

**Consumer, Corporate and Insurance Services Division
Office of the Attorney General
Payday Loans Act, S.P.E.I. 2009, Cap. 83**

Consultation Paper

November 6, 2009

The Consumer Services Section is seeking public comment on regulations to be made under the *Payday Loans Act*. This Act received Royal Assent on May 15, 2009, but it has not yet been proclaimed in force, pending development of regulations required under the Act.

Under the new *Payday Loans Act* a maximum allowable cost of borrowing will be set for payday loans. This maximum will be set in the regulations. The new Act will also require that all payday lenders be licensed. It will require the lenders to give clear and plain disclosure to borrowers about the terms of payday loans and about the total cost of borrowing for the loans. Borrowers will be protected by a 2 day cancellation right and by a prohibition on concurrent or replacement loans.

A set of draft regulations to the Act is attached as an appendix to this consultation paper. These regulations deal with the process for licensing and regulating payday lenders. They also include provisions for the protection of borrowers and establish certain prohibited practices. The draft regulations include a section setting the maximum amount for the cost of borrowing, but the actual amount has been left blank.

A. SUMMARY OF DRAFT REGULATIONS

I. Licensing of Payday Lenders

In order to receive a license, payday lenders are required to provide basic information to the regulator on their corporate and legal structure. Bank account information must also be provided. Payday lenders that are corporations must have at least one director or officer who is a Canadian resident. Each separate store front office must be identified. Licenses are issued with the condition that the payday lender display educational and financial planning materials in each office.

II. Regulation of Payday Lenders

A payday lender can only use its legal name or a name that has been registered under the *Partnership Act* in its offices. To operate in Prince Edward Island a payday lender must have at least one physical office in the province. Documents and records relating to payday loans must be kept and made available to the regulator.

III. Protection of Borrowers

Each office of a payday lender must display a poster setting out

- the maximum allowable cost per \$100 under PEI laws
- the cost the payday lender is charging per \$100
- the total cost of borrowing on a \$300 loan over 14 days
- the total amount to be repaid on each \$300 loan

Payday loan advertisements dealing with the cost of borrowing must include similar information.

All payday loan agreements must include a table with clear disclosure of the terms of the agreement in the form set out below:

Details of Payday Loan Agreement	
Amount Borrowed	A
Term of the Agreement in Days	B
Total Cost of Borrowing	C
Maximum Allowable Cost per \$100 Borrowed	D
Cost per \$100 Borrowed	E
Total Amount Due under the Agreement	F
Payment Due Date	G
Borrower's Signature	H

Payday loan agreements must be dated, signed, and include the legal name of the lender. If a debit card is provided, the agreement must set out the conditions of its use. The agreement must also set out the rights that the borrower has to cancel the agreement within the first 2 days of the loan, and advise a borrower of how they can get a refund if they are entitled to one.

IV Prohibited Practices

Payday lenders are prohibited from contacting family members or friends of borrowers. Employers may only be contacted with the consent of the borrower or before the loan is taken out to confirm the borrower's employment. A payday lender cannot take an assignment of wages from a borrower, and cannot use a cheque given for one payday loan to pay off another payday loan. Balances on any debit card must be given if asked for and the payday lender cannot attempt to process any payment twice if there might be charges levied against the borrower when they do so.

The regulations set out prohibited methods of collection as follows:

- the loan cannot be collected from anyone other than the borrower
- calls cannot be made on Sundays
- calls cannot be made between the hours of 9 p.m. and 8 a.m.
- calls cannot be made on holidays
- contact cannot be made more than 3 times in a 7 day period except by ordinary mail
- publication of default is forbidden
- threats and profane, intimidating or coercive language are prohibited
- undue, excessive or unreasonable pressure cannot be used
- collect calls are forbidden

Finally, agreements cannot be entered into which make payment due on the day before a borrower's next regular payday.

B. COMMENTS REQUESTED

While we are asking for comment on the draft regulations generally, we are specifically seeking comment on the appropriate maximum rate for the cost of borrowing. Comments on the maximum allowable rate which were submitted in our earlier consultation on the *Payday Loans Act* need not be re-submitted. They will be taken into consideration in this consultation. To assist with comments on the maximum cost of borrowing the table below sets out the rates in the other Canadian jurisdictions.

Jurisdiction	Maximum Cost of Borrowing	Source
Nova Scotia	\$31 per \$100	Nova Scotia Utility and Review Board Decision (NSUARB-PD-07-001) [www.nsuarb.ca]
Ontario	\$21 per \$100	Section 23 of the Payday Loans Act, 2008 Regulations (Ont. Reg. 209/09) [www.e-laws.gov.on.ca]

Manitoba*	\$17 per \$100 [on first \$500]; plus \$15 per \$100 [on \$501 to \$1000]; and 6% per \$100 [on \$1000 to \$1500] *Order 39/08 was repealed by Bill 14 - The Consumer Protections Amendment Act (Payday Loans) – June 11, 2009 [www.gov.mb.ca]. Maximum cost of borrowing now to be set by regulation.	<i>Manitoba Public Utilities Board Order 39/08</i>
Alberta	\$23 per \$100	Section 17 of the Alberta Fair Trading Act Regulation (157/2009) [www.alberta.ca]
British Columbia	\$23 per \$100	Payday Loans Regulation (B.C. Reg. 57/2009) [www.gov.bc.ca]

Please note that responses to this discussion paper will be made public. Comments should be provided in writing via fax or mail by December 8, 2009 to:

Payday Lending Consultation
Office of the Attorney General
Consumer, Corporate and Insurance Division
4th Floor Shaw Building
95 Rochford Street
P.O. Box 2000
Charlottetown, PE C1A 7N8

Fax:(902) 368-5283
Tel:(902) 368-4550 Toll Free: 1-800-658-1799

Electronic copies of this paper may be found at www.gov.pe.ca/oag.

CONSULTATION DRAFT
Payday Loans Act Regulations
[November 3, 2009]

PAYDAY LOANS ACT

REGULATIONS

Pursuant to section 60 of the *Payday Loans Act* S.P.E.I. 2009, Cap. 83, the Lieutenant Governor in Council made the following regulations:

DEFINITIONS

1. In these regulations

Definitions

(a) “device” means an instrument, including a debit card or a cheque, that the lender under a payday loan agreement uses to deliver all or part of the advance to the borrower in a form other than cash;

device

(b) “remote payday loan agreement” means a payday loan agreement entered into when

remote payday loan agreement

(i) the borrower is not present with the lender, if no loan broker assisted the borrower in obtaining the payday loan, or

(ii) the borrower is not present with the loan broker or the lender, if a loan broker assisted the borrower in obtaining the payday loan.

LICENCES OR RENEWAL OF LICENCES

2. (1) An applicant for a licence or renewal of a licence shall provide the Registrar with

Application process

(a) the legal name of the applicant;

(b) the address of each office that the applicant intends to operate when acting as a licensee;

(c) the names of the applicant registered under the *Partnership Act* R.S.P.E.I. 1988, Cap. P-1 that the applicant intends to use at any office when licensed and an indication of the address of each office at which the applicant intends to use each of the names when licensed; and

(d) for each account that the applicant intends to maintain under section 11, the address of the branch of the institution in which the account is located, the account number of the account and an indication for which offices the applicant intends to use the account and the names of all persons with signing authority over the account.

Contents of application and fees	<p>(2) An application for a licence or renewal of a licence shall</p> <p style="padding-left: 20px;">(a) contain, in the form that the Registrar specifies, the information that the Registrar specifies and that is relevant to the decision to be made by the Registrar as to whether or not to issue or renew the licence; and</p> <p style="padding-left: 20px;">(b) be accompanied by the fees, if any, required under section 60 of the Act.</p>
Eligibility requirements	<p>3. The following are the prescribed requirements mentioned in subsections 9(1) and 10(1) of the Act for an applicant for a licence or renewal of a licence:</p> <p style="padding-left: 20px;">1. If the applicant is an individual, the applicant must be at least 18 years of age.</p> <p style="padding-left: 20px;">2. The applicant shall have paid the fees, if any, required under section 60 of the Act.</p> <p style="padding-left: 20px;">3. If the applicant is a corporation, all of its officers and directors who are individuals must be at least 18 years of age.</p> <p style="padding-left: 20px;">4. If the applicant is a corporation, at least one officer or director of the corporation must be an individual who is ordinarily resident in Canada. The applicant shall notify the Registrar in writing of the name and residence address of all such officers and directors.</p>
Certificates of licence	<p>4. (1) Upon issuing a licence or a renewal of a licence, the Registrar shall give the licensee a certificate of licence for the licensee's main office and a certificate of licence for each of the licensee's branch offices, if any.</p>
Main office	<p>(2) If the licensee operates only one office, references in this section to the licensee's main office shall be read as references to that office of the licensee.</p>
Contents of certificate	<p>(3) A certificate of licence mentioned in subsection (1) shall include</p> <p style="padding-left: 20px;">(a) the licensee's legal name;</p> <p style="padding-left: 20px;">(b) if the licensee uses a name registered under the <i>Partnership Act</i> in respect of the office in respect of which the certificate is given, the name used in respect of that office;</p> <p style="padding-left: 20px;">(c) an indication of whether the licensee is a lender or a loan broker;</p> <p style="padding-left: 20px;">(d) the licence number of the licensee;</p> <p style="padding-left: 20px;">(e) the address of the office to which the certificate relates;</p> <p style="padding-left: 20px;">(f) if the licensee operates more than one office, an indication whether the office to which the certificate relates is the main office or a branch office; and</p> <p style="padding-left: 20px;">(g) the expiry date of the term of the licence.</p>
Branch offices	<p>(4) At a licensee's main office and each of the licensee's branch offices, if any, the licensee shall post the certificate of licence that relates</p>

to the office so that the certificate is visible to persons immediately upon entering the office.

(5) If the licensee is a lender that offers to make a remote payday loan agreement with a borrower or is a loan broker that offers to assist a borrower in obtaining a remote payday loan agreement, the licensee shall communicate to the borrower the information that is required to be on the certificate of licence for the main office of the licensee as soon as the borrower makes contact with the licensee. Remote agreement

(6) If the Registrar revokes, suspends, cancels or refuses to renew the licence of a licensee, the licensee shall Revocation, suspension or refusal

- (a) immediately return to the Registrar all certificates of licence that relate to the licensee's main office and branch offices, if any; and
- (b) no longer communicate the information that subsection (5) required the licensee to communicate before the revocation, suspension, cancellation or the refusal to renew, as the case may be.

(7) If a suspension of a licence ends before the term of the licence would have otherwise expired, then, when the suspension ends, End of suspension

- (a) the Registrar shall immediately return to the licensee the certificates of licence mentioned in clause (6)(a); and
- (b) the licensee shall immediately resume complying with subsection (4) or (5), as the case may be.

(8) A person who is required to return a certificate of a licence to another person under clause (6)(a) or (7)(a) shall do so using a form of delivery that provides proof of delivery. Return of certificate

5. The following are conditions of a licence:

- 1. At each office authorized by the licence, the licensee shall display and provide educational materials about the payday lending industry, financial planning, the Act and the regulations that the Registrar approves and that are visible to borrowers immediately upon entering the office. Conditions of licence
- 2. If the licensee is a lender that offers to make a remote payday loan agreement with a borrower or is a loan broker that offers to assist a borrower in obtaining a remote payday loan agreement, the licensee shall
 - i. communicate to the borrower, as soon as the borrower makes contact with the licensee, that the educational materials described in paragraph 1 are available, and
 - ii. at the request of the borrower, immediately provide the educational materials to the borrower.
- 3. If the licensee is a corporation, all of its officers and directors who are individuals must be at least 18 years of age.

CONSULTATION DRAFT
Payday Loans Act Regulations

4. If the licensee is a corporation, at least one officer or director of the corporation must be an individual who is ordinarily resident in Canada. The licensee shall notify the Registrar in writing of the name and residence address of all such officers and directors and any change in those names and residence addresses within five days after the change occurs.

Transition, licences	6. The time prescribed for the purposes of subsection 18(1) of the Act shall be the period of 90 days after the day that subsection comes into force.
Time for further application	7. The time prescribed for the purposes of clause 19(a) of the Act is 12 months.
Change of information	8. (1) If there is a change to any of the information that was included in an application for a licence or renewal of a licence after the applicant makes the application, whether or not the Registrar has issued or renewed the licence, the applicant or the licensee shall notify the Registrar, in writing, within five days after the change occurs and shall set out the nature of the change.
Other notice of the change	(2) Subsection (1) does not apply if any other provision of the Act or the regulations requires the applicant or the licensee to give notice of the change to the Registrar.

GENERAL REGULATION OF LICENSEES

Name of licensee	9. (1) A licence shall not authorize the licensee to operate an office except under the licensee's legal name or a name of the licensee registered under the <i>Partnership Act</i> .
More than one office	(2) A licence shall not authorize the licensee to operate any office under more than one name registered under the <i>Partnership Act</i> , but the name registered under that Act under which the licensee operates any one office may be different from the name registered under that Act under which the licensee operates any other office.
Location of offices	10. (1) A licensee shall maintain at least one office that is physically located in Prince Edward Island.
Dwelling	(2) A licence shall not authorize the licensee to operate an office from a dwelling.
Address for service	(3) A licensee shall maintain an address for service that is in Prince Edward Island.
Bank account or similar account	11. (1) A licensee shall maintain an account in respect of the activity for which the licensee is licensed; the account must be in the legal name of

the licensee, must be in Prince Edward Island and must be located in a bank or an authorized foreign bank within the meaning of section 2 of the *Bank Act* (Canada) or in a credit union as defined in the *Credit Unions Act* R.S.P.E.I. 1988, Cap C-29.1.

(2) A licensee may maintain more than one account under subsection (1) but shall not use more than one such account for any one of the licensee's offices.

More than one
account

(3) The licensee shall ensure that all amounts that the licensee receives or disburses in connection with the activity of the licensee for which an account mentioned in subsection (1) is maintained are deposited into or disbursed from the account, as the case may be.

Deposits and
disbursements

(4) If there is any change in respect of an account mentioned in subsection (1), including a change in the address of the branch of the institution in which the account is located, the offices for which the licensee uses the account or the persons who have signing authority over the account, the licensee shall notify the Registrar in writing of the change and the nature of the change within five days after the change occurs.

Notification of
change

12. (1) A licensee shall keep all documents and records relating to the activity in respect of which the licensee is licensed separate and apart from the documents and records of any other activity that the licensee conducts and shall keep them in electronic or paper form at the office authorized by the licence to which they relate.

Documents and
records

(2) The licensee shall keep the documents and records at the office required under subsection (1) for a time period of at least two years from the end of the term of the payday loan agreement to which they relate.

Records retention

13. (1) Upon request, a licensee shall provide information to the Registrar that is relevant to the administration of the Act.

Disclosure to
Registrar

(2) If the Registrar so requests, the licensee shall provide the information in a form that is verified by affidavit.

Idem

(3) Within three months of the end of the licensee's fiscal year, a licensee shall file with the Registrar a financial statement in respect of the activities, during the fiscal year, of the business for which the licensee is licensed.

Idem

(4) The Registrar may require licensees to provide information to the Registrar about their business, including financial information, within the time and in the manner that the Registrar specifies.

Idem

PROTECTION OF BORROWERS

Poster for payday loans	<p>14. (1) A licensee shall display a poster in English at each of the offices authorized by the licence and shall ensure that the poster is visible to borrowers immediately upon entering the office and that it complies with this section.</p>
Minimum width and length	<p>(2) The poster shall be of a minimum size of 61 centimetres in width by 76 centimetres in length.</p>
Contents	<p>(3) The poster shall consist of the following with respect to a payday loan agreement that the licensee offers to make with a borrower, if the licensee is a lender, or that the licensee offers to assist a borrower in obtaining, if the licensee is a loan broker, and shall not include anything else:</p> <ol style="list-style-type: none"> 1. A heading setting out <ol style="list-style-type: none"> i. the words “Maximum Allowable Cost per \$100 Borrowed:” in 144 point font, and ii. the amount “[??]” in 144 point font, immediately below subparagraph i. 2. A heading setting out <ol style="list-style-type: none"> i. the words “Our cost per \$100 borrowed:” in 72 point font, and ii. the total cost of borrowing per each \$100 advanced under the agreement in 144 point font, immediately below subparagraph i. 3. A subheading in 54 point font with the words “Example: Your \$300 loan for 14 days”. 4. The following in 54 point font: <ol style="list-style-type: none"> i. the words “Amount Advanced \$300.00”, and ii. the words “Total Cost of Borrowing” followed by the total cost of borrowing per each \$300 advanced under the agreement. 5. A horizontal line extending across the width of the text on the poster immediately below the text described in paragraph 4. 6. The following in 54 point font: the words “Total You Repay” followed by the total of \$300 plus the total cost of borrowing per each \$300 advanced under the agreement. 7. The words “This poster is required under the <i>Payday Loans Act</i>” in 36 point font.
Communication for remote lending	<p>(4) If a licensee is a lender that offers to make a remote payday loan agreement with a borrower or is a loan broker that offers to assist a borrower in obtaining a remote payday loan agreement, the licensee shall communicate to the borrower the information required by subsection (3) for the poster before discussing with borrower anything about payday loans.</p>
Advertising	<p>15. (1) Any licensee who makes representations in respect of a payday loan, or causes representations to be made in respect of a payday loan, in</p>

an advertisement shall do so in accordance with this section, regardless of whether the representations are made orally, in writing or in any other form.

(2) If an advertisement about a payday loan mentions cost of borrowing, the amount advanced, the repayment of the loan or the term of a payday loan agreement, the advertisement shall also disclose the following information:

Cost of borrowing disclosure

1. The maximum allowable cost of borrowing under payday loan agreements is \$[??] per each \$100 advanced.
2. The actual cost of borrowing per each \$100 advanced under the payday loan agreement that the licensee offers or that the licensee offers to assist the borrower in obtaining.
3. The cost of borrowing described in paragraph 2 applied to \$300 advanced for a term of 14 days.
4. The cost of borrowing under the agreement mentioned in paragraph 2, expressed as a total amount.
5. The term of the agreement mentioned in paragraph 2, expressed in days.
6. The amount of the advance under the agreement mentioned in paragraph 2.
7. The total amount that the borrower is required to pay under the agreement mentioned in paragraph 2.

16. If, under subsection 50(4) of the Act, the Registrar requests a licensee to submit all statements to the Registrar for approval before publication, the time period for the purposes of subsection 50(5) of the Act shall be six months.

Registrar's approval before publication

17. The following amounts are prescribed as included in the cost of borrowing with respect to a payday loan agreement:

Cost of borrowing

1. Any amount that must be paid by the borrower to process a payment provided by the borrower under the agreement.
2. Any other amount that must be paid by the borrower to obtain the payday loan.

18. (1) For the purposes of subsection 27(1) of the Act, a payday loan agreement shall include the following:

Contents of payday loan agreements

1. The following table, which is set out on the first page of the agreement and which does not include anything else:

Details of Payday Loan Agreement	
Amount Borrowed	A
Term of the Agreement in Days	B

CONSULTATION DRAFT
Payday Loans Act Regulations

Total Cost of Borrowing	C
Maximum Allowable Cost per \$100 Borrowed	D
Cost per \$100 Borrowed	E
Total Amount Due under the Agreement	F
Payment Due Date	G
Borrower's Signature	H

where,

A = the amount of money transferred to the borrower under the agreement,

B = the term of the agreement in days,

C = the cost of borrowing expressed as a total amount,

D = \$[??] per \$100 borrowed, but this space may be left blank if the parties entered into the agreement before the day section 30 of the Act comes into force,

E = the actual cost of borrowing expressed as an amount per \$100 advanced under the agreement,

F = the total of all payments that the borrower is required to make in connection with the agreement,

G = the date at which the borrower is required to pay amount F, and

H = the borrower's signature.

2. The date of the agreement.

3. The borrower's signature and name and, if any, the borrower's address and telephone number.

4. The signature and legal name of the lender under the agreement.

5. The name, if any, registered under the *Partnership Act* for the office from which the lender entered into the agreement, the address of that office, the telephone number of that office and information respecting other ways, if any, in which the borrower can contact the lender, such as facsimile number and e-mail address.

6. If a loan broker assisted the borrower in obtaining the payday loan under the agreement

i. the legal name of the loan broker, and

ii. the name, if any, registered under the *Partnership Act* for the office from which the loan broker assisted the borrower, the address of that office, the telephone number of that office and information respecting other ways, if any, in which the borrower can contact the loan broker, such as facsimile number and e-mail address.

7. If the lender has all or any part of the advance delivered to the borrower in a form other than cash, the following information about the device used to deliver that part of the advance to the borrower:

- i. Information about where the borrower can access the terms and conditions governing the device, if the device is not a cheque.
 - ii. An indication of the restrictions or exclusions of use, if any, related to the device, if the device is not a cheque.
 - iii. Instructions on how to access the advance using the device, if the device is not a cheque.
 - iv. The amount, if any, that the borrower is required to pay to obtain the device or to load or activate it.
 - v. A statement that there may be a transaction charge for using the device.
 - vi. Information about how the borrower can verify the amount of the balance on the device, if the device is not a cheque.
 - vii. If the device is not a cheque, a statement that the borrower may request the lender or the loan broker that assisted the borrower in obtaining the payday loan to disclose the balance on the device and that the licensee who receives the request shall make the disclosure at no charge to the borrower.
 - viii. The process for the borrower to obtain a replacement for the device and the amount, if any, that the borrower is required to pay for the replacement.
 - ix. If the device is not a cheque, whether or not the device that the borrower obtains from the lender can be used under a subsequent payday loan agreement that the borrower enters into with the lender and if so, whether the borrower has to pay an amount to obtain, load or activate the device under the subsequent agreement.
8. The methods by which the borrower may make payment to the lender.
 9. The statements set out in subsection (2) in the language of the agreement.
 10. A statement that the borrower is entitled to receive a copy of the agreement by requesting it at any time before the end of one year from the end of the term of the agreement from,
 - i. the lender, if no loan broker has assisted the borrower in obtaining the payday loan, or
 - ii. the loan broker who assisted the borrower in obtaining the payday loan.
 11. Information for contacting the Registrar, including an address, facsimile number and telephone number, as well as a toll free number, if any.
 12. The website address of the Consumer, Corporate and Insurance Services Division of the Prince Edward Island Office of the Attorney General.

(2) The statements mentioned in paragraph 9 of subsection (1) are the following: Statements

ATTENTION

This payday loan is intended to address short-term financial needs. The cost of borrowing for this loan may be significantly higher than credit offered by other lenders.

YOUR CANCELLATION RIGHTS UNDER THE PAYDAY LOANS ACT

You may cancel the agreement within two (2) business days of entering into it. You do not have to give a reason for cancelling the agreement.

To cancel the agreement, you must provide your notice of cancellation, together with the amount you borrowed, to the business you dealt with to get your loan. If you have made any payments under the loan, the lender must return those payments to you at the earliest reasonable opportunity.

If you are not provided with the loan or with a copy of this agreement that complies with the Act when you enter into the agreement, you may cancel the agreement at any time. For remote payday loan agreements, you may cancel the agreement at any time if the lender did not deliver instructions for transfer on the date of the loan agreement or if you are not provided with a copy of this agreement that complies with the Act when you enter into the agreement. You do not have to give a reason for cancelling the agreement.

* A remote payday loan agreement is one in which the borrower is not present with the lender or the loan broker when the payday loan agreement is made (e.g. a loan made over the internet or by phone).

REFUNDS UNDER THE PAYDAY LOANS ACT

Under certain circumstances, you may demand a refund of a payment you made under a payday loan agreement within one year of having made that payment. Either the licensee has received a payment to which it is not entitled or the licensee has engaged in prohibited conduct of such a serious nature that you are entitled to a refund of the cost of borrowing that you paid. To obtain a refund you must give a notice demanding it to the business that you dealt with to get your payday loan. Your notice must set out your demand for the refund and the reason for it, as well as your name and telephone number. Note that the business has two (2) business days within which to provide the refund to you. You may choose to collect your refund in person or have it mailed to you.

Please contact the Consumer, Corporate and Insurance Services Division of the Prince Edward Island Office of the Attorney General for more information on when you may be entitled to a refund and how to make your demand for a refund. You may contact the Division at 1-800-658-1799.

(3) For the purposes of subsection 27(1) of the Act, it is a prescribed requirement that a payday loan agreement be in at least 12 point font and that headings in the agreement be in at least 14 point font. Font

(4) Before a borrower enters into a remote payday loan agreement, the lender shall ensure that the agreement is available and accessible in a manner that ensures that the borrower has accessed it and is able to retain and print it. Availability and accessibility

(5) In a remote payday loan agreement, after complying with subsection (4) and before delivering the advance to the borrower, the lender shall ensure that the borrower has consented to entering into the agreement in a manner that allows the lender to prove that the borrower has so consented. Consent

(6) If a loan broker assisted the borrower in obtaining the payday loan, the loan broker shall facilitate compliance with subsections (4) and (5). Facilitate compliance

19. (1) A borrower under a payday loan agreement who cancels the agreement under subsection 28(1) of the Act shall give the notice required by subsection 28(2) of the Act to Cancellation

- (a) the lender if no loan broker has assisted the borrower in obtaining the payday loan; or
- (b) the loan broker who assisted the borrower in obtaining the payday loan.

(2) At the time of giving the notice, the borrower shall repay the advance, as required by clause 40(3)(b) of the Act. Timing of repayment

(3) The lender shall comply with clause 40(3)(a) of the Act at the earliest reasonable opportunity after the borrower gives the notice. Compliance with settlement or decision

(4) If a loan broker assisted the borrower in obtaining the payday loan, the loan broker shall facilitate compliance with subsection (3). Cancellation

20. (1) In addition to the copy of the payday loan agreement that a borrower under the agreement receives under subsection 27(1) of the Act, the borrower may, at any time before the end of one year from the end of the term of the agreement, request a copy of the agreement from Copy of payday loan agreement

- (a) the lender if no loan broker has assisted the borrower in obtaining the payday loan; or

(b) the loan broker who assisted the borrower in obtaining the payday loan.

Requests by
borrower

(2) The borrower may make the request orally or in any other way.

Compliance with
request

(3) The licensee shall provide the requested copy of the agreement to the borrower within

(a) the first day after the time that the licensee receives the request, if the licensee is open for business on that day; or

(b) the next day that the licensee is open for business following the first day described in clause (a), if the licensee is not open for business on that first day.

No fee for first
request

(4) The licensee shall not charge any fee for providing the requested copy of the agreement to the borrower the first time that the borrower requests a copy of the agreement under subsection (1).

Delivery of advance

21. (1) Subject to subsection (2), it is deemed that a lender under a payday loan agreement has not delivered the advance to the borrower upon entering into the agreement unless the advance is immediately accessible by the borrower at that time.

Deemed delivery of
advance

(2) Under a remote payday loan agreement, the lender is deemed to have complied with subsection (1) if the lender under a payday loan agreement delivers instruction to the lender's financial services provider to transfer the amount of the advance to the borrower on the same day on which the agreement is entered into by both the borrower and the lender.

Financial services
provider

(3) For the purposes of subsection (2), "financial services provider" includes a bank listed in Schedule I, II or III of the *Bank Act* (Canada), a treasury branch, a credit union, a trust corporation or loan corporation registered under the *Extra-Provincial Corporations Registration Act* R.S.P.E.I. 1988, Cap. E-14 or an organization that provides remote funds transfers, electronic funds transfers or any similar method of transferring money.

Convertibility of
advance into cash

22. (1) If a lender under a payday loan agreement delivers all or any part of the advance to the borrower by way of a device, the borrower is entitled to receive in cash that part of the advance that is still accessible by way of the device upon making a request to

(a) the lender if no loan broker has assisted the borrower in obtaining the payday loan; or

(b) the loan broker who assisted the borrower in obtaining the payday loan.

Form of request

(2) The borrower may make the request orally or in any other way.

Provision of cash

(3) When a borrower makes a request under subsection (1), the lender shall, immediately and at no charge to the borrower, provide in cash to the borrower that part of the advance that is still accessible by way of the device.

(4) If a loan broker assisted the borrower in obtaining the payday loan, the loan broker shall facilitate compliance with subsection (3). Facilitation of provision of cash

(5) If the lender contravenes subsection (3), the borrower is only required to repay the advance to the lender and is not liable to pay the cost of borrowing. Failure to provide cash

23. The prescribed limit on the cost of borrowing under a payday loan agreement for the purposes of subsection 30(2) of the Act is \$[??] per \$100 advanced under the agreement. Maximum allowable cost of borrowing

24. (1) The person or entity prescribed for the purposes of subsection 41(1) of the Act is Refund of illegal payments

(a) the lender in respect of the payday loan to which the refund relates, if no loan broker has assisted the borrower in obtaining the loan; or

(b) the loan broker who assisted the borrower in obtaining the payday loan to which the refund relates.

(2) A notice demanding a refund described in subsection 41(1) of the Act shall include Contents of notice demanding refund

(a) the name of the borrower;

(b) a telephone number, if any, at which the borrower may be contacted;

(c) a statement that the borrower demands a refund;

(d) the grounds on which the borrower demands the refund; and

(e) a statement of the amount of the charge, if any, of which the borrower demands recovery if the charge is a charge levied against the borrower as described in subsection 31(1).

(3) If the borrower gives a notice demanding a refund under subsection 41(1) of the Act in a form that is not in writing, the recipient of the notice shall make a written record of Notice not in writing

(a) the date and time that the recipient received the notice;

(b) the contents that subsection (2) requires to be included in the notice; and

(c) the address, if any, that the borrower provided.

(4) A loan broker who, under clause (1)(b), receives a notice demanding a refund under subsection 41(1) of the Act shall immediately forward the notice to the lender in respect of the payday loan to which the refund relates. Immediate forwarding of notice

- Delivery of payment to borrower
- (5) If the borrower gives a notice demanding a refund under subsection 41(1) of the Act, the lender shall ensure that the refund is paid to the borrower and, subject to subsection (7), shall ensure that it is sent by regular mail to the address of the borrower mentioned in subsection (6) by the end of
- (a) the second day after the time that the recipient of the notice receives the notice, if the recipient is open for business on that day; or
 - (b) the next day that the recipient of the notice is open for business following the second day described in clause (a), if the recipient is not open for business on that second day.
- Address of borrower
- (6) For the purposes of subsection (5), the address of the borrower shall be
- (a) the address that the borrower specifies when the borrower gives the notice demanding the refund; or
 - (b) the address, if any, of the borrower set out in the payday loan agreement, if the borrower does not specify an address under clause (a).
- Availability of payment
- (7) The lender shall ensure that the refund is available for the borrower to collect in person, by the end of the time period described in subsection (5), from the recipient of the borrower's notice demanding the refund if
- (a) there is no address for the borrower set out in the payday loan agreement, if any, relating to the payday loan and the borrower does not specify an address when giving the notice; or
 - (b) the borrower indicates in the notice that the borrower intends to collect the refund in person.
- Facilitation of payment to borrower
- (8) If a loan broker assisted the borrower in obtaining the payday loan, the loan broker shall facilitate compliance with subsections (5) and (7).
- Subsequent payday loan agreements
- 25.** The Registrar may specify what constitutes sufficient proof for the purposes of clauses 33(1)(b) and (3)(b) of the Act in the circumstances that the Registrar specifies with respect to the particular borrower involved.

PROHIBITED PRACTICES

- Definitions
- 26. (1)** In this section
- (a) "contact" includes communication by e-mail or voice mail;
 - (b) "spouse" means
 - (i) a spouse as defined in section 1 of the *Family Law Act* R.S.P.E.I. 1988, Cap. F-2.1, or
 - (ii) either of two persons who live together in a conjugal relationship outside marriage.
- contact
- spouse

- (2) No licensee shall contact or attempt to contact the borrower's spouse, a member of the borrower's family or household, or a relative, friend, neighbour or acquaintance of the borrower in respect of a payday loan. Prohibited contacts
- (3) Except with the consent of the borrower, no licensee shall contact an employer of a borrower or any employees of that employer unless Prohibited contact to employer
- (a) the contact occurs before the borrower enters into a payday loan agreement; and
- (b) the contact is for the sole purpose of confirming the borrower's employment, length of employment, employment income, occupation or business address.
- 27.** (1) A lender shall ensure that all applications for a payday loan and all documentation relating to such an application or a payday loan agreement are not used for any purpose other than providing a payday loan and are not used in connection with any other good or service. Goods and services other than loan
- (2) A lender shall not require a borrower to transact in any good or service, other than a payday loan, as a condition of entering into a payday loan agreement. No conditions
- (3) A lender under a payday loan agreement shall not, in the agreement, provide to the borrower any good or service, other than the payday loan. No provision of other good or service
- (4) No loan broker shall facilitate a contravention of subsection (1), (2) or (3). No facilitation of other good or service
- (5) If a lender contravenes subsection (1), (2) or (3), the borrower is only required to repay the advance to the lender and is not liable to pay the cost of borrowing. Not liable to pay cost of borrowing
- (6) For greater certainty, a device with respect to a payday loan agreement shall be considered to be part of the payday loan. Device with respect to a payday loan
- 28.** (1) No lender under a payday loan agreement shall request or accept an assignment of wages or any part of them from the borrower. No wage assignment from borrower
- (2) No loan broker shall facilitate a contravention of subsection (1). No facilitation of wage assignment
- (3) If a lender contravenes subsection (1), the borrower is only required to repay the advance to the lender and is not liable to pay the cost of borrowing. Not liable to pay cost of borrowing
- 29.** (1) No lender in respect of a payday loan shall, without the borrower's consent, use any post-dated cheques, pre-authorized debits or future payments of a similar nature received from the borrower under a No future payments

payday loan agreement by applying them to a payday loan made under another payday loan agreement.

No use of information without consent	(2) No licensee in respect of a payday loan shall, without the borrower's consent, use any information obtained from the borrower in connection with the loan for any purpose not connected with the loan, including to obtain payment in respect of another payday loan.
No facilitation of use of information without consent	(3) No loan broker shall facilitate a contravention of subsection (1) or (2).
Not liable to pay cost of borrowing	(4) If there is a contravention of subsection (1) or (2) with respect to a payday loan agreement, the borrower is only required to repay the advance to the lender and is not liable to pay the cost of borrowing.
Devices used to deliver an advance not in cash	30. (1) No licensee in respect of a payday loan agreement shall refuse to disclose the balance on the device to the borrower at the request of the borrower or shall charge the borrower a fee for disclosing that balance.
Not liable to pay cost of borrowing	(2) If a licensee contravenes subsection (1), the borrower is only required to repay the advance to the lender and is not liable to pay the cost of borrowing.
No unreasonable replacement charge	(3) No licensee in respect of a payday loan agreement shall charge the borrower an amount that is not reasonable to replace the device.
No facilitation	(4) No loan broker shall facilitate a contravention of subsection (1) or (3).
No repeat processing charges	31. (1) No lender under a payday loan agreement shall attempt to process the same payment instrument provided by the borrower under the agreement in exchange for the advance more than once if such a subsequent attempt would result in any charge being levied against the borrower, other than the amount of the payment.
No facilitation	(2) No loan broker shall facilitate a contravention of subsection (1).
Not liable to pay cost of borrowing	(3) If the lender contravenes subsection (1), the borrower is only required to repay the advance to the lender and is not liable to pay the cost of borrowing.
Recovery of amount of charge	(4) If the lender contravenes subsection (1) and a charge is levied against the borrower, other than the amount of the payment, the borrower is entitled to recover the amount of the charge from the lender.
Manner of recovery	(5) The borrower may demand recovery of the charge in the same manner as the borrower is entitled, under subsection 41(1) of the Act, to demand a refund of a payment.

32. (1) In this section, “contact” includes communication by e-mail or voice mail.

Contact, defined

(2) No licensee shall

Methods of collection

- (a) collect or attempt to collect an amount owing under a payday loan agreement from a person who is not the borrower; or
- (b) contact or attempt to contact a person for the purpose of collecting an amount owing under a payday loan agreement if the person has informed the licensee that the person is not the borrower, unless the licensee first takes all reasonable precautions to ensure that the person is, in fact, the borrower.

(3) No licensee shall engage in conduct described in any of the following paragraphs with respect to a borrower:

Prohibited conduct

- 1. Make a telephone call or personal call at any of the following times, except at the request of the borrower:
 - i. On a Sunday local time of the place where the call is being made.
 - ii. On any day of the week, between the hours of 9 p.m. and 8 a.m. local time of the place where the call is being made.
 - iii. Despite subparagraphs i and ii, on any holiday listed in subsection (4).
- 2. Contact the borrower more than three times in a seven-day period, except that contact made by ordinary mail shall not be counted as contact.
- 3. Publish or threaten to publish the borrower’s failure to pay.
- 4. Use threatening, profane, intimidating or coercive language.
- 5. Use undue, excessive or unreasonable pressure.
- 6. Communicate or attempt to communicate by a means that enables the charges or costs of communication to be payable by the borrower.
- 7. Otherwise communicate in a manner or with a frequency that constitutes harassment.

(4) For the purposes of subparagraph 1 iii of subsection (3), the following days are holidays:

Holidays

- 1. New Year’s Day.
- 2. Islander Day.
- 3. Good Friday.
- 4. Victoria Day.
- 5. Canada Day.
- 6. Civic Holiday.
- 7. Labour Day.
- 8. Thanksgiving Day.
- 9. Christmas Day.
- 10. Boxing Day.

CONSULTATION DRAFT
Payday Loans Act Regulations

11. Any day fixed as a holiday by proclamation of the Governor General or Lieutenant Governor.

False information **33.** No licensee shall, in respect of a payday loan in default, give any person, directly or indirectly, by implication or otherwise, any false, misleading or deceptive information with respect to a payday loan.

Expiry of payday loan agreement **34.** (1) A lender shall not enter into a payday loan agreement with a borrower if the term of the agreement ends before the day on which the borrower is next regularly due to receive income.

No facilitation (2) No loan broker shall facilitate a contravention of subsection (1).

Not liable to pay cost of borrowing (3) If the lender contravenes subsection (1), the borrower is only required to repay the advance to the lender and is not liable to pay the cost of borrowing.

Commencement **35.** These regulations come into force on