FINANCIAL SERVICES FEDERATION

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Exposure draft of the Credit Contracts and Consumer Finance Amendment Regulations 2020

The Financial Services Federation ("FSF") is grateful to the Ministry for the opportunity to provide this submission on the issues raised in the draft regulations and in the commentary and request for submissions accompanying these.

By way of background, the FSF is the industry body representing the responsible and ethical finance, leasing and credit-related insurance providers of New Zealand. We have sixty members and affiliates providing these products to more nearly 1.5 million New Zealand consumers and businesses. Our affiliate members include internationally recognised legal and consulting partners. A list of our members is attached as Appendix A. 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.

Executive Summary:
Given the nature of the draft regulations and their potentially significant impact on FSF members and the way in which they run their businesses, this submission is necessarily comprehensive. The following is an Executive Summary of the key points made in the submission (but should not be read in isolation to the rest of the content of this submission):

- The FSF believes that the changes to the Credit Contracts and Consumer Finance Act 2003 ("CCCFA") that have been enacted with the passing of the Credit Contracts Legislation Amendment Bill ("CCLAB") late last year, and these accompanying regulations, would have been largely unnecessary had the Commerce Commission had the capacity to adequately and rigorously enforce the CCCFA following its previous update effective in 2015.

- The FSF supports targeted and reasonable enforcement by the Commerce Commission to deter consumer credit providers from irresponsible and harmful behaviour. However, this

is not always able to be achieved sufficiently swiftly to prevent other consumers from also experiencing harm or to deter irresponsible lenders from undertaking such behaviour. The FSF believes that the independent disputes resolution schemes have a role to play in being able to more swiftly determine whether harm has actually occurred and to order redress to be made to the consumer to remedy this. This does not prevent the Commission also taking Court action against such lenders but would provide a strong disincentive to the particular lender (and hopefully others like them) from continuing this behaviour.

- The FSF submits that, given that a threshold now exists in law to describe what constitutes a high-cost lender or loan, more rigour around enforcement of the new legislation and regulation should be directed towards this particular group of lenders.

- The FSF believes that irresponsible and predatory lending resulting in consumer harm is the minor exception rather than the norm in the New Zealand credit market (whilst acknowledging the harm that such practices cause where it does take place). The majority of lending in New Zealand is provided by responsible lenders to borrowers who understand the commitment they are making when entering into a credit contract and the debt is repaid without hardship.

- As evidence of this point the FSF references the survey of members conducted as at 31 July 2019 by KPMG which showed that 99.6% of loans provided by FSF members in the previous 12 months had been repaid or were being repaid without the borrower requiring hardship assistance (see Appendix B). Further, KPMG's 2019 Financial Institutions Performance Survey of the Non-Bank Lending Sector released in December last year, and which reviewed the performance of 26 large non-bank lenders, revealed that a mere 0.87% of the total loans of the entities surveyed are considered to be "impaired assets". Further, provisioning for impairments over the gross loans held by these entities is at an historically low level of 1.92%.

- The draft regulations are taking an inappropriate "one size fits all" approach that will apply to all lenders, whether or not they are the ones causing harm to consumers, that will put all the onus on the lender to question the information provided by the borrower. This will be unnecessarily inconvenient and intrusive for responsible borrowers making access to credit more difficult, costly and time-consuming for them.

- The draft regulations are also contradictory in the way in which they have been written. The passing of the CCLAB has removed the Lender Responsibility Principle 7 which allowed lenders to rely on the information being provided to them by the borrower unless they had reason to believe the information was not reliable. The draft regulations are therefore requiring lenders to verify all the information the borrower provides on the one hand and on the other is expecting lenders to rely on information provided by the borrower on matters such as where and how they spend cash withdrawals or any likely changes that may occur to their income or expenses. The FSF submits that there are many scenarios whereby

the only practical, workable solution for lenders is to rely on what the customer is telling them.

- The FSF believes that the effect of the passing of the Bill and these regulations will make access to credit made much less convenient than it is currently for the majority of New Zealand consumers because of all the information and verification they will be required to provide to the lender. This does not appear to have been considered in either the regulations themselves or the accompanying Commentary document.

- The FSF wonders what consultation, if any, has been conducted with consumers of credit to determine how they feel about all the "protections" that are being put in place as a result of the changes to the Act and the accompanying regulations. If there has not been any consultation with actual consumers the FSF questions how it can be assumed that all New Zealand consumers of credit actually want these extra "protections".

- The FSF submits that some flexibility is required in the way in which lenders meet the requirement of Regulation 4AA(2)(b) to determine the purpose of the credit or finance if that is to be provided by way of a credit card or similar such product. Consumers access these for a variety of reasons such as to smooth out their cash flows, to use for everyday expenses or for convenience. The FSF urges caution in ensuring that this clause does not unnecessarily further inconvenience consumers or take away their quite reasonable access to choices in the way they manage their finances.

- The FSF believes that the provision of appropriate insurance, warranty and/or waiver products is an essential part of responsible lending as they provide protection for both the borrower and the asset they are purchasing with the finance provided in the event that their circumstances change. The Responsible Lending Code provides guidance for some flexibility in the way that these products can be appropriately sold to consumers that are not reflected in the draft regulations. The FSF believes that this flexibility is entirely appropriate and of benefit to the consumer.

- All responsible lenders are predominantly concerned with ensuring that the loans they provide can be repaid without the borrower experiencing substantial hardship because this is the most prudent and responsible way for them to run their businesses. Responsible lenders do not provide finance to borrowers who they believe cannot meet their repayments. However, there are many ways in which lenders make this assessment which are not reflected in the one size fits all nature of the way in which the draft regulations have been written.

- The FSF believes the draft regulations lack any reference to materiality or scalability. They do not address the areas where the most harm is being caused to consumers and the FSF also believes that they should be amended to allow for consideration of the risk of harm (or lack thereof) to particular customer sectors within which lenders operate.

- The FSF believes the Australian Securities and Investments Commission's ("ASIC") Regulatory Guide 209 on Credit Licensing: Responsible Lending Conduct issued in December 2019 takes a far more realistic approach to gathering information about the consumer's financial situation than the "one size fits all" approach taken in the draft regulations. This is because the guidelines allow for a less prescriptive and more scalable approach to be taken by lenders depending on the risk profile of their customer market segment.

- The FSF believes that taking into account fixed financial commitments and assessing borrower's living expenses in assessing affordability of a loan is one thing (and can be done in a variety of ways other than just by accessing borrowers' banking transaction information), but it is excessive to expect all lenders to include borrower's discretionary expenses and not put sufficient onus on borrowers to meet their contractual commitment to repay their loans.

- The FSF believes the general rules in regulation 4AE are unhelpfully vaguely written, specifically the requirement in regulation 4AE for lenders to make reasonable inquiries in order to estimate the borrower's likely income and likely expenses in order to estimate these over a reasonably foreseeable time period.

- The FSF submits that, provided the lender is not a high-cost lender, and they are dealing with an existing customer who has borrowed from them previously, often over many years, and who has demonstrated a good repayment history, the lender should be able to obtain less information from that borrower than would be required from a new customer (commensurate with ASIC Regulatory Guide 209.112).

- The FSF strongly objects to the requirement for all lenders to require all borrowers to provide 90 days' worth of transaction records for any bank account into which the borrower's income is paid; and any bank account or credit card account of the borrower into which the borrower's income is transferred over that period for a number of reasons set out further in this submission. Not the least of which being that the FSF believes that borrowers will find it more convenient to just deal directly with their bank for all their finance needs as they already hold this information which eliminates credit options that may be more suitable for the borrower's requirements and healthy competition in the credit market.

- Not all consumers are comfortable with providing access to their banking transactional information via the use of available technology solutions, particularly as their banks constantly remind them to maintain the utmost security around their internet banking login information.

- The FSF submits that consideration be given to postponing the requirement for all lenders to assess 90 days' worth of bank transaction information from borrowers (unless they are

high cost lenders) until such time as Open Banking (open access to bank-held customer data enabling ease of sharing of such data with approved financial technology firms) has become a reality.

- The draft regulations do not consider any other means lenders might employ to determine the affordability of a loan such as a reasonable and reputable Household Expense Measure, the use of comprehensive credit reporting from a credit reporting agency, any other automated decisioning process or scorecard determining the borrower's risk profile or a combination of these means – each of which are as appropriate as the examination of 90 days of bank transaction records.

- The draft regulations have been written in such a way that lenders will be required to ask about all cash withdrawals they may uncover from the transactional information they gather. The FSF believes that this must be amended to require lenders to do so only in the case of significant cash withdrawals or where the loan is on the border line of being affordable.

- Where lenders are being required under the draft regulations to adjust their initial estimate of borrower's likely relevant expenses, the FSF is at a loss to understand what lenders are being required to do particularly where they are required to compare their initial estimate of the borrower's likely living expenses, individually or as groups of expenses, against a reasonable cost of those expenses.

- The FSF submits that the regulations do not take into account the fact that taking out a loan means entering into a consumer credit contract and that a contract has obligations for both parties so the borrower also has obligations to the lender to disclose all material information so that the lender can make an informed decision as to whether or not to advance the loan.

- With regard to the advertising of credit the FSF believes that the draft regulations make no allowance for the different requirements that may be needed for different advertising mediums and again takes a one size fits all approach. The FSF believes that advertisements in whatever medium should link to the lender's website for full terms and conditions.

- The FSF believes that all advertising of high-cost lending, including brand awareness advertising by a high-cost lender (as opposed to the advertising of a specific product) should state that the lender is a high-cost lender whose products are not suitable for long-term or regular borrowing.

- The FSF submits that using statements like "guaranteed acceptance", "instant approval", "bankrupt OK" or "bad history – OK" should definitely not be made in advertisements, particularly by high cost lenders. However the FSF does believe that making the statement that credit could be approved within 15 minutes might not necessarily mean the lender has

avoided their obligations under the CCCFA and the proposed regulations, if that lender has a streamlined automated process which allows them to achieve fast approval times whilst also meeting their responsible lending obligations.

- The FSF submits that it is common for a payment reminder to be sent when payment has been inadvertently overlooked by the borrower. The missed payment may not necessarily mean the borrower is suffering hardship and is often rectified by the borrower immediately upon receipt of the payment reminder. The regulations should therefore allow for a reasonable time after the payment reminder has been sent before the details of dispute resolution or MoneyTalks are provided – for example 5 working days from the time the payment reminder was sent.

- Not all the information required to be provided to borrowers in proposed regulation 24 is always available to be disclosed when a debt is assigned to a debt collection agency (e.g. the purpose for which the credit was originally sought) so the FSF believes this requirement should be made where it is ascertainable at the time of assignment.

- Whilst supportive of the concept that all lenders should be required to provide some information in an annual return to the Commerce Commission, the FSF urges caution with respect to the amount and fields of data lenders will be expected to provide in order to minimise costs to the lender to gather the data, verify it and share it. The FSF also urges caution in comparing data from one type of lender versus another as all lenders are not the same. The FSF would welcome the opportunity to take part in more detailed discussion as to what data should be gathered and for what purpose before the annual reporting requirements are finalised.

Introductory comments:
The FSF is largely comfortable with much of the Bill as reported back to the House by the Finance and Expenditure Committee and how it has now been enacted into the CCCFA. The FSF is pleased that some of their submissions to the Committee were taken into account. However, the FSF has always felt strongly that further legislation was not required following the reforms to the CCCFA implemented in 2015. In the FSF's view, what was missing following those wide-ranging reforms was enforcement of the law by the regulator against those who were not complying with its requirements.

The FSF knows that the vast majority of finance provided to consumers in New Zealand by its members and other responsible lenders, is done so with the key focus of ensuring it is able to be repaid affordably by the borrower. Lenders lose significant money on any defaulting borrower, so they have an incentive to lend only to those who are able to repay the loan.

Indeed, many lenders that have been in business for a long period of time constantly test different measures to assess applications to improve their processes and reduce losses. Many of the larger players utilise automated decisioning systems using variables of the information

provided by the borrower in the loan application, household expense measures and scorecards because experience has shown that these are more predictive than manual reviews of applications alone.

Even if circumstances change for the borrower throughout the term of the loan, responsible lenders will work with borrowers to ensure a fair and equitable outcome for all parties concerned in the transaction. This often includes forgoing the charging of fees and interest (including default interest), and other ways (including working with financial mentors) to ensure the debt is repaid without adversely affecting either the borrower's reduced budget or their credit record – as is required of lenders under the hardship provisions of the CCCFA .

If irresponsible and predatory lending resulting in consumer harm is still taking place following the 2015 amendments to the CCCFA, this of serious concern to the FSF – particularly as it most clearly targets those consumers who are more vulnerable or more likely to already be living in circumstances of hardship. But the FSF believes that this is being carried out by a small minority of lenders targeting a small minority of consumers.

The FSF is certainly supportive of more powers and resources being granted to the Commerce Commission to enforce the law against those who are not compliant if that is where their efforts are targeted. The FSF believes that targeted and reasonable enforcement by the Commission will be more effective in curbing this egregious behaviour than changes to legislation and regulation. Certainly, the FSF would expect to see lenders who extend credit to a borrower who is unable to repay the debt without being in substantial hardship, experiencing the full powers of the Commission's enforcement against them.

However, the FSF still has concerns with regard to the effectiveness of Commerce Commission enforcement action in preventing harm to vulnerable consumers and certainly with respect to remedying any harm that may have already been caused to such borrowers due to irresponsible lending practices. The FSF believes that, even when the Commission has taken enforcement action against lenders who have not met their responsible lending obligations, the process to get such lenders to prosecution or enforcement action is often slow and while the process grinds on, more consumers are falling victim to the same irresponsible practices of the lender before the matter is resolved before the Court.

The FSF therefore submits that serious consideration should be given to the role of the independent disputes resolutions schemes (the Banking Ombudsman Scheme; the Insurance & Financial Services Ombudsman Scheme; Financial Services Complaints Limited; and Financial Disputes Resolution Scheme) and how these could be used to provide consumers harmed by irresponsible lending practices with a means to more swiftly determine whether harm has actually occurred and, if so, what redress should be made to the consumer to remedy this. The process of taking the lender to Court could still continue but at least the affected consumers would be able to be more swiftly compensated for the harm caused to them.

The FSF also submits that, given there is now a threshold described in the law as to what constitutes a high-cost lender because it has been recognised that consumers are at more risk of harm from such credit providers as compared to those who do not lend at the high-cost threshold, and given that there are now limits as to the charges these lenders can pass on to borrowers under the amended CCCFA, that more rigour around enforcement of these new conditions should be concentrated towards this particular group of lenders.

If the disputes resolution schemes uncover systemic issues (as opposed to one-off situations) in a consumer credit provider's behaviour through putting a greater emphasis on the use of the schemes to determine whether consumers should be compensated for the harm caused to them the schemes could be required to report this to the Commerce Commission for further investigation and potentially more punitive enforcement action.

As already stated, predatory and irresponsible behaviour is very much the exception rather than the norm. Credit is provided responsibly to consumers who provide reasonable information to the lender in support of their application and the loan is repaid without any problem in the vast majority of cases. The FSF's survey of members conducted as at 31 July 2019 by KPMG, showed that 99.6% of loans provided by FSF members in the previous 12 months had been repaid or were being repaid without the borrower requiring hardship assistance (see Appendix B).

KPMG's 2019 edition of their annual Financial Institutions Performance Survey – the non-bank sector which was released in December last year reviews the financial performance of 26 non-bank financial entities with total assets of $75 million or more. These entities include finance and leasing companies (many of which are FSF members), and some building societies and credit unions. The survey revealed that a mere 0.87% of the total loans of the entities surveyed are considered to be "impaired assets". Further, provisioning for impairments over the gross loans held by these entities is at an historically low level of 1.92%. This reflects responsible lending from the sector – apart from a small minority.

This is why the FSF so vehemently opposed the removal of Principle 7 of the Lender Responsibility Principles (9C7 of the CCCFA) which allowed lenders to rely on the information provided to them by borrowers unless they had reason to believe that the information being provided was not reliable.

In the FSF's view, this was always a very sensible and pragmatic way of ensuring that the majority of both lenders and borrowers were able to enter into credit contracts with reasonable ease whilst also ensuring that the credit was being provided responsibly. It took into account the fact that a credit contract is something to which there are two parties – the lender and the borrower – and that each has obligations to the other in terms of what should be disclosed whilst still placing an onus on lenders to use their judgement to question any information provided by the borrower which did not appear to be reasonable. That a small minority of lenders took advantage of this provision and misused it so that it has caused harm

to a small minority of borrowers, is not only extremely unfortunate but a clear breach of the existing law which should not have been allowed to go unpunished.

It is also now resulting in overly onerous regulation that is attempting to take a "one size fits all" approach for those lenders who are already responsible and puts all the onus on the lender to question the information provided by the borrower which will be unnecessarily inconvenient and intrusive for responsible borrowers who accurately disclose their financial information to the lender making access to credit more difficult, costly and time-consuming for them. This is ultimately penalising the vast majority of New Zealand consumers for a lack of enforcement against a small minority of lenders which does not seem reasonable in any way to the FSF.

The FSF believes that these new requirements once implemented will come as a nasty shock to the majority of New Zealand consumers when they next apply for credit and find that it is not as easy to do as it once was and that being the case, there is a very real likelihood the New Zealand economy could slow as a result of less lending and purchases being taken up by NZ consumers.

One further point with regard to the removal of Principle 7 is that the way in which the draft regulations have been written appears to the FSF to be counter-intuitive or even contradictory. This is because on the one hand they are requiring lenders to verify in a very granular and prescribed way the information being provided by the borrower with regard to their income and expenses and then on the other are asking the lender to rely on the borrower's account of how they spend cash withdrawals as an example or about any likely changes to their income or expenses. It seems to the FSF to be contradictory to not allow lenders to rely on borrower information on the one hand and then expect them to do so on the other.

These requirements are also clearly going to create the need for change in the way that most lenders, including those responsible lenders such as FSF members, manage their processes for assessing the affordability of the loan being applied for. The FSF submits that these changes will clearly result in more cost to lenders as the time required to assess each loan application will necessarily be longer and more manual so credit fees will inevitably rise to recover this extra cost. This is an outcome of extreme concern not just to lenders but also to the majority of New Zealand consumers who provide reliable information to lenders when accessing credit.

The fact that this majority of New Zealand consumers are clearly going to have their access to credit made much less convenient than it is currently because of all the information and verification they will be required to provide to the lender as a result of these regulations is one that does not appear to have been considered in either the regulations themselves or the accompanying Commentary document. The FSF wonders what consultation, if any, has been conducted with consumers of credit to determine how they feel about all the "protections" that are being put in place as a result of the changes to the Act and the accompanying regulations.

If there has not been any consultation with actual consumers (as opposed to organisations representing consumer rights who tend to deal more with consumers who have issues or

problems with lenders rather than the vast majority who borrow responsibly from responsible lenders and have no problems with their loan accounts) the FSF questions how it can be assumed that all New Zealand consumers of credit actually want these extra “protections”. As previously stated, the FSF believes that these new requirements once implemented will not be appreciated by the majority of New Zealand consumers when they next apply for credit and find that it is not as easy to do as it once was.

The FSF is however very pleased that the timeframe within the Bill for commencement of these requirements has been pushed out to 1 April 2021 in line with the FSF’s submission on the Bill.

What more the FSF has to say with regard to the proposed regulations is as follows.

Assessment of whether credit or finance will meet the borrower’s requirements and objectives:

The FSF is largely comfortable with the information collection and assessment requirements of Regulation 4AA on the basis that these are in line with what responsible lenders do already to make the determination in section 9C(3)(a)(i) of the CCCFA that the credit or finance provided under the agreement will meet the borrower’s requirements and objectives.

However, the FSF notes that Chapter 4 of the Responsible Lending Code provides helpful guidance to lenders and allows a certain amount of flexibility as to how lenders might achieve this. For example, section 4.2 of the Code allows flexibility for the lender to determine the scope and method of inquiries as it relates to the complexity of the finance agreement; 4.5 allows for different methods for collecting the information, including the use of reliable third parties such as agents, dealers or introducers; and 4.6 provides guidance as to when lenders should make further inquiries, e.g. in the case of vulnerable borrowers or complex products. The FSF would be concerned if Regulation 4AA removed this entirely sensible flexibility that is currently allowed to lenders to fulfil their obligations under 9C(3)(a)(i).

The FSF submits also that meeting the requirement of Regulation 4AA(2)(b) to determine the purpose of the credit or finance can be very simple if the finance is required to purchase a particular asset such as a property, a motor vehicle or a home appliance. It can also be hard for a consumer to articulate their reasons for applying for a product such as a credit card in any greater detail other than that they wish to have one to smooth out their cash flows, use for everyday expenses or for convenience. The FSF urges caution in ensuring that this clause does not unnecessarily further inconvenience consumers or take away their quite reasonable access to choices in the way they manage their finances.

Additional requirements for certain waivers, warranties, and insurance:

The FSF has no objection in principle to the specific additional requirements in regulation 4AB which are to apply to repayment waivers, extended warranties and relevant insurance contracts. The FSF firmly believes that the provision of appropriate insurance, warranty and/or waiver products is an essential part of responsible lending as they provide protection for both the borrower and the asset they are purchasing with the finance provided in the event that the

borrower's circumstances change. In fact, to not offer these products when someone takes on debt is irresponsible in the FSF's view. The alternative can be outcomes such as loan arrears or default, adverse credit history, repossession action or bankruptcy.

The FSF believes that the very people these regulations are being drafted to protect (i.e. consumers whose circumstances render them more vulnerable to unscrupulous lending practices) are the consumers who derive the most benefit from waivers, warranties and insurance products when these are fit-for-purpose for the individual concerned and sold responsibly. This is because those people whose circumstances make them more vulnerable often have little to provide a buffer for them when things go wrong, nor do they have other forms of insurance protection, and therefore these products provide them with vital protections to fall back on if they suffer a change in circumstance. However, the FSF believes that once again it is appropriate and targeted enforcement of legislation and regulation around the sale of these products that is key to ensuring that they are not being sold irresponsibly.

The FSF notes that the draft regulation is essentially taking the requirements from Chapter 9 of the Responsible Lending Code and converting them from guidance as to what responsible credit-related insurance and repayment waiver providers **should** do into requirements as to what they **must** do. However, the regulation does not allow for the more flexible guidance that the Code provides.

For example, the Code in section 9.2 states that there may be a range of products that meet the borrower's requirements and objectives and goes on to say that the lender does not need to assess whether the proposed contract best meets the borrower's requirements and objectives, but should be satisfied that it is likely that the product is within the range of products that will do so. Further, Code point 9.4 states that the lender is entitled to rely on the information provided by the borrower in respect of any cover they might already hold and that the lender is not expected to review the terms of borrowers' existing policies to establish whether they already provide some or all of the protection sought by the borrower.

The FSF believes that this flexibility is entirely appropriate when lenders provide borrowers with access to these products. For example, the regulation states in 4AB(2)(a)(i) that the lender must determine whether the borrower has existing cover that may protect against some or all of the risks for which the borrower is seeking cover. It is not unlikely that a borrower might have existing income protection cover (or similar) as an example which cover is not dissimilar to that provided by a Payment Protection Insurance (PPI) or Credit Contract Indemnity Insurance (CCI). However, the existing cover may have a stand down period before which the claimed benefit can be accessed of 30, 60 or 90 days (or more) whereas the PPI or CCI may have only 7 days' stand down.

Clearly there may still be a benefit to the borrower in having both income protection and PPI or CCI or similar because their loan repayments could be taken care of in circumstances where the existing cover is not able to be accessed. But from the wording of the regulation it is not clear whether the lender is expected to make further inquiries regarding the existing cover the

borrower holds to determine whether there is such a gap, or whether because the lender has made the inquiry and determined that the existing cover is held, that is the extent to which they are expected to go. If the latter is the case, there is the potential that the borrower could be left with a gap before the existing cover could be accessed which could potentially lead them to a hardship situation if not addressed and the FSF is concerned that the lender might be penalised in some way because they took the regulation at face value and made no further inquiry.

Assessment that a borrower is likely to repay without substantial hardship:
This is where the FSF has serious concerns as to the “one size fits all” nature of the proposed regulations. Once again, lenders who already behave responsibly are being penalised for the actions of those who do not and have been allowed to continue to flout the law without consequence. On this occasion, however, the consequences of tighter restrictions will also directly and adversely affect the vast majority of New Zealand consumers who access credit by providing accurate information and disclosing everything of relevance to the lending decision.

These proposed changes will require lenders to spend more time than ever in their decisioning process to ensure they remain compliant which means that where their credit decisioning process is model based, making credit assessments at a portfolio level will no longer be possible. The FSF notes that the fees that lenders can charge to recover the cost of providing access to credit to consumers are already very restricted by the CCCFA and the revised Act now applies restrictions to the amount of interest a lender can charge borrowers. The FSF submits that the resulting cost to New Zealand consumers will be huge – and in the FSF’s view would not be necessary had we had sufficient enforcement of the existing law to prevent the harm that was apparently being caused to consumers by a small minority of lenders.

The FSF reiterates the point that for all responsible lenders, the key issue they are concerned with in making an assessment of whether to extend a credit facility to a borrower, is whether or not the loan can be repaid. In order to sustain their business model, their loans must be repaid. It is therefore in the interests of every responsible lender to ensure that the loans they are providing are likely to be repaid by borrowers without them experiencing substantial hardship. There are, however, various ways in which lenders make this assessment.

The FSF refers back to the KPMG survey data of members previously referred to in this submission which showed that 99.6% of loans provided by FSF members in the year to 31 July 2019, were repaid or being repaid without the borrower requiring hardship assistance (refer again to Appendix B). In the FSF’s view this data evidences the fact that the vast majority of loans provided to consumers (at least by FSF members) are done so responsibly. As does the extremely low level of impaired assets revealed by the participants in KPMG’s 2019 Financial Institutions Performance Survey of non-bank lenders also previously referred to.

The problem with the draft regulations in the FSF’s view is that they are requiring all lenders to adopt the same processes and not taking into account the fact that the spectrum of reasons why consumers need to access credit is vast and can range from a $200 (or less) payday loan

through to a housing loan running into the millions of dollars. The risks to lenders and borrowers reflect this vast spectrum and these are mitigated not just by assessing the loan's affordability but also by factors such as the borrower's previous repayment and credit history and whether or not there is collateral available to secure the loan. Indeed, it is the experience of FSF members that the use of scorecards that take into account multiple factors have been proven to far outperform manual assessments as a predictor of the likelihood of loan repayment.

Further, the proposed regulations 4AD to 4AI will require lenders to reconcile information provided by the borrower to a very granular level making applying for credit a more labour-intensive process for the lender and very intrusive for the borrower. This is at a time when consumers in general are expecting to be able to access the products they want and need more quickly and efficiently through the use of technology solutions and are not expecting to be unnecessarily delayed in achieving what they want by requirements to provide more and more paper-based verification.

The FSF is therefore surprised that the proposed regulations are taking what is in the FSF's view a backward step in ensuring that New Zealand's legislation remains forward looking and technology neutral. This is not in line with other recent regulatory reviews where a considerable amount of time and consideration has been put into ensuring this, including what consumers' expectations are around service, delivery, timing, etc (for example allowing for the provision of Robo-Advice and the changes made to accommodate this in the financial advisers' legislation.

This need for a very manual process will, as has been previously stated, result in increased costs to lenders to assess, reconcile and verify information provided by borrowers before making a decision as to whether or not to offer credit which will inevitably be passed on to consumers via increased credit fees. Once again, this creates a situation where the responsible majority of both lenders and borrowers are being unnecessarily penalised for the actions of a few lenders against whom the full extent of the current legislation should have been applied to provide the necessary protections to the consumers they were harming.

There is also, as the FSF has already pointed out, an inherent contradiction in the removal of the lender's ability to rely on the information provided by the borrower (unless they had reason to believe the information was not reliable) and the expectation in these regulations that lenders will make further enquiries of borrowers when their enquiries evidence a number of cash withdrawals (as an example), and then rely on the information the borrower provides as to what these were being used for.

What is lacking from these regulations, in the FSF's view, is any reference to materiality. Where is the harm that the regulations are trying to eradicate being caused? And then what is the reasonable solution to address that harm rather than the one size fits all approach that has been taken to date? The FSF submits that rather than address the entire population of lenders and borrowers, the detailed prescription of the regulations should be directed to situations of

high cost lending and where the lender's initial inquiries and assessment of income and expense information provided by the borrower reveal that the loan is border-line affordable.

The FSF further submits that by adopting this one size fits all approach, these draft regulations are effectively removing points of difference between lenders that will ultimately stifle healthy competition as well as innovation – leaving New Zealand consumers worse off rather than better which goes against the supposed intention of the reforms.

The commentary issued with the exposure draft of the regulations, states in para 25 that Ministry personnel visited a variety of lenders in the course of their research and the draft regulations reflect the practices currently in use by these lenders. As you are no doubt aware, the FSF helped facilitate visits to three of its consumer lending members and one debt collection agency. Unless there were visits to other lenders who were not FSF members, the FSF would not consider a sample of three lenders to be "a variety" and it appears to the FSF that the draft regulations have been written on the basis of the processes demonstrated by those three lenders. The FSF is therefore very pleased to discover that the Ministry has since engaged with a wider variety of lenders, including several more FSF member organisations and is hopeful that some sense of the need for the regulations to be amended to allow for more scalability based on the level of risk posed by the customer sector each lender works within may result before the regulations are finalised.

Because of the spectrum of needs for consumers to access credit mentioned above, the universe of consumer credit providers is vast. As you will be aware, they range from banks providing housing loans secured by a first mortgage over the property through to payday lenders providing access to finance on a high cost, short-term basis to people who are arguably already experiencing hardship with a huge range in between. This range includes (but may not be limited to) non-bank housing lenders, banks providing access to credit via revolving credit facilities, personal loans or credit cards; specialist motor vehicle lenders (most often associated with a particular motor vehicle marque or brand); lenders to the used vehicle market; lenders providing access to credit to purchase home appliances and furniture; personal loan providers; peer-to-peer lenders; buy now, pay later providers; mobile traders and payday lenders.

The range of circumstances of the borrowing public is equally as vast taking into consideration their financial situation including income and outgoings, their current indebtedness, their credit history, their financial capability, etc. The FSF submits that more consideration should be given to the circumstances of different types of borrowers when forming the requirements for assessment of affordability and will provide more detail as to what this might look like and how it could be applied further in this submission.

The FSF refers to the Australian Securities and Investments Commission's ("ASIC") Regulatory Guide 209 on Credit Licensing: Responsible Lending Conduct issued in December 2019 as a far more realistic approach to gathering information about the consumer's financial situation than the "one size fits all" approach taken in the draft regulations. This is because the guidelines

allow for a less prescriptive and more scalable approach to be taken by lenders depending on the risk profile of their customer market segment.

Turning now to some of the specific requirements of the draft regulations, the FSF has the following to say:

Interpretation: Relevant expenses:
The FSF is comfortable with the concept of lenders being required to make reasonable enquiries as to what “fixed financial commitments” a borrower might have. However, this is not always as easy to do in practice as it might seem. This is because of the prevalence of the use of credit cards to meet many fixed commitments which is a preference of many borrowers because of the loyalty points they accrue in the process and also because paying by direct debit to a credit card for some utilities for example attracts a prompt payment discount.

Assessing borrowers’ living expenses such as accommodation costs, insurance, utilities, food and groceries, school fees, childcare and transport expenses, etc, is even more difficult because of their variable nature. Whilst it is possible to obtain copies of bank statements to estimate an average of these expenses over a given period, this is extremely manual and time-consuming which is not always in either the best interests of the borrower or the lender. The former because they want access to credit without undue delay and the latter because of the cost involved in the process (which cost will inevitably need to be recovered from the borrower, as stated previously).

The alternative of using one of the available technology solutions to download bank information via the borrower’s online banking i/d is often not something all borrowers feel entirely comfortable with, particularly when they are constantly being reminded by their banks to maintain the utmost security around their internet banking login information. Even with this information, the FSF submits that it is most unlikely that most consumers are able to assess such possible expenses as what their medical expenses are likely to be or that lenders would be able to do so from scrutiny of bank transactional information.

The remaining expenses listed: personal expenses (including clothing and personal care) and other regular or frequently recurring discretionary expenses are just that “discretionary” – as in the borrower can decide whether to incur these expenses or not and, as is often the case, can also decide that, because they have taken on a financial commitment in the form of a loan, they will cut their cloth accordingly and will therefore eliminate or reduce some of this expenditure. It is not reasonable, in the FSF’s view, to expect lenders to include these expenses in their loan assessment processes nor is it the responsibility of lenders to determine what, if any, of these expenses the borrower might maintain, decrease or stop. In the FSF’s view, this is taking the responsibility of lenders too far and not putting sufficient onus on borrowers to meet their contractual commitments to repay their loans.

The FSF submits that a better way, other than for those lenders that are high-cost lenders, to assess the affordability of a loan to would be to require lenders to determine from borrowers

their fixed and reasonable living expenses (including the cost of servicing the loan being applied for) and then to ensure that a buffer or surplus exists to meet all other expenses.

Further, FSF members report that it is very common for one member of a joint household to apply for credit but the FSF is unclear how the regulations would expect lenders in this situation to assess affordability. For example, transactions showing on a joint bank statement may not all be incurred by the individual borrower or the borrower's expenses may not line up with the kinds of comparisons lenders are expected to make under regulation 4AH(1)(a) and (b) against a reasonable cost of these expenses if the borrower's household arrangement is that one partner pays for all grocery items while the other pays the rent for example. The FSF is unclear as to how it is expected that lenders verify such statements – other than to rely on the information provided to them by the borrower.

General rule:

With regard to regulation 4AE of the draft regulations the FSF submits that this is unhelpfully vaguely written. For example, it states that the lender must "make **reasonable** inquiries in order to **estimate** (over a **reasonably foreseeable** time period):

(i) The borrower's **likely** income on a weekly, fortnightly, or monthly basis (see regulation 4AF); and

(ii) The borrower's **likely** expenses on a corresponding basis (see regulations 4AG and 4AG)"

The FSF is at a loss as to what "reasonable" inquiries the lender is going to be required to undertake; how they might be expected to estimate likely income (over and above what the borrower has disclosed) and likely expenses; and completely baffled as to what is expected of lenders in estimating these over a reasonably foreseeable time period.

What exactly is meant by a "reasonably foreseeable time period"? How long is it envisaged that this might be? And how are lenders or borrowers for that matter expected to be able to determine this likely income or these likely expenses over this time period?

This is where the "one size, fits all" approach that will impose the same requirements on all lenders regardless of whether they are already responsible and are operating in a sector of the market at very low risk of borrowers experiencing hardship or whether they are specifically targeting more vulnerable consumers, starts to become problematic not just for lenders but also for consumers.

The FSF refers once again to the data gathered by KPMG and provided in Appendix B of this submission that shows that in the past year 99.6% of loans by FSF members are being repaid without the borrower requiring hardship assistance, and also to the data gathered by KPMG's 2019 Financial Institutions Performance Survey into Non-Bank Lenders showing that less than 1% of the surveyed lenders' assets book were classed as being impaired which clearly demonstrate the FSF's position that the majority of lending is being done responsibly.

Lenders must estimate borrower's likely income:
The FSF notes that regulation 4AF provides some guidance as to how a lender might determine and verify a borrower's income. However, it is not always the case that responsible lenders require their responsible customers to verify the income statement they make in their application. For example, where a borrower is taking out the credit contract to purchase a high-end motor vehicle.

It may be that the borrower declares their occupation on the application form and the income stated is commensurate with someone in that type of occupation. If this is verified by the lender through a credit check or even a google search, the FSF submits that, if the lender is not a high-cost lender, they should be able to rely on this information without requesting that the borrower provide verification of their income.

This would be particularly so in the case of a returning customer with whom the lender already has a history of repayments without any cause for concern. The FSF refers once again to the ASIC Regulatory Guide 209 – in this case RG 209.112 which allows lenders to obtain less information from the existing customer than would be required in the case of a new customer which is entirely sensible in the FSF's view and certainly provides for a far better customer experience.

The FSF believes that to require borrowers who are used to accessing credit easily and without unnecessary inconvenience to produce means of verification of information that is either already known by the lender or entirely reasonable to be relied upon, is penalising the vast majority of borrowers who access credit responsibly.

It is also the experience of FSF's credit provider members that income is not necessarily always predictive of the likelihood of default or ability or otherwise to repay. This goes back to the point made in the previous section about the discretion borrowers may use to adjust their spending habits when taking on a new credit commitment.

Lenders must do initial estimate of borrower's likely relevant expenses:
The FSF has a particularly strong objection to the requirement in regulation 4AG for all lenders to require all borrowers to provide 90 days' worth of transaction records for any bank account into which the borrower's income is paid; and any bank account or credit card account of the borrower into which the borrower's income is transferred over that period.

There are many reasons for the FSF taking this view. The main one being that the inconvenience caused to borrowers of having to provide access to this information will make it more convenient for them to just deal directly with their bank for access to credit as the bank already holds the required information. This is effectively eliminating many other credit options that for whatever reason may be more suitable for the borrower's requirements and thereby eliminating healthy competition in the credit market.

The FSF strongly submits that consideration be given to postponing such an onerous requirement on any lenders other than those which are high cost lenders until such time as Open Banking (open access to bank-held customer data enabling ease of sharing of such data with approved financial technology firms) has become a reality.

The FSF believes that, without Open Banking being a reality, most borrowers will find it easier to deal with their bank when borrowing because the bank has all the transactional information available to them to assess loan affordability and therefore the borrower does not have to go through any extra steps to provide this information to the lender. The FSF obviously strongly objects to this being an absolute requirement for all lenders on the basis that it is effectively anti-competitive if one sector has a considerable advantage through their access to information about borrowers than another.

The FSF also refers again to the point made previously under *Interpretation: Relevant Expenses* above, that not all borrowers are comfortable with allowing lenders to have access to their bank transactional information through the currently available technology applications because of the emphasis their banks have placed on maintaining the security of their customers' online banking login information and passwords (and rightly so).

Further, the FSF objects to this requirement on the basis that many borrowers operate more than one bank account with more than one bank, or they have revolving credit facilities whereby their income is paid to an account to reduce debt, all their transactions are paid by credit card and then the credit card debt is paid in full at the end of the month from the revolving credit facility. In any event, gathering all the information from each of the borrower's accounts in order to form a full picture of the borrower's expenditure is going to be time-consuming and subject to the borrower making information on or access to all of their relevant accounts available to the lender.

The FSF sees the requirement for every borrower to provide at least 90 days' worth of transaction records as being a particularly "one size fits all" solution to a problem that only applies to a minority of lenders. The regulation does not consider any other means lenders might employ to determine the affordability of a loan such as: a reasonable and reputable Household Expense Measure; the use of a comprehensive credit report from a credit reporting agency detailing the borrower's payment history not just for any lines of credit they may have but also for other regular payments such as to utilities companies; or any other automated decisioning process or scorecard which, as previously stated, are more predictive than comparing income against expenses in the experience of many of the FSF's members.

Whilst many FSF members do in fact require access to borrowers' bank account transactional details in their assessment of credit affordability, this is not the case for all members. This is because their business model or their borrower target market does not require them to make such enquiries due to the nature of their customers' risk profile. This is again a one size fits all requirement for a situation which is extremely complex and does not lend itself to such an approach.

The FSF has a particular problem with the requirement in the diagram of the process for assessing whether a loan is affordable on page 16 of the Commentary accompanying the Exposure Draft of the regulations, that lenders must ask about cash withdrawals that the transactional information may uncover. There is also a significant contradiction between what is intended to be required of lenders in terms of the Commentary document and what is actually being required of them in the draft regulation with respect to enquiries required about the purpose of cash withdrawals. The Commentary document in para 51 requires lenders to make further enquiries where there are **significant** cash withdrawals. Regulation $AG(1)(c) requires the lender to make these enquiries in relation to **any** cash withdrawals.

Frankly, this is no-one's business but that of the borrower. If the information provided to the lender shows that the loan is affordable based on the lender's criteria, then that should be the end of the process. Anything beyond that would, in the FSF's view, breach the borrower's right to privacy and would place the lender in the position of some kind or moral arbiter determining what borrowers can and cannot spend their own money on. Again, a solution that takes a hard-line approach in all instances rather than one that is targeted to the small minority causing the most harm. But even if these intrusive enquiries do become a requirement for all lenders, the FSF strongly submits that the regulation be re-worded to require the enquiries to be made only in the case of **significant** cash withdrawals.

The FSF believes there is a very real issue with regard to this expectation that lenders will take some form of moral standpoint when dealing with borrowers with regard to the way in which they spend their income that could potentially breach other legal obligations lenders have such as compliance with the Privacy Act 1993 or the Human Rights Act 1993.

One further point with regard to the requirements of regulations 4AG(1)(c) and (d) is that made earlier in this submission where the massive contradiction exists between the removal of Lender Responsibility Principle 7 allowing the lender to rely on the information provided by the borrower (unless they have reason to believe the information is not reliable) and the requirement that lenders must make enquiries of borrowers as to how they are spending their cash and what likely changes to their relevant expenses might occur over a "reasonably foreseeable time period" with no other means of the lender being able to verify this beyond what the borrower tells them.

This would be a particular issue for those borrowers on limited incomes who choose to manage their budget by means of withdrawing all of their income in cash on payday and then transacting in cash for every expense – which is not uncommon in the experience of some FSF members.

The FSF therefore submits that the regulation should require all high-cost lenders to obtain the bank transaction records for all their borrowers but, for those lenders who are not offering high-cost credit, they should be given the choice of either obtaining these records, relying on a reputable Household Expense Measure to estimate likely expenses, obtaining a comprehensive credit report on the borrower, or the use of a reputable automated credit-scoring process

based on a number of factors (not just income and expenses) – or a combination of one or other of these. This will allow lenders to determine the level of information required in line with the customer's credit risk or creditworthiness.

The FSF sounds one note of caution however over the presumption in regulation 4AG(1)(e) which is repeated in the Commentary document at para 51, that credit reports provide an insight into relevant expenses borrowers may have. It is certainly true that credit reports are a vital tool in assessing a borrower's ability to repay the loan but they do not provide insight into all the expenses a borrower may have so, particularly for a high cost loan, a credit report on its own would not be a sufficient check into the borrower's ability to repay in the FSF's view.

It is certainly true that a credit report will likely identify that the borrower has other fixed financial commitments that should be taken into account in the loan assessment. It is also true that the introduction of Comprehensive Credit Reporting (CCR) provides even more valuable information about the borrower's willingness or capacity to repay without falling into arrears and into a wider range of commitments the borrower may have such as utilities payments. But the report will not show the actual amount of each payment and lenders can only obtain data under CCR if they themselves contribute CCR information to the credit reporting agency.

Lenders must adjust initial estimate of borrower's likely relevant expenses:
Once again, the FSF objects to the "one size fits all" approach of regulation 4AH. Having determined that the loan is affordable for the individual borrower using the methods mentioned above, this regulation is requiring lenders to go even further beyond that and apply yet another standard over and above which is likely to be seen by financially capable borrowers with a good credit history as being entirely unreasonable. Once again, responsible lenders and capable non-vulnerable borrowers are being unnecessarily inconvenienced, even penalised, for the actions of a few (against whom the law should have been enforced so that this exercise is not required).

The FSF is at a loss to understand what lenders are being required to do under regulation 4AH(1)(a) where it says that lenders **must** "*compare their initial estimate of the borrower's likely living expenses, individually or as groups of expenses, against a reasonable cost of those expenses;".* How is it expected that lenders might assess what is a "reasonable cost"? Who will determine what this "reasonable cost" actually is?

This requirement is in the FSF's view, unhelpfully vague and therefore the requirement is virtually impossible to fulfil.

In Australia there are strongly established benchmarks such as the Household Expense Measure ("HEM") developed by economic research group the Melbourne Institute but it is still unclear as to whether lenders may rely on this notwithstanding the judgment in the ASIC vs Westpac case from Justice Perram that was handed down late last year.

In New Zealand a Household Expense Survey exists but it is not as granular in its detail as the Australian HEM. The Inland Revenue Department provides some data for different segments, but the question remains as to what will be developed and by whom to provide lenders with the means to determine what exactly is a "reasonable cost".

This regulation also requires lenders to take into account regular or frequently recurring discretionary expenses when making an affordability assessment. The FSF again submits that surely the fact that such expenses are "discretionary" means that they are made at the borrower's discretion. Taking on a commitment such as a new credit contract is something the vast majority of borrowers take seriously. If, for example, they need access to credit to purchase a new appliance, motor vehicle, or even a property, they will necessarily make adjustment to their household budget to accommodate this. Therefore, some of their "discretionary" spending might well be diverted to loan repayments at least until the loan is repaid. The FSF believes this is entirely reasonable and borrowers should not be prevented from obtaining credit because their discretionary spending prior to taking out the loan does not accommodate the loan repayment once the loan is in place.

Indeed Justice Perram in the ASIC vs Westpac case mentioned above, made the (perfectly sensible in the FSF's view) observation that *"I may eat wagyu beef every day washed down with the finest shiraz but if I really want my new home, I can make do on much more modest fair."*

Further, the FSF notes that regulation 4AH(3) also requires lenders to "have regard to" a number of factors including the number of dependents and, if relevant, their ages. Whilst having no objection to the idea that the number of a borrower's dependents should be taken into account when assessing loan affordability, the FSF questions what is expected from lenders in determining the ages of these dependents and how they would be expected to do this. The only way in which the FSF can envisage this being achieved, would be to ask for the information on dependent ages from the borrower which goes back to the contradiction that exists where the lender can rely on the information provided by the borrower which has now been removed from the CCCFA with the removal of Principle 7 of the Lender Responsibility Principles.

Even if this information is provided, the FSF is at a loss as to how lenders should take this into account in their affordability assessment as there is no guidance available to them as to the way in which the costs associated with dependents at different ages may vary.

The FSF further submits that the regulations do not take into account the fact that taking out a loan means entering into a consumer credit contract and that a contract has obligations for both parties. The obligations for the lender are now becoming even more onerous (due mostly to the poor behaviour of a few rather than the majority) but it needs to be remembered that the borrower also has an obligation to the lender which is that they disclose all material information so that the lender can make an informed decision as to whether or not to advance the credit. The heavy-handedness of the proposed regulations seems not to take this into account or the fact that, once again in the vast majority of cases, borrowers meet their obligations to the lender in terms of the disclosures they make.

High-cost consumer credit contracts – Presumption of substantial hardship:
The FSF does not represent any lenders who offer high-cost consumer credit contracts but is largely supportive of the requirements of such lenders in regulation 4AI.

Lender responsibility to ensure advertising complies with advertising standards:
The FSF is also largely supportive of the proposed regulations 4AJ - 4AL in respect to the advertising of credit. However, compliance with these requirements is not always as easy as it might seem.

In April of last year, the FSF submitted on early proposals for the regulation of advertising of credit. At that time the FSF made the point that much of the information that will be required to be disclosed in credit advertisements will also be pre-disclosed during the robust process that is required of lenders in disclosing the key features of the loan before the borrower accepts the offer of credit.

These proposals recognised the challenge posed by space-constrained advertising media such as Google Ads for lenders to be able to include all the information that might be required by the regulations but went on to say that these formats can be compliant with the requirements, but that lenders might not be able to advertise that a washing machine could be purchased for $40 per week if there was insufficient space to explain that the total amount of the payments would be $3,140.

The FSF suggested in its submission that, rather than lenders therefore not advertising how this washing machine might be purchased, the regulations could require every advertisement to contain a link to the lender's website to access the terms and conditions (and total repayment amount) of the loan. This is the way in which investment offerings are advertised and the FSF still believes that this would be an appropriate way to advertise credit in situations where space constraints exist.

It is disappointing therefore that no allowance has been made in the regulations for different requirements for the different mediums that can be used to advertise credit such as radio, print, on-line, text message, television, etc and again the one size fits all approach has been taken and the requirement for advertisements in whatever medium to link to the lender's website would seem to be the obvious way to remedy this.

The FSF supports the requirements of regulation 4AM with respect to the advertising of credit fees if the advertisement states there is no interest.

With respect to the regulation 4AN relating to prohibited advertising practices the FSF has the following to say.

The FSF agrees with the intent of the regulation 4AN being to prohibit lenders from making exaggerated or false claims in their advertising with respect to the assessment process (or lack thereof) of a loan application. On this basis, claims such as "guaranteed acceptance" or

“instant approval” would appear to breach this regulation and should therefore not be allowed to be made in any advertising of credit. Also, these kinds of claims tend to be made more by high cost lenders again without reference to the fact that the credit is being provided by a high cost lender and without any reference to the actual interest rate or fees being charged by the lender. The FSF submits that any advertising by a high cost credit provider (including brand advertising that is promoting the lender’s brand as opposed to a specific product) should make it clear that the lender offers high-cost loans and should disclose the applicable interest and fees (or the range of these).

However, to say that a loan might be able to be approved within 15 minutes may not necessarily mean that the lender’s obligations under the CCCFA and the proposed regulations have been avoided. It could simply be that the lender has such a streamlined and automated process that they are able to assess a loan application to approval within such a timeframe without breaching any of their obligations. If a lender has developed an innovative process that allows them to meet their obligations and still provide a loan approval within 15 minutes, the FSF submits that they should be able to say so.

Further, the FSF submits that advertising credit and making a statement along the lines of “bankrupt – OK” should definitely not be made. Anyone still undischarged from bankruptcy should not be applying for credit and should certainly not have any approved. Indeed, under S360 of the Insolvency Act 2006 it is an offence for a debtor in respect of whom a Summary Instalment Order has been made and before all creditors have been paid all amounts to which they are entitled under the Order, the debtor obtains credit or $1,000 or more or incurs liability to any person of $1,000 or more for the purpose of obtaining credit or enters into a hire purchase agreement under which they are liable to pay $1,000 or more.

Also, the statement “bad history – OK” should not be made either as it implies that anyone with a bad credit history will be able to access credit which may not be in the best interests of every borrower under those circumstances. However, the FSF does not agree that credit cannot be advertised to anyone who has had an adverse credit event in their history.

Under negative credit reporting, the only information available about an individual’s previous credit history related to whether or not they had ever had a default on any other credit arrangement and whether or not that default amount had since been cleared. For many responsible lenders, such a history would lead to an automatic decline of a loan application from that individual and it would be something like two years from the time the default was repaid before that adverse credit record dropped off the individual’s history.

With the introduction of CCR, an individual who has had a default or previous payment arrears but who has been able to rehabilitate themselves and show a history of meeting their commitments, may well be able to meet the commitment of a new loan contract in their current circumstances. Indeed, the hardship process required for every lender under the CCCFA may well have assisted in rectifying an adverse circumstance so therefore, the FSF submits that it should be possible to advertise that the individual circumstances of a person

with an adverse credit history will be considered and that terms and conditions will therefore apply.

With regard to the advertising of high-cost credit, the FSF notes that the Bill as passed now requires high-cost consumer credit providers to disclose that a high-cost credit agreement should not be used for long-term or regular borrowing and is suitable only to improve short-term cash flows and to provide information about the MoneyTalks service for budgeting and financial capability advice and the FSF is supportive of both of these requirements.

However, the FSF believes that if the credit being advertised is being provided under a high-cost credit agreement, the advertisement should explicitly state this. Even where the advertising is not specifically advertising credit but is a generic branding advertisement for the credit provider, the advertisement should contain the warning that the credit this provider is offering is high cost.

Disclosure:
The FSF is comfortable with the requirements of regulations 4F, 4G and 4H in respect to variation disclosure.

However, the FSF notes that s59 5A now requires lenders to disclose certain information about financial mentoring services available through the MoneyTalks helpline whenever the lender sends a payment reminder to a borrower. The FSF submits that it is common for a payment reminder to be sent when payment has been inadvertently overlooked by the borrower. The missed payment may not necessarily mean the borrower is suffering hardship and is often rectified by the borrower immediately upon receipt of the payment reminder. This is particularly prevalent for the first loan repayment as the borrower may have omitted to set up the payment mechanism. In these circumstances the payment reminder is all that is required for the borrower to get themselves back on track and sending them details of either dispute resolution services (which they already have in their loan agreement) or the MoneyTalks service is unnecessary.

The FSF therefore suggests that a reasonable time after the payment reminder has been sent should be allowed before the details of dispute resolution or MoneyTalks are provided – for example 5 working days from the time the payment reminder was sent.

Provisions about securitisation and covered bond arrangements:
The FSF is also comfortable with the clarification provided as to when section 59B(4) of the Act applies in regard to securitisation or covered bond arrangements or similar arrangements under proposed new regulations 22 and 23.

Disclosure before debt collection starts:
The FSF is also broadly comfortable with the requirements under proposed new regulation 24 with respect to disclosures required before debt collection starts including the statement that

the debtor can ask for free and confidential budgeting and financial capability advice from MoneyTalks, the contact details for MoneyTalks, and a link to MoneyTalk's internet site.

However, it is not always possible for debt collectors to provide all of the information required in regulation 24(1). For example, 24(1)(b) requires the date of the credit contract to be disclosed. For a credit contract that has been in place for some years this information may not be available to the debt collector particularly if that is an agent of the original creditor.

Similarly, 24(1)(c) requires the debtor's purpose of the credit when the credit contract was entered into to be disclosed. This may be information that was never collected at the time the credit contract was entered into (because it was not then a requirement under the legislation that applied at the time), or it was not recorded.

The FSF therefore suggests that all the regulation should require that all the information should be disclosed where it is ascertainable at the time that the debt collection process is commenced.

Contents of the annual return:
In principle, the FSF supports the concept of the requirement for lenders to provide an annual return to the Commerce Commission which will provide statistical information about the finance sector that is not currently available from any other source (or where it is available from sources such as the Reserve Bank of New Zealand, for example, the data is incomplete and does not cover the entire spectrum of credit providers). The FSF believes that some statistical information could be very useful to help understand the size and scope of the New Zealand credit market, who are the participants from the credit providers' perspective, and how many consumers and businesses are accessing credit.

However, the FSF would strongly urge caution with respect to the amount and fields of data lenders are to be expected to provide. Any such exercise in sharing of data will necessarily result in costs to the lender to gather the data, verify it and to share it. The required data fields will need to be considered very carefully as, once again, a one size fits all approach will not be appropriate taking into consideration the spectrum of credit providers that do participate in the New Zealand credit market.

It also needs to be remembered that many entities that would be required to provide the annual return to the Commission already have similar requirements to provide similar returns to the Reserve Bank of New Zealand. This is because they are registered banks or licensed Non-Bank Deposit Takers or credit-related insurance providers. The FSF therefore urges caution to ensure that the requirements of both returns are as closely aligned as possible so that these entities are not being required to provide one set of data to one regulator and then having to compile an entirely different set of data for another.

Also, once again, consideration needs to be given to the vast differences between one of the larger banks and a small finance company that will in all probability not have a data warehouse

or reporting platform, and their consequently widely differing abilities to gather and provide such data. Serious consideration also needs to be given as to what information is to be gathered and to what use this information might be put.

Comparison of data from one type of lender versus another (for example bank data versus finance company data) would be very dangerous in the FSF's view. The products provided by each of these are completely different because they operate in different markets more often than not, they have different thresholds, different pricing structures and different appetites for risk so the way in which the data provided is to be interpreted is another crucial matter on which the FSF would urge caution before proceeding further.

The potential data types listed in the Commentary Document accompanying the draft regulations is extremely long (as acknowledged in paragraph 127 of the Document). There is also little or no clarity as to the period over which lenders are being required to report for many of the potential data types. Much of the information required for other potential data types might well not be available from the lender (for example the number of loans in relation to car finance where an insurance claim has been lodged or paid out (paragraphs 141 and 143) as this information would only be obtainable from the insurance provider or, in some cases, multiple insurance providers).

Other potential data types in the Commentary Document's list lack clarity as to what is meant by the data that might be requested, for example paragraph 150 asking for the number of applications for consumer credit that were withdrawn. The FSF does not believe most lenders would be able to gather information on credit applications that did not proceed.

Other data could potentially result in misinterpretation as to what the situation actually is. An example of this would be the data required under paragraph 151 asking for the number of loans which went into default or which fell into arrears within one month of taking out the loan. As previously stated, this is not an uncommon occurrence – not because the loan was provided irresponsibly and is unaffordable but because the first payment has been set up incorrectly against the customer's income payment date or the payment has not in fact been set up at all. These situations are usually rectified immediately and don't indicate any lack of responsibility on behalf of the lender. A better metric would be to determine the number of unremedied defaults or arrears beyond that time period.

Further, clarity as to who is classed as a lender required to provide annual return data would be helpful. For instance, would a debt collection agency be required to provide data which would probably be data on loans already reported by the original credit provider? Similarly, would the credit provider's obligation to report on a loan they had referred to a debt collection agency cease at that point or would they be expected to continue to provide data on the loan until it was fully repaid or written off?

The FSF would welcome the opportunity to take part in more detailed discussion with an appropriate group such as MBIE's Code Advisory Group as to what data should be gathered and for what purpose it is to be gathered before the annual reporting requirements are finalised.

Thank you again for the opportunity to provide the FSF's views on the proposed regulations. Please do not hesitate to contact me if you require anything further.

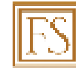
Lyn McMorran
EXECUTIVE DIRECTOR

FSF Membership List as at 1 February 2020

Appendix A

Non-Bank Deposit Takers (NBDTs)	Vehicle Lenders	Finance Company Diversified Lenders	Finance Company Diversified Lenders	Credit-Related Insurance	Affiliate Members
Rated Asset Finance (B) Non-Rated Gold Band Finance ➢ Loan Co Mutual Credit Finance	AA Finance Limited BMW Financial Services ➢ Mini ➢ Alphera 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 **Leasing Providers** Custom Fleet Fleet Partners NZ Ltd Lease Plan ORIX NZ SG Fleet	L & F Ltd ➢ Speirs Finance ➢ YooGo Avanti Finance ➢ Branded Financial Caterpillar Financial Services NZ Ltd CentraCorp Finance 2000 Finance Now ➢ The Warehouse Financial Services FlexiGroup (NZ) Limited Future Finance Geneva Finance Home Direct Instant Finance ➢ Fair City ➢ My Finance John Deere Financial Latitude Financial Metro Finance Pepper NZ Limited Personal Loan Corporation Pioneer Finance	Prospa NZ Ltd South Pacific Loans Thorn Group Financial Services Ltd Turners Automotive Group **Credit Reporting and Debt Collection Agencies** Baycorp (NZ) Centrix Equifax (prev. Veda) Illion (prev. Dun & Bradstreet (NZ) Limited Intercoll Receivables Management	Autosure Protecta Insurance Provident Insurance Corporation Ltd Southsure Assurance	Buddle Findlay Chapman Tripp Experian EY FinTech NZ Happy Prime Consultancy Limited HPD Software Ltd KPMG PWC Simpson Western Total : 60 members

Appendix B



FINANCIAL SERVICES FEDERATION

The Financial Services Federation (FSF) is the association for responsible finance and leasing companies operating in New Zealand. This infographic is a snapshot of our 61 members, the membership list can be found at our website: www.fsf.org.nz

Consumer Lending	Business Lending
$6 billion Total Assets	**$4.9 billion** Total Assets
1.3 million Customers	**88,739** Businesses

88,793

Businesses helped to achieve their goals

2,533 jobs

provided by FSF member companies

99.6%

Loans paid-off without requiring assistance of a hardship process

FSF lending members data survey period as at 31 July 2019 . Data collected and aggregated by KPMG