

JUNE 2023

# Guidance for annual returns required to be submitted by lenders



# 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. <sup>1</sup> 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). <sup>2</sup>

## What is the purpose of the annual return?

2. The purpose of requiring an annual return 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, <sup>3</sup> 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 and it must relate to the preceding 12 month period 1 April to 30 March (relevant period). <sup>4</sup>
6. The first annual return, relating to the period 1 April 2023 to 30 March 2024, must be provided to the Commission by 30 June 2024. <sup>5</sup>



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: [http://comcom.govt.nz/\\_data/assets/pdf\\_file/0017/272411/Consumer-credit-contracts-overview-Fact-sheet-November-2021.pdf](http://comcom.govt.nz/_data/assets/pdf_file/0017/272411/Consumer-credit-contracts-overview-Fact-sheet-November-2021.pdf)

4 Regulation 29(2) and (3).

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

## 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));<sup>6</sup>
  - 7.2 the *number* of high-cost related consumer credit contracts entered into (regulation 29(4)(a));<sup>7</sup>
  - 7.3 the *number* of other consumer credit contracts entered into (this includes those contracts which the lender has treated as consumer credit contracts) (regulation 29(4)(b));
  - 7.4 the *number* of material changes to consumer credit contracts (this includes the number of material changes to contracts which the lender has treated as consumer credit contracts (regulation 29(4)(c));<sup>8</sup> and
  - 7.5 for each type of credit contract entered into, or material change to a credit contract, that is described in regulation 29(4)(a) to (c) (regulation 29(4)(d)):
    - 7.5.1 for credit contracts that are not revolving credit contracts,<sup>9</sup> the *total dollar amount* to be advanced (regulation 29(4)(d)(i));
    - 7.5.2 for revolving credit contracts, the *total credit limit* (regulation 29(4)(d)(i));<sup>10</sup> and
    - 7.5.3 the *number* of times that the lender has relied on each of the following exceptions in the Regulations: 4AF(1)(b), 4AG, 4AH(1) and 4AH(3) (regulation 29(4)(d)(ii)).<sup>11</sup>
8. When providing the information required by regulation 29(4)(a) to (d), referred to at paragraphs 7.1 to 7.5 above, lenders are not required to provide:
  - 8.1 information about an identifiable individual;<sup>12</sup>
  - 8.2 information that is neither in its possession or control nor reasonably ascertainable from information that is in its possession or control;<sup>13</sup>
  - 8.3 for the purposes of regulation 29(4)(b) and (c) (referred to at paragraphs 7.3 and 7.4 above), and regulation 29(4)(d) (referred to at paragraph 7.5 above), any breakdown of information relating to consumer credit contracts and those contracts which the lender itself has treated as consumer credit contracts. However, the online form will allow for this breakdown and the Commission encourages lenders to provide it wherever possible as it will enhance the utility of the information provided to the Commission.<sup>14</sup> Additional information about this approach is provided in paragraphs 9 to 14 below;
  - 8.4 any further breakdown by product type beyond the breakdown by type required by the Regulations (“high-cost consumer credit contracts”, “high-cost related consumer credit contracts” and “other consumer credit contracts (including those treated as consumer credit contracts)”). For example, if a lender has multiple consumer credit contract products (e.g. credit cards, home loans, personal loans etc) the lender is not required to provide the information breakdown for each product. However, the online form will allow for information to be provided in product categories.

<sup>6</sup> High-cost consumer credit contract is defined at s 45C of the CCCF Act. See more about high-cost consumer credit contracts here:

[https://comcom.govt.nz/\\_data/assets/pdf\\_file/0017/215027/High-cost-credit-guidelines-September-2021.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0017/215027/High-cost-credit-guidelines-September-2021.pdf)

<sup>7</sup> Related consumer credit contract is defined at s 45E(5) of the CCCF Act

<sup>8</sup> 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.

<sup>9</sup> Revolving credit contract is defined at s 5 of the CCCF Act.

<sup>10</sup> Revolving credit contract is defined at s 5 of the CCCF Act.

<sup>11</sup> Regulation 4AH(3) is the new exception that came into force on 4 May 2023.

<sup>12</sup> Section 116AAA(4)(a).

<sup>13</sup> Section 116AAA(4)(b).

<sup>14</sup> The annual return will be required to be submitted via an online portal – see paragraph 24 below.

## Commission guidance on the annual return requirements

*Consumer credit contracts and contracts treated as consumer credit contracts for the purposes of regulation 29(4)(b), (c) and (d)*

9. Section 11 of the CCCF Act defines those credit contracts that are consumer credit contracts. Even if they do not meet this definition, the CCCF Act also requires that the following contracts must be treated as if they were consumer credit contracts for the purposes of the legislation:
  - 9.1 credit sales under which a mobile trader supplies goods to a natural person as set out in section 16A of the CCCF Act; and
  - 9.2 leases as set out in section 16(1) of the CCCF Act.
  
10. We are also aware that some lenders may treat a credit contract as if it were a consumer credit contract, despite it not being a credit contract as defined by section 11 of the CCCF Act or captured by sections 16A or 16(1) of the CCCF Act. For example, when:
  - 10.1 the lender's lending process categorises a lending product given to non-natural persons, or for business purposes, as a consumer credit contract; and/or
  - 10.2 the lender's processes for a credit product do not distinguish between consumer and non-consumer credit contracts.
  
11. Given the above scenarios, the number that must be submitted in satisfaction of the requirements of regulation 29(4)(b) and (c) (referred to at paragraphs 7.3 and 7.4), must include contracts:
  - 11.1 that meet the definition of a consumer credit contract under section 11 of the CCCF Act;
  - 11.2 treated as consumer credit contracts as a result of falling within sections 16(1) or 16A of the CCCF Act; and
  - 11.3 that the lender itself treats as consumer credit contracts as described in paragraph 10.
  
12. This is also the case for the information required by regulation 29(4)(d) (referred to at paragraph 7.5).
  
13. The Commission encourages lenders to provide the information required by regulation 29(4)(b), (c) and (d) in a way that separates it according to those contracts that:
  - 13.1 are consumer credit contracts in accordance with the CCCF Act (including those that fall within sections 16(1) or 16A of the CCCF Act); and
  - 13.2 lenders have chosen to treat as consumer credit contracts in line with the explanation in paragraph 10 above.



14. The online form will enable lenders to provide separate numbers if it is possible for the lender to do so.

### *Material change reporting*

15. For the purposes of regulation 29(4)(c), (referred to at paragraph 7.4 above), lenders are required to report the number of *material changes* to consumer credit contracts. This includes the number of material changes to contracts which the lender has treated as consumer credit contracts.
16. For the purposes of regulation 29(4)(d), (referred to at paragraph 7.5 above), lenders are required to report the additional advance and/or credit limit added as part of the *material change*.
17. 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 an additional advance that the lender did not take into account when previously satisfying itself of the suitability and affordability for the borrower under section 9C(3)(a).

### *Application of the requirement in regulation 29(4)(d)*

18. Regulation 29(4)(d) (referred to at paragraph 7.5 above) requires information about the advance (or additional advance in the case of a material change) and the credit limit (or the credit limit added to the existing credit limit, in the case of a material change) to be provided in respect of each type of credit contract or material change referred to in regulation 29(4)(a) to (c). Examples of the application of the requirement in regulation 29(4)(d) include:
  - 18.1 If the lender has entered into 100 high-cost consumer credit contracts during the relevant period with each of those loans having advanced \$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.
  - 18.2 If the lender has materially changed 100 high-cost consumer credit contracts during the relevant period, with each of those loans having advanced an additional \$500, the total dollar amount that the lender must report in the annual return for the “materially changed high-cost consumer credit contract” type of loan is \$50,000.
  - 18.3 If the lender has materially changed the credit limit under 100 revolving credit contracts during the relevant period, with each of those credit limits having increased an additional \$500, the total dollar amount that the lender must report in the annual return for the “materially changed total credit limit” is \$50,000.

### *When is the contract entered into?*

19. As with other existing obligations under the CCCF Act, we encourage lenders to consider the dates that contracts are entered into during the relevant period. This is because it can differ depending on the type of lending product. The date of entry into contracts may most easily be determined for reporting purposes by a lender’s systems and/or other regulatory requirements.
20. Lenders should identify the dates of entry into contracts most appropriate for reporting purposes based on their own circumstances, but they should take care to ensure that all contracts fall into one reporting period or another. The online form will provide a free text box where lenders will have the option to provide an explanation or context around the data they have provided, which may include how they have determined the appropriate dates for reporting.

### *Loans split across multiple contracts*

21. 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*

22. 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 in relation to the information required at regulation 29(4)(a), (b) and (d), referred to at paragraphs 7.1 to 7.3, and 7.5 above.
23. 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 in relation to the information required at regulation 29(4)(c), referred to at paragraph 7.4 above.

## **How to provide the annual return**

24. 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 regulation 29(4)(a) to (d), referred to at paragraphs 7.1 to 7.5 above.<sup>15</sup> The information required is quantitative (ie. a number or dollar amount) and no written explanation is required. However, in some places the online form will provide a free text box for lenders to provide comments or explanations if they wish.
25. The Commission will require that the person who is making the submission on behalf of the lender has the appropriate authority to do so.
26. 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?**

27. Every lender that is subject to the obligation to provide an annual return, and fails to do so, commits an infringement offence and is liable on conviction:<sup>16</sup>
  - 27.1 in the case of an individual, to a fine not exceeding \$10,000; and
  - 27.2 in the case of a body corporate, to a fine not exceeding \$30,000.
28. Alternatively, the Commission can issue an infringement notice, requiring lenders to pay an infringement fee of \$1,000 for breaches of the annual return obligations.<sup>17</sup>
29. Whether the Commission chooses to prosecute an infringement offence, or issue an infringement notice, will depend on the circumstances of the case and the Commission's [Enforcement Response Guidelines](#)

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<sup>15</sup> Regulation 29(4)(a)-(d).

<sup>16</sup> Section 102A(7A) of the CCCF Act.

<sup>17</sup> Section 105B of the CCCF Act and regulation 4 of the Credit Contracts and Consumer Finance (Infringement Offences) Regulations 2015.

are applied when making such decisions.

30. 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:<sup>18</sup>
  - 30.1 in the case of an individual, to a fine not exceeding \$200,000; and
  - 30.2 in the case of a body corporate, to a fine not exceeding \$600,000.

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<sup>18</sup> Section 103(6) of the CCCF Act.

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This is a guideline only and reflects the Commission's view. 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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