

Draft addendum to the Responsible Lending Code: COVID-19

Purpose

1. The purpose of these additions to the Responsible Lending Code is to elaborate on and offer guidance on how lender responsibility principles and lender responsibilities may be implemented by lenders while dealing with borrowers who have been impacted by COVID-19.
2. Since March 2020, all lenders have been dealing with borrowers who have been experiencing financial stress as a result of COVID-19, including reductions in income and uncertainty about future employment or income prospects. This stress and uncertainty may continue for some time. In addition, most lenders have experienced disruption to their businesses as a result of COVID-19.
3. Many borrowers who have existing consumer credit contracts are suffering financial difficulties due to the economic or health impacts of COVID-19 and have been seeking variations to consumer credit contracts to provide them with relief.
4. Common means of relief include reducing current repayments by extending loan terms, changing the type of repayments (e.g. interest only payments), or temporarily deferring repayments.

Scope

5. The guidance in this addendum to the Code applies where a borrower is experiencing, or reasonably expects to experience, financial difficulties due to the economic or health effects of COVID-19, and either:
 - a. an existing contract is varied (or proposed to be varied) for the purpose of reducing those difficulties on or before of 31 October 2020
 - b. a replacement contract is entered into (or proposed to be entered into) for the purpose of reducing those difficulties on or before of 31 October 2020.
6. This addendum expands on the guidance in the existing Responsible Lending Code in the circumstances described in paragraph 5. This addendum also sits alongside Commerce Commission [Guidance](#), which sets out their expectations and enforcement approach. Where applicable, references in the Code to guidance in section 5 of the Code (e.g. in sections 6 and 9) should be interpreted as references to guidance in section 5 of the Code as supplemented by the addendum.

Considerations when varying or replacing contracts to reduce financial stress caused by the impacts of COVID-19

Obligations under the Act

7. The Credit Contracts and Consumer Finance Act (the Act) 2003 provides that lenders must exercise the care, diligence, and skill of a responsible lender in all subsequent dealings with a borrower or a guarantor (see section 9C(2)(a)(iii)). This obligation applies when a credit contract is being varied.
8. In addition, for some lenders, variations are effected in practice by replacing the previous credit contract with a new agreement that reflects the agreed changes to the terms. When a new agreement is being entered into, the Act provides that lenders:
 - a. must make reasonable inquiries, before entering into an agreement, so as to be satisfied that it is likely that the borrower will make the payments under the agreement without suffering substantial hardship (see section 9C(3)(a)(ii))
 - b. must exercise the care, diligence and skill of a responsible lender before entering into an agreement (see section 9C(2)(a)(ii)).

Guidance

9. In the context of the uncertainty and disruption caused by COVID-19, in order to meet their obligations under sections 9C(2)(a)(ii), 9C(2)(a)(iii) and 9C(3)(a)(ii) of the Act, a lender should make sufficient inquiries so as to be satisfied that:
 - a. the borrower requires payment relief due to the nature and extent of the financial difficulties they are experiencing, or expect to experience
 - b. the payment relief is appropriate, given the borrower's circumstances.
10. The types of inquiries which may be relevant include:
 - a. asking the borrower how COVID-19 has impacted them, including current or expected changes to income or expenses
 - b. asking the borrower how long they may be impacted for, if known
 - c. asking the borrower, where relevant, the level of repayments the borrower may be able to afford
 - d. checking with the borrower as to whether they are able to make a claim under an insurance policy or a repayment waiver, and giving particular consideration to any credit-related insurance or repayment waiver that the lender has previously provided to the borrower
 - e. checking whether the borrower is aware that other support that may be available, for example through the Government
 - f. considering the likely impact of any repayment relief provided on the borrower's obligations over the longer term.