

Submission on *Exposure draft of Credit Contracts and Consumer Finance Amendment Regulations (No 2) 2022 and updated Responsible Lending Code*

Your name and organisation

Name	Privacy of natural persons
Organisation (if applicable)	NZ Finance
Contact details	Privacy of natural persons

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Responses to questions

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?
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? Yes, particularly "may exclude discretionary expenditure that responsible lender would reasonably expect the borrower to cease if they were at risk of substantial hardship:" as this will assist in making a decision where the transaction purpose maybe unclear whether or not it is a discretionary expense.
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? Option 2 As this could simplify the analysis of categorised expenses. As often the wide variety of expenses is difficult to allocate and would otherwise require a "line by line" questioning on the phone to the borrower which is not practical and would be very intrusive.
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?
5	Is any additional guidance needed for the exception in 4AL(2A) for certain credit cards? If so, what should this guidance state?
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? Yes BNPL should be included in discretionary expenses as they are by definition "purchases" and as such would be included in the recommendation "That it may exclude discretionary expenditure that responsible lender would reasonably expect the borrower to cease if they were at risk of substantial hardship" All BNPL purchases are highly likely to be discretionary by their very nature. As normally any BNPL commitment is for a maximum term of 4 to 6 weeks it is easy to overstate the financial commitment. Apart from making it a discretionary expense, another option would be to ask the borrower how much they expect future BNPL payments to be.

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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?

Restriction on BNPL should be applied to the BNPL industry. Our own anecdotal evidence shows that in the under 40 year olds demographics, they can spend a significant amount on BNPL purchases regularly and to the extent that can represent a significant outgoing.

A solution to this could be to restrict the number of BNPL open purchases at any one time by any one provider.

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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?

Yes

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

Option 2

Option 2 permits lenders to take a **narrower initial capture of expenses, further reducing the extent of inquiries**. Lenders would still need to consider an individual borrowers' circumstances where they have reason to believe that some expenditure that might usually be discretionary was in fact non-discretionary. This option has a higher risk that lenders take a blanket approach to treating expenses as discretionary, when further inquiries would reveal these to be non-discretionary, in reality.

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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?

Would like to see BNPL be discretionary.

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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?

No material changes

We are already using the processes in Option 1 of first capturing commitments and ratios of debt to income and then expanding on expenses to determine affordability where we use the categorising provided by our bank report provider.

Other comments

The proposed inclusion of this principle as a "sense check" when completing an affordability assessment is valuable.

"That it may exclude discretionary expenditure that responsible lender would reasonably expect the borrower to cease if they were at risk of substantial hardship"

In reference to Option 2, Chapter 5 "regular or frequently recurring outgoings associated with tithing, remittances to a family member overseas and pets", may be changed to:

“Where a borrower discloses regular or frequently recurring outgoings associated with tithing, remittances to a family member overseas and pets”.

Payment transactions which cannot be recognised in the bank report because the payee details have insufficient description on many occasions.

Compassionate lending;

Lending could include exceptions for compassionate grounds where the borrower is known to the lender. Current regulations create a black or white assessment only.