

DRAFT Updated addendum to the Responsible Lending Code: COVID-19

This addendum was originally introduced on 31 August 2020, and expired on 31 March 2021. The addendum is being reissued now in light of the recent COVID-19 Delta variant outbreak. It will expire on 1 February 2022, on which date the revised Responsible Lending Code Chapter 12 (which concerns hardship) will come into force.

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. Lenders have been dealing with borrowers who have been experiencing financial stress as a result of COVID-19. This stress includes factors such as reductions in income, uncertainty about future employment or income prospects and increases in expenses for the borrower's household or wider family. 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. 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 31 January 2022
 - b. a replacement contract is entered into (or proposed to be entered into) for the purpose of reducing those difficulties on or before 31 January 2022.
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.

7. Lenders continue to have other obligations in the Credit Contracts and Consumer Finance Act 2003 (the Act) such as the requirement to assist borrowers to reach informed decisions in all subsequent dealings in relation to agreements (see section 9C(3)(c) of the Act and section 11.9 to 11.12 of the Code).

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

Obligations under the Act

8. The Act 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.
9. 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

10. 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.
11. 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 income-support or other financial support may be available, for example through the Government
 - f. considering the nature of the goods or property against which the loan is secured, if any

- g. considering the likely impact of any repayment relief provided on the borrower's obligations over the longer term.

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