Submission on *Exposure draft of updated Credit Contracts and Consumer Finance Regulations 2004 and Responsible Lending Code*

Your name and organisation

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Contact details	Privacy of natural persons

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Responses to questions

1	Do you agree with the way that the draft Regulations are phrased? If not, what changes would you make?
	Benchmark needs further definition. National benchmarks do not work as there is significant variation across the country, for example, fuel prices. Power costs will differ between the top of the North Island and the bottom of the South Island in winter, along with firewood usage. Is benchmark data provided to lenders or can they rely on internal company data? From our experience, every client family faces different financial challenges and priorities, for example tithing, pet care, medical needs, and special diets. Applying benchmarks does not work. Furthermore, we think that benchmarks do not work for a significant proportion of consumers known as 'Henrys' - High Earners, Not Rich Yet. Henrys earn high incomes but spend all of it. https://www.stuff.co.nz/business/opinion-analysis/300564500/the-problem-with-henrys-young-highearners-with-an-enviable-lifestyle For the lender to ensure they are acting responsibly and in the borrowers' best interests, an individual thorough affordability assessment needs to be carried out on every occasion with every potential customer. There have been some comments recently in the media https://www.rnz.co.nz/news/business/463104/lending-rules-that-hit-credit-approvals-to-be-eased-government-announces about the time taken complete due diligence. A thorough affordability assessment should have been taking place since the original Responsible Lending Code was first published in 2015. In our view, bank statements are the most reliable source of information to understand and gauge spending habits and income.
2	Do you agree with the way that the guidance relating to expenses is communicated in the Draft Code? If not, how do you suggest it is improved?
	We think savings and investments should be encouraged for all New Zealanders. We understand the thinking behind removing this once a customer has successfully saved for a deposit and purchased a property however, removing them as listed outgoings gives the impression that lenders do not need to consider putting aside money for emergencies, house maintenance, car bills, vet costs etc.

3	Are there other practices for estimating expenses that the Code should endorse?
	Please **do not** endorse 3rd party software applications that some lenders (particularly online) use to analyse an applicant's bank statements. The software does not know the story behind the data and can make poor recommendations. Examples we have seen include people having other people's income being deposited into their bank account and ex partners depositing money for their children. This, once again, highlights the very real need to have an individual conversation with the proposed borrower. We support 5.27. However, many BNPLs do not report so a customer's spending habits around Buy Now, Pay Laters may not show on their credit file. As positive credit reporting is not compulsory, having a credit check on a customer may not reflect the customers actual accurate history or behaviour.
4	Is the new wording in the Draft Code on how lenders may apply a reasonable surplus to comply with regulation 4AF(2)(b)(i) relating to changes to expenses clear? If not, how do you suggest it is improved?
	A surplus is essential to take account of unknown costs and emergencies. For example, car repairs, emergency housing repairs and of course COVID-19.
5	Do you have any other proposals for additional guidance on surpluses?
	Having a surplus also encourages the customer to save for a rainy day and gives them the confidence in their financial capability. In October 2020 the Head of the CFFC, Retirement Commissioner Jane Wrightson, said "financial resilience was still a concern, with 41% of households still exposed due to high debt and low savings". https://retirement.govt.nz/news/latest-news/pink-and-blue-collar-households-hit-hardest-by-covid-19-survey/ 5.6 of the draft RLC needs to have strict guidance around expenses which are clearly addictions. For example, gambling (online and other), tobacco and vape use, regular and/or excessive alcohol costs. These costs cannot be discounted by either the lender or the borrower in future projected expenses.
6	Is the updated guidance and examples on 'obvious' affordability helpful? If not, how could they be improved?
	Yes, the updated guidance is helpful, and no further amendments need to be made
7	Do you have any other proposals for additional guidance and examples for 'obvious' affordability?
	No

8	Would any of these initial changes require changes to lender systems before they could come into force? If so, what are the likely timeframes for making these changes?
	As previously stated in question 1, all lenders should have been applying these standards since the inception of the Responsible Lending Code in 2015. All lenders will have their systems already running for the new amendments if they had previously been complying with the CCCFA. There has been much outrage from the major banks in the media since the changes came into effect on 1 December 2021, however, there have been no comments from finance companies and 2nd tier lenders who also offer mortgages. We believe this is because these other companies already have robust affordability assessments and take their time with their customers and are very much enjoying collecting the banks would be customers since banks seem to have such a political stake in the review. This is evident in the fact that non-bank lenders do not seem to have been misinterpreting the regulations and code as they stand

Other comments

We are thrilled to see that the Regulations and RLC in their current form appear to be working well. We are concerned that 'fiddling' with the Regulations will dilute their intent.

Personal insolvencies have been dropping since 2018
https://www.insolvency.govt.nz/about/statistics/ – the current law is working well

We believe that the concerns raised by consumers and lenders regarding the regulations being too restrictive are misplaced. According to Centrix "Lenders appear to have rejected 5% of new applicants who would have qualified in November". This is while we have uncertainty around Omicron, a retreating housing market, increasing mortgage rates, and rising inflation.

https://www.centrix.co.nz/wp-content/uploads/2022/04/Centrix-March-2022-Credit-Indicator-and-Economic-Forecast-Report.pdf

The media has been highlighting examples like this:
https://www.odt.co.nz/news/dunedin/%E2%80%98thrilled%E2%80%99-see-changes-lending-laws as examples of consumers being declined loans due to the recent regulatory changes to the CCCFA. In our opinion, this consumer would have been unlikely to extend their mortgage pre 1 December 2021 and the media is being misleading. (Please watch the video in the article).

We think it is urgent that Buy Now Pay Later products are included in the CCCFA as soon as possible. Providers of these products do not have to undertake affordability assessments or make enquiries into assessment of substantial hardship. This loophole is causing harm to consumers and needs plugged.

Thankyou for the opportunity to comment.