Things to think about when lending online

The CCCF Act basics

Lenders:

- must comply with the lender responsibility principles (guidance at: Responsible Lending Code)
- must disclose key information about the contract, at the start of the contract, during the life of the contract, if the contract is changed and if the borrower requests it – the information must be clear and accurate
- must comply with rules about repossession
- must disclose any fees and make sure they are reasonable
- must follow the process set out in the CCCF Act if a borrower applies to change the contract on the grounds of unforeseen hardship
- should ensure that the contract is not oppressive and that they do not exercise powers under the contract oppressively.

For more information, see:
www.comcom.govt.nz

Online lending must be responsible lending

It does not matter how a loan is made – whether it is online, in person, on the phone or by text or email, the lender responsibility principles (the Principles) apply.

Lender Responsibility – the Principles and the Code

The Principles are designed to ensure people are protected when they borrow money under a consumer credit contract. The Responsible Lending Code (the Code) elaborates on the Lender Responsibility Principles and provides guidance about what lending responsibly looks like in practice.

All lenders offering consumer credit must comply with the Credit Contracts and Consumer Finance Act 2003 (CCCF Act). The law applies no matter how lenders choose to offer their products.

Achieving compliance in an online environment

If your lending process is carried out entirely online then you are not face to face with your borrower at any point. This means that the processes and documentation you might use to make a lending decision in an online lending environment are likely to be different from those that you would use if you were able to talk to the borrower in person. Before you start lending online we recommend that you consider carefully how you will comply with your CCCF Act obligations. You should design your website and processes to ensure that you are able to comply before you start lending online.

You should pay particular attention to:

→ how you comply with your obligations when you have limited interaction with borrowers

→ what enquiries you make of borrowers online, and whether those enquiries are reasonable to achieve compliance when lending online.

Limited interaction with the borrower

Lending online generally means you have less interaction with the borrower. We recommend you take extra care in designing your website and online processes so you may identify if the borrower:

→ is vulnerable

→ fully understands what information they need to give you about their financial situation

→ is able to repay without substantial hardship

→ is under significant pressure from others

→ is able to understand what terms you are offering and the repayment commitments, and what may happen if they fail to meet their commitments.

When borrowers may be vulnerable, lenders need to make more extensive enquiries as to their income, expenses and likelihood of repayment without substantial hardship. Vulnerable borrowers are likely to need more help to fully understand the loan agreement, in particular what may happen if they fail to meet their repayments. It is important that your application process gives you enough information to identify vulnerable borrowers and that you are able to respond to their needs.

Making reasonable enquiries

An online process can enable you to obtain information and make decisions on applications faster but an online application process should be sufficiently robust to meet your obligations to:

→ properly assess affordability

→ understand the borrower's current financial commitments

→ ensure the loan is suitable

→ identify a potentially vulnerable borrower.

You need to get enough information to be aware of the borrower's circumstances for example, whether they have unreliable or irregular income or unusual financial commitments such as medical expenses. The less contact that you have with the borrower, the more steps (or questions) you may need to build into your process to ensure that you have the right information to reach a responsible decision.

Online application systems must be robust enough to identify information or discrepancies that could signal the need for you to obtain additional information from the borrower. For example, have you designed your online system to alert you to information suggesting that:

→ the borrower is underage or of advanced age

→ the borrower is under significant pressure to obtain the loan

→ the borrower is seriously unwell or of diminished mental capacity

→ the borrower has limited understanding of the English language

→ the borrower does not understand the full implications of what they are agreeing to

→ (if you are lending to a repeat borrower) the borrower's circumstances have changed and information you have obtained from them previously is no longer reliable.

Factors that may contribute to irresponsible lending in an online environment include:

→ automated processes that do not accommodate a range of borrower profiles, making assumptions about the borrower's ability to repay

→ systems that capture limited information about the borrowers' circumstances or expenditure

→ systems that rely solely on statistical data for calculating the borrower's income and/or expenses without also obtaining information that would allow you to assess whether it is reasonable to use that data (for example, using statistical information about the expenditure of a single adult when the borrower has dependents)

→ promoting or advertising loans via email or text to existing borrowers without checking whether they are meeting their existing obligations

→ offering fast, automatic loans that do not allow you to be satisfied about the borrowers' ability to pay.

Tips for lending online

→ Ensure that the information you provide can be easily understood:

- use plain English and avoid jargon where possible

- consider whether your target audience would benefit from key information and terms and conditions in languages other than English

- think about having a video to explain key information and your application and lending process to those who are more comfortable with visual or audio communication.

→ Make sure your online processes collect sufficient information for you to make reasonable enquiries and inform your assessment of the borrower's circumstances:

- consider what information the borrower needs to provide in support of the application such as personal identification, confirmation and details of employment, copies of recent bank statements, information about expenditure and income and why the borrower wants the loan

- avoid using tick boxes because they prevent you from collecting tailored information

- have sufficient free-text boxes and options for borrowers to declare all expenses, to help you to get a complete picture of their financial situation, or to tell you in their own words why they want the loan rather than having a list of answers to select from.

→ Consider whether there is anything in the way borrowers answer your questions that might indicate they have not understood what they are agreeing to or may be vulnerable.

→ Make sure there is an opportunity for borrowers to speak to someone if they need to, and reflect on whether there is anything in their application that should prompt you to speak to them.

→ If you are using a pre-made template for your website or an off-the-shelf product that provides online access to your loans for borrowers, then we recommend that you independently consider whether it meets the needs of your business and contains all the features required to comply with your responsible lending obligations and other legal obligations arising under the CCCF Act. Ultimately, compliance with consumer credit laws is your responsibility as a lender.

COMMERCE COMMISSION NEW ZEALAND
Te Komihana Tauhokohoko