

Criminal interest rate regulations published for consultation

JANUARY 12, 2024 4 MIN READ



Related Expertise

- [Banking and Financial Services](#)
- [Financial Services](#)
- [Financial Services Regulatory](#)

Authors: [Joyce M. Bernasek](#), [Elizabeth Sale](#)

On December 23, 2023, the federal government published [draft regulations](#) that propose important exemptions from the application of the criminal rate of interest cap as set out in section 347 of the *Criminal Code*.

As we [previously reported](#), on April 20, 2023, the federal government introduced amendments to the criminal rate of interest provisions in Bill C-47, the *Budget Implementation Act, 2023, No. 1*. These amendments changed the definition of "criminal rate" in the *Criminal Code* from an effective annual rate of interest that exceeds 60% to an annual percentage rate (APR) that exceeds 35%, meaning that both the method of calculation and the interest rate cap were changed.

The proposed amendments to the criminal rate of interest represent a significant change and have been widely followed by market participants. In addition, the amendments introduced a new section (347.01) that authorizes the Governor in Council to make exemptions from the application of section 347 by regulation. The draft regulations have been published pursuant to this section.

Exemptions

The draft regulations set out two key exemptions for commercial loans, which are loans that are made with a borrower that is not a natural person, for business or commercial purposes:

- **Commercial loans over \$500,000:** There is a full exemption from the criminal interest rate for commercial loans where the amount of credit advanced is more than \$500,000.
- **Commercial loans over \$10,000 but equal to or less than \$500,000:** There is a partial exemption for commercial loans where the amount of credit advanced is more than \$10,000 but less than or equal to \$500,000. In this case, the APR must not exceed 48% of the credit advanced (which is roughly equivalent to the current criminal interest rate cap of 60%).

There are no exemptions for consumer or small commercial loans.

The policy intent is set out in the accompanying regulatory impact analysis statement (the

statement) to the draft regulations, which states that the government is focused on vulnerable Canadians and on loans that may trap consumers in a cycle of debt. The proposed exemptions are for loans that fall outside of this policy ambit.

For this reason, in addition to the commercial loan exemptions set out above, the government has set out a partial exemption for certain pawn loans. The stated rationale is that these loans do not trap consumers in a cycle of debt since if the consumer does not repay a pawn loan, the pawned collateral is retained by the lender and the debt is extinguished. If a pawn loan meets the prescribed criteria, including that the amount of the credit advanced is less than \$1,000, a lender may charge an APR that does not exceed 48%.

Payday lending limit

The draft regulations also propose a federal limit on the cost of borrowing for payday loans, which would harmonize the cost across all provinces that have enacted a payday loan regime. The proposed limit is 14% of the amount of money advanced to the borrower. This limit would not include any default fee that is specifically authorized under applicable provincial payday lending laws or a fee for any dishonored cheque or payment (NSF fee), provided that the NSF fee is \$20 or less, effectively capping payday loan NSF fees at \$20.

Next steps

While the draft regulations provide some welcome clarity on the intended scope of the changes to the criminal rate of interest provisions, some uncertainty remains:

- As noted above, Bill C-47 changes the method of calculating the criminal rate from an effective annual rate to an APR, which must be calculated in accordance with generally accepted actuarial practices and principles. Such actuarial practices and principles have not yet been finalized, so lenders who remain captured by the application of section 347 do not yet have clarity on exactly how the APR must be calculated.
- The Department of Finance issued a consultation in the fall of 2023 to explore whether the criminal interest rate cap should be lowered even further. This consultation has closed and it is not known whether any further legislative changes will be proposed in response.
- While Bill C-47 has passed, these amendments are not yet in force. The draft regulations will also need to be finalized.

Lenders and other debt providers should continue to monitor developments to the criminal interest rate and assess any necessary changes to their financing agreements. In particular, lenders should be prepared to implement the necessary systems changes once the calculation methodology has been finalized and an in-force date is set. The statement mentions that the draft regulations would come into force three months following publication of the final regulations, which is a fairly short window of time.

Interested parties may make submissions concerning the draft regulations; the consultation closes January 22, 2024.