



## FINANCIAL SERVICES FEDERATION

19 January 2022

Open letter on behalf of members of the Financial Services Federation to:

Minister of Commerce and Consumer Affairs,  
The Hon David Clark

Chair of the Finance and Expenditure Select Committee,  
Duncan Webb

Council of Financial Regulators

Opposition Spokesperson for Commerce and Consumer Affairs,  
Andrew Bayly

Leader of the ACT Party and ACT spokesperson for Finance & Expenditure  
David Seymour and Damien Smith

The Financial Services Federation (FSF) is very pleased to see that Minister Clark has called for the Council of Financial Regulators to bring forward a scheduled investigation into whether banks and lenders are implementing the CCCFA as intended.

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 over 85 members and affiliates providing these products to more than 1.7 million New Zealand consumers and businesses. Our affiliate members include internationally recognised legal and consulting partners. The FSF and its members take a conservative approach to compliance and support the government's mandate to stamp out predatory lending.

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.

The FSF strongly supports the call for an immediate and urgent investigation into the effects of the changes to the Credit Contracts and Consumer Finance Act 2003 (CCCFA) that came into effect from 1 December 2021.

## **Executive Summary:**

The following are the key points of this letter:

- The changes to the CCCFA that took effect from 1 December 2021 are not working for consumers, lenders or intermediaries such as brokers. An urgent review into what is wrong with the regime is required.
- The changes apply to all lenders not just to banks and are affecting business customers (particularly SMEs) not just consumers as outlined further in this letter.
- The changes will not just affect housing lending but lending for essential items like motor vehicles and household appliances.
- FSF made many submissions while the regime was being developed stating that the proposed reforms were moving too far in the wrong direction from the principles-based regime put in place by the 2015 CCCFA reforms given that the vast majority of lending carried out in New Zealand was already being done responsibly.
- The problems of vulnerable consumers being preyed upon by irresponsible or unscrupulous lenders would not be solved by further legislation but by enforcement of the existing legislation against such practices.
- The FSF does not believe that officials developing the changes to the law, the new regulations and the revised Responsible Lending Code took into sufficient consideration the concerns of lenders voiced throughout the change process in spite of the many opportunities afforded to lenders to voice these concerns.
- The implementation timeframe from the time the total regime was confirmed (February 2021) until the time it took effect (1 December – admittedly later than the original 1 October date) caused significant stress and pressure for lenders to ensure 100% compliance, particularly in light of the overly punitive personal liability attached to senior managers and directors of lenders for not being in compliance.
- The key problem with the regime lies with the overly prescriptive nature of the regulations for assessing loan affordability (Regs 4AA – 4 AO), the granular nature of the enquires required of consumers under these regulations, the requirement that a “reasonable” buffer or surplus be applied over and above the granular expense assessment and the lack of any ability on the part of the lender to trust the information provided by the borrower since the repeal of Lender Responsibility Principle 9C7.

- These Regulations have the effect of treating every New Zealand consumer as a “vulnerable borrower” when the significant majority of consumers would consider themselves to be no such thing.
- The issue does not lie with the way in which lenders are interpreting these regulations as they have been written so as to leave no room for interpretation and lenders will not risk deviating from the prescriptive nature of the requirements of the regulations as written for fear of incurring the significant personal liability against their senior managers and directors.
- The FSF believes the affordability regulations 4AA – 4AO should be repealed and Lender Responsibility Principle 9C7 should be reinstated immediately. Beyond this the Government and officials need to engage with lenders, consumers and intermediaries to determine a way forward to ensure that New Zealand’s consumer credit legislation is fit for purpose for the future.
- The FSF is eager to be part of such further engagement.

#### **Application of the CCCFA changes to all lenders:**

The FSF notes that since the implementation of the substantive changes to the Credit Contract and Consumer Finance Act 2003 as of 1 December 2021, there has been a lot of media commentary about the effects these changes have had particularly on consumers seeking lending for house purchases. This commentary has become more frequent and more vocal over the holiday period and has centred mainly on the fact that these changes have been brought about by the banks.

The FSF would like to point out that the changes apply to all lenders – not just to banks – and they are having adverse effects on the ability for consumers to borrow from all lenders. This creates issues for consumers wishing to access credit to purchase motor vehicles, home appliances, all manner of other essential goods or services – indeed for any lending purpose at all.

The FSF will be gathering data from members over the coming months to quantify the effect of the changes on the time it is taking lenders to assess credit applications, and whether the number of declinatures has increased as a result of the changes. The FSF has however received sufficient anecdotal information from members to understand that the time to assess applications and the number of declines has increased dramatically in the weeks since 1 December. The FSF notes that FSF members already had a high average rate of declinature reporting only 55% of loan applications approved in the year to 28 February 2021. This information is included in Appendix B.

It is also worth noting that the average percentage of loans in arrears across the FSF membership as of 28 February 2021 had decreased to 4.4% from 5.8% in 2016, which suggests that the changes made to the CCCFA in 2015 introducing the Lender Responsibility Principles

were working. It is an unfortunate fact that there will always be some borrowers whose lending falls into arrears, not because the original lending decision was irresponsible but due to changes in the borrower's circumstances etc. Only a very small percentage of the accounts in arrears become defaults or lead to the lender taking recovery action against the borrower as this almost always leads to losses for the lender and the worst possible outcome for the borrower.

Rather, responsible lenders such as FSF members prefer to work with their customers (and their financial mentors) to come to the best possible solution for both parties in order to maintain the relationship with the borrower for the longer term and, for this reason, the FSF has always been fully supportive of the formal hardships process implemented by the 2015 changes to the CCCFA.

### **The effects of the changes on customers of non-bank lenders:**

As demonstrated by the data provided in Appendix B, FSF members as of 28 February 2021 provided almost half of the personal lending taken out by New Zealand consumers in the previous year, with the remainder being provided by the banks. The FSF membership has grown considerably (by nearly 40%) in the months since 28 February, largely because of the serious concern all responsible lenders had with respect to the significant penalties attached to not just the company itself but its senior managers and directors if they were not 100% compliant with the requirements of the revised Act, and the need for them to be sure that they were completely across all of these requirements given their substantive and complex nature. It is therefore likely that the personal lending provided by non-bank lenders now exceeds that of the banks.

For customers of responsible non-bank lenders, the inability to access credit when they apply for it will mean that they will not be able to replace essential household appliances when required which could result in substantial hardship.

As you can see from the membership list provided in Appendix A, many FSF members are heavily involved in lending for the purchase of motor vehicles both new and used. You will be aware that New Zealand currently has one of the oldest motor vehicle fleets in the OECD at an average age of 14.4 years according to Ministry of Transport data. This makes New Zealand's fleet amongst the most unsafe and the most fuel emitting fleet in the world.

Most New Zealanders require a motor vehicle to transport themselves and their families to work, school, shops, medical appointments etc. Many people rely on access to their motor vehicle to be able to sustain their employment and therefore their income. The vast majority of New Zealand consumers require credit in order to be able to purchase a motor vehicle. Again, restricting such access will result in substantial hardship for many New Zealand families.

The FSF also believes that the less that New Zealand consumers can have access to finance to upgrade their vehicles when they feel it is appropriate for them, the longer they will retain their existing vehicle or the more they will be forced to purchase older vehicles with fewer safety

features and less fuel efficiency. This will only make New Zealand's situation worse with respect to the safety of the vehicles on New Zealand's roads and the amount of carbon emissions for which they are responsible and will make the Government's objectives with respect to conversion of the fleet to electric vehicles impossible to achieve.

FSF members are also reporting that their business customers, particularly small to medium enterprise customers, are being adversely affected by the CCCFA changes. Whilst business lending is not directly covered by the CCCFA changes, they are impacting indirectly on business lending applications. Even where the primary purpose of the lending is for business, where the business is closely held by directors with concurrent consumer debt that is also serviced by income derived from the business, lenders feel it is necessary to consider the effect of the new CCCFA affordability requirements on existing consumer debt to determine whether the business is providing sufficient income to meet those requirements as well as any additional business debt. This is to ensure that not only can the business afford its debts, but that the consumer borrowers linked to the business can also afford theirs under the overly prescriptive requirements of the new affordability assessment regulations.

Unfortunately, the FSF believes that the CCCFA changes are likely to have the opposite effect to the purposes of the CCCFA to promote and facilitate fair, transparent, and efficient markets for credit in New Zealand and to protect the interests of consumers under credit contracts. The FSF believes the changes are already causing responsible lenders to decline loan applications from people who they would have been able to help in the past because these prospective borrowers do not meet the prescriptive criteria that now apply to those lending entities who have always behaved responsibly and compliantly. If these consumers are unable to access credit from responsible providers and they have a need for such access, their only alternative will be those lenders for whom compliance and responsible behaviour have never been a concern, possibly placing vulnerable consumers right back where they started with the irresponsible players in the market as these will be the only choices left for some consumers.

#### **How FSF members have worked with their customers since COVID-19:**

Since the onset of the COVID-19 pandemic within New Zealand's borders, many consumers have experienced (or have been concerned that they might experience) financial stress because of reduced hours or loss of income due to lockdowns and changes to Alert Levels. From the beginning of the first lockdown in March of 2020, FSF members have been inundated by calls from customers seeking assistance due to the financial stress they were experiencing because of the effects of the COVID-19 pandemic and subsequent lockdown(s). Appendix C demonstrates the extent of these calls across the membership at the time (February to September 2020) and the number of loan contracts that were varied to assist these customers.

FSF members provided this assistance to their consumer customers knowing that technically they could be in breach of the CCCFA as it stood in 2020 but because it was the right and moral thing to do. This is despite the fact that banks were provided with an exemption via regulation from the requirements of the CCCFA to assess the affordability of the loan variation when they

extended terms, deferred repayments, or converted the loan to interest only as a result of the Mortgage Repayment Deferral Scheme, whilst this same accommodation was not afforded to all lenders until some three months later through an addendum to the Responsible Lending Code.

FSF members have continued to work with their customers – both consumer and business – to develop solutions to help them through the uncertainties that COVID-19 continues to throw at us.

The FSF points this out to demonstrate the ongoing commitment of FSF members to provide responsible lending and empathetic consideration of the individual circumstances of all of their customers.

**What the FSF believes are the problems with the CCCFA in its current form:**

The FSF has set out our concerns on this reform and new regulations in our many submissions throughout the consultation period over the last three years. These are housed on our website [here](#).

Essentially, the FSF has said right from the very beginning since the announcement of the reform process by then Commerce and Consumer Affairs Minister, the Hon Kris Faafoi, at the FSF's annual conference in October 2018 that the changes were unnecessary if the existing regime was being enforced with sufficient rigour.

Throughout the consultation period the FSF reiterated the belief that the reforms were swinging far too far in the wrong direction by moving from the principles-based approach the changes made to the CCCFA effective 2015 brought in with introduction of the Lender Responsibility Principles (S9C) to that of a highly prescriptive one that was always going to be very manual and time-consuming from the lenders' point of view and intrusive and time-wasting from that of the consumer, particularly with respect to the regulations regarding the way in which affordability assessments would be required to be carried out.

The FSF continually voiced the belief that the vast majority of the lending carried out in New Zealand was already being done so responsibly and that, without enforcement, the proposed changes would do nothing to protect vulnerable consumers being preyed upon by unscrupulous lenders. The FSF also stated repeatedly that we did not believe that most New Zealand consumers accessing credit as required from responsible lenders wanted these changes and we consider that we have proven to have been right in this belief.

Indeed, no notice of the changes or the effect they may have on consumers has been provided to the public of New Zealand by the Government nor any justification as to why the process for them to access credit has now become so difficult. It has been left to the FSF and the NZ Bankers Association in association with FinCap for a consumer resource to have been developed to explain the reasons why the process has now become so fraught.

The FSF supported the changes to the CCCFA made by the Credit Contracts Legislation Amendment Bill 2019 (CCLAB) that placed into law a definition of what constitutes a “high-cost lender” or “high-cost loan” (being a loan provided at an annual interest rate of more than 50%). The FSF also fully supported the introduction of a limit on the amount of fees and interest that could be charged by such high-cost lenders to 100% of the loan amount (where, if a loan of \$500 is provided, the maximum that the lender could charge in interest and fees would be \$1,000).

The FSF further supported the amendment to CCLAB at Select Committee stage that introduced an interest rate cap of 0.8% per day per annum on all high-cost loans (meaning that high-cost lenders could not charge an interest rate greater than that equivalent to 292% per annum) – despite only being given four days to respond to the consultation on the introduction of such a cap.

However, as stated previously, the FSF has always believed that the issue of vulnerable consumers continuing to be victims of irresponsible lending practices lies not with a lack of preventive legislation but more with a lack of enforcement of the legislation already in place. The FSF would have liked to have seen far more of the types of enforcement activity that the Commerce Commission has undertaken against the likes of payday lenders and mobile traders to substantially penalise them for their unethical behaviour or to put them out of business completely.

The FSF also believes that the major cause of lenders’ concerns and the poor experiences for consumers since the December CCCFA changes lies less with the Act itself but with the regulations that were supposed to support these changes. The FSF has always strongly submitted that the regulations, particularly those with respect to how the assessment of the affordability of a loan was to be conducted (Regs 4AA-4AO), took too much of a “one-size-fits-all” and an overly prescriptive approach.

The FSF acknowledges that the views of members were widely sought by MBIE officials developing these regulations and the subsequent guidance provided in the Responsible Lending Code over many consultations, meetings, and through the provision of multiple submissions throughout much of 2020 before the regulations and Code were finalised in February of 2021. However, the FSF has always felt that, whilst officials listened to these views, members’ serious concerns were never taken into sufficient consideration by them. The fact that the concerns raised in these submissions are now coming to fruition so early in the new regime does not give FSF members any sense of satisfaction.

The FSF believes that the regulations should never have had the effect of making access to credit difficult for all consumers or of excluding some consumers that have previously proven they can afford to meet their loan commitments but do not now meet the prescriptive affordability requirements – as is becoming increasingly obvious. Rather, it should have been made harder for irresponsible lenders to provide credit to consumers in vulnerable

circumstances that would leave these consumers in significant financial hardship or a worsening spiral of debt, and easier for the Commerce Commission to enforce the law against such lenders if they were found to be doing so.

The FSF does not believe that the problem lies with the way in which lenders are interpreting these regulations – the regulations are so prescriptive as to leave absolutely no room whatsoever for interpretation. They must be complied with as written – no matter how poorly – and that is what lenders are doing and the liability of not doing so is so punitive as to leave lenders with no choice with respect to any kind of interpretation or judgement.

Additionally, once the regulations and the Code were finalised in February of 2021, lenders initially had until 1 October to implement them (however the FSF gratefully acknowledges the Minister’s extension of this deadline to 1 December as a result of the August lockdown).

However, even with this extension, the FSF has always maintained that the prescriptive nature of the regime and the significant company and personal liability attaching to senior managers and directors of lenders if found to be in breach required such significant changes to lenders’ systems and processes as to make this date virtually impossible to meet. In the absence of any further leeway concerning the commencement date, lenders have had to do what they can to ensure compliance and the addition of any nuance or allowance for judgement of any kind was unable to be accommodated. The delivery of these changes including significant changes to systems and processes and training of staff and intermediaries in new processes were further challenged by the longest lockdown in New Zealand’s largest market, Auckland.

### **What in particular is wrong with the Affordability Regulations:**

Previously it was acceptable for lenders to obtain information from borrowers about their fixed financial commitments such as rent/mortgage, other debt, insurance costs, power, phone/internet, etc, then to determine reasonable allowable amounts for other costs such as food and transport (depending on the borrower’s circumstances), and then to allow for some discretionary expenditure (without having to have all such expenditure itemised) to ensure the loan’s affordability. This is no longer the case.

Nor is it any longer the case that the lender can rely on the information provided by the borrower unless they have reason to believe that this information might be unreliable – as was allowed under Lender Responsibility Principle 9C7 which was repealed under CCLAB much to the protest of the FSF.

Now the regulations require that lenders should obtain information about the borrower’s fixed commitments and all their discretionary expenditure, verify these where possible and interrogate the customer as to what, if any, of their discretionary expenditure they would cease to make the loan more affordable. The lender is then required to apply a “reasonable” surplus or buffer over and above this expenditure to consider the fact the income might have been



overstated or expenditure understated – in spite of whether or not income and expenditure has been verified.

It used to be that lenders could trust borrowers to make their own decisions as to what expenditure they would continue and what they would stop to ensure they met their loan commitments. These regulations require lenders to start off an essentially non-trusting relationship with customers by asking them to provide so much detailed and personal information (and verification of this information) with respect to their spending habits. Clearly there are consumers in vulnerable circumstances who might not be able to make the most appropriate judgement with respect to their own circumstances, and lenders have since 2015 had an obligation to identify such borrowers and treat them with special care and attention.

Treating all consumers as being vulnerable, which is what these regulations are requiring lenders to do, is entirely unreasonable when most New Zealand consumers are perfectly capable of making decisions for themselves as to whether a loan is appropriate for their circumstances.

**What the FSF believes should be done to improve the CCCFA regime:**

The FSF would greatly value any opportunity to work constructively with Government and officials to ensure better outcomes for all consumers seeking access to consumer credit in New Zealand, for whatever purpose, provided by responsible lenders whether they be banks or non-bank lenders.

However, the FSF believes that the regime we have in place currently is significantly flawed and the FSF's biggest concerns throughout the process of the development of the regime are being realised only weeks into the commencement of the regime.

The FSF strongly supports an immediate and comprehensive review of what is working with respect to the regime and what is not. The FSF believes that this time around the review needs to take into consideration the views and financial expertise of responsible lenders and more consumers wishing to access credit responsibly. The FSF believes that a fundamental problem with the process of developing the 2021 CCCFA changes is that they have come as a nasty surprise to most consumers who, if they were aware that there were problems with the existing CCCFA regime, it was because of "loan sharks" flouting the current law to prey on vulnerable consumers. The fact is that the current regime now treats all consumers as being either "vulnerable" or incapable of making their own rational borrowing decisions which is frankly insulting to the majority of New Zealanders as the vast majority of New Zealanders would not see themselves as either dealing with loan sharks or as being a vulnerable consumer.

The FSF would like to see the review firstly and most urgently repeal the affordability regulations Regs 4AA – 4AO and return to the principles-based regime of the 2015 CCCFA reforms, (including the reinstatement of Lender Responsibility Principle 9C7 to allow lenders to

rely on the information provided by the borrower unless they have reasonable grounds to believe the information is not reliable.

Further, there needs to be a willingness from Government and officials to undertake to listen this time around to responsible lenders as to what further improvements could be made to the regime to protect access to credit for New Zealand consumers and to ensure that it is provided to them by responsible lenders.

**Where to from here:**

The FSF is eager to be part of any such further investigation. FSF members are available to talk to Government and officials about their experiences and those of their customers and are hoping that they will be acknowledged and considered. We remain optimistic, in hopes to finally achieve a level of understanding between both the regulator and the industry, as we both strive to achieve the same objectives– reasonable access to credit provided responsibly by all lenders, and protection of those who are vulnerable – which can be constructively and more efficiently achieved this time around.

We look forward to these further discussions.

With kind regards,



Lyn McMorran  
EXECUTIVE DIRECTOR

Please note that as an open letter this will be sent to FSF members, media and other interested parties such as other industry bodies.

Appendix A

FSF Membership List as at January 2022

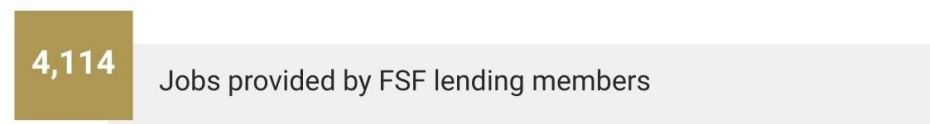
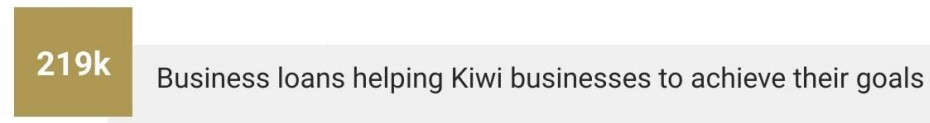
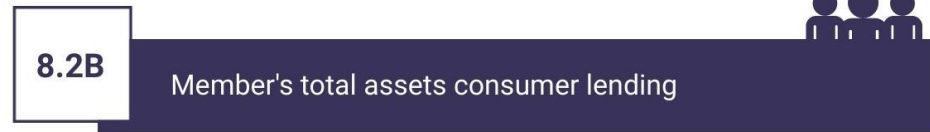
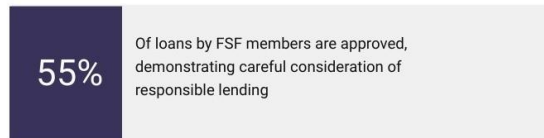
Non-Bank Deposit Takers, Insurance Premium Funders,	Vehicle Lenders	Finance Companies/ Diversified Lenders	Finance Companies/ Diversified Lenders, Leasing Providers	Credit Reporting, Debt Collection Agencies, Insurance Providers	Affiliate Members
<p>XCEDA (B)</p> <p>Finance Direct Limited ➤ Lending Crowd</p> <p>Gold Band Finance ➤ Loan Co</p> <p>Mutual Credit Finance</p> <p><u>Credit Unions/Building Societies</u></p> <p>First Credit Union</p> <p>Nelson Building Society</p> <p>Police and Families Credit Union</p> <p>Steelsands Credit Union Inc</p> <p>Westforce Credit Union</p> <p><u>Insurance Premium Funders</u></p> <p>Elantis Premium Funding NZ Ltd</p> <p>Financial Synergy Limited</p> <p>Hunter Premium Funding</p> <p>IQumulate Premium Funding</p> <p>Rothbury Instalment Services</p>	<p>AA Finance Limited</p> <p>Auto Finance Direct Limited</p> <p>BMW Financial Services ➤ Mini ➤ Alpha Financial Services</p> <p>Community Financial Services</p> <p>European Financial Services</p> <p>Go Car Finance Ltd</p> <p>Honda Financial Services</p> <p>Kubota New Zealand Ltd</p> <p>Mercedes-Benz Financial</p> <p>Motor Trade Finance</p> <p>Nissan Financial Services NZ Ltd ➤ Mitsubishi Motors Financial Services ➤ Skyline Car Finance</p> <p>Onyx Finance Limited</p> <p>Toyota Finance NZ</p> <p>Yamaha Motor Finance</p>	<p>Avanti Finance ➤ Branded Financial</p> <p>Basalt Group</p> <p>Basecorp Finance Ltd</p> <p>Blackbird Finance</p> <p>Caterpillar Financial Services NZ Ltd</p> <p>Centracorp Finance 2000</p> <p>Finance Now ➤ The Warehouse Financial Services ➤ Southsure Assurance</p> <p>Humm Group</p> <p>Future Finance</p> <p>Geneva Finance</p> <p>Harmony</p> <p>Instant Finance ➤ Fair City ➤ My Finance</p> <p>John Deere Financial</p> <p>Latitude Financial</p> <p>Lifestyle Loans NZ Ltd</p> <p>Metro Finance</p> <p>NZ Finance Ltd</p>	<p>Pepper NZ Limited</p> <p>Personal Loan Corporation</p> <p>Pioneer Finance</p> <p>Prospa NZ Ltd</p> <p>Smith's City Finance Ltd</p> <p>Speirs Finance Group ➤ Speirs Finance ➤ Speirs Corporate &amp; Leasing ➤ Yoogo Fleet</p> <p>Thorn Group Financial Services Ltd</p> <p>Turners Automotive Group ➤ Autosure ➤ East Coast Credit ➤ Oxford Finance</p> <p>UDC Finance Limited</p> <p><u>Leasing Providers</u></p> <p>Custom Fleet</p> <p>Fleet Partners NZ Ltd</p> <p>ORIX New Zealand</p> <p>SG Fleet</p>	<p>Baycorp (NZ) ➤ Credit Corp</p> <p>Centrix</p> <p>Collection House</p> <p>Debtworks (NZ) Limited</p> <p>Equifax (prev Veda)</p> <p>Illion (prev Dun &amp; Bradstreet (NZ) Limited</p> <p>Intercoll</p> <p>Quadrant Group (NZ) Limited</p> <p><u>Credit-related Insurance Providers</u></p> <p>Protecta Insurance</p> <p>Provident Insurance Corporation Ltd</p>	<p>Buddle Findlay</p> <p>Chapman Tripp</p> <p>Credisense Ltd</p> <p>Credit Sense Pty Ltd</p> <p>Experian</p> <p>EY</p> <p>FinTech NZ</p> <p>Finzsoft</p> <p>Happy Prime Consultancy Limited</p> <p>HPD Software Ltd</p> <p>KPMG</p> <p>LexisNexis</p> <p>Motor Trade Association</p> <p>PWC</p> <p>Simpson Western</p> <p>Verifier Australia</p> <p>Total 84 members</p>

Appendix B



FINANCIAL SERVICES FEDERATION

The Financial Services Federation (FSF) is the non-profit industry association for responsible and ethical finance, leasing and credit-related insurance providers operating in Aotearoa New Zealand.



Data collected and aggregated by KPMG in FSF's annual member data survey as at February 2021. Values in NZ\$.

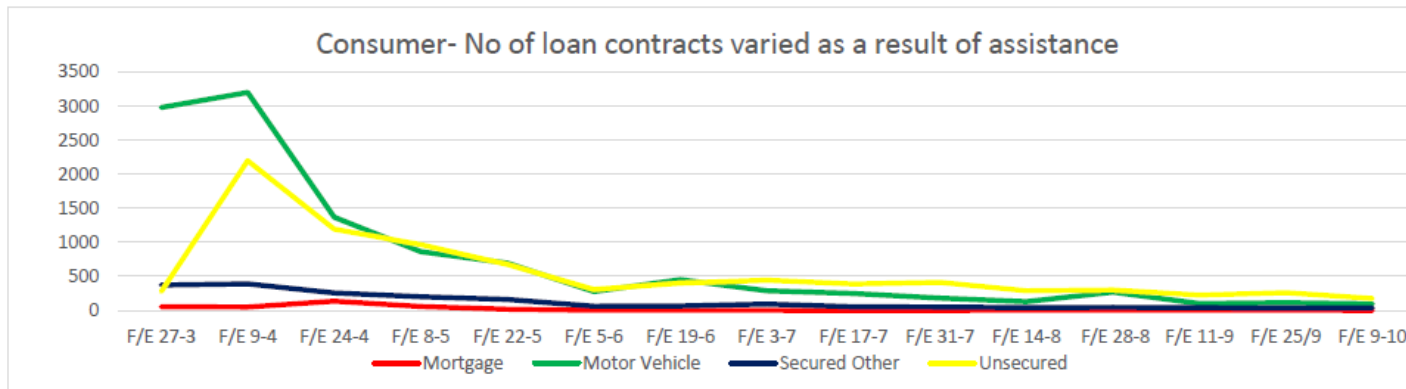
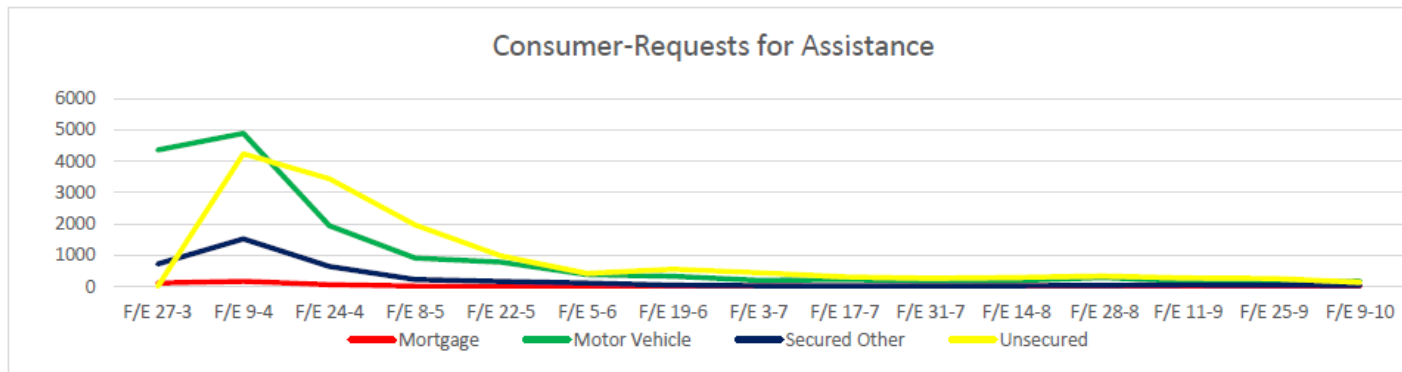
Appendix C



FINANCIAL SERVICES FEDERATION

Requests for assistance data up to 9 October 2020

1. Consumer Lending



Data collected by the FSF membership regarding requests for assistance due to financial effects of COVID-19 on customers. Data collected and aggregated by KPMG.