

**Senate Economics Legislation Committee**

**ANSWERS TO QUESTIONS ON NOTICE**

**Treasury Portfolio**

Additional Estimates

2016 - 2017

**Division/Agency:** Australian Securities and Investment Commission

**Question No:** 166

**Topic:** Conditional loan

**Reference:** Written

**Senator:** Whish-Wilson, Peter

**Question:**

Ref: Tabled Doc 7 - Conditionally approved loans from Commonwealth Bank of Australia

- Does the offer of unsolicited 'conditionally approved' loans by email comply with the responsible lending obligations under the National Credit Act?
- Is the offer of unsolicited 'conditionally approved' loans by email covered under any other financial regulations?
- Has ASIC assessed how widespread or commonplace the offer of unsolicited 'conditionally approved' loans by email are?
- Has ASIC discussed with the banks the practice of offering by email of unsolicited 'conditionally approved' loans?

**Answer:**

**- Does the offer of unsolicited 'conditionally approved' loans by email comply with the responsible lending obligations under the National Credit Act?**

The responsible lending obligations for a lender are triggered by (and must be completed before) the following actions:

- entering a credit contract;
- increasing the credit limit of a credit contract; and
- making an unconditional representation that the consumer is eligible to enter a credit contract or increase the credit limit on a credit contract.

The making of the invitation that has been tabled does not of itself meet any of these triggers. This is because the offer is 'conditional' on the consumer making an application for the loan and 'subject to credit checks and assessment of [the consumer's] current financial situation'.

Provided the lender makes the requisite inquiries, verifications and assessment prior to entering a loan as a result of this invitation, the responsible lending obligations will be complied with.

**- Is the offer of unsolicited 'conditionally approved' loans by email covered under any other financial regulations?**

No. Neither the *National Consumer Credit Protection Act 2009* (the National Credit Act) nor the *Australian Securities and Investments Commission Act* (the ASIC Act) prohibit the making of unsolicited *invitations* in relation to personal loans.

However, it is not possible to make an unsolicited *offer* of a loan (which is capable of simply being accepted by the consumer without an application process) because a lender cannot make an unconditional representation that a consumer is eligible to enter a credit contract without triggering the responsible lending obligations.

The National Credit Act does prohibit unsolicited invitations to increase the limit of a credit card contract (see additional rules for credit cards contracts in Part 3-2B of the National Credit Act). Late last year the Government accepted a recommendation to introduce a similar prohibition for small amount credit contracts.

The National Credit Act and ASIC Act include other consumer protection provisions that relate to:

- Displaying an annual percentage rate;
- False or misleading representations;
- Misleading or deceptive conduct; and
- Unconscionable conduct.

Whether the email breaches any of these provisions will depend on a number of factors.

**- Has ASIC assessed how widespread or commonplace the offer of unsolicited 'conditionally approved' loans by email are?**

ASIC receives reports of alleged misconduct relating to consumers being sent invitations to apply for 'conditionally approved' loans or invitations containing words to similar effect. We assess each of these reports individually but also record them in our internal database for future reference, including to identify trends.

**- Has ASIC discussed with the banks the practice of offering by email of unsolicited 'conditionally approved' loans?**

We have had discussions with banks about the practice of sending unsolicited communications (including emails) to their customers for 'conditionally approved' loans (or similarly worded invitations). These discussions have generally focussed on the processes the banks have around these invitations to comply with their responsible lending obligations. We have also discussed with banks the need to ensure that communications of this type do not give consumers the impression that credit will be provided immediately or that approval is guaranteed in circumstances where the bank is required to take further steps to comply with their obligations (i.e. where the bank needs to obtain further information from the customer before completing the assessment that the bank is required to undertake).