



6th August 2010

Green Paper on National Credit Reform
Corporations and Financial Services Division
The Treasury
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PARKES ACT 2600

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Dear Sir/Madam

Green Paper on National Credit Reform

CPA Australia represents the diverse interests of more than 129,000 members in finance, accounting and business in 100 countries throughout the world. Our mission is to make CPA Australia the global professional accountancy designation for strategic business leaders. We make this submission not only on behalf of our members, but also the accounting profession generally and in the broader public interest.

CPA Australia strongly supported the national regulation of consumer credit under Phase One of the reforms implemented by the Federal Government.

Whilst we understand the Government intends to build on those reforms in Phase Two, we are extremely concerned that consideration is being given to the possible extension of the national credit scheme to the provision of credit to small business. Neither our research on small business credit nor the Green Paper have identified any mischief that requires a regulatory response. Further, we are concerned that the regulation of small business credit will have serious unintended consequences, particularly restricting access of small business to independent credit advice and negatively impacting the supply of credit to small business.

CPA Australia therefore recommends:

- that the consumer credit regime **not** be extended to small business credit
- the government should not seek to further regulate small business credit in any other way; and
- in lieu of a regulatory response the Government should, consistent with recommendation 6 of the Senate Economics References Committee *Access of Small Business to Finance* report, encourage the Australian Bankers' Association to meet with small business representatives to develop a code of practice for lending to small business.

Should you have any questions on small business credit, please do not hesitate to contact Gavan Ord, Business Policy Advisor on 03 9606 9695 or gavan.ord@cpaaustralia.com.au. All other questions relating to the submission should be directed to Mrs Keddie Waller, Technical Advisor – Financial Planning on 03 9606 9816 or keddie.waller@cpaaustralia.com.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Paul Drum', written in a cursive style.

Paul Drum FCPA
General Manager – Policy & Research

CPA Australia's submission in response to the Green Paper on national credit reform

1. Credit for small business

Summary of CPA Australia's position

We have not seen any evidence that supports the need for further regulation of small business credit, nor do we believe that further regulation is desirable. In other words, it is difficult to determine what mischief further regulation would address.

This lack of a mischief does not however justify a continuance of the status quo either. We believe that the current approach to regulating small business credit should be strengthened through the extension of the existing Code of Banking Practice (or the creation of a separate code) by the Australian Bankers' Association (ABA), to better cover small business lending.

Instead of regulating small business credit, we submit that the Government could have a greater positive influence by concentrating their resources on developing more information and education tools on finance products and financial management for small business.

In this section no comments are provided in respect of questions 2, 3, 4, 5, 8, 9 and 14.

Use of Credit

1. **Are there any differences in how small business borrowers use credit compared to individuals? If so, what are they? Please provide reasons for these differences.**

Overview

CPA Australia is of the view that small business credit is significantly different to consumer credit. In particular, individuals generally borrow money for private, non-income producing purposes, whereas businesses seek credit in order (directly or indirectly) to generate income. The purpose for which small business borrow funds is therefore quite different to consumers, even if the security is the same or similar.

In addition to the very different debt financing products that small business require, small businesses tend to require a greater degree of flexibility in product design and application and this must be recognised in order to preserve this flexibility.

Use of credit by small businesses

How does small business use credit – by number of employees¹

	Australia			
	Nil	1-4	5-9	10-19
Business growth	28%	22%	40%	63%
To purchase assets	39%	22%	27%	13%
To fund stock purchases	28%	22%	33%	25%
To cover late payment from debtors	14%	17%	33%	25%
To cover increasing expenses	25%	39%	27%	13%
To cover increasing sales	8%			
To cover tax payments	11%	13%	13%	
To service increasing cost on bank loans	6%	4%	13%	
For business survival	50%	41%	20%	13%
Other		6%	7%	

¹ Question 3-5 And which of the following best describes the reasons for the 'required additional funds' ? *The CPA Australia Asia-Pacific small business survey 2009*

The Australian Bureau of Statistics *Selected Characteristics of Australian Business 2007-08* came to a similar conclusion. It found that smaller businesses (in terms of number of employees), were more likely to seek debt or equity finance to ensure business survival and larger businesses were significantly more likely to seek debt or equity finance to expand their business.

How small business use credit – by business maturity (years in business)²

Reason	Under 5 years	5 to 10 years	11 to 20 years	21 years +
Business growth	42%	16%	29%	16%
Purchase assets	44%	21%	31%	11%
Fund stock purchases	25%	24%	38%	16%
Cover late payments from debtors	16%	13%	26%	16%
Cover increasing expenses	18%	43%	29%	35%
Cover increasing sales	4%	-	14%	-
Cover tax payments	7%	12%	22%	5%
Service increasing costs of banks loans	-	7%	7%	16%
Business survival	45%	47%	36%	33%
Other	-	-	3%	16%

Our survey also found that the youngest businesses (less than five years old) tend to use credit more than other businesses to fund business growth and purchasing assets. Younger businesses also responded that they tend to use finance more for business survival than older businesses.

The question then becomes, does the age of the business dictate the demand for credit? In our 2009 small business survey, we found that younger businesses were slightly more likely to seek additional funds to support business operations outside of their existing cash resources in the 12 months preceding the August 2009 survey. See the following table³:

	Under 5 years	5 to 10 years	11 to 20 years	21 years +
Percentage of businesses requiring additional funds	23%	21%	20%	16%

Sophistication of small business borrowers

Our research points to small businesses typically not undertaking record keeping or their record keeping being poor. This does not in itself prove that small businesses are unsophisticated in relation to their financing needs. Other research has found (*Understanding the Barriers to and Opportunities for Access to Private Equity for Small-to-Medium sized Family-owned Enterprises – Seet and Graves 2010*) that small business have a strong inclination to obtain professional advice, particularly from accountants on financing. Hence, while many small businesses may be assumed to be unsophisticated in terms of their financial practices, they frequently do access independent expert advice before making decisions on financing.

Small business may also become familiar with different financing products due to the frequency with which they use such finance, such as an overdraft. In such situations, familiarity builds a degree of sophistication.

² *ibid*

³ Question 3-3 In the last year, have you required additional funds to support your business operations outside of your existing cash *The CPA Australia Asia-Pacific small business survey 2009*

We do not see that a business not knowing the interest rate or interest rates they are being charged as remarkable. Small businesses may have multiple loans with multiple interest rates which can change regularly. Not keeping up to date with the interest rate is therefore not a sign of an unsophisticated business.

Our members have highlighted that in some instances, small business (and large business as well) have not been fully aware of the covenants in their finance facilities. While businesses themselves have a responsibility to be aware of and monitor their compliance with such covenants, lenders could be more proactive in pointing out such covenants at the time the financing facility is entered into. This could be covered by an expanded Code of Banking Practice.

While we agree that more mature businesses typically have a higher level of sophistication, this does not mean that the standards for lenders dealing with small business should be different based on this factor. Such a policy outcome would create significant definitional difficulties.

Security requirements imposed on small business

We can not see that the similarity in the security used for some small business loans and consumer loans is relevant. It is the product and the reasons for which such finance is used that is most important.

Role of credit providers

6. To what extent have industry conduct standards assisted small business borrowers to date? Please provide details.

The Australian Bankers' Association (ABA) Code of Banking Practice has been identified as covering the provision of credit to consumers and small business. However, it is our view that the Code is inadequate to meet the needs of small business. When the clauses relevant to small business lending in the Code, particularly clause 25, are compared with the business lending codes of the UK, Canada and Ireland and also taking into account the suggested content of a specific small business code in paragraph 7.11 of the Senate Economics References Committee *Access of Small Business to Finance* inquiry report, it demonstrates the inadequacies of the Code in relation to small business.

This however does not mean there is a need for government intervention by way of amending or administering the Code. Consistent with recommendation 6 of the *Access of Small Business to Finance* final report, we believe it is the role of the ABA and their member banks in consultation with small business to enhance the Code so it better covers small business lending. Further, we believe the current arrangements for the administration of the Code (self-regulation) are sufficient.

It is our view that a stronger industry-based standard on lending to small business should negate the need for further regulation of small business credit, including the three options identified in this chapter.

Given the difference between how small business use credit compared with individuals, CPA Australia advocates that either the current code be expanded to cover small business credit in greater depth or the ABA follow their British and Canadian counterparts and introduce a separate code of conduct on small business lending. The decision on which approach is preferable should be made by the industry in consultation with key stakeholders.

Guidance on what such a Code should look like is provided in paragraph 7.11 of the *Access of Small Business to Finance* report. CPA Australia developed this guidance from a review of the Canadian and Irish small business lending codes.

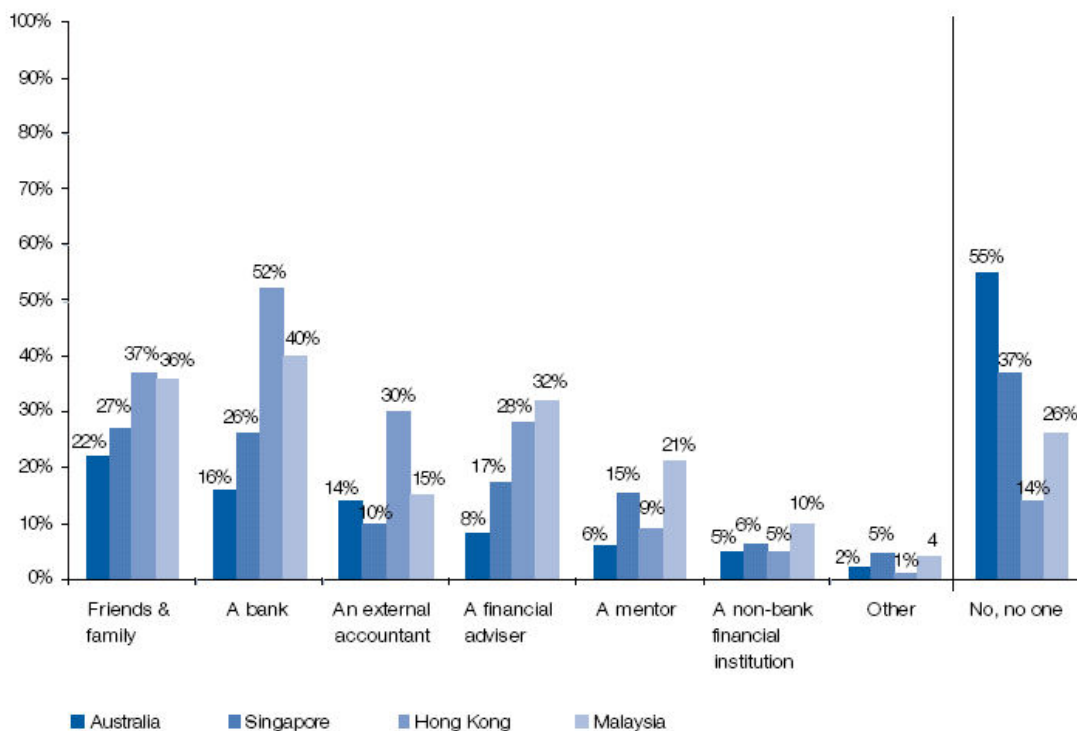
We note that the ABA is currently reviewing the Code of Banking Practice and an exposure draft is due for release soon. The ABA and their member banks should take this as an opportunity to provide stronger industry conduct standards on small business lending. Other industry associations representing other lenders should also update their codes to better cover small business lending.

Role of credit service providers

7. What are the main differences and similarities between lending and providing credit service assistance to small business borrowers?

Both our surveys and independent surveys indicate that finance brokers are not a major source of advice on small business credit (accountants and banks being more popular), as the below diagram from our 2009 Small Business Survey⁴ indicates:

Figure 7: The parties with whom discussions have already been held in relation to upcoming additional funding requirements



Q3-8 *Have you already discussed your additional funding requirements for the next 12 months with any of the following? (multiple response) (Australia n=178, Hong Kong n=148, Malaysia n=149, Singapore n=111)*

Further, at our recent member round table events on small business and access to finance, members who are brokers for small business credit noted a significant decline in their business since the onset of the global financial crisis. They attributed this to lenders favouring lending direct to small business rather than going through intermediaries due to higher margins for direct lending.

⁴ Page 20 *The CPA Australia Asia-Pacific small business survey 2009 – Australia, Hong Kong, Malaysia and Singapore*

Other sources of advice and assistance for small business borrowers

10. Do small business borrowers use other sources of advice and/or assistance not identified in relation to credit contracts?

If small businesses are very unlikely to seek advice from credit service providers (brokers), who are they seeking advice from? In an independent survey of small to medium sized family-owned enterprises, such businesses were much more likely to seek advice from their external accountant on financing than any other source of advice, including banks and consultants.⁵

Table 7 – Sources of Advice for SMFEs on Financing, Exit/ Succession and PE

Top 5 Sources of Advice for SMFEs on	Financing	Exit / Succession	PE
External accountant	4.3	4.4	4.4
Bank	3.5	2.9	3.2
Consultants	2.8	3.2	3.2
Solicitors	2.8	3.4	3.7
Family & Friends	2.4	2.6	2.4

Scale: 1 (very unlikely) to 5 (very likely)

It is therefore very important that any Government response to the Green Paper takes into account the key role that accountants play in advising small business on financing. In particular, if the Government favours regulating the provision of small business credit, it must take into account the impact that imposing the credit licensing provisions will have on accountants and small business and consider whether such a regulatory response is necessary and desirable. The major impacts include:

- discouraging accountants from providing advice on credit to small business. This can lead to small businesses accessing the wrong type of finance, or not borrowing the right amount, and
- discouraging accountants from assisting small business with their loan application. This can stymie small business access to finance as their loan applications may not provide the information lenders require.

11. What is the nature of this advice and/or assistance? Please provide details.

The significant difference between the sources of advice on consumer credit and small business credit is the major role that accountants play in providing independent advice on small business credit, and the limited role of credit service providers. Our experience with the current licensing regime is that accountants are not usually involved in providing advice to consumers on credit, and if they are, it is typically in their capacity as a broker.

It should be noted that accountants are remunerated directly by the small business for their advice, rather than by a credit provider (through a commission arrangement). Therefore one of the reasons that necessitated the licensing of advisers on consumer credit (being the remuneration structures of advisers) is not present or is only present in a very small way in small business credit.

The nature of advice that accountants provide small business on credit includes:

- determining whether external finance is needed or can 'it' be funded from internal sources
- if external finance is needed or desirable, should it be debt or equity
- if debt, what debt financing product is most suitable

⁵ Page 32 *Understanding the barriers to and the opportunities for access to private equity for small to medium-sized family-owned enterprises*, Seet, PS and Graves, C

- assistance in determining the amount that is to be borrowed or the amount of the financing facility. This includes determining what is affordable
- assistance with the loan application
- accompanying the business owner to their meeting with potential lenders
- reviewing the different options and advise on what is most suitable.

Options for reform

The options for regulation of small business credit identified in the Green Paper would unnecessarily (as no mischief has been identified) add to the cost of lenders and borrowers and would cause significant, unnecessary impost on advisers (particularly accountants) on small business credit.

Should the Government consider the need for regulatory action, it is important that they not only consider the burden such regulation will place on lenders and borrowers, but also the impact it will have on advisers to small business.

Option One: Limited application of consumer protection regulations

12. Are the Credit Act and National Credit Code a useful framework for extending regulatory coverage to small business lending?

No. It seems from the short description provided for this option that there is little change between the current co-regulatory approach and this proposal, except that the Government takes a more active role in regulation. We therefore do not see any benefit in moving to this proposed option. We see the development of a more detailed industry standard on small business lending as preferable and less costly to taxpayers, lenders, borrowers and advisers.

We can not provide additional comment due to the lack of detail in the option. In particular, we are uncertain how this option may impact upon advisers.

13. Are there any provisions in the Credit Act or National Credit Code that either should or should not apply to small business?

No. For reasons stated elsewhere in this submission.

Option Two: Full application of consumer protection regulations

Requiring more stringent risk assessment, as suggested under this option will not only raise the costs of applying for loans (as small business will more likely have to engage professionals to assist them prepare their loan application), but it will also impede the supply of finance to small business, creating a risk to the viability of some small businesses. We believe the risk assessment processes banks currently have in place are sufficient to determine whether a business borrower can repay.

15. Are the Credit Act and the Code the most effective mechanism for extending regulation to small business lending?

No. For reasons stated elsewhere in this submission.

16. What specific provisions in the Credit Act or the Code should or should not apply to small business?

None. For reasons stated elsewhere in this submission.

17. If the Credit Act was applied in full to small business lending, what would be the costs and benefits for small business borrowers and industry? Please provide details.

We are concerned that the Green Paper does not explore the impact that this option will have on advisers, such as accountants. The impact in our view would be significant given that many members in practice routinely give advice to small business on their financing needs. It should also be noted that very few accountants are licensed under the consumer credit regime.

The credit licensing regime is complex and expensive to comply with. In the case of small business credit, there is no evidence to suggest that a licensing regime of advisers will lead to improved outcomes. In fact, we are of the opinion that imposing the credit licensing regime on small business credit advisers will lead to negative outcomes for small business.

We fear that extending the consumer credit licensing regime (in whole or part), will, due to its compliance burden, discourage many accountants from becoming licensed, hence such accountants will no longer provide independent advice on financing matters to small business nor assist small business clients with their loan applications.

This may increase the likelihood of small businesses accessing the wrong type of finance, borrowing the wrong amount and reducing the likelihood of small business accessing finance (as the quality of the information the small business provides with their loan application will not be of a standard lenders require).

Option Three: Development of tailored regulations for small business lending

18. What are the likely costs and benefits for small business borrowers and industry with a tailored approach? Please provide details.

While we support the development of a specific code of practice on small business lending or an extension to the current Code of Banking Practice to cover small business lending in greater depth, such a code must be developed by the industry in consultation with small business (as recommended in the *Access of Small Business to Finance* report). We see no role for the Government in developing and enforcing such a Code, beyond providing input to the ABA.

While industry codes can be expensive to develop, they are much cheaper than standards imposed by a regulator. We do not see the extra costs to lenders, borrowers, advisers and taxpayers of a regulated code as being justified.

2. Regulation of credit cards

In this section comments are provided in respect of questions 5, 6, 11, 13, 14 and 18.

5. What key information is useful to be disclosed or should be made more prominent? When and how should this information be disclosed?

Consumers should be provided with clear, concise and sufficient information in order for them to make an informed decision.

Lengthy and complex disclosure has also been a problem in the financial planning industry, however this has somewhat been addressed by the work of the Financial Services Working Group (the Working Group).

The Working Group was tasked with developing short, standardised and easy to understand product disclosure documents. The approach was developed in close consultation with industry and consumer representatives through the Financial Services Working Group Industry and Consumer Advisory Panel.

Under these reforms, Product Disclosure Statements (PDSs) will be limited to six A4 pages of key information presented in a clear and uncomplicated manner. These documents will be supported by more detailed or frequently updated information provided online, so that businesses can enjoy greater flexibility without compromising investor protection.

CPA Australia recommends that the credit industry adopt these principles and develop a standard product information document for credit cards. The document should be limited to a maximum number of pages, for example no more than six pages (A4) and mandate the inclusion specific information in a standard format so that it is easy for the consumer to understand and compare different products.

The information that should be disclosed includes all relevant interest rates, key features of the product including information on any rewards program, as well as the core terms and conditions of the credit card.

This short, standardised document should be developed in consultation with industry and consumer representatives. Any information that is more detailed or frequently updated should be provided to the consumer online.

6. What impact would these disclosures have on consumers and the credit card market more generally?

Short, standardised and easy to understand disclosure documents will enable the consumer to make informed financial decisions with confidence. It will also allow the consumer to easily compare different products, allowing them to source the best product available to meet their specific needs.

11. What impact, if any, would these options have on consumer behaviour and default levels?

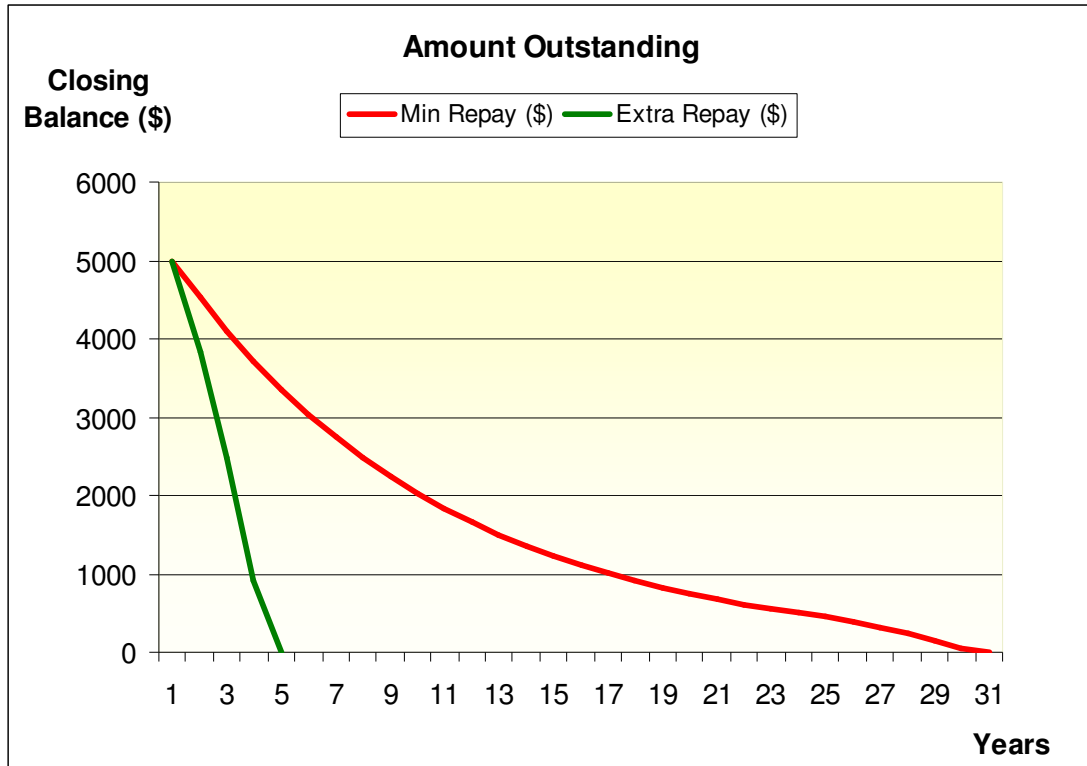
CPA Australia supports the introduction of a 'health warning' on monthly credit card statements. We believe that a graphical warning would have the most effective impact and convey the desired message to all consumers, regardless of their level of financial literacy.

The graph could demonstrate how long it would take to repay the credit card balance and how much interest would be incurred by only repaying the required minimum

repayment. More importantly, it could also show the benefit of additionally paying a set amount above the required minimum monthly payment.

The 'health warning' should be based on the credit card calculator currently available on ASIC's FIDO website⁶ and demonstrate the benefit of paying, for example, an extra \$50 a month above the required minimum repayment. It could then be supported by a simple table showing how long each method of payment would actually take to repay the full balance and how much interest this would incur.

An example of the graph and table are as follows:



	Minimum repayments	Extra \$50/month	Time & Interest Saved
Time	29 years 4 months	3 years 8 months	25 years 6 months
Interest paid (\$)	\$6,654	\$1,369	\$5,285

CPA Australia believes that the 'health warning' should be included on the credit card statement and not be sent separately, as the credit card statement advises the consumer their required minimum repayment and normally prompts the consumer to make the next payment. If the warning appeared on this same statement, it would be more likely to motivate the consumer to make the extra repayment.

13. What impact would any proposed minimum monthly repayment have on default levels?

The introduction of a mandated minimum repayment amount may unintentionally place some consumers in financial hardship. Many consumers use their credit card as a source of immediate finance when the required level of credit is not high enough to

⁶ <http://www.fido.gov.au/fido/fido.nsf/byheadline/Credit-card-calculator?openDocument>

warrant a personal loan or to cover a large one-off unexpected expenses, for example a vet bill or car expense. While many consumers will then make the conscious effort to pay off this debt as quickly as possible, it may not be at a rate that would possibly mandated under this proposal. This could also possibly effect their future credit rating.

By instead including the 'health warning' on the credit card statement, you are motivating the consumer to make positive changes themselves on how they manage and repay their debt. It also allows the consumer to make their own financial decisions, given their own specific financial circumstances.

14. If mandated, what level should the minimum monthly repayment be set?

CPA Australia does not support this proposal, as it fails to take into account the consumer's individual financial circumstances or reason for initially incurring the credit card debt.

Rather than mandating a minimum repayment amount, the focus should be on educating and alerting the consumer on the benefits making additional repayments above the minimum repayment. This will both empower the consumer to take responsibility for their own financial decisions and educate them on how to make more informed decisions in the future.

18. Should regulations be introduced to specify or standardise the balances to which repayments are to be allocated? What would the cost be to industry if such an approach were adopted?

Whilst CPA Australia is not in a position to specifically comment on this proposal, an alternative maybe to provide a summary of how repayments will be allocated to balances in the standard product information document that was recommended in Question 5. This would allow the consumer to both understand the practices of different credit card issuers and compare the relevant information.

3. Reverse Mortgages

In this section comments are not provided in respect of questions 1, 2, 4, 7 and 8.

- 3. Is there any need for specific measures to address issues relating to any of the product features discussed above, or any other product features of reverse mortgages?**

CPA Australia recommends that a standardised default procedure is developed for issuers of a reverse mortgage products based on the SEQUAL Guideline on default conditions.

- 5. Is there a need for specific responsible lending conduct obligations applicable to reverse mortgage providers and other intermediaries such as brokers?**

A reverse mortgage has many unique features and it is therefore appropriate that consideration be given to developing specific responsible lending obligations for reverse mortgage providers and intermediaries.

- 6. Are the examples of possible mandatory reverse mortgage-specific responsible lending enquiries and assessments listed above appropriate?**

Reverse mortgage lenders and intermediaries should have to meet their responsible lending conduct obligations when assessing whether a product is suitable for a consumer. This should include whether the type and amount of the loan reflects the borrower's purpose for its use.

Whilst any fixed interest loan break fees or exit fees should be disclosed and explained to the consumer, they should not necessarily be a specific consideration when assessing the borrower's capacity to repay the loan.

It may also be prudent for the lender or intermediary to draw the consumer's attention to alternatives to a reverse mortgage or that such a loan may affect their entitlement to any pensions or benefits, however they may not have the knowledge or expertise to provide specific advice on these considerations. Rather they could direct the consumer to the ASIC publication *Thinking of using the equity in your home*⁷, as this publication provides guidance on these issues and directs the consumer to relevant contacts who can further provide assistance. Alternatively the consumer could seek advice from a suitable qualified professional.

- 9. Which of the above regulatory approaches is preferred and why? Are there other options which should be considered?**

CPA Australia supports statutory protection against negative equity. This measure would provide necessary protection for the consumer. Furthermore, given that majority of the industry already provides this guarantee, it would have minimal impact on lenders while also providing a uniform approach to this issue.

- 10. If Option 2 is preferred, are the terms mentioned above which may void the statutory protection against negative equity appropriate? Are there others that should be considered?**

The terms mentioned in which a lender may void the statutory protection against negative equity are appropriate and CPA Australia do not believe there are others that should be considered at this time.

⁷ [http://www.fido.gov.au/asic/pdflib.nsf/LookupByFileName/Home-equity-and%20reverse-mortgages-July2009.pdf/\\$file/Home-equity-and%20reverse-mortgages-July2009.pdf](http://www.fido.gov.au/asic/pdflib.nsf/LookupByFileName/Home-equity-and%20reverse-mortgages-July2009.pdf/$file/Home-equity-and%20reverse-mortgages-July2009.pdf)

11. Which of the above regulatory approaches is preferred and why? Are there other options which should be considered?

Both Option One and Option Two provide measures that can potentially strengthen the quality of information on reverse mortgages being provided to consumers.

12. Would there be merit in considering both options?

CPA Australia believes that there is merit in considering both options.

Due to complexity and significant financial commitment a consumer makes when they enter into a reverse mortgage, the consumer should obtain independent legal or financial advice. However this advice may be expensive and the consumer may not be able to afford the associated cost. We therefore recommend that the consumer is encouraged to seek this advice, but it is ultimately their decision.

Improving pre and post contractual generic advice to consumers will also assist the consumer make an informed financial decision when considering whether to enter into a reverse mortgage. Similar to our recommendation in response to question 5 of Chapter 2, we recommend that the industry develop a short standard product information document. This document should include mandated information, such as the information outlined in Option Two.

13. What advice could be usefully provided pre-contractually and which post-contractually?

Prior to entering into a reverse mortgage contract, the consumer should be provided with all relevant information to ensure that they can make an informed decision. This should include the content outlined in Option Two and any initial or ongoing fees that will be payable under the contract.

14. Would there be any merit in the options raised above being applied to home reversion schemes?

For consistency and to ensure adequate consumer protection, CPA Australia also makes the same recommendations in respect of Option One and Option Two for home reversion schemes.

15. Are current arrangements provided under the Code and industry practice adequate, or are other measures required? Please provide details.

Given the unique features and complexity of reverse mortgages, we recommend that procedures are developed which are specifically tailored to these products.

16. If a reverse mortgage specific default procedure is required, what could this involve (for example, a requirement for lenders to make personal contact with borrowers, prior to the expiry of a default notice)?

CPA Australia recommends that a standardised default procedure be developed for issuers of a reverse mortgage products that is based on the SEQUAL Guideline on default conditions.

4. Investment Lending

In this section comments are not provided in respect of question 3.

- 1. Do borrowers who invest in shares, securities and managed investment schemes require the protections (for example, responsible lending requirements) that are provided in the Credit Act and in Chapter 7 of the Corporations Act? If so, please explain why.**

The key concept of the responsible lending obligations for credit licensees is that they must not enter into a credit contract with a consumer, suggest a credit contract to a consumer or assist a consumer to apply for a credit contract if the credit contract is unsuitable for the consumer.

An important aspect of these obligations is to establish that consumer has the capacity to repay the credit provided.

Given that personal loans, credit cards and equity home loans are generally provided to consumers as a source of funds for personal use, it is our belief that the protections that are provided by National Credit Act would already apply even if these funds were used to invest in a financial product.

Where credit is provided through an equity home loan, for example, to specifically invest in a financial product, the National Credit Code should be extended to provide the protections under the National Credit Act to these consumers.

- 2. Is lending for an investment purpose inherently different to lending for a personal or domestic purpose? If so, what are the reasons for this? Please explain the circumstances under which you consider that any differences might support the case for the regulation or non-regulation of investment lending.**

CPA Australia believes that the responsible lending obligations, including ensuring the consumer has the capacity to repay the loan without suffering financial hardship, should be applicable to all credit provided to a consumer, irrespective of the purpose of the funds.

- 4. Given that borrowers of margin loans and loans for residential investment property are protected by responsible lending obligations imposed on lenders, is there any reason why similar protection should not be given to those who borrow to invest in other financial and investment products?**

As previously stated CPA Australia believes that the responsible lending obligations, including ensuring the consumer has the capacity to repay the loan without suffering financial hardship, should be applicable to all credit provided to a consumer irrespective of the purpose of the funds.

- 5. Are there any other investment products, besides those mentioned in this section of the chapter, that potentially raise concerns about irresponsible lending practices? If so, please explain what they are and the circumstances under which any identified problems might arise.**

CPA Australia is not aware of any other investment products that may potentially raise concerns about irresponsible lending practices.

6. Alternatively are there any circumstances surrounding the provision of loans for investment purposes that suggest that regulatory intervention may not be required?

The responsible lending obligations of the National Credit Act should apply to all consumer lending, irrespective of the purpose of the consumer lending.

7. In light of the discussion under *Option 2: Commonwealth regulation*, do you have a view on the approach that any potential regulation should take? In particular, would you prefer that investment lending be regulated under the Credit Act or in Chapter 7 of the Corporations Act?

The key concept of the responsible lending obligations is that credit should not be provided to a consumer that is unsuitable for their needs or that they can only repay by incurring substantial hardship. This obligation should be applicable to all consumer lending, irrespective of the purpose of the credit provided.

As noted, it is not uncommon for a consumer to apply for a small unsecured personal loan or credit card and then use these funds to invest in a financial product without first seeking licensed financial planning product advice. Whilst we believe that the protections of the National Credit Act would already apply in these circumstances given the funds have primarily been lent by the credit provider for what they believe to be personal use, certainty that this is the case should be provided.

The National Credit Code should also be amended to provide protection to the consumer where they use an equity home loan for the specific purpose of investing in a financial product.

The most important consideration in these situations remains that the consumer must have the capacity to repay the credit provided, regardless of how the credit provided has been spent or invested. For this reason and given that the consumer may not seek the advice of a licensed financial planner, the regulation should only be through the National Credit Act through amendments to the National Credit Code.

**8. Please provide answers (with explanations) in relation to:
(i) whether regulation should cover natural persons or corporate entities; retail or sophisticated investors; and**

It is important that any attempt to regulate this aspect of investment lending should only be applied to natural persons to avoid any unintended consequences such as capturing business lending.

(ii) whether considerations for regulation should be driven by the type of investment product.

The examples provided in this section of borrowing to invest includes unsecured personal loans, credit card advances and accessing equity in the home loan. In each of these situations, it is likely the credit provider believes that the consumer will access these funds for personal use, not to specifically invest in a financial product.

Therefore whilst consideration may be given to try and regulate this segment of the market through targeted legislation, it is highly unlikely that it would be effective.

A more effective means of protecting the consumer in these situations would be to amend the National Credit Code to provide certainty that the consumer is protected through the responsible lending obligations of the National Credit Act.

7. Enhancements to the National Consumer Credit Protection regime

E. Restricting the use of certain words or expressions

12. Should the use of certain words or expressions be restricted?

CPA Australia believes that certain words and expressions do have the potential to mislead the consumer in specific circumstances and therefore should be restricted.

13. If so, do you agree with the examples above? Are there other words or expressions that should be restricted?

The words and expressions that should be restricted include:

- 'pre-approved' – unless the credit provider has undertaken steps to meet their responsible lending obligations; and
- 'independent, impartial or unbiased, not for profit or free' – unless the credit provider or intermediary can demonstrate they meet specific criteria, however care must be taken to ensure that any proposed definition is not so restrictive that it precludes anyone from achieving this status.

Whilst there are relevant associations who accredited individuals to become a 'financial counsellor', it must be recognised that there are other professional who also provide this service in the community. A 'Recognised Accountant' is one such example and their professional qualifications and experience means they are well placed to provide this service.

CPA Australia therefore does not support the term 'financial counselling' to be restricted to only those individuals who are accredited by a relevant association.