



Annual returns guidance – consultation on draft

December 2022



Introduction

1. From 2024, the Credit Contracts and Consumer Finance Act 2003 (CCCF Act) requires every creditor under a consumer credit contract to provide an annual return to the Commerce Commission (the Commission) in a prescribed manner.¹ The information that lenders are required to provide as part of the annual return is set out in the Credit Contracts and Consumer Finance Regulations 2004 (the Regulations).²

What is the purpose of the annual return?

2. The purpose of the annual return requirement is to support the Commission's monitoring and enforcement functions by providing the Commission with information about the consumer credit market.
3. The information required to be provided in the annual return focuses on the volume of credit being advanced through consumer credit contracts,³ including the sub-set category of high-cost consumer credit contracts.

Who must provide an annual return?

4. An annual return must be provided by every lender. For the purposes of this guidance, you are a lender if you are a:
 - 4.1. creditor under a consumer credit contract as set out in section 11 of the CCCF Act;
 - 4.2. mobile trader under a credit sale where goods are sold to a natural person as set out in section 16A of the CCCF Act; and/or
 - 4.3. lessor under a lease of goods as set out in section 16(1) of the CCCF Act.

When, and for what period, does the annual return have to be provided?

5. The annual return must be provided to the Commission by 30 June each year relating to the preceding 12-month period 1 April to 30 March (relevant period).⁴
6. The first annual return, relating to the period 1 April 2023 to March 2024, must be provided to the Commission by 30 June 2024.⁵

What does the annual return need to include?

7. The annual return must contain the following information for the relevant period:
 - 7.1. the *number* of high-cost consumer credit contracts entered into (regulation 29(4)(a));⁶

¹ Section 116AAA of the CCCF Act which came into force on 1 December 2021.

² Regulation 29(4)(a) – (d).

³ See more about consumer credit contracts [here](#).

⁴ Regulation 29(2) and (3).

⁵ Regulations Schedule 1AA, Part 2(2).

⁶ Defined at s 45C of the CCCF Act. See more about high-cost consumer credit contracts [here](#).

- 7.2. the *number* of high-cost related consumer credit contracts entered into (regulation 29(4)(a));⁷
 - 7.3. the *number* of other consumer credit contracts entered into (regulation 29(4)(b));
 - 7.4. the *number* of contracts that *the lender has treated* as consumer credit contracts (regulation 29(4)(b));
 - 7.5. the *number* of material changes to consumer credit contracts (regulation 29(4)(c));⁸
 - 7.6. the *number* of material changes to contracts that *the lender has treated* as consumer credit contracts (regulation 29(4)(c)); and
 - 7.7. for each type of credit contract entered into, or material change to a credit contract, that is included in the numbers at paragraphs 7.1 to 7.6 above:
 - 7.7.1. for credit contracts that are not revolving credit contracts,⁹ the *total dollar amount* to be advanced;
 - 7.7.2. for revolving credit contracts, the *total credit limit*;¹⁰ and
 - 7.7.3. the *number* of times that the lender has relied on each exception in the Regulations from the requirements in either or both of regulation 4AF (general rule; full income and expense estimates required in certain cases) and 4AI (general rule in other cases).¹¹
8. To give an example of the application of the requirement in paragraph 7.7: if the lender has entered into 100 high-cost consumer credit contracts during the relevant period with each of those loans having advanced an amount of \$500, the *total* dollar amount that the lender must report in the annual return for the “high-cost consumer credit contract” type of loan is \$50,000.
9. When providing the information set out at paragraphs 7.1 to 7.7 above, lenders are not required to provide:
- 9.1. information about an identifiable individual;¹²
 - 9.2. information that is neither in its possession or control nor reasonably ascertainable from information that is in its possession or control;¹³ and/or
 - 9.3. any further breakdown by product type (but may do so if they wish).

⁷ Defined at s 45E(5) of the CCCF Act.

⁸ Section 9C(8) of the CCCF Act defines “material changes” as the parties to the agreement agreeing to change the agreement by increasing the credit limit, the lender exercising a power under the agreement to increase the credit limit, or the lender making additional advances that the lender did not take into account when previously satisfying itself of the suitability and affordability for the borrower.

⁹ Defined at s 5 of the CCCF Act.

¹⁰ Defined at s 5 of the CCCF Act.

¹¹ See Regulations 4AF(1)(b), 4AG, and 4AH.

¹² Section 116AAA(4)(a).

¹³ Section 116AAA(4)(b).

Commission guidance on the annual return requirement

Consumer credit contracts and contracts treated as consumer credit contracts

Consumer credit contracts for the purposes of paragraphs 7.3 and 7.5

10. The CCCF Act sets out those contracts that must be treated as consumer credit contracts, even if they do not meet the definition of a consumer credit contract under section 11 of the CCCF Act. These are:
 - 10.1. credit sales under which a mobile trader supplies goods to a natural person as set out in section 16A of the CCCF Act; and
 - 10.2. leases as set out in section 16(1) of the CCCF Act.
11. It is the number of these contracts, together with other consumer credit contracts (if any), that must be included in the numbers submitted at paragraphs 7.3 and 7.5.

Contracts treated as consumer credit contracts for the purposes of paragraphs 7.4 and 7.6

12. If the lender has chosen to treat a contract as a consumer credit contract (despite the requirements of section 11 of the CCCF Act not being met), it is those contracts that must be included in the numbers submitted at paragraphs 7.4 and 7.6.
13. An example of where a lender has treated a contract as a consumer credit contract, despite the requirements of section 11 not being met, is where the lender's lending process categorises a lending product given to non-natural persons, or for business purposes, as a consumer credit contract.

When is the contract entered into?

14. As with other existing obligations under the CCCF Act, we encourage lenders to give careful consideration as to when contracts are entered into during the relevant period. This is because the manner and timing in which contracts are entered into may differ depending on the loan product. For example, credit cards may be entered into at a different point in the process (for instance, on activation) compared to a personal or home loan.

Loans split across multiple contracts

15. Where a loan has been documented across multiple documents (for example, home loans with different interest rates such as floating and fixed or a mix of revolving and term facilities), if the lender documents each as separate contracts, then the contracts should be recorded individually.

Redocumentation and variation of loans

16. Where a lender enters into a new contract with a borrower and initial disclosure is provided, we consider this to be a new contract and will need to be included as part of the numbers submitted at paragraphs 7.1 to 7.4.
17. Where a loan is varied and it constitutes a material change to the existing agreement, this will need to be included as part of the number submitted at paragraphs 7.5 and 7.6.

How to provide the annual return

18. The Commission will require lenders to provide the annual return through a secure online portal on our website. Lenders will set up an individual account and submit individual values for each of the reporting requirements identified at paragraphs 7.1 to 7.7.¹⁴ The information required to be provided is only quantitative (ie. a number or dollar amount) and no written explanation is required or will be sought. This will be evident when completing the online form.
19. The Commission will require that the person who is making the submission on behalf of the lender has the appropriate authority to do so.
20. There is no fee payable to submit an annual return.

What happens if you fail to comply with your obligation to submit an annual return

21. Every lender that is subject to the obligation to provide an annual return, and breaches that obligation, commits an infringement offence and is liable on conviction:¹⁵
 - 21.1. in the case of an individual, to a fine not exceeding \$10,000; and
 - 21.2. in the case of a body corporate, to a fine not exceeding \$30,000.
22. Alternatively, the Commission can also issue infringement notices, requiring lenders to pay an infringement fee of \$1,000 for breaches of the annual return obligations.¹⁶
23. A lender who, in its annual return, makes or authorises the making of a statement that is false or misleading in a material particular, and/or makes or authorises the making of a statement knowing it to be false or misleading, commits an offence and is liable on conviction:
 - 23.1. in the case of an individual, to a fine not exceeding \$200,000; and
 - 23.2. in the case of a body corporate, to a fine not exceeding \$600,000.¹⁷

¹⁴ Regulation 29(4)(a)-(d).

¹⁵ Section 102A(7A) of the CCCF Act.

¹⁶ Section 105B of the CCCF Act and regulation 4 of the Credit Contracts and Consumer finance (Infringement Offences) Regulations 2015.

¹⁷ Section 103(6) of the CCCF Act.