

Submission on discussion document: *Guidance for lenders on assessing affordability: draft changes to the Responsible Lending Code*

Your name and organisation

Name	privacy of
Organisation (if applicable)	Unity Credit Union ("Unity Money")
Contact details	privacy of natural persons

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Responses to discussion document questions

Guidance (5.1-5.4)

1

Do you have any concerns with changes proposed to paragraph 5.1, or other changes we should consider?

Unity considers that 5.1-5.4 should reference the option for lender(s) to apply discretion in the affordability assessment of 'low-risk and/or low value' consumer credit.

The application of 5.1-5.4 should include 'guidance' that Lender(s) may consider alternative approaches to the assessment of affordability, based on other factors the lender considers appropriate (for example in the provision of overdrafts, revolving credit such as credit card facilities and low-value short term personal loans to existing customers). The guidance should reference the use of information data which is already held (by the lender and/or credit referencing agency) in making an informed, risk-based assessment of a consumer(s) repayment capacity (and character/capability).

The revised text at 5.1 contains reference to, and explicitly states, that the borrower should not have to borrow from another source to meet their financial commitments. In general, this reference is supported, but should be broadened to allow circumstances where: a) refinancing may have taken place (for example, to reduce the consumers existing or future repayments on 'other' debt), and/or b) be clear that this does not apply to assistance from parent(s) and/or guarantors in the form of a gift prior to the purchase of a residential property.

2

Do you have any concerns with any of the changes proposed to guidance on responsibly estimating the payments that will be required/made under the agreement?

5.2 – Forecasting future interest rate cycles/movement is not an exact science, and therefore reference in the text should refer to 'the best endeavours' a lender can make in assessing the impact, in any 'future' period, of increase(s) in the interest rate (and therefore repayments).

3

Do you see any other guidance on this topic as desirable? If so, please explain.

Unity fully supports 'guidance' being provided to all lenders in respect of what 'good' responsible lending looks like.

It should be noted within the text, that the assessment of affordability is undertaken and applicable at the time of assessment and prior to any consumer credit being advanced to a consumer.

Purpose of inquiries (5.5-5.6)

4

Do you have any concerns with the guidance proposed in paragraph 5.5? If so, what changes should we consider?

Unity supports the expansion of the text within 5.5-5.6, and the inclusion of means other than income.

As with the general nature of the proposed amendments to section 5, Unity welcomes the provision of 'guidance' for lenders in this section of the Code, and the clarification that lender(s) are provided with the discretion to determine the applicability of this guidance to their consumer lending operations, under the amendments to the CCCF Act. Unity recommends that the Code states the items at 5.5-5.9 are not intended to be prescriptive,

and that lenders should/may 'consider' the suitability of relevant guidance as part of its risk-assessment of affordability inquiries.

5

Do you believe the Code should provide general guidance on use of surpluses, buffers, and adjustments to account for uncertainty that the loan will be affordable? If so, what would you suggest it say, noting the potential for excessively conservative approaches by lenders.

Unity supports the provision of general 'guidance' on the use of surpluses, buffers, and adjustments as proposed under 5.5. However, the complexity, and wide-ranging scenarios that have impacted the application of benchmarking for household expenditure may persist, if guidance provided for surpluses and buffers is interpreted by lenders as 'prescriptive.'

Consumer circumstances are unique to the individual - their personal circumstances and the type of consumer lending they need access to. Guidance must be broad enough to allow lender(s) to determine the suitability of surpluses/buffers on a risk-based approach (taking account of the risk profile of the consumer, the type of product offered, pricing, knowledge of the consumer relationship with the lender and the purpose of the borrowing).

Scope of inquiries (5.7-5.11)

6

Do you have any concerns with the changes proposed to guidance on inquiries into income, or believe we should consider any other changes?

Unity supports the more flexible approach detailed in 5.7 with regard to allowing inquiries into any other means the borrower expects to have for making payments.

7

What wording do you think would work best (in paragraph 5.9.c) to capture other, less essential expenses that may be important for the lender to account for?

Unity considers 5.9c adequately highlights the need for Lenders to consider borrower expenditure in general and notes the difficulty in detailing further guidance which may be interpreted either as prescriptive or limited to the literal interpretation of the guidance.

8

Do you have any concerns with other changes proposed to guidance on inquiries into expenses, or believe we should consider any other changes?

No. Unity supports the aims of 5.7-5.11 to provide more detailed and practical guidance for lenders on assessing a borrower's ability to repay without experiencing substantial hardship.

9

Do you believe guidance on joint expenses would be worthwhile. If so, would you have any issues with paragraphs 5.28 – 5.32 of the current Code being used?

Unity does not consider that further guidance on joint expenses is worthwhile, and that the Code should avoid being prescriptive in this respect.

10

Do you believe guidance on inquiring into spending through use of Buy Now Pay Later facilities is necessary? If we were to do this, would paragraph 5.33 of the current Code be a good approach?

Any guidance provided in relation to Buy Now Pay Later (BNPL) should be generic, and not prescriptive, due to the variability in the circumstances under which consumers spend through the use of such facilities.

11

Would you have any concerns, based on the proposed guidance, about lenders making unreasonable assumptions that the borrower will reduce certain expenditure? If so, please explain why and what the Code might do to address this.

Unity considers that the proposed guidance, and the applicability of the Code to Lending Policies and operational procedures, will strike a balance between ‘consumer protection’ and ‘accessibility’ – promoting financial inclusion whilst protecting consumers from predatory practice. Lenders breaching the principles of the code, including the making of unreasonable or unfounded assumptions, should be subject to appropriate enforcement action.

Method inquiries (5.12-5.17)

12

Do you have any concerns with the 2017 guidance on methods of inquiry? Please explain.

N/A

13

Do you believe further guidance on use of statistical information is necessary? If so, why?

No. The availability of, and the practical application, of statistical information varies dependent on the source of such information and it’s intended use. For example, the Household Expenditure data (produced by NZ Stats) is intended for the provision of generic household expenditure (and can be segmented into household formation, income banding, and regional/geographical locations). To apply this data to an expenditure assessment results in a ‘broad brush’ approach which may limit certain borrower groups access to credit, without allowing for the individualistic nature of a borrower’s personal expenditure patterns, and the lender the opportunity to assess and evaluate the individually unique expenditure behaviour of borrower(s). In addition to the above, the data available in relation to household expenditure is generally updated biennially, quickly becoming out of date. Unity considers that lenders should be permitted to apply the application of statistical data (they possess and can validate) in accordance with their risk assessment of the borrower, and the general guidance contained within the Code.

Unity recommends that 5.13 (d) ii) is amended to refer to ‘essential’ expenditure (i.e. expenditure referenced at 5.1 a) and b).

14

Do you agree paragraph 5.13 is desirable to make lenders aware of their obligation under the Privacy Act 2020?

Yes.

15

What might be the implications of using the 2017 guidance on verification? What changes, if any, would you suggest?

N/A

16

Do you have any other feedback on guidance relating to verification or use of information provided by intermediaries?

*Unity recommends that 5.14 is amended to read ‘the lender **may** confirm with the borrower the correct use of that information.*

Unity recommends that further guidance should be provided in respect of the application of 5.18, and the foundation on which lenders are required to satisfactorily meet the standard the code sets in this regard.

Unity supports the aim to provide a more detailed and robust framework for lenders to follow in making reasonable inquiries, enhancing the reliability of the information used in lending decisions, and ensuring compliance with responsible lending obligations.

Extent of inquiries (5.18-5.21)

17 *Do you believe the proposed guidance on extent of inquiries would encourage lenders to make their inquiries more proportionate to affordability risk, as intended? What changes might help to achieve this?*

Unity supports an approach which encourages lenders to make their inquiries more proportional to affordability risk, allowing the scope and method of inquiries to vary depending on the circumstances.

Unity further supports more extensive inquiries when there is a greater risk that the borrower will not be able to make payments, such as:

- *The loan size is large relative to the borrower's ability to repay.*
- *The borrower is a vulnerable borrower.*
- *The credit agreement is a high-cost credit agreement.*

Unity also considers less extensive inquiries may be reasonable when:

- *The risk of the borrower not making payments without substantial hardship is lower.*
- *The consequences of non-payment are less serious.*
- *Specific cases such as:*
 - *Refinancing existing debt without a material increase in regular payments.*
 - *When it is obvious that the borrower can make payments without substantial hardship, making further inquiries disproportionate.*

18 *Do you have any other feedback on guidance to support lenders in assessing affordability risk and what that means for how they should approach inquiries?*

N/A

Record keeping (5.22-5.25)

19 *Do you have any views on the need for guidance on record keeping and changes we should consider?*

Overall, the expanded text offers more specific guidance on what records lenders should keep and how they should be maintained to meet regulatory requirements effectively. Unity supports this approach to record-keeping.

High-cost consumer credit contracts (5.26)

20 *Do you have any views on the need for guidance on assessing affordability of high-cost credit and whether changes are desirable?*

N/A

Pawnbroking (5.27-5.28)

21 *Do you have any views on guidance for assessing affordability in the case of pawnbroking?*

N/A

Other

22 *Do you have any other feedback on how the draft content for Chapter 5 can better meet its objectives, including anything that might be missing?*

N/A

23 *Do you have any suggestions for how this content could be presented more clearly or usefully to users?*

Unity suggests that the Code clearly distinguishes between the legal obligations derived from the CCCF Act (and which must be complied with at a statutory level).

Unity further suggests that the 'Principles' and 'Guidance' elements of the Code are clearly distinguished.

Other comments

The current provisions of the Credit Contracts and Consumer Finance Act (CCCF Act) provide effective protection for most consumers, however exposure to high-cost lending practices should be regulated separately from mainstream lending products/product providers. High-cost lending regulation, in our view, warrants a more prescriptive (rules-based) approach being adopted when considering responsible lending in this context.