



VIA REGULAR AND ELECTRONIC MAIL

February 8, 2017

Mr. Peter Tabuns, MPP
Chair, Standing Committee on Social Policy
Room 165, Main Legislative Building, Queen's Park
Toronto, ON M7A 1A5

Dear Mr. Tabuns,

Re: Considerations for Loan Tracking Mechanisms Related to Amendments to the *Payday Loans Act, 2008*

The Office of the Information and Privacy Commissioner of Ontario (IPC) is responsible for ensuring compliance with the *Freedom of Information and Protection of Privacy Act (FIPPA)*, which applies to the provincial public sector, and the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*, which applies to the municipal public sector. In accordance with these statutes, the IPC acts independently of government to uphold and promote open government and the protection of personal privacy.

We are making this submission to assist the Standing Committee on Social Policy's consideration of Schedule 2 of Bill 59, *Putting Consumers First Act (Consumer Protection Statute Law Amendment), 2016*, which amends the *Payday Loans Act, 2008*. The Bill includes some measures to enable better enforcement of payday lending practices, including providing the Registrar of payday loans with authority to inspect unlicensed lenders. It gives the Lieutenant Governor in Council new authority to make regulations governing a number of matters including advertising and signage; factors for lenders to consider before entering into loan agreements; and for some classes of loans, the ability to offer installment payments and specify the terms of those payments. This submission focuses specifically on the privacy implications of a payday loan tracking database.

Background

The Ministry of Government and Consumer Services (MGCS) consulted the IPC in the fall of 2015 regarding measures to strengthen consumer protection in the payday lending sector. In the context of those consultations, MGCS and the IPC discussed the privacy implications of a proposed payday loan tracking database. At that time, we stated that we would prefer the ministry not proceed with the proposal and recommended that it continue to evaluate the effectiveness of other consumer protection measures including those set out in the Bill.

Following the introduction of Bill 59, we learned that questions have been raised about the absence of a tracking database. We trust that the comments that follow will assist the Standing Committee in its consideration of the privacy concerns raised by such a database.



Protection of Personal Information

A loan tracking database operated by the government would require Ontario payday lenders to upload prescribed information about borrowers and their loan activities. Consequently, this central database would contain the personal information of a significant number of individuals engaged in payday borrowing activities across Ontario.

We do not support any proposal to establish a central loan tracking database without first evaluating the effectiveness of other consumer protection measures contained in Bill 59. In our view, a government-controlled database, which involves the mandatory and systematic collection, use and disclosure of sensitive personal information of individuals resulting from their dealings with private-sector lenders, is significantly invasive of personal privacy interests.

We appreciate the goals of a central loan tracking database, but believe that there are significant risks of unauthorized access to, and secondary uses of, the database and the sensitive financial and other personal information it would contain. Further, we believe that a tracking database has the potential to stigmatize a vulnerable sector of society and erode trust in government.

When evaluating public sector initiatives that impact the privacy interests of individuals, the IPC looks at a number of factors, including:

- **Necessity:** is there a demonstrable problem or need to be addressed?
- **Effectiveness:** is the proposed solution likely to be effective in meeting that problem or need?
- **Proportionality:** is the proposed solution reasonable, and do the benefits substantially outweigh the reduction of privacy that may result, while taking into account the extent of the problem and degree of invasiveness?
- **Alternatives:** is there a less privacy-invasive alternative solution available?

Based on information provided by MGCS and other sources, we acknowledge that there is a demonstrable problem or need to be addressed and that a loan tracking database may be effective as a possible solution. However, we believe that the privacy risks associated with a central database are significant, not proportional to the degree of invasion and that other, less privacy-invasive alternative options merit further examination.

Achieving proportionality means that the benefits outweigh the privacy risks and that the risks are minimized to the furthest extent possible. This involves limiting the collection, use, and disclosure of personal information to the fullest extent possible.

We believe strongly that other, less privacy-invasive policy options should be studied and explored first to meet the goals of strengthening consumer protection in the alternative financial services sector. As noted, Bill 59 either contains such options or facilitates the introduction of such options by way of regulation. Without evidence that existing and other possible measures are not effective in achieving the broader goals of consumer protection, we are not persuaded that such a database should proceed.

We are aware of a range of regulatory approaches being undertaken in other jurisdictions, including the adoption of loan tracking databases in some U.S. states. However, no databases

currently exist in Canada and some evidence suggests that the most effective approaches do not involve a database.

We note that in its February 2016 research report submitted to MGCS and entitled *Banking on the Margins*, Cardus, an independent think tank based in Hamilton, found that a law passed in Colorado in 2010 governing payday loans, which did not mandate a loan tracking database, “transformed the structure of the industry without reducing access to consumers.”¹ The report stated that the Colorado law “has arguably been the most effective regulatory framework for payday lending in North America.” It lengthened loan terms and made other targeted changes to repayment structures, allowing payday providers to continue to operate while significantly reducing the number of repeat borrowers. According to a report of Pew Charitable Trust dated August 2016, U.S. national survey data show that payday borrowers and the American public overwhelmingly prefer a model similar to Colorado’s.²

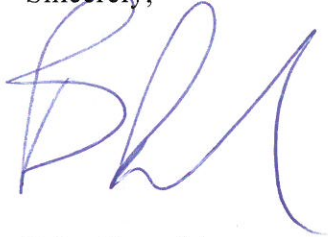
We also note that the 2014 Deloitte Payday Lending Task Force Report, commissioned by MGCS and prepared by a volunteer panel of stakeholders with expertise in the payday lending industry, concluded that it “would be premature to recommend either in favour of or against the introduction of a loan tracking capability.”³ One of the considerations informing this assessment was concern for the privacy of borrowers’ information.

Conclusion

As indicated above, we do not favour a government-operated central database at the present time and recommend that further research and study be undertaken of the other consumer protection measures contained in the Bill.

We hope that our comments and recommendations are helpful. We would welcome any questions that the Committee may have on this issue.

Sincerely,



Brian Beamish
Commissioner

cc: Katch Koch, Clerk, Standing Committee on Social Policy
Peter Hope-Tindall, Head of Privacy, MGCS & ServiceOntario
Renu Kulendran, Assistant Deputy Minister, Consumer Services Operations, MGCS

¹ *Banking on the Margins: Finding Ways to Build an Enabling Small-Dollar Credit Market*
(<https://www.cardus.ca/research/workandeconomics/paydayloans/>)

² *From Payday to Small Investment Loans: Risks, opportunities, and policy proposals for successful markets*
(<http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2016/08/from-payday-to-small-installment-loans>)

³ *Strengthening Ontario’s Payday Loans Act: Payday Lending Panel Findings and Recommendations*
(<http://www.ontariocanada.com/registry/showAttachment.do?postingId=17182&attachmentId=26292>)