



FINANCIAL SERVICES FEDERATION

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Credit Contracts and Consumer Finance Amendment Act 2014 Regulations

The Financial Services Federation (“FSF”) is grateful for the opportunity to provide a response to the draft discussion document relating to the disclosure regulations being developed in support of the Credit Contracts and Consumer Finance Amendment Act 2014 (“the CCCFA”).

By way of background, the FSF is the industry body for the responsible and ethical finance and leasing providers of New Zealand. The FSF has over forty members and associates providing first-class financing, leasing, investment, banking and insurance products and services to over 1 million New Zealand consumers and businesses. The FSF’s affiliate members include internationally recognised legal and consulting partners. A list of our members is attached as Appendix A.

Before answering the questions raised in the discussion document, the FSF notes that the draft covers three areas, being initial disclosure, credit card statements and rebate formulae. A disclosure aspect that is not covered in the discussion document but where the FSF believes guidance is needed is in relation to continuing disclosure – particularly as regards loan statements and given the repeal of S21(2)(a) of the previous CCCFA what may or may not be required to be included in a statement for a fixed term/fixed rate loan agreement.

The FSF’s concern in regard to this is that continuing disclosure in this circumstance adds little if any value to the borrower but simply adds cost to the lender to provide such disclosure. The FSF believes that for the vast majority of such agreements it ought to be possible to disclose via a statement or loan schedule provided at the outset showing amounts and dates of scheduled repayments.

The FSF agrees with the approach described in paragraph 21 of the discussion document of not proposing to prescribe a form of disclosure through regulations. The FSF believes it is important to allow lenders to have the freedom to design their own disclosures. If over time it becomes evident that some lenders are not disclosing adequately this approach could perhaps be reconsidered however the FSF would favour enforcing the regulations against those who do not comply rather than taking a prescriptive approach for all lenders.

The FSF is pleased with the approach to the provision of information in relation to the cost of borrowing as described in paragraph 28 of the discussion document. The FSF also believes that the approach taken in paragraph 30 with regard to the regulations’ requirements as to information about fees is sensible.

However the FSF is unclear as to what is meant by the statements in paragraph 31 (a) and (b) where creditors are being asked to detail the percentage or proportion the creditor will apply in relation to prepayment fees or insurance premiums if the prepayment fees are set by reference to the remaining amount of the loan. The FSF does not believe that the intent of the regulations in this respect is conveyed by the wording in paragraph 31 and would request that officials revisit this description.

It is worth noting that the 2004 CCCFA regulations take half a page to set out the formula that should be disclosed in relation to prepayment fees and insurance premiums and a further half a page to provide an example of it. In other words it is hard to explain and describe prepayment fees succinctly.

Questions for Submitters:

Purpose and objectives relating to disclosure of information and Regulations relating to costs of borrowing:

1. Will the information described above assist consumers in comparing different products?

The FSF believes that theoretically the information provided in the discussion document will assist consumers in comparing different products. The FSF does believe however that the actual method will be key in helping customers make comparisons. Applications for credit are more and more likely to occur at the point of sale or online. If creditors are permitted to only place this type of information at their place of business, a prospective debtor at a third party's premises would not be able to make a comparison. If however the information was required to be displayed on an internet site, it should be accessible to most (if not all debtors) from most locations.

2. Are there other relevant ways that a creditor may disclose information about fees and charges?

The FSF does not believe so but would ask with regard to paragraph 30 (b) of the discussion document, whether the safe harbour prepayment formula if it is prescribed by regulation, would have to be restated or would reference to the method as prescribed by regulation suffice?

3. How often might a lender's "cost of borrowing" change?

The FSF submits that a lender's cost of borrowing can be very volatile such as during the Global Financial Crisis as they are subject to market conditions such as when interest rates move etc. It is incumbent on a lender to have in place good policies to manage their funding and to react when the cost of borrowing changes.

4. What are the costs to creditors in publishing and updating the information described above?

The costs involved in updating information include such things as staff training, some printing costs and costs associated with systems input. An FSF member reports that costs to update information to customers are in the region of \$100,000 per 350,000 customers.

Model disclosure statements:

1. Do you have any comments on the proposed amendments to the disclosure statements?

The FSF believes that lenders would use model disclosure statements if they were available at least as a basis for their disclosures so the FSF would look forward to the amendments to the current model disclosure statements when they have been redrafted. The FSF would suggest that there are some areas where these could be improved (and would be happy to work with officials to do so) but would suggest that they should not be changed too much as they are being used in their current form by some lenders who would incur costs if they change significantly. These improvements could include such things as using specific and consistent language in the headings of each element of a disclosure statement rather than different terms by different lenders to describe the same thing which can lead to confusion and an inability to make clear comparisons. Similarly, the order in which information is set out in the Key Information can lead to the most important information being set out at the end of a disclosure statement – a creditor's name and address is less important when comparing the cost of credit.

2. From a creditor’s perspective, what are the benefits of these disclosure statements, and do you currently, or are you likely to, use them?

As stated above, the FSF submits that some creditors currently use these model disclosure statements as a basis for their disclosure and it is likely that more might do so if these were to be improved by amendment.

3. From a borrower’s perspective, is the information in these disclosure statements presented in a useful and clear way?

The FSF submits that the model disclosure statements are adequate but a bit wordy and could be improved on that basis and on the basis suggested in the answer to question 1 above.

4. Would you find it useful for the model disclosure statements to be produced in word format on the Ministry’s website?

The FSF believes that lenders would find it useful to be able to download the model disclosure statements from the Ministry’s website and use them thereafter in their own systems.

5. Should the wording of the “debtor’s right to cancel” (to be included on the model disclosure statement) be compulsory, or should lenders be able to use their own wording to describe the “debtor’s right to cancel”?

The FSF understood that the change to the 2014 Act made to Item (S) in Schedule 1 of the Act was intended to allow lenders to use their own wording and therefore believes that lenders should be allowed to do so. In the FSF’s opinion almost anything would be an improvement on the original para (S) which is far too wordy.

Part two: Minimum repayment warnings on credit card statements:

6. In your experience what proportion of credit card holders make only the minimum repayment each month?

Given the Ministry’s request to limit circulation of the draft discussion document, the FSF has been unable to canvas its wider membership including all of those who provide a credit card product to determine what this proportion might be but would be happy to do so and provide this information to the Ministry. One member who does provide a credit card product reports that about 5% of their total customer base makes only the minimum monthly repayment each month.

7. What information is currently provided on the monthly statement regarding the cost of repaying the balance at the minimum repayment?

The FSF would suggest that this is already prescribed to some degree by the CCCFA but would be happy to provide more information on this once the contents of the draft regulations have been shared with members via a wider circulation.

8. Is any warning information provided online or in the terms and conditions information for the credit card?

As above, the FSF would be happy to provide more information on this once the contents of the draft regulations have been shared with members via a wider circulation.

9. In your view, should the minimum repayment warning be based on a warning statement, or should it include calculated information similar to that included in the United States and Australian examples?

The FSF would strongly submit that the warning statement similar to that of the United Kingdom Lending Code as described in paragraph 64 of the discussion document would be sufficient to provide consumers with a warning that the minimum payment is just that and that paying only that amount will mean a longer repayment period and higher interest costs than if they were to pay more without lenders incurring significant systems costs to produce personalised warnings such as those used in the Australian and United States examples.

The FSF would further submit that, apart from the costs lenders would incur in having to complete a significant systems rebuild to provide information to cardholders similar to that of the Australian and United States examples, these figures are also based only on assumptions that only hold true at a certain period of time. Indeed paragraph 57 of the discussion document states that the United States example is based on assumptions that the borrower pays the amount of the minimum payment mentioned in the statement of account each month, and that no other purchases or advances are added to the outstanding balance. It would also assume that no other payments were made to the outstanding balance during the month. It is however the reality that credit card balances are highly volatile as they are used more and more often by consumers for their daily payment functionality and as such the balance owing can change from day to day and indeed from minute to minute depending on spending and/or repayments. Therefore any payment information provided is often obsolete and even potentially misleading by the time it is received and therefore not always of particular value to the consumer.

If the issue of consumers' lack of understanding of the effect of making only the minimum monthly payment is due to a lack of understanding or education, the FSF would suggest that the Ministry working with industry could develop a calculator that consumers can use to plug in specific information to carry out their own comparisons.

The FSF would also suggest that, if it was decided to follow the Australian and United States examples (although again it should be stressed that the FSF would have extreme reservations about so doing), the circumstances where the information does not need to be included in the monthly statement as described in paragraph 61 of the discussion document should be reviewed. It is the FSF's view that not having to provide such information where the outstanding balance on the statement is \$50 or less is far too low a threshold and that this should realistically be more like \$500.

One last point to also consider is the fact that monthly statements for credit cards as such are rapidly becoming obsolete. It is now a reality that more and more cardholders choose to suppress monthly paper statements in favour of being able to check their balances and make payments on-line. This is a further reason why the FSF would support the warning statement (which could appear on the Welcome/Account Balances page when a consumer logs into online banking) as per the United Kingdom Lending Code example rather than the very complex requirements of the Australian and United States examples.

10. Should the minimum repayment warning include the contact information of a debt counselling service like the United States and Australian examples?

The FSF assumes that what is meant by "debt counselling service" is similar to that of a budget advisory service here in New Zealand. On that basis the FSF would submit that, if a cardholder is having difficulty in meeting minimum repayments, it would be preferred that they contact the card issuer to discuss the issue in the first instance. In the case of FSF members, a Memorandum of Understanding exists between the FSF and the NZFFBS where members undertake to proactively refer their customers to a NZFFBS member for budget advice and assistance when they first start to exhibit signs of potential hardship (such as when a payment is missed or delayed). The FSF has chosen to partner with the NZFFBS because their budget advisers are qualified to provide appropriate advice and they have a quality assurance programme to ensure their members continue to do so. It is not the case that other budget advisory services require their advisers to have a qualification to provide advice and on that basis the quality of the service provided can be patchy. The FSF would therefore submit that lenders should be the first point of contact for

their customers and that responsible lenders will make the decision as to whether the customer should be referred to an appropriate budget advisory service if they deem it necessary.

11. Should the New Zealand minimum repayment warning be based on any of these international examples?

For the reasons provided above, the FSF believes that a similar warning to that of the United Kingdom example would be appropriate.

12. Are there any aspects of these international examples you believe should be adopted in New Zealand?

As above.

13. What information should be included in the prescribed minimum repayment warning? How should this be presented?

As above.

14. Should the minimum payment warning be based on a simple warning statement? If so, what are the compliance costs of introducing this type of minimum repayment warning?

As previously stated, the FSF strongly supports the introduction of a simple minimum payment warning statement as opposed to the very complex information provided in the Australian and United States examples in the discussion document. The costs to do so would be minimal compared to the costs associated with the major systems rebuild that would be required for lenders to provide the complex information required in the Australian and United States examples. An FSF member estimates that to provide the warning statement would require some IT build at a cost in the region of \$40,000 whereas to provide the calculator would make costs much higher – potentially in the region of \$200,000.

15. Should the minimum repayment warning include calculated information similar to that provided in the Australian minimum warning? If so, what are the costs of introducing this type of minimum credit warning?

As above.

16. What are the additional benefits of providing calculated information to the consumer as opposed to a warning statement?

As stated previously in the answer to question 9 above, the FSF would suggest that due to the volatility of credit card balances, calculated information is often obsolete almost from the moment it is produced so would suggest that the additional benefits, if any, would be minimal as opposed to a warning statement.

17. If the minimum repayment warning was to include calculated information, are there any assumptions that these calculations should be based on?

Paragraph 57 of the discussion document talks about the types of assumptions used in the United States example which would seem to be the only types of assumptions that could be made to provide this information. As stated previously in the answer to question 9 above, the FSF believes that the nature of credit card use is that balances are highly volatile and therefore assumptions are often obsolete as soon as they are made.

18. Should the prescribed minimum repayment warning be based on the minimum repayment warning adopted in Australia? If so, are there certain features of the credit industry in New Zealand that should be reflected in the minimum repayment warning?

As stated previously, the FSF would not support the introduction of a minimum repayment warning such as that used in Australia for the reasons already stated.

19. Are there any circumstances in which a minimum repayment warning would not be required?

The FSF would suggest that minimum repayment warnings should not be required where the outstanding credit card balance is very low – say less than \$500.

Thank you again for the opportunity to provide feedback on the draft discussion document. It is much appreciated. Please do not hesitate to contact the FSF if there is anything further you would like to discuss.

Yours sincerely



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EXECUTIVE DIRECTOR

A National Federation of Financial Institutions

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APPENDIX A
Membership List as at 1 September 2014

Debenture Issuers - (NBDT) Non-Bank Deposit Takers	Vehicle Lenders	Finance Company Diversified Lenders	Credit Reporting	Insurance	Affiliate Members
<p><u>Rated</u></p> <ul style="list-style-type: none"> • Asset Finance (B) • Avanti Finance (BB) • Fisher & Paykel Finance (BB+) • Medical Securities (A-) <p><u>Non-Rated</u></p> <ul style="list-style-type: none"> • Mutual Credit Finance • Prometheus Finance 	<ul style="list-style-type: none"> • BMW Financial Services • Branded Financial Services • Community Financial Services Limited • European Financial Services • Fleet Partners NZ Ltd • Mercedes-Benz Financial Services • Motor Trade Finances • Nissan Financial Services NZ Pty Ltd • ORIX NZ • SG Fleet • Toyota Finance NZ • Yamaha Motor Finance 	<ul style="list-style-type: none"> • Advaro Ltd • Centracorp Finance 2000 • Dorchester Finance • Finance Now • Future Finance • GE Capital • Home Direct • Instant Finance • John Deere Financial • Oxford Finance Ltd • DTR Thorn Rentals • South Pacific Loans • The Warehouse Financial Services Group 	<ul style="list-style-type: none"> • VEDA Advantage <p><u>Debt Collection Agency</u></p> <ul style="list-style-type: none"> • Baycorp (NZ) 	<ul style="list-style-type: none"> • Autosure • Protecta Insurance • Provident Insurance Corporation Ltd <p><u>Associate Members</u></p> <ul style="list-style-type: none"> • Southsure Assurance 	<ul style="list-style-type: none"> • American Express International (NZ) Ltd • Buddle Findlay • Chapman Tripp • Deloitte • Ernst & Young • Finzsoft • KPMG • PriceWaterhouseCoopers • SimpsonWestern