Note: Proposed changes to the Code are in red.

Exposure Draft of the Responsible Lending Code

5. Inquiries into and assessment of substantial hardship (borrowers)

Legal obligations

Lender responsibility

A lender must, in relation to an agreement with a borrower, make reasonable inquiries, before entering into the agreement, and before making a material change referred to in subsection (8), 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) of the Act).

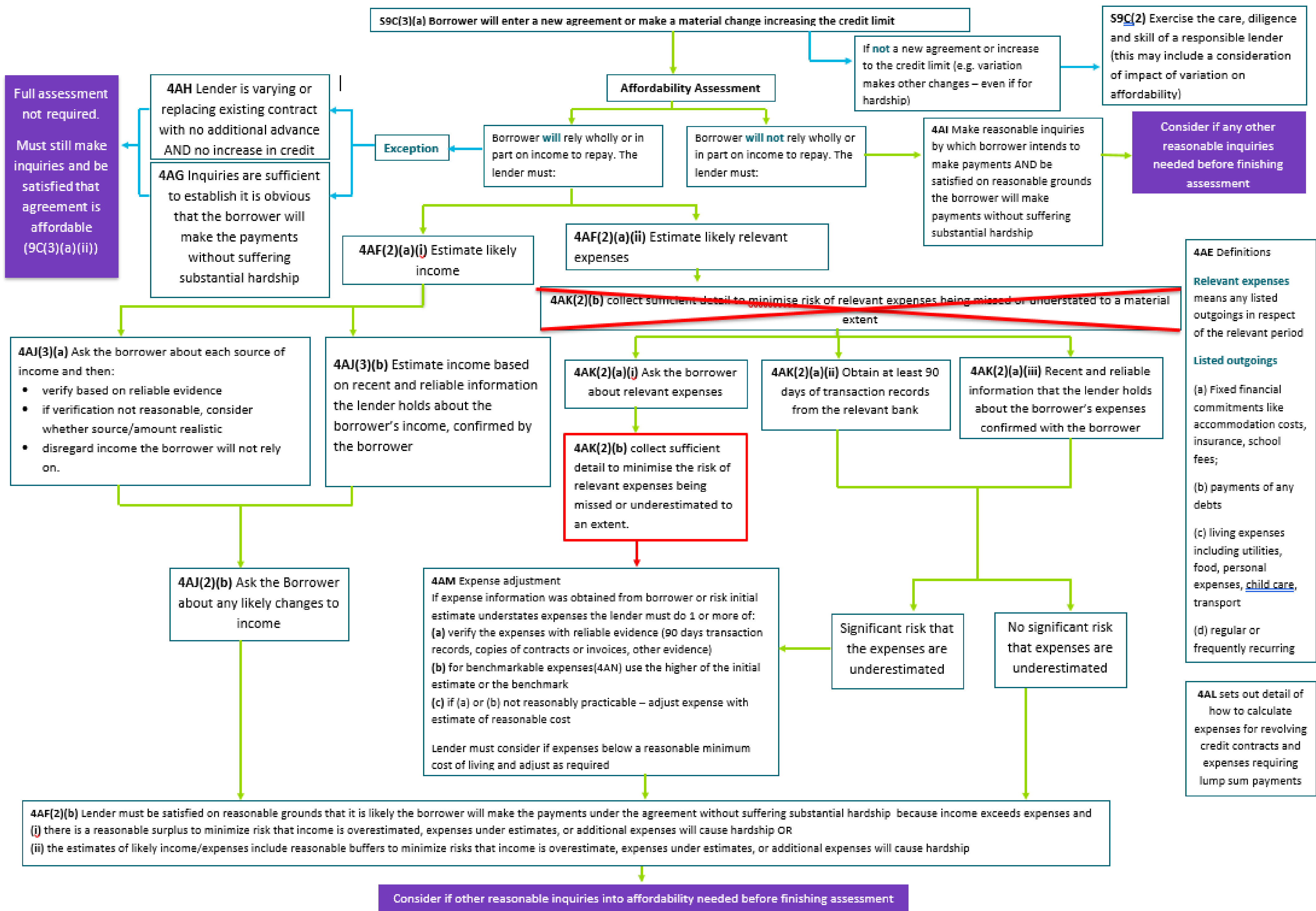
Regulations - minimum requirements for inquiries and assessment

As part of complying with the lender responsibility in section 9C(3)(a)(ii) of the Act, lenders must comply with the minimum requirements for inquiries and assessment prescribed in regulations 4AE–4AO (see section 9C(5A)).

Commentary

Regulation 4AD provides an outline of regulations 4AE–4AO, which set out requirements for making reasonable inquiries about the likelihood that the borrower will make the payments under the agreement without suffering substantial hardship.

Below is a diagram of this process. Note that this is illustrative only and does not represent every step or legal test provided by regulations.


S9C(3)(a) Borrower will enter a new agreement or make a material change increasing the credit limit
If not a new agreement or increase to the credit limit (e.g. variation makes other changes – even if for hardship)
S9C(2) Exercise the care, diligence and skill of a responsible lender (this may include a consideration of impact of variation on affordability)
Affordability Assessment
Full assessment not required.
Must still make inquiries and be satisfied that agreement is affordable (9C(3)(a)(ii))
4AH Lender is varying or replacing existing contract with no additional advance AND no increase in credit
4AG Inquiries are sufficient to establish it is obvious that the borrower will make the payments without suffering substantial hardship
Exception
Borrower will rely wholly or in part on income to repay. The lender must:
Borrower will not rely wholly or in part on income to repay. The lender must:
4AI Make reasonable inquiries by which borrower intends to make payments AND be satisfied on reasonable grounds the borrower will make payments without suffering substantial hardship
Consider if any other reasonable inquiries needed before finishing assessment
4AF(2)(a)(i) Estimate likely income
4AF(2)(a)(ii) Estimate likely relevant expenses
4AK(2)(b) collect sufficient detail to minimise risk of relevant expenses being missed or understated to a material extent
4AE Definitions
Relevant expenses means any listed outgoings in respect of the relevant period
Listed outgoings
(a) Fixed financial commitments like accommodation costs, insurance, school fees;
(b) payments of any debts
(c) living expenses including utilities, food, personal expenses, child care, transport
(d) regular or frequently recurring
4AJ(3)(a) Ask the borrower about each source of income and then:
• verify based on reliable evidence
• if verification not reasonable, consider whether source/amount realistic
• disregard income the borrower will not rely on.
4AJ(3)(b) Estimate income based on recent and reliable information the lender holds about the borrower's income, confirmed by the borrower
4AK(2)(a)(i) Ask the borrower about relevant expenses
4AK(2)(a)(ii) Obtain at least 90 days of transaction records from the relevant bank
4AK(2)(a)(iii) Recent and reliable information that the lender holds about the borrower's expenses confirmed with the borrower
4AK(2)(b) collect sufficient detail to minimise the risk of relevant expenses being missed or underestimated to an extent.
4AJ(2)(b) Ask the Borrower about any likely changes to income
4AM Expense adjustment
If expense information was obtained from borrower or risk initial estimate understates expenses the lender must do 1 or more of:
(a) verify the expenses with reliable evidence (90 days transaction records, copies of contracts or invoices, other evidence)
(b) for benchmarkable expenses(4AN) use the higher of the initial estimate or the benchmark
(c) if (a) or (b) not reasonably practicable – adjust expense with estimate of reasonable cost
Lender must consider if expenses below a reasonable minimum cost of living and adjust as required
Significant risk that the expenses are underestimated
No significant risk that expenses are underestimated
4AL sets out detail of how to calculate expenses for revolving credit contracts and expenses requiring lump sum payments
4AF(2)(b) Lender must be satisfied on reasonable grounds that it is likely the borrower will make the payments under the agreement without suffering substantial hardship because income exceeds expenses and
(i) there is a reasonable surplus to minimize risk that income is overestimated, expenses under estimates, or additional expenses will cause hardship OR
(ii) the estimates of likely income/expenses include reasonable buffers to minimize risks that income is overestimate, expenses under estimates, or additional expenses will cause hardship
Consider if other reasonable inquiries into affordability needed before finishing assessment

Record keeping

The lender must keep records about the inquiries made by the lender under section 9C (including the results of those inquiries). Those records must demonstrate how the lender has satisfied itself as to the matters in section 9C(3)(a), (4)(a), and (5)(a) (see section 9CA of the Act).

Guidance

Inquiries

5.1. A lender should be satisfied that the scope and methods of inquiry are reasonable and will provide satisfaction that it is likely that the borrower will make payments under the agreement without suffering substantial hardship.

Commentary

Regulations 4AF and 4AJ–4AO require lenders to make particular inquiries into the borrower's income and expenses.

5.2. Depending on the circumstances, it may be reasonable for the lender to make inquiries into matters in addition to those specified in the regulations to be satisfied that it is likely that the borrower will make payments without suffering substantial hardship (for example, where conflicting information is received in response to prescribed inquiries).

Initial estimate of expenses

Commentary

Regulation 4AK(2)(a) requires lenders to create an initial estimate of likely relevant expenses, based on three potential information sources: asking the borrower, bank transaction records, and information the lender already holds.

5.3. To make an initial estimate of likely relevant expenses under *regulation 4AK(2)(a)*, lenders may choose to use only one or a combination of information sources to create it. Lenders may choose to use some information sources to estimate some types of expenses, and other information sources to estimate other types of expenses. For example, financial commitments may be identified through a combination of information sources, while living expenses may be estimated solely by asking the borrower to declare their living expenses in accordance with *regulation 4AK(2)(a)(i)*.

5.4. Where lenders are asking borrowers about their relevant expenses under *regulation 4AK(2)(a)(i)* to estimate some likely relevant expenses, but have also obtained bank transaction records for another purpose, lenders may choose not to use the bank transaction

records to estimate the amount of those expenses. However, lenders should not 'close their eyes' to information that is contained in the bank transaction records. For example, the lender may briefly review a borrower's transactions to identify any likely relevant expenses that are missing from the borrower's declarations or other clear inconsistencies.

5.5. Lenders may also ask the borrower about how expenses are likely to change once the contract is entered into and take this into account in making their initial estimate under *regulation 4AK*. Where an expense would be ceased, it should not be part of the initial estimate under *regulation 4AK*.

Discretionary expenses

5.6. Some lenders may choose to create an initial estimate of some types of expenses using bank transaction records. An initial estimate based solely on bank transaction records can overestimate variable expenses, as those records often include discretionary components that borrowers say they would cut back on once the loan is entered into. Where this would be relevant to the outcome of the affordability assessment, lenders may additionally ask borrowers what their likely expenses will be after taking out the loan and use this as the initial estimate for that expense. For example, a borrower's food expenses may include dining out or takeaway expenses that that the borrower would be prepared to reduce by replacing them to some extent with eating at home more often.

Credit reports

5.7. The regulations require a lender to obtain a credit report, in certain circumstances. A credit report must cover credit information that is relevant to identifying the borrower's financial commitments, however it need not contain positive credit information.

Adjusting the initial estimate of borrower's likely relevant expenses

Commentary

Regulation 4AM gives lenders a choice of either verifying expenses against evidence or using a benchmark. If neither option is reasonably practicable, lenders may use a reasonable cost estimate.

This only applies where the initial estimate was based on asking the borrower about relevant expenses and under 4AK(2)(a)(i) or where there is a significant risk that the initial estimate materially underestimates relevant expenses.

5.8. Lenders may use different methods to adjust different types of expenses:

a. Verification may be more appropriate for some types of expenses (such as other debt payments) that are highly variable between borrowers. Verified expenses may also be preferred if a benchmark is set higher than the borrower's verified expenses, such that the borrower's likely expenses would be overestimated by using a benchmark.

b. A benchmark may be easier to apply to many types of expenses that would otherwise be difficult to accurately identify from bank transactions, or where the borrower's verified expenses would overestimate their likely expenses.

c. For example, if the borrower declared that they would cut back on some expenses after the loan is entered into, the lender could use a benchmark or a reasonable cost estimate.

Further verification of information provided by borrowers, financial advisers or other intermediaries~~– affordability~~

5.9. Subject to requirements in the regulations to verify particular information about income and expenses, lenders may rely on the information provided to them by the borrower unless the lender has reasonable grounds to believe that the information is not reliable. Where the lender has reasonable grounds to believe the information is not reliable, the lender should take reasonable steps to verify the information provided by the borrower.

5.10. A lender may ask for or receive information from financial advisers or other intermediaries acting on behalf of the borrower. Where that is the case:

5.11. A lender may rely on information provided to it by a financial adviser or intermediary as though it had been provided to it by the borrower.

5.12. A lender should require financial advisers and intermediaries to implement and maintain appropriate policies and procedures to collect information from the borrower and perform any necessary verification, and to train their staff on the Code and the lender responsibility principles. The lender, not financial advisers or other intermediaries, remains responsible for ensuring the lender complies with its responsible lending obligations.

Surpluses, buffers or adjustments

Commentary

This part of the Code provides guidance on how lenders should assess the adequacy of surpluses, buffers or adjustments provided in accordance with regulation 4AF(2)(b).

Regulation 4AF(2)(b) requires that the surplus, buffers or adjustments adequately address the risks that likely income may be overestimated, likely relevant expenses may be underestimated or the borrower may need to incur other expenses that cause them to suffer substantial hardship.

5.13. Lenders should seek to have a consistent set of surpluses, buffers or adjustments across credit products the lender offers to adequately address the risk that income is overstated or relevant expenses understated.

5.14. Lenders may apply different surplus, buffers or adjustments across credit products to reflect the different risks of those products to affordability. For example, a lender may apply a

different uncommitted monthly income requirement for a lower risk loan compared to a higher risk loan.

5.15. Whilst the amount of a surplus, buffer or adjustment is not prescribed, the amount must adequately address the risk. The determination of what is adequate will depend on the nature of the credit provided and the risk that income is overstated or relevant expenses understated. For example, a buffer or adjustment may depend on the size, term or revolving nature of the credit product. A surplus, buffer or adjustment may be a percentage amount or an absolute amount.

5.16. Where the interest rate under an agreement can vary, a lender should take account of the risk that interest rates may rise. Lenders should consider applying buffers to the loan's interest rate, to mitigate the risk that potential increases in the interest rate adversely impact on a borrower's capacity to repay. For example, lenders could:

a. use a single, sensitised interest rate (which includes a buffer) regardless of the loan's actual interest rate or use the loan's actual interest rate plus a margin (which functions as a buffer);

b. apply an interest rate floor, to ensure the interest rate buffer applied reflects higher likely average interest rates over the longer term when operating in a low interest rate environment.

5.17. For interest only loans, where the interest only period is shorter than the term of the loan, lenders should consider assessing the borrower's ability to repay the loan on a principal and interest basis, excluding the interest-only period. For example, if the loan's term is 5 years, and the interest-only period will be 1 year, the lender should assess affordability over the 4 years of principal and interest.

5.18. Lenders should consider adjusting volatile, irregular, or variable income, for example discounting seasonal income, bonuses, overtime, rental income, or investment returns.

5.19. Lenders may reduce the surplus used to the extent they include the above adjustments and buffers, or any other adjustments and buffers beyond those expressly required by the regulations. In some cases, a lender may not require a reasonable surplus at all. For example, a lender is unlikely to require a reasonable surplus if the lender applies all of the following adjustments:

a. the borrower has a home loan, or is applying for a home loan, and the lender has applied an appropriate sensitised interest rate in accordance with paragraph 5.16

b. appropriate discounts to volatile, irregular or variable income (if any) in accordance with paragraph 5.18

c. most living expenses are compared against statistical benchmarks in accordance with regulation 4AM(2)(b).

Payments where there is an option to extend a loan term

5.20. Where the borrower asks for a loan term that is shorter than the maximum available for that credit product, lenders may assess the borrower's ability to repay the credit over a longer loan term, if all of the following apply:

a. the lender has told the borrower that the longer agreement term is available, but the borrower wants to keep a shorter term as more suitable for them;

b. the borrower has a right to extend the term of the loan up to the longer term at any time without fee, and the borrower is aware of this ability;

c. the borrower is aware that repaying over a shorter term may require more financial commitment or a further reduction in expenses; and

d. the agreement is not a high-cost consumer credit contract.

Example

Borrower B is seeking a home loan of 25 years, but the maximum available for that product that the borrower can obtain is 30 years. The lender may assess the borrower's ability to repay the credit over 25 years, or over a longer period, up to 30 years.

Joint expenses

Commentary

This part of the Code provides guidance on how lenders should estimate a borrower's likely relevant expenses when a borrower shares expenses with others.

Some of the borrower's relevant expenses may be shared with other people (for example, a partner, spouse, or extended family).

5.21. Where the lending is joint between two or more borrowers, the lender should consider each borrower's individual relevant expenses, any relevant expenses the borrowers share together, and any relevant expenses each borrower shares with any other person.

5.22. Where the lending is to one borrower, the lender should consider that borrower's individual relevant expenses, and any relevant expenses that borrower shares with any other person.

5.23. When estimating the borrower's likely relevant expenses, lenders should consider whether it is appropriate to apportion shared expenses in the circumstances. If so, lenders should consider:

a. whether a known amount for that borrower's individual contribution to the shared expenses is reasonable and can be used (for example, a borrower who is in a flatting situation contributes $30 a week towards power); or

b. whether apportioning expenses based on the salary of the borrower and other parties is appropriate in the circumstances; or

c. whether to apply the whole amount of the expense.

Example

A couple, A and B, have a joint home loan and a joint bank account into which they each have their income paid. A applies to a lender, L, for a personal loan, with A as the sole debtor. In apportioning payments on the shared home loan, L decides it is appropriate to apportion according to A's share of A and B's joint income.

5.24. In considering how to apportion shared expenses, the lender should take into account any information provided by the borrower about how their expenses are apportioned between them and others.

5.25. Lenders should consider the approach they will take when apportioning shared expenses to reduce the risk that the expenses are underestimated. If relevant, the lender should also consider whether the apportionment itself is likely to change over the relevant period. For example:

a. if the partner of an individual borrower's income is known to be reducing during the period of the loan, and it is likely the proportion of expenses the borrower will need to meet will increase from 50% to 90%;

b. if a tenant with their name on the house lease shares rent and other expenses with flatmates who are not on the lease, the lender should consider whether there is a risk that the tenant will become liable for a greater share of those expenses.

Exception to general rule if it is obvious there will be no hardship

Commentary

Regulation 4AG provides an exception from regulation 4AF (full income and expense estimates) if the lender makes inquiries that are sufficient to establish that it is obvious in the circumstances of the particular case that the borrower will make the payments under the agreement without suffering substantial hardship, so as to make the inquiries required by regulation 4AF disproportionate.

~~This is intended to be a high test.~~

5.26. Lenders may establish that that the exception in regulation 4AG applies by:

a. undertaking some of the inquiries that would ordinarily be required by regulation 4AF and halting these inquiries once they are sufficient to establish that the 'obvious' test in regulation 4AG is met; or

b. undertaking different inquiries in accordance with section 9C(3)(a) of the Act that are sufficient to establish that the 'obvious' test in regulation 4AG is met.

5.27. For the avoidance of doubt, credit scores and repayment history will not, in themselves, be decisive as to whether affordability is obvious. This is because, while past borrowing behaviour is relevant to the inquiry, it does not mean that previous lending was affordable without substantial hardship, and also does not automatically mean that any future loan will be affordable without substantial hardship.

Example

Lender L makes inquiries that determine that Borrower K earns income of $1,500 per week (after tax and KiwiSaver contributions) from a full-time job and contributes $300 of their pay each week to a savings account for discretionary spending. K has no other lending. K wishes to take out a $10,000 personal loan for 2 years. At an interest rate of 12.90%, the repayments are $107 per week for two years. It is obvious in the circumstances that K will make the payments under the agreement without substantial hardship.

Example

K and their partner, C, inherit $400,000 from a deceased relative. They would like to put the money towards a first home, costing $800,000. Their deposit, including the inheritance, is $500,000. L makes inquiries that determines that combined, the borrowers earn $250,000 p/a. The total home loan lending for this property would be $300,000. The borrowers decide to refinance the remainder of K's personal loan into the home loan lending, taking the total lending to $303,172. On a 30-year loan term at an interest rate of 5%, the repayments would be $375 per week. Given the size of their deposit and their combined incomes, it is obvious in the circumstances that the borrowers will make the payments under the agreement without substantial hardship.

10 years later, K and C approach L about a top up of $30,000 to their existing home loan (which is now $283,672) to finance some renovations. L makes inquiries that determines that K and C's combined income has risen to $300,000. Their expenses are $100,000 per year. The interest rate is still 5%. It is obvious in the circumstances that K and C will make the higher repayments of $477 per week under the agreement without substantial hardship. [Note in this example, the higher loan amount with the $30,000 added is $313,672. The loan term is 20 years – i.e., the couple did not extend the original 30-year loan term.]

Example

One year later, K approaches L about a $5000 personal loan to pay for some urgent car repairs. K will receive a $6000 quarterly bonus in one month's time and plans to use this to repay the loan. L has been given evidence of the certainty of the bonus. It is obvious in the circumstances that the K will make the payments under the agreement without substantial hardship.

~~Lender L makes inquiries that determine that Borrower B is a high net worth customer earning $350,000 a year with over $1m in net assets. Borrower B is seeking a credit card with a balance of $10,000 in order to obtain Airpoints on purchases. Lender L establishes that it is obvious that the borrower will make the payments under the agreement without substantial hardship.~~

Record keeping

Commentary

This part of the Code illustrates the kind of information that lenders should consider keeping to meet sections 9CA(1) and (2) of the CCCFA. These records are kept for 'successful' assessments in which a lender has entered into an agreement or agreed a material change with a borrower.

Lenders are required to ensure their records are fit for their intended purpose, including disclosure on demand to the Commission, dispute resolution service, the borrower, or guarantor.

However, the way information is presented by a lender under section 9CA(3) to (6) may depend on the way in which the lender collected and recorded information, verified that information where required, and made its assessments under section 9C(3)(a), (4)(a), and (5)(a).

5.28. Where the lender has followed the approach in *regulation 4AF*, the lender should keep a record of:

a. the borrower's likely income on a weekly, fortnightly, or monthly basis;

b. the reliable evidence for that likely income or, if verification was not reasonably practicable, a concise summary as to why the source and amount were realistic;

c. a statement about any likely changes to the borrower's income disclosed by the borrower;

d. the borrower's likely relevant expenses on a weekly, fortnightly, or monthly basis;

e. a list of relevant expenses, or groups of relevant expenses (eg living expenses), and the initial estimates used by the lender for each;

f. where those likely relevant expenses were derived by using 90 days' of transaction records or other reliable evidence, copies of that information;

g. any information or documents obtained when making reasonable inquiries into whether financial commitments were omitted, like a credit report;

h. where those likely relevant expenses were verified by using 90 days' of transaction records or other reliable evidence, copies of that information;

i. where those likely relevant expenses were benchmarkable expenses and were compared against a benchmark, a list of the relevant expenses or groups of relevant expenses that were benchmarked and a brief description of the benchmark;

j. where any likely relevant expenses were adjusted by estimating a reasonable cost for the expense, a statement to that effect and a list of relevant expenses that were estimated;

k. where any living expenses were compared to a reasonable minimum cost of living for a person in similar circumstances to the borrower, a statement to that effect and a list of relevant expenses or groups of relevant expenses that were adjusted;

l. if a buffer or adjustment (in accordance with 4AF(2)(b)(ii)) was applied to income or a relevant expense, a statement to that effect;

m. a list of relevant expenses, or groups of relevant expenses (eg living expenses), and the final estimates of those expenses used by the lender; and

n. any other inquiries made under section 9C(3)(a)(ii).

5.29. In recording how the lender satisfied itself as to the matters in section 9C(3)(a)(ii) where the approach in regulation 4AF was followed, the lender may choose to capture a concise summary of the lender's decision or some other record of how the lender satisfied itself. This may include references to its policies or procedures and how they were applied. For example, the lender could keep a record summarising that:

a. the lender was satisfied based on inquiries made that the borrower's likely income of $(amount) exceeded their likely relevant expenses of $(amount); and

b. the lender was satisfied based on inquiries made that:

  i. there was a reasonable surplus to adequately address the risk that likely income may be overestimated, likely relevant expenses underestimated, or that the borrower may need to incur other expenses that cause them to suffer substantial hardship;

  ii. the lender's estimates of likely income and likely relevant expenses included reasonable buffers or adjustments to adequately address the risk that likely income may be overestimated, likely relevant expenses underestimated or that the borrower may need to incur other expenses that cause them to suffer substantial hardship.

5.30. Where the lender has used the exception in regulation 4AG, the lender should keep a record of:

a. the specific inquiries that were made to establish that it is obvious in the circumstances of the particular case that the borrower will make the payments under the agreement without suffering substantial hardship;

b. the results of those inquiries; and

c. the lenders' reasons why it is obvious in the circumstances of the particular case that the borrower will make the payments under the agreement without suffering substantial hardship.

5.31. Where the lender has followed the approach in regulation 4AI, the lender should keep a record of any specific inquiries made into the means by which the borrower intends to make the payments under the agreement and the results of those inquiries, including any documents or information relied on.

5.32. In recording how the lender satisfied itself as to the matters in section 9C(3)(a)(ii) where the approach in regulation 4AI was followed, the lender may choose to capture a concise summary of the reasons for the lender's decision. For example:

a. the lender was satisfied based on inquiries made that the borrower has listed their existing property for sale and the likely sale proceeds will be sufficient to repay the lending by the end of the loan term;

b. the lender was satisfied based on inquiries made that the borrower has funds on term deposit that will be sufficient to repay the lending by the end of the loan term.

High-cost consumer credit contracts

Commentary

This part of the Code provides guidance for lenders under high-cost credit agreements when assessing whether the borrower has existing high cost loans or has had high cost loans within the preceding 90 days.

Under section 45F and section 45G of the Act, lenders are prohibited from entering into high-cost credit contracts with certain borrowers. Regulation 4AO applies a rebuttable presumption of substantial hardship if the lender has reasonable evidence that the borrower has defaulted in payment on a consumer credit contract in the preceding 90 days.

In the case of a high-cost consumer credit contract, a lender may not enter into a high cost credit contract with a debtor who:

a. has unpaid balance on any high-cost consumer credit contract with another creditor (s 45F(1)(a));

b. has had, at an any time within the preceding 15 days, an unpaid balance on any high-cost consumer credit contract with another creditor (s 45F(1)(b));

c. has entered into 2 or more high-cost consumer credit contracts at any time within the preceding 90 days (s 45G(1)); or

d. has been in default under one or more loans in the preceding 90 days. (see section 45F, section 45G and regulation 4AI).

Lender's inquiries – high cost lending

5.33. In making reasonable inquiries, a lender should obtain information through all of the following:

a. explaining to the borrower what a high-cost loan is;

b. asking the borrower if they have entered into any high-cost loans in the past 90 days with another lender, and if so, determining the dates on which those contracts were entered;

c. asking the borrower if they currently have any high-cost consumer credit contracts with another lender, or have repaid any high-cost consumer credit contracts with another lender over the past 15 days;

d. collecting information from the borrower that would enable the lender to determine whether the borrower's recent or existing loans are high cost loans – eg copies of the contracts, or if these are unavailable, standard contracts or loan disclosures that may give a range of the interest rates of the relevant loans;

e. verifying the information provided by the borrower and checking for any contracts that may have been omitted through:

    iii. asking the borrower about any other names they use, and checking their own loan record systems and those of any associated lender;

    iv. bank statements (looking for deposits from other lenders, or outgoings to other lenders);

    v. reviewing credit reports for enquiries or defaults;

    vi. asking the borrower for evidence that a high-cost consumer credit contract with another lender has been repaid; and

    vii. going back to the borrower to clarify any discrepancies.

Pawnbroking

Commentary

Pawnbroking transactions are subject to and must comply with both the Act and the Secondhand Dealers and Pawnbrokers Act 2004 (SDPA).

For a pawnbroking transaction, a borrower can make payments under the agreement in the form of either:

a. *monetary payment of the redemption price (as defined under the SDPA); or*
b. *the sale of the pledged item by the lender on behalf of the borrower.*

5.34. In assessing whether it is likely the borrower can make payments without substantial hardship, the lender under a pawnbroking transaction may inquire into and assess:

a. whether the borrower can pay the redemption price through monetary payments without substantial hardship by making inquiries in accordance with regulations 4AF and 4AJ–4AO; or

b. whether the borrower can make the payments through a sale of the pledged item without substantial hardship, in accordance with regulation 4AI. Sale of the pledged item may cause substantial hardship to the borrower if the item is essential to the borrower.

5.35. If the lender makes an assessment under paragraph 5.31b, the lender should be satisfied that an item is not essential, taking into account the borrower’s circumstances.

Commentary

Regulations 4AJ(3)(a)(i) and 4AM(2)(a)(i) require verification (or allow for verification) of some information provided by the borrower about their income and expenses.

Borrowers may provide other information for the purposes of the lender’s inquiries into whether the agreement is affordable.