



FINANCIAL SERVICES FEDERATION

8 June 2020

Consumer Policy

Ministry of Business, Innovation and Employment

By email: consumer@mbie.govt.nz

The Financial Services Federation (FSF) is grateful for the opportunity to provide feedback on the draft addendum to the Responsible Lending Code (RLC) to cover situations where an existing consumer credit contract is varied or replaced for the purposes of reducing a borrower's financial difficulties brought on by the economic or health impacts of COVID-19.

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 than 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.

While the FSF is pleased that some relief is at last being provided to all lenders and not just registered banks, from the obligations of the Credit Contracts and Consumer Finance Act 2003 (CCCFA) to allow them to provide assistance to their customers who are experiencing financial stress due to the impact of COVID-19 by varying contracts, the FSF is very disappointed both in the time it has taken to get to this point and the process of getting there.

On 19 March, the FSF first flagged to the Minister of Commerce and Consumer Affairs, the Hon Kris Faafoi, its concerns that in order to help their customers who were already experiencing financial stress due to the impact of COVID-19, even at that early stage, lenders would require relief from the provisions of the CCCFA. In that letter the FSF pointed out to the Minister that the Financial Conduct Authority in the United Kingdom had already advised lenders in their country that their expectation was that lenders would be expected to develop initiatives that go beyond normal business practices to provide assistance to borrowers and that the UK Consumer Credit Act could impede lenders from doing so.

The FSF has continued to frequently press the point to the Minister and to officials since then that relief was urgently required for all lenders from the provisions of the CCCFA and the

Responsible Lending Code specifically relating to varying consumer credit contracts to provide assistance to borrowers experiencing financial stress due to the impacts of COVID-19. It is therefore extremely disappointing that we are only now having the opportunity to consult on an addendum to the RLC that will allow for that.

This is particularly so because the exemption in regulation for registered banks was granted as at 1 April literally overnight and without any consultation with other similarly affected lenders or other interested stakeholders.

This is also so because of the fact that throughout the entire period leading into Alert Level 4 and beyond the members of the FSF have provided assistance to over 16,000 of their customers by varying or replacing consumer credit contracts in the period from 16 March to 22 May. These variations or replacements have been made to allow for extended payment terms such as reduced repayments, interest only payments or payment deferrals – in exactly the same way as banks have provided assistance to their customers.

FSF members have been providing this assistance because their customers have needed it as they have dealt with the very real financial stress they have been experiencing due to the impact of COVID-19 because this stress is not exclusive to customers of registered banks only. FSF members have done so with the very real risk during this time that the Commerce Commission might enforce the CCCFA against them at some time in the future. But the FSF asks how else could lenders have provided assistance to people in sometimes desperate situations?

Whilst FSF members are reporting that the numbers of requests for assistance they are receiving and the number of credit contracts varied as a result of these is reducing since the peak during the first fortnight in lockdown, they are expecting that there will be further spikes in these types of requests as we reach milestones such as the end of the first 12 weeks of wage subsidy or as people's future employment prospects become clearer in Alert Level 1.

The FSF also points out that the conversations that staff of FSF member companies have had with their customers experiencing this financial stress have been very stressful for these staff members as they try to determine the best way forward for each individual customer knowing that by doing so, they may not have met their company's CCCFA obligations. It must also be remembered that during Alert Levels 4 and then 3 and even since, all this was being done while staff were working remotely from home without the support of their colleagues and team leaders and were therefore experiencing their own levels of stress.

All of which is to say that the FSF strongly believes that the fair and reasonable thing to do when the draft addendum is eventually finalised is to make it retrospective at least as far back as the beginning of Alert Level 4 to provide non-bank lenders with the same level of comfort as has been afforded to registered banks through the 1 April exemption regulation and also to acknowledge and formalise necessary practices in place since the start of lockdown.

With respect to the addendum itself, the FSF has the following to say. Whilst the FSF would have preferred that the clarity and conciseness of the bank exemption regulation be brought across to cover all lenders, the addendum certainly provides more comfort to lenders than did either version of the Commerce Commission's guidance for lenders released first in April and updated in May.

The FSF is pleased to see the acknowledgement in the addendum of the fact that lenders too have experienced disruption to their businesses as a result of COVID-19. FSF members have also experienced significant loss in the volume of new lending being applied for both during the period of Alert Levels 4 and 3 and since. This will have a significant impact on future revenue streams and will also impact the availability of credit from non-bank lending sources which will not be helpful to New Zealand's economic recovery from the effects of COVID-19.

The FSF is also pleased that the scope of the addendum applies where either an existing contract is varied, or a replacement contract is entered into for the purpose of reducing borrowers' financial difficulties. This recognises the fact that for some non-bank lenders, as was the case for some registered banks, their systems are such that a replacement contract must be entered into in order to extend a loan term rather than varying an existing contract.

The FSF understands the rationale behind the fact that the addendum is only in place until 31 October 2020 to allow for the varying or replacement of existing loan contracts for the purpose of reducing borrowers' financial difficulties due to the impact of COVID-19 up until that point. However, with economic forecasters predicting that the economic recovery from the effects of COVID-19 is going to be a long one, the FSF believes the way needs to be left open for this to be extended if lenders are still seeing customer need for assistance beyond this deadline without having to go through the extended process that it has taken to get this addendum in place this time round.

The FSF notes from paragraph 6 of the addendum that, where applicable, references in the Code to guidance in section 5 of the Code (e.g. in sections 6 and 9) should be interpreted as references to guidance in section 5 of the Code as supplemented by the addendum. Whilst this means that it is implied that the addendum sits alongside section 5 of the Code in order to replace relevant parts of this section, the FSF believes that this should be made more explicit. By that the FSF means that the addendum should clearly state that sections 5.6 and 5.9 of the Code are superseded by the addendum.

Other than that, the FSF believes the actual guidance to lenders in paragraphs 9 and 10 of the draft addendum is appropriate and provides lenders with the comfort they have so long been seeking. The types of inquiries which **may** be relevant to determine whether payment relief is required and whether it is appropriate given the borrower's circumstances as detailed in paragraph 10 resemble the types of inquiries lenders have been making of borrowers since they commenced providing assistance to them more than two months ago.

Finally, the FSF strongly submits that this addendum needs to be finalised and put into force sooner rather than later so as to provide the appropriate relief to all lenders that was provided to registered banks more than two months ago. The FSF also reiterates the strong submission that this addendum be made retrospective to 1 April 2020 in order to provide the requisite comfort to all lenders that their actions in assisting their borrowers and the necessary practices taken to do so since the start of lockdown, will not leave them vulnerable to enforcement action from the Commerce Commission.

Thank you again for the opportunity for the FSF to submit on the draft addendum. Please do not hesitate to contact me if you require any further information or discussion.



Lyn McMorran
EXECUTIVE DIRECTOR

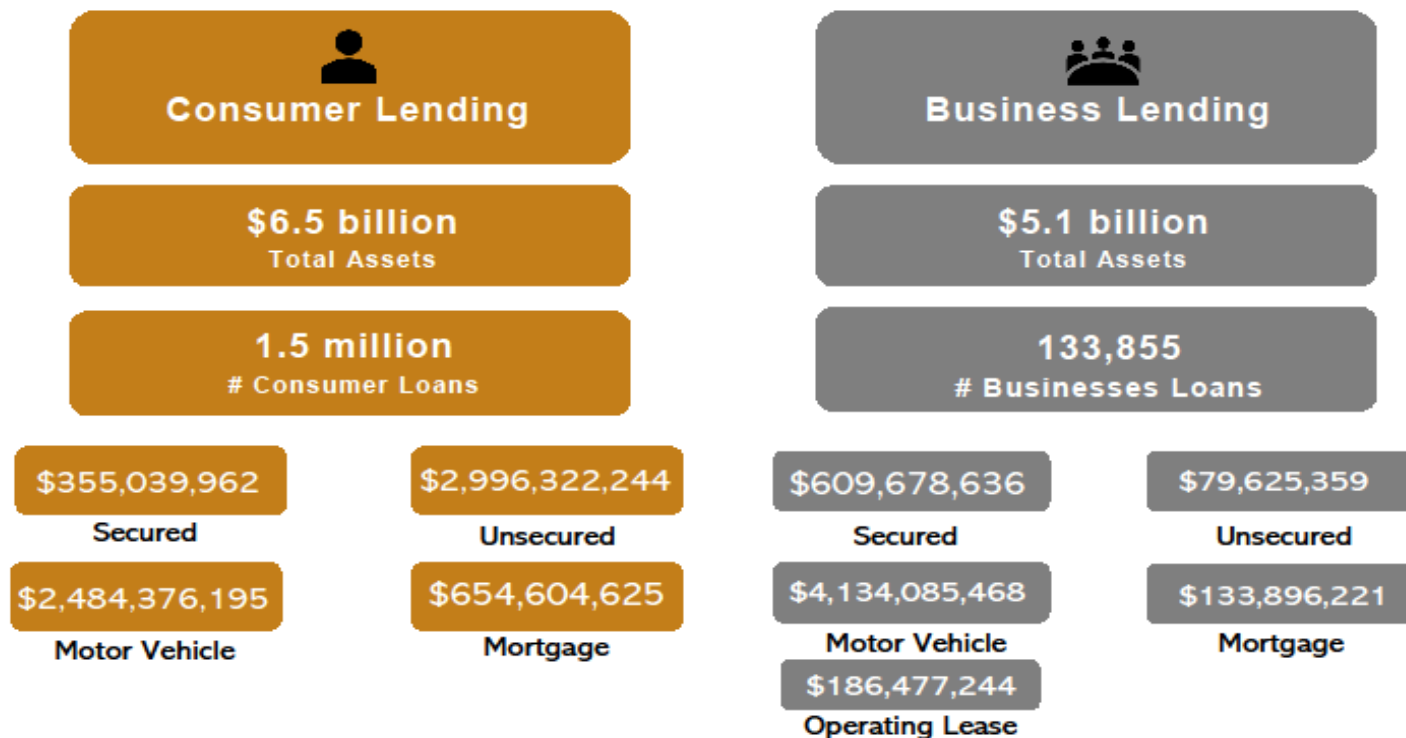
Appendix A
FSF Membership List as at 1 February 2020

Debenture Issuers - (NBDT) Non-Bank Deposit Takers	Vehicle Lenders	Finance Company Diversified Lenders	Finance Company Diversified Lenders	Insurance	Affiliate Members
<u>Rated</u> Asset Finance (B)	AA Finance Limited BMW Financial Services <ul style="list-style-type: none"> ➤ 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 <ul style="list-style-type: none"> ➤ Mitsubishi Motors Financial Services ➤ Skyline Car Finance Onyx Finance Limited Toyota Finance NZ Yamaha Motor Finance	Avanti Finance <ul style="list-style-type: none"> ➤ Branded Financial Caterpillar Financial Services NZ Ltd CentraCorp Finance 2000 Finance Now <ul style="list-style-type: none"> ➤ The Warehouse Financial Services Flexi Group (NZ) Limited Future Finance Geneva Finance Home Direct Instant Finance <ul style="list-style-type: none"> ➤ Fair City ➤ My Finance John Deere Financial L & F Ltd <ul style="list-style-type: none"> ➤ Speirs Finance ➤ YooGo 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 <ul style="list-style-type: none"> ➤ Autosure <u>Credit Reporting & Debt Collection Agencies</u> Baycorp (NZ) <ul style="list-style-type: none"> ➤ Credit Corp Centrix Collection House Equifax (prev Veda) Illion (prev Dun & Bradstreet (NZ) Limited) Intercoll	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: 59 members
<u>Non-Rated</u> Mutual Credit Finance Gold Band Finance <ul style="list-style-type: none"> ➤ Loan Co 	<u>Leasing Providers</u> Custom Fleet Fleet Partners NZ Ltd Lease Plan ORIX NZ SG Fleet				



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 40 lending members, the membership list can be found at our website www.fsf.org.nz



FSF lending members data survey period as at 29 February 2020 . Data collected and aggregated by KPMG. Values in NZ\$.