8. What could financial institutions, banks, and credit unions in particular, do to improve, promote, and support access to low-cost, small-value credit?

Financial institutions must provide low-cost credit to people, especially those who face systemic barriers in accessing fair credit. This provisioning should not be based on the credit score as that is one of the major reasons why people are unable to get access to fair credit.

Banks need to create this product out of their non-profit making arm. Or better the government should find a non-profit or community development non-profit to deliver it.

9. Are there practises to improve the availability of low-cost, small-value credit within Canada or abroad that could be learned from?

Good Shepherd, a non-profit in Australia, offers a good example which started a no-cost or 0% interest loans up to $2,000 for essential goods and services including household essentials, car repairs and registration, medical & Dental, technology, housing and education.

Canada Post-TD bank product provided a decent alternative to payday lenders; however, the product was discontinued.

Europe should be explored to understand the different options as well. Canada models its credit system too much off the USA which has so many predatory lenders.

Section 2: Further Lowering the Criminal Rate of Interest and Payday Lending Exemption

10. How much further beyond 35 percent APR should the criminal rate of interest be lowered?

ACORN is encouraged to see the lowering of the criminal interest rate for installment loans. But for larger amounts of loans, even 35% APR is too high. We want to see 20% APR plus alternatives via government and non-profits that go lower than this.

As per a report by the National Consumer Law Centre, in the US, for a $2,000, two-year installment loan, 43 states and DC cap rates, at a median of 32.5% APR.

Many states in the US recognize the need for lower rates on larger loans by adopting tiered interest rate caps. For example, for loans up to $10,000, Alaska allows 36% on the balance up to $850, and 24% on the remainder, with no additional fees. For a five-year $10,000 loan the borrower will pay $7,766 in interest. If the state allowed 36% on the whole amount, the same loan would cost the borrower $11,680 in interest—almost $4,000 more.

The California State Legislature passed the Fair Access to Credit Act, which blocks lenders from charging more than 36% on consumer loans of $2,500 to $10,000.

ACORN would like to see the criminal rate of interest lowered to 20% APR. Maximum rate should include all associated lending costs: fines, fees, penalties, insurance, or any related cost.

11. How can the government improve enforcement of the criminal rate of interest to protect Canadian consumers?

Enforcement is a critical piece because if any changes are made but not enforced, it defeats the purpose and the intended benefit will not flow to the people.

Two important technical changes must be made to section 347 of the Criminal Code to permit appropriate enforcement of violations by Crown prosecutors. The attorney general fiat requirement (subs. 347(7)) and the actuarial calculation requirement (subs. 347(4)) both must be removed. Both are considerable impediments to prosecution of criminal interest rate violations and effectively make prosecution under section 347 impractical and therefore non-existent. It is in this grey zone of non-enforcement where the high-cost lending industry grows new products that violate the criminal interest rate.

12. Should further revisions to the *Criminal Code*'s provincial or territorial-requested payday lending exemption be considered?

The APR is a critical way to measure and compare the cost of a loan, because it takes both interest and fees, and the length of the repayment period, into account.

The NCLC report recommends an airtight 36% interest rate cap for smaller loans.

ACORN recommends repealing section 347.1 which provides an exemption for payday lending by transferring responsibility to the provinces. The Criminal Code maximum rate of interest must include all consumer credit in the market today or in the future, including payday lending.

The 2007 decision to exempt payday lenders from adhering to the Criminal Code's maximum interest rate, and the transfer of regulatory responsibility for payday and other high-cost lending to the provinces, resulted in patchwork of inadequate regulation and enforcement across the country and enabled payday loan interest rates to soar, topping 600% in some jurisdictions.

Recent reforms to predatory lending in numerous provinces have improved consumer protection but these reforms do not go far enough.

The repeal of section 347.1 and the consequent re-inclusion of payday loans under section 347 of the Criminal Code should be pursued over a transition period in which the federal government prepares a federally-backed low-income credit product, and supports the creation of safe/affordable alternatives.

It would be more important to create alternatives first!

Thank you for considering our submission.

Yours sincerely,

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