

5 February 2020

Competition and Consumer Policy team
Building, Resources and Markets Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140

To whom it may concern,

SUBMISSION ON THE CREDIT CONTRACTS AND CONSUMER FINANCE AMENDMENT REGULATIONS 2020 ("THE REGULATIONS")

Thank you for the opportunity to provide feedback on the Credit Contracts and Consumer Finance Amendment Regulations 2020.

UDC Finance Ltd – Context and Background

UDC Finance Limited is New Zealand's largest asset finance company and has been providing vehicle, plant and equipment finance to New Zealanders and their businesses for more than 80 years.

UDC offers vehicle finance to consumer customers. UDC's consumer finance product suite is made up of two products only, being a term loan and a credit sales agreement (which is similar to a hire purchase arrangement). All consumer loans are secured against the vehicle being purchased. The amount of the loan will correspond to the value of the asset together with any directly associated costs. UDC does not provide personal loans.

UDC provides consumer customers with a convenient and simple loan product. Customers have access to finance that is often more affordable than alternative financing options available to them in the market (for example, unsecured personal loans, credit cards and bank overdrafts, or the option of adding to an existing home loan), given that the loan is secured against the vehicle being financed.

UDC supports in principle the objectives of the amendments to the Regulations, to help ensure that the interests of consumers under credit contracts are protected.

Submissions on draft Regulations

We support the submission being presented by our parent company, ANZ Bank New Zealand Limited, and accordingly we have not separately submitted on the points that ANZ has submitted on.

However, we do have some additional concerns about the Regulations as they are currently drafted, and we have set out details on these, together with our suggestions for addressing them, in our submissions below.

1. Draft regulation 4AA - Assessing lending suitability

1.1. Concern: extent of suitability assessments for certain finance products

- a) UDC offers two consumer loan products to allow a customer to finance the purchase of a vehicle. The loan amount which can be offered, and the term of the loan, are reasonably limited and will depend on the vehicle's age and value and on UDC's affordability assessments. UDC typically only considers loan terms of up to five years.
- b) At the point that UDC becomes involved in the transaction, the customer will already have decided to purchase a vehicle (and has most likely found the vehicle that they wish to purchase). The customer will also have decided to finance the vehicle purchase using a loan. UDC cannot offer any finance product other than a vehicle loan, and a vehicle loan is, by its nature, a suitable product for the purpose of financing a vehicle purchase.
- c) It would streamline loan approvals and reduce administration (and accordingly reduce the cost of lending) if there were an acknowledgement in the regulations that, for certain identified loan products, the required level of the suitability assessment is reduced.

1.2. Suggested changes

- a) We would propose that the regulations acknowledge that where a lending product has only one purpose, and provided that the lender has satisfied itself that the customer indeed wishes to use finance for that purpose, the level and extent of suitability enquiries may be reduced.
- b) Considerations around the loan term and the credit limit will be limited in any case (these are largely determined by the value and age of the underlying asset) and will be addressed as part of the affordability assessment.

2. Draft Regulations 4AG and 4AH - Assessing lending affordability

2.1. Concern: access to required information

- a) The regulations as they are currently drafted set out prescriptive requirements for verifying income and expenses, coupled with the requirement to then take the greater of the customer's individual expenses or the benchmark. We anticipate significant complexity in being able to collect, collate and verify the information that is required from a customer. Customers will also find these requirements cumbersome.
 - b) The time and/or infrastructure needed to develop the capability to collate the information and verify that information (as currently drafted) will greatly increase the costs for our business to assess and implement the loan. These costs will need to be recovered from the consumer, either in the cost of the loan (i.e. a higher interest rate) or as a processing fee, making the loan less economic for the customer. Based on preliminary calculations, we expect this could add in the region of \$15-\$30 to the cost of each consumer loan.
 - c) In the absence of open-banking arrangements in NZ, the requirement to collate expenses means that non-bank finance companies and providers are at a significant disadvantage with the introduction of the new legislation, as banks currently have access to their customers' transaction information called for in the regulations as they are currently drafted. We believe that this would lead to a less competitive market and ultimately a diminished range of choice for consumers.
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2.2. Suggested changes

- a) UDC proposes that, as an interim step until open-banking becomes available, there is the option for the lender to use *either* the customer's verified expenses *or* an appropriate benchmark value. This would alleviate the requirement to verify expenses by allowing lenders to rely on a benchmark instead.
- b) In the absence of open-banking, this would make the cost of assessing and implementing loans more economical for lenders, and the process less cumbersome for the lender and the customer.
- c) The option of using verified expenses *or* the prescribed benchmark also addresses situations where customers have clearly demonstrated (by way of verified expenses) that they live a relatively frugal lifestyle and could be prejudiced in the assessment of their loan application if we were to take the higher benchmark value. Under this proposal, we expect that we would commonly rely on the benchmark, but have the option of undertaking a more detailed individual assessment if the circumstances required.

3. *Securitisation – Part 3A: request for a new regulation.*

We suggest making a new regulation under 138(1)(da)(i) of the Act to prescribe circumstances under section 26A(3) and to prescribe how Part 3A applies to securitisation, covered bond arrangements, or similar arrangements.

Under a typical securitisation structure:

- the original creditor assigns its rights under the credit contracts to a special purpose trustee company ('SPV'); and
- the creditor won't give notice of the assignment to the debtors under those securitised credit contracts because the creditor continues to act as 'servicer' for the SPV for those credit contracts.

Upon assignment, the SPV will be a 'creditor' for the purposes of the Act, as assignee of the rights under the contract.

Under section 26A(1) of the Act, if a consumer credit contract is assigned, the debtor must be notified of the assignee's name, address and other contact details. However, disclosure isn't required if:

- the transfer is made for the purposes of securitisation, covered bond arrangements, or similar; and
- Regulation 20 or 21 of the Credit Contracts and Consumer Finance Regulations 2004 applies.

When exempting securitisation transactions from disclosure under section 26A, MBIE agreed that disclosure under section 26A may confuse debtors where they continued to have a relationship with the assignor. MBIE concluded that¹:

disclosure of transfer [should] not be required in circumstances where the debtor continues with existing arrangements for management of the loan and has no contact with the new creditor. The status quo option [that is, the option to require disclosure of the assignment] is not the preferred option, as it may confuse the debtor, and creates additional compliance costs for creditors.

MBIE also concluded that an assignee under securitisation should be exempt from registering as a financial service provider or being party to a dispute resolution scheme.

¹ Regulatory Impact Statement – Securitisation Exemptions (7 April 2015), paragraph 26

Under Part 3A of the Act, the name and address of the creditor must be disclosed to the debtor:

- under section 83G, in a repossession warning notice
- under section 83O(e), if a creditor exercises a right of entry to repossess consumer goods; and
- under section 83V, in a post-repossession notice.

We submit that it is incorrect and illogical to require the SPV's details to be disclosed to a debtor under Part 3A, given the creditor doesn't have to disclose the assignment under section 26A. This is because:

- Disclosure is likely to confuse debtors, which section 26A(3) and Regulations were intended to avoid;
- The SPV is exempt from the FSP Register and dispute resolution scheme requirements, which again could confuse debtors if they want to raise a dispute; and
- The provisions treat types of securitised consumer credit contracts differently, depending on whether they provide for security over consumer goods.

We note that section 138(1)(da)(i) of the Act, added by the Credit Contracts Legislation Amendment Act 2019, appears to support the above analysis.

To address this issue, we suggest a new Regulation 21A:

21A Disclosing creditor information under Part 3A of Act to apply only to the contract manager for securitisation, covered bond arrangements, or similar

(1) In respect of a relevant contract, if the creditor (or creditor's agent) is required to serve or produce a Part 3A notice in accordance with Part 3A of the Act, the creditor information to be contained in the Part 3A notice may be substituted with the corresponding information pertaining to the contract manager of that relevant contract (as if the contract manager were the creditor under that relevant contract).

(2) In this regulation:

contract manager has the meaning given to it in regulation 20(2)

creditor information means any information relating to the creditor that is required to be contained or set out in a Part 3A notice, including the creditor's name and contact details

relevant contract means a consumer credit contract that has been transferred to another creditor in circumstances where section 26A of the Act does not apply in accordance with regulations 19 and 20

Part 3A notice means a repossession warning notice, a post-repossession notice or any document that a creditor (or creditor's agent) is required to produce in accordance with section 83O(e) of the Act.

Contact for submissions

UDC welcomes the opportunity to discuss any of our submissions directly with MBIE officials. Contact details for UDC to arrange a meeting, if required, are:

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Yours sincerely



Gretchen Cotter
