

Financial advice given for the purpose of complying with lender responsibilities

This information sheet explains the circumstances that may exclude a lender from some Financial Markets Conduct Act 2013 (FMC Act) obligations related to financial advice. The exclusion applies only in relation to consumer credit contracts and certain credit-related insurance contracts.

New financial advice regime

From 15 March 2021 anyone giving financial advice to retail clients must operate under a Financial Advice Provider licence granted by the Financial Markets Authority. They must also comply with a code of conduct and various duties in the FMC Act as amended by the Financial Services Legislation Amendment Act 2019 (FSLA Act). [Read more about the changes here.](#)

A person gives financial advice when they make a recommendation or give an opinion about acquiring or disposing of a financial advice product (including a consumer credit contract). Regulated financial advice can only be given to retail clients by a person who is authorised to do so under a market services licence.

About the exclusion

When amended, the FMC Act will contain a limited exclusion in relation to lenders under consumer credit contracts and certain credit-related insurance contracts¹ as follows:

- (1) Financial advice is not regulated financial advice if—
 - (a) the advice is given—
 - (i) by a lender to a borrower; and
 - (ii) in relation to a consumer credit contract or relevant insurance contract (the agreement); and
 - (iii) either—
 - (A) in order to comply with the lender’s lender responsibilities; or
 - (B) as a reasonably incidental consequence of complying with the lender’s lender responsibilities; and
 - (b) the lender has taken reasonable steps to ensure that the borrower understands that the advice is not regulated financial advice and the implications of that.
- (2) A lender is taken to have complied with subclause (1)(b) if the lender gives the borrower a statement in the prescribed manner.²

1: The exclusion applies to “relevant insurance contracts” as defined in section 9B of the Credit Contracts and Consumer Finance Act 2003 (CCCF Act). Relevant insurance contracts are credit-related insurance contracts entered into, or to be entered into, by a borrower if

- the borrower has also entered into, or is seeking to enter into, a credit agreement with the lender; and
- the insurance is arranged by the lender.

The circumstances in which insurance is “arranged” by the lender are set out in section 9B of the CCCF Act. “Credit-related insurance” is defined in section 5 of the CCCF Act. Further information is available on the Commerce Commission’s website [here](#) and [here](#).

2: See clause 10 of Schedule 5 of the FMC Act as amended by the FSLA Act.

MBIE is developing regulations for the purposes of subclause (1)(b) setting out the statement the lender is required to give the borrower in the prescribed manner.

The purpose of this exclusion is to give comfort to lenders that they can do what they need to in order to comply with their responsible lending obligations, recognising that consumer lending is already specifically regulated under the CCCF Act. However, it's important to understand the limits of the exclusion.

The exclusion will only apply in circumstances where the lender responsibilities³ require lenders to give a recommendation or opinion in relation to a consumer credit contract or relevant insurance contract; or where providing that opinion or recommendation is a natural consequence of compliance.

Example

Bob visits Northwest Finance to apply for a \$5,000 loan, which he would like to repay at \$100 per week. A Northwest representative, Jane, reviews Bob's application and asks Bob various questions. Jane is not satisfied Bob could repay at \$100 per week without substantial hardship. Jane suggests to Bob that he obtains a \$4,000 loan instead because that would reduce his repayments to \$80 per week.

Jane's suggestion could fall within the definition of "regulated financial advice" under the FMC Act (as amended). However, the suggestion was made only because the lender responsibilities meant Northwest could not provide Bob with his chosen loan (as the loan repayments would have resulted in substantial hardship for Bob). The limited exclusion for advice to comply with lender responsibilities would apply as Jane's suggestion was a reasonably incidental consequence of complying with the lender responsibilities.

The exclusion does not mean that all financial advice related to consumer credit contracts and relevant insurance contracts is excluded from the new financial advice regime. Where a person is giving financial advice for a different reason other than in order to comply with lender responsibilities, or the financial advice is not a reasonably incidental consequence of complying with the lender responsibilities, they will need to comply with the requirements relating to giving regulated financial advice to retail clients. This includes the requirement to be authorised to do so under a financial advice service licence.

Example

After agreeing to provide Bob with a \$4,000 loan, Jane recommends that Bob obtain Northwest's consumer credit insurance so that he is covered if his ability to repay is affected by sickness, unemployment or other similar event. The limited exclusions for advice to comply with lender responsibilities would not apply in this instance as Jane's suggestion was not made in order to comply with the lender responsibilities or as a reasonably incidental consequence of complying with the lender responsibilities.

In this example the lender responsibilities do not require Jane to recommend Bob also obtains consumer credit insurance, as recommending Bob obtains this is not reasonably incidental to the lender responsibilities relating to the loan application. Jane needs to comply with the lender responsibilities relating to consumer credit contracts and relevant insurance contracts, and requirements relating to financial advice for the insurance would also need to be complied with in this case.

3: As set out in section 9C(3)(a) to (e) and 9C(5) of the CCCF Act. Further information is available on the Commerce Commission's website [here](#).

 fma.govt.nz

 0800 434 566

 questions@fma.govt.nz