



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 and licence applicants.

It provides guidance on how credit licensees can meet their organisational competence and 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 guide was issued on 18 December 2009 and is based on the credit legislation and regulations as at 18 December 2009.

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.

At the date of issue of this guide, the regulations proposed to be made under the National Credit Act and the Transitional Act are in exposure draft form and therefore subject to change before being made final. Once the regulations are made final, we will update our guidance if necessary.

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A Overview

Key points

Credit licensees must comply with the organisational competence obligation in s47(1)(f) of the 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.

We will give people until 30 June 2014 to acquire the necessary qualifications outlined in this guide.

Organisational competence

- RG 206.1 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). 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 them as your 'responsible managers'.
- RG 206.2 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 206.3 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 206.4 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 206.5 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).

If you are a mortgage broker, your responsible managers' qualification should be at least a Certificate IV in Financial Services (Finance/Mortgage Broking).

RG 206.6 You also need to have measures in place to ensure you maintain your organisational competence at all times.

RG 206.7 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 206.8 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 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 206.9 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 206.10 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 206.11 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 206.12 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 206.13 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 206.14 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). We refer to this obligation as the 'representative training' obligation.
- RG 206.15 Generally, we have not set minimum training standards 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 206.16 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 Financial Services (Finance/Mortgage Broking). These representatives also need to undertake 20 hours of continuing professional development per year. This specific training is necessary because poorly informed assistance leading to poor decisions about mortgages could potentially jeopardise ownership of the family home.

RG 206.17 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 206.18 If you are:

- (a) an authorised deposit-taking institution (ADI);
- (b) applying for a licence to engage in credit activities of the kind you are authorised to engage in under a law of a state or territory that meets certain conditions (see reg 8(2)(c) of the National Credit Regulations); or
- (c) a general insurer authorised by APRA under the *Insurance Act 1973* that offers lenders mortgage insurance products and engages in credit activities only as an assignee in relation to providing those mortgage insurance products (lenders mortgage insurer),

you have the benefit of a streamlined process when applying for a credit licence. This process does not include an assessment of organisational competence: see s38 and reg 8.

RG 206.19 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.

Transitional arrangements

- RG 206.20 You must comply fully with the qualification requirements in Section B by 30 June 2014. Until then, we will also accept:
- (a) responsible managers of lenders who can demonstrate five years relevant problem-free experience; and
 - (b) responsible managers of businesses providing credit assistance who can demonstrate two years relevant problem-free experience,
- even if they do not have the Certificate IV level credit industry-specific qualifications or general relevant higher level qualifications outlined in Section B.
- RG 206.21 If you are a mortgage broker, your responsible managers will be able to rely on mentoring to meet the requirement for two-years problem free experience, provided the mentoring arrangement will be completed by 30 June 2012. Your responsible managers and representatives also have until 30 June 2014 to complete a Certificate IV in Financial Services (Finance/Mortgage Broking).

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 mortgage brokers should have at least a Certificate IV in Financial Services (Finance/Mortgage Broking).

Responsible managers should undertake at least 20 hours of continuing professional development per year.

How we assess your organisational competence

RG 206.22 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). We refer to this obligation as the 'organisational competence' obligation.

Note: Special licensing provisions apply to people engaged in credit activities in relation to carried over instruments: see Divs 1 and 3 of Part 3 of the Transitional Regulations. People who engage in credit activities only in relation to carried over instruments and who are granted a licence are required to comply with a subset of the general conduct obligations in s47(1): see reg 10 of the Transitional Regulations. Also refer to Regulatory Guide 203 *Do I need a credit licence?* (RG 203).

The 'fit and proper' test

RG 206.23 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 206.24 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 206.25 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.

Identifying your responsible managers

RG 206.26 To determine whether all of the people referred to in RG 206.23 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 206.27 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 206.28 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, National Credit Act; s9, *Corporations Act 2001*.

RG 206.29 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 206.30 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 206.31 If you are a small businesses, 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 206.32 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 condition

RG 206.33 If we think your organisational competence is heavily dependent on one or two responsible managers, we may impose a 'key person condition' on your credit licence. The key person 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 206.34 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 206.35 If you:

- (a) are an authorised deposit-taking institution (ADI);
- (b) are applying for a licence to engage in credit activities of the kind you were authorised to engage in under a law of a state or territory that meets certain conditions (see reg 8(2)(c)); or
- (c) offer lenders mortgage insurance products (see reg 8(7)),

you have the benefit of a streamlined process when applying for a credit licence. This process does not include an assessment of organisational competence: see s38 and reg 8.

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

RG 206.36 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 206.37 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 a 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 206.38 Generally, your responsible managers should have 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, and

at least two years relevant problem-free experience.

RG 206.39 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 206.40 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 minimum requirements.

RG 206.41 In the case of a lender, 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 206.42 We have, however, set a minimum requirement for responsible managers of a credit licensee that provides mortgage broking services. We expect these responsible managers to have completed at least a Certificate IV in Financial Services (Finance/Mortgage Broking). We have adopted this approach because the Certificate IV in Financial Services (Finance/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 mortgage broking business to hold this qualification will help ensure that they have an appropriate level of competence.

RG 206.43 We may develop additional requirements in the future to adapt to changing conditions in the credit industry.

Experience

RG 206.44 In addition to the qualifications described at RG 206.41–RG 206.42, 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 206.53.

- RG 206.45 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 206.46 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.

Experience gained under supervision and mentoring

- RG 206.47 The objective of gaining experience as a support person or representative is to acquire a good understanding of the processes necessary to independently manage a business undertaking those particular credit activities. This should be done on the express understanding that the support person or representative is being mentored by a responsible manager in the licensed business to gain relevant experience that will go towards assisting them to work independently in the industry.
- RG 206.48 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.
- RG 206.49 In some parts of the credit industry (e.g the mortgage broking industry), the main providers of credit activities are sole traders who do not have employees. We recognise that in these circumstances it would be very difficult for entrants to the industry to gain the necessary experience to become a responsible manager or a licensee, as there are few opportunities available for being employed to gain experience.
- RG 206.50 In recognition of this, we will allow people who are currently being mentored according to the Mortgage and Finance Association of Australia (MFAA) mentoring guidelines (as current at the date of publication of this regulatory guide) to be responsible managers on the basis they will successfully complete their mentoring. This will be a transitional arrangement until 30 June 2012. After this date, we expect all new credit

licensees providing mortgage broking services to gain two years of problem-free experience working for licensed mortgage brokers prior to seeking a credit licence in their own right.

Note: The MFAA mentoring guidelines are available from the MFAA website at <http://www.mfaa.com.au/default.asp?artid=1879>.

Non-compliance issues you need to tell us about

- RG 206.51 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 206.53–RG 206.54.
- RG 206.52 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 206.53 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 2001* (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 lender, mortgage manager or mortgage insurer;

- (i) whether they have had their accreditation cancelled or suspended by a lender, 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 206.54 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 206.55 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 continuing professional development (CPD) relating to credit issues will help ensure this.

RG 206.56 Your responsible managers should undertake 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 206.57 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 Chapter 3 of the National Credit Act.
- RG 206.58 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); and
 - (e) completion of online tutorials and/or quizzes on recent (within the last year) regulatory, technical or professional developments in the industry.

Transition period

- RG 206.59 We have provided a transition period, until 30 June 2014, so that existing participants can decide whether they want to participate in the credit industry in a responsible manager capacity and, if so, acquire the necessary qualifications and experience. During this transition period, we will accept:
- (a) responsible managers of lenders who can demonstrate five years relevant problem-free experience; and
 - (b) responsible managers of businesses providing credit assistance who can demonstrate two years relevant problem-free experience,
- even if they do not meet the qualification requirements set out in RG 206.38–RG 206.42.

- RG 206.60 It is appropriate to require five years experience from responsible managers of lenders because these licensees have greater responsibilities in terms of responsible lending. The compliance burden is also much greater because the business of lending involves other obligations, such as pre-contract and contractual disclosure, management of ongoing disclosure, account management and statements, handling of hardship applications, debt collection, and enforcement of securities and guarantees.

Note: Credit licensees must also comply with the responsible lending obligations in Ch 3 of the National Credit Act. We will be releasing guidance about our expectations for compliance with these obligations in early 2010: see Consultation Paper 115 *Responsible lending* (CP 115).

- RG 206.61 From 1 July 2014, credit licensees and licence applicants must have responsible managers with the necessary experience and qualifications.
- RG 206.62 Responsible managers of mortgage broking businesses will be deemed to satisfy the requirement for two years experience if they are in a mentoring arrangement which will be completed before 30 June 2012, and at the end of that mentoring arrangement the mentor is satisfied that the period has been problem-free. This will be set out in a licence condition.

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.

We have not set minimum training standards that we think representatives should meet (other than for mortgage broker representatives). 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 working as mortgage brokers should hold at least a Certificate IV in Financial Services (Finance/Mortgage Broking) and undertake 20 hours of CPD per year.

General expectations

- RG 206.63 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). Your representatives include your staff, agents and authorised credit representatives.

Note: Special licensing provisions apply to people engaged in credit activities in relation to carried over instruments: see Divs 1 and 3 of Part 3 of the Transitional Regulations. People who engage in credit activities only in relation to carried over instruments and who are granted a licence are required to comply with a subset of the general conduct obligations in s47(1): see reg 10 of the Transitional Regulations and RG 203.

- RG 206.64 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 credit representatives. We expect you to ensure that your representatives are suitably qualified to perform the role that they are employed to perform.
- RG 206.65 For example, if your business is a small microlending 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 206.66 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 mortgage brokers, this is a minimum of a Certificate IV in Financial Services (Finance/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 206.67 We would 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 206.68 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 206.69 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.

Mortgage broker representatives

- RG 206.70 A representative will be providing mortgage broking services when they give credit assistance in relation to a credit product where the credit is secured by real property (mortgage broking services).

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. Consequently, these individuals will also not be considered to be providing mortgage broking services for the purposes of the training requirements.

- RG 206.71 Representatives who provide mortgage broking services will need to have at least a Certificate IV in Financial Services (Finance/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 206.72 We recognise that some representatives who provide mortgage broking services 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 Financial Services (Finance/Mortgage Broking) to recognise this existing qualification.

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

RG 206.73 We think it is appropriate to require representatives who provide mortgage broking services to hold a Certificate IV in Financial Services (Finance/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.

RG 206.74 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 be a mortgage broking service. Table 1 sets out some examples of when representatives will and will not be providing mortgage broking services.

Table 1: Representatives and when advice will or will not be mortgage broking

Example	Explanation
Providing advice about a client's financial arrangements, including their mortgage	<p>If a financial planner is providing advice to a client about all their financial arrangements, including their mortgage, 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 be providing mortgage broking services. 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 recommend a particular mortgage product themselves that the client should switch to, we would consider this to be mortgage broking. In addition, if they made a positive recommendation to the client that they should stay with their product, we would consider this to be mortgage broking.</p>
Advising a client to pay off their mortgage	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 mortgage broking services.
Suggesting a client take out a mortgage with a particular lender	If a financial planner suggests a client take out particular product with a particular lender, this would be mortgage broking regardless of whether the financial planner earns a commission or not.

Example	Explanation
Providing advice about loan features	<p>If a financial planner advises a client that some mortgage providers offer loans with a free redraw facility and explains how a free redraw facility works without recommending a particular provider or product, we would not consider this to be mortgage broking.</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 lender to explain the features and costs associated with that type of loan.</p>

Continuing professional development

- RG 206.75 While we are not mandating a set minimum number of hours of CPD that all credit 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. We also expect you will document what is a suitable number of hours of CPD for your representatives.
- RG 206.76 We consider 20 hours to be an appropriate suitable minimum number of hours of CPD for mortgage brokers to undergo each year.
- RG 206.77 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 that licensee to explain to us why this is sufficient.
- RG 206.78 For more information on the types of activities that may count towards CPD and which activities may only be counted to a limited number of hours, see RG 206.58.

Transition period

- RG 206.79 As a transitional arrangement, representatives who provide mortgage broking services will have until 30 June 2014 to obtain a Certificate IV in Financial Services (Finance/Mortgage Broking).

Key terms

Term	Meaning in this document
ADI	Authorised deposit-taking institution—has the meaning given in s5 of the National Credit Act
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
carried over instrument	Has the meaning given in s4 of the Transitional Act
consumer	A natural person or strata corporation Note: See s5 of the National Credit 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 s65(2) of the National Credit Act
financial product	Generally a facility through which, or through the acquisition of which, a person does one or more of the following: <ul style="list-style-type: none"> • makes a financial investment (see s763B); • manages financial risk (see s763C); • makes non-cash payments (see s763D) Note: See Div 3 of Pt 7.1 of the <i>Corporations Act 2001</i> for the exact definition
lender	A credit provider
MFAA	Mortgage and Finance Association of Australia
mortgage broker	A person who provides mortgage broking services

Term	Meaning in this document
mortgage broking services	Providing credit assistance in relation to 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 Schedule 1 of the National Credit Act
National Credit Regulations	Either: <ul style="list-style-type: none"> • National Consumer Credit Protection Regulations 2010; or • before these regulations are made final—Exposure Draft National Consumer Credit Protection Regulations released by Treasury in November 2009
person	Has the meaning given in s5 of the National Credit Act
PI insurance	Professional indemnity insurance
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
responsible manager	A credit licensee's responsible managers will be the following people or a subset of these people: <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
senior manager	Has the same meaning as in s9 of the <i>Corporations Act 2001</i>
Transitional Act	<i>National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009</i>

Term	Meaning in this document
Transitional Regulations	Either: <ul style="list-style-type: none"><li data-bbox="770 338 1394 405">• National Consumer Credit Protection (Transitional and Consequential Provisions) Regulations 2010; or<li data-bbox="770 416 1394 526">• before these regulations are made final—Exposure Draft National Consumer Credit Protection (Transitional and Consequential Provisions) Regulations released by Treasury in November 2009

Related information

Headnotes

competence, continuing professional development, credit activities, credit licence, credit licensee, credit representative, experience, 'fit and proper' test, lender, mortgage broker, mortgage broking services, organisational competence, qualification, representative, responsible manager, key person condition, training, transition

Regulatory guides

RG 146 *Licensing: Training of financial product advisers*

RG 203 *Do I need a credit licence?*

RG 204 *Applying for and varying a credit licence*

RG 205 *Credit licensing: General conduct obligations*

Legislation

Corporations Act 2001, s9

Finance Brokers Control Act 1975 (WA)

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); Transitional Regulations, Pt 3 Divs 1 & 3, reg 10

Consultation papers and reports

CP 110 *General conduct obligations of credit licensees*

CP 113 *Training and competence for credit licensees*

CP 115 *Responsible lending*

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*