



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 206

Credit licensing: Competence and training

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About this guide

This guide is for credit licensees, licence applicants and unlicensed carried over instrument lenders (unlicensed COI lenders).

It provides guidance on how credit licensees and unlicensed COI lenders can meet their organisational competence and representative training obligations under the *National Consumer Credit Protection Act 2009* (National Credit Act).

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This version was issued in July 2014 and is based on legislation and regulations as at the date of issue.

Previous versions:

- Superseded Regulatory Guide 206, issued 18 December 2009, reissued 25 June 2010, 2 July 2012 and February 2013

Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the credit legislation and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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A Overview

Key points

Credit licensees must comply with the organisational competence obligation in s47(1)(f) of the *National Consumer Credit Protection Act 2009* (National Credit Act) and licence applicants must be able to demonstrate in their licence application that they can comply with it.

We assess your compliance with this obligation by looking at the qualifications and experience of the people who are required to be ‘fit and proper’ to engage in credit activities.

What you need to do to comply will depend on the nature, scale and complexity of your business. However, this guide sets out our minimum expectations for demonstrating organisational competence: see Section B.

You must also ensure that your representatives are adequately trained and competent to engage in the credit activities authorised by your licence: s47(1)(g). We generally expect you to determine what is appropriate initial and ongoing training for your representatives, and to embed this in your recruitment and training systems: see Section C.

An unlicensed carried over instrument lender (unlicensed COI lender) must comply with modified organisational competence and representative training obligations set out in s47(1)(f) of the National Credit Act, as modified by the National Consumer Credit Protection Regulations 2010 (National Credit Regulations): see RG 206.25–RG 206.28.

- RG 206.1 This guide sets out our requirements on organisational competence and representative training. These requirements are also summarised in Table 1.

Organisational competence

- RG 206.2 If you are a credit licensee, you must maintain your organisation’s competence to engage in the credit activities authorised by your credit licence: s47(1)(f).
- RG 206.3 If you are a credit provider or lessor in relation to credit contracts or consumer leases entered into before 1 July 2010, but not in relation to any credit contracts or consumer leases entered into after that date, you are a carried over instrument lender (COI lender). You may operate either as a credit licensee or as an unlicensed carried over instrument lender (unlicensed COI lender): see RG 206.25–RG 206.28. If you are an unlicensed COI lender, you must also maintain your organisation’s competence to engage in the credit activities in relation to the carried over instrument: s47, as modified by item 2.17 of Sch 2 to the National Credit Regulations.
- RG 206.4 We refer to this obligation as the ‘organisational competence’ obligation. We assess your compliance with this obligation by looking at the qualifications and experience of the people who manage your credit business, namely those

people who are required under the *National Consumer Credit Protection Act 2009* (National Credit Act) to meet a ‘fit and proper’ test, or a subset of those people. We refer to these people as your ‘responsible managers’.

RG 206.5 Our focus is on the people in your business who are responsible for the quality of your credit activities. Our objective is to ensure you have people with appropriate qualifications and experience so that you have the competence to engage in all your credit activities efficiently, honestly and fairly: s47(1)(a).

Note: See Regulatory Guide 205 *Credit licensing: General conduct obligations* (RG 205) for a discussion of this obligation.

What you need to do to comply

RG 206.6 The National Credit Act places responsibility on you to ensure you maintain the competence to provide the credit activities authorised by your credit licence.

RG 206.7 What you need to do to comply will depend on the nature, scale and complexity of your business, including the size of your business, the credit activities you engage in, and the roles that individuals play in your business. However, this guide sets out our minimum expectations for demonstrating organisational competence.

RG 206.8 At a minimum, you need to have responsible managers with at least two years relevant problem-free experience and either:

- (a) credit industry qualifications to at least the Certificate IV level; or
- (b) another general relevant higher level qualification (e.g. a diploma or university degree).

RG 206.9 If your business provides third-party home loan credit assistance, your responsible managers’ qualifications should be at least a Certificate IV in Finance and Mortgage Broking.

Note 1: ‘Home loan credit assistance’ means credit assistance in relation to a credit product where the credit is secured by real property. Your business will be providing third-party home loan credit assistance where neither you nor your representatives will be the credit provider. See RG 206.75 for further details.

Note 2: References to courses are to those included as part of the most recent training package for the industry, FNS10 *Financial Services Training Package*: see www.training.gov.au. However, we will also recognise equivalent qualifications completed before the implementation of FNS10. For example, the Certificate IV in Financial Services (Finance/Mortgage Broking) accredited under FNS04 *Financial Services Training Package* was an equivalent course to the current Certificate IV in Finance and Mortgage Broking.

RG 206.10 While we have not set specific requirements for responsible managers where the business only provides home loan credit assistance in relation to the licensee’s own credit products, these responsible managers should take

account of the training outcomes in Table 2, and review their own qualifications in this light. We would also expect licensees to have regard to these training outcomes when appointing new responsible managers for similar roles.

- RG 206.11 In setting our minimum expectations for demonstrating organisational competence, we aim to strike a balance between certainty and flexibility for licensees while promoting consumer protection and market integrity.

Measures for maintaining organisational competence

- RG 206.12 You also need to have measures in place to ensure you maintain your organisational competence at all times.

- RG 206.13 We expect your measures for complying with the organisational competence obligation will ensure that you:

- (a) review your organisational competence on a regular basis and whenever your responsible managers or business activities change;
- (b) maintain and update the qualifications and experience of your responsible managers and ensure your responsible managers undertake at least 20 hours of continuing professional development (CPD) per year; and
- (c) keep records showing that you have reviewed your organisational competence and the steps you have taken to maintain your organisational competence.

- RG 206.14 You should document these measures in some form. In our view, it is more difficult to show compliance where documentation is not in place. Documentation will help you demonstrate whether or not you are complying with the organisational competence obligation.

When you need to comply

Applying for a credit licence

- RG 206.15 If you are applying for a credit licence, you must be able to show that you can comply with the organisational competence obligation from the time you are granted a licence, and on an ongoing basis. We cannot grant you a licence if we have any reason to believe you will not be able to comply with this obligation: s37(1)(b).

Ongoing compliance

- RG 206.16 Once you have a credit licence, you must maintain your organisational competence at all times. If we have reason to believe that you are not complying, we may take administrative action, which could include suspending or cancelling your licence, or imposing additional licence conditions: s55(1)(a).

RG 206.17 If we conduct a surveillance visit on your business, we may check your ongoing compliance with the organisational competence obligation, including the measures you have for ensuring compliance.

Making changes to your business

RG 206.18 We expect you to review your organisational competence and ensure you will maintain it before you make any changes to your business, such as expanding your range of credit activities or replacing a key person.

Representative training

RG 206.19 If you are a credit licensee, you must ensure that your representatives are adequately trained and competent to engage in the credit activities authorised by your licence: s47(1)(g). If you are an unlicensed COI lender, you must also ensure that your representatives are adequately trained and competent to engage in the credit activities in relation to the carried over instrument: s47, as modified by item 2.17 of Sch 2 to the National Credit Regulations. We refer to this obligation as the ‘representative training’ obligation.

RG 206.20 Generally, we have not set specific training requirements that we think representatives should meet. We think that, as a credit licensee, you should:

- (a) determine for yourself what is appropriate initial and ongoing training to ensure your compliance with the representative training obligation; and
- (b) embed this in your recruitment and training systems.

RG 206.21 However, we have set specific requirements for representatives who provide home loan credit assistance:

- (a) Representatives who provide third-party home loan credit assistance need to have at least a Certificate IV in Finance and Mortgage Broking. These representatives also need to undertake at least 20 hours of CPD per year.
- (b) Representatives who only provide home loan credit assistance in relation to credit products offered by their own credit licensee may complete training in the form determined appropriate by the licensee. However, this training should allow the representatives to apply the knowledge specified in Table 2, as well as covering other areas appropriate to their role. These representatives should either undertake at least 20 hours of CPD per year or undertake a regular ‘knowledge update review’ and sufficient hours of CPD each year to enable completion of the knowledge update review.

These specific training requirements are necessary because poorly informed assistance leading to poor decisions about home loans could potentially jeopardise ownership of the family home.

RG 206.22 Where industry training standards exist for other sectors of the credit industry or for specific products, we expect you will ensure that your representatives are trained to at least the level of the industry standard.

Streamlined applicants

RG 206.23 You will have the benefit of a streamlined process when applying for a credit licence if you are:

- (a) an authorised deposit-taking institution (ADI);
- (b) a lenders mortgage insurer—that is, a general insurer authorised by the Australian Prudential Regulation Authority (APRA) under the *Insurance Act 1973* that:
 - (i) offers lenders mortgage insurance products; and
 - (ii) engages in credit activities only as an assignee in relation to providing those mortgage insurance products or as the credit provider under the doctrine of subrogation in relation to providing those mortgage insurance products; or
- (c) a life insurer registered with APRA under the *Life Insurance Act 1995* that engages in credit activities only because of the operation of the terms and conditions of a life policy, or a document issued or given by the life insurer in relation to a life policy, that was entered into by the life insurer before 1 July 2010.

This streamlined process does not include an assessment of organisational competence: see s39 and reg 8.

RG 206.24 While you may automatically be granted a credit licence on application, you must still be able to meet the organisational competence and representative training obligations when you apply for your credit licence. We will ask you to provide details of the experience and qualifications of your responsible managers with your licence application. You will also need to ensure that you comply with the organisational competence and representative training obligations on an ongoing basis.

Carried over instruments

RG 206.25 If you are a credit provider or lessor in relation to credit contracts or consumer leases entered into before 1 July 2010, but not in relation to any credit contracts or consumer leases entered into after that date, you are a COI lender and specific rules apply to you.

Note: A 'carried over instrument' is a contract or other instrument that was made and in force, and to which an old Credit Code applied, immediately before 1 July 2010: see s4 of the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009* (Transitional Act).

RG 206.26 If you are a COI lender, you can elect to either:

- (a) be regulated as a credit licensee; or
- (b) not be licensed under the National Credit Act and instead be regulated as an unlicensed COI lender—in which case, you will be subject to a modified statutory regime.

Note 1: For most people, the decision about whether to be regulated as an unlicensed COI lender will have been made before 1 July 2010. However, if you have since ceased credit activities in relation to credit contracts or consumer leases entered into from 1 July 2010, but continue to be a COI lender, you may apply to cancel your credit licence. If you do this, you must notify ASIC that you intend to become an unlicensed COI lender, and you must comply with the modified statutory regime.

Note 2: For more guidance for people who engage in credit activities in relation to a carried over instrument, see Regulatory Guide 202 *Credit registration and transition* (RG 202), Regulatory Guide 203 *Do I need a credit licence?* (RG 203) and Information Sheet 110 *Lenders with carried over instruments* (INFO 110).

RG 206.27 The modified statutory regime for unlicensed COI lenders includes the requirement to maintain the competence to engage in credit activities in relation to the carried over instruments and ensure that your representatives are adequately trained and competent to engage in the credit activities: see s47 of the National Credit Act, as modified by item 2.17 of Sch 2 to the National Credit Regulations.

RG 206.28 The obligations on unlicensed COI lenders in relation to organisational competence and representative training are broadly similar to the obligations on credit licensees. Our guidance on how credit licensees can meet the organisational competence and representative training obligations will also assist unlicensed COI lenders in meeting similar obligations.

Summary of our organisational competence and representative training requirements

RG 206.29 We have summarised our organisational competence and representative training requirements in Table 1.

Table 1: Our organisational competence and representative training requirements

Who you are	What you must do	
	Initial requirements	Ongoing requirements
Responsible managers		
A responsible manager of a business that provides third-party home loan credit assistance*	Responsible managers must have completed at least a Certificate IV in Finance and Mortgage Broking.	At least 20 hours of CPD each year.
A responsible manager of a business that only provides home loan credit assistance in relation to the licensee's own credit products	Responsible managers must have completed: <ul style="list-style-type: none"> • a credit industry qualification to at least the Certificate IV level; or • another general higher level qualification (e.g. a diploma or university degree) in a relevant discipline. 	At least 20 hours of CPD each year.
All other responsible managers	Responsible managers must have completed: <ul style="list-style-type: none"> • a credit industry qualification to at least the Certificate IV level; or • another general higher level qualification (e.g. a diploma or university degree) in a relevant discipline. 	At least 20 hours of CPD each year.
Representatives		
A representative providing third-party home loan credit assistance*	Representatives must complete a Certificate IV in Finance and Mortgage Broking.	At least 20 hours of CPD each year.
A representative only providing home loan credit assistance in relation to their licensee's own credit products	Representatives must complete training as determined by the licensee that will: <ul style="list-style-type: none"> • allow the representative to apply the knowledge specified in Table 2 in Section C; and • cover all other areas appropriate to the representative's role. 	A choice of: <ul style="list-style-type: none"> • a minimum 20 hours of CPD each year; or • a regular knowledge update review and sufficient hours of CPD each year to enable completion of the knowledge update review.
All other representatives	Representatives must complete training as determined by the licensee, and as appropriate to the representative's role and industry sector.	Between 10 and 30 hours of CPD each year. [†]

* 'Home loan credit assistance' means credit assistance in relation to a credit product where the credit is secured by real property. Your business will be providing third-party home loan credit assistance where neither you nor your representatives will be the credit provider.

† If a licensee determines that less than 10 hours of CPD per year is an appropriate number of hours for its representatives to engage in, we would expect the licensee to explain to us why this is sufficient.

B Organisational competence

Key points

We assess your organisational competence by looking at the qualifications and experience of the people in your business who are required to be 'fit and proper' to engage in credit activities. These are your 'responsible managers'.

Generally, your responsible managers should have at least two years relevant problem-free experience and either:

- credit industry qualifications to at least the Certificate IV level; or
- another general relevant higher level qualification (e.g. a diploma or university degree).

Responsible managers of third-party home loan credit assistance providers should have at least a Certificate IV in Finance and Mortgage Broking.

While we have not set specific requirements for responsible managers where the business only provides home loan credit assistance in relation to the licensee's own credit products, these responsible managers should take account of the training outcomes in Table 2, and review their own qualifications in this light.

All responsible managers should undertake at least 20 hours of CPD per year.

How we assess your organisational competence

- RG 206.30 If you are a credit licensee, you must maintain your organisation's competence to engage in the credit activities authorised by your credit licence: s47(1)(f). If you are an unlicensed COI lender, you must also maintain your organisation's competence to engage in the credit activities in relation to the carried over instrument: s47, as modified by item 2.17 of Sch 2 to the National Credit Regulations. We refer to this obligation as the 'organisational competence' obligation.

The 'fit and proper' test

- RG 206.31 In deciding whether to grant a credit licence, we must consider whether certain people in the applicant's business are fit and proper people to engage in credit activities: s37(1)(c) and 37(2)(h). We refer to this as the 'fit and proper' test. This test is applied to:
- (a) the applicant, if the applicant is a single natural person (s37(1)(c));
 - (b) each director, secretary or senior manager of the body corporate who would perform duties in relation to the credit activities to be authorised by the licence, where the applicant is a body corporate (s37(2)(h)(i)); or

- (c) each partner or trustee who would perform duties in relation to the credit activities to be authorised by the licence, where the applicant is a partnership or the trustees of a trust (s37(2)(h)(ii)).

RG 206.32 If you are granted a credit licence, you must ensure on an ongoing basis that these people are fit and proper people to engage in credit activities. We may suspend or cancel your licence if one of these people is not fit and proper at any time during the term of the licence: s55(1)(c).

Note: We expect you to carry out and document your own checks about whether your responsible managers are fit and proper. This would generally include reference checks, verification of qualifications, searches of registers of banned persons and criminal history checks. For more information, see Regulatory Guide 204 *Applying for and varying a credit licence* (RG 204).

Responsible managers

RG 206.33 To assess your organisational competence, we look at the qualifications and experience of the people in your business who are required to meet the ‘fit and proper’ test, or a subset of them. These are your ‘responsible managers’ and you will be asked to identify them in your licence application. We look at their qualifications and experience because they are the people who will be responsible for the quality of the credit activities your business provides.

Carried over instrument lenders

RG 206.34 While we acknowledge that the s37 ‘fit and proper’ test does not apply to unlicensed COI lenders, we think it is nevertheless appropriate for COI lenders to identify individuals responsible for ensuring that your organisation remains competent to engage in the credit activities in relation to the carried over instrument.

Identifying your responsible managers

RG 206.35 To determine whether all of the people referred to in RG 206.31 will be your responsible managers, or a subset of them, you should consider which people in your business are primarily responsible for managing the credit activities, rather than solely relying on their job titles.

RG 206.36 Factors that can affect whom you identify as your responsible managers, and how many you need, include:

- (a) the credit activities you engage in;
- (b) the number of representatives who engage in credit activities on your behalf;
- (c) the size, structure and diversity of your operations;
- (d) the number of clients you have; and
- (e) whether your main business is engaging in a credit activity.

RG 206.37 If you are a large body corporate, you may have many senior managers and directors who perform duties in relation to your credit activities. In this case, we expect you to identify as responsible managers a subset of the people required to be fit and proper. Your responsible managers should be those most directly involved (or who will be involved) in managing your credit activities.

Note: Senior managers are people who make or participate in decisions that affect the whole or a substantial part of the business or who have the capacity to affect significantly the business's financial standing: see s5 of the National Credit Act and s9 of the *Corporations Act 2001* (Corporations Act).

RG 206.38 We would not expect your responsible managers to be directors with a governance rather than management role (e.g. non-executive directors) or company secretaries. We would also not expect your responsible managers to be those with a specialist business support role (e.g. a human resources director). This is because these people are only indirectly involved in managing your credit activities.

RG 206.39 There may also be people in your business who are required to meet the 'fit and proper' test but whose responsibilities in relation to your credit activities only comprise a small part of their duties. You should not identify these people as your responsible managers.

Note: For example, where there are senior managers who have broad oversight responsibilities which, among other things, include credit activities, and senior managers working to them who specialise in making management decisions only in relation to credit activities, it is the latter group of people whom we consider to be responsible managers, rather than the former.

RG 206.40 If you are a small business, we expect your responsible managers will be the people or person who is ultimately responsible for the day-to-day decisions in relation to the provision of the credit activities of the business.

Note: For example, where a small lending business consists of one owner and two employees and the two employees undertake all the credit checking of the clients but have to get approval from the owner before providing credit, it is the owner who is the responsible manager, not the two employees.

RG 206.41 We expect that where a family business is structured so that there is a professional trustee, and that trustee has little to do with the operation of the business, the trustee would not be a responsible manager. Instead, the responsible managers are likely to be the members of the family who are responsible for making the day-to-day decisions regarding management of the credit activities their business offers.

Key person licence condition

RG 206.42 If we think your organisational competence is heavily dependent on one or two responsible managers, we may impose a 'key person licence condition' on your credit licence. The key person licence condition would name the

responsible managers you are depending on and, if these people change, you would have to identify other responsible managers to replace them and demonstrate that you continue to have the organisational competence to provide your credit activities.

Note: For more information about the key person licence condition, see Section D of RG 204.

- RG 206.43 For other credit licensees, where responsibilities are spread more widely among a group of responsible managers, we think that it is not necessary to notify us every time a responsible manager changes. Rather, we think it would be sufficient if we update our records about the credit licensee's responsible managers periodically. We may do this based on information obtained in the annual compliance certificate.

Streamlined applicants

- RG 206.44 If you are one of the applicant types referred to in RG 206.23, you will have the benefit of a streamlined process when applying for a credit licence. This streamlined process does not include an assessment of organisational competence: see s39 and reg 8.

Note: For guidance on how we assess applications from streamlined applicants, see RG 204.

- RG 206.45 Although you will not have your organisational competence assessed on entering the credit regime, you must still meet the ongoing organisational competence obligations. We do not distinguish streamlined applicants from other applicants when setting our expectations for ongoing organisational competence.
- RG 206.46 We will ask you to provide details of the experience and qualifications of your responsible managers with your credit licence application. While we acknowledge that the s37 'fit and proper' test does not apply to ADIs or other streamlined applicants, we think it is nevertheless appropriate to use s37 to determine who should be the responsible managers for these businesses. If you are an ADI or other streamlined applicant, you will need to give us details of the qualifications and experience of your responsible managers, and we will ask you for these details when you apply for a licence.

What qualifications and experience do your responsible managers need?

- RG 206.47 Generally, your responsible managers must have at least two years relevant problem-free experience and either:
- (a) a credit industry qualification to at least the Certificate IV level; or
 - (b) another general higher level qualification (e.g. a diploma or university degree) in a relevant discipline.

- RG 206.48 You need to set these out in your application. We may ask you for further information about the experience, history and qualifications of your responsible managers if we conduct a surveillance visit on your business.

Qualifications

- RG 206.49 We recognise that the diversity of the credit industry is reflected in the diverse qualifications held by people working in that industry. Qualifications ought to be appropriate for the particular role of the person within their organisation; however, we appreciate that for many parts of the credit industry, relevant industry-specific courses may not exist. Therefore, we have generally not set specific requirements.
- RG 206.50 In the case of a credit provider, for example, relevant qualifications that responsible managers could have might include a Certificate IV in Financial Services, a Diploma in Financial Services (Banking) or a university degree in a financial discipline (e.g. economics, commerce, business, accounting or equivalent).
- RG 206.51 We have, however, set a specific requirement for responsible managers of a credit licensee that provides third-party home loan credit assistance. We expect these responsible managers to have completed at least a Certificate IV in Finance and Mortgage Broking. We have adopted this approach because the Certificate IV in Finance and Mortgage Broking is a well-recognised qualification that is specifically relevant to the mortgage broking industry. We believe that requiring responsible managers involved in a business that provides third-party home loan credit assistance to hold this qualification will help ensure that they have an appropriate level of competence.
- RG 206.52 Responsible managers of licensees only providing home loan credit assistance in relation to their own credit products will need to meet the general requirements in RG 206.47. While we have not set specific requirements for these responsible managers, it is nevertheless important that they have qualifications and experience to provide them with a good understanding of the area of the business for which they are responsible. These responsible managers should take account of the training outcomes in Table 2, and review their own qualifications in this light. We would also expect licensees to have regard to these training outcomes when appointing new responsible managers for similar roles.
- RG 206.53 We may develop additional requirements in the future to adapt to changing conditions in the credit industry.

Experience

- RG 206.54 In addition to the qualifications described at RG 206.50–RG 206.51, we also expect your responsible managers to have at least two years of relevant experience that is not marred by significant non-compliance issues. This is

because we think it is necessary to have sufficient practical experience in the relevant area of credit, as well as relevant qualifications, to competently operate a credit business. You will need to outline the experience of your responsible managers in your licence application, including any significant non-compliance issues you are aware of: see RG 206.61.

- RG 206.55 While requiring certain people to successfully complete particular educational courses cannot guarantee that all licensed businesses will provide their services competently, a combination of education and experience requirements should promote competent leadership. Therefore, we expect you to only select responsible managers who already have two years relevant experience when you apply for a credit licence.
- RG 206.56 Ideally, experience should be gained in a licensed business engaging in similar credit activities to those for which the applicant wishes to be licensed. This may be done by working as a representative of a credit licensee business or as a support person in the licensed business with sufficient exposure to the credit activities of the business.
- RG 206.57 The objective of gaining experience as a support person or representative is to acquire a good understanding of the processes necessary to manage a business undertaking those particular credit activities.
- RG 206.58 On reviewing your licence application, we may need to ask you for supporting documentation in order to check that your responsible managers have had two years problem-free experience. The supporting documentation we ask you to provide could be references from their previous supervisors within a credit business confirming their duties and length of time in the business and the role of the supervisor providing the reference.

Non-compliance issues you need to tell us about

- RG 206.59 Problem-free experience is experience that has not been marred by significant non-compliance issues (e.g. where ASIC or a state regulator has taken action against the person). We will determine if your responsible managers' experience has been problem-free with reference to the circumstances set out in RG 206.61–RG 206.62.
- RG 206.60 We will review all information that you submit in your licence application about your responsible managers' non-compliance issues. If we require it, we will ask you for further information to thoroughly assess the circumstances surrounding your responsible managers' non-compliance issues.
- RG 206.61 In your licence application you must provide the following information about your responsible managers that may indicate significant non-compliance issues in the past 10 years:

- (a) any refusals or restrictions that have been applied in relation to carrying on a trade, business or profession for which an authorisation (licence, certificate or other authority) is required by law;
- (b) any disciplinary action in relation to any such authorisation;
- (c) details of whether they have been the subject of any investigations or proceedings that are still current or pending and which may result in disciplinary action being taken in relation to any such authorisation;
- (d) details of whether they have been engaged in the management of any companies or businesses that have had a licence under the Corporations Act (or previous corresponding laws) cancelled;
- (e) details of whether they have been reprimanded, or disqualified or removed, by a professional or regulatory body in relation to matters relating to the person's honesty, integrity or business conduct;
- (f) details of whether they have had any past, present or pending claim made against a professional indemnity (PI) insurance policy in relation to advice they have tendered;
- (g) whether they have been refused PI insurance;
- (h) whether they have been denied accreditation by a credit provider, mortgage manager or mortgage insurer;
- (i) whether they have had their accreditation cancelled or suspended by a credit provider, mortgage manager or mortgage insurer, or had their membership of an aggregator or franchise group terminated, or have similar action pending against them, other than for volume reasons;
- (j) whether they have been the subject of administrative, civil, or criminal proceedings or enforcement action, which were determined adversely to them (including by their consenting to an order or direction, or giving an undertaking not to engage in unlawful or improper conduct) in any country;
- (k) whether they have ever carried on business under any other name than the name shown in the application; and
- (l) whether they have been known by any name other than the name shown on the application.

Note: For more guidance about the information you need to supply relating to your responsible managers' possible significant non-compliance issues, see Section E of RG 204.

RG 206.62 Where there have been problems, we will take into account any mitigating circumstances and corrective action taken by the responsible manager in relation to any non-compliance issues. We will not automatically disqualify a person who has had an isolated non-compliance issue from becoming a responsible manager. However, we will only disregard a non-compliance issue which we consider particularly trivial, inadvertent and/or where immediate corrective action was taken. We may contact you if we need more

information in order to determine if the instance of non-compliance should prevent a person from being a responsible manager. Numerous examples of non-compliance issues in a person's history will mean we do not consider that person competent to be a responsible manager.

Continuing professional development

- RG 206.63 It is important for a credit licensee's responsible managers to keep up-to-date with credit industry and regulatory developments in order to provide sound leadership for their organisations. A requirement to undertake a set number of hours per year engaging in CPD relating to credit issues will help ensure this.
- RG 206.64 Your responsible managers should undertake at least 20 hours of CPD per year, which may consist of a combination of relevant credit-related educational activities. This requirement will be set out in a licence condition, which will also require you to keep a record of the CPD activities undertaken by your responsible managers each year.
- RG 206.65 The CPD should include both product and industry developments related to credit, and also compliance training, including in relation to new regulatory requirements of the credit regime. For example, compliance training would need to encompass the responsible lending obligations: see Ch 3 of the National Credit Act.
- RG 206.66 The following activities may be counted towards CPD:
- (a) attendance at relevant professional seminars or conferences;
 - (b) preparation time for presenting at relevant professional seminars or conferences;
 - (c) publication of journal articles relevant to the credit industry;
 - (d) viewing DVDs of recent (within the last year) professional seminars or conferences (up to a maximum of 10 hours per year);
 - (e) completion of online tutorials and/or quizzes on recent (within the last year) regulatory, technical or professional developments in the industry; and
 - (f) internal training on systems, procedures and policies relevant to the responsible manager's role (although activities in this category should not make up the majority of CPD hours).

Note: This is not intended to constitute an exclusive list of activities that may be counted towards CPD, and other types of activities may also be appropriate. Generally, we do not regard private study as adequate for the purpose of meeting the CPD requirements, unless it involves audio or visual material specifically designed for the purpose.

C Representative training

Key points

The National Credit Act requires you to ensure your representatives are adequately trained and competent to engage in the credit activities authorised by your credit licence.

If you are an unlicensed COI lender, you must also ensure that your representatives are adequately trained and competent to engage in the credit activities in relation to the carried over instruments.

We have not set specific training standards that we think representatives should meet (other than for representatives providing home loan credit assistance). We expect you to determine for yourself what is appropriate initial and ongoing training for your representatives, and to embed this in your recruitment and training systems.

Representatives who provide third-party home loan credit assistance need to have at least a Certificate IV in Finance and Mortgage Broking and undertake at least 20 hours of CPD per year.

Representatives who only provide home loan credit assistance in relation to credit products offered by their own credit licensee may complete training in the form determined appropriate by the licensee. However, this training should allow the representative to apply the knowledge specified in Table 2, in addition to any other training that is necessary to ensure they are fully trained to undertake the credit activities in which they engage. These representatives should either undertake at least 20 hours of CPD per year or undertake a regular knowledge update review.

General expectations

- RG 206.67 You must ensure that your representatives are adequately trained and are competent to engage in the credit activities authorised by your credit licence: s47(1)(g). If you are an unlicensed COI lender, you must also ensure that your representatives are adequately trained and competent to engage in the credit activities in relation to the carried over instruments: s47, as modified by item 2.17 of Sch 2 to the National Credit Regulations. Your representatives include your staff, agents and authorised credit representatives.
- RG 206.68 Generally, we think that you should determine for yourself what is appropriate initial and ongoing training for your representatives, and embed this in your recruitment and training systems. The diversity of roles in the credit industry requires a flexible approach to representative training. Therefore, we have not set specific educational prerequisites or ongoing training requirements for representatives. We expect you to ensure that your representatives are suitably qualified to perform the role that they are employed to perform.

- RG 206.69 For example, if your business is a small micro lending business that has only two or three representatives, it may be sufficient for your responsible managers to set aside a few days a year to personally train your representatives about your credit products and about the legal obligations that apply to your business. However, if your business is a large finance company with many branches, we would expect you to put in place an extensive training regime to take into account the large number of representatives you are responsible for, and the staff turnover that inevitably occurs in large organisations.
- RG 206.70 Where industry training standards exist for particular sectors of the credit industry or specific products, we expect you will ensure that your representatives are trained at least to the level of the industry standard. In the case of third-party home loan credit assistance providers, this is at least a Certificate IV in Finance and Mortgage Broking.
- Note: For example, there are specific industry accreditations provided by industry bodies that provide training in equity release products. We regard equity release products as a specialised credit product for which representatives need to be specially qualified in order to be competent to discuss the product with consumers.
- RG 206.71 We expect you to ensure that the training course you select for your representatives is one that is endorsed by their industry body. New training organisations with no connection to the relevant industry are unlikely to have the expertise to offer the kind of comprehensive course that would sufficiently cover the specialised content needed to ensure representatives can provide thorough assistance to their clients in relation to these products.
- RG 206.72 We expect you to document your recruitment and training policies and procedures, and the implementation of these policies and procedures, as appropriate to the nature, scale and complexity of your business.
- RG 206.73 We will monitor how our approach to meeting the representative training obligation is working and may adjust that approach if necessary in light of our broader regulatory experience.
- RG 206.74 While unlicensed COI lenders will not be taking over any new credit contracts or consumer leases, we expect that your representatives will be adequately trained to deal with the carried over instruments that you hold.

Home loan credit assistance

- RG 206.75 A representative will be providing home loan credit assistance when they give credit assistance in relation to a credit product where the credit is secured by real property (home loan credit assistance). This includes credit products provided by the representative's own licensee, as well as those provided by third parties.

Note 1: Credit assistance is defined in s8.

Note 2: Regulation 23 exempts providers of credit assistance from needing a licence where they are linked to the credit provider, in connection with the supply of goods and

services (the 'point-of-sale retailer' exemption: see Appendix 2 of RG 203 for further details). Consequently, these individuals will also not be considered to be providing home loan credit assistance for the purposes of the training requirements.

- RG 206.76 In our representative training requirements, we distinguish between:
- (a) representatives who provide third-party home loan credit assistance—that is, home loan credit assistance where the credit assistance relates to credit secured by real property and neither the licensee nor its representatives will be the credit provider; and
 - (b) other representatives who only provide home loan credit assistance in relation to credit products offered by their own credit licensee.

Third-party home loan credit assistance

RG 206.77 Representatives who provide third-party home loan credit assistance will need to have at least a Certificate IV in Finance and Mortgage Broking. This qualification is a well-recognised industry qualification that is specifically relevant to the mortgage broking industry and meets nationally endorsed industry standards under the Australian Qualifications Framework.

RG 206.78 We recognise that some representatives who provide third-party home loan credit assistance will meet the Tier 1 training requirements in Regulatory Guide 146 *Licensing: Training of financial product advisers* (RG 146). We will work with industry bodies to determine appropriate exemptions from units in the Certificate IV in Finance and Mortgage Broking to recognise this existing qualification.

Note: Financial planners who provide credit assistance but do not provide home loan credit assistance still require a credit licence, but do not need to meet the training obligations for advisers who provide home loan credit assistance. See RG 203 for guidance on when financial product advice is credit assistance.

RG 206.79 We think it is appropriate to require representatives who provide third-party home loan credit assistance to hold a Certificate IV in Finance and Mortgage Broking because home loans are the largest loan most consumers will take on, and poor decisions and advice can jeopardise ownership of the family home. Factors that influence the decision to borrow against a home are very important and people assisting a consumer with these decisions should be adequately trained to provide this assistance.

Other home loan credit assistance

RG 206.80 Representatives who only provide home loan credit assistance in relation to credit products offered by their own credit licensee may complete training in the form determined appropriate by the licensee. However, this training should allow the representative to apply the knowledge specified in Table 2. Additionally, it should also cover all other areas appropriate to the representative's role to ensure they are fully trained to undertake all of the credit activities in which they engage.

Table 2: Training outcomes for representatives providing home loan credit assistance in relation to their licensee's own loans

1 Dealing appropriately with consumers	<ul style="list-style-type: none"> • Ability to gather relevant information about a consumer's situation as needed, including their relevant personal and financial situation. • Ability to establish and address consumers' priorities and concerns.
2 Types of home loan products and their characteristics	<ul style="list-style-type: none"> • Broad knowledge about the range of home loan products available in the lending industry, and their characteristics. • General understanding of the loan process, loan features, and fees, charges and commissions.
3 Economic and market context	<ul style="list-style-type: none"> • Knowledge of relevant economic environment, including the business cycle and market factors, and inflation. • Basic financial and accounting concepts directly relating to home loans, including interest rates. • Real estate terms and concepts (e.g. land titles).

RG 206.81 We have not prescribed a particular course for representatives only providing home loan credit assistance in relation to credit products offered by their own credit licensee. Nevertheless, we believe it is critical that these representatives are adequately trained because of the important role they play in the process of consumers' decision making on home loans. The outcomes described in Table 2 are designed to ensure representatives in this position have a well-rounded set of knowledge and skills to apply to their role including:

- (a) being able to deal with consumers effectively;
- (b) having an adequate understanding of the range of home loan products and their characteristics; and
- (c) understanding the economic environment impacting on home loans.

Note: Depending on the representative's role, undertaking some units from the Certificate IV in Finance and Mortgage Broking may assist them to achieve these training outcomes.

Financial product advice

RG 206.82 We recognise that financial planners often provide advice about clients' home loans in the context of broader financial product advice. Not all advice about home loans will necessarily constitute home loan credit assistance. Table 3 sets out some examples of when representatives will and will not be providing home loan credit assistance.

Table 3: Examples of when representatives will or will not be providing home loan credit assistance

Example	Explanation
<p>Providing advice about a client's financial arrangements, including their home loans</p>	<p>If a financial planner is providing advice to a client about all their financial arrangements, including their home loan, and while noting they are not a mortgage broker, advises them that the interest rate they are paying for their mortgage seems reasonable or unreasonable compared to other mortgage products on the market, we would not consider this to constitute home loan credit assistance. We would expect the financial planner to refer the client to a mortgage broker for assistance in choosing a better mortgage.</p> <p>If, however, the planner goes further to suggest a particular home loan product themselves that the client should switch to, we would consider this to be home loan credit assistance. In addition, if they made a positive recommendation to the client that they should stay with their product, we would consider this to be home loan credit assistance.</p>
<p>Advising a client to pay off their home loan</p>	<p>If a financial planner advises their client to pay off their mortgage before they invest in other financial products, we would not consider this to be providing home loan credit assistance.</p>
<p>Suggesting a client take out a home loan with a particular credit provider</p>	<p>If a financial planner suggests a client take out a particular product with a particular credit provider, this would be home loan credit assistance regardless of whether the financial planner earns a commission or not.</p>
<p>Providing advice about loan features</p>	<p>If a financial planner advises a client that some home loan providers offer loans with a free redraw facility and explains how a free redraw facility works without suggesting a particular provider or product, we would not consider this to be home loan credit assistance.</p> <p>If the client expressed an interest in getting assistance to select an appropriate loan with a free redraw facility, we would expect the financial planner to refer them to a mortgage broker or credit provider to explain the features and costs associated with that type of loan.</p>

Alternative approaches to meeting the training standards

Foreign qualifications

- RG 206.83 Generally, we will accept foreign qualifications relevant to the products and activities the credit representative is engaged with. An exception to this is credit representatives with foreign qualifications who would like to provide mortgage broking services. Like other such representatives, they must undertake a Certificate IV in Finance and Mortgage Broking.
- RG 206.84 Representatives that are not providing mortgage broking services need to obtain evidence that their training qualification has been recognised by a relevant overseas regulatory body. Relevant foreign university qualifications can be verified by Australian Education International—National Office of Overseas Skills Recognition (AEI NOOSR) through its *Country education*

profile publications. You can contact AEI NOOSR directly, or you can contact the Overseas Qualifications Unit (OQU) located in each Australian state or territory.

RG 206.85 Foreign qualifications will not have addressed Australian legal requirements (e.g. obligations under the Corporations Act, the National Credit Act, codes of conduct and knowledge of other relevant Australian legislation including taxation and superannuation). Advisers with foreign qualifications should undertake suitable training to become familiar with Australian requirements.

RG 206.86 Despite RG 206.83–RG 206.85, we will treat the following persons from New Zealand, who have practised for at least six consecutive months, as fully meeting the training standards currently required by this regulatory guide for the relevant products or subject areas covered by their New Zealand qualifications:

- (a) current and former authorised financial advisers (AFAs); and
- (b) current and former advisers of qualifying financial entities (QFEs) who meet the competency requirements to be an AFA set out in Code Standard 16 of New Zealand’s Code of Professional Conduct for Authorised Financial Advisers.

Note 1: For example, qualifications relevant to provide assistance on credit products in New Zealand will be sufficient to provide credit assistance on equivalent products in Australia. Information on the different licence scopes for AFAs and the competency standards required to be an AFA can be found on the New Zealand Financial Markets Authority’s website at www.fma.govt.nz.

Note 2: By ‘former advisers’, we mean advisers not currently practising but who have done so within the three years before the adviser started practising in Australia.

Note 3: The arrangement in RG 206.86 will be reviewed every three years. This will include considering any changes to the training regimes in either Australia or New Zealand during that time.

Continuing professional development

General expectations

RG 206.87 While we are not mandating a set number of hours of CPD that all representatives must undertake each year, we expect you will ensure that your representatives engage in a suitable number of hours of CPD activities each year to suit your sector of the industry, and each representative’s role. We also expect you will document what is a suitable number of hours of CPD for your representatives.

RG 206.88 We note that, in other industry sectors, between 10 and 30 hours of CPD per year is standard. Consequently, if a licensee determines that less than 10 hours of CPD per year is an appropriate number of hours for their

representatives to engage in, we would expect the licensee to explain to us why this is sufficient.

RG 206.89 The following activities may be counted towards CPD:

- (a) attendance at relevant professional seminars or conferences;
- (b) preparation time for presenting at relevant professional seminars or conferences;
- (c) publication of journal articles relevant to the credit industry;
- (d) viewing DVDs of recent (within the last year) professional seminars or conferences (up to a maximum of 10 hours per year);
- (e) completion of online tutorials and/or quizzes on recent (within the last year) regulatory, technical or professional developments in the industry; and
- (f) internal training on systems, procedures and policies relevant to the representative's role (although activities in this category should not make up the majority of CPD hours).

Note: This is not intended to constitute an exclusive list of activities that may be counted towards CPD, and other types of activities may also be appropriate. Generally, we do not regard private study as adequate for the purposes of meeting the CPD requirements, unless it involves audio or visual material specifically designed for the purpose.

Requirements for home loan credit assistance

RG 206.90 We consider 20 hours to be an appropriate suitable minimum number of hours of CPD to undergo each year for representatives who provide home loan credit assistance.

RG 206.91 As an alternative to the CPD requirement, representatives who only provide home loan credit assistance in relation to credit products offered by their own credit licensee may choose to complete a regular 'knowledge update review'. Knowledge update reviews for this purpose should be administered by a registered training organisation (RTO) via a secure facility, and should test representatives' knowledge of key regulatory and market developments, as relevant to their role and industry sector. Reviews should be completed every three years.

RG 206.92 If representatives who only provide home loan credit assistance in relation to credit products offered by their own credit licensee choose to undertake a regular knowledge update review, we will not require them to complete the minimum 20 hours of CPD each year. Nevertheless, these representatives are likely to need to undertake a reasonable amount of CPD each year in order to maintain their knowledge of key regulatory and market developments, for the purposes of completing their regular knowledge update review.

Key terms

Term	Meaning in this document
ADI	Authorised deposit-taking institution—has the meaning given in s5 of the National Credit Act
AEI NOOSR	Australian Education International—National Office of Overseas Skills Recognition
AFA	A person who is an authorised financial adviser under the <i>Financial Advisers Act 2008</i> (NZ) and the <i>Financial Service Providers (Registration and Dispute Resolution) Act 2008</i> (NZ)
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
carried over instrument	Has the meaning given in s4 of the Transitional Act
COI lender	A person who was a credit provider or lessor who only has a closed pool of carried over instruments as at 1 July 2010 and will not offer new credit contracts or consumer leases from 1 July 2010
consumer	A natural person or strata corporation Note: See s5 of the National Credit Act.
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
CPD	Continuing professional development
credit	Credit to which the National Credit Code applies Note: See s3 and 5–6 of the National Credit Code.
credit activity (or credit activities)	Has the meaning given in s6 of the National Credit Act
credit assistance	Has the meaning given in s8 of the National Credit Act
credit legislation	Has the meaning given in s5 of the National Credit Act
credit licence	An Australian credit licence under s35 of the National Credit Act that authorises a licensee to engage in particular credit activities
credit licensee	A person who holds an Australian credit licence under s35 of the National Credit Act
credit provider	Has the meaning given in s5 of the National Credit Act
credit representative	A person authorised to engage in specified credit activities on behalf of a credit licensee or registered person under s64(2) or 65(2) of the National Credit Act

Term	Meaning in this document
financial product	<p>Generally, a facility through which, or through the acquisition of which, a person does one or more of the following:</p> <ul style="list-style-type: none"> • makes a financial investment (see s763B); • manages financial risk (see s763C); • makes non-cash payments (see s763D) <p>Note: See Div 3 of Pt 7.1 of the Corporations Act for the exact definition.</p>
home loan credit assistance	Providing credit assistance in relation to a credit product where the credit is secured by real property
knowledge update review	A test administered by an RTO, testing a representative's knowledge of key regulatory and market developments, as relevant to their role and industry sector
lessor	Has the meaning given in s5 of the National Credit Act
mortgage broker	Generally, a member of the sector of the credit industry that provides third-party home loan credit assistance (i.e. home loan credit assistance where the credit assistance relates to credit secured by real property and neither the licensee nor its representatives will be the credit provider)
National Credit Act	<i>National Consumer Credit Protection Act 2009</i>
National Credit Code	National Credit Code at Sch 1 to the National Credit Act
National Credit Regulations	National Consumer Credit Protection Regulations 2010
person	Has the meaning given in s5 of the National Credit Act
PI insurance	Professional indemnity insurance
QFE	An entity that is a qualifying financial entity under the <i>Financial Advisers Act 2008</i> (NZ)
reg 8 (for example)	A regulation of the National Credit Regulations (in this example, numbered 8), unless otherwise specified
registered training organisation (RTO)	An organisation that has undergone a registration process conducted by a state/territory recognition authority and is an accredited training and assessment organisation
representative	Has the meaning given in s5 of the National Credit Act

Term	Meaning in this document
responsible manager	<p>A credit licensee's responsible managers will be the following people or a subset of these people:</p> <ul style="list-style-type: none"> • where the licensee is a single natural person, the licensee; • where the licensee is a body corporate, each director, secretary or senior manager of the body corporate who would perform duties in relation to the credit activities to be authorised by the licence; • where the licensee is a partnership or the trustees of a trust, each partner or trustee who would perform duties in relation to the credit activities to be authorised by the licence
RG 203 (for example)	An ASIC regulatory guide (in this example, numbered 203)
s35 (for example)	A section of the National Credit Act (in this example, numbered 35), unless otherwise specified
senior manager	Has the same meaning as in s9 of the Corporations Act
third-party home loan credit assistance	Home loan credit assistance where the credit assistance relates to credit secured by real property and neither the licensee nor its representatives will be the credit provider
Transitional Act	<i>National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009</i>
Transitional Regulations	National Consumer Credit Protection (Transitional and Consequential Provisions) Regulations 2010
unlicensed COI lender	Has the meaning given in s5 of the National Credit Act, as modified by item 2.4 of Sch 2 to the National Credit Regulations

Related information

Headnotes

carried over instrument, COI lender, competence, continuing professional development, credit activities, credit licence, credit licensee, credit provider, credit representative, experience, 'fit and proper' test, home loan credit assistance, lessor, mortgage broker, organisational competence, qualification, representative, responsible manager, key person condition, third-party home loan credit assistance, training, transition, unlicensed COI lender

Regulatory guides

RG 146 *Licensing: Training of financial product advisers*

RG 202 *Credit registration and transition*

RG 203 *Do I need a credit licence?*

RG 204 *Applying for and varying a credit licence*

RG 205 *Credit licensing: General conduct obligations*

Information sheets

INFO 110 *Lenders with carried over instruments*

Legislation

Corporations Act, s9

Financial Advisers Act 2008 (NZ); Financial Service Providers (Registration and Dispute Resolution) Act 2008 (NZ)

National Credit Act, Ch 3, s5, 8, 37(1), 37(2), 38, 47(1), 55(1); National Credit Regulations, regs 8, 8(2), 8(7), Sch 2; Transitional Regulations, Pt 3 Divs 1 and 3, reg 10

Consultation papers and reports

CP 113 *Training and competence for credit licensees*

REP 178 *Response to submissions on CP 110 General conduct obligations of credit licensees*

REP 180 *Response to submissions on CP 113 Training and competence for credit licensees*