FINANCIAL SERVICES FEDERATION

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Consumer Policy
Building, Resources and Markets
Ministry of Business, Innovation and Employment

By email: consumer@mbie.govt.nz

Fit for purpose consumer credit legislation discussion document

The Financial Services Federation (FSF) is grateful to the Ministry for the opportunity to respond to its draft discussion document: Fit for purpose consumer credit legislation document.

Introductory comments:
The FSF congratulates the Ministry on the discussion document and recognises the enormous amount of work that has gone into its preparation in such a timely manner.

The FSF is the industry body representing the responsible and ethical non-bank finance providers operating in New Zealand. Our membership (a list of which is attached as Appendix A) includes motor vehicle finance providers, non-bank housing lenders, Non-Bank Deposit Takers (NBDTs), the larger finance companies operating in New Zealand, fleet and asset leasing providers, credit-related insurers and a number of Affiliate members which include internationally recognised legal and consulting partners. Our members provide their products and services to more than 1.7 million New Zealand consumers and businesses. Data relating to the extent to which FSF members (excluding Affiliate members) contribute to New Zealand consumers, society, and business is attached as Appendix B.

The organisations that are members of the FSF provide valuable competition to the banks. As highlighted by the recent draft report from the Commerce Commission's market study into personal banking services in New Zealand, this competition is critical if New Zealanders are to get better value from the banks.

The FSF is generally very supportive of the proposed financial services reforms to achieve the government's objectives of simplifying and streamlining regulation of financial services (including reducing duplication); removing undue compliance costs for financial markets participants; and improving outcomes for consumers.

New Zealand's regulatory landscape for financial services has in recent years become overly complex and unwieldy as different pieces of legislation and regulation are added on top of each other without anyone ever taking the time to step back and consider how it could be simplified for financial institutions and yet still achieve the same necessary protections for consumers. The FSF has submitted strongly against this layering of complexity on many occasions in recent years so is particularly pleased that the issues are now being addressed.

With respect to consumer credit legislation where we have landed with the 2021 reforms of the CCCFA is particularly complex and prescriptive and the FSF is very pleased that the government is taking steps to address this.

The FSF has been consistent in our view that lenders always seek to write high quality loans that are in the best interests of their customers. They do not set out to write unaffordable loans. We feel that the point is worth reiterating in the context of this particular consultation and should be kept in mind at all times when considering the following submissions.

Seek more time to submit on change of regulatory body:
Although the FSF is supportive of the principle of the reforms and their intended objectives, the FSF sounds one strong note of caution with respect to transferring regulatory responsibility for the CCCFA from the Commerce Commission to the Financial Markets Authority (FMA).

The FSF will detail our concerns with this proposal more fully in our response to the concurrent consultation on Fit for purpose financial services conduct which is due to be submitted on at the same time as this consultation and later in this submission, but the key issue is the lack of clarity as to how financial institutions that are not currently subject to the conduct regime under the CoFI Act or which do not currently require a market services licence to operate will be treated in that transfer of authority.

At present most of the FSF's members are Non-Deposit-Taking Lending Institutions (NDLIs) and, as such, are not covered either by the CoFI regime (and therefore do not require a conduct licence to operate) and are also not required to have a market services licence. The question of how these entities would be treated under a transfer of regulatory responsibility from the Commerce Commission to the FMA needs to be explored in more detail and with more consultation and consideration of possible unintended consequences before final decisions are made.

It is very difficult to comment on a possible licensing regime as we are being asked to in this consultation without having any information on what the licensing obligations are likely to be and there are many unanswered questions with respect to this that require more thought and time for affected entities to consider their implications. These include whether or not, as holders of a market services licence, NDLIs would then be required to meet the obligations under the CoFI Act, what are the conditions to obtain a licence, what conditions will be imposed on consumer credit providers as a market services licence holder etc.

The FSF therefore urges government to consider extending the timeframe for consideration of this particular option and to undertake robust consultation with NDLIs before any final decisions are taken.

Executive Summary:
The following are the main points of this submission:

- Lenders do not intentionally provide credit to consumers who cannot afford to meet their repayment obligations.
- There is a lack of clarity as to how financial institutions that are not currently subject to the conduct regime under the CoFI Act, or which do not currently require a market services licence to operate will be treated in the transfer of authority for the CCCFA from the Commerce Commission to the FMA.

- More consultation with affected entities is required and consideration of possible unintended consequences before this transition is made final.

- The personal liability on directors and senior managers of lenders has caused them to take a much more conservative approach and restricted consumer access to credit.

- The personal liability is disproportionately disadvantageous for smaller lenders who have the same liability as larger ones.

- The personal liability is a strong disincentive for anyone to take on a role as a director or senior manager of a lender.

- The FSF would like to see the personal liability for directors and senior managers removed altogether and does not support any of the three options presented in the discussion document.

- Allowing lenders to indemnify their directors and senior managers from liability is not feasible because of the significant cost it would impose on the lender's company which is particularly unaffordable for smaller lenders.

- Allowing directors and senior managers to insure against their personal liability is also not feasible as such insurance would be difficult to obtain and very expensive if it was available.

- Requiring smaller lenders to hold a market services licence and pay levies to the regulator will not help in ensuring that more competitive products and services are being made available to consumers.

- Lenders have already incurred significant compliance costs to be able to meet the challenges of the prescriptive 2021 CCCFA changes.

- The FSF supports in principle the FMA being able to use its general enforcement powers to act faster against possible breaches of the CCCFA.

- Disclosure obligations need to be more consumer-centric and focused on what information consumers need rather than all the information they could possibly be given.

- The requirement to obtain the borrower's consent for disclosures to be made in electronic form should be abolished as it is the expectation in today's world that electronic disclosure will be made.

- The FSF has some suggestions for improvement in the disclosure requirements before debt collection starts, for continuing disclosure statements for debt collection accounts and those relating to financial mentors.

- The FSF has a strong preference for Option E3 to repeal sections 99(1A), 95A and 95B for the reasons stated further in this submission.

- The FSF does not support Option F1 to expand the definition of a high-cost consumer credit contract to contracts with an interest rate above 30% for the reasons stated further in this submission.

- The FSF does not support any further strengthening of the CCCFA to protect consumers who are sold add-on products. The 2021 changes to the CCCFA and the RLC strengthened the requirements with respect to the provision of credit-related insurance products and the providers of these products are now subject to the CoFI regime.

- The FSF submits that Insurance Premium Funders should be exempt from all requirements of the CCCFA, not just the requirement to make suitability and affordability assessments as they are currently for the reasons outlined in the answer to question 46 below.

Answering specific questions:
The following are the FSF's answers to the specific questions raised in the discussion document:

1. **Do you have any evidence or experience of the due diligence duty and personal liability resulting in overly conservative approaches to complying with the CCCFA? What impact did this have on consumers?**

FSF members report that they have taken a much more conservative approach to complying with the CCCFA since the imposition of the personal liability on their directors and senior managers. There is therefore no doubt that consumers have had their access to credit limited because of this lack of tolerance for risk.

Members report that the personal liability has slowed down their credit process, significantly increasing their costs, and reducing access to credit particularly for consumers in more vulnerable circumstances.

Further, the personal liability in particular has discouraged lenders from innovating and considering development of new products or processes because of the personal risk involved for their directors and senior managers.

2. **Do you have any observations about how the impact of the due diligence duty and personal liability works may or may not depend on the size of the lender?**

The FSF notes that because the liability is not able to be applied in a proportionate manner in that directors or senior managers of very small lenders such as many of the FSF's member organisations have exactly the same liability as do those of very large lenders such as the four major banks, smaller lenders are much more severely impacted by the prospect of the personal liability falling on their directors and senior managers.

Directors and senior managers of small lending organisations are not remunerated in a manner that is in any way comparable to the directors and senior managers of large lending institutions and therefore there is a very strong disincentive for anyone taking on those roles. FSF members report that the personal liability has made it significantly more difficult to attract good people into roles as directors and senior managers and in fact has had the effect of good people leaving the industry altogether to avoid it.

The FSF also points out that the level of harm to consumers of a breach of obligations under the CCCFA is also disproportionate if it occurs in a small lender with fewer customers than a large corporation with many times more customers.

3. **Are you aware of any other problems with these liability settings?**

The FSF submits that the fact of directors and senior managers being prohibited from indemnifying or insuring themselves against their personal liability under the CCCFA unfairly puts a burden on people working in the provision of consumer credit that is not present in legislation relating to other sectors which might equally be liable to cause consumer harm – or even more so.

This personal liability makes it harder for lenders to appoint directors as the reward for the risk they are forced to carry is not sufficient.

The FSF notes that the Minister of Justice has just now asked the Law Commission to undertake a review of directors' duties and liabilities as the law relating to directors' duties and liabilities has been causing concern for some time. The Law Commission has noted that duties in the Companies Act 1993 relating to reckless trading and incurring obligations are particularly unclear and difficult to apply as they are currently framed and may discourage directors from taking legitimate business risks.

The Law Commission also notes that directors can be liable under a range of other Acts and that it is appropriate to consider the overall burden of liability on directors, including the Companies Act's impact on directors' willingness to take legitimate business risks.

Whilst the discussion document raises some options for potential change to the personal liability for directors and senior managers, the FSF would far rather that it was removed altogether. The key reasons for this view are:

- The fact that removal of the personal liability for directors and senior managers of consumer credit providers is the best way to achieve the government's stated aim of improving access to credit for all consumers.
- The lack of clarity with respect to how a market services licence would impact the obligations on directors and senior managers of consumer credit providers.
- What the consequences of a breach of the conditions of such a licence would be. For example, a consequence could be withdrawal of the licence for a serious breach leaving the lender unable to operate which would make the personal liability of directors and senior managers irrelevant.
- The FSF's belief that the Law Commission's review of directors' duties and liabilities should be completed and then consideration could be given to whether or not personal liability for directors and senior managers of consumer credit providers needed to be reinstated (although we believe this would be unlikely).
- The disproportionate and unfair nature of the current personal liability settings for directors and senior managers of small consumer credit providers.
- The fact that the imposition of the personal liability for directors and senior managers has already had the effect of making it harder for lenders to recruit people to these roles and has in fact caused many good people to leave the sector.
- The fact that the personal liability for directors and senior managers is a significant barrier to entry for new lenders so it inhibits innovation and stifles competition for consumers.
- The fundamental problems with lenders providing indemnities for their directors and senior managers as outlined in the answer to question 4.
- The likely inability for directors and senior managers to be able to obtain insurance against their personal liability if that was to be allowed which is discussed further in this submission.
- The fact that directors and senior managers of consumer credit providers are among the few individuals in these positions that have this personal liability imposed upon them whilst people in similar positions in other industries and sectors do not which to the FSF is grossly unfair.

4. If lenders were able to indemnify their directors and senior managers from liability for pecuniary penalties (and costs), what difference (if any) would you expect that to make to how those individuals and the company as a whole approach the due diligence duty?

The senior managers and directors of FSF consumer credit provider members take all their compliance obligations very seriously and would not undertake irresponsible lending even if the company was able to indemnify them from their liability under the CCCFA. Any such indemnity would still impose a significant cost on the lender's company which, particularly in the case of smaller lenders, could be a burden too great for it to be able to bear. This also goes to the proportionality issue for smaller lenders versus the large ones which we have already mentioned.

A small credit provider with 5-7 directors and 2-3 senior managers could not afford to indemnify all of these individuals as they would be looking at upwards of $1 million if they were found to be liable under the CCCFA which would be unsustainable.

Further, for directors and senior managers who leave their role with the lender they could be personally liable for several years beyond their employment with the lender. Would the lender be expected to continue to provide the indemnity for years into the future as well as for their current directors and senior managers?

As the FSF has already said in the answer to question 3 above, we strongly believe that the personal liability on the directors and senior managers of consumer credit providers should be removed altogether rather than fiddling around at the edges with questions like whether or not they could be indemnified or insured.

5. **If insurance were available for pecuniary penalties liability, what difference (if any) would you expect that to make to how directors and senior managers and the company as a whole meet their due diligence duty? Do you have any information about how affordable that insurance might be for different types of lenders?**

Once again, the FSF reiterates that lenders do not intentionally provide credit irresponsibly or to people who cannot repay it. This should be remembered when considering the FSF's preferred option which is that the personal liability for directors and senior managers of consumer credit providers should be removed altogether.

Allowing for directors and senior managers to be insured against their personal liability is not a viable option in the FSF's view because it is very unlikely that lenders could get insurance for this risk, or it would be very expensive if it was available. It would most likely need to be placed offshore and offshore insurers do not understand the risks of this legislation so there will be very limited appetite for insurers to write this risk.

6. **Do you agree that the due diligence duty is less likely to be needed for lenders who are sophisticated enough to be licensed under the CoFI Act? Why/Why not?**

The FSF has no objection to the removal of the due diligence duty for consumer credit lenders who have been licensed under the CoFI Act as suggested in Option A2.

The FSF believes that the requirement under the Act for such lenders to ensure fair outcomes are achieved for their customers, adequately covers the due diligence requirement under the CCCFA.

However, as we have already said, the FSF believes that the option to require all consumer credit lenders to hold a market services licence is one that needs more consideration.

7. **How well do you think licensing and ongoing supervision by the FMA could replace the need for due diligence and personal liability? Does this depend on the kind of lender? If so, how?**

As per the answers already provided, the FSF believes that the personal liability for directors and senior managers of lenders needs to be removed entirely.

8. What impacts might options A1 and A2 have on lenders and consumers compared to the status quo? For lenders, how would you expect lender decision-making and compliance cultures to change under these options?

As we have already said, the FSF does not support option A1 because allowing for indemnification is impractical and unsustainable for the reasons already mentioned and allowing for insurance against the personal liability is also not viable because of the very likely possibility that such insurance would not be available.

Option A2 needs further consideration due to the lack of clarity around what a requirement for a market services licence might look like, particularly with respect to the fact that it would bring in all lenders not covered by its scope into the CoFI Act obligations, but the FSF supports in principle the concept of removing the due diligence duty for licenced lenders.

Given the requirement that non-licensed lenders must have their directors and senior managers certified by the Commerce Commission as being fit and proper persons and the lack of clarity as to what any further market services licence obligations might place on them, the FSF would prefer to see the due diligence duty removed for all lenders so that s59B could be removed altogether.

The FSF does not believe that removing the personal liability and the due diligence duty for all lenders whether licensed or certified will open the floodgates to irresponsible lending. The key criteria for all lending decisions is whether or not the repayments can be made affordably as we have already said. That would not change if s59B was removed so we do not believe its removal would change the way lenders make their decisions or manage their compliance cultures.

9. Do you agree that these are a fair reflection of the minimum legislative changes that are required to transition consumer credit to the FMA? If not, please explain why.

The FSF agrees that these likely are a fair reflection of the minimum legislative changes required to transition consumer credit to the FMA. However, the FSF is not entirely convinced of the benefits to lenders and consumers of this transition and whether it will in fact achieve the government's stated objectives for financial services reform being to simplify and streamline regulation of financial services (including reducing duplication); removing undue compliance costs for financial markets participants; and improving outcomes for consumers.

As already stated in this submission, the FSF believes that there is so little clarity around how consumer credit providers will be supervised by the FMA if consumer credit regulation was to be transitioned to them, particularly for NDLIs, that further consideration and opportunity for lenders to fully consider the implications of the proposal before proceeding with it.

It seems likely to the FSF that if this transition is proceeded with, all consumer credit providers will be required to obtain a market services licence. Whilst on the surface licensing appears to be similar to certification, which is the current state for NDLIs, licensing also comes with levies on the licensee to cover the cost of the regulator overseeing the licensing regime that NDLIs are not currently required to pay.

The 457 lenders currently certified by the Commerce Commission are the smaller consumer credit providers that offer competitive offerings to consumers or products that are not available to them from the large institutions like the four major banks. Requiring them to hold a market services licence and pay levies to the regulator to be licenced certainly does not seem to the FSF to achieve the government's objectives. Rather than streamlining regulation and removing undue compliance costs, the FSF believes it will only add to them which is not likely to improve outcomes for consumers.

The introduction of levies will increase the cost of lending and therefore have adverse effects on consumers and potentially further limit their ability to access credit which is the exact opposite of the government's objectives.

The FSF believes that much more thought needs to go into this proposal before it becomes a reality.

10. What implications would you expect adopting a licencing approach and the associated regulatory tools for consumer credit?

The FSF acknowledges that it is an anomaly that only banks, NBDTs and licensed insurers are required under the CoFI Act to hold a licence for their conduct whilst NDLIs are not. The FSF strongly supports the proposal laid out in the Fit for purpose financial services conduct regulation discussion document that all the licences financial institutions are required to hold are rolled into one market services licence issued by the FMA. The need for more than one licence to be held for what is essentially the same activity is, in the FSF's view, a prime example of regulatory overkill.

However, with respect to those consumer credit providers who are not currently required to hold a licence to operate – essentially the NDLIs – it should be noted that the 2021 CCCFA changes made it a requirement that their directors and senior managers be certified by the Commerce Commission as fit and proper persons to hold such positions. They are also required to be registered on the Financial Services Providers Register (FSPR) and to belong to an approved disputes resolution scheme.

Moving to a licensing regime for these lenders will inevitably involve further compliance costs for them, likely including a levy on them to cover the cost of the regulator's licensing overview. They have already incurred significant compliance costs to be able to meet the challenges of the prescriptive 2021 CCCFA changes (admittedly so too have the banks and NBDTs on top of the costs they have incurred in applying for and obtaining their conduct licences).

In the spirit of trying to reduce compliance costs and allow lenders to get on with the business of providing consumers with access to credit, the FSF strongly urges government to slow down and seriously consider the implications and possible unintended consequences of requiring all consumer credit providers to hold a market services licence.

11. What modifications to the FMA's existing regulatory tools, such as stop orders, should we consider if extending them to the CCCFA under this option?

As previously stated, the FSF submits that applying all the FMA's licensing powers to consumer credit by requiring all consumer credit providers to obtain a market services licence should be given more consideration to avoid any unintended consequences for lenders who are not already required to hold such a licence.

One such unintended consequence the FSF can see is that the FMA currently has powers to suspend or terminate a licence without needing to go to Court to do so which is a power that should not be used without reasonable and serious grounds as a lender whose licence was suspended would be unable to continue operating.

The FSF does however support in principle the FMA being able to use its general enforcement powers to act faster, streamline enforcement processes and reduce some administrative costs. This is because one of the FSF's criticisms of the current CCCFA regime has been the length of time it takes for enforcement action to be taken by the Commerce Commission against irresponsible lending behaviour due to their limited enforcement powers.

However, if the FMA was enabled to make a stop order for non-compliant CCCFA disclosures (as defined in s464 of the FMCA), then that makes section 99(1A) of the CCCFA redundant and therefore section 99(1A) should be repealed simultaneously with that enablement.

12. What do you think about the transitional licence approach, including what time periods are appropriate?

If, in spite of the FSF's warning that caution is required to consider all the advantages and disadvantages of moving to a market services licence requirement for all consumer credit providers, it is decided to proceed with that approach, then the FSF would certainly support the granting of a transitional licence of adequate duration to adapt to the new requirement for existing consumer credit lenders.

13. Do you agree with our analysis about the relative benefits and risks of the certification model? Why/why not?

Given all the answers previously provided with respect to the licensing of all consumer credit providers, Option B2 to retain 'fit and proper' certification (status quo) and add FMA core tools for enforcing the regulatory perimeter is clearly the FSF's preferred option.

The FSF agrees with the analysis in the discussion document that the certification model has benefits in the lower entry barriers for new consumer creditors to enter the market. This is important because, as the Commerce Commission's draft report on their market study into personal banking services reveals, New Zealanders are not well served when it comes to competition in this area.

There has been little in the way of innovation in consumer credit products for a long time – largely due to the cost of compliance – and it is the NDLI sector that creates such innovation (for example peer-to-peer lending and Buy Now Pay Later). Putting up further barriers to entry will certainly not encourage further innovation or competition in the consumer credit market which is disadvantageous to all consumers.

However, the FSF does acknowledge that retaining the certification model for NDLIs would leave them out of step with other financial products and services which are required to be licensed. But the FSF does not necessarily see that as a bad thing as most NDLIs are very small – certainly when compared with the large financial institutions like the banks – but they provide essential competitive offerings for consumers and it is imperative that they not be priced out of the market by excessive compliance costs and obligations which would have the opposite effect to achieving the government's objectives for these financial services reforms.

14. Are there additional tools that you consider the FMA should have to regulate credit, for example tools like action plans or censures that are usually only available under a licensing model?

The FSF cannot think of any additional tools the FMA should have to regulate credit.

15. As a consumer, do you receive the right kind and amount of information to make informed decisions? Why/why not?

The FSF is not a consumer so is therefore not qualified to answer this question.

16. Do you consider any of the disclosure obligations to be irrelevant, confusing or inappropriate? If so, please tell us what impact this has.

The FSF submits that there is only so much information people can absorb at any one time. Disclosure obligations, in our view, need to be more consumer-centric and in plain English, focusing on what information do they need rather than what is all the information they could possibly be given. Much of what lenders are currently required to disclose is counterproductive because of its lack of effective messaging to the borrower but is rather covering the lender's legal obligations for disclosure.

Lenders agree that disclosure of key information through initial disclosure is helpful for consumers but disclosure during the life of the loan is often not so much. The FSF agrees with the assertions in para 56a and b of the discussion document that the amount of information disclosed exceeds what is relevant to the consumer's needs or ability to make informed decisions and that the same information being disclosed repeatedly on separate occasions is of questionable value to the borrower.

FSF members report that less than 1% of their borrowers or prospective borrowers click on the "how it works" or terms and conditions section of their websites before applying for credit. It would seem that consumers simply are not interested in all the terms and conditions of the loan. They want the key information of how much the loan will cost and how long will it take to repay.

Disclosure needs to be helpful rather than overwhelming and on that basis, the FSF does not support Option C1 to maintain the status quo.

17. How could disclosure obligations be more targeted to the consumer's circumstances to ensure only relevant information is disclosed?

Disclosure obligations could be targeted to the key information consumers want to know – the interest rate, any fees associated with the loan, the repayment amount and frequency and the term of the loan, whether the borrower can repay the loan early without penalty – with links provided to the lenders' full terms and conditions on their websites. On this basis, Option C2 is the FSF's preferred option.

Disclosure obligations which are more targeted would provide better flexibility to use technology solutions that provide borrowers with the information they need when they need it rather than as part of a laundry list of items.

Where insurance products are being funded by the loan, disclosure should be made of what these products are, what they cost and what the respective cooling off period is in relation to the products.

The FSF submits that further consultation on a simpler form of disclosure is required as the implication of the options proposed at C2 and C3 are not very clear as presented. A new 'model form' of disclosure which provides a safe harbour if followed would be welcomed by lenders.

One further point with respect to making disclosure simpler for consumers is about the disclosure requirements for prepayments on loan accounts which happen not infrequently. Members report that their legal advice is that where a prepayment is made, variation disclosure must be made within 5 days of the receipt of the prepayment which is not helpful to the consumer. Some consideration of removing this requirement would also be helpful.

18. Is the information set out in Regulations 4F and 4G both sufficient and do sections 22 and 23 require the right information to be disclosed when a contract is varied?

The FSF does not support Option C3 to review the particulars of information required to be disclosed by making more technical changes to disclosure requirements.

FSF's debt collection members are both lenders conducting debt collection activities in-house and debt collection agencies who conduct debt collection activities on behalf of consumer credit providers. These members consider that providing clear information to consumers at the commencement of debt collection, to allow them to identify their debt and how their liability has arisen, is sensible and benefits both consumers and creditors. But the current complex "disclosure before debt collection starts" requirements under regulation 23 of the Credit Contracts and Consumer Finance Regulations 2004 present significant operational challenges and impose costs on lenders for little corresponding consumer benefit. The FSF believes the section should be retained but should be simplified to remove the complexity.

The matters under regulations 23(3) and (4) present the greatest operational challenge, with many clients of debt collection agencies not possessing structured data that would enable provision of information to support such disclosures. This presents significant challenges and barriers for debt collection agencies when onboarding new clients and regularly causes lenders to delay referral to a debt collection agency as they work through these complex provisions and this complexity can also produce errors. Delay in commencing debt collection has a detrimental effect on consumers as their debt increases during the time of the delay.

Debt collection members report that, since these provisions came into force, they have not seen any corresponding reduction in "proof of debt" complaints from consumers, suggesting that consumers do not derive any benefit from the disclosure.

These requirements can result in up to 50 pages of disclosure being made to a consumer which dilutes the key message of the communication and adds to the cost of debt collection.

The FSF therefore submits that regulations 23(3) and (4) add cost and complexity for no corresponding consumer benefit and should be removed. Regulation 3(1)(g) should be amended to preface it with the words "where applicable".

These regulations 22 and 23 and regulations 4F and 4G are extremely confusing and therefore most unhelpful to lenders, particularly with respect to the meaning of "full particulars" and is open to interpretation by lenders. What would be useful to borrowers is to limit required disclosure to the nature of the agreed changes or changes following exercise of power.

Pursuant to s18 of the CCCFA, every lender under a consumer credit contract must ensure that disclosure of the matters set out in s19 is made periodically to every debtor under the contract in continuing disclosure statements. Whilst this is possibly helpful to consumers when the loan is in order and they are meeting their repayment obligations, the FSF considers that this is not helpful when the loan has moved to debt collection. The FSF therefore submits that s21 which provides some relief from the obligation could be amended to be more helpful for both debt collectors and consumers on the following basis:

- The allowance where the lender or debt collector maintains a website that allows the borrower to access the information which requires the borrower's consent for the information to be disclosed in this matter. This should be amended to require notification, rather than consent whilst still allowing for consumers who do not have access to online systems to request a physical statement from the lender or debt collector.
- The allowance where neither interest charges nor credit fees are payable under the credit contract should be amended so that no notification is required if the interest and fees are not charged during any particular statement period, rather than referring to fees and interest not being "payable under the contract".

- The allowance where the borrower has breached the consumer credit contract, and the lender or debt collector has commenced enforcement proceedings which is likely to exclude only a very small minority of accounts where legal recovery has actually been commenced. Most debts are resolved by mutual agreement outside of the legal process.
- The allowance where the lender or debt collector cannot reasonably locate the borrower. Whilst this appears helpful at face value, it actually complicates the situation. After reliance on this carve out (and the others listed here), the next continuing disclosure statement must cover every immediately preceding period for which a continuing disclosure statement has not been given. This is a significant technical challenge for lenders and debt collectors and creates more of a burden than it removes.
- The allowance where the lender or debt collector has written off the unpaid balance and there are no subsequent credits or debits to the borrower's account. This would require statements for the period and all preceding periods a statement was not provided, when a payment is subsequently received.

In the FSF's view, the current exclusions do a poor job of removing the burden on lenders and debt collectors, requiring statements in circumstances where there is little corresponding consumer benefit. The FSF suggests that consideration be given to the simpler and more practical approach allowed for in Australia's section 33(3) of the National Credit Code.

19. Are there any other concerns or issues you would like to raise related to disclosure obligations?

With respect to the requirement in s26B(2)(a) of the CCCFA that lenders provide information in relation to financial mentoring services, the FSF supports the intent of this provision as we recognise the support that financial mentors provide to consumers.

However, under this section, information about financial mentoring services must be disclosed by a lender or a debt collector, to a borrower who has defaulted on their repayment obligations or who has caused their credit limit to be exceeded.

The Regulations require that the information required under this section of the Act must be disclosed at the time when a payment reminder is provided by a borrower under a consumer credit contract if the repayment is overdue for more than 10 working days or if the credit limit under the contract has been exceeded for more than 10 working days.

Because the term "when a payment reminder is provided by a creditor" is very broad, it applies for all mediums of communication including text messages and telephone calls and therefore a very lengthy statement of all the information required under regulation 5(a)(6) is required.

This obligation makes sense and is useful for letters and emailed payment demands, however is unhelpful in text messages and in routine collections calls, where the recipient of the call is already likely to have been provided the information in writing. FSF members report that consumers find the verbal statement to be a distraction, an inconvenience and it adds to the length of a call. For text messages, the notice results in the messages exceeding the character count, either preventing the message being sent, or causing the message to be sent over multiple messages, effectively doubling the cost of such communication and increasing the likelihood that the consumer will be confused by it.

The FSF there submits that the current position of the regulation is inadvertent and was likely meant to apply only to formal letters of demand. We therefore recommend that the regulation be amended to address these issues.

20. As a lender, do you identify any barriers in the Act to the use of electronic methods of disclosure? If so, can you explain what are these barriers and how they impact your processes?

The FSF notes that the world has moved on considerably since the inception of the CCCFA in 2003. Sending disclosures or communications by post, for example, is something that almost never happens in 2024. This is likely to be used even less frequently as NZ Post continues to reduce mail delivery services due to the lack of mail to be delivered.
The requirement to obtain the borrower's consent for disclosures to be made in electronic form or via electronic communication is outdated in today's world and it is more likely that borrowers expect to receive electronic disclosures or communication rather than that being the exception.

The FSF submits it should be left up to the lender and the borrower to decide what is the most effective means of disclosure or communication for them.

21. As a lender, are there any practical difficulties with obtaining the borrower's consent for electronic forms of disclosure (section 32(4)(b))?

As stated above, it is the borrower's expectation in 2024 that they will receive electronic disclosure and having to obtain their consent to this is archaic and could easily be done away with.

22. What would be the implications of removing the requirement to obtain borrower's consent for electronic communication and forms of disclosure (section 32(4)(b))?

See the answer to question 21 above.

23. Do sections 95A and 95B meet their objectives? Why/why not?

The FSF has been strongly opposed to section 99(1A) since its introduction in 2015, particularly as it has no materiality threshold. This section is overly draconian and grossly unfair to lenders and should never have been introduced without a materiality threshold. Any changes to it should always have been made retrospective on that basis and should be if further changes are made this time around.

The FSF agrees with the banks that section 99(1A) is unreasonable but does not agree that it is disproportionate to them. It is unfair and unreasonable for all lenders and, in fact, would likely be more disproportionate to smaller lenders if they were found to be in breach of it.

The introduction of sections 95A and 95B have done nothing to address our objections to 99(1A) and in our view do not meet the objectives for their introduction. The fact of lenders having to apply to a court for relief from forfeiture of all interest and fees is not, in our view, sufficient to address the serious deficiencies of section 99(1A).

24. As a lender, to what extent does section 99(1A) impact the time, effort and costs you dedicate to initial and variation disclosures?

FSF members find the time, effort and cost (particularly in obtaining legal advice that their disclosures will not put them at risk of breaching section 99(1A)), significant and disproportionate to the material effect that incomplete disclosures may have on borrowers. This is particularly due to the lack of a materiality threshold so even the most minor of disclosure omissions or mistakes could trigger a breach of section 99(1A).

25. Under option E1, what should a materiality test look like?

Whilst the lack of a materiality test in section 99(1A) is a significant issue for lenders, the FSF does not support Option E1 to limit section 99(1A) to breaches that are material or have potential to mislead. Our strong preference is for Option E3 to repeal sections 99(1A), 95A and 95B in their entirety.

Having to apply to a court over a theoretical technical breach of disclosure obligations that has no bearing on the customer experience, is regulatory overkill in the extreme. It imposes unreasonable costs on lenders and courts have better things to do than to make judgments on such matters.

As we have said previously in this submission, disclosure needs to be considerably simpler and more consumer friendly in the first place providing only the key information the consumer needs about the loan. Once disclosure obligations are significantly simplified, any breach of disclosure obligations should be treated the same as any other breaches.

The FSF notes also that the FMA has a broader range of enforcement options available to them that are more proportionate to the harm caused to borrowers which makes repeal of these sections a viable option without the prospect of leaving borrowers in any way disadvantaged.

26. Under option E1, which party should have the burden of proof and what would this mean for the effectiveness of the option? If the onus is on borrowers to show materiality would that deter them from seeking redress under section 99(1A)?

The FSF does not support Option El for the reasons stated above.

27. Under option E2, how should the maximum amount the lender forfeits be calculated?

The FSF does not support Option E2 to limit the total liability under section 99(1A) because our view is that this section and 95A and 95B should be repealed entirely.

28. Under option E3, would there be the right incentives in place to ensure lenders comply with their disclosure obligations?

The FSF believes that absolutely there would be sufficient incentives in place to ensure lenders comply with their disclosure obligations, particularly if these obligations were considerably simplified from the excessive obligations that currently exist. Further, the fundamental incentive for lenders is that their customers understand their loan so that they repay it. Clear simple disclosure requirements are in the interests of both lenders and borrowers. Option E3 is the only sensible one in the FSF's view.

29. What would be the risks associated with each option? How could they be mitigated?

The FSF has covered off the fact that the risks associated with taking Option E3 can be mitigated by simplifying the disclosure obligations to just the information that is necessary for the borrower and by allowing the FMA to use their broader range of enforcement powers in the same way as they will be able to do for any other breach of the CCCFA.

30. What specific provisions (high-cost or other) have most impacted lenders' willingness or ability to offer high-cost consumer credit?

The FSF has always been supportive of the inclusion in the CCCFA of a definition of a high-cost consumer credit contract, including setting an interest rate threshold of 50% per annum, and limiting the amount that can be charged under such contracts by limiting the total amount to be repaid to 100% of the loan amount and putting in place a cap on interest and fees that can be charged under these contracts.

Subpart 6A of the CCCFA also prohibits lenders from entering into a high-cost consumer credit contract with a consumer who has an unpaid balance or has had an unpaid balance on any other high-cost consumer credit contract in the preceding 15 days; or who has entered into two or more high-cost consumer credit contracts in the past 90 days.

These provisions have likely resulted in high-cost credit contracts not being rolled repeatedly leading to a repeat cycle of borrowing, unaffordable debt and loan spirals for consumers, but they have also led to a considerable reduction in the number of providers of high-cost credit as noted in the discussion document, so it has clearly impacted lenders' willingness or ability to offer such credit contracts.

The FSF has no insight into what specific provisions have led to lenders making the decision to exit the provision of high-cost credit as we do not have any members that offer high-cost credit, but it is likely that the combination of provisions in total has had something to do with this.

The question is whether high-cost or payday lending can be viable and done responsibly. By its very nature, such credit has to be high-cost or high interest because they are small loans with higher risk and over a short term. There is a lot of work involved for the lender in administering such small short-term loans.

31. In the absence of high-cost loans, what other avenues are borrowers turning to?

Again, the FSF has no actual insight into other avenues borrowers are turning to if they are not able to access high-cost loans but our concern has always been that if borrowers are unable to access high-cost credit from a lender who complies with their CCCFA obligations, they will seek to find credit from other sources as the need that drove them in the first place has likely not gone away just because they have been declined credit from a reputable source.

It would be naïve, in the FSF's view, to think that there are not entities operating who are doing so without regard to the law. Unfortunately, it is very difficult to identify who and where they are because, by their very nature, they are operating underground and are highly unlikely to identify themselves so that the regulator (whoever they may be) can investigate them to see if they are operating responsibly. These very likely include criminal gangs as they have money to launder from their other illegal activities.

The economic climate and high cost of living is only likely to exacerbate the need for some people to seek access to credit in this way which is also extremely unfortunate.

It is therefore surely better for high-cost credit providers to be able to operate openly and responsibly rather than putting them out of business by excessively prescriptive and restrictive compliance obligations. The FSF has no suggestions as to what provisions might be relaxed because high-cost credit providers are not part of our member constituency as we have said but it is surely something policy makers and officials should turn their minds to. There is a need to balance regulatory settings so that consumers are not being taken advantage of with the ability for them to access a product they need from time to time.

32. Is the unavailability of high-cost consumer credit having positive or negative effects on would-be borrowers?

Apart from what has already been said in answer to question 31 above about the likely negative effects on would-be borrowers due to the unavailability of high-cost consumer credit, these contracts will still be subject to the existing provisions of subpart 6A of the CCCFA following this review and these providers will also still be required to undertake comprehensive affordability assessments even after the revocation of the affordability regulations for all other lenders. The FSF can therefore see nothing in the discussion document that addresses the issue of the unavailability of high-cost credit for would-be borrowers needing access to that type of credit.

The FSF notes that MBIE released figures earlier this month that show that not one high-cost loan was granted in the last year. Whilst that could be seen as a good outcome for consumers, as we have already said in this submission, the need for consumers to access small amounts of credit on a short-term basis, is highly unlikely to have gone away just because there is no-one operating in the high-cost credit market in New Zealand.

Not representing any high-cost credit providers under the current threshold to define a high-cost loan makes it difficult for the FSF to comment on what changes could be made to the provisions that would encourage lenders to offer such products in the New Zealand market, but, as we cover more fully in the answer to question 37 below, the FSF does not support lowering the interest rate threshold to 30%. This will further discourage lenders from offering such contracts by lowering the definition threshold or will place some lenders within the high-cost credit definition that should not be there and this is not something the FSF supports if the government is serious about improving access to credit for consumers.

33. What evidence, if any, is there of debt spirals and/or continued repeat borrowing for vulnerable borrowers across credit contracts with interest rates of 30% to 49.9%?

Firstly, there appears to the FSF to be some conflation in the minds of officials and financial mentors between the terms "high-cost credit contracts" and "payday lending". They are different and need to be considered differently. Payday lending requires repayment of the debt over a short period (at high interest rates) and these repayments are often unsustainably large leading to a cycle of repeat borrowing known as a "debt spiral". The FSF is pleased to see that the previous reforms of the CCCFA have pretty much wiped out the payday loan sector.

High-cost credit is different in that these loans are more often of assessed as being affordable over a longer term to repay than are payday loans making it easier for the borrower to repay the loan.

The FSF has some members who provide unsecured personal loans with interest rates that are between 30% to 49.9%, particularly when any potential default interest is added to the annual interest rate. They are priced at this level to reflect the lender's cost of funding their loan book and because they are unsecured and therefore higher risk. The fact that they are repaid over a longer term than payday loans make them more sustainable and far less likely to cause debt spirals or continued repeat borrowing than payday loans.

The FSF does not believe there is any evidence that such credit contracts cause debt spirals or other harm to vulnerable borrowers, particularly as the introduction in 2021 of the overly prescriptive affordability assessment regulations that are now about to be revoked have led to lenders declining significantly more loan applications.

Again, this does not mean that a would-be borrower's need for access to credit has gone away with the decline from a responsible lender and they could therefore be driven to seek credit from other sources.

The fact of the revocation of the affordability assessment regulations for lenders offering loans in this interest rate range (if the threshold is not lowered as a result of these reforms) will not, in the FSF's view, open the floodgates to unaffordable lending in the 30% to 49.9% interest rate range. First and foremost, the most important thing to a lender is whether or not the borrower can afford to repay the loan. They will still be assessing affordability, but the revocation of the regulations does allow them to use their judgement and discretion to assist borrowers who have been shut out of the responsible market by the affordability regulations. In the FSF's view, they should be allowed to continue to do so.

34. **Are there any other issues associated with loans in the 30% to 50% interest rate range that we should be aware of?**

The FSF also submits that lowering the high-cost threshold to 30% could limit innovation if product offerings are not viable if lenders cannot price for them accordingly. An example of this would be with interest free offerings where the interest rate may be high when the borrower comes off the interest free period, but the average interest rate charged to borrowers because of the interest free period is realistically much lower. In reality, for members offering interest free periods, around half of their borrowers repay their debt within the interest free period.

35. **Are there examples where loans with interest rates between 30% and 50% would breach the 0.8% rate of charge cap?**

The FSF cannot think of examples where loans with interest rates between 30% and 50% would breach the 0.8% rate of charge cap. In fact, we are struggling to understand the question because the 0.8% rate of charge cap equates to 292% per annum which is a long way away from an interest rate of 30% to 50%.

36. **What evidence, if any, is there of debt spirals and/or continued repeat borrowing for vulnerable borrowers across credit contracts with interest rates of 45% to 49.9%? Are there any other issues associated with loans in this interest rate range that we should be aware of?**

The FSF has no evidence of debt spirals or continued repeat borrowing for any borrowers, whether vulnerable or otherwise across credit contracts with interest rates of 45% to 49.95%.

37. **For lenders: If the government extended the high-cost provisions to loans with an annual interest rate of 30% or more, what would be the impact on your operations (if any)? Are there any changes to the high-cost provisions we should consider to enable those loans to remain profitable, and on what terms?**

The FSF does not believe it is reasonable that the high-cost threshold definition should be lowered to 30%.

Our reasons for this view are detailed below:

- Loans made at an annual interest rate of 30% - 49.9% are not payday loans for which the provisions in subpart 6A of the CCCFA were introduced to protect borrowers. They are paid off over a longer term and the affordability of the repayments is assessed on this basis.
- An interest rate threshold of 30% will capture a lot of loans priced at interest rates well below 30% when the combined annual interest rate and potential default interest rate are likely to be 30% or more if the definition of a high-cost consumer credit contract remains the same as in the current CCCFA. For example, a loan with a 25% interest rate and a 5% default rate would be captured under the definition which the FSF believes

would be a poor outcome for consumers as the likely increased cost of complying with all the high-cost credit obligations would force lenders to increase their interest rates to meet this cost, or like many of the high-cost credit providers when the 50% threshold was introduced, they would be forced out of business. Fewer participants in the market is not advantageous to consumers.
- The purpose of these reforms is to improve access to credit for consumers. This proposal will have the opposite effect because it will force lenders with interest rates of between 30% to 49.95% to adopt an overly conservative approach to affordability which is exactly what the revocation of the affordability assessment regulations is trying to avoid.
- Lenders are unlikely to be able to further reduce their interest rates if the threshold is reduced as the economics will not allow for this.
- The move of the regulatory responsibility for CCCFA from the Commerce Commission to the FMA may well involve the imposition of a requirement for all lenders to hold a market services licence, including high-cost credit providers. This will undoubtedly include a levy being imposed to cover the cost of the licensing regime (as we have pointed out in the answer to question 9 above). This is an increased cost that lenders will be unable to recover via their credit fees so it will have to be reflected in the interest rate charged.
- Lenders will leave the market and deploy their capital elsewhere because it is difficult to achieve economies of scale in such a small market which will also limit access to credit for consumers.
- The cost of funding for lenders is out of their control and subject to interest rates rising and falling due to economic conditions which makes a 30% threshold too tight to stay below.
- Institutional funders, on whom credit providers rely to provide the funding they need to operate, may also be reluctant to provide funding to lenders who would become high-cost credit providers under this option as there is a negative perception that they are somehow less responsible than other lenders.
- If lenders' funding is impacted, many more will exit the sector either willingly or because they are forced out. New Zealand is a small market, and institutional funders can afford to be choosy about who they support.
- Such a low threshold limits lenders' ability to price for the risk, particularly if they wish to stay below the threshold to avoid the high-cost credit definition.
- The FSF believes that reducing the threshold to 30% will have severe unintended consequences for access to unsecured personal loans that will see consumers even further alienated from access to such loans than they have been as a result of the 2021 CCCFA reforms.

For these reasons the FSF's strong preference is for the definition of a high-cost consumer credit contract to remain as those contracts with an interest rate of 50% or more. The FSF can see no point in reducing the high-cost threshold to 45% as suggested in Option F2.

38. How is a revised definition of a high-cost consumer credit contract interest rate threshold likely to affect access to credit for borrowers?

Please see the answer to question 37 above.

39. Do you recommend considering another interest rate threshold? If yes, please explain why?

We do not. The FSF believes that the interest rate threshold should remain as it is for the reasons stated in answer to question 37 above.

40. Do you have any other feedback on any of the high-cost provisions? Have they been effective in reducing financial harm caused by the excessive cost of credit for some types of loans and repeat borrowing by vulnerable consumers?

The FSF has no further feedback on any of the high-cost provisions other than what has already been said in answer to the previous questions.

41. Is there evidence of certain industry lending practices that are causing harm which the high-cost credit provisions could address?

The FSF has no such evidence and would strongly object to any further widening of the high-cost credit provisions to bring in other types of lending. The high-cost credit provisions are designed to limit the harm caused to consumers by credit that is provided at a high interest rate. On that basis, they work as they were intended. If there is evidence of any other forms of lending or harm being caused by lending practices, then the FSF strongly suggests that appropriate enforcement action be taken to put a stop to that.

42. Are there any other industry lending practices that you believe are harmful to consumers?

The FSF refers to the answer to the previous question 41 above.

43. Do you agree with the suggested impacts of each of the identified options? Why/why not?

The FSF has no further comment on the suggested impacts of each of the identified options.

44. Do you have any information or data that would support our assessment of the impacts of each of the options?

Please see the answers to the previous questions.

45. Do you think that the CCCFA could be strengthened to protect consumers who are sold lending products or add-ons that exceed the value of the product? If so, how?

The FSF does not believe that the CCCFA requires any such further strengthening and in fact that goes against the government's objectives to improve access to credit for consumers.

The FSF represents among our membership responsible credit-related insurance providers whose product ranges include some of what could be termed "add-on" products. They do not exceed the value of the product and the FSF is looking to update the data gathered by the Commerce Commission in their report on their review Motor Vehicle Financing and Add-on Insurances that was released in November 2021.

This report was based on data gathered from lenders and insurers over a period 12 to 18 months prior to the report's release so the data it contains is now at least four years old. In addition to the providers the Commission also interviewed 62 consumers who had recently purchased or made a claim on an add-on insurance product.

The report identified that nothing in their consumer interviews gave the Commission any cause for concern about their experience when buying or claiming on an add-on product although it did identify that some industry participants may have been falling short on their obligations under the CCCFA.

Much has changed since this report was released particularly for credit-related insurance providers. This includes the 2021 changes to the CCCFA and the accompanying guidance in the Responsible Lending Code with respect to the provision of credit-related insurance which happened after the report's release and the data that went into the report was gathered. Providers are also now subject to the CoFI regime which ensures that they have a Fair Conduct Programme to describe how they are ensuring good customer outcomes and the FSF expects that the update to the Commission's report should reflect that consumers are now better served as a result of these initiatives.

46. Finally, are there any other areas and options for change that we should consider that have not been addressed in the discussion document?

The FSF would like to see the requirement to physically mail the repossession warning notice and post-settlement notice required in section 83ZQ(2) of the CCCFA removed as postal services are becoming so limited as to make this form of communication unreliable and obsolete.

The option to receive notices electronically for other forms of notice required under the CCCFA exists (and should be able to be used without obtaining the borrower's consent to receive notice this way as previously stated) and borrowers now expect to receive notices in this way rather than by post.

Further, the FSF has among its members the small number of Insurance Premium Funders that are currently operating in New Zealand (please see Appendix A for a list of these). These lenders provide credit to consumers to pay insurance premiums (they also provide such loans to businesses).

The loans to consumers are all small amount and for a short term – the average size of these loans is in the range of $2,000 - $2,500 and the term does not exceed 12 months or the period until the insurance policy requires renewal.

Insurance Premium Funders are exempt from the suitability and affordability assessment requirements under s18H of the CCCFA Regulations 2004. In Australia Insurance Premium

Funders are fully exempt from the National Credit Code under a subsection 6(14) exemption granted by ASIC.

On behalf of our Insurance Premium Funder members, the FSF requests that consideration be given to a similar broad exemption from all the requirements of the CCCFA as part of this process.

The Australian exemption applies so long as the Insurance Premium Funder is a member of an approved dispute resolution scheme, has an internal dispute resolution procedure that covers disputes in relation to the credit contract and maintains adequate arrangements for compensating persons for loss or damage suffered because of a breach of a contract under which they provide credit in relation to insurance policies.

The FSF's IPF members belong to one of the approved dispute resolution schemes and have an internal complaints process but in reality they report that they do not receive complaints from consumers about their products. Where a borrower has difficulty in repaying the loan, the loan is just written off and the insurance policy is cancelled.

The CCCFA requirements for Insurance Premium Funders that remain following their exemption under s18H include having to provide continuous disclosure every six months for loans that may only last that long, or at the very longest 12 months. This provides no value to borrowers.

They are also required to have all their directors and senior managers certified by the Commerce Commission and to provide an annual return to the Commission. This again provides no value to consumers or to the Commission as there is so little information that applies to them that can be provided in the annual report.

If the key elements of the CCCFA regime, being the requirement to assess suitability and affordability of the loan, is something from which Insurance Premium Funders can be exempted, then, in the FSF's view, it stands to reason that they could reasonably be exempted from all other requirements. The requirement for them to be a registered financial services provider under the FSPR Act would ensure that they would still be required to belong to a dispute resolution scheme (which would also require them to have an adequate internal complaint handling process).

Finally, we have become aware that the New Zealand Insolvency and Trustee Service, which we believe is a department of MBIE, is advising lenders that they may not continue recovery action in the case where the borrower has undergone the No Asset Procedure (NAP process). Whilst it is true that under s369(1)(a) of the Insolvency Act 2006 the credit provider is prohibited from initiating or continuing any efforts to recover or enforce a debt that the debtor owed at the time of the application and members of course are not seeking to do so. However, the Insolvency and Trustee Service is advising members that *'the effect of the admission captures **secured** and unsecured debts at the time of application and prevents creditors from taking any further recovery action'*.

Members report that borrowers and financial mentors are taking this to mean that the lender is unable to repossess an asset over which they held security for the debt such as a motor vehicle. When the lender attempts to identify where the security is or what has happened to the security, they are presented with a letter from the Insolvency and Trustee Service quoting the above. Not only is this difficult and costly for lenders but seems to be giving borrowers the opportunity to avoid providing any explanation or proof they no longer have possession of the security. The FSF would like to see some clarity around the fact that, whilst the lender cannot take further recovery action to get the debt repaid under a NAP, they do still have the right to repossess an asset over which they had security.

Once again, the FSF is grateful for the opportunity to comment on the discussion document and looks forward to the outcome of this consultation. We are, as ever, happy to provide any further information or feedback that might be helpful.

Privacy of natural persons

Lyn McMorran
EXECUTIVE DIRECTOR

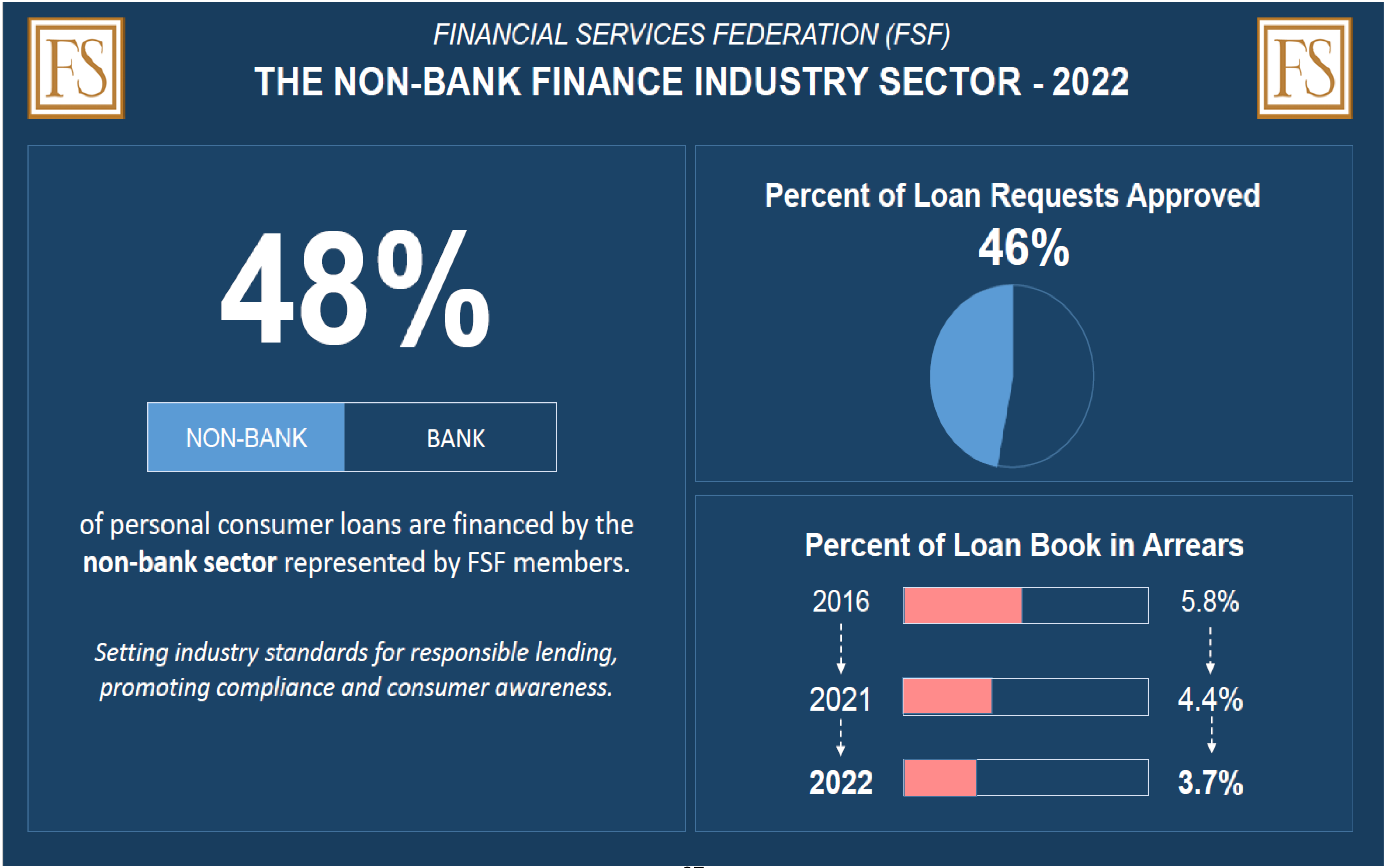
Appendix A

Financial Services Federation

FSF Membership List as at April 2024

Non-Bank Deposit Takers, Specialist Housing/Property Lenders, Credit-related Insurance Providers	Vehicle Lenders Finance Companies/Diversified Lenders	Finance Companies/ Diversified Lenders contd.	Finance Companies/ Diversified Lenders, Insurance Premium Funders	Affiliate Members	Affiliate Members contd., and Leasing Providers
XCEDA (B) Finance Direct Limited ➢ Lending Crowd General Finance (BB) Gold Band Finance (B+) ➢ Loan Co Mutual Credit Finance (B) Credit Unions/Building Societies First Credit Union (BB) Nelson Building Society (BB+) Police and Families Credit Union (BB+) Specialist Housing/Property Lenders Basecorp Finance Limited First Mortgage Managers Ltd. Liberty Financial Limited Pepper NZ Limited Resimac NZ Limited Credit-related Insurance Providers Protecta Insurance Provident Insurance Corporation Ltd	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 Finance Companies/Diversified Lenders AfterPay Avanti Finance ➢ Branded Financial Basalt Group	Blackbird Finance Caterpillar Financial Services NZ Ltd Centracorp Finance 2000 DebtManagers 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 Speirs Finance Group (L &F) ➢ Speirs Finance ➢ Speirs Corporate & Leasing ➢ Yoogo Fleet Turners Automotive Group ➢ Autosure ➢ East Coast Credit ➢ Oxford Finance UDC Finance Limited Yes Finance Limited Zip Co NZ Finance Limited Insurance Premium Funders Elantis Premium Funding NZ Ltd Financial Synergy Limited Hunter Premium Funding IQumulate Premium Funding Rothbury Instalment Services	Alfa Financial Software NZ Limited AML Solutions Limited Buddle Findlay Chapman Tripp Credisense Ltd Credit Sense Pty ltd Deloitte EY FinTech NZ Finzsoft Happy Prime Consultancy Limited KPMG Loansmart Ltd LexisNexis Motor Trade Association Odessa Technology Inc. One Partner Limited PWC Sense Partners Simpson Western Summer Lawyers	Credit Reporting, Debt Collection Agencies, Centrix Credit Corp ➢ Baycorp Debtworks (NZ) Limited Equifax Gravity Credit Management Limited IDCARE Ltd Illion Quadrant Group (NZ) Ltd Recoveries Corp NZ Ltd Leasing Providers Custom Fleet Euro Rate Leasing Limited Fleet Partners NZ Ltd ORIX New Zealand SG Fleet Total 97 members

Appendix B


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
2016
5.8%
2021
4.4%
2022
3.7%

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	$329B
Value of Consumer Loans	$7.6B
Value of Business Loans	$118B

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	$8.1B
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	$7.3B
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