FINANCIAL SERVICES FEDERATION

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Financial Services Federation Response to Draft Responsible Lending Code

The Financial Services Federation ("FSF") is grateful for the opportunity to provide a response to the Draft Responsible Lending Code being developed to elaborate on and offer guidance on the new lender responsibility principles included in the Credit Contracts and Consumer Finance Amendment Act 2014 ("the CCCFA").

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

FSF members take their obligations to behave responsibly and ethically towards their customers very seriously as they do in terms of their compliance obligations. They will do everything they can to ensure they comply with the requirements of the Act, the Code and any regulations in support of these. The FSF does not believe that its members are the lenders about whom regulators should have concerns as it is not FSF members who prey on vulnerable consumers or who behave irresponsibly towards any sector of the community.

The FSF has a major concern that in spite of what is ultimately required of lenders when the Code is finalised, it will be the responsible lenders such as the membership of the FSF who will do whatever they can to comply with the Code's requirements. The minority who do not belong to an industry body like the FSF are the cause for concern in terms of their behaviour and the Code will do little to change their behaviour if that is how they already operate.

In the preparation of this submission, we have where possible tried to answer the questions for submitters raised in the Draft Code, however there are areas where the FSF feels the most appropriate question has not in fact been asked and we have therefore addressed all the areas of concern to members as these occur in the Draft Code.

Where we have no comment to make on a specific question raised in the Draft Code we have omitted the question altogether. In the case of the second question in most of the chapters with regard to whether the guidance provided in the chapter would protect the interests of consumers etc, the FSF has often made no comment at all as the FSF is not able to speak on behalf of consumers but can in some places provide some insight into the consumer experience from the lender's point of view.

Timeframe for developing the Responsible Lending Code

An area of significant concern to FSF members is with regard to the timeframe within which they will be expected to comply with the Responsible Lending Code once it is issued some time in March 2015 (assuming there is no slippage). There will inevitably be gaps in processes, policies and procedures even for already responsible lenders between what they do currently and what will be required of them by way of the Code. There are already major issues identified in the proposed disclosure regulations on which the FSF has already submitted which, depending on what these look like when finalised, will cause substantial, expensive and very time-consuming changes to systems and processes for already responsible lenders.

The FSF has many members who operate in Australia and New Zealand. The Australian divisions of these businesses are undergoing major upgrades to their IT systems to accommodate demands arising from commercial developments and governmental changes in Australia. These upgrades are critical and must

proceed despite the changes to New Zealand laws. It also means that in June 2015, it is likely that due to lack of resources (both human and financial), their New Zealand documents and systems may not be compliant with local law.

It is impossible to overemphasise the concern of the FSF and its members, all of whom are willing to comply with whatever is ultimately required of them, but who may well be unable to do so as a result of the impossible timeframe in which to achieve this. Just conducting a gap analysis once the Code and regulations are finalised to determine what, if any, gaps do actually exist will take time they do not have let alone what may be required to fill these. Following that, the changes proposed will require me3mbers to upgrade IT systems which is not an easy process.

Whilst it is clearly understood that the deadline is just that and cannot be changed, the FSF urges regulators to take account of the extremely tight timeframe involved and to be mindful of this to ensure that any changes to already responsible lenders' systems and processes are of the most minor variety unless it is clearly demonstrable that a significant consumer benefit will result.

Where a significant change is unavoidable the FSF asks that the Commerce Commission be given the discretion to undertake their enforcement powers beyond 6 June 2015 with some flexibility to allow for them to delay enforcement action against a lender who is showing willing to comply with their obligations but has simply not been able to achieve this within the timeframe.

1. Introduction

1.1 Please provide any comments you may have on the explanatory material in this chapter.

- With regard to the status of the Code, it is of concern to the FSF that although the Code is not a "safe harbour" this section goes on to say "However, evidence of compliance with the provisions of the Code will be treated as evidence of compliance with the lender responsibility principles." The FSF believes that these two statements contradict each other and in fact compliance with the Code should – and effectively does – provide a safe harbour to lenders.

- Certain aspects of the Code are vague and open to interpretation. Regulators need to provide a statement on how they intend to enforce the Code, such as working with the industry toward compliance rather than seeking test cases to obtain a precedent.

1.2 Please provide any comments you may have on the ability for the lender to make a judgment about the number of inquiries and the extent of information sought, as well as the extent of the assistance that should be provided based on specified factors in the Code. Does this approach strike the right balance between consumer protection, providing certainty for lenders, and minimising unnecessary compliance costs?

- The FSF submits that the statement "the lender should make a greater number of inquiries and see more extensive information for products where consequences of default are higher." should be amended to also include "… or where the **risk** of default is higher."

- A responsible lender would be concerned with the potential risk of a loan defaulting rather than the consequences of default, and the interests of lenders and borrowers are actually aligned here. An example of how this might work is that the risk of default is considerably higher for unsecured personal loans but the consequences of default are less as there is no security at risk.

- The FSF submits that there are many areas where the requirement for lenders to provide assistance to borrowers or to make more detailed inquiry of them or to ask for more extensive information to be provided by them as described in the Draft Code, could be discriminatory or in breach of the Human Rights Act 1993 particularly where lenders are being asked to make a judgment in situations where the

borrower might be pregnant, close to retirement age or where English is the borrower's second language.

1.3 Please provide any comments you may have in relation to the aim that the Code be technology neutral, and whether the guidance in the Code allows for technology neutrality (including by reference to specific aspects of the guidance).

- The FSF submits that the Code should absolutely be technology neutral. Financial service consumer demand is trending towards on-line platforms with some lenders operating their entire business on-line rather than through branch networks. The FSF estimates that up to 50% or even more of all consumer credit contracts are now being initiated on-line and it is likely that this will continue to grow.

- The Draft Code does not allow for technology neutrality. For example the Code calls for lenders to identify characteristics that may make the borrower vulnerable such as where English is a second language or if a consumer appears to lack basic knowledge about financial products. This would require a very subjective judgment by the lender and would be difficult to achieve in an on-line environment.

- A further example would be where the Code in paragraph 5.2.i requires the lender to take into account reasonably foreseeable changes in the borrower's income or expenditure over the term of the loan (such as approaching retirement or expecting a child). The FSF fails to understand how a lender interacting with a borrower on-line (or indeed even in a face-to-face situation) would establish that that person was pregnant without asking the question. There is a real risk that the lender could run into issues with the Human Rights Act 1993 by doing so as making judgments on the basis of a person's age or gender or whether or not they appear to be pregnant is clearly discriminatory.

- Lenders who operate via on-line platforms could potentially be disadvantaged as it may be difficult for them to demonstrate compliance with some aspects of the Code. Therefore the Code needs to be more flexible to allow lenders to achieve compliance across a range of technology options.

2. Obligations that apply before and throughout the agreement

2.1 Please provide any comments you may have on the guidance in this chapter, including any suggested revisions or additions.

- The FSF submits that there needs to be more clarity around how the regulators expect responsible lenders to document their policy or process on communicating with borrowers and guarantors in financial difficulty. This is often subjective and a judgment call made by experienced lenders so is often not a "one size fits all" situation.

- The requirement to monitor and periodically review policies should not become a de facto audit requirement – there should not be any prescription as to how often lenders need to do this. Lenders know their business and will keep their processes updated and under review as required.

2.3 Does the guidance in this area provide sufficient certainty for lenders as to how to comply with the relevant principles and responsibilities? Please provide any comments you may have on whether the guidance (and which aspects) should be more prescriptive, or more flexible, and the reasons for that.

Please refer to the answer provided to question 2.1.

2.4 For lenders, please provide an estimate of cost (both one-off costs and ongoing costs), over and above costs you incur in these areas today:

(a) That you may incur if you had to comply with the relevant principles and responsibilities without any guidance in these areas;

(b) That you may incur if you comply with the guidance in this chapter.

The FSF believes it is difficult to quantify the cost of compliance or to break it down according to the lifecycle of the loan, particularly when it is not yet entirely clear with what they are being expected to comply. There are some areas where the detail of the Act itself, the Code and the disclosure regulations will cause significant systems issues and will result in significant cost in time and investment such as:

- The requirement in the Act for lenders to provide loan statements to borrowers on a six-monthly basis regardless of whether anything has changed since the previous statement or where the loan is on a fixed interest rate for the term of the loan and the borrower was provided with a repayment schedule at the outset. These six-monthly statements provide absolutely no useful information to a borrower that they do not already have however one FSF member estimates the cost of postage alone to produce these and send them out is approximately $50,000 a time. So a $100,000+ per annum cost for absolutely no benefit to the consumer.

- The suggestion in the model disclosure statements to include the exact date on which the borrower's right to cancel rather than a generic statement informing the borrower that they may cancel the credit contract within 5 working days. It is estimated that creating a systems change that allows lenders to provide individualised information such as the exact date on which the right to cancel expires for each individual borrower will cost between $100,000 and $200,000 per lender to implement.

- The suggestion in the proposed disclosure regulations that credit card issuers provide their card holders with personalised calculations as to the time it will take them to repay their current card balance and at what cost in interest if they make only the minimum monthly repayment. It is estimated that this very complex systems build will cost between $200,000 and $600,000 per lender and analysis of the experience in Australia where these calculations are now required suggests that it has had absolutely no effect on cardholder repayment behaviour as a result.

Beyond these quite specific examples, the FSF believes it is difficult for lenders to quantify the cost of changing their systems, processes and policies in order to comply with the Responsible Lending Code itself until the Code is finalised. Once that happens, most FSF members believe that they will at least incur the cost of one further staff member at a relatively senior level to monitor their current systems to ensure compliance and to manage the change process in terms of whatever needs changing in order to comply with the Code.

One further point which regulators should be aware of is that the CCCFA changes and the resultant Responsible Lending Code are not the only regulatory or compliance changes that lenders have been faced with in the last few years. All responsible lenders have gone through a process to ensure their compliance with legislation such as the Financial Service Providers (Registration and Disputes Resolution) Act 2008, the Financial Advisers Act 2008, the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 etc, as well as those Acts and regulations that apply specifically to non-bank deposit taking lenders. A survey of FSF members carried out earlier this year to which 30 responses were received estimates the cost of compliance to date (outside of the requirements of the amended CCCFA and the Responsible Lending Code) has been nearly $40 million in aggregate, in matters such as audit of existing processes to determine what needs to change, systems changes to accommodate this, web development, changes to documentation, staff training in new processes, professional advice to ensure compliance, monitoring of compliance once changes are introduced, etc. This figure does not include the time and human resources members have also had to commit internally to ensure compliance.

Finally the FSF is concerned that those lenders who are already operating responsibly will wish to continue to do so and will do what they have to, including spending what is required and assigning resources to ensure this is achieved, in order to comply.

It should therefore be remembered that the more already responsible lenders are forced to change their current processes, the higher the cost to do so which is ultimately passed on to the consumer by either or both of interest rates and fees.

3. Advertising

3.1 Please provide any comments you may have on the guidance provided in this chapter, including any suggested revisions or additions.

- The FSF submits that the content of paragraphs 3.2.b and 3.2.c are somewhat unclear as to what is required of lenders. As an example, would the need for a deposit mean that a lender was being contradictory or behaving in an unexpected manner if the lender was advertising "no payments for 12 months"?

- The guidance around specific practices with regard to advertising in paragraph 3.4.b.i of the Draft Code which refer to the need for lenders to display an annual percentage interest rate and note if that rate is variable requires some clarification. For example where a lender operates using a range of interest rates and the rate is struck depending on the individual characteristics of the borrower and their creditworthiness, would that lender be required to publish the applicable range of interest rates if they are advertising that their rates are "competitive", as opposed to referring to a specific rate?

- Lenders may stop advertising specific interest rates or the amount of regular repayment (as per paragraph 3.4.c) because the requirement to include the total amount payable under the agreement is too onerous. Information about the total amount payable is provided to the consumer as a repayment schedule in the loan agreement and this should be sufficient. If lenders stop advertising specific rates or repayment amounts this could have a negative effect for consumers wishing to shop around for a loan.

- Providing comprehensive information including the total amount payable under the agreement is not practical and could also be misleading where lenders are using certain perfectly legitimate advertising media such as a 15 second television advertisement.

- In the case of a credit contract, the lender is already required to complete the contract with the borrower including providing full disclosure of all costs associated with the loan. Also, the Fair Trading Act 1986 provides in s 9 that no person shall, in trade, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

- With regard to 3.5.a and the requirement that a lender should not undertake the practice of advertising claims like "$500 credit available in your account" without making it clear that the $500 is the amount of the loan rather than a $500 credit balance, the FSF questions what else in fact that claim would refer to other than the loan amount and on that basis would suggest that this does not need to be said.

- The FSF questions whether on-line loan calculators would be deemed to be advertising. These are not mentioned in the Draft Code but they are useful to consumers in making comparisons between the finance offerings of various lenders.

3.3 Does the guidance in this area provide sufficient certainty for lenders as to how to comply with the relevant principles and responsibilities? Please provide any comments you may have on whether the guidance (and which aspects) should be more prescriptive, or more flexible, and the reasons for that.

- The FSF submits that if lenders stop advertising specific interest rates or the amount of regular repayment in order to comply with the requirements of paragraph 3.4.c, this will not be helpful to consumers in making decisions about which lender to approach for credit.

- Advertising the total amount payable under the loan could actually be misleading and confusing to those consumers who work on a weekly, fortnightly or monthly budget and who therefore look for weekly, fortnightly or monthly repayment information when shopping for credit to determine whether the cost would fit within their budget.

3.4 For lenders, please provide an estimate of cost (both one-off costs and ongoing costs), over and above costs you incur in these areas today:

(a) That you may incur if you had to comply with the relevant principles and responsibilities without any guidance in these areas;

(b) That you may incur if you comply with the guidance in this chapter.

Please refer to the answer provided to question 2.4.

3.5 Do you think the specific practices set out in the guidance will lead to consumer benefits in the form of greater transparency of credit products and key features of the product? Please consider both the value of the information to the consumer balanced against the potential risk of providing consumers with too much information.

Please refer to the answer provided to question 3.1.

3.6 Do you agree that it is appropriate for all advertising of high-cost short-term credit agreements to carry a risk warning? Why or why not?

The FSF does not have any members providing high-cost short-term credit agreements as described in the Glossary of the Draft Code and therefore has no comment to make on this matter.

3.7 Do you have any comments in relation to the specific wording of the warning?

Please refer to the answer to question 3.6.

4 Inquiries into and assessment of borrower's requirements and objectives

4.1 Please provide any comments you may have on the guidance provided in this chapter, including any suggested revisions or additions.

- The FSF submits that further guidance is required as to what is considered to be a "complex or uncommon credit product". If these are considered to be solely buy-back transactions or reverse equity mortgages, the FSF would have no problem with this. If however, transactions such as contracts with the option of returning a motor vehicle during the term of the loan for example were to be considered complex, the FSF would suggest that these products, whilst not necessarily common, should not be considered complex and therefore requiring more extensive information.

- With regard to the requirement in 4.2.c to make more extensive enquiries where the loan amount is large relative to the borrower's ability to repay, the FSF submits that this really does not need to be said. A lender's first concern is to be repaid and therefore the borrower's ability to repay is the most important part of their loan assessment criteria. The size of the loan is immaterial so long as the borrower can meet their stated outgoings including the loan repayment.

- The FSF also questions how regulators expect lenders to determine that a borrower has the characteristics described in 4.2.d and how they would enforce the requirement for lenders to do so. The FSF believes that this requirement is potentially open to abuse by borrowers who can demonstrate an understanding of the terms and conditions of a credit contract at the time of taking it out and then claim not to have understood some time during the term of the loan when it suits them to do so.

- The FSF also has concerns with regard to the example provided under paragraph 4.9 on page 18 of the Draft Code and believes that to follow this could potentially be disadvantageous to consumers if they are not offered the choice and flexibility a store card provides. A store card is a legitimate product for which there is significant consumer demand and it may be the only form of in-store finance being offered by a retailer as hire purchase-type finance is now very rarely used.

- It should also be remembered that the borrower does not receive the card at the time of applying. This is usually sent by mail some time after the initial application for finance has been approved. The borrower has the choice of whether or not to activate the card when they receive it. If they do not do so, the initial purchase is the only transaction debited to the card facility. On this basis, the FSF suggests that this example be deleted from the final version of the Code.

4.2 In your view, will this guidance: (1) protect the interests of consumers; (2) promote the confident and informed participation in credit markets by consumers; and (3) promote and facilitate fair, efficient and transparent credit markets? Please provide reasons as to how it may or may not do this.

- The FSF believes that not offering a store card in the example under paragraph 4.9 on page 18 of the Draft Code is potentially disadvantageous to consumers because it is the experience of FSF members who offer such products that consumers tend to repay revolving credit facilities more quickly than they would do a term loan which tends to be repaid according to the repayment schedule without any extra or increased repayments.

- Also it is not always possible that consumers can know whether they will need to make a further purchase in the short to medium term. They may well be purchasing a couch on credit in the first instance, as per the example, and then shortly thereafter have an unforeseen need to replace an important appliance. If it is the customer's choice to take out a store card to avoid having to go through the applications process again if they find they have a further need in the future, the FSF believes they should have the ability to do so.

- Further the FSF points out that the customer typically does have the right to terminate the store card facility at any time if they so wish.

4.3 Does the guidance in this area provide sufficient certainty for lenders as to how to comply with the relevant principles and responsibilities? Please provide any comments you may have on whether the guidance (and which aspects) should be more prescriptive, or more flexible, and the reasons for that.

The FSF submits that with regard to paragraph 4.10 which states in the last paragraph that the fact that a lender complies with the record keeping Guidance set out at 4.10.c does not mean that a Court will accept those records as sufficient proof of the actions a lender took in any individual transaction makes it very unclear what lenders should comply with in order to satisfy a Court that there is evidence of compliance with the Code. If the lender undertakes the inquiries presented in the Guidance in chapter 4 and keeps records of the inquiries undertaken and the borrower's responses to these surely that should be sufficient.

4.4 For lenders, please provide an estimate of cost (both one-off costs and ongoing costs), over and above costs you incur in these areas today:
(a) That you may incur if you had to comply with the relevant principles and responsibilities without any guidance in these areas;
(b) That you may incur if you comply with the guidance in this chapter.

Please refer to the answer provided to question 2.4.

4.5 Do you think that any of the inquiries set out at paragraph 4.1 should be mandatory in all cases? Why or why not?

- The FSF submits that in some cases all of the inquiries set out at paragraph 4.1 would be made by a responsible lender, but not in all cases, depending on the circumstances. On that basis, the lender should be free to determine the appropriate extent of inquiry with regard to the likelihood that the credit provided will meet the borrower's requirements and objectives.

- Paragraph 4.1.a requires a lender to inquire into the amount of credit sought by the borrower. While the amount of credit sought by the borrower should be considered by the lender, the amount of credit provided should be determined by the lender if, for example, the lender's assessment of what the borrower can afford to repay is a lesser amount.

- Paragraph 4.1.c requires the lender to determine the timeframe for which the credit is sought. The FSF would suggest that this does not make clear whether the lender will need to check the borrower's likely time for keeping a motor vehicle for example versus the term of the loan advanced to purchase it.

- Some clarification is needed for paragraph 4.1.e that a borrower must be made aware of the additional costs of expenses such as premiums for insurance related to the credit, payment for extended warranties or repayment waivers. As the total interest cost is already being disclosed it is considered that the borrower is being provided with sufficient information without the need for separation of interest costs for each component of the amount financed. To do so would also be extremely challenging from a systems perspective (and therefore very costly and time-consuming to implement).

4.6 If you are a lender, and based on your current experience, do you consider the guidance in this chapter will in practice require you to provide "personalised financial advice" under the Financial Advisers Act 2008, and if so how?

The FSF has only one point to make with regard to the guidance provided in the Draft Code and the fact that this will require lenders to provide "personalised financial advice" under the Financial Advisers Act 2008. This is in regard to the issue of finance provided at point of sale by dealers or retailers under a credit contract which is then assigned to a lender within 24 hours. The FSF submits that the exemption from giving advice that the FAA allows these dealers or retailers is now being confused by the Code saying the opposite.

4.7 Please provide any comments you may have in relation to the specific guidance for high-cost short-term credit agreements, reverse mortgages, buy-back transactions, and pre-approved offers of credit.

Please refer to the answer provided to question 3.6.

5 Inquiries into and assessment of substantial hardship (borrowers)

5.1 Please provide any comments you may have on the guidance provided in this chapter, including any suggested revisions or additions.

The FSF has provided its response to the inquiries required of lenders under paragraph 5.2 in the answer to question 5.9 below, and therefore in answer to this question will confine itself to areas of concern for lenders in chapter 5 of the Draft Code excluding those arising out of paragraph 5.2.

- Paragraph 5.5.d requires lenders to make a greater number of inquiries and seek more extensive information for borrowers for whom English is a second language or who appear to lack basic knowledge about financial matters. It may be difficult for a lender to reasonably ascertain that this is the case, particularly when a borrower acknowledges their understanding, to all intents and purposes appears to understand and/or is being dealt with via an on-line platform.

- Throughout this chapter with regard to inquiries and assessment of a borrower's circumstances there is no onus on the borrower to adequately disclose what would be relevant to a lender making a credit decision. Principle 7 of the Lender Responsibility Principles does state that lenders may rely on the information provided by a borrower or guarantor unless the lender has reasonable grounds to believe the information is not reliable. The FSF believes that this principle should also be kept in mind when developing the Code, and indeed should be explicit in the Code in a number of places.

- The FSF has a serious concern with the requirement in 5.11.b that the lender is required to determine whether the information provided by the borrower is within the usual range for that type of borrower. From the FSF's point of view this requirement (and the accompanying example of how this might be achieved) is imposing more obligations on lenders than the legislation requires and is considerably at odds with Lender Responsibility Principle 7.

5.3 Does the guidance in this area provide sufficient certainty for lenders as to how to comply with the relevant principles and responsibilities? Please provide any comments you may have on whether the guidance (and which aspects) should be more prescriptive, or more flexible, and the reasons for that.

Please refer to the answer provided to question 5.1.

5.4 For lenders, please provide an estimate of cost (both one-off costs and ongoing costs), over and above costs you incur in these areas today:
(a) That you may incur if you had to comply with the relevant principles and responsibilities without any guidance in these areas;
(b) That you may incur if you comply with the guidance in this chapter.

Please refer to the answer provided to question 2.4.

5.5 Please indicate whether you have a preference for option 1 or 2, and the reasons for that. Do you have any suggested alternative definitions?

The FSF has a strong preference for option because this is the option that is already in use by responsible lenders. Any change to the way in which lenders make this assessment currently would result in significant systems changes being required with the resultant cost and time to implement that have already been discussed where the FSF has referred to other systems changes the Code may necessitate.

5.6 Is the level of hardship or the threshold set out in the definitions appropriate?

The FSF is at a loss to know where "substantial hardship" is actually defined as it is certainly not in the Draft Code and nor does it seem to be defined in the Act. Without a definition it is extremely difficult for lenders to determine whether they are complying with the requirement to ensure that by approving the loan they are not putting the borrower into "substantial hardship".

5.7 In some circumstances, a borrower may be able to make repayments without substantial hardship by selling certain non-essential assets. Should the definition of hardship reflect this? If so, how?

The FSF submits that it would be very unlikely that a responsible lender would approve a loan to a borrower who would need to sell any assets in order to meet repayments, but essentially if that is the borrower's choice to do so, then the Code should not prevent this.

5.8 For pawnbroking transactions where the only consequence of an inability to pay the redemption price is the loss of the pledged good should the reasonable inquiries that should be made or the assessment of whether borrowers can repay without substantial hardship be any different? If so, how?

The FSF does not have any members who provide pawnbroking transactions and therefore has no comment to make on this question.

5.9 Do you think that any of the inquiries set out at paragraph 5.2 should be mandatory in all cases? Why or why not?

- The FSF has some strong concerns about the way in which some of the inquiries a lender should make, as set out in paragraph 5.2 have been worded. No responsible lender makes a decision to lend to

anyone who is unable to demonstrate the ability to repay the loan. The only way in which responsible lenders can remain in business is to have current outstanding loans repaid so that they might on-lend to other borrowers. On that basis therefore lenders are always concerned first and foremost with whether or not a prospective borrower can repay the loan they are applying for.

- The requirement in 5.2.b for a lender to determine the "likely stability of that income" appears to the FSF to be impossible to comply with. The lender is in no position to predict future stability of income and the FSF is unable to think of any reasonable questions that a lender could ask to determine this without potentially being seen to be discriminatory towards a prospective borrower.

- The same applies to the enquiry the lender is required to make under 5.2.d in terms of determining "other regular expenditure that the borrower **intends to make**". The FSF therefore suggests that this be amended to read "… that the borrower is **currently making** …".

- The same applies again to the requirement in 5.2.i with regard to the lender being able to predict "reasonably foreseeable changes in the borrower's income or expenditure" but the FSF would also express concern that to take into consideration such things as the borrower's approaching retirement or the fact of their being pregnant could well become discriminatory or cause issues with Human Rights legislation as already noted above. In fact the FSF would suggest that paragraph 5.2.i should be deleted in its entirety as paragraph 5.2.b already requires the lender to enquire into the likely stability of the borrower's income.

5.10 For lenders, please provide any comments you may have in relation to the specific guidance for high-cost short-term credit agreements, and pre-approved offers of credit.

Please refer to the answer to question 3.6.

6 Inquiries into and assessment of substantial hardship (guarantors)

6.1 Please provide any comments you may have on the guidance provided in this chapter, including any suggested revisions or additions.

FSF members treat guarantors (if any) in the same way that they treat borrowers in terms of the assessment of a guarantor's circumstances as it is always possible that the guarantor could become the borrower. If anything FSF members would apply slightly more scrutiny of a guarantor's circumstances than they would a borrower's because of the fact that the guarantor does not have the same 5 working day right to cancel the credit contract as does the borrower.

6.3 Does the guidance in this area provide sufficient certainty for lenders as to how to comply with the relevant principles and responsibilities? Please provide any comments you may have on whether the guidance (and which aspects) should be more prescriptive, or more flexible, and the reasons for that.

Please refer to the answer provided to question 6.1.

6.4 For lenders, please provide an estimate of cost (both one-off costs and ongoing costs), over and above costs you incur in these areas today:
(a) That you may incur if you had to comply with the relevant principles and responsibilities without any guidance in these areas;
(b) That you may incur if you comply with the guidance in this chapter.

Please refer to the answer provided to question 2.4.

6.5 Are the inquiries that should be made of the borrower to assess whether it is likely that the borrower will be able to make the payments under the agreement without suffering substantial hardship also relevant for the guarantor. Why or why not?

Please refer to the answer provided to question 6.1.

6.6 Do you think that any of the inquiries set out at paragraph 5.2 should be mandatory in all cases for guarantors? Why or why not?

The same reservations the FSF has expressed with regard to paragraph 5.2 would apply to guarantor inquiries, for the same reasons.

6.7 For lenders, please provide any comments you may have in relation to the specific guidance for high-cost short-term credit agreements.

Please refer to the answer to question 3.6.

7 Assisting borrowers to make an informed decision

7.1 Please provide any comments you may have on the guidance provided in this chapter, including any suggested revisions or additions.

- The FSF repeats its concerns already expressed in the answer provided to question 5.1 in relation to paragraph 5.5.d in terms of how a lender is reasonably to be expected to determine that a borrower shows characteristics that make them vulnerable without also potentially breaching the Human Rights Act 1993. The same also applies to paragraph 7.13 although the FSF would agree with the suggestion that they should not rely on children under 18 or those with a potential conflict of interest to act as interpreters.

- With regard to paragraph 7.4.a the FSF submits that in any situation where a guarantee is being provided, the borrower has more direct benefit from the credit agreement than does the guarantor. Chapter 8 paragraphs 8.5 – 8.7 specifies what a lender should do in terms of recommending the sort of advice a guarantor should seek before giving the guarantee and on this basis 7.4.a does not need to be said.

- With regard to paragraph 7.4.b the FSF would ask how the lender would determine that any borrower or third part may be under undue influence from another party, particularly where the loan is being applied for on-line.

- Paragraph 7.8 details the types of credit contract for which the lender may not need to provide the same level of assistance when informing the borrower of the key features of the agreement as they would for the types of contract detailed in paragraph 7.7. The FSF submits that this list should also include short-term (by which the FSF means a loan term of no more than 3 years or 36 months), fixed interest rate loan contracts which provide a schedule of payments over the term of the loan as there will be no changes to the contract during its life.

- The FSF questions the efficacy of the use of focus groups, as suggested in the examples under paragraphs 7.11 and 7.18, as a means to ensure potential borrowers understand key features of the loan agreement. The FSF's members have lending relationships with over one million New Zealanders at any one time and the FSF fails to see how a focus group could be truly representative of the individual situations of the vast majority of these people. The FSF believes it should be sufficient that lenders are able to demonstrate that they have made a real attempt to ensure that their loan agreements are written in language that is easy to understand and that they have avoided the use of jargon wherever possible. Analysis of customer complaints or complaints to disputes resolution services would indicate if they have achieved this.

- The FSF questions the relevance of paragraphs 7.22 and 7.23 in the context of assisting borrowers to make informed decisions when these relate to the advertising of lending products which has already been dealt with comprehensively under chapter 3 of the Draft Code.

7.3 Does the guidance in this area provide sufficient certainty for lenders as to how to comply with the relevant principles and responsibilities? Please provide any comments you may have on whether the guidance (and which aspects) should be more prescriptive, or more flexible, and the reasons for that.

Please refer to the answer provided to question 7.1.

7.4 For lenders, please provide an estimate of cost (both one-off costs and ongoing costs), over and above costs you incur in these areas today:
(a) That you may incur if you had to comply with the relevant principles and responsibilities without any guidance in these areas;
(b) That you may incur if you comply with the guidance in this chapter.

Please refer to the answer provided to question 2.4.

7.5 Do the key features of a credit agreement listed at 7.2 capture the key information borrowers should have to make an informed decision as to whether to enter into a credit agreement?

- Paragraph 7.2.a.iv requires lenders to inform borrowers that where repayments are to be made by direct debit payment authority the borrower can cancel the authority. The FSF would suggest that this is not key information a borrower needs to know to make an informed decision. In fact to suggest that they have the right to cancel a direct debit payment authority could effectively put them in breach of their credit contract if they fail to make other arrangements to ensure the loan repayments are met. In any case, it is hard to see what is wrong with the requirement (common in many loan documents) that payments must be made by automatic payment or direct debit. This may in fact be in the borrower's interests by minimising the risk of late payment and the FSF strongly resists the suggestion that there is anything wrong with this practice.

- With regard to paragraph 7.2.f the FSF also reiterates what has already been said about the significant cost involved in making the required systems changes in order to provide individualised information to borrowers such as if the requirement in regard to the cancellation period was to provide the actual date on which this expires rather than to say that the borrower has 5 working days in which to exercise their right to cancel.

8 Assisting guarantors to make an informed decision

8.1 Please provide any comments you may have on the guidance provided in this chapter, including any suggested revisions or additions.

The FSF questions how providing a link to a video explaining the implications of giving a guarantee as per the example provided in paragraph 8.9 would ensure a better understanding of the obligations of the guarantor. If the guarantor's knowledge of basic financial matters is low, the FSF fails to see how provision of a video would in any way enhance their understanding and the mere provision of such a video should not be seen in and of itself to have met lender obligations to guarantors.

8.3 Does the guidance in this area provide sufficient certainty for lenders as to how to comply with the relevant principles and responsibilities? Please provide any comments you may have on whether the guidance (and which aspects) should be more prescriptive, or more flexible, and the reasons for that.

Please refer to the answer provided to question 8.1.

8.4 For lenders, please provide an estimate of cost (both one-off costs and ongoing costs), over and above costs you incur in these areas today:

(a) That you may incur if you had to comply with the relevant principles and responsibilities without any guidance in these areas;

(b) That you may incur if you comply with the guidance in this chapter.

Please refer to the answer provided to question 2.4.

8.5 Please provide any comments you may have on the guidance in paragraphs 8.5-8.7 about when a lender should recommend that guarantors seek legal or consumer information advice, when they should require legal advice, and when they should require independent legal advice.

Paragraph 8.5 suggests that a lender should always allow a guarantor sufficient time to seek legal advice or consumer information advice before they provide a guarantee. The FSF questions what is meant by "sufficient time" and whether, in the case of some transactions, drawing down the loan on the same day as it has been approved would be seen to be allowing sufficient time. More often than not, the timing of the loan relative to the guarantor's opportunity to obtain advice is actually driven more by the borrower's urgency than by the lender's.

Apart from this the FSF is in agreement with the guidance provided in paragraphs 8.5 – 8.7, particularly where it states that the lender can recommend that the guarantor seek either legal advice or consumer information advice, as this choice will ensure that the guarantor is able to obtain the advice they require to make an informed decision without having to incur the expense of taking legal advice if they so wish.

9 Credit-related insurance and repayment waivers

9.1 Please provide any comments you may have on the guidance provided in this chapter, including any suggested revisions or additions.

Credit-related insurance is vital to responsible lending and it could be irresponsible not to offer borrowers appropriate protection. Consumer credit insurance and repayment waivers provide borrowers with another way to avoid having to default on their loan obligations if they become ill for example with all the implications for possible repossession of a secured asset, bankruptcy or other enforcement action that may result. On that basis the FSF is very supportive of the concept of making the provision of credit-related insurance that is appropriate to the borrower's situation as easy as possible for both borrowers and lenders.

- Paragraph 9.2.e states that a lender should inquire into, and consider whether, the premium (including interest where the premium is financed under the credit agreement) is excessive in comparison to the amount of the credit advanced or available. The FSF would like to point out that the Draft Code applies to two types of insurance products, consumer credit insurance and asset insurance. The term of the loan affects the amount of premium paid for consumer credit insurance and repayment waivers. The longer the term of the loan, the higher the premium. It is not clear what is meant by "excessive in comparison to the amount of the credit advanced of available" and the Code needs to provide more clarity in this respect. Asset insurance is a policy paid on an annual basis. Motor vehicle insurance for example can vary depending on the age of the driver, type of vehicle and claims history making the premium vary, however if the loan is settled the policy continues until the annual renewal.

- Paragraph 9.3 states that a lender is entitled to rely on the information provided by the borrower in respect of that cover. However, as an example, it would not be prudent for a lender to rely on the borrower's verbal confirmation that asset insurance is held over a secured asset and it would be quite reasonable and is commonplace for the lender to ask for written confirmation that the asset insurance is in place.

- With regard to paragraph 9.17.a with regard to the requirement to give borrowers sufficient opportunity to consider the terms of the relevant insurance contract, the FSF would point out that consumers have a 15 day cooling off period with regard to insurance policies as an industry standard.

- The FSF also submits that if a lender follows the guidance contained in paragraph 9.18 with regard to the advertising of credit-related insurance, the lender should be able to rely on the insurer to ensure that the advertising material complies with all legal obligations and therefore the requirement that this is the lender's responsibility as per paragraph 9.19 is unnecessary.

9.2 In your view, will this guidance: (1) protect the interests of consumers; (2) promote the confident and informed participation in credit markets by consumers; and (3) promote and facilitate fair, efficient and transparent credit markets? Please provide reasons as to how it may or may not do this.

- Paragraph 9.4 states that a lender should "have regard to" the information they have received in order to satisfy themselves that it is likely that the insurance will meet the borrower's requirements and objectives. The FSF supports the idea that if a borrower is fully employed they can be offered a full and comprehensive consumer credit insurance or repayment waiver whereas a person receiving their income by way of a benefit for example might only be offered term life cover as this is what responsible lenders do already.

- Providing the right cover for the right person is important but it is not clear as to what is expected of lenders in terms of ensuring that the borrower provides sufficient information with regard to a hazardous pursuit such as skydiving for example which might potentially void their cover if they were to suffer an injury in such a pursuit.

9.3 Does the guidance in this area provide sufficient certainty for lenders as to how to comply with the relevant principles and responsibilities? Please provide any comments you may have on whether the guidance (and which aspects) should be more prescriptive, or more flexible, and the reasons for that.

Please refer to the answer provided to question 9.1.

9.4 For lenders, please provide an estimate of cost (both one-off costs and ongoing costs), over and above costs you incur in these areas today:
(c) That you may incur if you had to comply with the relevant principles and responsibilities without any guidance in these areas;
(d) That you may incur if you comply with the guidance in this chapter.

Please refer to the answer provided to question 2.4.

9.5 Do the key features of a credit-related insurance agreement listed at 9.9 capture the main information borrowers require to make an informed decision as to whether to purchase credit-related insurance? Should the Code provide further guidance on which "key exclusions" borrowers should be informed of? If so, how?

- The FSF refers to the answer provided to question 4.5 above in relation to the requirement in paragraph 4.1.e. to provide the borrower with information on the additional costs of financing credit-related insurance and whether this requires the interest cost for the premium of such insurance to be separated out from the other components of the loan. This again appears to be required under paragraph 9.10.b and the FSF repeats its previous objection to the need to do so because the consumer is already being provided with the necessary information as to the total cost of the loan so therefore nothing is to be gained from expecting lenders and insurers to make the significant and costly systems changes this would require in order to comply.

- With regard to paragraph 9.10.d and the requirement that the borrower should be informed of any **key** exclusions from cover, this requirement should apply to consumer credit insurance only and not to asset insurance. These are two distinctly different types of policies and the likelihood of there being key exclusions that might adversely affect the borrower if they were not aware of them is higher with the consumer credit type of insurance than it is with asset insurance.

10 Fees

10.1 Please provide any comments you may have on the guidance provided in this chapter, including any suggested revisions or additions.

The FSF submits that with regard to the matter of credit fees, lenders are awaiting the outcome of the appeal in the case of the Commerce Commission v Sportzone/MTF to provide them with the certainty they seek as to how they can set credit fees since the Commerce Commission's draft guidelines for credit fees seem no longer able to be relied upon.

10.4 For lenders, please provide an estimate of cost (both one-off costs and ongoing costs), over and above costs you incur in these areas today:

(e) That you may incur if you had to comply with the relevant principles and responsibilities without any guidance in these areas;

(f) That you may incur if you comply with the guidance in this chapter.

Please refer to the answer provided to question 2.4

10.5 Do you agree with the guidance in relation to how lenders should have regard to reasonable standards of commercial practice when setting credit fees and default fees?

The FSF does not believe that the Draft Code provides any presently useful guidance on which a lender could rely with regard to the setting of credit fees as outlined in paragraph 10.3. To a large extent lenders still feel that they are in limbo as far as the setting of credit fees is concerned because of the ongoing appeal of the High Court judgment in the MTF/Sportzone case. The FSF looks forward to the outcome of the case and hopes that it will provide the precedent and certainty for which the industry is looking.

11 Subsequent dealings

11.1 Please provide any comments you may have on the guidance provided in this chapter, including any suggested revisions or additions.

The FSF has little in the way of comment to make with regard to the guidance provided in this chapter except to say that paragraph 11.4.1 requires lenders to notify the borrower when it refunds any credit balance or uses that credit balance to repay another amount the borrower owes. Some loan contracts specifically allow for the situation where a borrower may have more than one contract with the lender and it is in the borrower's interest to avoid potential costly bank fees by paying the full amount for all contracts in one regular payment and having them spread across multiple contracts. The FSF submits that it should possible for borrowers to continue to be able to do this if they so wish.

11.2 In your view, will this guidance: (1) protect the interests of consumers; (2) promote the confident and informed participation in credit markets by consumers; and (3) promote and facilitate fair, efficient, and transparent credit markets? Please provide reasons as to how it may or may not do this.

Please refer to the answer provided to question 11.1.

11.4 For lenders, please provide an estimate of cost (both one-off costs and ongoing costs), over and above costs you incur in these areas today:

(g) That you may incur if you had to comply with the relevant principles and responsibilities without any guidance in these areas;
(h) That you may incur if you comply with the guidance in this chapter.

Please refer to the answer provided to question 2.4

12 Default and other problems

12.1 Please provide any comments you may have on the guidance provided in this chapter, including any suggested revisions or additions.

The first concern of a responsible lender is to ensure that the borrower can repay the loan, whether this is at the outset when the loan is first approved or during the life of the loan. Responsible lenders work with their borrowers as much as they possibly can as soon as they start showing signs of stress or get into an arrears situation in order to avoid default and possible enforcement action. The FSF has stressed many times previously, but it is worth stating again, that repossession action is the absolute last resort for a lender. The ultimate aim is always to have the loan repaid for the benefit of both the borrower and the lender.

With that in mind therefore, the FSF submits the following with regard to chapter 12:

- With regard to the second example provided in paragraph 12.7, it is quite common for lenders to enter such arrangements with a borrower. However problems arise when the vehicle will not realise sufficient to fully repay the debt and there would be a shortfall. In this situation the lender may be reluctant to release the security until such time as the full amount owing on the loan is repaid which means the ownership of the vehicle cannot be transferred to the purchaser.

- Paragraph 12.10.b suggests that the lender should tell the borrower there are free and independent budgeting services that may be able to help them develop a repayment plan. This is certainly true and the FSF has a Memorandum of Understanding with the NZ Federation of Family Budgeting Services that describes how FSF members may work with NZFFBS members for the mutual benefit of the borrower and the lender. This relationship exists because FSF members can have confidence that NZFFBS budget advisers are actually trained to provide this advice and because there is a quality assurance process in place to ensure that their advice is appropriate. The same cannot be said of many other budget advisory services which may be staffed by enthusiastic amateurs who ultimately do not provide any benefit to either party to the loan. In fact in FSF members' experience, there are some community agencies who have advised a borrower to default on their loan putting them in breach of their loan contract.

- The FSF has some concerns with the suggestions set out in paragraph 12.13. These potential courses of action should be optional for the lender and not an obligation. Lenders are in business, and where possible, will work with borrowers to come to an arrangement to repay the loan because that allows the lender to on-lend to future borrowers and to stay in business. But it is a business decision on the part of the lender as to whether or not to come to this sort of arrangement and it should remain at their ultimate discretion to do so. It is also of concern to the FSF that anything other than leaving this to the lender's discretion could open the process up to abuse on the part of unscrupulous borrowers.

- Responsible lenders will work proactively with borrowers showing signs of stress to ensure that this aim is achieved but it requires a willingness to work together from both parties. It is unfortunately true that borrowers do not always take up the opportunity to communicate with lenders when they strike trouble throughout the life of the loan, and lenders can find that a borrower in this situation will become impossible to contact.

12.3 Does the guidance in this area provide sufficient certainty for lenders as to how to comply with the relevant principles and responsibilities? Please provide any comments you may have on whether the guidance (and which aspects) should be more prescriptive, or more flexible, and the reasons for that.

Please refer to the answer provided for question 12.1.

12.4 For lenders, please provide an estimate of cost (both one-off costs and ongoing costs), over and above costs you incur in these areas today:

(i) That you may incur if you had to comply with the relevant principles and responsibilities without any guidance in these areas;

(j) That you may incur if you comply with the guidance in this chapter.

Please refer to the answer provided to question 2.4

13 Repossession

13.1 Please provide any comments you may have on the guidance provided in this chapter, including any suggested revisions or additions.

The FSF reiterates previous comments in this submission that the taking of repossession action is the absolute last resort of a responsible lender. The lender's ultimate aim is to have the loan repaid, and repossession seldom results in the lender receiving full repayment of the debt owing and costs incurred in recovery action.

- The FSF has some concerns with the guidance in paragraph 13.1.a which says that a lender should consider all other less intrusive means of enforcing the agreement before starting repossession. Whilst this is precisely what responsible lenders are already doing, sometimes their course of action needs to be pragmatic and timely as failed alternatives to repossession can result in making the borrower's situation worse as interest and costs mount up. Usually it is the case that, if the borrower remains in contact with the lender and continues to update the lender on their situation, the lender will work with the borrower as much as they can. Often borrowers who are under stress avoid communication with lenders and therefore there is no other choice for the lender but to commence repossession action to protect their position.

- The second example under paragraph 13.1.b with regard to the lender allowing the borrower to voluntarily sell the car themselves is often an acceptable practice to FSF members. However should the lender allow the borrower to take this option, it could result in the lender being put in a loss position, due to the value of the vehicle having decreased below the loan balance leaving a shortfall once the vehicle is sold. Further, the lender does not have control of the proceeds of the voluntary sale and cannot ensure that they receive the full benefit of these proceeds to apply to the loan. For this reason, an option such as this should be left entirely to the discretion of the lender as to whether to allow voluntary sale or not.

- With regard to the guidance provided post repossession and sale in the example in paragraph 13.12.c.ii the FSF would question what is meant by "unique items of high value". Some guidance as to what would be considered to be "high value" would be helpful. "Unique items" could also include such things as classic cars as an example which the lender would be capable of valuing or selling appropriately without the need to refer to a third party if the lender is a motor vehicle financier. Again this should be left to the discretion of the lender.

13.3 Does the guidance in this area provide sufficient certainty for lenders as to how to comply with the relevant principles and responsibilities? Please provide any comments you may have on whether the guidance (and which aspects) should be more prescriptive, or more flexible, and the reasons for that.

Please refer to the answer provided to question 13.1.

13.4 For lenders, please provide an estimate of cost (both one-off costs and ongoing costs), over and above costs you incur in these areas today:

(k) That you may incur if you had to comply with the relevant principles and responsibilities without any guidance in these areas;

(l) That you may incur if you comply with the guidance in this chapter.

Please refer to the answer provided to question 2.4

14 Oppression

14.1 Please provide any comments you may have on the guidance provided in this chapter, including any suggested revisions or additions.

There should not be any circumstances under which a borrower might be forced into an agreement or a guarantor forced to provide a guarantee by oppressive means. The Commentary provided in regard to this chapter suggests that the Court must have regard to whether the borrower or guarantor is reasonably able to protect their interests, taking into account their particular characteristics (including their age or physical or mental condition). The FSF submits that a responsible lender could fall foul of this definition because, where the loan assessment takes place on-line rather than face-to-face, they were unable to assess that the borrower was in poor physical or mental condition.

15 Glossary

15.1 Please provide any comments you may have on the suggested definition in this glossary, including any suggested revisions or additions.

The definition of an "experienced user of credit" in the Draft Code is subjective insofar as the requirement for them to have had experience as a borrower under a similar credit agreement recently and to appear to be fluent in English. It may not be possible for a lender to assess a borrower's fluency in English in an on-line situation and the borrower's English fluency does not signify whether or not they are an experienced user of credit.

15.2 Should the definition of high-cost short-term credit agreement instead be based on definitive thresholds? How should any such thresholds be framed to avoid gaming by lenders who provide credit just outside of any such thresholds?

The FSF submits that framing the definition of high-cost short-term credit agreements on definitive thresholds is helpful in determining what types of loans would be described in this way. Certainly care needs to be taken that these thresholds are sufficiently high to avoid lenders providing credit just inside of the thresholds but the FSF believes that the threshold with regard to the loan amount as specified in chapter 15 should be reduced to an amount of $750 as this is the highest amount generally offered by payday type lenders.

Thank you again for the opportunity for the FSF to submit on the draft Responsible Lending Code. Please do not hesitate to contact me if there is anything which you would like to discuss further.

Lyn McMorran
EXECUTIVE DIRECTOR

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APPENDIX A

Membership List as at 19 December 2014

Debenture Issuers - (NBDT) Non-Bank Deposit Takers	Vehicle Lenders	Finance Company Diversified Lenders	Credit Reporting	Insurance	Affiliate Members
Rated • Asset Finance (B) • Fisher & Paykel Finance (BB+) • Medical Securities (BBB+) **Non-Rated** • Mutual Credit Finance	• Aqua Group Ltd • BMW Financial Services • Branded Financial Services • Community Financial Services Limited • European Financial Services • Fleet Partners NZ Ltd • Mercedes-Benz Financial Services • Motor Trade Finances • Nissan Financial Services NZ Pty Ltd • ORIX NZ • SG Fleet • Toyota Finance NZ • Yamaha Motor Finance	• Advaro Ltd • Avanti Finance • Centracorp Finance 2000 • Dorchester Finance • Finance Now • Future Finance • GE Capital • Geneva Finance • Home Direct • Instant Finance • John Deere Financial • DTR Thorn Rentals • South Pacific Loans • The Warehouse Financial Services Group	• VEDA Advantage **Debt Collection Agency** • Baycorp (NZ)	• Autosure • Protecta Insurance • Provident Insurance Corporation Ltd **Associate Members** • Southsure Assurance	• American Express International (NZ) Ltd • AML Solutions • Buddle Findlay • Chapman Tripp • Deloitte • Ernst & Young • Finzsoft • KPMG • PriceWaterhouseCoopers • SimpsonWestern

Total: 47 Members