

Common Problems with Submitted Licence Applications

Note: The suggested resolutions described below are provided to assist applicants to meet regulatory requirements; they are not to be considered legal advice. Please consult your legal counsel if you have questions concerning the legal ramifications relating to any of the issues described.

1. Default interest:

Problem: Many applicants do not clearly describe the default interest charge in the required sign and the documentation they provide to borrowers.

Requirement: *The Payday Loans Act* (the “Act”) allows payday lenders to charge default interest, but only to a maximum of 30% per annum, and only on the principal amount of the loan outstanding.

Solution: In describing the default interest charge in the section 20 (pre-contract) disclosure, the payday loan agreement and the required sign, ensure that the description makes it clear that the interest rate is “per annum”, and that the interest is only chargeable on the outstanding principal balance of the loan.

Example: “Default interest will be charged at a rate of 30% per annum on the outstanding principal balance of the loan if you fail to repay the loan in full on the loan repayment date.”

2. Loan Fees/Cost of Borrowing:

Problem: Some applicants are not clearly and consistently describing their loan charges in the required sign and documentation they provide to borrowers. For example, an applicant might describe their loan charge in the loan agreement as a “loan charge” and then refer to it in the section 20 (pre-contract) disclosure and the required sign simply as “cost of borrowing”.

Requirement: Payday lenders should clearly and accurately describe their fees and charges in their documentation, and this includes being consistent in the name of the fee or charge.

Solution: The cost of borrowing is not intended to be a fee name; it is intended to be a standardized measurement that will assist borrowers to compare loan products offered by different payday lenders. It could encompass several different fees, depending on the business model of the payday lender. Give your loan charges a name other than “cost of borrowing” and check all of your documentation to ensure that you use that name consistently when describing the charge.

Example: “loan fee”, “finance charge”, etc.

3. NSF charges:

Problem: Some applicants are not making it clear in their documentation that only one NSF charge can be levied per loan agreement.

Requirement: Payday lenders are only allowed to charge one NSF fee, up to a maximum of \$50, regardless of the number of cheques or pre-authorized debits (“PADs”) dishonoured with respect to a payday loan agreement.

Solution: Review your section 20 (pre-contract) disclosure, payday loan agreement and required sign to ensure that your description of the NSF charge does not suggest that it will be charged for each dishonoured cheque or PAD.

Example: “NSF charge of \$x for a dishonoured cheque or pre-authorized debit. This charge is payable only once per loan, regardless of the number of cheques or pre-authorized debits dishonoured.”

4. Loan Details Table:

Problem: Several applicants have not copied the loan details table exactly as prescribed in *The Payday Loans Regulations* (the “Regulations”), or have not used the correct 12 point font.

Requirement: Section 10 of the Regulations prescribes a “loan details” table that must be included, in 12 point font, on the first page of every payday loan agreement.

Solution: Review your payday loan agreement to ensure that the loan details table appears on the first page, in 12 point font, exactly as it is set out in the Regulations (except for the letters in the right hand column).

No other information should be included in the table, and no information in the table should be left out. The information appearing in brackets in the prescribed table must be included in the table on your loan agreement.

Example:

Loan Details

Amount borrowed (in dollars)	
Term of loan (in days)	
Total cost of borrowing (in dollars)	
Annualized borrowing rate	
Cost per \$100 borrowed (in dollars)	
Total amount to be paid by borrower (in dollars)	
Repayment date	
Borrower's signature	

Note: When entering into a payday loan agreement with a borrower, the loan details table in the payday loan agreement must have the right-hand column filled out with the information corresponding to the items identified in the left-hand column, having regard to the particular loan entered into with that borrower.

A table completed for a loan should look something like this:

Loan Details

Amount borrowed (in dollars)	\$300.00
Term of loan (in days)	14
Total cost of borrowing (in dollars)	\$60
Annualized borrowing rate	521.4%
Cost per \$100 borrowed (in dollars)	\$20
Total amount to be paid by borrower (in dollars)	\$360
Repayment date	June 14, 2011
Borrower's signature	<i>John Doe</i>

5. Contact Information for Credit Counselling Canada:

Problem: Some applicants misstated the name and contact information of Credit Counselling Canada.

Requirement: The Act requires payday lenders to provide contact information for Credit Counselling Canada to borrowers as part of the section 20 (pre-contract) disclosure.

Solution: Review your section 20 (pre-contract) disclosure to ensure it includes the correct name and contact information for Credit Counselling Canada.

Example:

Debt Counselling:

If you feel you may benefit from confidential debt counselling, **Credit Counselling Canada** can be reached by calling toll-free at 1-866-398-5999; by fax at 416-929-5256; by e-mail at

contact@CreditCounsellingCanada.ca; or by mail at 720 Spadina Ave., Suite 202, Toronto ON M5S 2T9. You can also visit their website for further information at www.creditcounsellingcanada.ca.

6. Borrower's Right to Cancel:

Problem: Many applicants do not provide clear and accurate notice of the borrower's right to cancel the payday loan agreement in the section 20 (pre-contract) disclosure.

Requirement: Section 20 of the Act requires payday lenders to provide notice to borrowers in the section 20 (pre-contract) written disclosure of the borrower's right to cancel the payday loan agreement pursuant to section 22 of the Act.

Solution: The wording chosen to provide notice of the borrower's right to cancel the payday loan should clearly draw to the borrower's attention that it is their right to cancel without reason or cost, the timeframe in which they have to cancel the loan and the manner in which they can cancel the loan.

The notice should refer the borrower to the included Notice of Cancellation form, it should state where the Notice of Cancellation form must be delivered, and it should state that it can be delivered to any employee at the location.

The notice should also state that the borrower must repay the principal amount of the loan, and provide the forms in which repayment will be accepted, including the permissible forms of repayment set out in the Act.

The timeframe in which delivery of the Notice of Cancellation must occur should also be clearly set out as anytime before the end of the business day following the date the loan was entered into. The timeframe should not be described as a number of hours (i.e. 24 hours) or days (i.e. the following day) after the loan was entered into, as this might have the effect of shortening the prescribed period.

Lastly, the notice of the borrower's right to cancel the loan should be particularized to the business of the payday lender, it should not copy section 22 of the Act verbatim or refer to aspects which do not apply to your business model. For example do not refer to a return of the un-negotiated cheque or cash card if you do not advance loans by cheque or cash card.

Example:

Your Right to Cancel the Loan:

You may cancel your payday loan, without reason or cost, at any time before the end of the business day following the date you entered into the payday loan agreement.

To cancel a payday loan agreement, you have to (a) deliver the Notice of Cancellation Form below to any employee at the address set out in the payday loan agreement; and (b) repay the loan principal to us, in the form of cash, certified cheque or money order. If the loan advance is made by cheque, you may return the cheque to repay the principal. If the loan is advanced on a debit card, returning the card will be considered repayment of loan principal in the amount of the credit balance remaining on the card.

7. Right to Prepay:

Problem: Many applicants do not give notice in writing to the borrower of their right to prepay the full outstanding balance at anytime, without charge or penalty.

Requirement: *The Cost of Credit Disclosure Act, 2002* (“CCDA”) requires that lenders disclose the borrower’s right to prepay the full outstanding balance of the loan at anytime, without charge or penalty. The CCDA also provides that borrowers are entitled to a pro-rata refund of any non-interest finance charge paid by the borrower for the loan in the event of prepayment. This would include most loan fees paid by borrowers for payday loans.

Solution: Ensure that written disclosure of the borrower’s right to prepay the loan without charge or penalty appears either in the section 20 (pre-contract) disclosure or the payday loan agreement.

Example: “You are entitled to prepay the full outstanding balance of the loan at anytime, without any prepayment charge or penalty.”

8. Incomplete Information About Payday Loan Activities:

Problem: In some applications, applicants have not disclosed infrequent variations in their payday lending activities. For example, entering into payday loans by telephone and advancing funds by way of cash card for a limited number of clientele.

Requirement: As part of the licence application, applicants must describe all payday loan activities and practices at the location for which a licence is sought.

Solution: Review your application to ensure you have described all payday loan activities and practices at the location for which a licence is sought. This includes infrequent payday loan activities and practices limited to certain clientele only.

9. PAD Agreements:

Problem: The form of PAD agreement submitted by several applicants does not reflect the PAD practices permitted by the Act.

Requirement: Clause 16(2)(d) of the Regulations restricts the number of PAD attempts with respect to a payday loan. A payday lender may only attempt to obtain repayment by means of a PAD one time, and if it is dishonoured, the payday lender may try a second time with the borrower’s consent. The borrower’s consent to the second PAD attempt must be obtained in writing from the borrower (email and fax are acceptable) only after the first attempt was unsuccessful. No more than two attempts to obtain repayment by means of a PAD can be made in respect of the same payday loan agreement.

Solution: Review your form of PAD agreement to ensure the authorization clause or form is consistent with these restrictions. It must not contemplate more than two attempts.

Example: You may need to review the form with your financial institution to ensure it meets their requirements, however, one example might be:

“I authorize [*name of payday lender*] to draw on my account with the processing institution for the repayment of Loan Agreement [*insert some method of identifying the agreement, i.e. date entered into, file #, etc.*] in accordance with the following schedule:

1st attempt: Date: _____ Amount: _____

2nd attempt: in accordance with my specific written consent.”

10. Description of Policies and Procedures

Problem: Many applicants have not provided adequate descriptions of the policies and procedures they have in place concerning compliance with section 30 of the Act (loan amount restriction), and concerning compliance with the prohibition on concurrent and rollover loans.

Requirement: Applicants must describe in their licence application the policies and procedures they have in place to comply with section 30 of the Act (loan amount restriction), and with the prohibitions on concurrent and rollover loans.

Solution: Review your licence application to ensure it contains a meaningful description of the policies and procedures you have in place to comply with these requirements. The description should detail all of the controls in place to ensure that loans in excess of 50% of the borrower’s net pay will not be provided, and that concurrent and roll-over loans will not be provided. The controls should generally include a means of educating employees on the prohibitions, plus procedures or technology which reduce the likelihood of a breach of the prohibitions through employee error.

Example: For the 50% net pay loan amount restriction the description of policies and procedures might look something like this:

“All of our employees receive training on the Act’s requirements and prohibitions when they start their employment. The 50% net pay loan amount restriction is specifically addressed in this training, including how to determine a borrower’s net pay, and the company procedures to ensure compliance.

Borrowers must specify their net pay information in the loan application form in order to get a payday loan. As a standard procedure, our employees must obtain verification of this net pay information before a loan will be advanced to the borrower, such as by reviewing a pay

stub or other evidence of the borrower's net pay. The net pay information provided by the borrower is also checked against the bank statements which the borrower has to provide as part of the application process to ensure the information is consistent. A copy of the document provided by the borrower verifying net pay is retained on file.

Employee performance is reviewed annually. As part of the review process, a random selection of the employee's files is reviewed by the branch manager to ensure the employee complied with company procedures, including the procedures relating to borrowers' net pay."

General Notes:

- The word "principal", as used in the loan documentation to refer to the loan principal, is frequently misspelled as "principle."