



CREDIT UNION CENTRAL OF CANADA

GOVERNMENT RELATIONS DEPARTMENT
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Mr. Reg Faubert
British Columbia Co-Chair
Alternative Credit Market Working Group
Consumer Measures Committee
C/O Office of Consumer Affairs
235 Queen Street
Ottawa, Ontario K1A 0H5

Ms. Anne Preyde
British Columbia Co-Chair
Alternative Credit Market Working Group
Consumer Measures Committee
C/O Office of Consumer Affairs
235 Queen Street
Ottawa, Ontario K1A 0H5

Dear Ms Preyde and Mr. Faubert

Credit Union Central of Canada (Canadian Central) is writing to outline the views of the credit union system in regard to a recently issued Consumer Measures Committee (CMC) Stakeholder Consultation Document entitled *A Proposed Consumer Protection Framework for the Alternative Credit Market*.

Canadian Central is the national trade association for credit unions in Canada outside of Quebec. Through their ownership of Canadian Central, the provincial credit union Centrals are able to provide their direct credit union members national services that include the last tier of system liquidity, participation in the clearing and settlement of

payment items through the Canadian Payments Association, participation in the Interac debit network and government relations.

The Canadian Central family of credit unions numbers 566, with just under 1,800 locations. Together, they serve 4.6 million members, and employ 20,000 people. Altogether, these 566 credit unions serve 951 communities across Canada. In 330 smaller towns, credit unions are the only financial institution. Assets of the 566 credit unions total approximately \$76 billion. If we add the Centrals and affiliated companies, that number grows to just under \$87 billion.

Canada's credit unions have watched, with interest, the emergence of a tier of substantially unregulated lenders providing consumers with short term credit in the alternative credit market (ACM). We agree that such institutions should be regulated in order to protect consumers using the services offered to this market segment. However, we believe that it is important that care be taken in crafting such regulations in order to ensure that lenders are able to do their business profitably and to serve this part of the market.

The submission that follows addresses - in order - the sixteen items set out for discussion in the CMC consultation document. Our answers reflect the consensus views of our members.

Canadian Central hopes that this submission is of use to the CMC and furthers your important work in developing a regulatory framework for the ACM. Canadian Central would be grateful if the CMC kept us informed of developments in this area as regulatory proposals are narrowed down into a package to be considered by the federal and provincial governments.

If you have any questions, please feel free to contact me.

Regards

David Phillips
Vice-President, General Counsel and Corporate Secretary
Credit Union Central of Canada

c.c.: David Clarke

1) Should there be an alternative maximum charge structure allowed specifically for small short-term loans?

Yes No

Comments: We agree that there should be an alternative maximum charge structure for small short term loans.

Currently, Section 347 of the Criminal Code does not provide a proper legal framework that permits small, short-term loans to be offered on a profitable basis. In fact, the definition of interest in Section 347 is so over-inclusive that it not only restricts lending to the small, short term market, it also restricts many valid commercial loans that need to be restructured in order to respect the letter of the law.

We also believe that Section 347 might be usefully amended so that administrative costs or service charges associated with granting loans do not form part of the calculation of the annual percentage interest rate. Often these costs are fixed and do not fall if a loan is for a small amount over a short period of time.

Clear and concise disclosure of interest, administrative and default charges to the borrower is as important as a maximum interest charge structure.

2) a) Should alternative consumer credit market loans be defined as loans for a maximum principal not exceeding \$1,500?

Yes No

b) Should alternative consumer credit market loans be defined as loans for a maximum term, regardless of extension or default, not exceeding 62 days?

Yes No

Comments / alternatives for a) and b): It is logical that if the alternative credit market is to be regulated as a separate sphere there must be appropriate parameters to define the market to be regulated. However, if governments are seeking to define the short term loan market for all financial institutions then the proposed thresholds may be too restrictive since, for traditional financial institutions, it is often unprofitable to service loans under \$5000.

3) Should there be a restriction on default and penalty charges that can be charged to a borrower of a small short-term loan? For example, the borrower of a small short-term loan could only be charged the NSF charges assessed by a financial institution.

Yes No

Comments: We agree that, in principle, there should be a limit on default and penalty charges; however, the example noted above appears to be very restrictive. Any such restrictions should reflect the size of the loan, the costs of doing high risk business and allow a lender to recoup

legitimate collection costs. Default and penalty charges should be outlined in plain language in lending agreements.

4) Should there be a clear and specific prohibition against misrepresenting the reasons for fees charged with respect to small short-term loans, such as the charge for a credit check where no credit check is performed?

Yes No

Comments: Such prohibitions should be clear in order to make it easier to comply with the law. Furthermore, such prohibitions must be enforced by the appropriate authorities.

5) Should jurisdictions ensure that cost of credit disclosure rules (commonly called “truth in lending” laws) apply to alternative consumer credit market loans? This would include disclosure of an annualized percentage rate (APR).

Yes No

Comments: Cost of credit disclosure rules must be uniform for all credit grantors operating in the same market area since such uniformity enables borrowers to make informed choices among available lending products.

However, an important question to be resolved is the manner in which ACM lenders can successfully estimate an annual percentage rate when many significant charges are routinely applied to overdue accounts after the loan has been made.

6) Should contract or disclosure documentation related to an alternative consumer credit market loan be required to include:

a) A plain language warning of the high cost of credit?

Yes No

b) Contact information for making a complaint to authorities?

Yes No

Comments on both a) and b): We believe that lenders should be required to disclose the cost of credit to borrowers in plain language. However, we believe that requiring the phrase “high cost of credit” may not be appropriate since the loan may be appropriately priced given the terms of the loan and the risk profile of the borrower.

We agree that contact information for making complaints to authorities could be of help to consumers, however, as contracts are becoming longer and more complicated it may be better if such information is provided in pamphlet form at the request of the consumer.

7) a) Should “rollovers” be prohibited in the alternative consumer credit market?

Yes No

Comments: There should be not be a blanket prohibition of roll-overs, however, it may be appropriate to limit the number of rollovers allowed and the fees that can be charged for each rollover. After such a limit is reached the lender might have to accept payment by installment.

b) Where a borrower cannot repay an alternative consumer credit market loan on its repayment date, should the lender be required to accept repayment by installment within the borrower’s ability to pay?

Yes No

Comments / alternatives: There should not be a blanket rule in this regard since it is unclear how a borrower’s ability to repay is determined.

8) Should the practice of “discounting” alternative consumer credit market loans be prohibited?

Yes No

Comments: If disclosure requirements are detailed enough then there should be no blanket prohibition on discounting.

9) Should the use of wage assignments be prohibited with respect to alternative consumer credit market loans? Note that wage assignments are already prohibited in some Canadian jurisdictions.

Yes No

Comments: There should be no blanket prohibition of wage assignments although it may be appropriate to set an upper limit for a wage assignment (e.g. as a percentage of an individual’s wage).

10) Should title loans, such as auto pawns, be prohibited?

Yes No

Comments: If an alternative credit market loan is to be defined as an unsecured loan, valued under a certain amount and within a certain term, then title loans should be prohibited.

11) Should rules respecting prohibited debt collection practices be applied to alternative consumer credit market loans, regardless of whether collection activities are provided by third party debt collectors? Note that some Canadian jurisdictions already apply such rules to both “in house” and third party collection activities.

Yes No

Comments: A level playing field in regard to debt collection practices is desirable. Such practices should be defined in such a way as to strike a careful balance between the rights of the lender and the rights of the borrower.

12) With respect to contact information for independent credit counseling services, should those providing small short-term loans be required to:

a) Provide such contact information within contract or disclosure documentation?

Yes No

b) Prominently post such contact information within their outlets?

Yes No

Comments on both a) and b): There was general agreement that ACM lenders should make contact information for counseling services easily available to their customers, however, regulations should not be too prescriptive on how such information is provided. Such information may be usefully provided in leaflet form.

13) Should those providing small short-term loans be required to provide their customers with copies of loan contracts, receipts for payments, and statements of account for installment payments?

Yes No

Comments: We believe that the lenders should not be required to provide their customers such documentation if their customers do not desire it. However, we believe that such lenders should be required to maintain copies of the above mentioned documentation and make them available to the borrower on request.

14) Should borrowers in the alternative consumer credit market be given the right to rescind a loan without cost (repayment of principal only) by the close of the next business day following the day on which the loan was taken out? Note that a 48 hour rescission right is already in place in Québec.

Yes No

Comments: A “no strings” right to rescind would be inappropriate and may invite abuse. A right to rescind should be accompanied by rules that allow a lender to recoup “out of pocket costs” and reasonable interest charges but should not allow lenders to impose an unwarranted punishment on their customers.

15) Relating to small short-term loans, should the reporting of all information, including default information, to the mainstream credit reporting system be prohibited?

Yes No ✓

Comments: Even if loans are small and for a short duration they are still a form of lending and therefore should be subject to reporting to the mainstream credit reporting system. If the aim of drafting a consumer protection framework for the small short-term market is to bring such lenders into the realm of respectable financial institutions then they should not be prohibited from using the mainstream reporting system.

16) Should lenders offering small short-term loans be prohibited from co-locating with or within gaming facilities (i.e., casinos)?

Yes ✓ No

Comments: There are many media reports of a link between gambling and short term, high cost borrowing and measures such as those proposed above may reduce gambling induced borrowing.

17) Are there other items not included above that would need to be addressed within a consumer protection framework for the alternative consumer credit market? If so, why?

It is imperative that resources are made available to help enforce any ACM consumer protection framework that is developed and implemented.

18) What would be the cumulative impact of addressing any or all of the items included above on the alternative consumer credit market? Please comment on the impacts to both industry members and consumers.

It is likely that the cumulative effect of these measures will result in a reduction in the availability of short term credit issued by ACM lenders to consumers with a high credit risk. However, it is likely that the framework would offer better protection for those that still participate in the short term market.

19) Other comments.

It is important that, when drafting a consumer protection framework to govern the small short-term market, care be taken to ensure the protections are not so burdensome that they make the business unprofitable and force lenders to exit the market. It is also important to ensure that the consumer protection framework does not choke off future product innovation and produce unintended consequences that reduce the ability of lenders to service their market.