Australian Securities & Investments Commission

CONSULTATION PAPER 113

Training and competence for credit licensees

July 2009

About this paper

This paper sets out ASIC's proposals about the training and competence obligations of credit licensees under cls 47(1)(f) and (1)(g) of the National Consumer Credit Protection Bill 2009.

We are seeking the views of entities that will be credit licensees under the new credit regime, and other interested parties, on our proposed guidance.

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 (primarily the Corporations Act)
- 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 paper was issued on 29 July 2009 and is based on the National Consumer Credit Protection Bill as at 29 July 2009.

Disclaimer

The proposals, explanations and examples in this paper do not constitute legal advice. They are also at a preliminary stage only. Our conclusions and views may change as a result of the comments we receive or as other circumstances change.

Contents

The consultation process

You are invited to comment on the proposals in this paper, which are only an indication of the approach we may take and are not our final policy.

As well as responding to the specific proposals and questions, we also ask you to describe any alternative approaches you think would achieve our objectives.

We are keen to fully understand and assess the financial and other impacts of our proposals and any alternative approaches. Therefore, we ask you to comment on:

- the likely compliance costs;
- the likely effect on competition; and
- other impacts, costs and benefits.

Where possible, we are seeking both quantitative and qualitative information.

We are also keen to hear from you on any other issues you consider important.

Your comments will help us develop our policy on training and competence requirements for credit licensees. In particular, any information about compliance costs, impacts on competition and other impacts, costs and benefits will be taken into account if we prepare a Business Cost Calculator Report and/or a Regulation Impact Statement: see Section E, 'Regulatory and financial impact'.

Making a submission

We will not treat your submission as confidential unless you specifically request that we treat the whole or part of it (such as any financial information) as confidential.

Comments should be sent by 26 August 2009 to:

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What will happen next?

Stage 1	29 July 2009	ASIC consultation paper released
Stage 2	26 August 2009	Comments due on the consultation paper
	August to October 2009	Drafting of regulatory guide
Stage 3	Early November 2009	Regulatory guide released

A Background to the proposals

Key points

The new credit regime proposed by the National Credit Bill is aimed at boosting consumer protection and raising standards in the credit industry. It requires credit licensees to maintain their competence and ensure their representatives are adequately trained to engage in credit activities.

In granting Australian credit licences, ASIC must have regard to whether particular people are 'fit and proper'. We will look to these people to demonstrate whether the credit licensee is competent as a whole.

While credit licensees must determine for themselves how best to meet their obligations, we are proposing to set out our expectations as to:

- credit licensee competence (see Section B);
- training requirements for representatives (see Section C); and
- transitional arrangements (see Section D).

To reinforce the training and competence requirements, we propose to impose some standard licence conditions.

Regulation of consumer credit by the Commonwealth

1 The Council of Australian Governments (COAG) agreed on 3 July 2008 that the Commonwealth would assume responsibility for the regulation of consumer credit. The Australian Government introduced the National Consumer Credit Protection Bill 2009 (National Credit Bill) into Parliament on 25 June 2009. The national regulation of consumer credit aims to boost consumer protection and raise standards in the credit industry.

2 Regulation of consumer credit in the new regime will be the responsibility of ASIC. A key component of the new credit regime is that businesses who provide credit services or who are engaged in other 'credit activities' will be required to be licensed and meet a range of general conduct obligations, including obligations relating to competence.

3 This consultation paper is based on the National Credit Bill. We will consider all submissions to this consultation paper before reaching a final view on whether our suggested approach is the most appropriate solution. Our final position will be published in a regulatory guide later this year and will be based on the final legislation as passed by the Australian Parliament.

New competence obligations for businesses engaging in credit activities

4 The regime outlined in the National Credit Bill requires credit licensees to:

(a) maintain the competence to engage in the credit activities authorised by the licence (organisational competence) (cl 47(1)(f)); and

(b) ensure that their representatives are adequately trained, and are competent, to engage in the credit activities authorised by the licence (representative training) (cl 47(1)(g)).

5 In addition, the new credit regime requires ASIC to grant a person an Australian credit licence (credit licence) only if, among other requirements, we have no reason to believe that the person is not a 'fit and proper' person to engage in credit activities: cl 37(1)(c). Where the applicant is not a natural person, the fit and proper test is applied to each director, secretary, senior manager, partner or trustee who would perform duties in relation to the authorised credit activities: cl 37(2)(h). We think that if those people who are required to be fit and proper have appropriate qualifications and experience, this indicates the business is competent as a whole.

6 While an authorised deposit-taking institution (ADI) must comply with the organisational competence and representative training requirements, an ADI has the benefit of a streamlined process when applying for a credit licence. This process does not include an assessment of organisational competence. This recognises that ADIs must comply with APRA's Prudential Standard APS 520 *Fit and Proper* and so must make an assessment of each responsible person's competence to hold their position. Confirmation must be provided to APRA that this assessment has occurred whenever a new responsible person is appointed.

Note: In April 2009, Senator Nick Sherry, then Minister for Superannuation and Corporate Law, announced that WA licensed Class A and Class B brokers will also have the benefit of a streamlined licence application process.

Proposed ASIC guidance on the training and competence obligations

7 The obligations set out in cls 47(1)(f) and 47(1)(g) are high-level and principles-based. We are proposing to set out our expectations in relation to these obligations with the aim of:

(a) providing certainty to credit licensees about our compliance approach; and

(b) protecting consumers by ensuring that those businesses that are licensed to engage in credit activities are competent to do so.

8 While requiring certain people to successfully complete particular educational courses cannot guarantee that all licensed businesses will provide their services competently, we think our education and experience requirements will promote competent leadership and an appropriate training system within licensed organisations. This should promote efficient, honest and fair dealings with consumers, thereby strengthening confidence in the credit industry.

9 This consultation paper sets out our proposals in relation to:

(a) organisational competence requirements for credit licensees (see Section B);

(b) training requirements for representatives (see Section C); and

(c) transitional arrangements (see Section D).

10 The paper also sets out the standard credit licence training and competence conditions we propose to impose to reinforce the general conduct obligations set out in the National Credit Bill.

B Organisational competence

Key points

Credit licensees must maintain the organisational competence to engage in credit activities. We will assess the organisational competence of licence applicants, and may also review the organisational competence of credit licensees as part of ongoing surveillances.

Certain people within a credit licensee's or licence applicant's business (i.e. the credit licensee's or licence applicant's 'key people') are subject to a 'fit and proper' test. We propose to look to these key people when assessing the credit licensee's or licence applicant's organisational competence.

Generally, we propose that these people have either:

- credit industry qualifications to at least the Certificate IV level; or
- another relevant higher level qualification, and

at least 2 years relevant problem-free experience.

In the case of a key person involved in a mortgage broking business, we propose to generally expect them to have completed at least a Certificate IV in Financial Services (Finance/Mortgage Broking).

We propose that a credit licensee's key people should undertake 20 hours of continuing education per year.

Our general approach

11 A credit licensee must comply with the obligation to maintain the competence to engage in the credit activities authorised by the credit licence: cl 47(1)(f). We refer to this obligation as the 'organisational competence' obligation. This is because this obligation requires a credit licensee to be competent at the organisational level. Licence applicants must be able to demonstrate in their licence application that they can comply with it.

12 What a credit licensee or applicant needs to do to comply will depend on the nature, scale and complexity of their business. However, this paper proposes our minimum expectations for demonstrating organisational competence. The National Credit Bill places responsibility on credit licensees to ensure they maintain the competence to engage in the credit activities authorised by their credit licence.

13 We expect credit licensees to have measures to ensure they maintain their organisational competence at all times. These include:

(a) reviewing organisational competence on a regular basis and whenever their key people or business activities change;

(b) maintaining and updating the knowledge and skills of their key people; and

(c) keeping records showing that organisational competence has been reviewed and the steps taken to maintain organisational competence.

14 Credit licensees should document these measures in some form. In our view, it is more difficult to show compliance where documentation is not in place. Documentation helps credit licensees demonstrate whether or not they are complying with the organisational competence obligation.

15 We propose to assess compliance with the competence obligation primarily by looking at the qualifications and experience of the credit licensee's or applicant's 'key people'. These are the people covered by the fit and proper test (see paragraph 16) or, in some cases, a subset of this group of people.

16 The fit and proper test (cl 37) applies to:

(a) the applicant, if the applicant is a single natural person;

(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; 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.

17 Credit licensees must ensure on an ongoing basis that these people are fit and proper. ASIC may suspend or cancel a credit licence if one of these people is not fit and proper at any time during the term of the licence: cl 55.

Organisational competence and the identification of 'key people'

Proposal

B1 We propose to ask credit licence applicants to identify in their application the people in their organisation covered by the fit and proper test (their 'key people'). For the purposes of assessing organisational competence, we propose to focus on the qualifications and experience of these key people. When an applicant has a large number of people who are required to be fit and proper, we may restrict our focus to a subset of those people, being those who are most directly responsible for managing the credit activities of the business.

Your feedback

B1Q1 Do you agree with the way in which we propose to apply the fit and proper test and assess organisational competence?

B1Q2 Do you think that we have provided sufficient guidance for a credit licence applicant as to the key people who must be identified in the licence application form?

B1Q3 Do you think it is appropriate for us to focus on the people who must be fit and proper when considering organisational competence? Do you agree that a subset of this group will sometimes be appropriate and, if so, is it appropriate to focus on those who will be most engaged in the credit activities?

B1Q4 Do you think that our proposal sufficiently caters for securitisation funding vehicles that may not have employees but may need to be licensed?

B1Q5 Are there other types of business structures where our assessment of key people would be problematic?

Rationale

18 The credit licensing regime outlined in cl 37 of the National Credit Bill requires ASIC to have regard to whether particular people are fit and proper when granting a credit licence. In this paper, we refer to the people covered by the fit and proper test (or the subset discussed in paragraphs 20–21, if relevant) as the credit licensee's or licence applicant's key people. We propose to ask licence applicants to identify their key people in the credit licence application form. We will also ask questions about the key people's competence and history, among other things, to establish whether they are fit and proper.

19 We would expect that credit licence applicants will differ as to the number of key people they identify and that this will depend on the nature, scale and complexity of their business.

20 In the case of a credit licensee or licence applicant that is a large company, there may be a number of people who might be considered to be senior managers within the legislative definition (i.e. people who make or participate in decisions that affect the whole or a substantial part of the company or who have the capacity to affect significantly the company's financial standing: cl 5, National Credit Bill; s.9, *Corporations Act 2001*). Where an applicant is a large company, we expect the applicant to identify a subset of its key people—that is, the senior managers most directly involved (or to be involved) in managing the applicant's credit activities.

21 We are likely to focus on a subset of key people where an applicant has a number of people who are required to be fit and proper, including those with a governance rather than management role (e.g. non-executive directors or company secretaries) and those with a specialist business support role (e.g. a human resources director). Where this is the case, we propose to consider the qualifications and experience of those who are most responsible for managing the credit activities of the business.

22 We expect credit licensees and licence applicants to carry out and document their own checks about whether their key people are fit and proper. This would generally include reference checks, verification of qualifications, searches of registers of banned persons and criminal history checks.

23 Where the credit licensee or applicant is a single, natural person, the competence and fit and proper requirements apply to them individually. In the credit licence application, we will ask about their qualifications and experience, and about their record (e.g. any previous bannings).

24 We think that the fit and proper concept includes competence and so we think it is appropriate that we inquire into the qualifications and experience of a credit licensee's or applicant's key people when assessing organisational competence.

Notification to ASIC of changes of personnel

25 If we think an applicant's organisational competence is heavily dependent on one or two key people, we may impose a 'notification condition' on their credit licence. The notification condition would name the people the credit licensee is depending on and, if these people were leaving, the credit licensee would have to nominate another person to replace them and demonstrate that they continue to maintain sufficient organisational competence.

26 For other credit licensees, where responsibilities are spread more widely among a group of key people, we think that it is not necessary to notify us every time a key person changes. Rather, we think that it would be sufficient if our records about the credit licensee's key people were periodically updated. We may include this in the annual compliance certificate: cl 53.

Qualifications and experience to demonstrate relevant knowledge and skills

Proposal

B2 We propose that the key people of a credit licensee or credit licence applicant should generally have at least 2 years relevant problem-free experience and generally hold:

(a) a credit industry-specific qualification to at least Certificate IV level (such as a Certificate IV in Financial Services (Credit Management)); or

(b) a more general qualification relevant to their role (e.g. a diploma or university degree).

Your feedback

B2Q1 Do you think that Proposal B2 will sufficiently promote organisational competence?

B2Q2 Is there an alternative way of dealing with the variety of qualifications that key people may have? Is this preferable?

B2Q3 Do you agree that, for lenders, a Certificate IV in Financial Services (Credit Management) is an appropriate minimum qualification to expect from key people?

B2Q4 Do you think that a Certificate IV in Financial Services (Credit Management) and a Certificate IV in Financial Services (Finance / Mortgage Broking) are relevant courses for all credit industry participants? If not, are there other courses that currently exist which are relevant for particular areas of credit?

B2Q5 If there are other businesses for whom existing Certificate IV courses are irrelevant, do these businesses have enough similarity to each other that a general course can be developed to cater for their needs? If not, how many other courses do you think need to be developed to cover the remaining industry participants, and which parts of the credit industry should they cover?

B2Q6 Do you think we should accept more experience and lesser or no qualifications (as in Proposal D1 for the transition period, but on an ongoing basis)? Why?

B2Q7 Are there any other combinations of qualifications and experience other than those outlined in Proposal B2 which we should accept?

B2Q8 By 'problem-free' experience, we mean 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). Do you think it is appropriate to require this?

B3 We propose to ask licence applicants to set out in their application the relevant details of their key people, in particular their current role title, educational qualifications and past employers and role titles. Where necessary, we propose to ask licence applicants for further information about the qualifications and experience of their key people as part of our review of their application.

Your feedback

B3Q1 Is it reasonable for us to seek this amount of detail from credit licence applicants and to ask for further information if there is insufficient information in the application for us to make a decision?

Rationale

27 We think that, as a general rule, the key people of a credit licensee or licence applicant should either hold:

(a) a credit industry-specific qualification to at least the Certificate IV level; or

(b) a more general, but still relevant, qualification (separate requirements are proposed for mortgage brokers: see Proposal B4). In the case of a lender, for example, relevant qualifications would include a Certificate IV in Financial Services (Credit Management), a Diploma in Financial Services (Banking) or a university degree in finance.

28 In addition, we think that key people should generally have at least 2 years relevant problem-free experience.

29 We recognise that the diversity in the credit industry brings diversity in the 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 recognise that for many parts of the credit industry, relevant industry-specific courses may not exist. Our proposals have been developed in this context and aim to provide flexibility while promoting competent leadership and recognising that the new credit regime aims to enhance standards. Consequently, as a general principle, we will allow for qualifications that are less relevant or at a lower standard where the person has a greater number of years of relevant experience.

30 Section D sets out proposals for transitional arrangements in relation to the qualifications and experience required of key people.

31 We may develop additional requirements in the future to adapt to changing conditions in the credit industry.

Qualifications and experience for key people of mortgage brokers

Proposal

B4 We propose that key people involved in mortgage broking (i.e. the key people involved in the mortgage broking activities of a broking business) should hold at least a Certificate IV in Financial Services (Finance / Mortgage Broking). These people should also be able to demonstrate 2 years relevant problem-free experience.

Your feedback

B4Q1 Do you think this is an appropriate minimum qualification to expect from the key people of mortgage broking businesses? If not, what should we expect?

B4Q2 Do you think we should accept other more general qualifications that are not specific to mortgage broking?

B5 We propose to define a mortgage broking business as one that suggests or assists consumers to borrow money secured by real property (or helps them to do so) from a person other than the credit licensee.

Your feedback

B5Q1 Do you agree with our definition of mortgage broker? If you do not agree, what definition do you suggest?

B5Q2 Should we incorporate the concept of deriving benefit (e.g. a commission) from suggesting or assisting consumers to borrow money secured by real property (or helping them to do so) into the definition of mortgage broker?

B5Q3 Should any concession be provided to a key person who is also a responsible manager for an Australian financial services (AFS) licensee (e.g. a financial planning firm) and who therefore meets the organisational competence requirements for AFS licensees? Should the concession depend upon the extent of the firm’s participation in mortgage broking? If so, how should that be specified in our guidance?

Rationale

32 The Certificate IV in Financial Services (Finance / Mortgage Broking) is a well-recognised qualification that is specifically relevant to the mortgage broking industry. It meets nationally endorsed industry standards under the Australian Qualifications Framework. We think it is an appropriate requirement for the key people of mortgage brokers because:

(a) it is the qualification that directors of finance brokers in Western Australia have had to complete in order to be licensed; and

(b) it is also the qualification required for mortgage brokers to gain membership to the Mortgage & Finance Association of Australia (MFAA). The MFAA membership includes approximately 75% of all mortgage brokers, suggesting that this qualification is attainable and an appropriate pre-requisite for the mortgage broking industry.

Ongoing training requirements

Proposal

B6 We propose:

(a) that a credit licensee's key people should undertake 20 hours of continuing professional development per year, which may consist of a combination of attending seminars, preparing and publishing technical articles, providing training, and other relevant educational activities; and

(b) to set this out in a licence condition, which would also require credit licensees to keep a record of the continuing professional development activities undertaken by their key people each year.

Your feedback

B6Q1 Do you think Proposal B6 will sufficiently promote ongoing organisational competence?

B6Q2 Do you think that 20 hours of continuing professional development strikes an appropriate balance between keeping up-to-date on developments within the industry and allowing enough time to perform the role, or do you think we should require more/fewer continuing professional development hours? Why?

Rationale

33 We think that continuing professional development is essential for the ongoing maintenance of organisational competence. Accordingly we expect a credit licensee's key people to undertake 20 hours of professional development per year. We propose to reinforce this with a licence condition.

34 It is important for a credit licensee's key people to keep up-to-date with 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 continuing professional development will help ensure this.

35 We think that 20 hours a year strikes the necessary balance as 20 hours is a significant investment in learning without imposing excessive costs or having a detrimental impact on substantive work commitments. In 20 hours, key people should be able to accumulate sufficient knowledge about new developments to keep themselves up-to-date with important information.

36 We would expect that professional development will include both product and industry developments, and also compliance training including in relation to new regulatory requirements. For example, compliance training would need to encompass the new responsible lending obligations once these come into force.

37 Records should be maintained of continuing professional development activities and credit licensees should monitor the achievement of the required 20 hours.

C Training of representatives

Key points

Under the National Credit Bill, credit licensees must ensure that their representatives are adequately trained, and are competent, to engage in the credit activities authorised by the licence.

Generally, we think that credit licensees should determine for themselves what is appropriate initial and ongoing training for their representatives.

However, we propose that representatives working as mortgage brokers should hold at least a Certificate IV in Financial Services (Finance / Mortgage Broking) and should undertake 20 hours of continuing professional development a year.

General approach

38 Under cl 47(1)(g) of the National Credit Bill, credit licensees must ensure that their representatives are adequately trained, and are competent, to engage in the credit activities authorised by their credit licence. This includes their staff, agents and authorised credit representatives. It does not include those employees and agents whose activities do not constitute 'engaging in credit activities', such as clerks and cashiers who are proposed to be exempted by the regulations.

39 With the exception of mortgage broking, we do not think it is necessary or desirable for ASIC to prescribe particular prerequisite qualifications or ongoing training requirements for representatives at this time. Rather, it is for credit licensees to determine what their representatives require.

Proposal

C1 Except for mortgage broking businesses, we propose not to set specific educational prerequisites or ongoing training requirements for credit representatives. We propose that credit licensees assess what training and competence their representatives need and embed this in their recruitment and training systems.

Your feedback

C1Q1 Do you think we should impose specific educational prerequisites for other areas of the credit industry besides mortgage brokers? If so, which areas and what requirements?

C1Q2 Do you think we should require credit licensees to document in a training plan their internal continuing professional development policy, including the number of hours that must be completed by representatives?

C1Q3 Do you think we should specify a minimum number of continuing professional development hours per year for representatives other than mortgage brokers? If so, what do you suggest?

Rationale

40 Because there is a diverse range of businesses of every size and description in the credit industry, as well as a large range of different business models, we think it is appropriate to take a flexible approach to representative training and competence, and not require specific qualifications from representatives. We recognise that the diversity of the credit industry means the people working in that industry have different training needs. Also, for many parts of the credit industry, highly relevant industry-specific courses may not yet exist. In this environment, we believe that credit licensees (in particular, their key people) are in the best position to evaluate the training needs of their representatives and implement appropriate measures to ensure their representatives are competent.

41 The following examples are, however, provided by way of guidance for credit licensees:

(a) For a small microlending business that has only two or three representatives, it may be sufficient for the credit licensee's key people to set aside a few days a year to personally train the representatives about the licensee's credit products and about the legal obligations that apply to the licensee's business.

(b) For a large finance company with many branches, we would expect the credit licensee to put in place an extensive training regime to take into account the large number of representatives the credit licensee is responsible for and the staff turnover that inevitably occurs in large organisations.

42 We expect credit licensees to document their recruitment and training policies and procedures, and the implementation of these policies and procedures, as appropriate to the nature, scale and complexity of their business.

Mortgage brokers

Proposal

C2 We propose that representatives who work as mortgage brokers in a mortgage broking business (as defined in Proposal B5):

(a) complete at least a Certificate IV in Financial Services (Finance / Mortgage Broking); and

(b) undertake 20 hours of continuing professional development per year.

Your feedback

C2Q1 Do you agree that a Certificate IV in Financial Services (Finance / Mortgage Broking) or higher is an appropriate qualification for a mortgage broker (as defined in Proposal B5)?

C2Q2 Do you think we should require more continuing professional development hours? Why?

C3 We propose to reinforce Proposal C2 in a licence condition. Our licence condition will also require that credit licensees with representatives who are mortgage brokers ensure that a record is kept of their initial and continuing training.

Your feedback

C3Q1 Is it appropriate to make our expectations of the minimum qualifications to be held by mortgage brokers and the number of continuing professional development hours they should undertake per year a requirement by setting this out in a licence condition?

C4 We propose to exempt from the requirements in Proposals C2–C3 representatives who:

(a) meet Tier 1 training requirements in Regulatory Guide 146 *Licensing: Training of financial product advisers* (RG 146); and

(b) provide advice about mortgages incidentally to providing financial product advice.

Your feedback

C4Q1 Do you agree with our proposed exemption for representatives who meet the Tier 1 training requirements in RG 146? If not, what do you propose instead?

Rationale

43 For mortgage broking, the Certificate IV in Financial Services (Finance / Mortgage Broking) is a well-recognised industry-specific qualification: see paragraph 32). We think that the completion of this course and a requirement for 20 hours continuing professional development per year would enhance the quality of service that mortgage brokers are able to provide to consumers.

44 Moreover, we think mortgage broking warrants a different approach to representative training from the approach we propose for the rest of the credit industry because of existing educational benchmarks in the mortgage broking industry. Home loans are the largest loan most consumers will deal with in their life, 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 the people assisting a consumer with these decisions should complete a minimum standard of training. There may be other areas of the credit industry where representatives ought to be required to have a particular qualification, however at the current time, this is only apparent in the mortgage broking industry. We may develop specific requirements for other representatives in the future.

45 We expect financial planners and financial advisers who advise on mortgages in a substantive way as part of their business to have sufficient training in the credit products they are advising on. If they provide services akin to a mortgage broker (e.g. they suggest a credit provider and mortgage product to a consumer and get paid a commission from the credit provider), we would expect them to have at least a Certificate IV in Financial Services (Finance / Mortgage Broking). We recognise, however, that some financial planners and financial advisers may only engage in credit activity in a very limited way, and in these circumstances the mortgage broking qualification may not be justified.

46 We recognise that financial planners and financial advisers often provide advice about their client's home loan in the context of broader financial advice and that they will usually have financial services Tier 1 qualifications in accordance with RG 146. Where a financial planner or financial adviser suggests a consumer obtain a new loan (or switch loans), or helps them to do so, we think the financial planner or financial adviser should hold a Certificate IV in Financial Services (Finance / Mortgage Broking) in addition to their other financial services qualifications and also meet the 20 hours ongoing training requirement. But where the financial planner or financial adviser simply refers to a consumer's current lending arrangements as part of an overall financial plan, we think that it may be appropriate for the financial planner or financial adviser to be exempt from the specific mortgage broking training requirements in Proposals C2–C3.

D Transitional arrangements

Key points

We propose to give the industry until December 2013 to adjust to the proposed regime set out in Sections B and C.

During this transitional period, we will accept key people who can demonstrate 5 years experience over the last 7 years, even if they do not have the qualifications proposed in Section B.

Representatives who are mortgage brokers will have until December 2013 to obtain a Certificate IV in Financial Services (Finance / Mortgage Broking).

A credit licensee's or licence applicant's key people

47 To recognise existing participants in the credit industry, we propose to put in place some transitional arrangements for those who do not meet our qualification requirements for key people. These arrangements are likely to be particularly relevant for mortgage broking.

Proposal

D1 Until 31 December 2013, we propose to accept key people without relevant qualifications but with 5 years relevant experience in the credit industry over the last 7 years. After that time, credit licensees and licence applicants must have key people who have the necessary experience and qualifications.

Your feedback

D1Q1 Do you think 5 years experience over the last 7 years is an appropriate period of experience for a key person who does not hold a relevant qualification?

D1Q2 Do you think it is reasonable for us to require all key people, including those who have entered the regime under the transitional arrangements, to obtain a relevant qualification by the end of the transition period?

Rationale

48 We accept that during a transition period demonstrable periods of problem-free experience in the credit industry should be taken into account. The proposed period of 5 years experience is significantly longer than the 2 years experience that we propose to require where relevant qualifications are held.

We think that for transition purposes, a 5-year period would suffice to meet organisational competence requirements.

49 We think that the transition period should finish at the end of 2013. This period of time provides sufficient opportunity for existing participants to decide whether or not they want to participate in the credit industry in a key person capacity. After that date, all key people will be expected to meet our organisational competence requirements.

Representatives who are mortgage brokers

Proposal

D2 We propose to give all mortgage broker representatives until 31 December 2013 to obtain the Certificate IV in Financial Services (Finance / Mortgage Broking).

Your feedback

D2Q1 Is this an appropriate timeframe for mortgage brokers to gain this qualification?

Rationale

50 For representatives who are mortgage brokers, we propose to allow until the end of 2013 to meet the requirements set out in Section C. The proposed transition period gives mortgage broker representatives a lengthy period of time in which to choose a course provider, enrol, and complete the study and assessment for the Certificate IV in Financial Services (Finance / Mortgage Broking).

51 While our prerequisite requirements will be an adjustment for some mortgage broker representatives currently in the industry, we believe that the Certificate IV qualification will promote professionalism in the mortgage broking sector of the credit industry and ultimately will increase consumer confidence in that sector to the benefit of all participants.

E Regulatory and financial impact

52 In developing the proposals in this paper, we have carefully considered their regulatory and financial impact. On the information currently available to us we think they will strike an appropriate balance between:

(a) ensuring improved consumer protection and raised standards in the credit industry; and

(b) minimising red tape for businesses in the credit industry.

53 Before settling on a final policy, we will comply with the requirements of the Office of Best Practice Regulation (OBPR) by:

(a) considering all feasible options;

(b) if regulatory options are under consideration, undertaking a preliminary assessment of the impacts of the options on business and individuals or the economy;

(c) if our proposed option has more than low impact on business and individuals or the economy, consulting with OBPR to determine the appropriate level of regulatory analysis; and

(d) conducting the appropriate level of regulatory analysis—that is, by completing a Business Cost Calculator report (BCC report) and/or a Regulation Impact Statement (RIS).

54 All BCC reports and RISs are submitted to the OBPR for approval before we make any final decision. Without an approved BCC report and/or RIS, ASIC is unable to give relief or make any other form of regulation, including issuing a regulatory guide that contains regulation.

55 To ensure that we are in a position to properly complete any required BCC report or RIS, we ask you to provide us with as much information as you can about:

(a) the likely compliance costs;

(b) the likely effect on competition; and

(c) other impacts, costs and benefits,

of our proposals or any alternative approaches: see ‘The consultation process’, p. 4.

Key terms

Term	Meaning in this document
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
COAG	Council of Australian Governments
consumer	A prospective borrower
credit licence	An Australian credit licence under cl 35 of the National Credit Bill that authorises a licensee to engage in particular credit activities
credit licensee	A person who will be required to hold an Australian credit licence
key people	A credit licensee's key people will be the following people or a subset of these people: • 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
lender	credit provider
National Credit Bill	National Consumer Credit Protection Bill 2009, tabled in Parliament on 25 June 2009