



ASIC

Australian Securities & Investments Commission

CONSULTATION PAPER 165

Credit assistance for home loans: Competence and training requirements

August 2011

About this paper

This paper sets out ASIC's proposals for modifying the training requirements for credit representatives who provide credit assistance to consumers on home loans. The current requirements are set out in Regulatory Guide 206 *Credit licensing: Competence and training* (RG 206).

We are seeking feedback on our proposals from credit licensees and their representatives, consumer representatives and other interested parties.

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 5 August 2011 and is based on the credit legislation and regulations as at the date of issue.

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	4
A Background to the proposals.....	5
Organisational competence and representative training	5
Addressing industry concerns.....	7
Overview of our proposals	8
B Our proposals	9
Definition of 'mortgage broking'	9
Credit provider representatives who provide mortgage broking services.....	10
Implementation of one or both proposals	13
C Regulatory and financial impact	14
Key terms	15
List of proposals and questions	17

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 requirements for credit representatives who provide credit assistance on home loans. 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 Regulation Impact Statement: see Section C, '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 16 September 2011 to:

Chloe Youl
Acting Senior Lawyer, Strategic Policy
Australian Securities and Investments Commission
GPO Box 9827
Melbourne VIC 3001
facsimile: (03) 9280 3306
email: policy.submissions@asic.gov.au

What will happen next?

Stage 1	5 August 2011	ASIC consultation paper released
Stage 2	16 September 2011	Comments due on consultation paper
	September–October 2011	Updates to regulatory guide drafted
Stage 3	October 2011	Regulatory guide released

A Background to the proposals

Key points

We have set out our minimum expectations on how credit licensees must maintain organisational competence and ensure that representatives are adequately trained in Regulatory Guide 206 *Credit licensing: Competence and training* (RG 206).

Generally, we have provided licensees with discretion to determine the appropriate level of training for their representatives. However, we have set a minimum standard for representatives who provide mortgage broking services. Representatives who provide mortgage broking services need to have at least a Certificate IV in Finance and Mortgage Broking.

In response to industry feedback, this consultation paper sets out our proposals for modifying the scope of this prescriptive training requirement.

Organisational competence and representative training

- 1 Since 1 July 2010, ASIC has been responsible for regulating the provision of consumer credit under the *National Consumer Credit Protection Act 2009* (National Credit Act). Any person engaging in credit activities must hold an Australian credit licence, or an authorisation from a credit licensee: s29.
- 2 Credit licensees must comply with certain general conduct obligations. Part of this is ensuring their organisation and representatives are able to provide the credit activities authorised by the credit licence by:
 - (a) maintaining organisational competence (s47(1)(f)); and
 - (b) ensuring representatives are adequately trained and competent (s47(1)(g)).

Note: This consultation paper refers to these obligations as the 'organisational competence' and the 'representative training' obligations, respectively.

Maintaining organisational competence

- 3 What each credit licensee needs to do to maintain its organisational competence will depend on the nature, scale and complexity of its business. Nevertheless, we have set out our minimum expectations in Regulatory Guide 206 *Credit licensing: Competence and training* (RG 206).
- 4 We assess a credit licensee's organisational competence by looking at the qualifications and experience of the licensee's responsible managers.

Note: For more details on who can be a responsible manager for the purposes of the organisational competence obligations, see RG 206.29–RG 206.33.

- 5 RG 206 states that responsible managers should generally have two years relevant problem-free experience and a qualification relevant to the credit industry to at least the Certificate IV level (or another general relevant higher level qualification).
- 6 However, we have set more specific requirements for responsible managers of a credit licensee that provides mortgage broking services. These responsible managers need to complete at least a Certificate IV in Finance and Mortgage Broking. ‘Mortgage broking services’ are defined as ‘credit assistance in relation to a credit product where the credit is secured by real property’: see RG 206.78.

Note 1: 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.

Note 2: ‘Credit assistance’ has the meaning given in s8 of the National Credit Act.

Ensuring representatives are adequately trained

- 7 RG 206 sets out guidance on the minimum training standards that we think representatives should meet. Most credit licensees may determine for themselves what type of initial and ongoing training their representatives should undertake: see RG 206.71.
- 8 However, we have set a minimum standard for representatives who provide mortgage broking services. These representatives need to:
- (a) have at least a Certificate IV in Finance and Mortgage Broking; and
 - (b) undertake at least 20 hours of continuing professional development each year.
- 9 We have set more specific requirements for representatives providing mortgage broking services because we think this is the most appropriate training for this kind of service and is an accepted qualification for this industry. Home loans are the largest loan most consumers will take on, and poorly informed assistance leading to poor decisions about mortgages could potentially jeopardise ownership of the family home.

Transitional period

- 10 To help credit licensees comply with the organisational competence and representative training requirements in RG 206, we have provided a transitional period.
- 11 Credit licensees have until 30 June 2014 to comply with the full organisational competence requirements. Until then, we will accept responsible managers who do not meet the full qualification requirements if they have the following experience:
- (a) five years relevant problem-free experience for responsible managers of credit providers (see RG 206.67(a)); and

- (b) two years relevant problem-free experience for responsible managers of businesses providing credit assistance (see RG 206.67(b)).
- 12 Representatives who provide mortgage broking services have until 30 June 2014 to obtain a Certificate IV in Finance and Mortgage Broking: see RG 206.87.

Addressing industry concerns

- 13 Some sectors of industry have recently raised concerns with us about the definition of ‘mortgage broking services’ in RG 206. Concerns have been raised that, because this definition is tied to the definition of ‘credit assistance’ in the National Credit Act, which is broad, this in turn means that the concept of mortgage broking services in RG 206 captures a wide range of persons performing a variety of functions, including representatives of credit providers. There is concern that this may include representatives who are only peripherally involved in the consumer home loan process.
- 14 Others have queried why we have not excluded representatives who only provide mortgage broking services for the licensees’ own loans from the prescriptive training requirements, arguing that these representatives play a different role from those working within the traditional mortgage broking industry.
- 15 We still think that there is a sound rationale for setting prescriptive training requirements for those who are in a significant position to influence consumers’ decisions about home loans, for the reasons described in paragraph 9. We think that this basic premise applies whether a representative only deals with loans provided by their licensee, or they work in the traditional mortgage broking industry.
- 16 As a related issue, it is also important to note that undertaking training that builds knowledge about the range of loan products available in the market may assist credit licensees and their representatives to meet their obligations to ensure that consumers are not disadvantaged by any conflict of interest: see Regulatory Guide 205 *Credit licensing: General conduct obligations* (RG 205) at RG 205.79–RG 205.85 for further details.

Overview of our proposals

- 17 Based on the feedback we have received, we think that there may be an argument for taking a more flexible approach to the definition of ‘mortgage broking’. This consultation paper sets out two proposals that aim to reduce licensees’ compliance burden, while still ensuring a high standard of training for those who do play a significant role in such decisions.
- 18 Section B sets out our proposals to modify the training requirements in RG 206 by:
- (a) redefining ‘mortgage broking’ so that it is limited to providing credit assistance in the form of ‘suggesting’, where credit is secured by real property (see proposal B1); and
 - (b) allowing mortgage broking representatives of credit providers to undertake training equivalent to a reduced number of units of the Certificate IV in Finance and Mortgage Broking, rather than the full qualification (with additional equivalent training) (see proposal B2).
- 19 Proposal B1 addresses industry concerns that defining mortgage broking by reference to the broad concept of ‘credit assistance’ means that representatives who are only peripherally involved in the home loan process are caught by the definition.
- 20 Proposal B2 addresses industry concerns that some aspects of the Certificate IV in Finance and Mortgage Broking qualification are more relevant to the process of running or working within a traditional mortgage broking business than others. This proposal should also enable representatives of credit providers who are providing mortgage broking services to focus on units of training most relevant to their roles.
- 21 Depending on the feedback we receive, we may implement one or both of these proposals: see proposal B3.

B Our proposals

Key points

We propose to modify the training requirements in RG 206 by:

- redefining ‘mortgage broking’ in RG 206 so that it is limited to providing credit assistance in the form of ‘suggesting’, where credit is secured by real property (see proposal B1); and
- allowing mortgage broking representatives of credit providers to undertake a reduced number of units of the Certificate IV in Finance and Mortgage Broking (with additional equivalent training) (see proposal B2).

Depending on the feedback we receive, we may implement one or both of these proposals: see proposal B3.

Definition of ‘mortgage broking’

Proposal

- B1** We propose to redefine the concept of ‘mortgage broking’ in RG 206 so that it means ‘suggesting’ that a consumer apply for a particular credit contract with a particular credit provider within the meaning of s8(a), where that credit contract is for credit secured by real property.

Your feedback

B1Q1 Do you agree with this proposal? Please give reasons for your answer.

B1Q2 What is the likely impact of this proposal on:

- credit providers; and
- the traditional mortgage broking sector?

B1Q3 Would redefining ‘mortgage broking’ in this way exclude any credit representatives who should be subject to a prescriptive training requirement?

B1Q4 Would a better approach be to retain the current definition, but exempt certain types of representatives? If so, which representatives should be exempted? Please provide specific details about the roles of any such representatives.

Rationale

- 22 While all credit licensees must ensure that their representatives are adequately trained and competent, this approach would mean modifying which representatives are subject to a prescribed training standard. ‘Mortgage broking’ would mean providing credit assistance in the form of suggesting that a consumer apply for a particular credit contract with a

particular credit provider, where the credit is secured by real property. Those credit representatives who provide credit assistance without making suggestions (as they only assist the consumer to apply for a credit contract) would not be included in this definition.

- 23 This approach would mean restricting prescriptive training requirements to those who both interact directly with consumers and are in a position to influence any decision consumers make regarding home loans. It would ensure that people who play the most significant roles in assisting a consumer with decisions about a home loan are adequately trained to provide this assistance, while avoiding capturing those who are providing credit assistance by undertaking more procedural work that does not involve interacting directly with consumers and influencing decisions. Credit licensees would have more flexibility on training for the latter group of representatives, although they would still need to ensure that these representatives are adequately trained for the role they perform.
- 24 If we implement proposal B1, we would retain the current organisational competence requirement for credit licensees that provide mortgage broking services (i.e. responsible managers should have completed at least a Certificate IV in Finance and Mortgage Broking). However, the new definition of mortgage broking would apply to these requirements.

Credit provider representatives who provide mortgage broking services

Proposal

- B2** We propose to alter the prescriptive training requirements in RG 206 so that representatives of credit providers who provide mortgage broking services may undertake a reduced number of units of the Certificate IV in Finance and Mortgage Broking, as described in Table 1. Credit licensees will need to ensure that these representatives complete additional training to an equivalent level, as necessary, to ensure that they are fully trained.

Your feedback

- B2Q1 Do you agree with this proposal? Please give reasons for your answer.
- B2Q2 What is the likely impact of this proposal on:
- (a) credit providers; and
 - (b) the traditional mortgage broking sector?
- B2Q3 Do you agree that we have selected the most appropriate units (see Table 1) for mortgage broking representatives of credit providers? Are there other units that should be included?
- B2Q4 Are there likely to be any practical difficulties in implementing this proposal?

Rationale

- 25 While we think that the Certificate IV in Finance and Mortgage Broking remains a relevant qualification for mortgage broking representatives, no matter what type of organisation they work for, some units are more relevant to the process of running or working within a traditional mortgage broking business.
- 26 Under this proposal, we would allow representatives of credit providers who are caught by the definition of ‘mortgage broking’ (which may be amended under proposal B1) to undertake training equivalent to a smaller number of units from the Certificate IV in Finance and Mortgage Broking qualification. If we implement proposal B2, these representatives would need to undertake the training prescribed in Table 1.

Table 1: Proposed prescribed units for mortgage broking representatives of credit providers

Unit of competency [#] in Certificate IV in Finance and Mortgage Broking	Prescribed training under proposal B2
Core units of competency	
BSBCOM501B Identify and interpret compliance requirements	
BSBWOR204A Use business technology	
FNSCRD301A Process applications for credit	✓*
FNSFMB401A Prepare loan application on behalf of finance or mortgage broking clients	✓
FNSFMB402A Provide finance and mortgage broking services	✓
FNSFMB403A Present broking options to client	✓
FNSINC401A Apply principles of professional practice to work in the financial services industry	
FNSINC402A Develop and maintain in-depth knowledge of products and services used by an organisation or sector	✓
Elective units of competency[^]	
BSBCUS301A Deliver and monitor a service to customers	
BSBOHS303B Contribute to OHS hazard identification and risk assessment	
BSBWOR501A Manage personal work priorities and professional development	
FNSFMB501A Settle applications and loan arrangements in the finance and mortgage broking industry	
FNSSAM403A Prospect for new clients	
FNSCUS501A Develop and nurture relationships with clients, other professionals and third party referrers	

[#] References to units of competency are to those included in the most recent training package for the industry, *FNS10: Financial Services Training Package*: see www.training.gov.au.

* ‘FNSCRD401A: Assess credit applications’ (from Certificate IV in Credit Management) may be completed as an alternative to this unit.

[^] Other units may also be selected as electives based on the guidelines set out in the *FNS10: Financial Services Training Package*: see www.training.gov.au.

- 27 We have selected the specific units highlighted in Table 1 because they develop knowledge that is critical to the process of making suggestions to consumers about home loans. We do not consider that this knowledge is built as adequately in any other qualification to the Certificate IV level, with the exception of the unit ‘FNSCR401A: Assess credit applications’ (from the Certificate IV in Credit Management).
- 28 Important areas covered include:
- (a) the process of gathering information about consumers’ relevant personal and financial information, investment goals and expectations, risk issues and tolerance;
 - (b) the process of communicating information to consumers about the range of products and credit providers available to them, as well as technical information about the loan process, loan features, and fees, charges and commissions; and
 - (c) contextual knowledge, such as relevant accounting and financial concepts, economic and market factors, real estate terms and concepts and loan transaction terminology, as well as important legislative and compliance information.
- 29 Credit licensees should ensure that representatives completing the training requirements are fully trained to undertake the credit activities in which they engage by undertaking other units relevant to their roles, if necessary. Additional training should be at an equivalent level (i.e. units from at least a Certificate IV level).
- 30 Consumers may have a slightly different expectation of the kind of service they will receive from the representative of a credit provider, rather than a traditional mortgage broker, and may understand that the former may only suggest home loans provided by their own licensee. Nevertheless, we think that undertaking training to develop knowledge about the range of products and credit providers available is also an important component of ensuring that consumers engaging with credit provider licensees and their representatives are not disadvantaged by any conflict of interest, and that consumers are not provided with loans that may be unsuitable.
- 31 Representatives of credit providers who are providing mortgage broking services need to maintain a reasonable knowledge about the range of products available in the industry to determine whether any loan provided by their own licensee may be not unsuitable in the context of loans provided by other licensees.
- 32 If we implement proposal B2, we would retain the current organisational competence requirement for credit licensees that provide mortgage broking services (i.e. relevant responsible managers should have completed at least a full Certificate IV in Finance and Mortgage Broking), rather than a smaller sub-set of qualifications.

- 33 Additionally, this proposal would not affect the current training requirements for non-credit provider credit representatives who are caught by the definition (current or amended) of ‘mortgage broking’ (e.g. those working within the traditional mortgage broking sector). We still think that the Certificate IV in Finance and Mortgage Broking is the most appropriate qualification for representatives undertaking this role.

Note: We will work with industry bodies to determine appropriate exemptions from units in the Certificate IV in Finance and Mortgage Broking for credit representatives who provide mortgage broking services and who meet the Tier 1 training requirements in Regulatory Guide 146 *Licensing: Training of financial product advisers* (RG 146): see RG 206.80

Implementation of one or both proposals

Proposal

- B3 We propose to implement one or both of the approaches outlined in proposals B1 and B2.

Your feedback

- B3Q1 Do you have a preference for the approach in proposal B1 or proposal B2? If so, please give details. Should we implement both proposals?
- B3Q2 Would any alternative approach better achieve our objectives?

Rationale

- 34 Depending on the feedback we receive, we may implement one or both of these proposals.

C Regulatory and financial impact

35 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 unnecessary compliance costs for businesses in the credit industry.

36 Before settling on a final policy, we will comply with the Australian Government's regulatory impact analysis (RIA) requirements by:

- (a) considering all feasible options, including examining the likely impacts of the range of alternative options which could meet our policy objectives;
- (b) if regulatory options are under consideration, notifying the Office of Best Practice Regulation (OBPR); and
- (c) if our proposed option has more than minor or machinery impact on business or the not-for-profit sector, preparing a Regulation Impact Statement (RIS).

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

38 To ensure that we are in a position to properly complete any required RIS, we ask you to provide us with as much information as you can about our proposals or any alternative approaches, including:

- (a) the likely compliance costs;
- (b) the likely effect on competition; and
- (c) other impacts, costs and benefits.

See 'The consultation process', p. 4.

Key terms

Term	Meaning in this document
ASIC	Australian Securities and Investments Commission
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
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
mortgage broker	A person who provides mortgage broking services
mortgage broking services	Credit assistance for a credit product where the credit is secured by real property
National Credit Act	<i>National Consumer Credit Protection Act 2009</i>
National Credit Code	National Credit Code at Sch 1 of 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
reg 8 (for example)	A regulation of the National Credit Regulations (in this example numbered 8), unless otherwise specified
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 148 (for example)	An ASIC regulatory guide (in this example numbered 148)
s35 (for example)	A section of the National Credit Act (in this example numbered 35), unless otherwise specified

List of proposals and questions

Proposal	Your feedback
<p>B1 We propose to redefine the concept of 'mortgage broking' in RG 206 so that it means 'suggesting' that a consumer apply for a particular credit contract with a particular credit provider within the meaning of s8(a), where that credit contract is for credit secured by real property.</p>	<p>B1Q1 Do you agree with this proposal? Please give reasons for your answer.</p> <p>B1Q2 What is the likely impact of this proposal on:</p> <p>(a) credit providers; and</p> <p>(b) the traditional mortgage broking sector?</p> <p>B1Q3 Would redefining 'mortgage broking' in this way exclude any credit representatives who should be subject to a prescriptive training requirement?</p> <p>B1Q4 Would a better approach be to retain the current definition, but exempt certain types of representatives? If so, which representatives should be exempted? Please provide specific details about the roles of any such representatives.</p>
<p>B2 We propose to alter the prescriptive training requirements in RG 206 so that representatives of credit providers who provide mortgage broking services may undertake a reduced number of units of the Certificate IV in Finance and Mortgage Broking, as described in Table 1. Credit licensees will need to ensure that these representatives complete additional training to an equivalent level, as necessary, to ensure that they are fully trained.</p>	<p>B2Q1 Do you agree with this proposal? Please give reasons for your answer.</p> <p>B2Q2 What is the likely impact of this proposal on:</p> <p>(a) credit providers; and</p> <p>(b) the traditional mortgage broking sector?</p> <p>B2Q3 Do you agree that we have selected the most appropriate units (see Table 1) for mortgage broking representatives of credit providers? Are there other units that should be included?</p> <p>B2Q4 Are there likely to be any practical difficulties in implementing this proposal?</p>
<p>B3 We propose to implement one or both of the approaches outlined in proposals B1 and B2.</p>	<p>B3Q1 Do you have a preference for the approach in proposal B1 or proposal B2? If so, please give details. Should we implement both proposals?</p> <p>B3Q2 Would any alternative approach better achieve our objectives?</p>