

# Due diligence duties for directors and senior managers

September 2021



## Overview

- 1 From 1 December 2021, every director and senior manager of a lender (including some mobile traders) will have to comply with a new duty of due diligence in respect of the Credit Contracts and Consumer Finance Act 2003 (**CCCF Act**).<sup>1</sup> The duty of due diligence obliges and incentivises individual corporate officers to drive a culture of compliance with the CCCF Act from the top down.
- 2 If, in your position, you:
  - 2.1 are responsible for managing or directing or supervising the management of a lender; or
  - 2.2 have significant influence over the management or administration of a lender;you must exercise the care, diligence and skill that a reasonable director or senior manager (as the case may be) would exercise to ensure that your business complies with its duties and obligations under the CCCF Act. We refer to this as the **due diligence duty**.
- 3 In practice the due diligence duty means that from 1 December 2021 you will need to take reasonable steps to ensure that the lender complies with its duties and obligations under the CCCF Act and regulations. This will include, but is not limited to:
  - 3.1 requiring employees and agents to follow procedures that are designed to ensure compliance with the CCCF Act and regulations, or ensuring that the business has automated procedures in place that are designed to do that;<sup>2</sup>
  - 3.2 having methods in place to systematically identify deficiencies in the effectiveness of these procedures;<sup>3</sup> and
  - 3.3 promptly remedying any deficiencies discovered.<sup>4</sup>
- 4 Failure to exercise the required levels of care, diligence and skill could expose you, personally, to significant financial consequences.<sup>5</sup>
- 5 This guidance is intended to help you to understand what the due diligence duty means for lenders and for their directors and senior managers. It is not intended to be legally binding. It is also necessarily general and it is not exhaustive. What you will need to do to comply in your circumstances will depend in each case on the nature of the lender's business (for example, the size of the lender and the nature of the credit provided) and what your role and responsibilities are. If you have questions about what you need to do to comply with the due diligence duty, we strongly recommend that you seek independent legal advice.
- 6 We may revise this guidance from time to time in accordance with legal developments and our organisational objectives and priorities.

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1. This duty was introduced by an amendment to the Credit Contracts and Consumer Finance Act 2003, through section 27 of the Credit Contracts Legislation Amendment Act 2019. The duty is now set out in section 59B of the principal Act and comes into force on 1 December 2021.

2. Section 59B(3)(a).

3. Section 59B(3)(b).

4. Section 59B(3)(c).

5. See paragraphs 38 to 44 below.

## Who does the duty apply to?

- 7 The due diligence duty applies to every director and senior manager of a lender.<sup>6</sup>  
The due diligence duty does not apply to directors or senior managers of pawnbrokers.<sup>7</sup>

### What do we mean by a “lender” or “loan” in this guidance?

A “**lender**” is a person or a business that provides credit under a consumer credit contract. It can also be a mobile trader.

A “**loan**” is a consumer credit contract and includes credit sales entered into by mobile traders.

Most credit transactions entered into by consumers are “**consumer credit contracts**” under the CCCF Act. A credit contract is one that allows a person to defer payment of a debt, incur a debt and defer payment, or to purchase goods or services and defer payment.<sup>8</sup> These are consumer credit contracts where:

- the borrower uses or intends to use the credit wholly or predominantly for personal, domestic or household purposes;
- the lender is in the business of, or makes a practice of, providing credit; and
- the lender:
  - charges interest; and/or
  - charges fees; and/or
  - takes or may take a security interest<sup>9</sup> under the contract.<sup>10</sup>

A lender is also someone who has taken over the rights of an original lender under a consumer credit contract, either through purchasing the consumer loan, or loans, or by having the contractual rights assigned to it in some other way.<sup>11</sup>

From 1 June 2020 credit sale contracts entered into by mobile traders will also be treated as consumer credit contracts whether or not they meet the criteria set out above.<sup>12</sup>

A mobile trader is someone who, in person and not at fixed premises, offers or agrees to supply consumer goods to an individual, either under a credit sale or where the goods are partly or fully financed by an associated company under a consumer credit contract.<sup>13</sup>

If a mobile trader meets this definition then, for the purposes of this guidance, they are also a “lender” and the credit sale is a “loan”.

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6. This includes directors and senior managers of lenders who are exempt from certification by the Commerce Commission because they are authorised or licensed by other regulators. For further information please see the [Fit and proper person certification guidance](#).
7. Section 15A CCCF Act.
8. Section 7 CCCF Act.
9. “Security interest” is defined in section 5 and means an interest in property that is taken to secure payment of a debt. For more on security interest and a lender’s exercise of their rights under a security interest, see our [Repossession guidelines](#).
10. Section 11 of the Act defines a consumer credit contract.
11. Section 5 CCCF Act. See more about consumer credit contracts [here](#). In cases where there is a contract for the purposes of securitisation or covered bond arrangements or similar entered into or varied after 1 December 2021, and the lender is the securitisation vehicle but there is a separate contract manager; the due diligence duties do not apply to directors and senior managers of the securitisation vehicle but apply to the directors and senior managers of the contract manager. See Regulation 22 of the Credit Contracts and Consumer Finance Regulations 2004 (as amended by regulation 10 of the Credit Contracts and Consumer Finance Amendment Regulations 2020).
12. Section 16A CCCF Act.
13. Section 5 CCCF Act. A credit sale is a sale of goods or services where payment of the price is wholly or partly deferred.

- 8 Lenders that are required to be certified need to identify their directors and senior managers when they register on the Financial Service Providers Register (**FSPR**).<sup>14</sup> These individuals are the people who are subject to the duty of due diligence at that time. However, if there are changes to personnel or to the organisation, other individuals may become directors or senior managers and they will assume the due diligence duty.<sup>15</sup> Lenders should ensure that new directors and senior managers are trained about their due diligence obligations.
- 9 It is important to think carefully about which people are directors and senior managers subject to the due diligence duty. A failure to identify a director or senior manager when registering on the FSPR does not mean that that person is not required to comply with the due diligence duty.

## Who is a director?

- 10 A director is someone who has responsibility for managing or directing or supervising the management of a lender's business and affairs, regardless of the title assigned to that person. It will include anyone named as a director on the Companies Office Register but may also include individuals that are not named but who otherwise exercise the powers and functions of directors.
- 11 So-called "silent" or "sleeping" directors or individuals who are registered as directors but who take no direct role in the management or supervision of the company are also subject to the due diligence duty.
- 12 The role of director, for the purpose of the due diligence duty, is not confined to lenders registered as companies.
- 13 A lender may be a sole trader, a partnership, a trust, a charity, a statutory entity, an unincorporated joint venture or any other type of trading entity, whether incorporated or unincorporated. Anyone with a governance role comparable with that of a director of a registered company is classed as a director for the purpose of the due diligence duty.<sup>16</sup>
- 14 A director includes:
  - 14.1 any person occupying the position of a director of a company regardless of the title assigned to that person;
  - 14.2 any partner in a partnership (other than a limited partnership);
  - 14.3 any general partner in a limited partnership; and
  - 14.4 any person in relation to an incorporated or unincorporated body (other than a company, partnership or limited partnership) occupying a position comparable with that of a director of a company.



14. For further information please see the Fit and proper person certification guidance.

15. Lenders who are required to be certified will also need to notify the Commission about changes to their directors and senior managers. See section 131R CCCF Act (in force from 1 October 2021).

16. Section 5 of the CCCF Act which uses the definition in section 6(1) of the Financial Markets Conduct Act 2013.

## Who is a senior manager?

- 15 A senior manager is a person, other than a director, whose position allows him or her to exercise significant influence over the management or administration of an entity.<sup>17</sup>
- 16 Who is a “senior manager” for the purpose of the CCCF Act will be different in different organisations and will depend on the structure of the organisation, its size, the nature of the credit provided and how responsibilities are allocated. The critical test is the amount of influence the person has over the entity.
- 16.1 In larger organisations senior managers might be the Chief Executive and those employees who report directly to the Chief Executive (for example, the Chief Financial Officer). In other words, it would be those individuals with top level management responsibility rather than everyone who has “senior manager” in their job title.
- 16.2 In smaller organisations the roles of directors and senior managers may overlap. The role of a senior manager may also overlap with more operational roles. An employee may not have a position title such as Chief Executive or Chief Financial Officer, or the position title may not reflect the level of seniority of the management role they actually perform.
- 17 External advisors acting only in their professional capacity are unlikely to be considered senior managers (for example: a lawyer or an accountant providing advice to the company). However, you cannot avoid the due diligence duty by structuring your relationship with the lender in any particular way. Senior managers are not restricted to employees only. Whether a person is a senior manager or not depends on the influence that person has on a lender, rather than their employment status.
- 18 If you exercise significant influence over the lender, you may be a senior manager subject to the due diligence duty even if you have no direct responsibility for credit functions and decisions. However, the nature of your role will affect what you might reasonably be expected to do. The greater your level of influence in areas of the business that are impacted by obligations imposed by the CCCF Act, the greater the level of care, diligence and skill likely to be expected of you in performance of your due diligence duty.



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17. Section 5 of the CCCF Act which uses the definition in section 6(1) of the Financial Markets Conduct Act 2013.

## The due diligence duty

### When does the due diligence duty apply?

- 19 The due diligence duty applies in respect of obligations that the lender must comply with, that arise *from or after* 1 December 2021.
- 20 For example, if a lender enters into a contract with a borrower on 1 January 2019 and is required to give continuing disclosure on that contract after 1 December 2021 you will have due diligence duties in respect of the lender's procedures for providing continuing disclosure. This means that even though the contract was entered into before the new due diligence duties applied to you, you will need to be satisfied that the lender has systems in place for meeting its continuing disclosure obligations, and other obligations, from 1 December 2021 when the due diligence duty starts to apply.<sup>18</sup>
- 21 But, in the example above, you will not be liable for any breaches of the due diligence duty for the lender's procedures for compliance with the Lender Responsibility Principles<sup>19</sup> that require affordability and suitability checks before the contract was entered into. Those checks should have been undertaken before 1 January 2019, before the due diligence duty applied to you.

### What is due diligence?

- 22 Every director or senior manager of a lender must exercise due diligence to ensure that the lender complies with its duties and obligations under the CCCF Act.

Whether you have exercised due diligence will be assessed objectively. This means that it does not matter whether you think you have performed the duty. What will be important is whether you have exercised the care, diligence and skill that a reasonable director or senior manager of a lender of the type and size of your business and with your responsibilities, would have exercised.<sup>20</sup>

What is considered reasonable will depend on the circumstances, including the nature of the lender's business (for example, its size and the nature of the credit provided).

It will also depend on your position and the nature of your responsibilities. In general, directors are more likely to satisfy their duty of due diligence by directing and requiring management to undertake key tasks focussed on fulfilling legislative and regulatory obligations, setting the approach to resource allocation and prioritisation, and driving a culture of compliance. In many organisations, senior managers will be expected to be more involved in the implementation and performance of compliance measures in areas in which they have responsibility or influence.

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18. Clause 10(3) of Schedule 1AA CCCF Act.

19. See section 9C of the CCCF Act and the Responsible Lending Code.

20. Section 59B(2).

- 23 You cannot avoid your responsibility for the due diligence duty, and it is not enough for you to merely assume or trust an assurance that *someone* in the business is taking care of compliance. Similarly, while delegation of tasks may be one way of fulfilling your obligations, you cannot delegate your overall responsibility for the due diligence duty to another director or a senior manager. If you are acting temporarily in a role, whether you assume the senior manager’s responsibility under the due diligence duty will depend on the scope and duration of the role you step into.
- 24 Due diligence requires you to take reasonable steps to ensure that the ways in which the lender undertakes its lending tasks (**procedures**) are designed to ensure compliance with the CCCF Act and regulations. The duty also requires adequate supervision to ensure that the lender’s procedures are properly implemented and maintained to ensure compliance.<sup>21</sup> This means (but is not limited to) taking reasonable steps to ensure that the lender:
- 24.1 establishes and maintains procedures, which may or may not be automated, that are designed to result in compliance with the CCCF Act and regulations
  - 24.2 requires staff (whether employees or agents) to follow those procedures
  - 24.3 undertakes reasonable checks on whether the procedures:
    - 24.3.1 do what they are designed to do (for example by sampling or testing); and
    - 24.3.2 are being used correctly (whether or not they are manual or automated);
  - 24.4 employs reasonable methods to identify any deficiencies; and
  - 24.5 promptly remedies deficiencies that it finds.
- 25 You will not necessarily breach your due diligence duty just because the lender breaches the CCCF Act. The emphasis of these obligations is on helping to ensure that lenders develop compliant procedures, take reasonable steps to implement them, monitor compliance effectiveness and fix errors where they occur.
- 26 We suggest that you keep records about how you have met your due diligence duty.



21. *SafeWork NSW v Grasso Consulting Engineers Pty Ltd; SafeWork NSW v Ignazio Grasso* [2019] NSWDC 792. While applying the duty of due diligence in a distinct context (health and safety), *Grasso* confirms at [236] that, at minimum, due diligence requires a system which provides against contravention of relevant regulatory provisions and adequate supervision ensuring that the system is properly carried out.

## Understanding obligations

- 27 Before you can perform due diligence, you will need to understand (and keep informed of) the lender's obligations under the CCCF Act and regulations. These obligations include compliance with:
- 27.1 the **Lender Responsibility Principles**;<sup>22</sup>
  - 27.2 obligations to provide **initial, continuing, variation, guarantor, transfer, standing and request disclosure** (including compliance with disclosure standards);<sup>23</sup>
  - 27.3 obligations relating to the charging of **interest**;<sup>24</sup>
  - 27.4 obligations not to charge unreasonable **credit or default fees**;<sup>25</sup>
  - 27.5 obligations relating to **high cost consumer contracts** (where applicable);<sup>26</sup>
  - 27.6 obligations relating to **cancellation**;
  - 27.7 obligations relating to **hardship**;<sup>27</sup>
  - 27.8 obligations relating to **credit related insurance**;
  - 27.9 obligations relating to **repossession**;<sup>28</sup> and
  - 27.10 obligations relating to **certification** (where applicable).<sup>29</sup>
- 28 We have not attempted in this guidance to comprehensively describe all of the obligations that lenders must comply with under the CCCF Act and regulations. You can find general information, fact sheets and guidance on our website. We strongly recommend that you obtain legal advice to ensure that you know what the lender has to do to comply with the CCCF Act and what you need to do to meet your due diligence duty.
- 29 You will need to keep up-to-date with any changes to the CCCF Act or regulations.
- 30 You may rely on information from subject matter experts (such as legal advisors) to meet your due diligence duty if it is reasonable to do so. However, to meet the level of care, diligence and skill required of you, you should have enough knowledge about the nature of the credit being provided, the lending tasks and the lender's obligations under the CCCF Act and regulations to ask the right questions of, and to challenge information provided by, the subject matter experts if necessary.

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22. The [Responsible Lending Code](#) provides guidance about how to comply with the Lender Responsibility Principles.

23. For further information please see the [Disclosure Guidelines](#).

24. For further information please see [Interest charges under consumer credit contract: fact sheet](#).

25. For further information please see the [Credit Fee Guidelines](#).

26. For further information please see the [High Cost Consumer Credit Guidelines](#).

27. For further information please see the [Applying for Hardship: fact sheet](#).

28. For further information please see [Repossession Guidelines](#).

29. For further information please see [Fit and proper person certification guidance](#).



## Systems and procedures

- 31 Performing the duty requires you to take reasonable steps to ensure that the lender has procedures or a series of procedures (a **system**) in place for lending tasks to ensure compliance with the CCCF Act and regulations. Systems and procedures can be automated, or they can rely on employees or agents to follow them. In either case, directors and senior managers are expected to:
- 31.1 ensure that each system or procedure is designed to meet the lender's obligations. Directors and senior managers should take steps to ensure that they obtain sufficient quality assurance that the system or procedure will do this, including ensuring that systems and procedures have been appropriately tested before they are used.
  - 31.2 make sure that there is a manager or managers who are responsible and accountable for the development and implementation of the systems and procedures and will report on the implementation and ongoing performance of those systems and procedures. In smaller businesses this may be a senior manager.
  - 31.3 ensure that there is sufficient resource made available to develop and implement the systems and procedures.
  - 31.4 understand the compliance risks associated with those systems and procedures (for example: how credit fees might over-recover closely associated costs) and ensure that the lender has a method of identifying and mitigating those risks (for example: by having a system for regularly reviewing costs and fees).

## Requiring staff to follow systems and procedures

- 32 You will need to take reasonable steps to ensure the lender has procedures in place to clearly and appropriately communicate the systems and procedures within the organisation. This may involve:
- 32.1 ensuring staff and agents are regularly trained in how to use them;
  - 32.2 having procedures accessible in written form (where appropriate); and
  - 32.3 encouraging and incentivising staff to follow them (for example: in job descriptions and through the use of key performance indicators linked to use of procedures).

## Checking use of systems and procedures

- 33 You will need to take reasonable steps to ensure the lender requires regular checks to ensure that procedures are being used appropriately and that the results of those checks, including any remedial steps, are reported to, and considered by, you. This may involve:
- 33.1 ensuring that employees and agents have mechanisms to report issues with systems and procedures;
  - 33.2 requiring use of the procedure to be documented or confirmed by staff in each case;
  - 33.3 requiring regular audits of the use of the procedures and systems; and
  - 33.4 reviewing regular reports about the results of audits, and requiring changes to systems or procedures and further staff training where those reports are not satisfactory.

## Identifying deficiencies in systems and procedures

- 34** Performing the duty of due diligence is an ongoing obligation. It is not enough to merely develop and implement systems and procedures, or to automate those systems and procedures. You will need to take steps to ensure that these work as intended and that they are resulting in compliance. The steps you take to do this may involve:
- 34.1** setting a high level compliance policy and compliance targets ensuring that the lender monitors and reports to you on those targets and investigates where those targets are not met;
  - 34.2** ensuring that the lender has a methodical way of monitoring systems and procedures to be sure that they are being implemented and are working (for example: through regular auditing);
  - 34.3** ensuring the regular review of complaints data in order to identify potential compliance issues; and
  - 34.4** ensuring regular auditing of the systems or procedures against compliance with the Act and regulations.

## Promptly remedying deficiencies discovered

- 35** The duty also requires directors and senior managers to take prompt action where the lender has identified failures within systems and procedures. This may include the director or senior manager:
- 35.1** setting clear requirements for reporting and timeframes for addressing and remediating non-compliance; and ensuring the lender has a procedure in place to ensure that reporting is accurate, timely, and identifies key risks and issues;
  - 35.2** ensuring that, as soon as possible:
    - 35.2.1** where practicable, the lender stops using the deficient system or procedure until it is fixed and ensuring that the lender has another method of compliance in the interim; or
    - 35.2.2** where it is not practicable to stop using the system, the lender identifies impacted borrowers and adopts procedures that minimise and mitigate harm arising from the deficiency.
  - 35.3** ensuring that the lender investigates the root cause of the problem, identifies a solution, tests that solution and implements it; and
  - 35.4** ensuring the lender has a procedure in place to take steps to identify borrowers affected by the deficiency within a reasonable timeframe and, as soon as practicable, to:
    - 35.4.1** remedy the deficiency where possible (for example making corrective disclosure, refunding overpayments); and
    - 35.4.2** remediate or compensate them in accordance with the Act.

## Other reasonable steps

- 36 The duty may require you to take other reasonable steps to ensure that the lender complies with its obligations and duties under the CCCF Act and regulations. What these other steps are will depend on factors such as the nature of the lender's business but could include:
- 36.1 ensuring that the lender has procedures in place that ensure that sales incentives do not encourage non-compliance; and
  - 36.2 that there are procedures in place to ensure that contracts for services and products offered by the lender do not contain terms that are oppressive, or unfair.

## Examples of what the duty requires

- 37 Examples of what the due diligence duty may require are set out in the **Appendix**. Not all lender obligations arising under the CCCF Act are described in the examples. The steps you will need to take in relation to any example will depend, in each case, on your position and responsibilities and the size and nature of the lender's business.



## What happens if directors and senior managers breach their duties and obligations?

- 38 You are personally liable if you breach your due diligence duty.<sup>30</sup>

### Pecuniary penalties

- 39 If you breach your due diligence duty, the court can order you to pay a pecuniary penalty of up to \$200,000.<sup>31</sup>

### Indemnity restrictions

- 40 Body corporates are unable to indemnify you in respect of any pecuniary penalty imposed under the CCCF Act or costs that you incur in defending any civil proceedings in which the pecuniary penalty is imposed. This applies even if you have stopped working for the lender. Any indemnity of this kind is void.<sup>32</sup>

### Insurance restrictions

- 41 Insurance cannot be used to indemnify you in respect of the pecuniary penalty or any costs involved with defending any civil proceedings in which the pecuniary penalty is imposed. Any contracts that claim to offer this protection are void.<sup>33</sup>
- 42 You are not restricted from obtaining insurance to cover the payment of statutory damages.

### Statutory damages or compensation or exemplary damages

- 43 If the court finds that the lender has breached the CCCF Act, that you have breached your duty of due diligence and that borrowers are entitled to recover statutory damages or compensation or exemplary damages from a lender, you may be ordered to pay them too.<sup>34</sup>
- 44 You may be jointly and severally liable with the lender for statutory damages or compensation or exemplary damages which means that either you or the lender must pay.

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30. For information on how the Commission enforces New Zealand's fair trading, competition and credit contract laws, please see our [Enforcement Response Guidelines](#).

31. Section 107A CCCF Act.

32. Section 107D CCCF Act.

33. Section 107E CCCF Act.

34. Section 116A CCCF Act.

## Appendix: Examples of what the due diligence duty may require

The following are examples of what the due diligence duty may require. Not all lender obligations arising under the CCCF Act are described in these examples. The steps you will need to take in relation to any example will depend, in each case, on your position and responsibilities, and the size and nature of the lender's business.

### Responsible lending

You must exercise due diligence to ensure that the lender complies with its duties and obligations under the Lender Responsibility Principles. These in part require a lender to make reasonable inquiries as to whether a loan meets a borrower's requirements and objectives and whether the borrower can make repayments under the loan without suffering substantial hardship.

#### Understanding obligations

You will need to understand the lender's obligations under sections 9C(1) and (2) and (3)(a) of the CCCF Act and under the Credit Contracts and Consumer Finance Regulations 2004. You should also consider the guidance provided by the Responsible Lending Code on these matters.

#### Systems and Procedures

You should ensure that the lender has a procedure or procedures in place so that staff know:

- what inquiries they should make and when;
- what information they should receive;
- when they should verify information and what sort of verification they should get;
- how they should assess affordability and suitability; and
- what records they should keep.

If any part of a procedure is automated, you should ensure that the lender tests the automated system for compliance with the CCCF Act and regulations.



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| <p><b>Requiring staff to follow systems and procedures</b></p>   | <p>You should ensure the lender has methods that require staff to use the procedures. For example:</p> <ul style="list-style-type: none"> <li>→ requiring staff to confirm that they have followed the procedure before each loan application is made; and</li> <li>→ if automated, ensuring that the loan application cannot be progressed without all the relevant information.</li> </ul> <p>You should take steps to ensure that the lender requires staff to keep records of the inquiries they make and how they assess affordability. You should also ensure that the lender has sufficient record keeping procedures in place where the system is automated.</p> <p>You should take reasonable steps to ensure that any sales incentives provided by the lender are structured in such a way so as to ensure that staff are encouraged (rather than discouraged) to use the procedure.</p>  |
| <p><b>Checking use of systems and procedures</b></p>             | <p>The lender should require records to be regularly audited to ensure that staff are following the procedure and you should require reports to be provided to you to help you to fulfil your due diligence duty.</p>   |
| <p><b>Identifying deficiencies in systems and procedures</b></p> | <p>You should ensure that there is a procedure for staff to report issues with gathering information.</p> <p>You should ensure that the lender regularly reviews complaints, defaults and hardship data to help to ascertain whether the procedure has been followed and whether it is sufficient to ensure compliance with the CCCF Act and regulations.</p>   |
| <p><b>Promptly remedying deficiencies discovered</b></p>         | <p>Where you are aware that there is evidence that a procedure has not been followed or is not sufficient to comply with the Lender Responsibility Principles, you should ensure that the lender undertakes a root cause investigation and that you receive the result of that report.</p> <p>Where a deficiency has been discovered you should ensure that there is a procedure in place that requires the lender to stop using the deficient procedure until it has been fixed or that identifies impacted borrowers and adopts procedures that minimise and mitigate harm arising from the deficiency. You should require regular reporting of steps taken.</p> <p>You should ensure that the lender has a procedure to identify solutions to fix the deficiency, that those solutions are tested and implemented, and that a process is in place to identify and mitigate risks arising from a failure to comply with the Lender Responsibility Principles.</p> |

## Initial disclosure

You must undertake due diligence to ensure that the lender has procedures in place to comply with obligations to provide **initial disclosure** (including compliance with disclosure standards).

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| <p><b>Understanding obligations</b></p>                          | <p>You will need to understand the lender’s obligations under sections 17, 32–35 and Schedule 1 of the CCCF Act.</p>   |
| <p><b>Systems and Procedures</b></p>                             | <p>You should ensure that the lender has a procedure in place to ensure that the initial disclosure statement contains all the information required by the Act and meets the disclosure standards. For example, you could ensure that the lender has methods for identifying changes to the disclosure requirements and responding to them.</p> <p>You should also ensure that there is a procedure in place to ensure that the disclosure is provided to the borrower before the contract is entered into.</p>  |
| <p><b>Requiring staff to follow systems and procedures</b></p>   | <p>You should ensure that the lender requires staff to use the disclosure procedure (whether automated or manual). For example, you could do this by requiring that the procedure has built in checks and balances to ensure that the disclosure procedure has been used.</p>  |
| <p><b>Checking use of systems and procedures</b></p>             | <p>You should require regular checks of the performance of the systems that are used to provide initial disclosure. For example, you could require the lender to establish lead and lag measures for the use of the procedure (for example how many loans the lender has entered into and how many disclosure statements have been sent) and ensure that the lender reports to you on those measures regularly.</p>  |
| <p><b>Identifying deficiencies in systems and procedures</b></p> | <p>You should ensure that the lender establishes a regular audit programme to assess whether the disclosure statements produced by the procedure are compliant.</p> <p>You should ensure that the lender has identified any risks associated with the disclosure procedure and taken steps to mitigate those risks.</p>  |
| <p><b>Promptly remedying deficiencies discovered</b></p>         | <p>Where a deficiency with the provision of initial disclosure has been discovered you should ensure that there is a procedure in place that requires the lender to stop using the deficient procedure until it has been fixed. You should require regular reporting of steps taken.</p> <p>You should ensure that the lender undertakes a root cause analysis to identify the cause of the deficiency and that the result of that investigation is reported to you.</p> <p>You should ensure that the lender identifies a solution to the problem, that any risks with the solution are identified and mitigated.</p> <p>You should ensure that, if a deficiency is discovered, there is a procedure in place to promptly provide remedial disclosure to affected borrowers.</p> <p>You should consider whether the lender should remediate affected borrowers.</p> |

