

Effective from 1 December 2021

Disclosure



This involves new responsible lending and disclosure obligations.

The changes cover providing information about your loan agreement in other languages, disclosure obligations when you agree to vary a loan have been made clearer, as well as new disclosure obligations around financial mentoring, dispute resolution and debt collection.

It's a moderate change to the law.

The overarching purpose of these changes is to assist borrowers and guarantors to make informed decisions by:

- improving disclosure to vulnerable consumers with a lower proficiency in English;
- providing debtors with accurate information about debts on commencement of debt collection;
- providing borrowers with information about financial mentoring services and dispute resolution schemes.

From 1 December 2021 lenders' disclosure obligations under the Credit Contracts and Consumer Finance Act 2003 (CCCF Act) will be changing:

- There are new responsible lending obligations to provide information about loan agreements and guarantees to borrowers and guarantors in different languages;
- Disclosure obligations when lenders agree to vary a loan have been made clearer;
- There is also a new obligation to disclose information about financial mentoring services and financial dispute resolution services (under certain circumstances);
- And lastly, a new disclosure obligation before debt collection.

As a result, the Commerce Commission has issued some updated Disclosure Guidance.

It incorporates the new disclosure changes relating to agreed variations, mentoring services and dispute schemes.

This was published in August 2021 and is available on our website.

Updated fact sheets about specific disclosure topics will be issued soon.

There are some new rules about language in advertisements and loan agreements which come into effect from 1 December 2021.

If the advert is less than six months old and it's in a different language from the loan agreement, the lender may need to offer the borrower information about the loan agreement in the same language as the ad. That should happen before the borrower decides to enter into any loan.

As part of being a responsible lender, there's an obligation under the CCCF Act to assist borrowers to reach informed decisions.

If the lender has advertised to the public wholly or significantly in a language other than that of the loan agreement, they must offer information about the loan agreement in that same language if it is necessary to ensure that the borrower can reach an informed decision (for example, if the borrower doesn't have a good understanding of the language of the loan agreement).

A revised Responsible Lending Code (February 2021 version) which is in force from 1 December, contains guidance about how a lender may comply with this language obligation.

The Code is not law, but it provides non-binding guidance on how lenders may implement the responsible lending principles. The CCCF Act says that evidence of compliance with the Code will be treated as evidence of compliance with responsible lending principles.

In Chapter 7, paragraph 7.22, you'll see a recommendation that lenders establish processes that give borrowers opportunities to opt in and receive information in the same language as the advertisement at relevant points before an agreement is entered into.

In the very next paragraph, that's 7.23, the Code also states that if a lender reasonably suspects that the borrower does not have a good understanding of the lender's usual language, and the lender knows the borrower speaks the language in the advertising, the lender should offer to provide information about the type of agreement in the same language used in the ad.

Lenders will also be expected to apply an equivalent responsible lending obligation to guarantors.

Lenders will be required to offer information to guarantors of a loan, about that guarantee, in the same language as the advertisement for the loan. The same conditions apply; the lender has to have advertised in that language in the previous six months and the information must be necessary to assist the guarantor to reach an informed decision about whether or not to guarantee the loan.

From 1 December 2021, where the lender and borrower agree to vary the loan, regulations will lay out the information that needs to be included in the variation disclosure provided to the borrower.

If a lender and borrower agree to vary a loan contract, the lender must provide variation disclosure to the borrower containing these elements:

- the "full particulars of the change";
- any other information prescribed by regulations in section 22 of the CCCF Act.

The Commerce Commission considers that the words "full particulars of the change" require lenders to provide borrowers with all details of any agreed change that would alter key information required in initial disclosure under section 17 of the CCCF Act. You can find that in Schedule 1.

From 1 December 2021 the Credit Contracts and Consumer

Finance Regulations 2004 (CCCF Regulations) will prescribe the information that also needs to be included as part of disclosure of an agreed variation if it is affected by the variation.

Changes to the following must be disclosed if they are affected by the variation in:

- credit limit;
- annual interest rate;
- credit fees and charges (if it is a high-cost consumer credit contract);
- total interest charges;
- payments required.

You can find further information about required disclosure where the lender and borrower both agree on changes to the loan in the Commission's Disclosure Guidance—including a worked example of a potential disclosure.

Lenders will need to disclose to a borrower information about financial mentoring services where:

- the borrower has defaulted in payment or caused their credit limit to be exceeded; and/or
- the borrower makes a hardship application; and/or
- the lender declines a high-cost loan application.

The CCCF Regulations contain more information about what must be disclosed about financial mentoring services and when it must be disclosed.

The Responsible Lending Code also suggests that a lender may wish to include the name and contact details of a building and financial capability service when sending a payment reminder—although this doesn't come into effect until 1 February 2022.

Lenders will need to disclose to a borrower, information about their dispute resolution scheme when the borrower makes:

- a hardship application;
- a complaint about enforcement action (e.g. repossession);
- any other type of complaint specified in the regulations.

There's more information about the types of complaints in the CCCF Regulations.

Before debt collection starts, the debt collector will need to ensure that disclosure of the following information is made to every borrower under the contract:

- information about the credit contract;
- a statement about the debt to be collected;
- information about debt collection;
- other information about:
 - o the borrower’s right to apply for hardship and how to make that application;
 - o the availability of free and confidential advice from an independent service to the borrower;
 - o the availability of a building financial capability service to the borrower.

For information about the meanings of debt collection, debt collector and exceptions to this, you can check out section 132A of the CCCF Act and for more details about what needs to be disclosed refer to regulation 23 of the CCCF Regulations.

Links to existing and relevant resources:

[Commerce Commission Disclosure for Lenders Guidance'](#)

[MBIE Responsible Lending Code \(Revised February 2021\)](#)

These are the relevant sections of the Act:

Responsible lending—informed decision

- Sections 9C(3)(b)(iv) & 9C(4)(b)(iii) CCCF Act.
- Responsible Lending Code (Revised February 2021), Chapters 7 & 8.

Agreed variation disclosure

- Section 22 CCCF Act.
- Regulation 4F CCCF Regulations.

Financial mentoring and dispute scheme disclosure

- Section 26B CCCF Act.
- Regulation 4F CCCF Regulations.

Disclosure on debt collection

- Section 132A CCCF Act.
- Regulation 23 CCCF Act Regulations.

(All section and regulation references are as at 1 December 2021)

ACTION

Ensuring that all disclosures are made, and that borrowers and guarantors are offered information about their loan agreements or guarantees in the language used in any advertisements which are less than 6 months old.

IMPACT

Lenders will need to make sure they get their disclosures right, and understand their new responsible lending obligations about when to offer information about their loan agreements/guarantees in other languages.

This material provides guidance only. 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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Commerce Commission contact details:

Phone: 0800 943 600 **Write:** Enquiries Team, PO Box 2351, Wellington 6140 **Email:** contact@comcom.govt.nz

