20 April 2022

Competition and Consumer Policy Team

Building, Resources, and Markets

Ministry of Business, Innovation, and Employment

BY EMAIL

Thank you for the opportunity to comment on the proposed changes to the CCCFA Regulations and the Responsible Lending Code.

As we've previously said, we greatly appreciate the intent behind the proposals.

However, our view remains that the changes are unlikely to materially address the impacts to consumers when they borrow.

The proposed changes:

- do not adequately address the detailed list of expenses lenders must capture, which is driving extensive inquiries — particularly into living and regular, recurring expenses that are discretionary
- do not provide flexibility for large, responsible lenders, like banks, to apply judgement in lending decisions and the guidance on 'reasonable surplus' could make things harder for borrowers and may contradict Cabinet's decision
- in the case of Code content on capturing and benchmarking living expenses, are directly inconsistent with Cabinet's decision — entrenching, not removing, requirements to review statements for expenses the lender has benchmarked.

We unequivocally support ensuring protections remain strong for vulnerable borrowers. But the rules have tipped the balance too far, and there is a clear need shown for improved flexibility and discretion in how lenders meet the lender responsibilities under the CCCFA.

We have seen and provided data on increases in declined and dropped applications, unavoidably connected to the changes in the CCCFA Regulations. These impacts are across lending products, not just home loans, so are not solely driven by international trends, lending appetites, or other regulatory change, as has been asserted. And, as shown by Centrix and our own data, the changes are impacting customers who would previously have had comfortable affordability outcomes.

Our business is to lend to customers to help them get ahead. Credit is an important part of our customers' lives and plays a critical role in the functioning of our economy.

These changes will not see customer complaints about restrictions on access to credit and intrusive inquiries abate. Suggestions the changes solve underlying problems caused by 'overly conservative' interpretation or application by lenders are frustrating, as they seem to reflect a lack understanding or acknowledgement of how lending must now be done under the regulatory framework imposed.

One of the key issues receiving media attention is the exhaustive steps lenders must take to capture a customer's expenses. The proposed changes won't materially alleviate this issue, stemming from the wide definition of 'listed outgoings' which doesn't differentiate between necessities and discretionary spend. The wide definition drives lenders to ask customers about their vet bills, make-up expenses, take-out habits, and streaming service subscriptions, to determine if they will continue or are material. And under the Regulations, a lender can't simply omit expenses, without confirming the amounts to be used with the borrower or keeping a record of their inquiries.

Changes to the scope of expenses, the affordability test, and exceptions in the Regulations must be made urgently. Without those changes, the Regulations will continue to cause customer inconvenience, reduced access to credit, and poor customer outcomes for the majority of ordinary New Zealanders.

We set out our comments on the proposed changes below, and look forward to discussing our submission with your further. If you have any questions or would like to discuss, please contact me by email at
Privacy of natural persons

Kind regards

Cushla Scholfield

ANZ comments on draft regulations

Amendment to Regulation 4AE

We support removing 'savings' and 'investments' as types of 'listed outgoings' in Regulation 4AE.

The Regulations shouldn't penalise prospective borrowers for developing good savings habits.

As borrowers can adjust how much they save after taking out a loan and can also access savings to meet expenses when needed, savings and investments shouldn't be treated as an expense.

However, simply removing 'savings' and 'investments' from paragraph (d) alone won't have the intended effect of ensuring that lenders don't capture those amounts as expenses.

The items included in paragraph (d) are non-exhaustive examples of what may be 'regular or frequently recurring outgoings'. If 'savings' and 'investments' still fall within that definition, a lender may still be required to include those items in affordability assessments.

To achieve the stated policy objective, the definition of 'listed outgoing' should expressly exclude 'savings' and 'investments'. For example:

> '**listed outgoings**:
>
> (a) means any of the following:
>
> (i) fixed financial commitments...
>
> (ii) payments of any debts...
>
> (iii) living expenses...
>
> (iv) any regular or frequently recurring outgoings
>
> (b) <u>does not include any savings or investments</u>.'

Another option would be to support the removal of references to 'savings' and 'investments' in paragraph (d) by replacing the term 'outgoings' in that paragraph with the term 'expenses'. For example:

> '**listed outgoings** means any of the following:
>
> (a) fixed financial commitments...
>
> (b) payments of any debts...
>
> (c) living expenses...
>
> (d) any regular or frequently recurring <u>expenses</u>...'

Amendment to Regulation 4AK

We understand amending Regulation 4AK(2)(b) is intended to ensure the duty to capture information in sufficient detail only applies where a lender asks the borrower for information under Regulation 4AK(2)(a)(i).

As framed, Regulation 4AK(2)(b) may still require a lender to capture information in sufficient detail where Regulation 4AK(2)(a)(ii) or (iii) are used, if the lender has asked the borrower about *any* expenses under Regulation 4AK(2)(a)(i).

To achieve the policy objective, we suggest Regulation 4AK(2)(b) should read:

> ‘ensure that where a lender asks the borrower about any relevant expenses under Regulation 4AK(2)(a)(i) they do so in sufficient detail to minimise the risk of relevant expenses being missed or underestimated to an extent that is material to the initial estimate’

Or, a simpler approach may be to remove Regulation 4AK(2)(b) and amend Regulation 4AK(2)(a)(i):

> ‘asking the borrower about their relevant expenses <u>in sufficient detail to minimise the risk of missing or underestimating those expenses to an extent that is material to the initial estimate</u>’.

We also note that a further amendment should be made to Regulation 4AK(2)(a)(i) to change the reference to ‘relevant expenses’ to ‘likely relevant expenses’.

ANZ comments on draft Responsible Lending Code

Initial estimate of expenses

Paragraph 5.3

The purpose of proposed paragraph 5.3 is to clarify how lenders can apply Regulation 4AK(2)(a).

To support good practices and present information more simply and clearly, we suggest replacing the proposed paragraph 5.3 with the following:

> 'Under Regulation 4AK(2)(a), a lender can choose how they collect expenses to create an initial estimate:
>
> - A lender can ask the borrower, use statements, or use other reliable information.
> - A lender can choose to use different methods or any combination of methods, for different expenses.
>
> For example, a lender could collect financial commitments by using statements and collect living expenses by asking the borrower.'

We also suggest adding the following new paragraphs given the proposed changes to the Regulations:

> 'Where a lender asks a borrower about any expenses under Regulation 4AK(2)(a)(i), the lender must ask the borrower about those expenses in sufficient detail to avoid missing or understating the expenses in their initial estimate.
>
> For example, a lender intends to use Regulation 4AK(2)(a)(i) to ask a borrower about their expenses from owning a vehicle. The lender must ask the borrower about their vehicle-related expenses in sufficient detail to avoid missing or understating them. To do so, the lender could ask the borrower about the likely vehicle-related expenses or, if the lender uses an application form to collect the expense information, the lender could ensure the application form prompts the borrower to provide that information.'

Where a lender uses statements or other reliable information, the lender is not required to verify the expenses further unless there is a significant risk of missing or understating expenses. We have previously suggested removing this requirement in Regulation 4AM, as it causes confusion and uncertainty for lenders. Practically, a significant risk of missing or understating expenses would only arise if a lender is using *one source* to collect expenses and knows that source is unlikely to capture all the expense information needed.

We think it would be helpful to clarify this further in the Code, to better support the proposed change to Regulation 4AK(2)(b):

> 'Where a lender uses statements or other reliable information under Regulation 4AK(2)(a)(ii) or (iii), a lender is not required to verify those expenses further. The only exception is where there is a significant risk those statements or other reliable information could miss or understate the expenses.
>
> For example, a borrower is borrowing money to buy a house. The lender uses statements to collect fixed financial commitments, debts, living expenses, and other regular and recurring outgoings. The lender also uses recent and reliable information about the likely rates on the property and asks the borrower about the likely insurance.
>
> As the lender asked the borrower about the likely insurance expense, the lender must verify that expense under Regulation 4AM. As the borrower hasn't taken out the insurance yet, the lender can't

verify the expense through the borrower's statements. So, the lender compares it to a benchmark or uses a reasonable cost estimate. The lender is otherwise satisfied there is no significant risk of missing or understating the borrower's expenses having used the statements or recent and reliable information. The lender does not need to verify those expenses further under Regulation 4AM.

If the lender *only* used statements to collect those expenses, there may be a significant risk of missing or understating the borrower's expenses. The statements would not show expenses for insurance or rates that the lender knows would arise given the borrower is buying a home. The lender must further verify the expenses under Regulation 4AM, by comparing to benchmarks or using a reasonable cost estimate for the likely relevant expenses.'

Paragraph 5.4

We believe the statement in paragraph 5.4 that a lender must not 'close their eyes' to information in statements makes Cabinet's decision and the Minister's stated policy intent meaningless. This content reflects the danger of having removed section 9C(7) from the CCCFA.

If a lender can't take a borrower at their word, then a lender will need to verify expenses using statements, regardless of choosing to benchmark expenses as allowed under Regulation 4AM.

In the absence of section 9C(7), we recommend changing the Regulations. Subject to verifying using one or more of the methods in Regulation 4AM, the Regulations should provide that a lender may rely on what a borrower tells them, unless unreasonable to do so.

We appreciate that MBIE have tried to align the Code's content with Cabinet's decision and lessen the impact by recommending a lender need only *briefly* review statements. But, this approach fails to address matters materially and doesn't reflect the practical steps needed to identify *missing or understated* expenses when reviewing statements.

Ultimately, we believe the content in paragraph 5.4 will merely reinforce the issue the Minister is seeking to address. If a lender asks a borrower about their living expenses, and benchmarks those expenses, a lender should need do nothing further.

We suggest removing statements about a lender not 'closing their eyes'. Besides undermining the Minister's stated policy objective, it is inconsistent with the framework developed in Regulation 4AM. That Regulation expressly allows a lender to choose how they verify expenses, and does not require a lender to complete all possible verification activities.

If kept, any Code content must stress that a lender should only briefly sense-check against statements. The lender is only quickly reviewing to look for clear inconsistencies (not missing expenses) that would mean it would not be reliable to use the borrower's stated expenses. The Code must clarify that a detailed review or assessment of information in a borrower's statements is not required.

Paragraph 5.5

Regardless of how a lender collects information about expenses, the lender should focus only *likely relevant expenses* — those expenses the borrower will have after taking out the loan. While this is briefly discussed at 5.5, we believe the Code should provide express guidance to stress how lenders should apply Regulation 4AK, 'likely relevant expenses', and 'relevant period'.

We suggest replacing paragraph 5.5 with the following:

> ‘Regulation 4AF requires lenders to consider the borrower’s *likely relevant expenses*, which are those *relevant expenses* the borrower will incur over the *relevant period*, which is after the borrower takes out the loan.
>
> A lender should only include expenses the borrower will have after taking out the loan.
>
> A lender can omit an expense from their initial estimate where it is clear in the circumstances the expense will stop. For example, if the borrower is borrowing to buy a home they will live in, then the lender can omit any existing expenses for renting.
>
> A lender may need to check with the borrower if a change is likely or the extent of any change likely to other expenses. For example, if a lender believes it likely entertainment expenses will reduce, the lender may ask the borrower how much those current expenses will reduce by, to adjust the amount used.
>
> Where a borrower says they’re willing to or can stop an expense (before taking out the loan or later, if needed), a lender should not include that expense in their initial estimate under Regulation 4AK.
>
> The lender can rely on what the borrower tells them will happen with their expenses. The lender does not need evidence that the expenses will or have stopped or reduced.
>
> Where a lender uses statements to create the initial assessment, the lender should still consider how the expenses in the statement may change. If the lender needs to clarify with the borrower which expenses should be excluded or adjusted, the lender is merely confirming the amounts to be used under Regulation 4AK(2)(a)(ii). Asking the borrower in that situation does not trigger Regulation 4AK(2)(a)(i).’

The final paragraph is important to explain that a lender asking a borrower about expenses in their statement is seeking to confirm amounts reflect the borrower’s likely relevant expenses under Regulation 4AK(2)(a)(ii). Regulation 4AK(2)(a)(i) does not apply in that situation.

If Regulation 4AK(2)(a)(i) is triggered, the provisions become circular. A lender would need to verify the information under Regulation 4AM. Given the lender collected the expense through statements the lender would be faced with creating unnecessary cost estimates. We don’t believe that outcome is intended under the regulatory framework, but note paragraph 5.8 implies this.

For example, a lender asks the borrower about their likely grocery expenses. The lender is relying on Regulation 4AK(2)(a)(i). The lender must then verify those likely grocery expenses under Regulation 4AM.

The lender instead uses the borrower’s statements to collect the borrower’s likely grocery expenses. From the statements, the lender can see the borrower spends $200 a week on groceries. The lender asks the borrower whether that sounds right and whether that could change. The borrower says they’re likely to cut back on what they spend. The lender uses $150 a week in their affordability assessment. The lender is relying on Regulation 4AK(2)(a)(ii), and has complied with the requirement in that Regulation to confirm the amounts used with the borrower.

Discretionary expenses

While we support providing clarity that lenders can choose how they collect information about expenses, we disagree with statements in the Code at paragraph 5.6. Bank transaction records do not present a distorted picture of a borrower’s likely expenses and will not always significantly overstate expenses.

Our experience is that customers significantly underestimate their living expenses when asked, which supports why lenders must further verify declared expenses under Regulation 4AM.

We believe the statements at paragraph 5.6 create a false impression that bank statements should not be used when, as noted above, bank statements are often far more reliable than borrower declared expenses.

The real issue is the wide definition of 'listed outgoings' which has impacted how lenders treat discretionary expenses – regardless of how lenders collect those expenses.

Discretionary expenses come from a customer's surplus available income. As more of that income is used to meet debts, the customer's discretionary expenses must reduce. This fact is why lenders previously omitted most discretionary expenses from affordability assessments – borrowers generally self-regulate and adjust those amounts.

Unnecessarily including discretionary expenses in affordability assessments is more likely to lead to lending being declined.

In the absence of changes to the definition of 'listed outgoings', the Code must further clarify the types of expenses to capture, to reduce the likelihood that lenders include discretionary expenses.

The key provisions to provide guidance on are paragraphs (c) and (d) of the definition of 'listed outgoings'.

<u>Living expenses</u>

Previous guidance in the Code regarding 'substantial hardship' was helpful in explaining what living expenses to consider. The previous Code described the need to capture *basic necessities* for food, living, or personal expenses. That test reflected well established credit practices among lenders.

Similarly, in the UK, the FCA Handbook provides that a lender must consider the *basic essential expenditure and basic quality-of-living costs of the customer's household*. The FCA Handbook describes the basic quality of living costs as those which are hard to reduce and give a basic quality of life.

Similar references in ASIC's Regulatory Guide RG209 quotes the finding by Judge Perram in *ASIC v Westpac* that the lender should identify living expenses which simply cannot be foregone or reduced beyond a certain point.

The Code should draw a distinction between *basic necessities* and *discretionary spend*. The Code provides an example where food expenses change because a borrower will not be eating out as often. This is helpful, but similar issues arise with clothing and personal care, and with entertainment costs.

We suggest clarifying the lender need only capture basic essential expenditure and basic quality-of-living costs, using the descriptions from the FCA Handbook.

The Code should clarify that a lender can adjust expenses they are comfortable go beyond that needed for basic necessities for that expense type, confirming the amount used with the borrower as required.

For example, a customer has high clothing and personal care expenses under paragraph (c) of the definition of 'listed outgoings', as they regularly purchase designer clothing brands and make-up using their discretionary income. After taking out the loan, the lender reasonably expects that spending behaviour to change, and uses a reduced expense amount to reflect basic necessities in their affordability assessment, confirming this remains right with the borrower.

Or, the borrower has high food and grocery expenses. The lender reasonably expects that spending behaviour to change, and uses a reduced expense amount to reflect basic food and grocery necessities in their affordability assessment, confirming this remains right with the borrower.

We also think it may be helpful to clarify that lenders should take a similar approach for other personal care or medical expenses.

We also suggest providing further guidance on when an expense should be included under paragraph (d) of the definition of ‘listed outgoings’.

In particular, a borrower may not be *willing* to cease an expense before taking out the loan (and would not expect to be asked if they will). But the customer *could* stop the expense and *would be willing to do so* if needed, including if they were having financial difficulties. In that case, the lender should be able to omit the expenses from their affordability assessment.

For example, the borrower has several subscription streaming services they use, which they would not expect to be asked about and want to continue. However, if needed, the borrower could and would stop those services.

<u>Paragraph 5.6</u>

To reflect the above, we suggest replacing paragraph 5.6 with the following:

> ‘The intent of Regulation 4AK is to capture the borrower’s likely relevant expenses after taking out the loan.
>
> It is likely a borrower will change their spending behaviour after taking out a loan, which may change their existing expenses.
>
> A borrower’s statements may show their current expenses. But the lender can and should consider how those expenses will change and only include expenses likely over the relevant period in their initial estimate.
>
> When a lender is collecting living expenses under paragraph (c) of the definition of ‘listed outgoings’, then the lender should distinguish between basic necessities and discretionary spend.
>
> The lender only needs to capture basic necessities, being the *basic essential expenditure* and *basic quality-of-living costs of the customer’s household*. Lenders should only include the borrower’s basic quality of living costs for food and groceries, clothing and personal care, and medical expenses. These are expenses the borrower can’t forego or would find hard to reduce beyond a certain point, and give a basic quality of life.
>
> For example, a customer has high clothing a personal care expenses, as they regularly buy expensive clothing and make-up using their discretionary income. After taking out the loan, the lender reasonably expects that spending behaviour to change. The lender uses a reduced expense amount to reflect basic necessities for clothing and personal care, confirming this is right with the borrower.
>
> For example, a borrower’s food expenses include regular dining out or take-away expenses the borrower is prepared to reduce or stop as their discretionary income reduces to repay the loan. The lender can omit or reduce those expenses, confirming this is right with the borrower.
>
> For example, a borrower’s food expenses reflect that they have a large family. The borrower can’t reduce or stop those expenses beyond their current level. The lender should use those expenses as reflecting the borrower’s basic necessities.

In considering what expenses to include under paragraph (d) of the definition of 'listed outgoing', a lender should only include expenses if the expense is:

(a) ongoing and will last during the relevant period

(b) not discretionary – the borrower would not or could not stop the expense if there is a need to (before entering the loan or later, if needed), and

(c) material or significant financially to the affordability assessment — for example, the expense is more than $100 a month.

A lender only needs to clarify whether the borrower *would* or *could* stop an expense if needed, not they will or have done so.'

Adjusting the initial estimate of a borrower's likely relevant expenses

The guidance at 5.8 seems to diminish the benefits of benchmarking, and may undermine the requirement in Regulation 4AM(b) to apply the higher of the declared or benchmarked expenses.

If guidance in this subject is kept, we suggest limiting it to confirming that under Regulation 4AM a lender can choose how to verify expenses, subject to any comments in paragraph 5.5.

We also believe the statement at 5.8(c) may be inappropriate where a lender has collected the initial estimate using Regulation 4AK(2)(a)(ii) or (iii). Where a lender confirms with the borrower any expense to be used, having collected that expense under Regulation 4AK(2)(a)(ii) or (iii), a lender need do nothing further.

A lender is only required to further verify those expenses under Regulation 4AM where the lender has asked the borrower about the expense under Regulation 4AK(2)(a)(i). Otherwise, the process becomes circular, and a lender would be obliged to create unnecessary reasonable cost estimates of expenses they've collected through statements but have adjusted on discussion with the borrower.

We suggest amending paragraph 5.8 as follows:

'Lenders may use different methods to verify and adjust their initial estimate of expenses under Regulation 4AM. For example, where a lender asks a borrower for their living expenses under Regulation 4AK(2)(a)(i) the lender may choose to:

(a) compare the benchmarkable expenses against a benchmark and verify the remaining living expenses using statements, or

(b) verify all living expenses using statements.

Where a lender can't verify the expenses against a benchmark or statements or other reliable information, the lender must compare the expense to a reasonable cost estimate.

For example, a borrower is buying a new car and will be insuring it. The lender asks the borrower what that insurance expense is likely to be. The insurance expense is not a benchmarkable expense. The borrower doesn't yet have the insurance expense, so it is not in their statements. So, the lender creates a reasonable cost estimate for the insurance expense instead to verify the amount the borrower has declared. Or, the borrower may have received an insurance quote, and provides this to the lender as reliable information about that expense.'

Surpluses, buffers, or adjustments

We remain very concerned that proposed content on surpluses, buffers, or adjustments is inconsistent with the framework created under Regulation 4AF.

We also believe the content is inconsistent with Cabinet's decision and will unintentionally require responsible lenders to make significant changes to their affordability assessments, further impacting access to credit.

We understand the intent is to provide guidance to ensure lenders do not unnecessarily apply overly conservative buffers or adjustments, or surpluses, or both in their affordability assessments.

However, as previously advised, the language used at 5.19 implies that buffers or adjustments *form part of* a reasonable surplus, and are not alternatives to it. This is not correct.

Regulation 4AF is clear that a lender may apply a reasonable surplus *or* buffers or adjustments. Some lenders may choose to apply both, but Regulation 4AF does not require this.

Given they are alternatives, if a lender is satisfied their buffers or adjustments are sufficient they need do nothing further.

As alternatives, Regulation 4AF does not provide that buffers or adjustments contribute *towards* a reasonable surplus. As such, a lender would not *reduce* any reasonable surplus to reflect buffers or adjustments applied.

The lender must, however, ensure buffers or adjustments in their lending processes are sufficient to minimise the risk of misstating income or expenses, or the borrower incurring further expenses causing substantial hardship.

We note that lenders may also use sensitised interest rates in other situations other than home lending. We also suggest removing the reference to 'beyond those expressly required by the regulations', as this implies these can't be relied on, despite including benchmarking in 5.19(c).

We suggest replacing paragraph 5.19 with the following:

> 'A lender may choose to apply a reasonable surplus or buffers and adjustments to meet Regulation 4AF. A lender may choose to apply both, but this is not required to meet Regulation 4AF.
>
> (a) Regardless of the approach the lender chooses, the purpose behind requiring a reasonable surplus or buffers and adjustments is the same.
>
> (b) Any reasonable surplus applied, and any buffers or adjustments applied, must be capable of addressing the risk of overstating income, understating expenses or the borrower needing to incur other expenses likely to cause substantial hardship.
>
> (c) A lender may apply one or more types of buffers and adjustments in their lending assessment processes, but must assess whether the buffers or adjustments meet the required purpose.
>
> Lenders may apply their buffers and adjustments or reasonable surplus at a product level or on a risk basis.
>
> A lender will have adequate buffers and adjustments to meet the requirements in Regulation 4AF if the lender's credit policies require, where relevant to a particular affordability assessment, the following:
>
> (a) use of a sensitised interest rate

(b) discounts to volatile, irregular, or variable income, and

(c) comparison of benchmarkable expenses against benchmarks.'

Exception to general rule if it is obvious there will be no hardship

Paragraph 5.26

We suggest widening 5.26(b) to reflect the information used can include recent and reliable information the lender already holds about the customer. It would be helpful to make it clear a lender can use their own records in assessing whether Regulation 4AG is met, if these are reliable in the circumstances.

Paragraph 5.27

We suggest removing the statement in 5.27 about past borrowing behaviour not being relevant to an affordability inquiry as this is invalid and unhelpful.

While we agree that credit scores and repayment history will not, in themselves, be determinative, they remain relevant and an important part of a lender's assessment of likelihood of repayment. Banks are also strongly encouraged by regulators to consider those matters.

For example, ASIC's Regulatory Guide RG209 refers to a statement from Judge Greenwood in *ASIC v Channic*. That guidance provides that a consumer's credit history and whether, by and large, they have demonstrated a pattern of meeting like or other financial obligations would be relevant to an affordability assessment.

In overturning a settlement agreement between ASIC and Westpac, Judge Perram also questioned penalties where customers had not suffered specific loss or damage and there was no admission that loans were unaffordable. The Judge questioned this approach given the low defaults on the loans identified.

Examples to support Regulation 4AG

While we support the policy intent in clarifying when lenders can apply Regulation 4AG, the examples provided following 5.27 are unlikely to help and will create further confusion.

It's unclear what makes each an example of obvious affordability. While some specifics are provided, these aren't necessarily representative or show how lenders should apply the examples in practice. We believe this is likely to create doubt or lead to some lenders applying Regulation 4AG inappropriately.

1. In the first example, we assume it is 'obvious' because the loan repayments ($107 a week) are a third of the borrower's weekly discretionary spending ($300). Although not stated, we assume that discretionary spend is available to service the debt.

2. In the second example, the reason the deposit is relevant isn't clear (particularly given it is sourced from a one-off windfall and not from good savings habits). We assume the debt repayments compared to income are such that it is obvious the repayments can be made without hardship, but this isn't clear.
3. We assume the key element, once some of the seemingly extraneous content is removed, is that there is a low (total) debt payment relative to income. If so, we suggest more clearly stating this. In particular, the first example, where loan repayments are less than discretionary spending would to apply in many applications and would not normally be considered as 'obvious' affordability. Similarly, the second example doesn't refer to expenses at all, which could become problematic and open the door to lending that is not appropriate.

As previously submitted through the NZBA, we strongly suggest the guidance on how to apply Regulation 4AG is stated as principles. If examples are given, these should reflect each principle clearly and unambiguously. For example:

Principle One

A lender is likely to have sufficient evidence of obvious affordability where:

- a proposed material change is a small percentage of the total credit limit of the contract
- the lender makes reasonable inquiries into the borrower's likely income under Regulation 4AJ
- the lender makes reasonable inquiries into the borrower's likely expenses and obtains a credit report
- the lender asks the borrower whether there have been any material adverse changes to the borrower's finances since they took out the original lending or last made a material change, and
- the lender is satisfied the borrower's income is likely to exceed the borrower's expenses, including the material change, and it is likely the borrower can meet their obligations without suffering substantial hardship under section 9C(3)(a).

Example

A material change of $10,000 is less than 5% of a total credit limit of $250,000. The lender makes reasonable inquiries into the borrower's current income and other debts, and asks the borrower if there have been any changes to their circumstances since they last borrowed. The lender is satisfied the borrower's income exceeds their likely expenses. The lender has sufficient evidence it is obvious the lending is affordable.

Principle Two

A lender is likely to have sufficient evidence of obvious affordability where:

- the lending or the proposed material change is a small percentage of the available security
- the lender makes reasonable inquiries into the borrower's likely income under Regulation 4AJ
- the lender makes reasonable inquiries into the borrower's likely expenses and obtains a credit report
- for a material change, the lender asks the borrower whether there have been any material adverse changes to their finances since they took out the original lending or last made a material change
- the lender makes reasonable inquiries and is satisfied the borrower's income is likely to exceed the borrower's expenses, and it is likely the borrower can meet their obligations without suffering substantial hardship under section 9C(3)(a).

Example

The borrower is seeking to buy a holiday home. They have an existing owner occupied property and three residential investment properties. The total lending, including the new lending, is less than 50% of the value of the properties available as security. The lender makes reasonable inquiries into the borrower's current income and other debts, and asks the borrower what their living expenses are and benchmarks these. The lender has sufficient evidence it is obvious the lending is affordable.

Principle Three

A lender is likely to have sufficient evidence of obvious affordability where:

- the agreement is intended to be temporary (lasting no more than 3 months)
- the borrower has confirmed the agreement will be repaid from a verified bonus, commission, or one-off or permanent increase to income, and
- the lender is satisfied it is likely the borrower can meet their obligations under the agreement without suffering substantial hardship under section 9C(3)(a).

Note this principle involves income repayment sources, which would not fall within Regulation 4AI. Regulation 4AI only applies where a borrower intends to use something other than income to repay the lending.

Example

The borrower is wanting to borrow $10,000 for a holiday. The lender has made reasonable inquiries and verified the amount will be repaid in full from an expected bonus that is due to be paid by their employer in two months' time. The lender has sufficient evidence it is obvious the lending is affordable.

Principle Four

A lender is likely to have sufficient evidence of obvious affordability where:

- the lender makes reasonable inquiries into the borrower's likely income under Regulation 4AJ
- the lender makes reasonable inquiries into the borrower's expenses and obtains a credit report, and
- the lender the lender is satisfied the borrower's income is likely to exceed the borrower's expenses, including the new lending, with a generous surplus of at least $500 a month, and
- the lender is satisfied it is likely the borrower can meet their obligations under the agreement without suffering substantial hardship under section 9C(3)(a).

Example

The lender makes reasonable inquiries and verifies the borrower's current income and debts. The lender asks the borrower what their living expenses are, and benchmarks these. The lender is satisfied that the borrower's income exceeds those expenses by over $500 a month. The lender has sufficient evidence it is obvious the lending is affordable.

Principle Five

A lender is likely to have sufficient evidence of obvious affordability where:

- the lender makes reasonable inquiries into the borrower's likely income under Regulation 4AJ
- the lender makes reasonable inquiries into the borrower's expenses and obtains a credit report
- the lender is satisfied the borrower has and would realise verified significant savings, investments, or other assets to meet repayments if needed, and
- the lender is satisfied it is likely the borrower can meet their obligations under the agreement without suffering substantial hardship under section 9C(3)(a).

Note this principle involves where a borrower intends to rely on income, rather than other sources of repayment.

Example

The borrower is seeking to borrow $50,000. The lender makes reasonable inquiries and is aware the borrower has a significant investment portfolio of $100,000 that could be liquidated if needed, even though the borrower has stated their intent is to use their current income to meet repayments. The lender has sufficient evidence it is obvious the lending is affordable.

Principle Six

A lender is likely to have sufficient evidence of obvious affordability where:

- the lender completed a full affordability assessment under Regulation 4AF for the same borrower in the last 12 months
- the lender is satisfied, based on the earlier affordability assessment that the new lending or material change is affordable
- the lender confirms with the borrower that there have been no adverse changes to their financial position and obtains a credit report, and
- the lender is satisfied it is likely the borrower can meet their obligations under the agreement without suffering substantial hardship under section 9C(3)(a).

Example

A borrower seeks a credit card of $10,000 to use when on holiday. Six months before, the borrower had taken out a new home loan, with an uncommitted monthly income of $300. The lender is satisfied the surplus in the previous affordability assessment is sufficient to meet the new lending. The lender asks the borrower to confirm there have been no adverse changes to their income or expenses in the last 6 months.