



FINANCIAL SERVICES FEDERATION

13 August 2018

Competition & Consumer Policy
Building, Resources and Markets
Ministry of Business, Innovation & Employment (MBIE)
P O Box 1473
WELLINGTON 6140

By email to: consumer@mbie.govt.nz

**MBIE: Disclosure requirements for digital interactions, Draft Proposals Paper July 2018
(Proposals Paper) in relation to the Credit Contracts and Consumer Finance Act 2003 (CCCFA)**

Firstly, thank you for the opportunity for the Financial Services Federation (FSF) to provide you with feedback in relation to the Proposals Paper.

Background:

By way of background, the FSF is the industry body representing the responsible and ethical finance and leasing providers of New Zealand. We have nearly sixty members and associates providing financing, leasing, and credit-related insurance products to more than 2 million New Zealanders. Our affiliate members include internationally recognised legal and consulting partners. A list of our members is **attached** as Appendix A.

The FSF and its members have long been advocates for all consumer credit contracts and credit-related insurance providers behaving responsibly towards consumers. FSF's commitment to this is demonstrated by the development of Responsible Lending Guidelines to which all members voluntarily signed up back in 2011 long before the introduction in the CCCFA review of 2014 of Lender Responsibility Principles which now apply to all lenders.

Indeed, the FSF's Responsible Lending Guidelines in large part informed the development of these Principles and the FSF was very pleased to see these extended to all credit providers. The FSF was also pleased to take a lead role with regard to putting responsible lending behaviour into focus and in the discussions that lead to the 2014 CCCFA review and the changes to credit contracts regulation that were introduced in mid-2015 including the Responsible Lending Code.

General Feedback

Some general feedback on the Proposals Paper is set out below, before the FSF answers the specific questions to which MBIE has requested a response:

1. The FSF agrees with the goal of the Draft Proposals Paper and has received positive feedback from members to the Draft Proposals Paper. It would be beneficial to lenders to have additional clarity and guidance as to how electronic disclosure can be achieved under the CCCFA.
2. However ideally, the FSF would like clarity on how the whole process of entering into a consumer credit contract can be completed electronically (i.e. not just electronic disclosure) including:
 - (a) completing an application for a consumer credit contract online;
 - (b) sending initial disclosure statements electronically;
 - (c) compliance with the Lender Responsibility Principles of the CCCFA by lenders e.g. how electronic communication impacts the obligation to assist borrowers to make an informed decision; and
 - (d) completing continuing disclosure electronically.

The FSF considers that, in particular, there is insufficient guidance available to lenders as to how to meet their responsible lending obligations when assisting a new borrower with their application for a consumer credit contract.

The FSF notes that the Draft Proposals Paper does not deal with providing any guidance to lenders as to how they might meet their Lender Responsibility Principle obligations to borrowers when transacting with them electronically. The FSF considers the appropriate place for such guidance to be in the Responsible Lending Code and has written a discussion paper suggesting ways in which this might be achieved for consideration by MBIE's Code Advisory Group (of which the FSF is a member). This has been temporarily put aside until the current review of the CCCFA is completed and any required changes arising from that are considered from the point of view of what further guidance they might lead to in the Responsible Lending Code.

3. The 2015 changes to the CCCFA resulted in substantial compliance costs for FSF members. Therefore the FSF would prefer that any changes to the CCCFA provide further guidance and clarity rather than being prescriptive or requiring mandatory changes to be made by lenders. FSF members would like to have the option of continuing to provide their disclosure statements by their current means without having to undertake any further system changes (if they do not wish to). Any mandatory change may result in increased compliance costs for lenders which are likely to be passed on to borrowers.
4. FSF members have also requested that consideration be given to further exemptions to the obligation on lenders to provide continuing disclosure as part of this CCCFA review particularly for situations when there does not seem to be any real benefit to borrowers by the provision of such statements. For example in the situation where there is a consumer credit contract that has not had any changes to:

- (a) the interest rate or credit fees payable under the contract;
- (b) any amounts or timing of payments required to be made by the borrower; and
- (c) there have been no further advances by the lender to the borrower since the initial drawdown of the advance.

The FSF would welcome an additional exemption to the lender's continuing disclosure obligations to cover the above circumstances and for a continuing disclosure statement to only be required to be provided by a lender on receipt of a request from the borrower. The FSF does not consider that the borrower receives much benefit from receiving such continuing disclosure statements on the regular basis required by section 18 but there is a significant cost to lenders providing this disclosure to borrowers who do not have access to this information online.

5. FSF members have specifically requested clarity as to whether or not:
 - a. disclosure has been sent if a borrower can choose whether or not to log onto their online account with the lender and then be provided with their disclosure document by accessing it on that online account; and
 - b. whether notification to a borrower that a disclosure document has been sent to them has occurred, if the notification is provided to the borrower on their online account with the lender, but the borrower must choose to log onto the account for access to the notification.
6. In the FSF's view, the consumer credit market is shifting towards more digital interactions between lenders and borrowers. Consequently the FSF's preference is for the CCCFA to continue to be enabling of digital interactions between borrowers and lenders – rather than prescriptive (as it is difficult to foresee all technology options that lenders and borrowers may wish to use in the future).

Specific feedback requested by MBIE:

1. **Do you agree with a change along the lines of that proposed? Why/why not?**
 - (a) **Section 35 Amendment:** The amendment proposed for section 35 will allow a lender to make disclosure electronically either by:
 - i. sending the disclosure statement to an information system that the borrower has provided for that purpose e.g. an email address provided by the borrower; or
 - ii. providing the disclosure statement on an information system that is readily accessible to the borrower, and then notifying the borrower that it is available.

(b) **Comments:**

The FSF considers the alternative option provided for in the amendment to be beneficial. It would be helpful if there was further clarification or guidance about whether the notification can be by way of a notice, for example, a message displayed on the borrower's online application with the lender, or whether the borrower needs to be personally notified, for example, by sending an email notification or a text. FSF members' preference is that the borrower not need to be notified personally by the lender; particularly if the borrower has already consented to the method by which the disclosure statements are provided.

Alternatively if the requirement is for the borrower to be personally notified, FSF members would prefer if the notification to be able to be achieved by a broad range of electronic means e.g. notification by a social media account with the lender, text or email etc.

FSF members would like to ensure that the amendments are technologically neutral and do not favour one particular method of electronic communication over others e.g. email over text.

It would be helpful to know if it is acceptable for a standard form consumer credit contract to provide the manner that the lender intends to send continuing disclosure statements or whether separate consent must be obtained to electronic disclosure. The lender should be able to specify in its terms and conditions that a borrower must provide an email address so that the lender can send notification or continuing disclosure statements to the email address.

Paragraph 19 of the Proposals Paper notes that Lenders will still be required to meet their responsible lending obligations to assist the borrowers to make an informed decision in respect of initial disclosure, such as clearly highlighting the key features of the credit contract. As raised in the comments provided earlier, FSF members would like to be able to not only provide initial disclosure electronically but also to be able to transact the entire lending process from initial application through to draw-down of the loan with borrowers applying for a consumer credit contract online whilst being certain that they were meeting their responsible lending obligations while doing so. This tends to be most borrowers' preference in any event!

- (c) **Section 21(1) (b) Continuing Disclosure exemption:** The proposed amendment provides a replacement continuing disclosure exemption if the following information is provided on an information system that is readily accessible to the borrower:

1. date, amount and description of each:
 - a. advance

- b. interest charge debited
- c. amount paid by the borrower or credited to the borrower
- d. description of each fee or charge debited to the borrower's account;
- 2. unpaid balance after each transaction referred to above;
- 3. amount and time for payment of the next payment that must be made by the borrower under the contract;
- 4. annual interest rate or rates that have applied to the contract, and the dates over which they applied.

(d) **Comments:**

The FSF notes that members have provided positive feedback to this new option for providing continuing disclosure electronically. However FSF members' preference would be to keep the existing continuing disclosure exemption in section 21 (1) (b), and have the amendment set out in the Proposals Paper be an additional exemption. This would allow lenders to continue their current processes if they were already set up using the existing exemption.

The FSF notes that there is an additional obligation to provide the balance after each transaction referred to in 1 (a) to (d) and wonders whether there is any real benefit derived to the borrower from this requirement. The FSF agrees that it is beneficial to provide borrowers with information as to their balances – but consider that a daily balance (i.e. if more than one transaction occurred on one day) would suffice. The FSF notes that real time reporting is not currently commonly achieved by many lenders – but rather batch time reporting at the end of the day. Accordingly any such requirement for a balance to be provided after each transaction (if more than one transaction occurs throughout a day) would be an onerous (and expensive) obligation imposed on lenders. However in saying that FSF members have noted that this is not a common issue amongst them.

The amendment does not specify any timeframe in terms of providing the information on the information system. It would be helpful if there could be some guidance as to when the information should be made.

The FSF assumes that no borrower consent is required for a lender to use this exemption on the basis it has all the information a borrower is likely to require.

2. **Do you have any suggestions for the design of the proposed changes to section 35 and 21(1(b))?**

The FSF is happy with the CCCFA being the statute that deals with electronic disclosure. As discussed above in general feedback, the FSF would also like to see some further guidance as to how lenders meet the Lender Responsibility Principles electronically and considers this could be dealt with by an amendment to the Responsible Lending Code.

3. **How long should credit transaction information be available for under the proposed section 21(1)(b) Continuing Disclosure exemption? Please give reasons.**

Paragraph 13 suggests 5 years or since the start of the contract (if less than 5 years).

The FSF considers that the length of time that the lender should be required to keep the continuing disclosure information available should be dependent on:

- (a) whether the account is still active;
- (b) the term of the loan (e.g. the obligation should terminate on termination of the loan facility (or within a reasonable period of termination; say 6 months?); and
- (c) how long a lender is required to keep such information under other legislative requirements.

However FSF members would like the flexibility to be able to remove the information from the information system that it is provided on initially electronically after a certain period on the basis that the lender will keep such information available by another method e.g. hard copy on request.

4. **Do you agree with our assessment of the costs and benefits of the proposal for digital disclosure? Are any costs or benefits missing? Do you have any information or data that would help us to assess the degree or estimate the size of these costs and benefits?**

- (a) **Benefits:** The FSF expects higher usage by lenders of the electronic disclosure provisions in the CCCFA in the future.
- (b) **Costs:** The FSF membership does not wish to incur any further compliance costs from these amendments. Consequently, our preference is for the amendments to be permissive and technology neutral.

The FSF is grateful for the opportunity to make this submission and would be pleased to discuss further any points that may require clarification or amplification.



Lyn McMorran
EXECUTIVE DIRECTOR

Appendix A
FSF Membership List as at 1 April 2018

Debenture Issuers - (NBDT) Non-Bank Deposit Takers	Vehicle Lenders	Finance Company Diversified Lenders	Credit Reporting Other	Insurance	Affiliate Members
<u>Rated</u> Asset Finance (B)	BMW Financial Services ➤ Mini ➤ Alphera Financial Services Branded Financial Services Community Financial Services European Financial Services Go Car Finance Ltd Honda Financial Services Mercedes-Benz Financial Motor Trade Finance Nissan Financial Services NZ Ltd ➤ Mitsubishi Motors Financial Services ➤ Skyline Car Finance Onyx Finance Limited Toyota Finance NZ Yamaha Motor Finance <u>Leasing Providers</u> Custom Fleet Fleet Partners NZ Ltd ORIX NZ SG Fleet Lease Plan	L & F Ltd ➤ Speirs Finance ➤ YooGo Avanti Finance Caterpillar Financial Services NZ Ltd CentraCorp Finance 2000 Finance Now ➤ The Warehouse Financial Services Flexi Cards Future Finance Geneva Finance Home Direct Instant Finance ➤ Fair City ➤ My Finance John Deere Financial Latitude Financial Pioneer Finance ➤ Personal Finance South Pacific Loans Thorn Group Financial Services Ltd Turners Automotive Group	Equifax (prev Veda) Centrix <u>Debt Collection Agencies</u> Baycorp (NZ) Illion (prev Dun & Bradstreet (NZ) Limited	Autosure Protecta Insurance Provident Insurance Corporation Ltd Southsure Assurance	American Express International (NZ) Ltd AML Solutions Buddle Findlay Chapman Tripp EY Finzsoft KPMG Paul Davies Law Ltd PWC Simpson Western FinTech NZ HPD Software Ltd Total : 56 members