# Submission on *Exposure draft of Credit Contracts and Consumer Finance Amendment Regulations (No 2) 2022 and updated Responsible Lending Code*

## Your name and organisation

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| **Name** | Rob Collins |
| **Organisation (if applicable)** | CUBS (NZ) |
| **Contact details** | Privacy of natural persons |

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The following is the submission on the above consultation paper on behalf from CUBS NZ representing the following entities:

Christian Savings Ltd
Credit Union Auckland
Fisher & Paykel Employees Credit Union
Unity Credit Union
Wairarapa Building Society
Heretaunga Building Society
Nelson Building Society

Collectively, we represent over 100,000 members with assets in excess of $2b. Being co-operative in structure and legislatively bound to always look after the best interests of our member/owners, we are uniquely placed to understand and follow responsible lending practices which looks after the interests of all parties and allows borrowers to enhance their own financial wellbeing.

We support the general aims of the regulations and believe that they must work for both lender and borrower. Our sector within financial services is at the ethical and responsible end of the industry where there have been few (if any) issues similar to those that may have driven the new regulations initially. We urge a balance in the application of regulation so that ethical and responsible lenders are not over-burdened and can work with their customers while irresponsible are lenders sanctioned.

We strongly recommend the comments and suggestions contained in our submission.

## Responses to questions

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| 1 | Do you agree with amending the definition of 'listed outgoings' along the lines proposed? Do you have any comments on the wording of these changes? |
| | In relation to regulation 4AE definition of "listed outgoings" we agree with the suggested change. |
| 2 | Do you agree with amending the definition of 'relevant expenses' along the lines proposed? Do you have any comments on the wording of these changes? |
| | While we agree with the change we are aware that some lenders may exercise their discretion inappropriately and strong guidance should be given as to how this is to be mitigated. |
| 3 | Which of the two options for guidance in the Draft Code relating to treatment of discretionary expenses is most appropriate and why? Do you have any comments on the wording of either of these options? |
| | Both options have merits but, on balance, we believe that Option 2 is the most appropriate to implement and provide some reassurance that unscrupulous lenders won't apply the discretion in Option 2 too widely. |
| 4 | Do you agree with the approach to excluding some credit cards as proposed in regulation 4AL(2A)? If not, what changes would you make? |
| | We totally reject this change. There is consistent history in financial services that even where the borrower has a history of paying a credit card balance in full each month, this will be one of the first changes made in times of financial stress and the minimum possible amount will be paid to allow other payments to be made if funds are stretched. Therefore, it is essential that at least the minimum monthly repayment based on the card limit is taken into account as a relevant expense. |
| 5 | Is any additional guidance needed for the exception in 4AL(2A) for certain credit cards? If so, what should this guidance state? |
| | All revolving credit facilities should be treated the same as the credit limit available to the borrower should be the basis for calculating potential minimum repayments. |

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| | Do you agree with explicitly excluding BNPL in its entirety from 4AL(2)? If not, are there alternative ways, that would be workable for lenders, to impute future BNPL expenses based on a borrower's existing BNPL facilities? |
| | We do not agree with excluding BNPL from the calculation. BNPL repayments are ongoing and the limit available to the borrower is identical that of a credit card and can be used at any time. It is irrelevant, as stated in the notes to the changes, that these facilities "are for day-to-day transactions" and are paid off quickly without incurring interest. These facilities are used continuously by consumers, often with multiple facilities. BNPL repayments must be taken into account as a relevant expense because with constant use, they are potentially never ending.<br><br>The use of BNPL facilities has already become a major method of payment for purchases by consumers and in times of stress may well be increased to avoid paying the full cost of goods and services upfront if the borrower was in financial hardship. That is to say, financial stress for the borrower could increase their use of BNPL and if the repayments are not subject to examination, a false picture would be obtain of the borrower's affordability. |
| 6 | In light of excluding BNPL from 4AL(2), is any further guidance in the Code necessary to address the treatment of BNPL expenses? If so, what should this guidance state? |
| | BNPL should not be excluded. |
| 7 | Do you agree with the way that the Draft Regulations relating to the expanded exception for variations and replacements of existing credit contracts is phrased? If not, what changes would you make? |
| | The extent of the changes suggested has resulted in an unnecessary and overly complicated regulation. Where a variation or refinancing is proposed, it should be sufficient to be assured that the total monthly repayments under the new contract will be equal to or less than the repayments under the existing contract(s). |
| 8 | Which of the two drafting options for expanding the exception for variations and replacements of existing credit contracts would be most workable and why? |
| | Option 1 is preferred as less cumbersome but the essence of this regulation should be that where the borrower is placed in a better or no worse position as a result of the variation or re-financing proposal, the process should be more borrower-focussed and less administrative for the lender. Re-financing in particular if often an avenue available to borrowers who are experiencing difficulties with high cost unscrupulous lenders where ethical and responsible lenders are able to reduce outgoings and ease the stress on the borrower. |
| 9 | Do you agree with the suggested guidance in the Draft Code relating to the expanded exception? If not, what changes should be made to the Draft Code guidance? |
| | The danger of unscrupulous debt consolidation services is obvious and the guidance given in the draft Code is positive and appropriate. However, the Code is not necessarily the most appropriate site for such advice. The requirements under the CCCFA clause 132A disclosure about debt collection might be a more appropriate placement. |

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| 10 | Would any of these changes require changes to lender systems before they could come into force? If so, what are the likely timeframes for making these changes? |

Potentially the changes (which haven't been completely established yet) may take some time to put in place – dependent on the approach of each organisation – how much of their processes are system generated, documentation changes required, training, monitoring, etc. We would welcome continued engagement once decisions have been made on the submissions to determine the level of change required.

## Other comments

Of particular interest is the monitoring impacts after the changes have been brought in. What the attitude of the Regulator will be towards looking at the deals put in place over the previous 12-15 months and in the early days of the new regime – will they be a bit more "tolerant" given the shifting sands of Regulations/Guidance and the markets understanding of these?

For example "lenders must assess the adequacy of surpluses, buffers or adjustments (4AF(2)(b)" – organisations' risk appetite will differ which provides different outcomes in the market. We have already seen this with the tightening of approvals that drove the need for these revisions in the first place. Just how the Regulators will view these decisions by lenders is still unclear. A statement by the Regulators as to their approach may ease concerns in the marketplace.