FINANCIAL SERVICES FEDERATION

20 October 2022

Consumer Policy Team
Building, Resources and Markets
Ministry of Business, Innovation and Employment
P O Box 1473
Wellington 6140 By email: consumer@mbie.govt.nz

Credit Contracts and Consumer Finance Amendment Regulations (No 2) 2022 and updated Responsible Lending Code

The Financial Services Federation (FSF) is grateful to the Ministry of Business, Innovation and Employment (MBIE) for the opportunity to comment on the draft Credit Contracts and Consumer Finance Amendment Regulations (No 2) (the draft Regulations) and updated Responsible Lending Code (RLC) and the opportunity to answer the questions posed in the Consultation Paper dated 22 September 2022.

The FSF acknowledges the work of the Ministry's Consumer Policy Team in putting together the draft Regulations and the updated RLC and the consultation that they have provided to interested stakeholders throughout the development of these since the August announcement of Cabinet decisions on further changes to the Credit Contracts and Consumer Finance Act (CCCFA) Regulations.

As we have previously advised, the FSF is the industry body representing the responsible and ethical finance, leasing and credit-related insurance providers of New Zealand. We now have nearly 90 members and affiliates providing these products to more than 1.7 million New Zealand consumers and businesses. The latest list of our members is attached as Appendix A and data relating to the extent to which FSF members contribute to New Zealand consumers, society and business is attached as Appendix B.

Introductory comments:
Whilst the FSF is grateful for the opportunity to comment on the draft Regulations and appreciates the consultative meetings with both the Ministry officials responsible for drafting these and those who were involved in the review of the CCCFA changes implemented from 1 December last year, the FSF strongly suggests that, in respect to this latest round of consultation, the views of industry are taken into consideration.

Throughout the consultation process on the review of the CCCFA from the point when it was first announced by then Minister of Commerce and Consumer Affairs, the Hon Kris Faafoi, in 2018 until the point in February of 2021 when the changes to the RLC were finalised and

including the development of the Regulations the draft Regulations are aiming to fix, the FSF has provided constructive feedback on the adverse unintended consequences that the prescriptive nature of the regime would have on both lenders and consumers alike.

It has always been the FSF's view that the changes to the CCCFA were largely unnecessary, and we have never been convinced that there was an issue of sufficiently significant magnitude to justify the excessively prescriptive regime that we have ended up with since 1 December. The changes to the Act that introduced the definition of high-cost lending and placed parameters around the interest and fees that could be charged under such consumer credit contracts were in our view all that was required.

The FSF believes that the principles-based approach to responsible lending introduced in the 2015 CCCFA reforms through the Lender Responsibility Principles and the guidance as to how lenders could meet these in the first version of the Responsible Lending Code ensured that consumer credit is provided responsibly in Aotearoa. If anything was missing it was sufficient swift and effective enforcement of the law.

These principles also provide the appropriate levels of protection for consumers in vulnerable circumstances in the FSF's view as they make clear that lenders must make more extensive enquiries of such people and treat them with more care when they recognise them. We certainly do not believe that all consumers should be treated as being vulnerable which is the outcome of the 1 December prescriptive regime.

The 1 December reforms have not just been extremely problematic for lenders. They have to a large extent removed borrowers' agency over their own finances and their ability to make their own risk assessment with respect to accessing credit. It must be remembered that consumers did not ask for these reforms. Most consumers are not in vulnerable circumstances, they access finance as required and as they themselves believe that they can afford to do so and most consumers neither need nor wish to be treated as though they are in a vulnerable situation and largely resent the implication that they should be.

The FSF still believes that the best possible solution for consumers and lenders alike would be to repeal the excessively prescriptive affordability regulations in their entirety and return to the principles-based approach we had prior to 1 December – including the reinstatement of Principal 7 of the Lender Responsibility Principles which allowed lenders to rely on the information provided to them by the borrower unless it was obvious that the information was not reliable.

In the absence of taking this approach and given the extremely punitive penalties that now exist for directors and senior managers of consumer credit providers, the easiest answer to a credit application for the lender is to decline. Data gathered from FSF members showed that new lending had declined by 21% in the first 3 months of the new regime from 1 December.

As you will recall, the FSF also raised very strong concerns with respect to the timeframe provided to industry to implement such a massive and prescriptive change to a regime that had been reviewed only a few years previously. Receiving finalised guidance in the RLC in

February and having an initial implementation date of 1 October (admittedly moved out to 1 December due to the second Covid lockdown) was always deemed to be very difficult to achieve without an enormous amount of pressure being applied to affected businesses.

In the event, FSF members reported costs of more than $1 million each for our larger members through to tens and hundreds of thousands of dollars proportionately for smaller members. Perhaps even more concerning than the cost of implementing the regime, is the personal stress and pressure the tight timeframe put on the people involved in each organisation. It is not an exaggeration to say that this was immense – particularly with the personal liability attaching to directors and senior managers of consumer credit providers if they were to inadvertently breach their obligations or be unable to complete the enormous project within the timeframe.

The FSF is therefore very keen to ensure that this latest review is the final one for some time to come. Whilst loosening up compliance requirements is easier to implement than tightening them, this does not come without cost both financially and in terms of time and effort.

Having said all of the above, however the FSF will now turn to answering the questions posed in the consultation document based on what is, in our view, the only approach currently being offered to fix this problem.

1. **Do you agree with amending the definition of "listed outgoings" along the lines proposed? Do you have any comments on the wording of these changes?**

The FSF believes that the amended definition of "listed outgoings" as proposed in the draft Regulations is an improvement on the current definition in Regulation 4AE(d).

2. **Do you agree with amending the definition of "relevant expenses" along the lines proposed? Do you have any comments on the wording of these changes?**

The FSF believes that the amended definition of "relevant expenses" as proposed in the draft Regulations is an improvement on the current definition in Regulation 4AE and will help clarify and therefore simplify the application process.

3. **Which of the two options for guidance in the Draft Code relating to treatment of discretionary expenses is most appropriate and why? Do you have any comments on the wording of either of these options?**

The FSF prefers Option 2 provided in the draft RLC as this option is the simplest to follow.

Whilst Option 2 contains a presumption that expenses will be discretionary if they don't fall within the categories set out in 5.10 a-d, lenders will want comfort that, provided they have no reason to believe that the presumption is incorrect for a particular borrower, that they don't need to make further enquiries. The Consultation Paper at paragraph 16 suggests that lenders cannot in fact rely on this presumption and must make extensive enquiries as to an individual borrowers' circumstances and a blanket approach is not acceptable.

The FSF therefore proposes that 5.10 (d) is amended slightly to make it clear that the reference to tithing, remittances to a family member overseas and pets, are examples only. It is clear in Option 1 that these are examples only and we would like this carried across to Option 2.

4. Do you agree with the approach to excluding some credit cards as proposed in regulation 4AL(2A)? If not, what changes would you make?

The FSF supports the intention of the proposed approach in draft Regulation 4AL(2A) to avoid double-counting of both expenses and debt for borrowers who use these facilities for day-to-day transactions and pay them off quickly without incurring interest. However, in reality non-bank lenders will find it hard to have oversight of this without the borrower providing very detailed bank transactional information to support that they do in fact use these facilities in this way. This provides the banks with a distinct advantage given they have direct access to this information. Banks also actively discourage customers from sharing this information with non-bank lenders.

This brings us back to the point made earlier which is that reinstatement of Lender Responsibility Principle 7 is essential to providing borrowers with sufficient agency over their own affairs and finances on which all lenders are able to rely.

What is also essential to avoid providing banks with an unfair competitive advantage is the immediate implementation of a Consumer Data Right that provides customers access to their own data and the ability for them to choose with whom they share it. As the FSF has said repeatedly, this important step should have been taken before implementing the prescriptive CCCFA regime of 1 December, but again this entirely sensible suggestion was ignored in the consultation process.

The proposed wording of new subclause 4AL(2A) appears to allow lenders the discretion to be able to discount the revolving credit contract if they are satisfied that the borrower uses these in the way described above – provided that the lender can verify that this is the case. This is an improvement on the current situation. However, as previously noted, this verification is hard to achieve for any lenders other than banks.

The FSF also propose that the drafting of Regulation 4AL(2A)(b) is clarified as it currently sets a high standard for lenders to meet. It is not clear how lenders can make the determination currently required of draft Regulation 4AL(2A)(b).

5. Is any additional guidance needed for the exception in 4AL(2A) for certain credit cards? If so, what should this guidance state?

As mentioned in the answer to question 4 above, some additional guidance as to how lenders can meet the requirement in Regulation 4AL(2A)(b) would be very helpful.

6. Do you agree with explicitly excluding BNPL in its entirety from 4AL(2)? If not, are there alternative ways, that would be workable for lenders, to impute future BNPL expenses based on a borrower's existing BNPL facilities?

The FSF notes that the consultation paper makes the observation that there is not as yet a definition in the draft Regulations of what exactly is meant by Buy Now Pay Later (BNPL). On that basis, it is difficult to comment on the proposed exclusion of BNPL from Regulation 4AL(2). Also, the FSF understands that the way in which BNPL products might be regulated is still under consideration by MBIE officials.

The FSF notes the proposed guidance in the RLC in para 5.34 that states that any payments under an existing BNPL facility should be treated as debt payments under the definition of listed outgoings. However, the lender is reliant on the borrower to disclose the BNPL facility to the lender so there is really little choice but to exclude BNPL from Regulation 4AL(2).

7. **In light of excluding BNPL from 4AL(2), is any further guidance in the Code necessary to address the treatment of BNPL expenses? If so, what should this guidance state?**

The FSF has no further comment to make with respect to any further guidance necessary in the Code to address the treatment of BNPL expenses other than what has been said in the answer to question 6.

8. **Do you agree with the way that the Draft Regulations relating to the expanded exception for variations and replacements of existing credit contracts is phrased? If not, what changes would you make?**

The FSF understands the intent of the expanded exception for variations and replacements of existing credit contracts being to allow consumers to take advantage of potentially more favorable terms and conditions with another lender without having to go through the rigorous affordability assessment process. The FSF has some quite significant concerns with respect to the way in which this may play out in reality.

Firstly, lenders will still need to be cautious about extending credit facilities to a borrower who is experiencing repayment difficulties with their existing lender, given the significant penalties that could apply if the new lender is seen to be extending that financial hardship.

Secondly, and more importantly, the FSF is concerned that lenders with a lower cost of funds could use this exception to take business from other lenders without having to apply the same scrutiny on the loan affordability as the original lender, but they meet the conditions for the use of the exception because they are able to offer lower repayments because of their lower cost of funds.

Lenders with a lower cost of funds could therefore claim in all circumstances their offerings are better for consumers because inevitably they can provide finance at a lower interest rate than other lenders. Being able to refinance a credit contract without any affordability assessment provides some lenders with a significant competitive advantage about which the FSF has significant concerns.

Therefore, whilst the FSF is supportive of relaxation of the current prescriptive regulatory settings as much as possible – and indeed a return to the principles-based approach of the

previous CCCFA regime – the FSF does not support this draft Regulation and believes it should not be made due to the unintended consequences that we predict will arise from it.

9. Which of the two drafting options for expanding the exception for variations and replacements of existing credit contracts would be most workable and why?

The FSF refers to the answer provided to question 8 above and the fact that the FSF does not support expanded exception in the proposed draft Regulation.

10. Do you agree with the suggested guidance in the Draft Code relating to the expanded exception? If not, what changes should be made to the Draft Code guidance?

Given that the FSF does not support the expanded exception, the FSF also does not agree that any changes need to be made to the RLC in support of this.

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

The FSF notes that the consultation paper states that the proposed changes could be made by February 2023 in order that they can come into force by March 2023. There will be changes required to lenders' processes in order to accommodate these changes given the enormous amount of work they have done to be ready for the highly prescriptive changes to the CCCFA regime that came into force from 1 December 2021. This will include possible changes to documentation including the application process to capture more or less information, amending policies and training of staff and agents on the changes.

Whilst it is certainly easier to unwind prescription than it is to implement it, this is not without its resource requirements, both financial and from the perspective of time involved, and the FSF therefore urges that the sooner that certainty with respect to the exact nature of the proposed changes can be provided to lenders, the better for all concerned. This will allow lenders to be ready to offer the benefits these changes can offer to consumers immediately from the time they come into force.

The FSF notes that the process to get to these relaxations of the prescription that was brought into the consumer credit regime in New Zealand from 1 December, has not been without a lot of stress and anxiety on behalf of the people working in consumer credit provider organisations.

Once again, thank you for the opportunity for the FSF to submit on these proposed changes to the CCCFA regulations. Please do not hesitate to contact me if you require any further input from us.

With kind regards,

Lyn McMorran
EXECUTIVE DIRECTOR

FINANCIAL SERVICES FEDERATION

Appendix A - FSF Membership List as at October 2022

Non-Bank Deposit Takers, Specialist Housing Lenders, Leasing Providers	Vehicle Lenders	Finance Companies/ Diversified Lenders	Finance Companies/ Diversified Lenders, Insurance Premium Funders	Credit-related Insurance Providers, Affiliate Members	Affiliate Members incl Credit Reporting, Debt Collection Agencies
XCEDA (B) Finance Direct Limited ➢ Lending Crowd Gold Band Finance ➢ Loan Co Mutual Credit Finance <u>Credit Unions/Building Societies</u> First Credit Union Nelson Building Society Police and Families Credit Union <u>Specialist Housing Lenders</u> Basecorp Finance Limited Liberty Financial Limited Pepper NZ Limited Resimac NZ Limited <u>Leasing Providers</u> Custom Fleet Euro Rate Leasing Limited Fleet Partners NZ Ltd ORIX New Zealand SG Fleet	AA Finance Limited Auto Finance Direct Limited BMW Financial Services ➢ Mini ➢ Alphera Financial Services Community Financial Services Go Car Finance Ltd Honda Financial Services Kubota New Zealand Ltd Mercedes-Benz Financial Motor Trade Finance Nissan Financial Services NZ Ltd ➢ Mitsubishi Motors Financial Services ➢ Skyline Car Finance Onyx Finance Limited Scania Finance NZ Limited Toyota Finance NZ ➢ Mazda Finance Yamaha Motor Finance	Avanti Finance ➢ Branded Financial Basalt Group Blackbird Finance Caterpillar Financial Services NZ Ltd Centracorp Finance 2000 Finance Now ➢ The Warehouse Financial Services ➢ SBS Insurance Future Finance Geneva Finance Harmoney Humm Group Instant Finance ➢ Fair City ➢ My Finance John Deere Financial Latitude Financial Lifestyle Money NZ Ltd Limelight Group Mainland Finance Limited Metro Finance	Nectar NZ Limited NZ Finance Ltd Personal Loan Corporation Pioneer Finance Prospa NZ Ltd Smith's City Finance Ltd Speirs Finance Group ➢ Speirs Finance ➢ Speirs Corporate & Leasing ➢ Yoogo Fleet Turners Automotive Group ➢ Autosure ➢ East Coast Credit ➢ Oxford Finance UDC Finance Limited <u>Insurance Premium Funders</u> Elantis Premium Funding NZ Ltd Financial Synergy Limited Hunter Premium Funding IQumulate Premium Funding Rothbury Instalment Services	<u>Credit-related Insurance Providers</u> Protecta Insurance Provident Insurance Corporation Ltd <u>Affiliate Members</u> Buddle Findlay Chapman Tripp Credisense Ltd Credit Sense Pty ltd Experian Experieco Limited EY FinTech NZ Finzsoft Happy Prime Consultancy Limited Lendscape Ltd KPMG LexisNexis Motor Trade Association PWC Simpson Western	Verifier Australia <u>Credit Reporting, Debt Collection Agencies,</u> Baycorp (NZ) ➢ Credit Corp Centrix Collection House Debt Managers Debtworks (NZ) Limited Equifax (prev Veda) Illion (prev Dun & Bradstreet (NZ) Limited Quadrant Group (NZ) Limited IDCARE Ltd Total 89 members

FINANCIAL SERVICES FEDERATION (FSF)

THE NON-BANK FINANCE INDUSTRY SECTOR - 2022

48%

NON-BANK | BANK

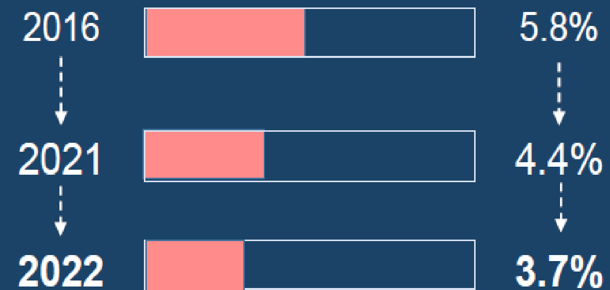
of personal consumer loans are financed by the **non-bank sector** represented by FSF members.

Setting industry standards for responsible lending, promoting compliance and consumer awareness.

Percent of Loan Requests Approved

46%

Percent of Loan Book in Arrears



KEY FACTS: THE NON-BANK FINANCE INDUSTRY SECTOR

FSF Members (as at 28 Feb 2022)

Number of Members	57
Number of Employees	3,561
Applications Processed	1,085,739
Loan Requests Approved	495,434
Percent of Loan Book in Arrears	3.7%

Bank Sector (as at 28 Feb 2022)

Value of Mortgage Loans	$328,776M
Value of Consumer Loans	$7,613M
Value of Business Loans	$117,944M

Non-Bank Sector Share (as at 28 Feb 2022)

% of Total Mortgage Loans	0.4%
% of Total Consumer Loans	47.7%
% of Total Business Loans	5.9%

Insurance Credit Related (as at 28 Feb 2022)

Number of Employees	237
Number of Policies	311,409
Gross Claims (annual)	$27.2M
Days to Approved Claim	20 days

Consumer Loans (as at 28 Feb 2022)

Total Value of Loans	$8,104M
Number of Customers	1,699,683
Number of Loans	1,584,984
Monthly Instalments:	$330M
Average Value of Loan:	
Mortgage	$171,932
Vehicle Loan	$12,393
Unsecured	$2,467
Other Security	$5,754
Lease Finance	$2,804
Average Monthly Instalment:	
Mortgage	$257
Vehicle Loan	$463
Unsecured	$144
Other Security	$302
Lease Finance	$241

Business Loans (as at 28 Feb 2022)

Total Value of Loans	$7,330M
Number of Customers	136,830
Number of Loans	264,827
Monthly Instalments:	$590M
Average Value of Loan:	
Mortgage	$443,784
Vehicle Loan	$28,869
Unsecured	$7,443
Other Security	$32,374
Lease Finance	$24,921
Average Monthly Instalment:	
Mortgage	$2,281
Vehicle Loan	$1,064
Unsecured	$799
Other Security	$11,044
Lease Finance	$939