



**MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT**  
HIKINA WHAKATUTUKI



Exposure draft

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# **Updated Credit Contracts and Consumer Finance Regulations 2004 and Responsible Lending Code**

6 April 2022

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How to have your say

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## Submission process

The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the issues raised in this document by 5pm on **20 April 2022**.

Your submission may respond to any or all of these issues. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.

Please use the submission template provided at: <https://www.mbie.govt.nz/have-your-say/exposure-draft-of-updated-credit-contracts-and-consumer-finance-regulations-2004-and-responsible-lending-code>. This will help us to collate submissions and ensure that your views are fully considered. Please also include your name and (if applicable) the name of your organisation in your submission.

Please include your contact details in the cover letter or e-mail accompanying your submission.

You can make your submission by:

- sending your submission as a Microsoft Word document to [consumer@mbie.govt.nz](mailto:consumer@mbie.govt.nz).
- mailing your submission to:

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

Wellington 6140  
New Zealand

Please direct any questions that you have in relation to the submissions process to [consumer@mbie.govt.nz](mailto:consumer@mbie.govt.nz).

## Use of information

The information provided in submissions will be used to inform MBIE's policy development process, and will inform advice to Ministers on finalising changes to the Credit Contracts and Consumer Finance Regulations 2004 and the Responsible Lending Code. We may contact submitters directly if we require clarification of any matters in submissions.

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- indicate this on the front of the submission, with any confidential information clearly marked within the text
- provide a separate version excluding the relevant information for publication on our website.

Submissions remain subject to request under the Official Information Act 1982. Please set out clearly in the cover letter or e-mail accompanying your submission if you have any objection to the release of any information in the submission, and in particular, which parts you consider should be withheld, together with the reasons for withholding the information. MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.

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## List of Acronyms

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MBIE	Ministry of Business, Innovation and Employment
CCCFA	Credit Contracts and Consumer Finance Act 2003

## Introduction

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### Purpose of this consultation and context

1. In January 2022, the Minister of Commerce and Consumer Affairs initiated an investigation into the impacts of recent legislative and regulatory changes under the CCCFA that came into effect on 1 December 2021. The [Terms of Reference](#) for this investigation were published on 31 January 2022. The investigation is currently underway and is scheduled to report to the Minister in April 2022.
2. At the end of February Cabinet agreed that MBIE would commence work on a number of ‘no regrets’ changes to the Credit Contracts and Consumer Finance Regulations 2004 (**the Regulations**) and Responsible Lending Code (**the Code**), in line with the existing policy intent of the CCCFA and the Regulations, and in advance of the investigation’s conclusion. This is intended to allow the Government to respond more expeditiously to the concerns raised by consumers and lenders, ahead of the investigation reporting back in April 2022.
3. We are consulting on an exposure draft of amendment regulations (**the Draft Regulations**) and a new draft of Chapter 5 of the Code (**the Draft Code**) which provides guidance on affordability assessments under the CCCFA.
4. The final report in April will more fully consider the impacts, unintended consequences and if any further action is needed.

### Issues to be addressed by initial set of changes

5. During the investigation, officials have met with a wide range of stakeholders, and have been collecting data from a range of sources.
6. It has become apparent that the interpretation and implementation of the Regulations has sometimes been more onerous and restrictive than the original policy intent. These issues were considered as part of the initial round of changes agreed by Cabinet. In particular:
  - a. Some lenders appear to be estimating living expenses by asking the borrower to declare them, reconciling them from bank transactions records *and* comparing them against a benchmark. The policy intention was that, where a borrower declared living expenses, they could *either* be verified against bank transaction records *or* compared against a benchmark (where both of these were options). The intended approach aligned more closely with the pre- 1 December processes of many banks, which were typically to take the higher of declared and benchmarked living expenses, without detailed investigation into bank transaction records of living expenses.
  - b. Some lenders, in accordance with Regulation 4AK, use recent bank transaction records to estimate likely expenses (with or without also asking the borrower to declare expenses), but are concerned that they are not able to adjust those expenses down appropriately (e.g., by asking the borrower whether they will forgo discretionary expenses and discretionary components of expenses) to reflect that borrowers are likely to cut back

expenses. The policy intent was that these inquiries could occur and be taken into account by lenders in order to generate estimates that reflected likely cut-backs.<sup>1</sup>

- c. Some lenders have set surplus income requirements (under Regulation 4AF(2)(b)(i)) in a way that does not appear to be 'discounted' for other adjustments and buffers used in income and expense estimates. This suggests that surpluses may be excessive, contributing to higher loan decline rates. The policy intent was that surplus income requirements and buffers/adjustments applied to income and expenses were alternatives to a significant extent.
  - d. Although some lenders are using the 'obvious' exception in certain cases, lenders have generally found it difficult to make systematic use of the exception based on current guidance.
7. In response to these issues, Cabinet has agreed on six changes to the Regulations and/or Code, set out below.

#### **CABINET AGREED CHANGES TO THE REGULATIONS AND/OR CODE**

- Amending the Regulations to exclude savings and investments from the definition of the 'listed outgoings'
- Clarifying that when lenders ask borrowers about their likely living expenses, and these are benchmarked against statistical data about household expenses, there is no need to also inquire into their current living expenses from recent bank transactions
- Clarifying that when lenders estimate expenses from recent bank transaction records, lenders can ask the borrower about how expenses are likely to change once the contract is entered into
- Clarifying the requirement to obtain information in sufficient detail to minimise underestimation only relates to information received from borrowers (e.g. ensuring that expense categories on application forms are sufficiently detailed) rather than relating to information from bank transaction records
- Amending the Code to further clarify when a 'reasonable surplus' is required and how it should be set
- Amending the Code to remove the current example for when affordability is 'obvious' and consider alternative guidance and examples.

8. These changes are reflected in the Draft Code and Draft Regulations that we would like your feedback on.

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<sup>1</sup> 'Other regular or frequently recurring expenses' were limited to those that the borrower was unable or unwilling to cease, although the approach across all categories of expenses was that they should encompass those that were likely to be incurred over the next 12 months.



## Changes relating to expenses

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9. The Draft Regulations make the following changes to the Regulations:
  - a. removing ‘savings’ and ‘investments’ from Regulation 4AE paragraph (d) of the definition of ‘listed outgoings’ (clause 4 of the attached draft regulations), as per the decision above
  - b. amending Regulation 4AK(2)(b) from:
    - i. “ensure that the information used to make the initial estimate is obtained in sufficient detail to minimise the risk of relevant expenses being missed or underestimated to an extent that is material to the estimate” to:
    - ii. *“to the extent that the initial estimate of the borrower’s likely relevant expenses is based on asking the borrower about their relevant expenses, ensure that the information used to make the initial estimate is obtained in sufficient detail to minimise the risk of relevant expenses being missed or underestimated to an extent that is material to the estimate” [emphasis added].*
10. This aims to ensure that Regulation 4AK(2)(b) is limited to information sought from the borrower under Regulation 4AK(2)(a)(i), i.e., it would not apply to information under (2)(a)(ii) or (iii).
11. In addition to these changes, we are proposing new guidance in the Draft Code that sets out different approaches that lenders may take in complying with Regulation 4AK and Regulation 4AM. This will include setting out inquiries that lenders do not need to undertake.
12. The Draft Code (at paragraphs 5.3-5.5) clarifies that lenders may choose to use only one or a combination of information sources to create an initial estimate of likely expenses. For example, lenders may choose to use some information sources to estimate some types of expenses, and other information sources to estimate other types of expenses.
13. The proposed guidance discusses situations where bank transaction records provide a distorted picture of a borrower’s likely expenses going forward if they were to enter the consumer credit contract. The guidance states that where this would be relevant to the outcome of the affordability assessment, lenders may ask borrowers what their likely expenses will be and use this as the basis of the initial estimate for that expense. This would be verified under Regulation 4AM.
14. The proposed guidance also discusses the choice of adjustment mechanisms under Regulation 4AM and clarifies that not all expenses need to be verified against bank transaction records.
15. The diagram on page 25 of the Code (page 2 of the attached exposure draft on the Code) has also been amended to reflect the change to Regulation 4AK(2)(b) discussed above.
16. We would welcome views on how such guidance could be best expressed, and whether there are any specific aspects of the Regulations that cannot be read consistently with the Draft Code.

1 Do you agree with the way that the draft Regulations are phrased? If not, what changes would you make?

2 Do you agree with the way that the guidance relating to expenses is communicated in the Draft Code? If not, how do you suggest it is improved?

3 Should the guidance be limited to certain types of expenses e.g. food?

4 Are there other practices for estimating expenses that the Code should endorse?

### Changes relating to surpluses

17. The Draft Code proposes changes to the guidance in Chapter 5 of the Code that sets out how lenders may apply a reasonable surplus to comply with regulation 4AF(2)(b)(i). This includes clarifying that the surplus can be reduced to accommodate any adjustments and buffers, and in some cases a surplus is not required at all.
18. The Draft Code sets out one example scenario where a surplus could be foregone altogether. This scenario only applies to home loans (or in other situations where borrowers have an existing home loan) and the lender applies a sensitised interest rate to that debt. The rationale is that, because home loans tend to be large, the use of a sensitised interest rate will result in a substantial buffer. It is less clear whether other buffers and adjustments would be sufficient to fully compensate for the lack of a surplus. However, we would welcome views and evidence on this point.
19. We would also welcome views on other potential approaches to clarifying this aspect of the regulations.

5 Is the new wording in the Draft Code on how lenders may apply a reasonable surplus to comply with regulation 4AF(2)(b)(i) relating to changes to expenses clear? If not, how do you suggest it is improved?

6 Do you have any other proposals for additional guidance on surpluses?

### Changes relating to the exception for 'obvious' affordability

20. We are proposing to remove the current example of 'obvious' affordability in the Code and replace it with guidance and examples that better support lenders at applying the existing test and developing a process to identify obvious affordability.
21. We welcome feedback on the usefulness of these examples, as well as other potential guidance and examples that would enable more effective use of the exception.

7 Is the updated guidance and examples on 'obvious' affordability helpful? Do the examples represent situations where affordability is obvious? If not, how could they be improved?

8 Do you have any other proposals for additional guidance and examples for 'obvious' affordability?

## Process from here

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22. The changes above could be made in May 2022, around the time that the final report is published. This would allow them to come into force in June 2022.
23. We consider the proposed changes to be purely 'permissive' in nature, rather than requiring lenders to change processes in order to comply with changes.
24. However, we would welcome views from lenders as to whether any of these changes would require changes to your systems before they could come into force, and your estimated timeframes for implementation of any such changes.

9

Would any of these initial changes require changes to lender systems before they could come into force? If so, what are the likely timeframes for making these changes?

## Recap of questions

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1

Do you agree with the way that the draft Regulations are phrased? If not, what changes would you make?

2

Do you agree with the way that the guidance relating to expenses is communicated in the Draft Code? If not, how do you suggest it is improved?

3

Should the guidance be limited to certain types of expenses e.g. food?

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Are there other practices for estimating expenses that the Code should endorse?

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Is the new wording in the Draft Code on how lenders may apply a reasonable surplus to comply with regulation 4AF(2)(b)(i) relating to changes to expenses clear? If not, how do you suggest it is improved?

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Do you have any other proposals for additional guidance on surpluses?

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Is the updated guidance and examples on 'obvious' affordability helpful? Do the examples represent situations where affordability is obvious? If not, how could they be improved?

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Do you have any other proposals for additional guidance and examples for 'obvious' affordability?

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Would any of these initial changes require changes to lender systems before they could come into force? If so, what are the likely timeframes for making these changes?