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

Commentary and submissions from Steelsands Credit Union Incorporated (trading as NZCU Steelsands)

Introduction

The introduction states that the Credit Contracts and Consumer Finance Act 2003 (**the Act**) helps to protect consumers when they borrow money. In April 2019, the Minister of Commerce and Consumer Affairs introduced the Credit Contracts Legislation Amendment Bill, the purpose of which was to reduce irresponsible and predatory lending and resulting consumer harm.

Feedback has been requested on the draft regulations, the commencement order, additional regulations inserted by the Bill and initial policy thinking on the content of the annual return.

NZCU Steelsands wishes to make submissions on these points and contribute to further discussions on the matters.

Submission

The regulations should be expanded to cover all credit provided to the public by companies. This is to ensure the provision of credit is controlled in the future and “new” versions of credit provided by any provider is overseen by this legislation. This will better control the unscrupulous lender who wants to slip between the cracks in the existing legislation.
While this may cause issues for small firms currently providing this type of lending or credit (eg buy now pay later, truck sales, pay day lending), it would force standards to be met and minimise the unscrupulous borrower taking advantage of lenders.

This approach may also cover the ever faster digital development and changing approach to banking & credit services in general.

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

KEY AREAS WE WOULD LIKE YOUR FEEDBACK ON:
• The proposed process for assessing the borrower's requirements and objectives.
• How these regulations could be refined to minimise cost for lenders.
• Other features of an agreement that lenders should ask borrowers about.

Submission

We support the standards or regulations proposed on assessing the borrower's requirements and objectives as this is a normal part of our processes and we believe it is important in understanding our members (or borrowers) needs.
Though we submit the following -
4AA requires the lender to ask the borrower the amount, purpose and term of the credit and then assess whether the products and related agreement is compatible with these requirements.
We agree with the amount and purpose, though the term is usually not provided or discussed at the start of the process as most borrowers have not pre- calculated the term of the loan as this is generally the complex part of the discussion. This would normally come at the end of the process, that is after the amount of the loan value is processed against the borrower's ability to repay as expressed in regulations 4A to 4AI.
We therefore submit that section 4AI be changed to include this process of detailed discussion of the term against their requirements and their ability to pay.
We also submit that there should not be a requirement to discuss the term in detail at the start of the process in 4AA, though if raised should be discussed against the products provided by the lender as you suggest.
For example, in our case we have a range for a personal loan (or credit) of $500 to $60,000 and for the term up to 7 years and this would be explained in the initial discussion along with different interest rates based on the amount of the loan and the security offered.
If the lender proposed a different term or amount or security available, then a different product would be explained to them, e.g. a loan requiring a mortgage with a different interest rate & repayment schedules.

As for the intent of the loan, we are required by other legislation to enquire on the purpose (by AML/CFT) of the credit request, so any requirement of this legislation should mirror or mention the requirements of other legislation that should be used in this process.
Our process also uses the identified purpose for the loan or credit in determining the disbursement of the funds to the lender. This is seen by us as a responsible approach to helping people manage their financial situation and to help us meet our requirements under the AML/CFT. That is, we pay the borrowers invoices directly to their supplier where ever possible.
For example we pay the seller of the car directly, we pay the seller of the airline flights directly. If a debt consolidation, we pay the various cards, lenders etc directly.
Sometimes this is not easy to complete depending on the purpose provided which maybe complex. For example, for a loan for travel the borrower may ask for spending money to be included.
We submit that regulations requiring direct payment of the borrowers' invoices should be included in the regulations. It is difficult to determine where this should be placed in the regulations; we believe that it should be at the end of the process of determining if the borrower can afford the loan and repayments and hence if the loan is consequently approved or not.

Assessment that a borrower is likely to repay without substantial hardship

KEY AREAS WE WOULD LIKE YOUR FEEDBACK ON: • The proposed regulation requiring there to be a reasonable surplus after estimating likely income and expenses. • Whether there are any other exceptions that are not adequately captured by the provision for exceptional circumstances to the general rule. • Whether the proposed requirement to compare the initial estimate of expenses against a reasonable level strikes an appropriate balance between prescription and flexibility. • How much, if any, of the proposed process above should apply to an assessment of affordability for guarantors. • How these regulations could be refined to better reflect existing good practice and minimise cost for lenders.

Submission

Steelsands CU loan process is to complete two forms, a loan application and once the application is completed and our staff believe the borrowers financial position is suitable for a loan (i.e. matches our products and they can likely repay the loan), the 2nd form requiring details of the borrower's security and consequently the interest rate and term.
The loan application requires full identification details, details of dependents & those involved in the loan, financial position (i.e. assets and debts), income and expenditure & loan details (purpose, amount, type of security). This includes a calculation of the expenditure based on estimates (standard Steelsands figures) and checks of last 3 months bank statements to double check income, expenditure and any concerns (e.g. gambling etc.).
The completion of the two documents determines the repayments and term, and these are updated on the loan form to give the new position after the loan is agreed, giving a new position for expenditure and total debt.
Three figures are then calculated for net equity, Net Surplus and debt serving ratio which must meet internal standards which drive out the affordability of the loan.
These numbers are analysed normally based on the regular pay period for the borrower, that is weekly, fortnightly or monthly.

We believe this process meets the requirements of the regulations and changes proposed. We are though concerned, that we are approached at times by borrowers who are in trouble or have irregular pay periods, such as meat workers who work seasonally. Perhaps in two or three different periods of time through a year.
In this case the calculations on income and expense will be over a longer period to better represent their varied income, will involve detailed discussions on saving money while working and carefully spending money available across the whole period. Careful attention is taken to coach the borrower on best practise and then monitor their progress so that the agreements are met. The intent by us is to help the borrower to a better financial position in the future by helping them learn how to manage their variable income and pay off debt in order to improve their financial position.
These regulations if too restrictive, may prevent this support in the future, and may result in desperate borrowers resorting to 'back-yard' lenders

Comments on the diagram for assessing whether a loan is affordable
Step 1 – we believe financial or bank statements for 2- 3 months should be the standard, except with a new person entering the working market.
We ask for all bank statements to support the income and liabilities listed.
Step 2 – agree
Step 3 – The statement "to take the greater of each comparison" is not practical. Our process is to ask the borrower to confirm their expenditure against a list of items (14 different items

ranging from Mortgage/rent/ board to child support), then compare the total against our standard living costs and discuss any disparities with the borrower regarding their situation (eg living at home with parents, boarding and sharing costs with friends, etc). Double check against their bank statements, identify any disparity and decide on the expenditure levels to use.
This process may end up with lower figures than that supplied initially from the borrower, but is a better representation of their financial position.
Step 4 – as indicated in paragraphs above we calculate the period surplus plus the total debt (liabilities) to total income ratio as this gives a better indication of their future ability to complete the repayments. We take into account where there income is derived to try and get an indicator of their future ability to pay.

Point 57 page 19 asks our views on the flexibility requirement – we agree this should be flexible as indicated in discussion above.

One key area you have asked feedback on is the assessments related to guarantors. It is our experience and process that a guarantor **must** be assessed if they are able to meet the requirements of the loan. To do otherwise is to place the lenders business at risk and mislead the public as to the meaning of a guarantor which would lead to widespread bad practise.
In our experience the guarantor normally requires only the listing of assets, liabilities, income and estimated (from lender standards) expenditure. This will normally give a clear picture of their ability to cover the loan repayments. If this is not obvious, then more detailed investigation is required. There is also a "hardship" effect which needs to be considered and discussed with the guarantor. For e.g. retired parents to go guarantor, if the borrower fails to repay and the full loan repayments are required of the guarantor, who may not be able pay it on a pension. So they have to sell an asset (house, car, etc) to pay off the loan, or reduce the debt to a level they can pay off.
This would cause undue hardship and we would not normally accept the guarantor.

Advertising

KEY AREAS WE WOULD LIKE YOUR FEEDBACK ON:
• How these regulations could be refined to reflect existing good practice and minimise undue cost for lenders

Submission

Regulations 4AK to 4AN
4AK – in general we agree that when payments are blandly stated as $10 per week for a washing machine, it can be misleading and the requirement to fully state the term and total amount paid and the annual interest rate makes sense.
We do not agree with the term "at least as prominent". This implies all the advertisement is the same size and would be impractical and very expensive for the lender, consequently driving up borrower's costs.
By modifying the regulation to say the explanation or added information must be able to be read at a distance of perhaps 1 metre from the advertisement, would seem more reasonable. This then allows for the hook of $10 per week to be seen from a distance, then the person approaches and can easily see the further explanation.
This rule would work for fixed advertising, I am not sure how this would work at all for TV or radio.
4AL – similarly the "at least as prominent" is impractical.
Fully agree annual interest rates should be provided and include fees.
4AM – acceptable

4AN – paragraph 83 – we use a quick loan application and have just introduced a pre-approved loan. We are concerned the wording of this regulation may prevent these in the future.
Our intent with both of these is to provide our member (the borrower) with an improvement in service and faster turnaround for the loan as we already have dealt with them and know their income, assets, liabilities and expenditure and have had experience with them lending from us previously.
In this case, we base the quick loan or pre-approved loan and or advertisement on that fact and that we will check with them that there has been no material change in their circumstances if they do apply for a loan.

High Cost – consumer Credit
We do not take part in this type of credit and encourage you to work to improve the fairness of people who require this type of credit.
It is also worth noting that if we drive people away from credit opportunities they are getting now, then they will still have the need and will find it elsewhere and create perhaps underground and/or criminal activities.
The Money talks services is useful to help here.

5A(3) – details of money talk.
We have many verbal or phone conversations with our troubled members (borrowers) about missed loan repayments and would find the requirement to mention Money Talks impractical.
We see it as our own role to discuss the members situation as to why they have missed the payment and then work with them to modify their loan agreement to help them through a difficult phase or similar actions. This would depend on their issue and could include mentioning Money Talks though should not be a requirement.
We agree that this can apply to written payment reminders.

Certifications of directors and senior managers as fit and proper persons

Submission

There are already significant requirements for current banks and NBDT's directors & senior officers to complete checks for the Reserve Bank and MBIE for the FSP financial services provider register in the process to determine and ensure fit and proper persons.

We strongly submit this should not be repeated in this legislation, but the other identical requirements recognised.

Content of the annual return

In summary we submit that existing reporting by banks and NBDT's to RBNZ on financial factors and on delinquents and complaints will provide a better picture of the effectiveness of a lender and whether they are taking advantage of their borrowers.
These reports are generally consistent across sectors allowing automated gathering of required information for analysis of Loan interest income, total lending, level of security required in loans, etc. Then adding existing internal reporting on delinquencies, loan summaries and similar would provide the remaining information.
There appears to be a lot of information requested in the annual return that is for statistical reasons and to be used for other purposes. Eg the number of loan applications declined, income and purpose for loans would not appear to aid protection of consumer credit, which in our opinion should be focused on.
The following information we believe would be sufficient

- loans total,
- average loan interest rate, with min and max.
- average loan term, with min and max.
- delinquency reporting,
- type of security
- high interest loan details

These figures give you a clear picture of the effectiveness of borrower's ability to pay, sector the lender is operating in and that advantage is being taken of borrowers.

We are concerned in general with the costs that would be incurred by us to collate the information given in the requirements below and that much of the data requested does not protect the public from irresponsible and predatory lending.

We have commented on each point below.

Information about the loan book
128. Total dollar amount of consumer credit provided. **Available and provided in monthly and annual reports to the Reserve Bank.**

129. Total dollar amount of consumer credit outstanding as at the end of the period. **As above**

130. Proportion of revenue coming from interest, fees, default interest and default fees. **As above**

131. The number of consumer credit contracts entered into for which a security interest is or may be taken under the contract. **This make up 98% of our loans and is reported internally. It may be easier to specify what the lenders policy is on percentage of secured, partially secured and unsecured loans and then ask for reporting on percentage of loans against these 3 areas. This is also reported to the reserve bank and can be extracted largely from the PPSR analysis.**

132. The number of high-cost consumer credit contracts and related consumer credit contracts entered into. **Available and normally 0% for us.**

133. The number of consumer credit contracts provided at an annual interest rate of: **Available.**
a. 10% or less

b. 11% to 25%

c. 25% to 29%

d. 30% to 40%

e. 41% to 50%

f. 51% or greater.

134. For each of the categories listed above, the number of consumer credit contracts where the terms of the loan were extended or the loan was rolled over or refinanced. **This is difficult with our current banking software and reports to identify. It would be easier to report delinquent loans, than those specifically extended or rolled over and this would make more sense in protecting borrowers. Banks and NBDTakers are required to identify and report delinquent loans. This process then leads to identifying the methods used to work with the borrower, ie extending the loan, restructuring the loan, repossession etc. This is required to be reported and gives a better picture of the lenders intent and ability to assess borrower's ability to pay.**

135. Information about interest rates and fees as required to be disclosed under the Credit Contracts and Consumer Finance Regulations 2004, sections 4B to 4D and if interest rates and fees have changed during the reporting period, details about changes. **Available.**

136. The average term of a loan. **Not currently reported and would require analysis of existing reports to find**.

Information to be provided about high-cost lending – **we do not take part in high cost lending.**

137. The number of consumer credit contracts provided, with data both as an average (mean) across all consumer credit contracts, and as averages (means) for all consumer credit contracts in each of the following categories:
a. 0.0 – 0.29 per cent rate of charge per day

b. 03 – 0.49 per cent rate of charge per day

c. 0.5 – 0.8 per cent rate of charge per day.

138. The number of consumer credit contracts and related consumer credit contracts where total payments made reached 90 per cent or more of the first advance. **Unsure of what the intent is here. All our loans (except for those delinquent) are paid off in full in the term originally agreed unless the borrower requests a top up. Consequently, this would be easier to report delinquent loan details. All banks, NBDT's are required to report delinquent loans.**

If you are after the number of loans which continue or are extended over and over again to determine those trapped in a debt cycle. This should be covered in delinquency reporting if it is completed correctly, ie identify restructure loans. Please refer to the discussion points 134.

139. A breakdown of the stated purpose for which a borrower requested a consumer credit contract (broken down by the lender's internal categories). We record loan purpose in our banking system though do not have current report available.

Information to be provided in relation to car finance

140. The number of loans which included insurance (including repayment waiver products), broken down by the type of insurance provided. **Current reports do not provide this detail and this requirement would require development of a new report.**

141. The number of loans with insurance where a claim was lodged. **Manual collection, only a small percentage.**

142. The number of loans with a repayment waiver where a claim was lodged. **As above**.

143. The number of loans with insurance where a claim was approved and paid out. **As above.**

144. The number of loans with a repayment waiver where a claim was approved and paid out. **As above.**

Information about loans
145. The number of unique borrowers (i.e. where each borrower is only counted once regardless of how many times they borrowed). **Available.**

146. The number of unique borrowers for high-cost consumer credit contracts. **Available though we do not have high cost consumer credit contracts.**

147. The information at paragraphs 148, 149 and 150 should be provided as a total across all consumer credit provided and as totals for all consumer credit provided in each of the following brackets of total income before tax and any other compulsory deductions (i.e. including all sources of income), in New Zealand dollars. **Very difficult to find and record data. We do not store income information for our members in our banking system. This would require a change to the way we use our banking systems and development of necessary reports.**
We submit this also increases the privacy risks for our lenders.
a. $0–$30,000

b. $30,001–$50,000

c. $50,001–$70,000

d. $70,001–$100,000

e. $100,001–$120,000

f. $120,001–$150,000

g. >$150,000.

148. The number of consumer credit contracts entered into, broken down into the number that were new customers and the number that were returning customers. **This can be done with our banking system reporting, though has to be manually determined by comparing reports from month to month in excel. Requires manual processing using excel.**

149. The number of applications for consumer credit that were declined, broken down into the number that were new customers and the number that were returning customers. **A declined loan application is recorded manually in the borrowers (members) file. This would require a significant change to systems and processes and would require us to record the data manually, and the cost in time and resources would be one that we would need to recoup from our members to the point where collecting, analysing and reporting the data would be revenue neutral**

150. The number of applications for consumer credit that were withdrawn. **As above. Do not record data.**

151. The number of loans which were defaulted on or fell into arrears within one month of taking out the loan. **All banks, etc have to report delinquent loans, this is the best way to report this. You are better to report delinquent loans as this gives a better picture of the efficiency of the lenders processes and how they are treating their borrowers.**

152. The number of loans which were repaid in full by taking out a new loan with the creditor. **We do not track repaid loans by other sources except to add a diary note covering what, where and why to meet AML requirements. Reporting on this would be difficult and require banking system changes and would be costly.**

If the intent of the question is to understand the loans which are repaid by taking another loan with us, this is covered again by the delinquency reporting and is regarded as a restructured loan as stated in 134 & 138.

153. The number of loans which included an assignment of wages. **If you mean some one we have taken to court and obtained an assignment of wages to pay the loan back. This can be done, we have a very limited number of cases and this aspect is dealt with in our delinquency review process.** Once again, is better to use delinquency reporting in place of this.

154. The number of loans with attachment orders, as a result of default. **As above.**

155. The number of consumer credit contracts for which debt collection action was undertaken (for example, by being transferred to an internal debt collection team, by contracting a debt collector to collect the debt, or by on-selling the debt to a debt collector) **As above.**

156. The number of hardship applications received in the period. **Small number so can collect data manually.**

157. The number of hardship applications approved in the period. **As above.**

158. Number of loans for which there was a guarantor. **Can be extracted from current reports.**

159. Number of loans where the guarantor was asked to repay the debt. **Very small number so can be counted manually and once again would be included in the delinquency reporting.**

Information about complaints
160. The number of complaints made to the creditor in the period. **We monitor and record complaints manually so this can be reported.**
161. The number of complaints that were resolved internally in the period. **As above.**

Proposed period of reporting and timing

162. We propose that information in the annual return be provided for the preceding calendar year (1 January to 31 December), and that it be provided by 31 July of the following year. For example, on 31 July 2021, consumer creditors would provide the prescribed information for the calendar year 1 January 2020 to 31 December 2020. **If this means 6 months to complete the report, this is practical.**

If the annual report is proceeded with as indicated above, some data we would not be able to be provided without expenditure on changes to our banking & reporting systems.
Producing the annual report would most likely require 1 extra person to complete the report, costing Steelsands in the order of $30 to 50k annually. This cost again we would need to recoup, as being a member-owned co-operative, we try and keep costs as low as we can, in order to provide our members with better products and services.

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