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August 14, 2015

An Open Letter to Ontario's Minister of Government and Consumer Services

The Honourable David Orazietti
Minister of Government and Consumer Services
c/o Consumer Policy and Liaison Branch
Ministry of Government and Consumer Services
777 Bay St, 5th Floor
Toronto, ON M7A 2J3
Via Email: consumerpolicy@ontario.ca

Attention: Consumer Financial Protection Consultations

Dear Minister Orazetti,

Re: Comments on "Strengthening Consumer Financial Protection"

Of the many issues addressed in the consultation document ("Strengthening Consumer Financial Protection"), its companion Discussion Guide, and the related background report ("Strengthening Ontario's Payday Loans Act," May 2014), we focus here on recommendations we believe will promote greater equity in access to financial services. For context, we provide our understanding of the primary drivers of the demand for these fringe financial services and make explicit our guiding principle.

PRIMARY DRIVERS OF THE DEMAND FOR FRINGE FINANCIAL SERVICES

We believe the demand by low income Ontarians for high cost, short term credit from non-bank financial service providers arises out of six situations:

1) Chronic poverty;
2) Need for emergency funding (to pay unexpected health care costs, for example);
3) Unexpected delays in income payments (but need for food and/or need to meet fixed payment due dates for rent, utilities, and the like);
4) Low financial literacy combined with opaque contract information;
5) No access to other forms of credit; and
6) Better service (non-judgmental treatment of clients, for example) and convenience of payday loans and other similar financial products and services.

While policies to address chronic poverty are well beyond our current scope, we take this opportunity to underscore the socially costly consequences of the chronically poor forced to pay exorbitant costs for short-term loans. Additionally, low income Ontarians confronting unforeseen financial emergencies should have better recourse to a source of lower-priced short term credit such as that which is available from "rent banks" operating in Toronto or the "Crises and Budgeting Loans" available to those on social assistance in the United Kingdom (https://www.gov.uk/budgeting-loans) . We would therefore recommend additional initiatives in this area.

GUIDING PRINCIPLE

We believe in the principle that all Ontario consumers should have equitable access to short term consumer credit. Specifically, we believe lower income Ontarians should be able to access short term credit on terms that are comparable to those which are available to higher income Ontarians. Where higher income Ontarians have access to competitively priced short-term credit from carefully regulated banks and credit unions, many lower income Ontarians are forced into a lightly or unregulated, usuriously priced, alternative or fringe financial market for this same service. Where higher income Ontarians are assured of privacy protection, for example, when dealing with a bank or credit union, lower income Canadians dealing with many fringe financial service providers have no such assurance. This two-tiered system of financial services delivery is socially and economically undesirable.

RECOMMENDATIONS

To ensure Ontario achieves equity in access to short term credit, we urge the Ontario government to enact legislation that will

R1) ensure the maximum total cost of borrowing (the "price cap") is consistent across different maturity terms of the loan, with no penalty for early payment,

R2) restrict contract options, limiting payments to an affordable percentage of a borrower's income and spreading costs evenly over the life of the loan,

R3) ensure easy access to information about a clearly identified complaint contact process,

R4) extend the cooling off period for cancelling a contract without penalty and without reason from 2 days to 7 days,

R5) create a data bank where all payday loans are recorded and accessed by all payday loan companies prior to providing the loan, prohibiting additional loans to any consumer who has one or two outstanding payday loans at the time of application, and

R6) require payday loan companies to encourage clients to get help with managing their debt.

To ensure success in achieving these legislative goals, we further encourage the Ontario government to

R7) expand the scope of coverage to include *all* fringe financial services, and

R8) require all suppliers of cash services and credit be licensed to operate as financial service providers and transfer oversight of this industry to the Financial Services Commission of Ontario.

R1. Ensure the maximum total cost of borrowing (the "price cap") is consistent across different maturity terms of the loan, including loans that are paid off early.

The current Payday Loans Act sets a maximum of $21 for every $100 borrowed but it does not specify the term to maturity. The cost of $21 on $100 borrowed for 1 week has an Annual Percentage Rate (APR) of 1095% while $21 for every $100 borrowed for 2 weeks has an APR of 548%, for example.[1] For consumers to be well informed about their choices, there must be "truth in lending;" the maximum total cost of borrowing must be standardized, inclusive of all fees, with the maturity term disclosed and accounted for in the cost.

Where $21/$100 appears to be informed by the estimated full cost of supplying these small dollar loans in 2008/2009, advances in information and communications technologies since that time can expectedly affect costs and may well warrant a lower regulated price. At a minimum, Ontarians need a reassessment of the cost of delivering these loans in the current financial environment.

In the interests of minimizing the loan costs to consumers and encouraging sound consumer financial practices there should be no penalty to early payment of these loans. With a cap on the "all-in" APR – instead of a cap on the absolute dollar amount of the loan – and no penalty for early payment, the cap on the total cost of these loans will be consistent, coherent and transparent.

R2. Restrict contract options, limiting payments to an affordable percentage of a borrower's income and spreading costs evenly over the life of the loan.

Current legislation prohibits rollover loans and the consultation document contemplates further restrictions (such as limitations on multiple loans and the like) as ways to reduce the consumer's risk of a debt trap. We are persuaded by the Pew Charitable Trusts research that suggests "payments above 5 percent of gross income are unaffordable."[2] Accordingly, we believe enforcing reasonably priced instalments over a longer period are a preferred contract alternative to the small dollar, lump sum loan. With an option of prepayment without penalty, a borrower would still have the same shorter term, lump sum payment opportunity.

R3. Ensure easy access to information about a clearly identified complaint contact and process.

Contact information posted in the store and included in the loan contract should include a telephone number to "live telephone assistance" at the regulatory agency where staff are available to answer questions "just in time" and to advise on next steps in the event the consumer wants to file a complaint.

R4. Extend the cooling off period for cancelling a credit application without penalty and without reason from 2 days to 7 days.

By lengthening the cooling off period consumers will have time to assess their alternatives fully including time to access live telephone assistance during week day business hours.

[1] Calculations made using the U.S. Office of the Comptroller of the Currency's Annual Percentage Rate Calculators at http://www.occ.gov/tools-forms/tools/compliance-bsa/aprwin-software.html.

[2] http://www.pewtrusts.org/en/research-and-analysis/reports/2013/10/29/payday-lending-in-america-policy-solutions

R5. Create a data bank where all payday loans are recorded and accessed by all payday loan companies prior to providing the loan, prohibiting additional loans to any consumer who has one or two outstanding payday loans at the time of application.

Creating a centralized database of clients of payday loans will allow the effective enforcement of a limit on the number of loans a client can obtain. A limit on the total number of payday loans a client can obtain at any given time will complement the existing legislation prohibiting rollover loans from any one service provider for limiting the debt a client can obtain.

R6. Require payday loan companies to encourage clients to get help with managing their debt.

Information about available debt counselling services should be readily available to all consumers of these financial services.

R7. Expand the scope of coverage to include *all* fringe financial services,

The market for non-bank financial services is expanding and delivery modes are increasing with the availability of credit on-line. In the small dollar consumer finance market, services now range from cash services (cheque cashing and money remittances), unsecured, high cost, short term loans (payday loans) to secured loans through instalment and pawn broking, and is expanding to include "title" loans (small dollar loans secured by the title to an automobile) and rent-to-own contracts that essentially extend credit for the purchase of semi-durable consumer goods (furniture, consumer electronics, etc). If the service is either moving cash or moving funds temporarily from a business providing credit to a consumer in need of a loan, then it is primarily a financial service and should come under appropriate financial legislation.

R8. Require all suppliers of consumer credit be licensed to operate as financial service providers and transfer oversight to the Financial Services Commission of Ontario.

We believe that protecting the public interest and enhancing public confidence in the broader financial system is necessary to ensure equitable, secure access to short term credit. These legislative goals require regulation beyond that currently afforded by the Consumer Protection Act. The discussion documents contemplate extending and expanding the mandate of the Registrar. Any expanded mandate risks duplicating the oversight structures and process already provided by the Financial Services Commission of Ontario. With the appropriate resources to support an expanded mandate to oversee these "fringe" financial service providers, FSCO has in place the structure, knowledge, and mechanisms to license, supervise and enforce legislation governing other financial service providers operating in Ontario.

The Black Creek Financial Action Network (BCFAN) is a multi-partner network working towards coordinating efforts among the many agencies providing financial information; advocating for the community on finance matters; sharing the best and promising practices aimed at building the capacity of service providers; and researching and evaluating financial programs and services. As members of this network, we have developed considerable expertise in financial issues affecting low income Ontarians in our work with low-income residents of the Black Creek community. We would be pleased to meet with you and share our experiences as they inform the types of questions on which you are reflecting.

Respectfully yours,

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