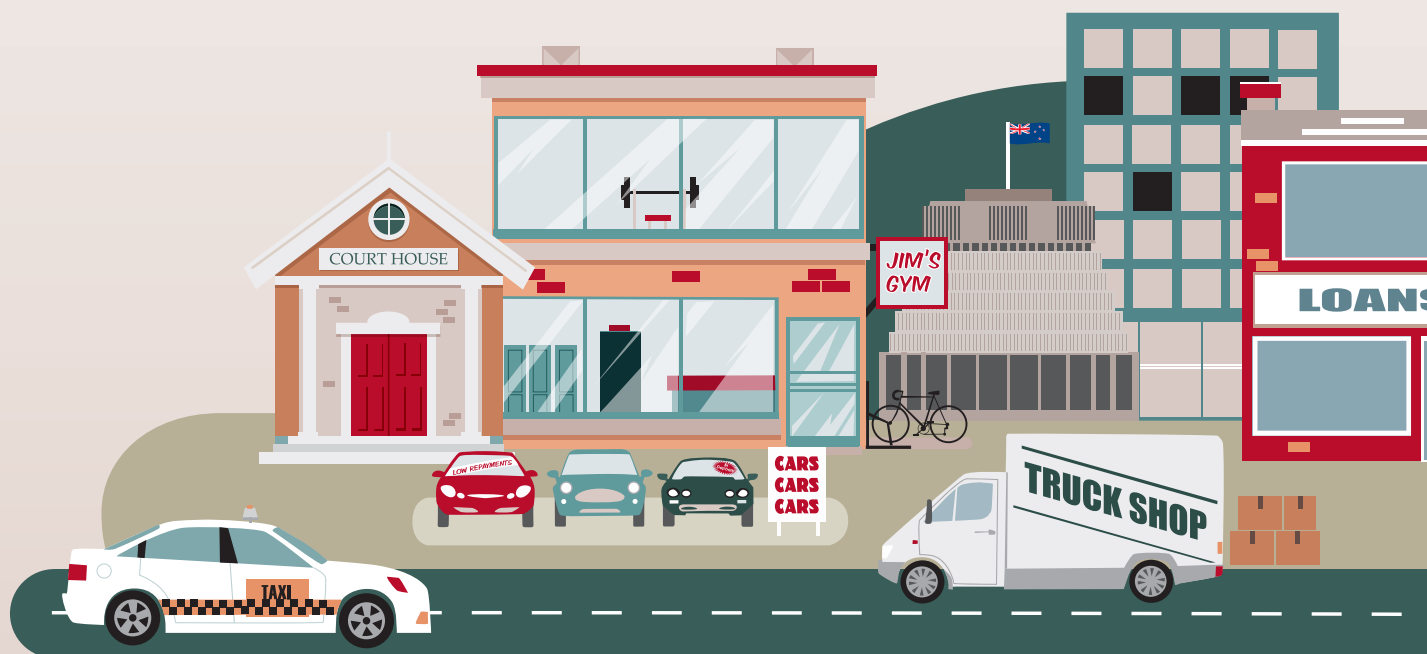


SEPTEMBER 2024

Record Keeping Guidance for affordability assessments for borrowers and guarantors



This guidance is the Commission's view and is not law and is intended to assist lenders in complying with the record keeping requirement in section 9CA of the Credit Contracts and Consumer Finance Act 2003 relating to affordability assessments for borrowers and guarantors. This guidance draws from the content of the Lender Responsibility Principles and Chapter 5 of the Responsible Lending Code.

The lender responsibilities

- 1 Under the Credit Contracts and Consumer Finance Act (the Act), a lender **must** make reasonable inquiries before entering a **consumer credit contract** (agreement) or **guarantee**, and before making any material change, to be satisfied that it is likely that the **borrower**¹ and any **guarantor**² will make the payments under the agreement or comply with the guarantee without suffering substantial hardship. The lender must also be satisfied that it is likely that the **borrower** will make the payments under any **relevant insurance contract**³ without suffering undue hardship⁴.
- 2 This guidance focusses on the record keeping requirement for inquiries into whether:
 - a. a borrower is likely to make the payments under the agreement.; and
 - b. guarantor is likely to comply with the guarantee:without suffering substantial hardship.
- 3 This guidance does not cover the record keeping requirements for **relevant insurance contracts**, although the principles set out below are likely to be applicable.

The requirement to keep records

- 4 Under section 9CA(1) and (2) of the Act, the lender **must** keep records (the records) about the inquiries it made to be satisfied that it is likely that the borrower will make the payments under the agreement and the guarantor will comply with the guarantee without suffering substantial hardship.
- 5 The records **should**:
 - a. demonstrate the **scope**⁵, **extent**⁶ and **method**⁷ of inquiries the lender made into the borrower and guarantor's **income, expenses and likelihood of repayment** to be satisfied that it is likely that the borrower will make the payments under the agreement and the guarantor will comply with the guarantee without suffering substantial hardship;
 - b. demonstrate the **information** that the lender relied upon to be satisfied that it is likely that borrower will make the payments under the agreement and the guarantor will comply with the guarantee without suffering substantial hardship;
 - c. demonstrate, including through the use of any **minimum surplus, buffers or adjustments**, how the lender **assessed** and **addressed** the risk of:
 - **materially overstating** the borrower and guarantor's **income or other means**; and/or
 - **materially underestimating** the borrower and guarantor's relevant **expenses**⁸;

1 Credit Contracts and Consumer Finance Act, s 9C(3)(a)(ii).
2 Credit Contracts and Consumer Finance Act, s 9C(4)(a).
3 As defined in s 9B(1) of the Credit Contracts and Consumer Finance Act.
4 Credit Contracts and Consumer Finance Act, s 9C(5)(a)(ii).
5 See paragraphs 5.8 to 5.18 and 6.7 to 6.10 of the Responsible Lending Code
6 See paragraphs 5.25 to 5.28 and 6.12 of the Responsible Lending Code
7 See paragraphs 5.19 to 5.24 and 6.11 of the Responsible Lending Code
8 See paragraph 5.7 of the Responsible Lending Code

- d. include the internal policies and/or procedures that applied⁹, and how those policies and/or procedures were followed when assessing whether the borrower will make the payments under the agreement and the guarantor will comply with the guarantee without suffering substantial hardship;
 - e. be **clear, coherent** and **complete**; and
 - f. demonstrate the result of the inquiries¹⁰ i.e. **why** the lender was satisfied that it is likely that the borrower will make the payments under the agreement and the guarantor will comply with the guarantee without suffering substantial hardship.
- 6 Under section 9CA(3) to (5), the Commission, a dispute resolution scheme or the borrower (or an authorised representative of the borrower) and guarantor may request a copy of the records about the inquiries made by the lender, including the results of those inquiries. The records provided by the lender in response to such a request should comply with the guidance in paragraph 4, and must be provided free of charge within 20 working days of the date the request is received by the lender¹¹.

Scope of inquiries

- 7 The records should demonstrate the **scope** of the lender's inquiries into¹²:
- a. income;
 - b. expenses (including debts); and
 - c. likelihood of repayment.
- 8 The records should demonstrate how the **scope** of those inquiries was **reasonable** in the circumstances of the particular case, including how the lender determined the **extent** of the inquiries required.
- 9 With respect to **income**, the records **should** demonstrate the inquiries made and information relied upon to determine¹³:
- a. the borrower and guarantor's current income level;
 - b. the sources and stability of the borrower and guarantor's income, including likely changes that may be material; and
 - c. any volatile, irregular or variable income and any adjustment made as a result.
- 10 With respect to **expenses**, the records **should** demonstrate¹⁴:
- a. the inquiries made and information relied upon to estimate the borrower and guarantor's relevant expenses, including the extent to which the lender considered:
 - i. the borrower and guarantor's expenses required to meet necessities to maintain a reasonable standard of living (such as accommodation, food, utilities, transport, clothing, required medical expenses, costs associated with any dependents (such as childcare));
 - ii. the borrower and guarantor's other financial commitments, such as insurance, including repayments on existing debts, and the extent to which existing debts are to be repaid from the credit advanced;
 - iii. other regular or frequently recurring expenditure which may be material to the affordability of the loan (such as tithing, transfers to support family overseas); and

9 See paragraph 2.4 of the Responsible Lending Code

10 Credit Contracts and Consumer Finance Act, s 9CA(2)

11 Credit Contracts and Consumer Finance Act, s 9CA(7)

12 See paragraph 5.17 of the Responsible Lending Code

13 See paragraphs 5.7 to 5.10 and 6.7 of the Responsible Lending Code

14 See paragraphs 5.11 and 6.8 of the Responsible Lending Code

- iv. likely changes in the borrower and guarantor's relevant expenditure; and
- b. whether and, if so, why the lender has taken into account a likely reduction in the borrower and guarantor's expenses once the agreement is entered into.

Extent of inquiries

- 11 In determining the **extent** of inquiries required, a lender **should** consider whether:
 - a. **more extensive inquiries**¹⁵ are required; or
 - b. **less extensive inquiries**¹⁶ are required.
- 12 Regardless of whether the lender makes **more extensive inquiries** or **less extensive inquiries**, the lender **should** ensure the extent of inquiries is sufficient to enable the lender to reach the point that it is **reasonably satisfied** that the borrower will make the payments under the agreement and the guarantor will comply with the guarantee without substantial hardship. Once the lender has reached that point, it may choose to make no further inquiries.
- 13 The records should demonstrate:
 - a. the **extent** of the lender's inquiries, particularly as to whether the lender has made **more extensive inquiries** or **less extensive inquiries**;
 - b. the information obtained and considered by the lender as a result of those inquiries; and
 - c. **why** the lender was **reasonably satisfied** that the borrower and guarantor could repay without substantial hardship and that no further inquiries were required.

Method of inquiries

- 14 The records **should** demonstrate the **methods** of inquiry used by the lender and the information obtained as a result of those inquiries. For example, the records should show whether and how the lender obtained and used information¹⁷:
 - a. **directly from the borrower and guarantor** (including any supporting documents) – noting that in relation to income, it is generally not sufficient to rely solely on statements made by the borrower and guarantor;
 - b. that **it holds about the borrower and guarantor**, provided the lender is satisfied that the information is current;
 - c. about the borrower and guarantor **from reliable third parties** such as government departments, credit reporters or valuers; or
 - d. which is **generated based on statistical information** relating to an appropriate class of borrower and guarantors.
- 15 If the lender uses **statistical information** related to an appropriate class of borrower and guarantors (e.g. benchmarking), the records **should** also demonstrate how:¹⁸
 - a. the statistical information is **reliable** and **current**; and
 - b. use of this method is **reasonable in the circumstances** (for example, if a component of household

15 See paragraphs 5.26 and 6.12 of the Responsible Lending Code

16 See paragraph 5.27 of the Responsible Lending Code

17 See paragraphs 5.19 and 6.11 of the Responsible Lending Code

18 See paragraph 5.19.d and 6.11.d. of the Responsible Lending Code

expenditure is estimated using statistical information, there is a low risk that the estimate will be materially lower than the particular borrower and guarantor's expenditure).

- 16 The records **should** also demonstrate how the information obtained using the selected methods of inquiry was sufficient to enable the lender to be **reasonably satisfied** that the borrower will make the payments under the agreement and the guarantor will comply with the guarantee without substantial hardship and that no further inquiries were required.
- 17 Where relevant, the records **should** also demonstrate:
- a. where the lender has used a **minimum surplus, buffers or adjustments**, how it calculated the surplus, buffers or adjustments;
 - b. where the lender has used information it already holds about the borrower and guarantor:¹⁹
 - i. whether the lender had any doubts as to whether it was using that information correctly; and if so
 - ii. the extent to which the lender confirmed with the borrower and guarantor that it was using the information correctly;
 - c. where the lender has relied on statements made by the borrower and guarantor:²⁰
 - i. the extent of the steps it took to confirm those statements with reliable evidence; or
 - ii. if no steps to confirm those statements were taken, **why?**
 - d. the extent to which the lender relied upon information provided by a financial adviser or intermediary and why the lender felt able to rely on that information.²¹

Completeness of records

- 18 The records **should** be **clear, coherent** and **complete** to enable the Commission, the borrower and guarantor, an authorised representative of the borrower and guarantor, a disputes resolution scheme and/or a Court to understand what inquiries the lender made and why the lender made the decisions it made.
- 19 If the records are not **clear, coherent** and **complete**, the Commission, a dispute resolution scheme or a Court could infer that the lender did not make the reasonable inquiries required under s 9C(3)(a)(ii).

¹⁹ See paragraphs 5.20 and 6.13 of the Responsible Lending Code

²⁰ See paragraphs 5.22, 6.13 and 6.14 of the Responsible Lending Code

²¹ See paragraphs 5.23 and 6.15 of the Responsible Lending Code

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This is a guideline only and reflects the Commission's view. It is not intended to be definitive and should not be used in place of legal advice. You are responsible for staying up to date with legislative changes.

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