### **Overview**

- The Commission's evolving approach to the collection and use of sampling in investigations
- Obligations under the CCCF Act vary: single incidents, wholesale breaches, or nuanced breaches
- Breaches that apply to an unknown portion of a population
- Common insights financial hardship, debt enforcement and repossession practices, and the use of benchmarking in affordability assessments.



# How the Commission Gathers Information

- The Commission obtains information voluntarily or by compulsion
- Updated June 2025: Investigation Guidelines
- Statutory notice powers under the Commerce Act 1986





## Two-stage sampling

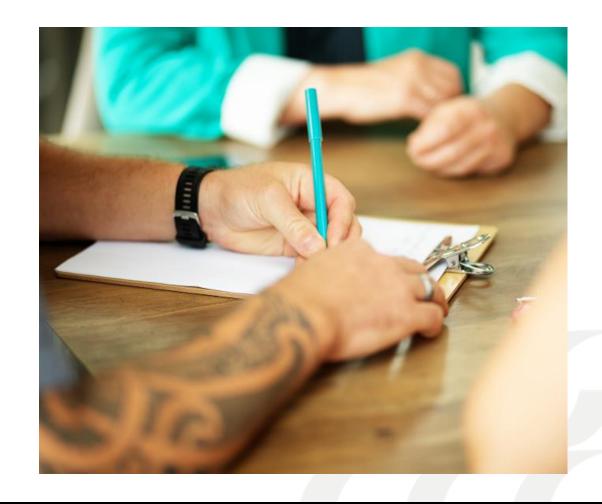
- The Commission uses the Notice power in a two-stage approach for collecting a sample of documents from borrower files
- First notice requests a list of all individuals in a population (e.g. all loans over the last two years)
- Second notice collects documents from borrower files (random sample)
- Identify breach rate and extrapolate likely harm
- Practical where impacted population is several hundred to tens of thousands



# **Examples where sampling applies**

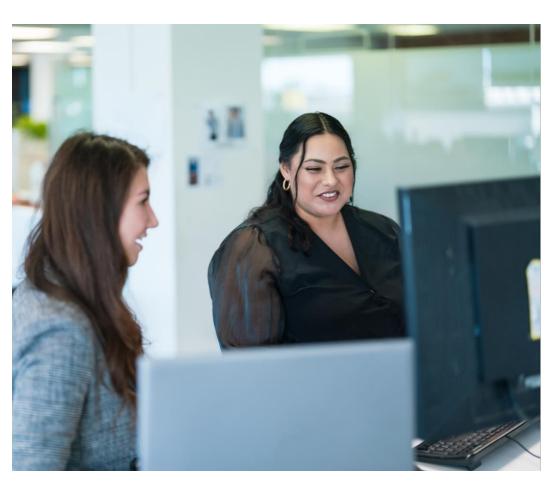
# **Obligations under the CCCF Act:**

- Inquiries into suitability or affordability
- Record keeping under section
   9CA
- Quality and compliance may vary by employee or lending agent





# Final takeaway



- Review compliance with the CCCF Act
- Focus on how lenders are meeting their obligations
- Ensure employees and lending agents are following policies and procedures



## Financial hardship

Applications for hardship relief can be considered under:

- Section 55 CCCFA provides that a borrower experiencing an unforeseen event meaning they are unable reasonably make their loan payments may apply to a lender to make changes to a contract if certain conditions are met.
- Section 9C(3)(d) CCCFA provides that a lender must treat the borrower and their property reasonably and ethically when breaches of the agreement have occurred or may occur or when other problems arise.
- Chapter 12 of the Responsible Lending Code provides guidance about dealing with borrowers in financial difficulty.



## Financial hardship continued



- Lenders cannot charge a fee for considering a hardship application regardless of the outcome, if it is declined a reason must be provided.
- If the lender accepts the application and varies the loan for a limited period, they may charge a reasonable fee for costs incurred documenting the changes.
- Where an agreement is varied lenders must:
  - assist the borrower to reach an informed decision to enter the variation
  - provide variation disclosure to the borrower.
- KiwiSaver withdrawals



#### **Debt enforcement**

- Lenders can only take enforcement action contractually agreed to.
- If the financed vehicle has a **disabling device**, sections 83L-83M CCCFA must be complied with, and the Lender Responsibility Principles.
- Lenders must not take repossession enforcement action (or continue if it has started)
- if a hardship application is undecided or
- a complaint is made about the repossession action itself and that complaint is unresolved (s 83J CCCFA).



#### **Debt enforcement continued**

- A borrower has the right to voluntarily surrender security goods after receipt of a Repossession Warning Notice. It must be treated as if the goods were repossessed.
- If the lender sells repossessed goods and there
  is a balance left owing (on the Statement of
  Account), that amount must be frozen no
  further interest or fees can be added.
  - This also applies if the residual debt is sold.
  - This rule applies even if one of multiple secured goods has been repossessed and sold.





## Benchmarking - keeping records

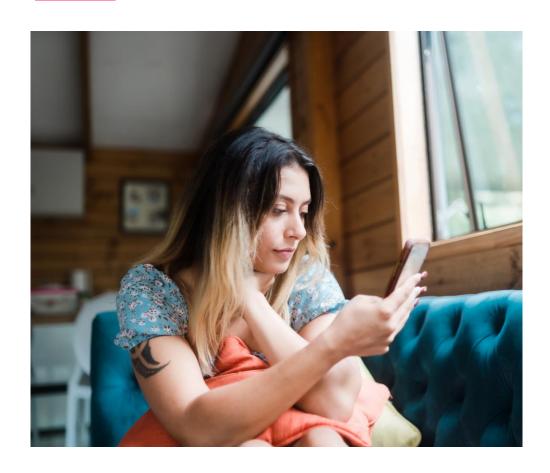
If affordability assessment records are requested it is not sufficient for a lender to simply state it is using a benchmark or only provide the benchmarked amount.

#### Lenders should record:

- That a benchmark was used
- The amount
- A brief explanation of how they determined it was reasonable



## **Benchmarking continued**



- s 9CA: records must show how affordability was assessed, including inquiries made and the results of those inquiries
- Record benchmarked expenses + brief description of benchmark
- Benchmark must be reliable, current, and reasonable
- Records should reflect appropriateness of benchmark
- Clear, complete records help demonstrate reasonable inquiries under s 9C



## **Closing thoughts**

- Take a proactive and thoughtful approach to hardship support
- Consider the guidance in Chapter 12 of the Responsible Lending Code
- Consider going beyond minimum requirements where possible
- Work constructively with financial mentors where authorised
- Treat borrowers reasonably and consider individual circumstances





# Questions