



ASIC

Australian Securities & Investments Commission

REPORT 271

Response to submissions on CP 165 Credit assistance for home loans

December 2011

About this report

This report highlights the key issues that arose out of the submissions received on Consultation Paper 165 *Credit assistance for home loans: Competence and training requirements* (CP 165) and details our responses in relation to those issues.

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.

Disclaimer

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

This report does not contain ASIC policy. Please see Regulatory Guide 206 *Credit licensing: Competence and training* (RG 206).

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A Overview

Organisational competence and representative training

- 1 All credit licensees are required to 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.

- 2 We have set out our minimum expectations on how credit licensees should fulfil their organisational competence and representative training obligations in Regulatory Guide 206 *Credit licensing: Competence and training* (RG 206).

- 3 Given the diversity of the credit industry, and the wide range of roles held by people working in various sectors, we have generally allowed credit licensees some discretion in determining the most appropriate qualifications for their responsible managers and initial and ongoing training for their representatives.

- 4 However, we have set more specific requirements for responsible managers and representatives of a credit licensee that provides mortgage broking services:

- (a) Responsible managers of mortgage brokers need to complete at least a Certificate IV in Finance and Mortgage Broking.
- (b) Representatives of mortgage brokers also need to have at least a Certificate IV in Finance and Mortgage Broking, and undertake at least 20 hours of continuing professional development (CPD) each year.

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: To help credit licensees comply with the organisational competence and representative training requirements in RG 206, we have provided a transition period of until 30 June 2014.

- 5 ‘Mortgage broking services’ were defined as ‘credit assistance in relation to a credit product where the credit is secured by real property’ in RG 206. We set prescribed training requirements for representatives providing mortgage

broking services because home loans are the largest loan most consumers will take on, and it is particularly critical that those providing credit assistance to consumers in relation to home loans are adequately trained to undertake this role.

Note: 'Credit assistance' has the meaning given in s8 of the National Credit Act.

Consultation Paper 165

- 6 In August 2011, we released Consultation Paper 165 *Credit assistance for home loans: Competence and training requirements* (CP 165), which contained proposals for modifying the representative training requirements for representatives providing mortgage broking services.
- 7 We were prompted to revisit our policy as a result of industry concern expressed to us about the definition of 'mortgage broking services' in RG 206. Because this definition is concerned with the type of credit activity in which a representative is engaged, rather than the type of licensee they work for, it captures a wide range of persons performing a variety of functions. This includes the representatives of credit providers.
- 8 Prior to releasing CP 165, we received submissions arguing that credit provider representatives play a different role from those working within the intermediary mortgage broking sector, and that they should not be subject to the same prescribed training requirements. There was also concern that the Certificate IV in Finance and Mortgage Broking is not an appropriate qualification for those working in the credit provider sector.
- 9 CP 165 set out proposals for modifying the representative training requirements, with the aim of reducing credit licensees' compliance burden, while still ensuring a high standard of training for those who play a significant role in consumers' decisions in relation to home loans.
- 10 We proposed to:
- (a) 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; and
 - (b) 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 of CP 165. 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.

- 11 We proposed to implement one or both of these approaches, depending on the feedback we received.

Responses to consultation

- 12 We received nine written responses to CP 165, including one confidential submission. Respondents included credit providers, industry bodies and investment management and advisory firms. We are grateful to respondents for taking the time to provide us with their comments.
- 13 We received comments from respondents in relation to the following issues:
- (a) the initial training requirements that should apply to the representatives of credit providers who provide credit assistance to consumers on home loans;
 - (b) how we have defined ‘mortgage broking services’;
 - (c) ongoing training requirements for representatives;
 - (d) the required qualifications for responsible managers of credit provider licensees, where representatives provide credit assistance to consumers on home loans; and
 - (e) how adequate training can assist representatives to meet their obligation in relation to conflicts of interest.
- 14 Section B provides more details on the issues raised, and our response to these issues. For a list of the respondents to CP 165, see the Appendix. Copies of the submissions are on the ASIC website at www.asic.gov.au/cp under CP 165.
- 15 As a result of some of the feedback we received on CP 165, in our revised version of RG 206 we have replaced the term ‘mortgage broking services’ with the term ‘home loan credit assistance’, which we define as credit assistance in relation to a credit product where the credit is secured by real property. However, for the purposes of responding directly to feedback received on CP 165, in this report we have retained the term ‘mortgage broking services’.

B Response to submissions on CP 165

Key points

This section outlines the key issues covered in submissions to CP 165, and our response to these issues.

It covers:

- initial training requirements for representatives;
- ongoing training requirements for representatives; and
- qualifications for responsible managers.

Representative training requirements

- 16 As described in paragraph 10, CP 165 set out two proposed approaches for modifying the representative training requirements. The majority of respondents to CP 165 felt that neither approach would really address the issues prompting the consultation.
- 17 On the proposal to limit the definition of mortgage broking services to credit assistance in the form of ‘suggesting’, many respondents thought that this might be difficult to apply in practice, as representatives may need to engage in a variety of credit activities that encompass both suggesting and other credit assistance. A small number of respondents believed that this proposal would be of assistance to them, as it would mean their representatives would be unlikely to be caught by the definition of mortgage broking services.
- 18 On the proposal to allow representatives of credit providers who provide mortgage broking services to undertake a reduced number of units of the Certificate IV in Finance and Mortgage Broking, while some respondents welcomed this as a potential reduction in their compliance burden, many respondents stated that they do not consider this qualification to be appropriate for those working within the credit provider sector. These respondents expressed a strong preference for ‘mortgage broking services’ to be redefined to differentiate between those working in the credit provider and the intermediary mortgage broking sectors.
- 19 We did not receive any submissions suggesting that we should change our policy on representative training for the intermediary mortgage broking sector.

ASIC's response

From the feedback we received, we think there is a justification for taking a different approach to training for credit provider representatives only providing credit assistance in relation to home loans offered by their licensee (as opposed to representatives of intermediary mortgage brokers), including because credit provider representatives are likely to need to perform a diversity of roles in addition to providing credit assistance in relation to home loans, and training designed for intermediary mortgage brokers may not fulfil their training needs alone.

Nevertheless, we remain concerned to ensure that credit provider representatives providing credit assistance in relation to home loans are fully trained to perform this role.

Our revised policy in RG 206 states that a representative only providing credit assistance in relation to home loans offered by their own licensee may complete training in the form determined appropriate by the licensee. However, this training should allow the representative to achieve the outcomes specified in Table 2 of RG 206, as well as covering other areas appropriate to their role.

The outcomes described in Table 2 of RG 206 are designed to ensure representatives in this position have a well-rounded set of knowledge and skills to apply to their role including:

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

As we no longer require credit provider representatives only providing credit assistance in relation to home loans offered by their licensee to complete a specific training course, this will provide their licensees with more flexibility to select appropriate training as long as it achieves these outcomes.

We have not changed our policy regarding training for intermediary mortgage brokers. The Certificate IV in Finance and Mortgage Broking is a well-regarded qualification for this industry sector.

Ongoing training requirements

- 20 While the issue was not directly raised in CP 165, some respondents from the credit provider industry sector expressed concern with the ongoing training requirements for representatives providing mortgage broking services. In particular, they stated that our guidance that representatives providing mortgage broking services should undertake at least 20 hours of CPD each year is difficult to comply with in practice.

ASIC's response

We have taken this feedback into account, and have modified our approach to ongoing training requirements to give further flexibility to credit provider representatives only providing credit assistance in relation to home loans offered by their licensee.

While we have retained our guidance that 20 hours is an appropriate suitable minimum number of hours of CPD each year, we have provided these representatives with the alternative option of undertaking a three-yearly 'knowledge update review'. This would be a test administered by a registered training organisation via a secure facility, assessing the representative's knowledge of key regulatory and market developments, as relevant to their role and industry sector: see RG 206.93.

If affected representatives 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.

We have not changed our policy regarding ongoing training for intermediary mortgage brokers (i.e. that these representatives should undertake at least 20 hours of CPD activities each year), as we understand this to be an appropriate requirement for this industry sector.

Other issues in relation to ongoing training

- 21 Some respondents to CP 165 noted that one of the difficulties industry faces in complying with the current CPD requirements in RG 206 is that representatives need to undertake a variety of ongoing training to meet various legislative and compliance requirements, as well as internal training relevant to their roles.

ASIC's response

CPD activities undertaken to meet RG 206 should be relevant to the purpose of ensuring that representatives are adequately trained to provide credit services; however, they need not simply be directed at understanding compliance requirements. In RG 206, we explain that CPD may encompass a variety of relevant credit-related educational activities, including both product and industry developments related to credit. We think internal training on systems, procedures and policies relevant to a representative's role may also make up a proportion of ongoing training.

Additionally, we have also received feedback on the kinds of activities that may count towards the CPD requirements. Concern has also been expressed to us that the list of activities is too

narrow and does not include, for example, internal training seminars. The guidance we have provided is not intended to constitute an exclusive list of activities that may be counted towards CPD, and we have clarified this in our revised version of RG 206: see RG 206.91. We have also clarified that we generally 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.

Qualifications for responsible managers

- 22 While the issue was not directly raised in CP 165, some respondents expressed concern with our qualification requirements for responsible managers of mortgage brokers, as they apply to credit provider licensees.
- 23 These respondents argued that, in order to be nominated as a responsible manager for a credit provider, a person is likely to have completed a number of higher level qualifications, and requiring them to hold a Certificate IV in Finance and Mortgage Broking in addition to this represents an unnecessary compliance burden. These respondents asked for more flexibility in relation to the qualification requirements for responsible managers of credit provider licensees providing mortgage broking services.

ASIC's response

We recognise that responsible managers of credit providers are often responsible for diverse businesses, and we accept that a range of qualifications may be appropriate to prepare them for this role.

Therefore, we have modified our policy in relation to qualifications for credit licensees' responsible managers. Our revised version of RG 206 states that responsible managers of licensees that only provide credit assistance in relation to their own home loans may hold credit industry qualifications to at least the Certificate IV level, or another general relevant higher level qualification (e.g. a diploma or university degree): see RG 206.53. This is the general approach we have taken in relation to responsible managers of other credit licensees.

While we propose to apply this more flexible policy, it is nevertheless important that responsible managers have qualifications and experience to provide them with a good understanding of the area of the licensee's business for which they are responsible. Responsible managers of credit providers who oversee representatives providing credit assistance in relation to home loans should take account of the training outcomes we propose to apply to such representatives (see Table 2 of revised RG 206), 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.

We have not changed our policy regarding qualifications for responsible managers of independent mortgage brokers. The Certificate IV in Finance and Mortgage Broking is a well-regarded qualification for this industry sector.

We have not changed our policy on appropriate experience for responsible managers.

Appendix: List of respondents

- Abacus Australian Mutuals
 - AMP Financial Services
 - ANZ Limited
 - Australian Bankers Association
 - Australian Finance Conference
 - Bank of Queensland
 - Heritage Building Society
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