Service Alberta

Payday Loan Business Regulation Consultation

A Report on Stakeholder Input by the Payday Loan Business Regulation Working Committee

June 2009

Government of Alberta

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1.0 Introduction

The Payday Loan Business Regulation Project is a legislative project of the Consumer Services Branch of the Ministry of Service Alberta. Its objective is the development of policy for the regulation of Alberta's payday loan industry that protects consumers from excessive rates and exploitive or abusive practices while allowing efficiently-run businesses to operate profitably.

To this end, Service Alberta formed a cross-ministry Payday Loan Business Regulation Working Committee ("Working Committee") in spring 2007.

In market research carried out in Alberta from March 2008 to January 2009:

1. The Working Committee conducted a public consultation in March–April 2008 in which it mailed a discussion paper/questionnaire to 67 clients and stakeholders and posted the document on its website.

2. Later, the ministry hired market research consultant Leger Marketing of Edmonton to conduct telephone surveys and organize focus groups of payday loan users.

Here is what was done and the volume of responses received:

Public consultation

The Working Committee mail-out included all 17 payday loan businesses operating in Alberta as of February 2008, plus consumers who contacted the ministry over the previous three years, industry and consumer associations, research organizations and counselling agencies.

In addition, project staff held meetings with industry and consumer representatives on April 1 and 3, 2008 in Edmonton and Calgary.

The working committee received 28 hard copy responses and 32 online responses. Thirty of the respondents identified themselves. The remainder were anonymous, and statistical summaries of their responses are given in Appendix B.

Of the identifiable respondents:

- 12 are individual consumers or consumer organizations;
- 10 are payday loan businesses;
- 2 are credit counselling agencies;
- 3 are "other stakeholders."

Leger Marketing

Leger's research, conducted in December 2008-January 2009, consisted of two components:

1. A telephone survey of 700 Albertans including 300 users of payday loans and 400 non-users[1], aged 18 years and over. Results for users are statistically accurate to within ± 5.7 percentage points, 19 times out of 20. Results for non-users are statistically accurate to within ± 4.9 percentage points, 19 times out of 20.

2. Four focus groups, including three conducted with payday loan users (one in Edmonton, one in Calgary and one by conference call covering smaller centres) and one conducted with non-users in Edmonton.

[1] Consumers who have never obtained a payday loan were included in the research to obtain information about perceptions of the industry and its clients.

2.0 Public Consultation; March–April 2008

2.1 Stakeholder Responses – An Overview

2.1.1. Maximum Rates

2.1.1.1. Consumers

Most of the consumers and their advocates said they would prefer, for simplicity's sake, to see the maximum rate set as a percentage or dollar amount of the loan. One exception is a senior citizens' association. This association would like to see the government set a limit of $15 per $100 on the first $300 of the loan, $10 per $100 on the next $500 and $7.50 for any amount above that.

Credit counselling agencies are also in favour of a tiered system. "These loan schemes take advantage of those least able to afford it," says an outreach program for street people. "If indeed the service is required, then it needs to be better controlled – it is a circle whereby one never gets the loan paid off."

2.1.1.2. The Industry

Most payday loan businesses that responded to the public consultation are in favour of a regulated maximum rate.

One payday lender says it opposes interest and fee limits because the current level of competition in the market is healthy and the "normal range" of rates charged in Alberta is consistent with those charged in other provinces. "We believe that a market-based approach to rate-setting is the most effective way of setting rate caps."

Another industry stakeholder did not say in the discussion paper what rate it would like to see the maximum set at, it charges interest and fees of as high as $41.50 per $100 based on information received by regulators or disclosed in writing on disclosure statements to borrowers. In 2006, an Edmonton television journalist posing as a first time borrower reported he was charged $52.70 per $100.

The stakeholder would like to see the government set a maximum fee as a percentage of the loan, i.e.: $23 per $100 lent. While it does not disclose what rate cap it would like to see set, the $23 figure is consistent with figures it has said publicly that it would like to see charged.

Several small payday lenders said they would like to see the maximum set between $30 and $35.

2.1.2. Consumer Protection Regulations

2.1.2.1. Consumers: support organizations

With one exception, consumers and the agencies or associations that support them were unanimous in their preference for federally approved provincial regulation. One Calgary client responded in favour of provincial regulation without federal approval, though she did not disclose why. All these respondents supported all or most of the eight proposed consumer law requirements/prohibitions, including banning rollovers and discounting and requiring plain language contracts. However, only eight individuals participated in the public consultation, an insufficient number to show where consumers stand on payday loan issues.

2.1.2.2. The Industry

The payday loan business respondents are unanimous in their desire for some form of industry regulation, and almost universally in favour of creating this with federally approved legislation. The sole exception is one payday lender in a small Alberta city that prefers regulation without federally approved legislation.

Most lenders embrace the concept of federal approval because the federal government is delegating its payday lending interest-setting authority to the provinces and territories. The federal government created this process as a way to exempt the industry from the usury section (section 347) of the *Criminal Code of Canada* which sets the maximum rate at 60 per cent. Payday lenders charge well above that amount.

To most payday lenders, the point of obtaining regulation is to avoid exposure to the usury law. It is possible that clients who oppose seeking federal approval have failed to grasp this legal nuance. "To regulate the industry without federally approved legislation leaves the provincial government in the awkward position of regulating transactions that allegedly contravene the *Criminal Code*," one industry stakeholder says. "Furthermore, there would be no limit on the amount of fees charged to consumers."

The questionnaire asks respondents to indicate their positions, by checking either "Yes" or "No," on the following eight requirements/prohibitions listed as potential consumer protections:

- requiring payday lenders to post security to qualify for a licence
- restricting the fees that a lender can charge a client who defaults on a loan
- banning discounting
- banning rollovers
- requiring plain-language contracts
- setting a maximum amount that the lender can lend as a percentage of the borrower's net income
- allowing "cooling off" periods
- limiting the borrower's obligation to repayment of principal only when the lender has violated the regulations

Two major industry representatives both favour banning rollovers (see Appendix A - Glossary), requiring plain language contracts, and allowing "cooling off periods" in which the borrower can cancel the loan within a specified amount of time without penalty.

The two organizations take different positions on discounting (see Glossary), with one favouring the practice and the other opposing it, and on restricting the fees that a lender can charge a client who defaults on a loan, with one supporting such a regulation and the other opposing it.

Both are against requiring payday lenders to post security to qualify for a licence and setting a maximum amount that the lender can lend as a percentage of the borrower's net income.

Most of the industry's smaller competitors support a ban on rollovers and a requirement for plain-language contracts. Two companies that oppose the ban on rollovers added that their opposition to such a ban is qualified. One Edmonton-area lender says it is in favour of restrictions aimed only at preventing the consumer from borrowing progressively higher amounts of principal. A competitor, also located in the Edmonton region, notes that unforeseeable events may prevent a borrower from paying the loan off on the due date. "After the client's third rollover, it should be required that at least the minimum payment should be made plus at least 10 per cent of the loan," this competitor says.

2.2 What the Respondents Said About Regulation Maximum Rates

2.2.1. Maximum Rates

Client/Stakeholder	Comments
PAYDAY LOAN INDUSTRY	
”Respondent A”	• in favour of regulated maximum rate • wants gov’t to set a maximum fee as a % of the loan
“Respondent B”	• in favour of regulated maximum rate • wants gov’t to set a maximum rate of $35 per $100 borrowed • charges $25/$100 at present. “If it was any lower, we would not be able to service some parts of the province
“Respondent C”	• in favour of regulated maximum rate • wants tiered system where max. fee depends on size of loan • charges $25/$100; wants $30/$100 limit
“Respondent D”	• in favour of regulated maximum rate • wants $23/$100 max rate “plus regulatory fees”
“Respondent E”	• in favour of regulated maximum rate • wants gov’t to set a maximum fee as a % of the loan • “Set rates that will allow competition to level them out and not force out the small stores”
“Respondent F”	• in favour of regulated maximum rate • wants gov’t to set a maximum fee as a % of the loan • wants $30/$100 limit
“Respondent G” (U.S. investor)	• in favour of regulated maximum rate • wants tiered system where max. fee depends on size of loan • wants $30/$100 limit for 1st $300
“Respondent H”	• in favour of regulated maximum rate • wants government to set a maximum fee as a % of the loan • took no position on what amount a max. rate should be, but uses $23 per $100 for loan calculations that it uses for illustrative purposes • cautions against placing undue weight on rates allowed in U.S., given the different labour costs and tax rates
“Respondent I”	• opposed to the setting of any maximum rate • “a market-based approach to rate-setting is the most effective” • Adds that if gov’t sets rate cap, it should be high enough to allow most payday lenders to remain in business
“Respondent J” (Internet loans)	• in favour of regulated maximum rate • wants gov’t to set a maximum fee as a % of the loan • tiered system would be more costly; more confusing to clients
CONSUMERS; CONSUMER ORGANIZATIONS	
“Consumer A”	• in favour of regulated maximum rate • wants tiered system where max. fee depends on size of loan • if gov’t opts for setting max. fee per $100, wants $15/$100 limit
“Consumer B”	• in favour of regulated maximum rate • wants rate limit of 60% as per s. 347 *Criminal Code*
“Consumer C”	• in favour of regulated maximum rate • wants gov’t to set a maximum fee as a % of the loan

“Consumer D”	• in favour of regulated maximum rate • wants gov’t to set a maximum fee as a % of the loan
“Consumer E”	• in favour of regulated maximum rate • would like to see max. rates based on National Money Mart fee schedule
Consumer F”	• in favour of regulated maximum rate • wants gov’t to set a maximum fee as a % of the loan • appears comfortable with $20/$100
“Consumer G”	• in favour of regulated maximum rate • wants tiered system where max. fee depends on size of loan
“Consumer organization A”	• in favour of regulated maximum rate • suggests max. rate of 60% plus a $10 fee and a fee of 5% of principal
“Consumer organization B”	• in favour of regulated maximum rate • wants rate limited to 100% APR • wants tiered system consisting of $5/$100 limit on 1st $300 of loan; $2/$100 on next $200 and $1/$100 for any amount above that
“Consumer organization C”	• in favour of regulated maximum rate • wants tiered system consisting of $10/$100 limit on 1st $250 of loan; $20/$100 on next $250 and $10/$100 on next $250 after that
“Consumer organization D”	• in favour of regulated maximum rate
“Consumer organization E”	• in favour of regulated maximum rate • wants tiered system consisting of $15/$100 limit on 1st $300; $10/$100 on next $500; and $7.50/$100 for any amount above that
CREDIT COUNSELLING AGENCIES	
“Agency A”	• in favour of regulated maximum rate • wants tiered system consisting of $20/$100 limit on 1st $300; $15/$100 on next $300; and $10/$100 for any amount above that
“Agency B”	• in favour of regulated maximum rate • wants gov’t to set a maximum fee as a % of the loan
OTHER STAKEHOLDERS	
“Lender association A”	• in favour of regulated maximum rate • wants tiered system consisting of $20/$100 limit on 1st $300; $17.50/$100 on next $700 and $15 on remainder of loan”
“Lender association B”	• in favour of regulated maximum rate • wants tiered system consisting of $20/$100 on 1st $200; $17.50/$100 on next $500; and $15/$100 for next $500 above that
“Respondent C” (Alberta lawyer)	• in favour of regulated maximum rate • wants tiered system consisting of $20/$100 on 1st $500; $15/$100 on next $1,000 and $10/$100 for amounts above that

2.2.2. Consumer Protection Regimen

2.2.2.1. How should the Alberta government regulate the payday loan industry?

Client/Stakeholder	Maintain the status quo	Regulate the industry with federally approved legislation	Regulate the industry without federally approved legislation
PAYDAY LOAN INDUSTRY			
"Respondent A"		✓	
"Respondent B"		✓	
"Respondent C"		✓	
"Respondent D"		✓	
"Respondent E"			✓
"Respondent G"		✓	
"Respondent H"		✓	
"Respondent I"		✓	
"Respondent J" (Internet loans)		✓	
CONSUMERS AND CONSUMER ORGANIZATIONS			
"Consumer A"		✓	
"Consumer B"		✓	
"Consumer C"		(✓)[2]	
"Consumer D"		✓	
"Consumer E"		(✓)[3]	
"Consumer F"		✓	
"Consumer G"			✓
"Consumer organization A"		✓	
"Consumer organization B"		✓	
"Consumer organization C"			✓
"Consumer organization D"			✓
"Consumer organization E"		✓	

[2] "Consumer C" indicated only that he supports regulation. He did not say how.
[3] Ibid

CREDIT C0UNSELLING AGENCIES			
“Agency A”		✓	
“Agency B”		✓	
OTHER STAKEHOLDERS			
“Lender association A”		✓	
“Lender association B”			✓
“Respondent C” (Alberta lawyer)		✓	

2.2.2.2. Which of the following requirements/prohibitions should be included?

Require payday lenders to post a bond or security to qualify for a licence			
Client/Stakeholder	**Yes**	**No**	**No answer**
Payday loan industry	2	6	2
Consumers	7	1	4
Credit counselling agencies	1	1	0
Other stakeholders	2	1	0

Restrict the fees that a lender can charge a client who defaults on a loan			
Client/Stakeholder	**Yes**	**No**	**No answer**
Payday loan industry	6	3	1
Consumers	9	0	3
Credit counselling agencies	1	0	0
Other stakeholders	2	1	0

Ban rollovers			
Client/Stakeholder	**Yes**	**No**	**No answer**
Payday loan industry	7	2	1
Consumers	9	0	3
Credit counselling agencies	2	0	0
Other stakeholders	2	1	0

Ban the practice of “discounting”			
Client/Stakeholder	**Yes**	**No**	**No answer**
Payday loan industry	5	3	2
Consumers	9	0	3
Credit counselling agencies	2	0	0
Other stakeholders	1	2	0

Set a maximum amount that the lender can charge as a % of the borrower's net income			
Client/Stakeholder	**Yes**	**No**	**No answer**
Payday loan industry	2	6	2
Consumers	9	0	3
Credit counselling agencies	2	0	0
Other stakeholders	1	2	0

Require plain-language contracts			
Client/Stakeholder	**Yes**	**No**	**No answer**
Payday loan industry	8	0	2
Consumers	9	0	3
Credit counselling agencies	2	0	0
Other stakeholders	3	0	0

Allow "cooling off" periods			
Client/Stakeholder	**Yes**	**No**	**No answer**
Payday loan industry	6	2	2
Consumers	8	1	3
Credit counselling agencies	2	0	0
Other stakeholders	1	2	0

Limit the borrower's obligation to repayment of principal only when the lender has violated the regulations			
Client/Stakeholder	**Yes**	**No**	**No answer**
Payday loan industry	7	0	3
Consumers	8	1	3
Credit counselling agencies	2	0	0
Other stakeholders	2	1	0

2.2.2.3. General Comments

Client/Stakeholder Sector	Comments
PAYDAY LOAN INDUSTRY	• "The benefit of licensing is that the government will be aware of each payday lender operating in the province and will be better able to monitor compliance and ensure consistency from lender to lender." • With regulatory certainty, more larger and stable operators will enter the market and this will ensure competition. • "To regulate the industry without federally approved legislation leaves the provincial government in the awkward position of regulating transactions that allegedly contravene the *Criminal Code*. Furthermore, there would be no limit on the amount of fees." • Alberta's objectives should be to foster a viable and competitive industry, be "competitor neutral" and create laws that are consistent with those for other sectors of the financial sector. • "(We support) industry-specific regulations, including a licensing regime that is not cost-prohibitive for industry participants." • "We support a ban on rollover loans that lead to rising fees and a decrease in the borrower's ability to retire their payday loan debt." • "We support all reasonable efforts to make the payday loan product easy for borrowers to understand and loan rates easy to compare." • "It is critical that lenders be required to provide full and everyday language disclosure." • While (we are) opposed to an outright ban on rollovers, it supports restrictions aimed only at preventing the consumer from borrowing progressively greater amounts of money. The loans should get smaller at each renewal. • Rollovers are a good practice when used properly, such as when unforeseen events take away the client's ability to repay on time. • After the client's 3rd rollover, he or she should be required to make at least the minimum payment plus 10% of the loan • Consumer protection legislation should be modelled on the Canadian Payday Loan Association's Code of Best Business Practices • The government should limit its role to monitoring the industry and allowing the Alberta Payday Loan Association to "self regulate."
CONSUMERS; CONSUMER ORGANIZATIONS	• These companies prey on the most vulnerable members of our society. "This form of exploitation must be stopped." • "A borrower who defaults a loan should be allowed ample time to repay the loan before it is sent to the Credit Bureau"

OTHER STAKEHOLDERS[4]	• "I note an awareness campaign in U.S. payday loan ads which cautions borrowers against reliance on payday loans for purposes other than occasional emergencies."
CONSUMER ADVOCACY ORGANIZATION SUGGESTIONS FOR ADDITIONAL PROTECTIONS	• $15 limit on NSF fees regardless of how many times the lender tries to cash the cheque • a provincial data base of payday lenders to ensure that borrowers aren't taking out *de facto* rollovers by going to different lenders • a limit of 25%, to a maximum of $500, on the size of loans as a percentage of the borrower's next paycheque • a ban on phone calls to employers and family members by lenders seeking to recover money lent • a ban on Internet lending unless the business operates out of a bricks-and-mortar office in Alberta • a requirement for extensive record keeping to assist regulators • disclosure of cost of borrowing to be expressed in APR as with any other type of loan • a ban on lending to people whose only income is social assistance • bans on concurrent and back-to-back payday loans • implementation of an inspection and enforcement regime • an education campaign • bans on cheque-cashing fees for cheques issued by same lender

[4] This respondent is an Alberta lawyer

3.0 Leger Marketing – Consumer Research; December 2008–January 2009

3.1 Telephone Survey and Focus Groups – An Overview

Leger Marketing found that only 3% of Albertans have ever taken a payday loan. Another study that Leger conducted in 2008 provided an estimate of 6% based on a sample size of 900 respondents.

The most frequently cited reason for needing a payday loan was to pay bills or to prevent bills from becoming overdue (40% of respondents) and for emergency cash to pay for necessities like food (30%).

3.1.1. Telephone Survey

Both users and non users of payday loans believe the payday loans industry should be regulated (85% users, 84% non users). More specifically, they believe regulation should apply to all of the following areas, with some of these types of regulation being higher priority than others:

1. Making lending agreements easier to understand (81% users and 84% of non-users believe this should be regulated)
2. Allowing a "cooling off" period (81% users, 68% non users)
3. Total cost of the loan, including interest and fees (79% users, 71% non users)
4. If there is a violation by business, the borrower should be allowed to pay back the loan without interest (79% users, 70% non users)
5. The practice of "discounting" (75% users, 67% non users)
6. Requiring payday lenders to post a bond or other security (72% users, 69% non users)
7. Rollovers (71% users, 66% non users)

3.1.2. Focus Groups

Users believe that payday loans serve a need because they allow for emergency loans to consumers who cannot obtain alternative financing.

However, users and non-users alike are in favour of regulating the following areas to eliminate unfair or predatory practices:

1. a limit to the allowable cost of borrowing and, to a lesser extent,
2. making agreements easier to understand,
3. allowing a "cooling off" period during which the loan can be cancelled without penalty,
4. allowing the borrower to repay only the principal amount borrowed if the business violates the regulations,
5. the practice of "discounting," and
6. rollover loans.

Payday loan users acknowledged that they are under financial hardship and have poor budgeting skills. They also appeared to have little comprehension about the actual cost of borrowing from payday lenders when all of the rates and fees are converted to an annualized percentage rate.

Appendix A

GLOSSARY

Cooling-off period	A cooling off period is a period of time during which the consumer can cancel a loan without being charged any fee or penalty.
Discounting	Discounting means the practice of deducting or withholding from the initial advance of a payday loan an amount representing any portion of the cost of borrowing.
Federally approved legislation	The 2007 amendment to section 347 of the *Criminal Code of Canada* refers to the federal government's power to "designate" provinces or territories that have passed payday loan consumer laws that receive federal approval. Payday loans are exempt from sanctions under the *Criminal Code* provided that the business operates in a jurisdiction with a federally approved payday loan law.
Maximum allowable cost of borrowing	A maximum allowable cost of borrowing means the total amount, including interest and all fees, that a payday lender is allowed to charge a client for a payday loan.
Payday loan	Payday loan means any advancement of money with a principal of $1,500 or less and a term of 62 days or less made in exchange for a post-dated cheque, a pre-authorized debit or a future payment of a similar nature, but not for any guarantee, suretyship, overdraft protection or security on property and not through a margin loan, pawnbrokering, a line of credit or a credit card.
Rollover loan	Rollover loan means the extension or renewal of a payday loan that imposes additional fees or charges on the borrower, other than interest, and includes the advancement of a new payday loan to pay out an existing payday loan.
Tiered system	A "tiered" system of establishing a maximum rate is an alternative to a single maximum rate. Each "tier"—or dollar-amount range of money borrowed—has its own maximum rate, and the maximums usually are set at progressively smaller amounts based on the amount of the loan.
Usury	Usury is the charging of an illegal rate of interest. Section 347 of the *Criminal Code* defines the criminal rate as an effective annual rate of interest calculated in accordance with generally accepted actuarial practices and principles that exceeds 60 per cent on the credit advanced under an agreement or arrangement

Appendix B

Payday Loans By Stakeholder Type

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This appendix is a statistical summary of the 60 hard copy and online responses to the March-April 2008 Payday Loan Business Regulation Discussion Paper Questionnaire.

Should the Alberta government regulate the payday loan industry and, if so, how?

Option 1: Maintain the status quo **This would allow payday loan companies to carry on business in Alberta and continue to be subject to Canada's criminal code.**

	% by Stakeholder
Consumer/Con.	4.00%
Industry	7.69%
Not Selected	12.50%

Option 2: Regulate the industry with federally approved legislation **This would involve requiring payday loan companies to be licensed in Alberta and new regulations would be introduced under Alberta's Fair Trading Act that would restrict what the industry can charge its clients.**

	% by Stakeholder
Consumer/Con.	68.00%
General	81.82%
Industry	61.54%
Not Selected	56.25%

<u>Option 3: Regulate the industry without federally approved legislation</u> New regulations would be introduced under the Fair Trading Act that would ban certain practices but not restrict what the industry can charge its clients. Licensing may be required, or the government may introduce standards or prohibitions without licensing.

	% of Stakeholder
Consumer/Con.	8.00%
Not Selected	25.00%
Industry	23.08%

<u>Option 4: Other alternatives</u>?

	% by Stakeholder
Not Selected	6.25%
General	18.18%
Consumer/Con.	20.00%
Industry	7.69%

If the Alberta government decides to regulate the payday loan industry, which of the following requirements or prohibitions should be included in the regulations? Please choose "Yes" or "No" beside each item in the chart below:

Allow borrowers a "cooling-off" period during which they can cancel the loan and return the money without any interest, fees or penalty.

No

Stakeholder Type	% By Stakeholder
Industry	30.77%
Not Selected	30.77%
Consumer/Con.	17.39%
General	45.45%

Yes

Stakeholder Type	% By Stakeholder
General	54.55%
Industry	69.23%
Consumer/Con.	82.61%
Not Selected	69.23%

Ban "rollover" loans where the payday lender gives the client another loan to pay for the initial loan and charges them a fee.

No

Stakeholder Type	% By Stakeholder
General	18.18%
Consumer/Con.	8.70%
Industry	38.46%
Not Selected	7.69%

Yes

Stakeholder Type	% By Stakeholder
General	81.82%
Industry	61.54%
Consumer/Con.	91.30%
Not Selected	92.31%

Ban the practice of "discounting" where the payday lender gives the client less money than what's stated on the loan agreement and treats the difference as a fee.

No

Stakeholder Type	% By Stakeholder
General	36.36%
Not Selected	7.69%
Industry	38.46%
Consumer/Con.	8.70%

Yes

Stakeholder Type	% By Stakeholder
General	63.64%
Not Selected	92.31%
Consumer/Con.	91.30%
Industry	61.54%

If a payday loan business is found to violate Alberta's regulations, allow the client to only pay back the amount with no interest or fees.

No

Stakeholder Type	% By Stakeholder
Consumer/Con.	13.04%
General	18.18%
Not Selected	15.38%
Industry	7.69%

Yes

Stakeholder Type	% By Stakeholder
Not Selected	84.62%
General	81.82%
Industry	92.31%
Consumer/Con.	86.96%

Require payday lenders to post a bond or other security in order to qualify for a licence.

No

Stakeholder Type	% By Stakeholder
Industry	69.23%
Consumer/Con.	26.09%
General	9.09%

Yes

Stakeholder Type	% By Stakeholder
Industry	30.77%
Consumer/Con.	73.91%
General	90.91%

Require payday lenders to use contracts written with easy-to-understand language.

Yes

Stakeholder Type	% By Stakeholder
Not Selected	100.00%
Consumer/Con.	100.00%
General	100.00%
Industry	100.00%

Restrict the fees that payday lenders can charge to a client who defaults on a loan.

No

Stakeholder Type	% By Stakeholder
Not Selected	15.38%
General	9.09%
Consumer/Con.	4.35%
Industry	46.15%

Yes

Stakeholder Type	% By Stakeholder
Not Selected	84.62%
Consumer/Con.	95.65%
Industry	53.85%
General	90.91%

Set a maximum amount that a payday loan business can lend to a client as a percentage of the client's net income.

No

Stakeholder Type	% By Stakeholder
Consumer/Con.	21.74%
Not Selected	30.77%
General	45.45%
Industry	46.15%

Yes

Stakeholder Type	% By Stakeholder
Industry	53.85%
General	54.55%
Not Selected	69.23%
Consumer/Con.	78.26%

Should the Alberta government set a maximum amount that payday lenders can charge a client? Please indicate your preference for a maximum fee option by selecting on of the following options:

<u>Option 1</u>: No maximum fees Under this approach, payday loan businesses could be prosecuted under Canada's criminal code.

	% by Stakeholder
General	9.09%
Consumer/Con.	4.17%
Not Selected	7.69%
Industry	15.38%

<u>Option 2</u>: Set a maximum fee as a percentage or dollar amount of the loan. For example, a payday loan business couldn't charge more than $20 per $100.

	% by Stakeholder
Not Selected	23.08%
Consumer/Con.	29.17%
Industry	46.15%

<u>Option 3</u>: Set a maximum fee with a tiered system where the maximum fee depends on the size of the loan. For example, set a maximum fee of $20 per $100 for the first $300 of the loan and $17.50 per $100 on the amounts above that.

	% by Stakeholder
Industry	23.08%
General	90.91%
Consumer/Con.	58.33%
Not Selected	69.23%

Option 4: Other options?

	% by Stakeholder
Industry	15.38%
Consumer/Con.	8.33%

Appendix C

Meetings with Key Stakeholders in Edmonton and Calgary
April 1 and 3, 2008

Note: This chart is a compilation of points of view expressed by industry and non-industry stakeholders at these meetings. Please note that we are sending copies of this document to everyone who attended, on a confidential basis as part of their role on a government working committee. These comments will be reviewed by senior government officials and the project team along with responses to the discussion paper that was distributed to stakeholders in March 2008. Though consideration will be given to all points of view, the final decision on regulation content rests with the Minister.

SUGGESTED PRINCIPLES FOR POLICY DIRECTIVES	INDUSTRY STAKEHOLDERS ▪ Market-based i.e. let the industry self regulate, very costly for government to regulate industry; ▪ Should be consistent with existing financial services legislation (in relation to rules for disclosure and cost of borrowing); ▪ Competitor neutral i.e. no differentiation between internet, phone and store front operations. Legislation should not prejudice any model. NON-INDUSTRY STAKEHOLDERS ▪ Protection from unscrupulous lenders; ▪ Sufficient disclosure to provide base for informed decision; ▪ Public awareness; ▪ Market needs this alternative financing for consumers.
SOME PROFILES OF PAYDAY LOAN USERS	▪ Repeat customers ▪ Vulnerable, desperate people ▪ Shift to middle class/ middle income ▪ Victim to some form of addiction ▪ Young families in crisis ▪ Immigrants and temporary foreign workers ▪ 80% are over the age of 30 ▪ Immediate need for money ▪ Homeless people who have no bank accounts

CONCERNS/ ISSUES/COMMENTS RAISED BY STAKEHOLDERS	INDUSTRY ▪ Government must firstly set policy objective. i.e. what is government trying to achieve? ▪ Want S. 347 of the Criminal Code of Canada exemption because they fear growth of class actions against them. In addition this limits investment by brokers; ▪ Seeing increase in defaulted loans and write offs; ▪ Becoming more difficult to collect delinquent debts; ▪ Feels unprotected by unscrupulous consumers who scam businesses by borrowing from many then declaring bankruptcy or going on the Orderly Payment of Debt (OPD) program; ▪ Privacy legislation prohibits sharing of information with other lenders; ▪ Need to avoid consumers having perpetual payday loan debt as it ultimately results in them defaulting on loan (e.g. rollovers) ▪ Regulators need to hear directly from consumers who use services. There is some research, statistics available which will be provided to government; ▪ Believe industry is self-regulating and regulators should not interfere with the market place; ▪ Believe regulators should proceed carefully, i.e. not over-regulate and not anticipate non-existent issues and avoid having to retract or amend legislation later; ▪ Don't believe cooling off periods work because clients will go elsewhere for a loan; ▪ APR is not a realistic measure of costs of credit. Consumers need to know what a loan costs in dollars, interest rate is not relevant information; ▪ Higher rates of internal and external theft along with high staff turnover pushes businesses to having no cash on premises. Consequently, the use of debit card and credit cards are for protection of consumers; ▪ High risk business so would like access to credit checks; ▪ Consumers put stop payments on their cheques so need to charge fees to offset losses; ▪ Need to create a balance for industry and consumers because businesses are motivated to make money - they won't lend to vulnerable consumers who can't pay the loan back; ▪ Disclosure should facilitate a competitive market, not restrict it; ▪ Consumers need to be educated on their rights and responsibilities; ▪ Banning rollovers is not the solution, just clarify through definition and set framework. Consumers will go elsewhere (perhaps the loan sharks); ▪ Date loans are due should be on payday or later to avoid failure to repay; ▪ Difficult to compete with businesses operating a publicly traded company; ▪ Suggestions of fees from \$20 to \$37/\$100.

CONCERNS/ ISSUES/COMMENTS RAISED BY STAKEHOLDERS	NON-INDUSTRY ▪ Consumers need clear and consistent disclosure upfront before signing the agreements; ▪ Consumers need to know their rights and responsibilities; ▪ Consumers need receipts to avoid claims that they failed to repay; ▪ Consumers need to know that if they are in a crisis situation they can get help such as credit counseling; ▪ Consumers need information available to assist them in making informed decisions; ▪ Industry should not be sheltered from prosecution for criminal code interest; ▪ Need to set limits on fees charged collectively so consumer knows the exact costs; ▪ Need standard record-keeping rules; ▪ Need for audits on a regular basis; ▪ Privacy rules for ID requirements; ▪ Unfair to call in a loan a day before payday (prompts failure and NSF fees) ▪ Rollovers should be disallowed as creates perpetual debt; ▪ Need clear parameters in regulation and code of conduct; ▪ Consumers should have time out between loans; ▪ Charges for debit cards should be clearly disclosed; ▪ Need to monitor misleading advertising; ▪ Minors should not be expediting loans; ▪ Need legislation that has teeth for enforcement; ▪ People in crisis don't care about APR, they need the money; ▪ Could set different criteria for first loan, vs subsequent loans, or an annualized fee; ▪ Costs should not be in a percentage but in a set amount of money; ▪ Consumers need to know cost of penalties if they default; ▪ Use of payday loans does not improve the consumer's credit rating so that prevents them from obtaining loans from banks in the future; ▪ Prohibit charging NSF fees if the loan was due one day before payday; ▪ Discontinue use of paying by cheque, then charging a fee for cashing it - (conflict of interest); ▪ The legislation should not restrict charitable organizations' ability to offer micro loans; ▪ Use a flat rate system, not a percentage base (e.g. $25 per $100) ; ▪ Provide some counseling up front to consumers about not over borrowing; ▪ Immigrants may not understand what they are agreeing to; ▪ Suggestions of fees from $17 to $25 per $100.
PRACTICES AMONGST SOME BUSINESSES THAT SHOULD BE PROHIBITED	**Rollovers**: ▪ Industry claims rollovers were meant to be short-term financial solution, not long-term sequential loans; ▪ Need clear definitions in regulations. i.e. Are they extensions of loans for the same fee as the original loan? Or back to back loans? Or is it simply an advancement of funds to pay off the new loan?

	Due Date for loan: ▪ Making the **due date** one day before payday which automatically triggers default and sets up consumer for failure; **Disclosure:** ▪ Providing incomplete **disclosure** on costs of borrowing; **Records:** Not creating or maintaining accurate financial records of loans**;** lack of retaining records for a specified period of time after account is closed. **Receipts:** Failure to provide receipts for cash payments**.**
IF REGULATED, WHAT SHOULD BE INCLUDED?	▪ A code of conduct within the regulations dealing with advertising, disclosure, misrepresentations; ▪ Reduced fees for shorter term loans (e.g. 1 week vs 2 weeks); ▪ No more loans until payday loan debt paid off; ▪ Prohibit lending to seniors on pensions, persons on disability pensions or people receiving social benefits; ▪ Maximum permissible loan should be based on % of income or cost to use; ▪ Contracts to be written in plain language ; ▪ Regular independent audits to be conducted by regulators; ▪ Rate caps should be reviewed every 2 years; ▪ Allow one time only fees to set up loan; ▪ Disclose fees in $/100 upfront, not %; ▪ Fees need to be an all inclusive amount (a maximum $); ▪ Fees or penalties for non-payment of debt should be clearly disclosed; ▪ Consumer should have a moment in time where he/she is not indebted to a payday loan lender; ▪ Default fees should not be excessive; ▪ Government should set maximum default fees- (i.e. reasonable costs); ▪ Default charges should not exceed chartered banks NSF fee;

IF REGULATED, WHAT SHOULD BE INCLUDED? (cont'd)	▪ Consistent and complete cost of credit disclosure prior to signing the contract. ▪ System to monitor complaints in the industry; ▪ Maximum fees for use of prepaid credit or debit cards; ▪ Maximum fees for late payment or delinquent loans; ▪ Information on insurance protection; ▪ Standards for use of credit checks and collection/use of private information; ▪ Restriction on location and numbers of lenders by population; ▪ Use of a standard contract for all businesses; ▪ Provision for regulators to monitor the activities of lenders; ▪ Clear disclosure of rates or fees; ▪ Standards to prevent over lending; ▪ Standards for gathering and retaining client records; ▪ Coverage to repay at a deferred date for loss of employment; ▪ "Watchdog" overseeing the outlets; ▪ Transparency in services; ▪ Clear definitions such as fees, interest, rollovers etc.
IF REGULATED, WHAT SHOULD BE EXCLUDED?	▪ APR is unclear- Focus on fixed costs- not interest; ▪ No rate caps, use variable rates that are market based; ▪ Maximum limit for a loan based on income (because businesses do not want to lend to someone who can't pay back). Industry takes the risk and suffers the loss. ▪ No cooling off period because the borrower will go elsewhere (even with cancellation rights) because consumers don't exercise that option; ▪ Ban on rollovers e.g. allow some form of rolling over a loan by setting a framework or structure.
WHAT WOULD LICENSING LOOK LIKE?	▪ Each branch? ▪ Each employee? (train the employee with courses similar to Alberta Motor Vehicle Industry Council) ▪ At the minimum mandate that employees receive adequate training in regulation; ▪ Some form of cash security for victims who claim legitimate losses; ▪ Set a limit on number of businesses in a location (e.g. bottle depots)

GENERAL COMMENTS/ ITEMS FOR FUTURE DIRECTION FROM GOVERNMENT	▪ Committed to consultation meetings with stakeholders; ▪ Legislation must be fair and enforceable; ▪ Committed to create a balance for both the consumers and the industry; ▪ Assemble documents/information from stakeholders and circulate to participants; ▪ Establish need for second mini-consultation (sub-committee of key stakeholders); ▪ Recommendation will be prepared for the Minister's consideration; ▪ Legislation does not have to be identical in each province; ▪ Requirement to get approval from federal government within stated parameters; ▪ Final decisions will be made by the Minister of Service Alberta and Cabinet ▪ Tentative working goal is for regulation to be in place by spring of 2009; ▪ Need to comply with existing provincial legislation such as Fair Trading Act and its regulations on Collection Practices, Cost of Credit Disclosure and Wage Assignments.

Appendix D

Service Alberta
Payday Loans Usage and Attitudes

SUMMARY REPORT

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1. BACKGROUND AND METHODOLOGY

This summary presents the findings of a research study on Payday Loans that Leger Marketing conducted on behalf of Service Alberta Consumer Services Branch. More detailed results are available in the Payday Loans Usage and Attitudes Final Report.

The primary purpose of the research is to further inform the Government of Alberta about issues to take into consideration when considering and drafting regulations for the payday loan industry. The study will also help determine what needs exists for the Government of Alberta to educate Albertans about payday loans and the legal issues surrounding them.

The research consisted of two components:

(1) A telephone survey of 700 Albertans including 300 users of payday loans and 400 non-users, aged 18 years and over. Results for users are statistically accurate to within ±5.7 percentage points, 19 times out of 20. Results for non-users are statistically accurate to within ±4.9 percentage points, 19 times out of 20.

(2) Four focus groups were held, including three conducted with payday loans users (one Edmonton, one Calgary and one other areas of Alberta conducted by teleconference) and one conducted with non-users in Edmonton.

2. SURVEY RESULTS

Characteristics of Payday Loan Users

The payday loan users participating in the survey demonstrated a higher than average likelihood to be between 25 and 35 years of age (35% vs. 18% of the Alberta general population) and a lower likelihood of being under 25 (6% vs. 14%) or 65 years and over (5% vs. 14%). Reflecting their ages, 46% of users report having children in their household under 18 years of age, versus 39% in the general population. Users' annual household incomes are below average, with 37% having incomes between $20,000 and $49,999 per year versus 23% for the general population.

Use of Payday Loans

The study estimates that 3% of Albertans have ever taken a payday loan. Another study Leger Marketing conducted in December 2008 provided an estimate of 6% based on a sample size of 900 respondents (±1.6 percentage points, 19 times out of 20).

The vast majority (93%) of non-users rate themselves unlikely to consider a payday loan. Supporting this view, most Albertans would not need a payday loan if they needed $300 in cash, as they tend to have access to funds from their bank accounts, relatives, lines of credit, overdraft protection and cash advances. Non users are more confident than users about being able to obtain the funds they need through their bank account or through a line of credit, while users and non users demonstrate similar levels of confidence about getting the required funds from other sources.
Albertans who have had a payday loan before tend to be repeat users (79%), using payday loans an average of four times in the past. However, only 22% anticipate using payday loans again in the future. Users perceive that they pay their loans off as soon as they are due (80%) and only use payday loans as a last resort (62%). Some users see themselves using payday loans at certain times of year (20%) and 10% use payday loans as part of their regular banking. There is a degree of stigma associated with payday loans, with 25% of users agreeing they would be concerned about being seen at a payday loan store.

Payday loans most frequently involve obtaining between $200 and $499 (52% of users' most recent loan value), and the amount is almost always under $1,000 (88%).

Payday Loan Agreements

While almost all payday loan users (92%) report having received a copy of their payday loan agreement, only 66% read the loan agreement before signing.

Motivations for Using Payday Loans

Users cite a range of situations of great need, or emergency situations in general, as their reasons for needing payday loans. The most frequently mentioned reason for needing a payday loan is to pay bills or prevent overdue bills (40%).

When asked for top of mind reasons for choosing a payday loan instead of another form of lending, users say it is a last resort (41%). Convenience factors represent other motivators for obtaining payday loans; for example, that it is easy to apply (12%), faster to get the loan (10%) and the location is convenient (6%). However, when asked to rate the importance of a number of specific aspects of payday loans, users rate speed, ability to borrow a small amount, hours of operation, convenient location, and ease of applying for the loan substantially more important (87-92% important ratings) than being the only place they are confident to apply (61%) or not being approved at other places (44%).

Internet Payday Loans

A low percentage of users obtain their loans through the Internet (3%). Almost all users obtain their loans from a payday loan store, usually somewhat or very close to their home. Most users (82%) have Internet access, at about the same incidence as the general population (84%).

User Satisfaction with Payday Loan Lenders

The majority of payday loan users are satisfied with their most recent payday loan experience, including 49% who are very satisfied. Users are highly satisfied with the rates and terms being explained to them (82%) but their satisfaction with the cost of the payday loan is substantially lower (54%).

Attitudes towards the Payday Loan Industry

Users and non users have very different views about the payday loan industry, with users expressing much higher agreement that the payday industry satisfied a need (73% users vs. 39% non users), and that the payday loan industry ensures applicants understand the agreement (62% users vs. 37% non users).

Payday Loan Regulation

Both users and non users of payday loans believe the payday loans industry should be regulated (85% users, 84% non users). More specifically, they believe regulation should apply to all of the following areas, with some of these types of regulation being higher priority than others:

1. Making lending agreements easier to understand (81% users and 84% believe this should be regulated)
2. Allowing a "cooling off" period (81% users, 68% non users)
3. Total cost of the loan, including interest and fees (79% users, 71% non users)
4. If there is a violation by business, the borrower should be allowed to pay back the loan without interest (79% users, 70% non users)
5. The practice of "discounting" (75% users, 67% non users)
6. Requiring payday lenders to post a bond or other security (72% users, 69% non users)
7. Rollovers (71% users, 66% non users)

3. FOCUS GROUP RESULTS

Payday loans are used for a variety of situations including emergency cash requirements for unexpected life events, as well as for convenience. Users usually have other debts in addition to their payday loan. Users usually receive a payday loan as a last resort; however, the loans are occasionally used instead of alternative financing that might be available. Sometimes they use a payday loan rather than ask friends or relatives, and they have no other form of credit available.

Non-users perceive payday loan users to be poor financial managers, while users of payday loan companies admit to financial challenges and poor budgeting skills.

Users report that there is a need for the payday loan industry in Alberta. While users did express a positive view of payday loan businesses, those opinions that were negative were strongly expressed. Opinions are more negative among non-users. Users generally understand payday loans are an expensive form of financing but felt it was their only option.

There is a lack of understanding among both users and non users regarding the actual interest rate that is charged by payday lenders, and a serious underestimation about the actual interest rate being charged with typical payday loan lenders on an annual basis.

There is an overall demand for some regulation of the payday loan industry so that consumers are protected from unfair or predatory practices. Concern was expressed that the regulation should be clear and simple, and it is most strongly felt that regulation should address the interest rate and the need to explain the agreement to applicants in clear and simple language so they completely understand it.

4. CONCLUSIONS

Needs Satisfied by Payday Loans

Albertans who have had payday loans tend to perceive that the lenders of that type of financing are in a unique position to satisfy a short-term, emergency need for a small loan. Payday loan lenders are perceived by users to offer loans that other lenders would refuse, either for credit reasons or because of the small amount and/or short term of the loan. Other motivations for using payday loans are fast turnaround and convenience. Those who have not personally used payday loans do not see payday loan lenders as satisfying a need, reinforcing their more negative opinions about payday loan lenders.

Profile of Payday Loan Users

The incidence of payday loan users in the Alberta general population is estimated to be between 3% and 6%. Users represent only a very small portion of the population. Non-users perceive that users are vulnerable because of their emergency situations and/or socioeconomic circumstances.

In terms of their demographic characteristics, above average proportions of payday loan users are aged 25-35, and have household incomes between $20,000 and $50,000 per year. However, lower income situations are not always the case, at least not following the timeframe of the payday loan: 38% of users have incomes over $50,000 per year and 9% have incomes of $100,000 or higher.

Users' main pattern of borrowing tends to have been borrowing money from people they know personally, and they have higher than average use of cash advances than non-users. Users are less likely than non-users to have had a bank loan, line of credit, or overdraft protection.

Use of Payday Loans

Users of payday loans most frequently obtain the loan for emergency needs such as food, rent or paying other bills that are due or already overdue. There is high repeat usage of payday loans, potentially indicating users find themselves in a number of emergency situations, and/or that their payments on previous borrowing takes a number of loans to pay off their debts to the point where it becomes manageable. Nevertheless, users perceive themselves to pay off their payday loans as soon as they are due, and only use payday loans as a last resort. Most users who responded to the survey believe their emergency credit needs have passed now and do not anticipate using payday loans again in the future.

Some users of payday loans perceive that they have a greater need for payday loans at certain times of year, although most do not see that as a factor in their borrowing. There is a small percentage of users that perceive themselves to use payday loans as part of their regular banking.

Users understand the rates are high, and are not as satisfied with that aspect as they are with other aspects of the lender, but they do not feel they have any other choice besides a payday loan.

Very few payday loans are over $1,000 in value, with the majority being for less than $500.

Payday loan users tend to be satisfied with their most recent payday loan experience, and with having the rates explained to them.

While almost all users receive a copy of their payday loan agreement, a substantial number of them do not read the agreement before signing. It is possible that making the agreement easier to understand, or explaining the agreement more in depth could increase users' understanding of it.

Other communication, such as from government or payday loan lenders, could be supplied to users to help them make informed choices.

Perceived Need for Regulation

Both users and non-users of payday loans believe there should be some regulations in place. A cap on the interest rate, and possibly the fees as well, are the primary areas that should be considered when considering regulations to implement.

Other potential areas of regulation are also perceived to be important, but to a somewhat lesser extent:

- Making agreements easier to understand
- Allowing a “cooling off period” during which the agreement can be cancelled without penalty
- Total cost of the loan
- Allowing the borrower to pay the balance back without any interest if the business violates the regulations
- The practice of “discounting,”
- Requiring payday lenders to post a bond or other security
- Rollovers