

Lowering the Criminal Rate of Interest – Consultation Coming

Bryan Woodman

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In the federal government's 2021 budget released on April 19, 2021, it announced that it would "launch a consultation on lowering the criminal rate of interest in the *Criminal Code of Canada* applicable to, among other things, installment loans offered by payday lenders." The details and timing of the consultation have yet to be announced. While the federal government's stated policy goal for lowering the criminal rate of interest is to combat predatory lending practices by payday lenders, any such change could potentially have far-reaching implications for lenders of all stripes.

Under Section 347 of the *Criminal Code of Canada*, an effective annual rate of interest that exceeds 60% will constitute a "criminal rate," and "interest" is calculated as the aggregate of all interest, fees, fines, penalties, commissions or similar charges or expenses paid in connection with the underlying loan (e.g., arrangement, commitment, agency, bonus or late fees, legal fees and expenses, etc.). Delivery of a certificate from a Fellow of the Canadian Institute of Actuaries stating that they have calculated the effective annual rate of interest, in the absence of evidence to the contrary, will serve as proof of the effective annual rate.

Prior to the release of the federal government's 2021 budget, an opposition Member of Parliament introduced a private members bill (C-274) proposing, among other things, a reduction of the criminal rate of interest to 30% above the Bank of Canada's overnight rate. While Bill C-274 does not appear to have the support of the federal government, the changes it proposes would have significant effects on lending markets in Canada and should serve as a reminder of the stakes of the forthcoming consultation. Lenders should monitor this issue closely going-forward and consider participating in the consultation.

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