



Credit Contracts and Consumer Finance (Residential Earthquake-prone Building Financial Assistance Scheme) Amendment Regulations 2020

Patsy Reddy, Governor-General

Order in Council

At Wellington this 3rd day of August 2020

Present:

The Right Hon Jacinda Ardern presiding in Council

These regulations are made under section 138 of the Credit Contracts and Consumer Finance Act 2003 on the advice and with the consent of the Executive Council and on the recommendation of the Minister of Commerce and Consumer Affairs made in accordance with section 138(1A) of that Act.

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Regulations

1 Title

These regulations are the Credit Contracts and Consumer Finance (Residential Earthquake-prone Building Financial Assistance Scheme) Amendment Regulations 2020.

2 Commencement

These regulations come into force on 3 September 2020.

3 Principal regulations

These regulations amend the Credit Contracts and Consumer Finance Regulations 2004 (the **principal regulations**).

4 New regulation 18F inserted (Exemption for credit under residential earthquake-prone building financial assistance scheme)

After regulation 18E, insert:

18F Exemption for credit under residential earthquake-prone building financial assistance scheme

- (1) A credit contract is exempt from being a consumer credit contract if the credit is provided by Kāinga Ora (as creditor) under the REPB scheme.
- (2) However, the contract is exempt only if Kāinga Ora complies with the following conditions:
 - (a) the terms of the credit contract must be expressed in plain language in a clear, concise, and intelligible manner;
 - (b) Kāinga Ora must ensure that, before the contract is entered into,—
 - (i) disclosure of the initial disclosure information (set out in subclause (3)) is made to every debtor; and
 - (ii) a copy of all of the terms of the contract not disclosed under subparagraph (i) (other than terms implied by law) is given or sent to every debtor;
 - (c) Kāinga Ora must ensure that disclosure of the continuing disclosure information (set out in subclause (4)) is made in a continuing disclosure statement given to the debtor at least once every 6 months (unless subclause (6) applies);
 - (d) the disclosures required by paragraphs (b) and (c) must be made in accordance with sections 32 to 35 of the Act (which apply as if the contract were a consumer credit contract).
- (3) The **initial disclosure information** is as much of the following as is applicable to the contract:

Full name and address of creditor

- (a) the full name and full address of the creditor:
- (b) the trading name of the creditor (if different from its full name specified under paragraph (a)):

Total advances

- (c) the total of all advances made or to be made in connection with the contract, if ascertainable:

Annual interest rate

- (d) the annual interest rate or rates under the contract (with the rate or rates being expressed in terms of a percentage):
- (e) if there is more than 1 rate, how each rate applies:
- (f) if an annual interest rate is fixed for the term or any part of the term of the contract, the period during which the annual interest rate is fixed:
- (g) if an annual interest rate is determined by referring to a base rate, particulars that describe how the annual interest rate is determined, including—
 - (i) the name of the base rate or a description of it; and
 - (ii) the margin or margins (if any) above or below the base rate to be applied to determine the annual interest rate; and
 - (iii) where and when the base rate is published or, if it is not published, how the debtor may ascertain the rate; and
 - (iv) the current annual interest rate or rates:

Method of charging interest

- (h) the method of calculating interest charges payable under the contract and the frequency with which interest charges are debited under the contract:

Interest free period

- (i) if the contract involves an interest free period, the following particulars:
 - (i) the length of the interest free period:
 - (ii) when interest will begin to accrue:

Credit fees and charges

- (j) a description of the credit fees and charges (other than interest charges) that are, or may become, payable under the contract, including—
 - (i) when each fee or charge is payable, if ascertainable; and
 - (ii) the amount of each fee or charge if ascertainable, but, if not, the method of calculation of the fee or charge:

Full prepayment

- (k) how the reasonable estimate of the creditor's loss on full prepayment is calculated and whether a statutory procedure prescribed in regulations is used:

Security interest

- (l) a description of any security interest that is or may be taken in connection with the contract, including a clear explanation of—
- (i) the nature of the security interest; and
 - (ii) the property that is, or is proposed to be, subject to the security interest; and
 - (iii) the extent to which the debtor's obligations to the creditor are secured by the security interest, including whether, if the creditor's rights under the security were to be exercised, the debtor would, or may, remain indebted to the creditor (if there is a shortfall in the proceeds of the sale of the property that is subject to the security interest); and
 - (iv) what the consequences would be if the debtor were to give a security interest over the property referred to in subparagraph (ii) to a person other than the creditor and, as a result, the debtor were to be in breach of the contract, including whether the property that would be subject to the security interest would be liable to repossession:

Default interest charges and default fees

- (m) particulars that describe any default interest charges and default fees that may be payable under the contract including how and when default interest charges and default fees would become payable:

Continuing disclosure statements

- (n) the frequency with which continuing disclosure statements will be provided (unless subclause (6) applies):

Consent to electronic communications

- (o) if the creditor consents to receive notices or other communications from the debtor in electronic form, whether by means of an electronic communication or otherwise, a statement to that effect.

- (4) The **continuing disclosure information** is as much of the following as is applicable to the contract:
- (a) the opening and closing dates of the period covered by the statement:
 - (b) the opening and closing unpaid balances:
 - (c) the date, amount, and a description of each advance during the statement period:

- (d) the date and amount of each interest charge debited to the debtor's account during the statement period:
 - (e) the date and amount of each amount paid by the debtor to the creditor, or credited to the debtor, during the statement period:
 - (f) the date, amount, and a description of each fee or charge debited to the debtor's account during the statement period:
 - (g) the annual interest rate or rates during the statement period (expressed as a percentage or percentages).
- (5) The opening unpaid balance (referred to in subclause (4)(b)) for a statement period must not exceed the closing unpaid balance shown in the previous statement.
- (6) Disclosure to a debtor under subclause (2)(c)—
- (a) is not required if—
 - (i) Kāinga Ora maintains (at all reasonable times) a website that allows the debtor to access the continuing disclosure information for any reasonable statement period specified by the debtor; and
 - (ii) the debtor consents to the information being disclosed in that way; and
 - (b) is not required in relation to a particular period if,—
 - (i) Kāinga Ora cannot reasonably locate the debtor; or
 - (ii) during that period,—
 - (A) there have been no debits or credits to the debtor's account and the unpaid balance is nil; or
 - (B) Kāinga Ora has written off the unpaid balance and there are no subsequent credits or debits to the debtor's account; or
 - (C) the debtor has breached the contract and Kāinga Ora has commenced enforcement proceedings; or
 - (D) the debtor has been declared bankrupt or died and the Official Assignee or executors or trustees or administrator of the debtor's estate have not requested a continuing disclosure statement.
- (7) If, in accordance with subclause (6), disclosure has not been made in relation to a particular period, the next disclosure that is made under subclause (2)(c) must cover every immediately preceding period for which disclosure was not made.
- (8) In this regulation,—
- Kāinga Ora** means Kāinga Ora—Homes and Communities established by section 8 of the Kāinga Ora—Homes and Communities Act 2019 (or, if that body is replaced as the creditor under the REPB scheme, the replacement creditor)

REPB scheme means the residential earthquake-prone building financial assistance scheme established by the Government (as announced in the 2019/20 Budget and as varied from time to time) to provide financial assistance to certain persons—

- (a) who own and occupy earthquake-prone household units in areas of high seismic risk (as defined in section 133AD of the Building Act 2004); and
- (b) who are required under subpart 6A of Part 2 of that Act to carry out seismic work; and
- (c) for whom doing so would cause significant financial hardship.

Michael Webster,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations are made under the Credit Contracts and Consumer Finance Act 2003 (the **CCCF Act**) and amend the Credit Contracts and Consumer Finance Regulations 2004. The regulations come into force on 3 September 2020.

As part of the 2019/20 Budget, the Government established the residential earthquake-prone building financial assistance scheme (the **REPB scheme**) to provide financial assistance to certain owners and occupiers of earthquake-prone household units who are required under the Building Act 2004 to carry out seismic work and for whom doing so would cause significant financial hardship. The scheme will involve Kāinga Ora making loans to qualifying owners and occupiers to assist them in carrying out that work.

The CCCF Act imposes various consumer protection obligations on lenders under consumer credit contracts. Loans made under the REPB scheme meet the criteria for being consumer credit contracts so, without this regulation, Kāinga Ora would be required to comply with those obligations. *New regulation 18F* will exempt those loans from being consumer credit contracts so that Kāinga Ora is not required to do so. However, they will still be required to comply with some of the CCCF Act's lender disclosure requirements.

Statement of reasons

The following statement of reasons is published for the purposes of section 138(1B) of the Credit Contracts and Consumer Finance Act 2003.

The Minister of Commerce and Consumer Affairs, having had regard to the purposes of the CCCF Act set out in section 3 of the CCCF Act as required by section 138(1A)(a) of the CCCF Act, and being satisfied as to the matters set out in section

138(1A)(b) and (c)(i) of the CCCF Act, considers the exemption made in *new regulation 18F* to be appropriate because—

- requiring Kāinga Ora to comply with the requirements of the CCCF Act as a creditor providing the residential earthquake-prone building financial assistance scheme would be unduly onerous and burdensome, given that Kāinga Ora’s usual business and ongoing purpose does not involve lending and only a small number of loans are likely to be made; and
- exempting loans will not cause significant detriment to debtors because—
 - the conditions attached to the exemption require that terms for the REPB loans be in plain language. This will mitigate the risk that debtors take on a loan under the REPB scheme without fully understanding its terms and conditions and their obligations under the scheme; and
 - the exemption requires Kāinga Ora to comply with particular disclosure obligations that are important in the circumstances; and
 - the REPB scheme will impose limits on establishment fees and the amounts loaned, prohibit pursuing negative equity, and enable early loan repayment with no early repayment fees; and
 - access to, and ability to engage in, other credit markets will not be jeopardised by participation in the REPB scheme; and
 - the REPB scheme is still subject to Part 5 of the CCCF Act, which will provide remedies for oppressive contracts and oppressive conduct by creditors; and
- the purposes of the CCCF Act to protect the interests of consumers, to promote confident and informed participation by consumers in markets for credit, to promote fair, efficient, and transparent markets for credit, and to provide remedies for consumers in relation to oppressive conduct will continue to be met.

Regulatory impact assessment

The Ministry of Business, Innovation, and Employment produced a regulatory impact assessment on 28 May 2020 to help inform the decisions taken by the Government relating to the contents of this instrument.

A copy of this regulatory impact assessment can be found at—

- <https://www.mbie.govt.nz/dmsdocument/11595-impact-summary-residential-earthquake-prone-buildings-loan-scheme-kainga-ora-cccfa-exemption-proactive-release-pdf>
- <http://www.treasury.govt.nz/publications/informationreleases/ria>

**Credit Contracts and Consumer Finance (Residential
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Scheme) Amendment Regulations 2020**

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These regulations are administered by the Ministry of Business, Innovation, and Employment.

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