



Compliance Update

March 2010

New Consumer Credit Protection Laws

An estimated 40% of financial planners provide debt advice or loan assistance to their clients. If you do this, after 1 July 2010, you may need to hold a credit licence.¹

From this date any one anyone who provides credit services in relation to a credit contract or a consumer lease, either on their own behalf or on behalf of another person, must hold a licence.¹

Consumer credit is a contract under which credit may be, or is, provided where:

- the borrower is a natural person or a strata corporation; and
- the credit is wholly or predominantly for personal, domestic or household purposes or relates to a residential investment property (this could include a loan to purchase, renovate or improve residential property for investment purposes, or to refinance such credit); and
- a charge is made for the credit.

Common consumer credit contracts include housing loans, personal loans, credit cards and pay day loans.

It follows from this that you will be providing a credit service if you suggest that a consumer:²

- apply for a particular credit contract with a particular lender;
- apply for an increase in the credit limit of a particular credit contract with a particular lender; or
- remain in their current credit contract; or
- act as an intermediary between a consumer and a credit provider or lessor to secure the provision of consumer credit.

Suggest means proposing the idea to or introducing the idea into the consumer's mind. It can extend to offering advice or making a recommendation.

In some situations, it can be a fine line between what conduct is credit assistance and what is not. The table below provides some examples of what conduct would be considered credit assistance and what would not.

Activity	Not Credit Assistance	Credit Assistance
Finance for residential property	A suggestion in general terms that a person consider borrowing to finance residential property.	A suggestion that a person approach a particular lender about a specific loan product (or approach a particular lender who only has a limited range of products) would be credit assistance (unless it is a mere referral) ³

¹ National Consumer Credit Protection Act 2009

² S8, 9 National Consumer Credit Protection Act 2009

³ RG 203.43

Activity	Not Credit Assistance	Credit Assistance
Mortgage⁴	<p>Preparing a financial plan that assumes that existing home loan will continue</p> <p>Advice that the interest rate on a person's home loan is higher than market.</p> <p>Recommendation that a consumer review available mortgage products and/or consult a mortgage broker to see if a better product can be obtained.</p> <p>General information about market interest rates and desirable features of home loans (provided these do not relate to a specific product).</p>	<p>Recommendation that a client continue in a current home loan.</p> <p>Recommendation of a specific product and a specific lender.</p>
Budgeting / debt management advice⁵	<p>Recommendations that a person:</p> <ul style="list-style-type: none"> • pay off a loan with the highest interest rate first; • approach their lender to discuss renegotiating a loan on the basis of hardship; • make extra payments to pay off their loans faster or repay more than the monthly payment on credit cards (even if it relates to a particular loan or credit card); • review their credit cards, consider cancelling them all and then find the cheapest card suitable to their needs. 	<p>Recommendation that a person:</p> <ul style="list-style-type: none"> • pay off a specific loan • consolidate their cards to a specific card with a low interest rate.
Salary packaging	<p>Advice in general terms about the common features of salary packaging products.</p>	<p>Explanation of the differences between or comparisons of salary packaging products.⁶</p>

Advisers will need to ensure that they understand when discussions with the client about their borrowings could constitute credit services, and be careful not to cross the line. Essentially, advice about a particular product with a particular provider will be credit assistance, whereas factual information and advice in general terms regarding credit will not.

If you are in the habit of providing what is now considered credit insurance, then you or your licensee may need to obtain a credit licence. Gold Seal can assist you to prepare and apply for an Australian Credit Licence.

You can apply for your licence after 1 July 2010, but remember, **you must register with ASIC as a Credit Services Provider between 1 April and 30 June 2010**

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<p>To discuss your compliance needs and the Credit Licensing requirements, contact</p> <p>Charmian Holmes T: 0408 244 736 charmianh@goldeal.net.au</p> <p>Claire Wivell Plater T: 02 8353 6604 E: clairew@goldseal.net.au</p>	<p>Disclaimer This eAdvice has been prepared for Gold Seal's clients. It contains general information about compliance issues. It is not tailored to the individual circumstances of any recipient and is not a substitute for obtaining specific advice about the compliance issues that arise in your business.</p>	<p>About Gold Seal Gold Seal is a leading provider of a compliance, risk management, human resource, training and education, services to financial services businesses.</p> <p>© Gold Seal 2010 If you would like to reproduce this publication, please contact Claire Wivell Plater on 02 8353 6604 or email clairew@goldseal.net.au</p>
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⁴ RG 203.44

⁵ RG 203.44

⁶ This would not apply to a product that only consists of an employment lease as this is not consumer credit s 171 Credit Code