2004/240

Credit Contracts and Consumer Finance Regulations 2004

Silvia Cartwright, Governor-General

Order in Council

At Wellington this 9th day of August 2004

Present:
Her Excellency the Governor-General in Council

Pursuant to section 138 of the Credit Contracts and Consumer Finance Act 2003, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

Contents

Regulations

1 Title

These regulations are the Credit Contracts and Consumer Finance Regulations 2004.

2 Commencement

These regulations come into force on 1 April 2005.

3 Interpretation

(1) In these regulations, unless the context otherwise requires,—

Act means the Credit Contracts and Consumer Finance Act 2003

fixed interest period means a period of a fixed rate contract for which a fixed interest rate applies

fixed interest rate means the rate of interest that is fixed for the term or any part of the term

fixed rate contract means a consumer credit contract that has a fixed interest rate

term, in relation to a fixed rate contract, means the period between the first advance made under the contract and the last payment anticipated by the contract.

(2) In these regulations, unless the context otherwise requires, variables contained in formulae are calculated as at the date of full prepayment.

4 Status of examples

(1) Every example used in these regulations is part of these regulations.

(2) An example used in these regulations is only illustrative of the provision to which it relates. It does not limit the provision.

(3) If an example and the provision to which it relates are inconsistent, the provision prevails.

Alternative publication requirements

5 Alternative publication requirements

For the purposes of sections 23(4) and 26(4) of the Act, a creditor may make disclosure in relation to a change to the amount of an interest rate, or to the amount of any fee or charge payable, by—

(a) displaying the information at all of the creditor's places of business that are accessed by the public so that the information is reasonably visible (at all reasonable times) to persons entering those places of business; and

(b) advertising the information at least once in the daily newspapers published in all of the following areas in which the creditor carries on business: Whangarei, Auckland, Hamilton, Rotorua, Hawkes Bay, New Plymouth, Palmerston North, Wellington, Nelson, Christchurch, Dunedin, and Invercargill; and

(c) if the creditor has a website, posting the information on the creditor's website in a form that is publicly accessible (at all reasonable times).

Assumptions

6 Assumptions

For the purposes of section 33 of the Act, the assumptions that may be used or applied when disclosing information that is required to be disclosed under the Act (and the terms and conditions of those assumptions) are set out in the Schedule.

Rebate of premium paid under consumer credit insurance contract

7 Rebate of consumer credit insurance contract premium

For the purposes of section 52 of the Act, the proportionate rebate of the premium paid under a consumer credit insurance contract financed under the consumer credit contract must be determined in accordance with the following formula:

$$y = \frac{p \times s \times (s + 1)}{t \times (t + 1)}$$

where—

y is the amount of the rebate of the premium

p is the amount of premium paid

s is the number of whole months in the unexpired portion of the period for which insurance was agreed to be provided

t is the number of whole months for which insurance was agreed to be provided.

Example

A consumer credit insurance contract is financed under a consumer credit contract. The period for which insurance was agreed to be provided under the consumer credit insurance contract is 36 months and a premium of $500 is paid. Full prepayment of the consumer credit contract is made 18 months and 24 days after the commencement of the period for which insurance was agreed to be provided. Applying the above formula, the amount of the rebate of the consumer credit insurance contract premium is calculated as follows:

p = $500
s = 17 (36 months − 18 months and 24 days = 17 months and 6 days, which is 17 whole months)
t = 36

$$y = \frac{500 \times 17 \times (17 + 1)}{36 \times (36 + 1)} = \$114.86$$

The amount of the rebate of the premium is $114.86.

Creditor's loss arising from full prepayment

8 Application of regulation 9

Regulation 9 applies to a fixed rate contract if—

(a) the contract has one fixed interest rate that is fixed for the whole term (whether or not the contract provides for default interest charges); and

(b) the contract requires payments of equal amounts to be made at equal intervals; and

(c) all the variables contained in the formula set out in regulation 9 can be determined with reasonable accuracy.

9 Calculation of reasonable estimate of creditor's loss if interest rate fixed for whole term

(1) For the purposes of section 54(1)(a) of the Act, a reasonable estimate of a creditor's loss arising from a full prepayment of a fixed rate contract may be determined in accordance with the following formula:

$$LRE = VFP - u$$

where—

LRE is the reasonable estimate of the creditor's loss arising from the full prepayment

VFP is the value of forgone payments calculated in accordance with subclause (2)

u is the unpaid balance at the time of the full prepayment.

(2) The value of forgone payments is calculated in accordance with the following formula:

$$VFP = p \times \left(\frac{1 - v^{n}}{\frac{i}{f}} \right) \times (1 + i)^{\frac{d}{365}}$$

where—

VFP is the value of forgone payments

p is the amount of each payment payable under the fixed rate contract

v is calculated in accordance with subclause (3)

n is the number of payments yet to be made under the fixed rate contract

f is the number of payments to be made per year under the fixed rate contract

i is the annual fixed interest rate determined in accordance with subclauses (4) and (5) and expressed as a decimal fraction

d is the number of days between the payment due date that immediately precedes the date of full prepayment and the date of full prepayment.

(3) The variable *v* is calculated in accordance with the following formula:

$$v = \frac{1}{1 + \frac{i}{f}}$$

where—

i is the annual fixed interest rate determined in accordance with subclauses (4) and (5) and expressed as a decimal fraction

f is the number of payments to be made per year under the fixed rate contract.

(4) The annual fixed interest rate *i* is the annual fixed interest rate that at the date of full prepayment of the fixed rate contract the creditor usually offers on a fixed rate contract that—

(a) is of the same or a similar type as the fixed rate contract that is to be fully prepaid; and

(b) has a term that is—

(i) equal to the unexpired portion of the term of the fixed rate contract that is to be fully prepaid; or

(ii) closest to the unexpired portion of the term of the fixed rate contract that is to be fully prepaid, whether shorter or longer (if the creditor does not offer a fixed rate contract with a term equal to the unexpired portion of the term of the fixed rate contract that is to be fully prepaid).

(5) If more than 1 annual fixed interest rate applies under subclause (4)(b)(ii), the annual fixed interest rate *i* is the higher or highest of those annual fixed interest rates.

(6) If a reasonable estimate of a creditor's loss arising from a full prepayment determined in accordance with the formula in subclause (1) is less than zero, then the reasonable estimate of that creditor's loss arising from the full prepayment is zero.

Example

A debtor is advanced $5,000 under a fixed rate contract. The contract is for a term of 2 years. The annual interest rate for the whole term is 12%. Each of the 24 monthly payments is $235.37. Full prepayment of the contract is made after 6 months and 5 days (5 days since the last payment due date) when the unpaid balance is $3,865.66. At the date of full prepayment, the annual interest rate that the creditor usually charges on a fixed rate contract of the same or a similar type as the fixed rate contract that is to be fully prepaid with a term of 12 months is 10% (a 12-month fixed rate contract having an interest rate of 10% being closest in term to the 18-month unexpired portion of the term of the fixed rate contract that is to be fully prepaid). Applying the above formula, a reasonable estimate of the creditor's loss arising from the full prepayment is calculated as follows:

Example—continued

$p = \$235.37$
$n = 18$
$f = 12$
$i = 0.1$
$d = 5$
$u = \$3{,}865.66$

$$v = \frac{1}{1 + \frac{0.1}{12}} = 0.991735538$$

$$VFP = \$235.37 \times \left(\frac{1 - (0.991735538)^{18}}{\frac{0.1}{12}} \right) \times (1 + 0.1)^{\frac{5}{365}} = \$3{,}924.23$$

$$LRE = \$3{,}924.23 - \$3{,}865.66 = \$58.57$$

A reasonable estimate of the creditor's loss is $58.57.

If, however, in the above example the interest rate for fixed term contracts offered by the creditor for a term of 12 months was 15%, then variables *v* and *VFP* would be:

$$v = \frac{1}{1 + \frac{0.15}{12}} = 0.987654321$$

$$VFP = \$235.37 \times \left(\frac{1 - (0.987654321)^{18}}{\frac{0.15}{12}} \right) \times (1 + 0.15)^{\frac{5}{365}} = \$3{,}780.11$$

LRE would then be calculated as follows:

$$LRE = \$3{,}780.11 - \$3{,}865.66 = -\$85.55.$$

A reasonable estimate of the creditor's loss in this case would be zero.

Note: For the purpose of this example only, calculations have been rounded to 9 decimal places.

10 Application of regulation 11

Regulation 11 applies to a fixed rate contract if—

(a) the contract has a fixed interest period for part, but not the whole, of the term (whether or not the contract provides for default interest charges); and

(b) the contract is fully prepaid during that fixed interest period; and

(c) the contract requires payments of equal amounts to be made at equal intervals during that fixed interest period; and

(d) all the variables contained in the formula set out in regulation 11 can be determined with reasonable accuracy.

11 Calculation of reasonable estimate of creditor's loss if interest rate fixed for part of term

(1) For the purposes of section 54(1)(a) of the Act, a reasonable estimate of a creditor's loss arising from a full prepayment of a fixed rate contract may be determined in accordance with the following formula:

$$LRE = VFP - EVP$$

where—

LRE is the reasonable estimate of the creditor's loss arising from the full prepayment

VFP is the value of forgone payments calculated in accordance with subclause (2)

EVP is the expected value of the remaining fixed interest payments payable during the fixed interest period in which the fixed rate contract is fully prepaid, calculated as at the date of full prepayment in accordance with subclause (6).

(2) The value of forgone payments is calculated in accordance with the following formula:

$$VFP = p \times \left(\frac{1 - v^{n}}{\frac{i}{f}} \right) \times (1 + i)^{\frac{d}{365}}$$

where—

VFP is the value of forgone payments

p is the amount of each fixed interest rate payment payable under the fixed rate contract during the fixed interest period in which the contract is fully prepaid

v is calculated in accordance with subclause (3) *n* is the number of fixed interest rate payments yet to be made under the fixed rate contract during the fixed interest period in which the contract is fully prepaid

f is the number of payments to be made per year under the fixed rate contract during the fixed interest period in which the contract is fully prepaid

i is the annual fixed interest rate determined in accordance with subclauses (4) and (5) and expressed as a decimal fraction

d is the number of days between the payment due date that immediately precedes the date of full prepayment and the date of full prepayment.

(3) The variable *v* is calculated in accordance with the following formula:

$$v = \frac{1}{1 + \frac{i}{f}}$$

where—

i is the annual fixed interest rate determined in accordance with subclauses (4) and (5) and expressed as a decimal fraction

f is the number of payments to be made per year under the fixed rate contract during the fixed interest period in which the contract is fully prepaid.

(4) The annual fixed interest rate *i* is the annual fixed interest rate that at the date of full prepayment of the fixed rate contract the creditor usually offers on a fixed rate contract that—

(a) is of the same or a similar type as the fixed rate contract that is to be fully prepaid; and

(b) has a fixed interest period that is—

(i) equal to the unexpired portion of the fixed interest period of the fixed rate contract that is to be fully prepaid; or

(ii) closest to the unexpired portion of the fixed interest period of the fixed rate contract that is to be fully prepaid, whether shorter or longer (if the creditor does not offer a contract with a fixed interest period equal to the unexpired portion of the fixed interest period of the fixed rate contract that is to be fully prepaid).

(5) If more than 1 annual fixed interest rate applies under subclause (4)(b)(ii), the annual fixed interest rate *i* is the higher or highest of those annual fixed interest rates.

(6) The expected value of the remaining fixed interest payments payable during the fixed interest period is calculated in accordance with the following formula:

$$EVP = p \times \left(\frac{1 - w^{n}}{\frac{j}{f}} \right) \times (1 + j)^{\frac{d}{365}}$$

where—

EVP is the expected value of the remaining fixed interest payments payable during the fixed interest period in which the fixed rate contract is fully prepaid

p is the amount of each fixed interest payment payable under the fixed rate contract during the fixed interest period in which the contract is fully prepaid

w is calculated in accordance with subclause (7)

n is the number of fixed interest rate payments yet to be made under the fixed rate contract during the fixed interest period in which the contract is fully prepaid

j is the annual fixed interest rate applying during the fixed interest period in which the fixed rate contract is fully prepaid and expressed as a decimal fraction

f is the number of payments to be made per year under the fixed rate contract during the fixed interest period in which the contract is fully prepaid

d is the number of days between the payment due date that immediately precedes the date of full prepayment and the date of full prepayment.

(7) The variable *w* is calculated in accordance with the following formula:

$$w = \frac{1}{1 + \frac{j}{f}}$$

where—

j is the annual fixed interest rate applying during the fixed interest period in which the fixed rate contract is fully prepaid and expressed as a decimal fraction

f is the number of payments to be made per year under the fixed rate contract during the fixed interest period in which the contract is fully prepaid.

(8) If a reasonable estimate of a creditor's loss arising from a full prepayment determined in accordance with the formula in subclause (1) is less than zero, then the reasonable estimate of that creditor's loss arising from the full prepayment is zero.

Example

A debtor is advanced $100,000 under a fixed rate contract. The contract is for a term of 10 years. For the first 2 years the interest rate is fixed at 12% and the 24 monthly payments are $1,434.71. For the remainder of the term a floating interest rate applies. Full prepayment of the contract is made after 18 months and 10 days (10 days since the last payment due date) when the unpaid balance is $91,757.77. At the date of full prepayment, the annual fixed interest rate that the creditor usually charges on a fixed rate contract of the same or a similar type as the fixed rate contract that is to be fully prepaid with a term of 6 months (6 months being the unexpired portion of the fixed interest period at the fixed rate contract that is to be fully prepaid) is 10%. Applying the above formula, a reasonable estimate of the creditor's loss arising from the full prepayment is calculated as follows:

p = $1,434.71
n = 6
f = 12
i = 0.1
d = 10
j = 0.12

$$v = \frac{1}{1 + \frac{0.1}{12}} = 0.991735538$$

Example—continued

$$w = \frac{1}{1 + \frac{0.12}{12}} = 0.990099010$$

$$VFP = \$1{,}434.71 \times \left(\frac{1 - (0.991735538)^{6}}{\frac{0.1}{12}} \right) \times (1 + 0.1)^{\frac{10}{365}} = \$8{,}384.53$$

$$EVP = \$1{,}434.71 \times \left(\frac{1 - (0.990099010)^{6}}{\frac{0.12}{12}} \right) \times (1 + 0.12)^{\frac{10}{365}} = \$8{,}340.68$$

$$LRE = \$8{,}384.53 - \$8{,}340.68 = \$43.85$$

A reasonable estimate of the creditor's loss is $43.85.

Note: For the purpose of this example only, calculations have been rounded to 9 decimal places.

Schedule

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Assumptions that may be used or applied when disclosing information under Act

1 Interest charges and payments

In disclosing the information referred to in paragraphs (k), (l), and (o) of Schedule 1 of the Act, the creditor may assume—

(a) that, in the case of an annual interest rate, the rate disclosed will not vary over the term of the credit contract or any shorter period for which it applies; and

(b) that, in the case of a variable interest rate, the variable interest rate applicable over the period for which it applies is the same as the equivalent variable interest rate as at the date that the disclosure statement is prepared; and

(c) that the debtor will make payments required by the credit contract at the times required by the credit contract and of the amounts required under the contract.

2 Business day

Disclosure relating to payments, charges, or fees may be made on the assumption that every day is a business day.

3 Charges and fees

Disclosures relating to charges (other than interest charges) and fees may be made on the following assumptions:

(a) that there will be no change in the charges and fees as disclosed and no new fees or charges imposed; and

(b) that the charges and fees will be paid by the debtor at the times required by the credit contract and of the amounts required under the contract.

4 Date of advance being made

If disclosure involves an advance being made under the credit contract on a certain date and that date is not ascertainable at the time the disclosure statement is prepared, disclosure may be made on the assumption that the advance is made on a date specified in the disclosure statement as being the date on which the advance is most likely to be made.

Diane Morcom,
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, which come into force on 1 April 2005,—

- set out publication requirements for the disclosure of a change to the amount of an interest rate or a change to the amount of any fee or charge payable under a consumer credit contract on which a creditor may rely as alternatives to the methods of disclosure provided for in the Credit Contracts and Consumer Finance Act 2003 (the **Act**); and
- set out assumptions that may be made when disclosing information that is required to be disclosed under the Act (and the terms and conditions applying to those assumptions); and
- prescribe the method for calculating the rebate of a consumer credit insurance premium to be deducted from the amount required for the full prepayment of a consumer credit contract; and
- prescribe the following methods that may be used for calculating a reasonable estimate of a creditor's loss arising from a full prepayment of a fixed interest rate consumer credit contract:
  - if the interest rate is fixed for the whole term of the consumer credit contract, the unpaid balance of the contract as at the date of the full prepayment is compared with the value of future payments that the creditor would receive if the amount fully prepaid is re-lent at the creditor's prevailing interest rates for the unexpired portion of the contract:
  - if the interest rate is fixed for part of the term of the consumer credit contract (but not for the whole term),

the expected value of the remaining fixed interest payments payable during the fixed interest period calculated as at the date of the full prepayment is compared with the value of future payments that the creditor would receive if the amount fully prepaid is re-lent at the creditor's prevailing interest rates for the unexpired portion of the fixed interest period in which the fixed rate contract is fully prepaid.

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