



ASIC

Australian Securities & Investments Commission

INFORMATION SHEET 134

Complying with your obligations if you are both a credit licensee and an AFS licensee

This information sheet explains how to comply with your obligations if you are both:

- a credit licensee under the *National Consumer Credit Protection Act 2009* (National Credit Act), and
- an Australian financial services (AFS) licensee under the *Corporations Act 2001* (Corporations Act).

This information sheet explains when it may be possible for you to avoid duplicating processes in complying with both regimes. For detailed guidance on your obligations under both regimes, you will need to refer to our regulatory guides.

Your obligations under the two regimes

To engage in credit activities and provide financial services, you must hold two separate licences – a credit licence and an AFS licence: see Regulatory Guide 1 *AFS Licensing Kit: Part 1—Applying for and varying an AFS licence* ([RG 1](#)) and Regulatory Guide 204 *Applying for and varying a credit licence* ([RG 204](#)).

The credit licensing and AFS licensing regimes impose broadly similar obligations on licensees. However, the two regimes also impose some distinct obligations. It is important that you understand when your business involves credit activities, and when you are providing financial services: see Regulatory Guide 203 *Do I need a credit licence?* ([RG 203](#)) and Regulatory Guide 121 *Doing financial services business in Australia* ([RG 121](#)).

Your conduct obligations

If you are both a credit licensee and an AFS licensee (i.e. a dual licensee), you are subject to conduct obligations under both regimes. These include:

- general conduct obligations – that is, basic obligations that apply to you after you hold a licence, and for as long as you remain licensed, and
- specific conduct obligations – that is, obligations that are triggered when you undertake a particular activity.

Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

General conduct obligations

If you are a dual licensee, you must comply with the general conduct obligations in s47 of the National Credit Act and s912A of the Corporations Act. While the obligations imposed by each regime are similar, in most cases, we have developed separate policy guidance for credit licensees and AFS licensees. You should therefore ensure that you are familiar with Regulatory Guide 205 *Credit licensing: General conduct obligations* ([RG 205](#)) and Regulatory Guide 104 *Licensing: Meeting the general obligations* ([RG 104](#)).

The obligations under both regimes are broadly similar, and can generally be met through similar systems and processes. For example, credit licensees must keep a written plan that documents their compliance systems: s47(1)(k) of the National Credit Act. We expect AFS licensees to do the same: see RG 104.24. If it is more convenient for you to do so, you can develop a single plan that covers your compliance obligations under both regimes.

However, there is a key difference between the two regimes in the obligations relating to conflicts of interest. AFS licensees must *manage* conflicts of interest (s912A(1)(aa) of the Corporations Act), while credit licensees must ensure that clients are *not disadvantaged* by any conflict of interest: s47(1)(b) of the National Credit Act. For more information about the different obligations, see RG 205.72–RG 205.78 and Regulatory Guide 181 *Licensing: Managing conflicts of interest* ([RG 181](#)).

Specific conduct obligations

Both regimes impose specific conduct obligations, which are triggered when licensees engage in certain activities. Specific conduct obligations include:

- recording your financial position
- keeping client money, and
- preparing advice and suggestions.

While there are some similarities between the two regimes, it is also important that you understand where the obligations differ.

Recording your financial position

Both regimes require licensees to keep accurate financial records for their business, which must be kept in a way that allows them to be properly audited, and must show certain particulars specified in the legislation: s88–89 of the National Credit Act and s988A–988B of the Corporations Act. However, the law does not require records to relate exclusively to credit activities or financial services. If it is more convenient for you to do so, you may keep a single set of financial records to meet your obligations under both regimes.

Keeping client money

Both regimes require licensees to hold money received from or on behalf of clients separately from their other funds, unless it is money paid to the licensee as remuneration for the services they provide: s99 of the National Credit Act and s981A–981B of the Corporations Act. However, because you are required to segregate this money, you must have separate accounts for credit activities and for financial services.

Preparing advice and suggestions

Both regimes provide guidelines about the factors you need to consider when developing personal financial advice or a credit suggestion for a credit contract or consumer lease: see RG 203 for what constitutes a credit ‘suggestion’ and Regulatory Guide 36 *Licensing: Financial product advice and dealing* ([RG 36](#)) for more information about providing financial advice. Under both regimes, licensees must make ‘reasonable inquiries’ into a client’s relevant personal circumstances, requirements and objectives before providing

advice or a suggestion: see Regulatory Guide 209 *Credit licensing: Responsible lending conduct* ([RG 209](#)) for 'reasonable inquiries' in relation to credit.

If you are a dual licensee, you can make inquiries for both financial services and credit assistance in a single meeting or fact-finding process. Indeed, doing so may allow you to gain a more complete view of your client's needs. However, when formulating advice or a suggestion:

- an AFS licensee must ensure that there is a reasonable basis for any personal advice (s945A of the Corporations Act), and
- a credit licensee must consider an explicit set of criteria, including whether the client will be able to meet the repayments: s115, 128, 138 and 151 of the National Credit Act and RG 209.

These are two separate and different processes and the requirements of both must be met.

Your disclosure obligations

As a dual licensee, you are subject to disclosure obligations under both regimes, including requirements relating to:

- providing general information about your business
- documenting suggestions and advice, and
- providing a credit quote.

Providing general information about your business

Under both regimes, you must provide – around the time of first contact with your client – a document that includes basic information about your business, the services you provide, and the fees you charge. An AFS licensee must provide a Financial Services Guide (FSG) and a credit licensee must provide a credit guide.

If you are a dual licensee, you may provide a single document covering all of the information relating to your financial and credit services: reg 7.7.08B of the Corporations Regulations 2001 (Corporations Regulations). If the same information is required in both the FSG and the credit guide, you only need to include it once in the single document.

Documenting suggestions and advice

Under both regimes, you must provide clients with documentation to accompany your advice or suggestion. AFS licensees providing personal advice must provide clients with a Statement of Advice (SOA) either when the advice is given, or as soon as practicable after the advice is given. The SOA must document:

- the advice, and the basis upon which the advice is being given, and
- information about any remuneration the licensee may receive in connection with the advice, and any conflicts of interest that could conceivably have influenced the advice.

Credit licensees must give the client a credit proposal disclosure document at the same time as credit assistance is provided. This document summarises what the consequences will be if they take up a suggestion (e.g. by entering into a credit contract, or increasing the limit of a contract), in terms of:

- the fees they will pay (whether to the credit assistance provider, credit provider or third party), and
- what the credit assistance provider is likely to receive by way of remuneration as a result.

If you are a dual licensee, you may combine the SOA and credit proposal disclosure document in a single document. However, while the SOA may be given at the same time as, or as soon as practicable after, personal advice is given, no credit assistance may be given unless a credit proposal disclosure document is given at the same time. Therefore, combining these two documents is likely to work best when the licensee:

- holds an initial fact-finding meeting, without providing any advice/suggestion
- goes away to formulate the advice/suggestion, and draft the required disclosure documents, and
- holds a second meeting, at which both the disclosure documents and oral advice/suggestion are given.

We recognise that there are other business models that do not involve face-to-face contact with clients. It may also be possible for these licensees to combine disclosure documents; we expect that they will develop their own processes to ensure that they comply with all of their obligations.

The unsuitability assessment

If you are required to undertake an assessment to determine whether credit will be ‘not unsuitable’ for a consumer, you must provide the consumer with a written copy of the assessment upon their request. In RG 209, we explain that credit licensees should set out in the written assessment the features of the client’s personal circumstances that they took into account, and the extent to which they considered some of the key statutory factors (e.g. capacity to repay, substantial hardship).

While there is no requirement for the assessment to be given unless requested, if you would like to provide clients with a copy of the assessment, you may include the necessary information in a combined document with the SOA and credit proposal disclosure document.

Setting out the combined document

Despite their similarities in purpose, the SOA, credit proposal disclosure document and unsuitability assessment are all subject to slightly different content requirements. If you are combining them in a single document, you should ensure that the document contains all of the required content, and that each component is easily distinguishable from the other.

Providing a credit quote

The credit quote is a tailored document that sets out for the client the specific services that you are offering and the maximum fees for each service. Unlike other disclosure documents, the timing requirements for a credit quote preclude it from being combined with other documents. It needs to be provided as an intermediate document between the credit guide (provided around the time of first contact with the client) and *before* the credit disclosure proposal document (provided at the same time as the credit assistance is given).

If you are a dual licensee providing financial advice and credit assistance as part of a single planning service, we recognise that it may be difficult for you to identify what proportion of the overall fee can be attributed to the credit assistance, and provide this figure in a credit quote. However, the law allows you to quote a maximum amount that will be payable by the consumer for both credit and other services you provide: s114 and 137 of the National Credit Act. Therefore, you may quote a single maximum payable fee that represents the combined cost of the financial advice and credit assistance services. If you do so, you should ensure that the quote clearly details the different services covered by the fee.

Where can I get more information?

- Go to www.asic.gov.au for the latest information on financial services and credit licensing and to download copies of our regulatory guides.
- Subscribe to ASIC updates on credit at www.asic.gov.au/credit-update
- ASIC Infoline 1300 300 630
- Infoline@asic.gov.au

Important notice

Please note that this information sheet is a summary giving you basic information about a particular topic. It does not cover the whole of the relevant law regarding that topic, and it is not a substitute for professional advice. Omission of any matter on this information sheet will not relieve a company or its officers from any penalty incurred by failing to comply with the statutory obligations of the National Credit Act.

You should also note that because this information sheet avoids legal language wherever possible, it might include some generalisations about the application of the law. Some provisions of the law referred to have exceptions or important qualifications. In most cases your particular circumstances must be taken into account when determining how the law applies to you.