



COVERSHEET

Minister	Hon Kris Faafoi	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Credit contracts and consumer finance (residential earthquake prone building financial assistance scheme) amendment regulations 2020	Date to be published	9 September 2020

List of documents that have been proactively released

Date	Title	Author
31 August 2020	<i>Credit contracts and consumer finance (residential earthquake prone building financial assistance scheme) amendment regulations 2020</i>	<i>Office of the Minister of Commerce and Consumer Affairs</i>
31 August 2020	<i>LEG-20-SUB-0124</i>	<i>Cabinet Legislation Committee</i>

Information redacted

~~YES~~ / NO

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In Confidence

Office of the Minister of Commerce and Consumer Affairs

Chair, Cabinet Legislation Committee

CREDIT CONTRACTS AND CONSUMER FINANCE (RESIDENTIAL EARTHQUAKE-PRONE BUILDING FINANCIAL ASSISTANCE SCHEME) AMENDMENT REGULATIONS 2020

Proposal

- 1 This paper seeks authorisation for submission to the Executive Council of the Credit Contracts and Consumer Finance (Residential Earthquake-prone Building Financial Assistance Scheme) Amendment Regulations 2020 (**the regulations**).
- 2 These regulations exempt credit contracts under the Residential Earthquake-prone Buildings Financial Assistance Scheme (**REPB loans scheme**) from classification as ‘consumer credit contracts’ under the Credit Contracts and Consumer Finance Act 2003 (**CCCFA**).

Policy

The REPB loans Scheme

- 3 In July 2017, a new earthquake-prone buildings system came into effect which requires earthquake-prone buildings to be remediated within set timeframes to improve life safety.
- 4 However, without substantial financial assistance, some unit owner-occupiers in residential earthquake-prone buildings (**REPBs**) are likely to face financial hardship to meet their contribution to remediation costs, and could be forced to sell.
- 5 The REPB loans scheme is a form of financial assistance, funded from Budget 2019, which will support unit owner-occupiers in REPBs to meet their remediation costs. Cabinet agreed to the parameters and settings for the REPB loans scheme in January 2020 [CBC-20-MIN-0002 refers]. Cabinet agreed that Kāinga Ora would deliver the REPB loans scheme. This decision did not include consideration of the operational implications of compliance with the CCCFA for Kāinga Ora.

The CCCFA exemption

- 6 The CCCFA imposes a number of obligations on creditors to protect the interests of consumers in connection with credit contracts.
- 7 Under the CCCFA, a consumer credit contract is where a natural person is provided credit that is to be used for personal purposes where interest, credit fees or a security interest is charged or taken and where the creditor is in the business of providing credit. In the absence of an exemption, Kāinga Ora will have to comply with the CCCFA.

- 8 In June 2020, Cabinet agreed that an exemption from the CCCFA should be granted to credit contracts entered into under the REPB loans scheme [DEV-20-MIN-0103 refers]. The exemption is subject to the following obligations:
- a. The loan agreement and loan terms and conditions must be in plain language.
 - b. Kāinga Ora will disclose to the debtor a subset of information from Schedule 1 of the CCCFA (key information concerning consumer credit contract) that is ascertainable and relevant to credit contracts under the scheme;
 - c. Kāinga Ora will provide six-monthly account statements to the debtor containing the information from section 19 of CCCFA (content of continuing disclosure statement) that is ascertainable and relevant to credit contracts under the scheme.

Justification for the CCCFA exemption

- 9 The unduly onerous and burdensome nature of compliance forms the policy rationale for the exemption. Kāinga Ora's normal business does not involve lending, and it is outside its normal functions as a Crown Entity.
- 10 Of the \$23.3 million appropriated to Kāinga Ora for the REPB loans scheme over four years, \$10 million of capital is for lending assistance. The maximum loan is capped at \$250,000 (but with limited discretion for the Chief Executive of Kāinga Ora to approve amounts above this level on a case-by-case basis). On this basis, Kāinga Ora estimates that it is likely that no more than 80 loans will be approved.
- 11 To comply fully with the CCCFA would cost approximately \$400,000 in legal costs alone. In comparison, with an exemption, the legal costs should only amount to \$150,000. The compliance costs are disproportionate to the small scale of lending.
- 12 Kāinga Ora will continue to be subject to other parts of the CCCFA that apply to all credit contracts, including Part 4 (enforcement and remedies) and Part 5 (reopening of oppressive contracts).

Timing and 28-day rule

- 13 The regulations will come into force on 3 September 2020, which is at least 28 days after its notification in the *New Zealand Gazette*.

Compliance

- 14 The regulations comply with each of the following:
- a. the principles of the Treaty of Waitangi;
 - b. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - c. the principles and guidelines set out in the Privacy Act 1993;
 - d. relevant international standards and obligations;
 - e. the Legislation Guidelines Legislation Guidelines(2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Statutory prerequisites for regulations under the CCCFA

- 15 Section 138(1A) of the CCCFA provides that the Minister may only recommend that regulations are made under section 138(1)(a) if he or she:
- a. has had regard to the purposes of the CCCFA; and
 - b. is satisfied that the exemption would not cause significant detriment to borrowers under credit contracts; and
 - c. is satisfied that compliance with the relevant provision or provisions of the CCCFA would, in the circumstances, require a creditor or a class of creditors to comply with requirements that are unduly onerous or burdensome.
- 16 These conditions have been met, and a summary of how the exemptions meet these criteria is set out in the statement of reasons attached to the regulations.

Regulations Review Committee

- 17 I do not consider there to be any grounds for the Regulations Review Committee to draw the regulations to the attention of the House of Representatives under Standing Order 319.

Certification by Parliamentary Counsel

- 18 The regulations have been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Impact analysis

- 19 An impact summary was prepared in accordance with the necessary requirements, and was submitted at the same time that Cabinet approval of the policy relating to the regulations was sought [DEV-20-MIN-0103 refers].

Publicity

- 20 No publicity is planned other than notification in the *New Zealand Gazette*.

Proactive Release

- 21 This paper will be proactively released in whole within 30 business days on the Ministry of Business, Innovation and Employment's website.

Consultation

- 22 The Ministry of Housing and Urban Development, Treasury and Kāinga Ora have been consulted on the Cabinet paper and attached regulations. DPMC was informed.
- 23 This paper needs to be considered by the Cabinet Legislation Committee on Tuesday 28 July 2020. The exemption is crucial to the introduction of the REPB scheme, which Cabinet committed to introducing in October of 2020. The Minister of Finance supports the proposed exemption, as it is necessary to maintaining timelines for the introduction of the scheme.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 **Note** that in January 2020, Cabinet agreed to the settings and parameters for a Residential Earthquake-Prone Building Financial Assistance Scheme and for Kāinga Ora to be the delivery agent for the Scheme [CBC-20-MIN-0002 refers].
- 2 **Note** that in June 2020, Cabinet agreed to provide an exemption from the CCCFA for credit contracts entered into under the Residential Earthquake-Prone Building Financial Assistance Scheme, subject to the following conditions [DEV-20-MIN-0103 refers]:
 - a. The loan agreement and loan terms and conditions must be in plain language;
 - b. Kāinga Ora will disclose to the debtor a subset of information from Schedule 1 of the CCCFA (key information concerning consumer credit contract) that is ascertainable and relevant to credit contracts under the scheme;
 - c. Kāinga Ora will provide six-monthly account statements to the debtor containing the information from section 19 of CCCFA (content of continuing disclosure statement) that is ascertainable and relevant to credit contracts under the scheme.
- 3 **Note** that Kāinga Ora will continue to be subject to other parts of the CCCFA that apply to all credit contracts, including Part 4 (enforcement and remedies) and Part 5 (reopening of oppressive contracts).
- 4 **Note** that the Credit Contracts and Consumer Finance (Residential Earthquake-prone Building Financial Assistance Scheme) Amendment Regulations 2020 will give effect to decisions referred to in paragraph 2 above.
- 5 **Note** that section 138(1A) of the CCCFA provides that exempting regulations may be made on my recommendation, and that I may make a recommendation only if I am satisfied that the criteria set out in section 138(1A) are met.
- 6 **Note** that I consider the criteria under section 138(1A) of the CCCFA to have been met.
- 7 **Authorise** the submission to the Executive Council of the Credit Contracts and Consumer Finance (Residential Earthquake-prone Building Financial Assistance Scheme) Amendment Regulations 2020.
- 8 **Note** that the Credit Contracts and Consumer Finance (Residential Earthquake-prone Building Financial Assistance Scheme) Amendment Regulations 2020 will come into force on 3 September 2020.

Authorised for lodgement

Hon Kris Faafoi

Minister of Commerce and Consumer Affairs