

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

31 May – 2 June 2011

Question No: BET 281

Topic: Increase credit limit

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Senator Bushby asked:

Mr Mikula: There was consideration given to that. I think, though, they are quite discrete issues and looking to address quite different topics and problems. The responsible lending is about whether the consumer can afford the repayments, at least in the context in which I think the question might be raised, whereas the credit card reforms, particularly those in relation to prohibiting unsolicited credit limit increases, are about seeking a more active engagement and more active choice by the consumer in deciding whether to increase their credit limit.

Senator BUSHBY: While we are on the credit limits, my reading of the draft legislation suggests that it is now very difficult for a credit provider to offer an increased limit. I would be interested in your views on how a credit provider, if this legislation were passed, would actually go about providing the consumer with the choice of an increased credit limit. What would they still be permitted to do?

Mr Mikula: The way in which the legislation is structured is that it would—section 133BE contains a prohibition on making unsolicited credit limit increase invitations. That is specifically designed to address the instant 'sign here and return this form' or 'click on this button and you can get an immediate increase' sorts of offers where consumers can make a very simple choice when it is put in front of them. The characteristic that defines those is that there is some level of encouragement or enthusiasm by the lender for this proposition. It has always been contemplated, since the issue was raised in the various consultations we have had, that lenders would still be able to provide neutral factual information about how you could increase your credit limit—for example, a statement that you would be able to discuss this by contacting a particular person or ringing a particular number or doing something like that. That has always been Treasury's position and that is being addressed through the regulations. There is no constraint on communications between lenders and their customers on that topic. They can still discuss it. But they have to do it in neutral ways that avoid the precise—

Senator BUSHBY: Could they write a general letter to customers in general saying, 'If you would like to consider an increase in your limit then please talk to us'? Are you saying that sort of thing would be fine?

Mr Mikula: That is what we would anticipate the regulations would allow when they finally—

Senator BUSHBY: But if it is a specific letter to a customer, because it may be observed that that customer is continually hitting the limit, saying 'We notice that you're continually hitting the limit and we thought that you might like to consider an increased limit', is that something they could do?

Mr Mikula: I suppose they would still be able to write to individual customers. The customer themselves would know whether they are going up to or over their limit, so whether they would be able to point that out or just provide the neutral information is still one of those issues of a level of detail that we are still considering.

Senator BUSHBY: So that is a bit grey at this point? So it is a bit fuzzy still at this point what they might be able to do in that?

Mr Mikula: Yes.

Senator BUSHBY: What about—and this is probably less fuzzy—the situation like we had earlier this year with the floods in Queensland? Banks in that case were, I think, asked by the federal and state governments to show a bit of largesse to some of the people who were affected. If in that case a bank

wanted to offer the ability to have a higher limit for a period to help people through that, presumably they would not be allowed to send a letter saying that, under this legislation.

Mr Mikula: There is possibly a misconception about that sort of scenario. Largesse by the banks in providing such a credit limit may not be in the consumer's best interest if they cannot afford to repay it.

Senator BUSHBY: But the responsible lending obligations would surely address that.

Mr Mikula: That is correct. So the utility of writing to consumers in that situation is questionable. I think what they did previously in that scenario was mass media messages, which are certainly still allowed. It is only individual written communications that fall within this prohibition.

Senator BUSHBY: I will leave that aspect of it there. On what basis has the government decided to only apply these measures to new customers? Did the government obtain legal advice on the issue?

Mr Mikula: We did.

Senator BUSHBY: On what date was the legal advice provided to Treasury?

Mr Mikula: I would have to take that on notice.

Answer:

Legal advice concerning the consequences of applying the National Consumer Credit Protection Act 2009 to credit contracts made before its commencement was provided to Treasury on 23 February 2010. Further advice was provided on 3 February 2011 and 18 April 2011 in relation to the same issue, in respect of matters raised by the reforms to be introduced in the National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Bill 2011.