

SEPTEMBER 2021

High-cost credit Guidelines



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Purpose of Guidelines

- 1 High-cost lending to consumers is now subject to specific restrictions that do not apply to other forms of lending.
- 2 The key restrictions on high-cost lending are:
 - 2.1 Interest and fees charged on a high-cost loan are capped at 100% of the amount first advanced;
 - 2.2 The rate of charge (excluding default fees) on a high-cost loan is capped at 0.8% per day;
 - 2.3 Lenders are restricted from making high-cost loans to some repeat borrowers; and
 - 2.4 Lenders have extra disclosure obligations.
- 3 These guidelines explain these key restrictions. The specific rules are set out in the Credit Contracts and Consumer Finance Act 2003 (the **Act**)¹ and the Credit Consumer and Consumer Finance Regulations 2004 (the **Regulations**). These rules are complex, and lenders are encouraged to take legal advice to ensure that they operate within the restrictions.
- 4 We have published separate guidance on the standard lender obligations in the Act; lenders are also encouraged to use these resources.²
- 5 These guidelines are not exhaustive and are not intended to be legally binding. We intend to revise the guidelines from time to time based on our experience, legislative or case-law changes, and changes in our organisational objectives and priorities.

Overview

- 6 These guidelines cover:
 - 6.1 when the high-cost lending rules apply;
 - 6.2 what a high-cost loan is;
 - 6.3 who you can lend to;
 - 6.4 limits on what you can charge on a high-cost loan;
 - 6.5 the ban on avoiding the rules;
 - 6.6 the extra disclosure obligations; and
 - 6.7 an outline of other rules that will apply to high-cost lending from 1 December 2021.

1. Unless otherwise stated, all section references in this guideline are to the Act as amended by the Credit Contracts Legislation Amendment Act 2019 (**CCLA**).

2. <https://comcom.govt.nz/business/your-responsibilities-if-you-provide-credit>

When do the high-cost lending rules apply?

- 7 The high-cost lending rules apply to every consumer credit contract (**consumer loan**) that is a high-cost consumer credit contract. We will call these loans **high-cost loans**.
- 8 A loan is a **consumer loan** if:
 - 8.1 the borrower is a natural person (not a business, trust, incorporated society or other organisation);
 - 8.2 interest and/or credit fees are payable under the loan, or a security interest may be taken under it; and
 - 8.3 the credit is used, or is intended to be used, wholly or predominantly for personal, domestic or household purposes.
- 9 A consumer loan is deemed to be a **high-cost loan** if the annual interest rate, the weighted annual interest rate or the combined interest and default rates are over 50%. So, it will be a high-cost loan where:
 - 9.1 **The annual interest rate** is 50% or more per annum at the beginning of the loan:

Example 1

Great Loans enters into a consumer credit contract with Colin, which Colin has agreed to repay within 10 weeks. The contract states that the annual interest rate is 50%. The contract is a high-cost loan because the contract provides for an annual interest rate of 50% or higher.

- 9.2 The **weighted average annual interest rate is likely to be 50% or more**: specifically, the weighted average annual interest rate applied to the unpaid balance of the loan is, or is likely to be, 50% or more on any day during the term of the loan.³ If more than one interest rate applies to the loan balance, you must calculate the weighted average annual interest rate. You also need to calculate the weighted average annual interest rate if the interest rate changes over the life of the loan. Note that the weighted average annual interest rate could be more than 50% even if each individual interest rate is under 50%.
- 9.3 **The combined annual interest rate and default interest rate are likely to be 50% or more**: that is, if the contract allows the lender to recover default interest as well as annual interest on any part of the unpaid balance, the loan is a high-cost loan where the combined interest charges payable are, or are likely to be, 50% or more.

Example 2

A lender's normal annual interest rate is 40%, and an additional default interest charge of 20% pa is applied to the part of the unpaid balance that is in default. The annual interest rate and any default interest charge rate are together 60% pa on the part of the unpaid balance in default. The contract is therefore a high-cost loan.

3. See definition and examples in **Attachment 1**.

Restricted loans to repeat borrowers

- 10 There are restrictions on providing high-cost loans to specific borrowers. From 1 June 2020 you cannot lend to a borrower who already has, or has recently had, high-cost loans. We will call these borrowers **repeat borrowers**.
- 11 It is a breach of the Act to provide high-cost loans to repeat borrowers in contravention of the rules.
- 12 A repeat borrower is someone who:
 - 12.1 **Already owes money** on a high-cost loan with another lender.⁴

Example 3

Rob contacts HC Loans to obtain a high-cost loan. Rob provides documents that shows he has another unpaid high-cost loan with Quick Loans. HC Loans cannot lend to Rob because he currently owes money to another lender on a high-cost loan.

- 12.2 **Owed money on a high-cost loan to another lender within the last 15 days.**⁵

Example 4

Rob contacts HC Loans on 15 May to obtain a high-cost loan. Rob provides documents that show that he paid off a high-cost loan with Quick Loans on 1 May. HC Loans cannot lend to Rob because he has owed money to another lender within the last 15 days.

Quick Loans can lend to Rob on the 16th of May providing it is satisfied that Rob has not obtained another high-cost loan in the meantime.

- 12.3 **Has entered into two or more high-cost loans in the last 90 days.**⁶
- 13 When applying these restrictions (or working out if they apply), you must count every day (not just working days). Do not count the day on which the borrower makes the application.⁷
- 14 Although these restrictions apply from 1 June 2020, they apply to situations where repeat borrowers took out high-cost loans before then.⁸



4. Section 45F(1)(a) of the Act inserted by section 25 CCLAA.
5. Section 45F(1)(b) of the Act inserted by section 25 CCLAA.
6. Section 45G(1) of the Act inserted by section 25 CCLAA.
7. Section 35 Interpretation Act 1999.
8. Schedule 1AA 9(3) and (4) of the Act inserted by Schedule 1 CCLAA.

- 15 So, for loans entered into on 1 June 2020 you will need to take into account loans the borrower has entered into from 3 March 2020 (being 90 days before 1 June). You will need to make enquiries about whether or not they were high-cost loans and whether they have been repaid.

Example 5

Rob contacts HC Loans to obtain a high-cost loan on 1 June 2020. Rob provides documents that shows he had another high-cost loan with Quick Loans on 3 March 2020 and another on 1 April 2020. HC Loans cannot lend to Rob because he has had two or more high-cost loans in the last 90 days.

The reasonable enquiries defence

- 16 While it is a breach of the Act to lend to repeat borrowers in contravention of these restrictions, the lender will have a defence if they can show that they made reasonable enquiries into the borrower's circumstances, and had reasonable grounds to think that the borrower was not a repeat borrower.⁹
- 17 The lender's defence exists where all of the following criteria are met:
- 17.1 before the loan was entered into the lender **made reasonable enquiries**, to be satisfied:
 - 17.1.1 the loan was likely to meet the borrower's requirements and objectives; and
 - 17.1.2 the borrower could afford to make payments on the loan without suffering substantial hardship; and
 - 17.2 when the loan was entered into, the lender had **reasonable grounds to believe** that the borrower did not have, and had not had, a high-cost loan within the relevant timeframes.¹⁰
- 18 In our view, for a lender to have reasonable grounds to believe the borrower is not a repeat borrower the lender must have taken steps, before the loan was entered into, to check:
- 18.1 whether the borrower has or recently had other loans;
 - 18.2 what the interest rates are or were on those other loans (see guidance at [9] above for how to work out whether a loan is a high-cost loan);
 - 18.3 when they entered into those loans; and
 - 18.4 whether the loans have been repaid.

9. Section 45F(2)(a) and 45G(2)(a) of the Act inserted by section 25 CCLAA.

10. Section 45F(2)(b) and 45G(2)(b) of the Act inserted by section 25 CCLAA.

- 19 Note that the reasonable enquiries referred to at [17.1] above are enquiries that lenders are already obligated to make under the **Lender Responsibility Principles**.¹¹

Example 6

Rob contacts HC Loans to obtain a high-cost loan. HC Loans asks Rob for information about his income and expenses and obtains bank statements covering the previous 90 days. HC Loans asks Rob whether he has any other high-cost loans. Rob says he doesn't. The bank statements show payments to three other high-cost lenders. HC Loans lends to Rob without obtaining information about those loans.

If the earlier loans are high-cost loans, HC Loans will have breached the high-cost lending restrictions because Rob has had 2 or more high-cost loans in the last 90 days. Because information showing Rob's other loans was in his bank statements, HC Loans did not have reasonable grounds to think it could loan to him. HC Loans could be liable to pay penalties of up to \$600,000 and statutory damages to Rob.

Example 7

Rob contacts HC Loans on 30 May to obtain a high-cost loan. HC Loans discovers through Rob's bank statements that he has made a payment to Quick Loans. Quick Loans sends through a statement confirming that the loan is a high-cost loan and showing that Rob paid off the loan on 10 May.

HC Loans is not prohibited from lending to Rob, because he has had only one other high-cost loan in the last 90 days and it was paid off more than 15 days ago. But HC Loans must in any event be satisfied, having made enquiries, that the loan meets Rob's requirements and objectives and that Rob can make payments on the loan without suffering substantial hardship.

Example 8

As above, Rob contacts HC Loans on 30 May in order to obtain a high-cost loan. HC Loans discovers through Rob's bank statements that he has made payments to Fast Loans. Rob also says that he has recently had a loan with Quick Loans. Quick Loans sends through a statement confirming that its loan to Rob was a high-cost loan and showing that Rob entered into its loan on 25 February and paid it off on 30 March. Fast Loans sends through a statement confirming that its loan was a high-cost loan and showing that Rob entered into that loan on 2 March and paid it off on 2 April. HC Loans is not prohibited from lending to Rob because he has only had one other high-cost loan in the last 90 days (Fast Loans) and it was paid off more than 15 days ago.

HC Loans must in any event still be satisfied, having undertaken reasonable enquiries, that the loan meets Rob's requirements and objectives and that Rob can make payments on the loan without suffering substantial hardship.

11. S9C(3)(a). For guidance about how to comply with these obligations please see the Responsible Lending Code (Revised June 2017) issued by the Minister of Commerce and Consumer Affairs under s 9G of the Act. <https://www.consumerprotection.govt.nz/assets/uploads/responsible-lending-code-june-2017.pdf>

Practical tips for compliant lending

- 20 To comply with the restrictions on lending to repeat borrowers, and to avoid the consequences of breach, you should, before you lend, at least take the steps described at [18] above to find out whether a borrower has or previously had a high-cost loan.
- 21 Your enquiries should include:
 - 21.1 asking the borrower about any other names they use;
 - 21.2 checking your own loan record systems and those of any associated lender;
 - 21.3 checking the borrower's bank statements for the last 90 days and identifying any payments to other lenders; and
 - 21.4 obtaining confirmation to help you ascertain whether any other loans were high-cost; when they were entered into; and if there are any outstanding balances on the loans. You will need to obtain a privacy waiver from the borrower to enable you to get confirmation directly from other lenders; or you will need the borrower to supply the required confirmation, if they can assemble proof of those loan accounts. It will be reasonable to rely on what another lender tells you about whether a loan is high-cost, provided you have no reason to doubt what you are told by them.
- 22 Practically, we recommend a precautionary approach: if, after taking these steps, you are in any doubt about whether you can lawfully lend to a borrower, do not do so.

Example 9

As in Examples 6, 7 and 8 above, but neither Rob nor Quick Loans provides information that would enable HC Loans to assess whether the loan is a high-cost loan, because Rob has declined to provide a Privacy Act waiver to enable HC Loans to obtain that information.

HC Loans should not enter into a high-cost loan with Rob, as it does not have reasonable grounds to think that Rob did not have a high-cost loan within the relevant timeframes.

- 23 A flow chart that will help you to work through the restrictions is at **Attachment 2**.

Consequences of breach

- 24 If you breach these provisions you could be liable for substantial penalties: up to \$600,000 (companies) and \$200,000 (individuals).¹²
- 25 In addition, the Court could order you to pay the repeat borrower statutory damages which represent the amount of interest, credit fees and default fees that have become payable on the loan.¹³

12. Subpart 5A of Part 4 of the Act, inserted by s43 CCLAA.

13. Section 89 of the Act, amended by s31 CCLAA.

Interest and charge caps

- 26 In addition to restricting who a high-cost loan may be provided to, the high-cost lending rules also restrict (**cap**) the amounts that the lender can charge.¹⁴
- 27 There are two main caps:
- 27.1 from 1 May the total amount of interest and fees that can be charged on a high-cost loan (and any related loans) are capped at 100% of the amount first advanced (**interest and fees cap**); and
 - 27.2 from 1 June the rate of charge (excluding default fees) payable on a high-cost loan (and any related loans) is capped at 0.8% per day (**daily rate of charge cap**). The daily rate of charge is the amount a high-cost lender charges daily for providing credit, expressed as a percentage of the loan's unpaid balance and is explained in more detail at [43] to [54] below.
- 28 You need to comply with both caps. It is possible for a contract to exceed the daily rate of charge cap but to be under the interest and fees cap. You should think of them as separate limits, and each high-cost loan must comply with both.

Example 10

A loan of \$500 is made at 500% annual interest rate; an establishment fee of \$20 is charged. The loan has a term of 4 weeks.

The loan will have a daily rate of charge of 1.60% (which is over the daily rate of cap) but the interest and fees charged under the contract will be \$150.35 (which is under the \$500 interest and fee cap). The lender will be in breach of the Act, by exceeding the daily rate of charge cap.

- 29 There are also two associated restrictions:
- 29.1 a **ban on compound interest**; and
 - 29.2 a rebuttable **presumption that default fees over \$30 are unreasonable**.



14. Section 45E and 45F of the Act inserted by section 25 CCLAA.

Interest and fees cap

- 30 This restriction applies from 1 May 2020 and provides that the **maximum costs of borrowing** that can be provided for or recovered under a high-cost loan and all related loans are not more than 100% of the amount of the **first advance**.

What are costs of borrowing?

- 31 Costs of borrowing are in this context the total amounts that a borrower is liable to pay under a high-cost loan and all related loans (not including repayments of principal). The costs of borrowing include all:
- 31.1 interest charges (including default interest);
 - 31.2 credit fees;
 - 31.3 default fees;
 - 31.4 charges for an optional service; and
 - 31.5 fees or charges passed on by the lender (third-party fees, other than default fees).¹⁵
- 32 This means that lenders should, in advance of entering into a high-cost loan, calculate all amounts that are, or may be, payable under the loan, and any related loan, to ensure that the maximum costs of borrowing are not exceeded. In addition, lenders will need to manage any change to the contract (for example extra fees, changes in amount of payments) to ensure that these changes do not cause the maximum cost of borrowing to be exceeded.
- 33 An explanation of these terms is set out in the **Glossary** at page 18 of this document.

What is a “related” consumer credit contract?

- 34 The interest and fees cap applies to a high-cost loan, subsequent loan and any **related loan**.
- 35 A loan is related to an original loan **A**, where:
- 35.1 the borrower is the same person as the borrower under loan A; **and**
 - 35.2 the lender is the same person as, or an associated person¹⁶ of, the lender under loan A; **and**
 - 35.3 the loans (including loan A) are entered into during a period—
 - 35.3.1 that begins with a high-cost loan being entered into; **and**
 - 35.3.2 that ends with the expiry of 15 continuous days during which there was no unpaid balance on any of loans entered into since the start of the period.
- 36 A related loan does not have to be a high-cost loan.

15. Section 45E(5) of the Act inserted by section 25 CCLAA.

16. Associated person is defined at section 8A of the Act.

What is the “first advance”?

- 37 The **first advance** is an important concept within the high-cost lending rules because the maximum costs of borrowing that the lender can recover must not exceed the amount of the first advance.
- 38 Where there are no related loans, the first advance is the amount paid to the borrower (excluding any fees or charges) when the borrower first drew down the high-cost loan. This will often, but not always, be the principal that the borrower sought to borrow.

Example 11

Sylvia borrowed \$100 from HC Loans under a high-cost loan. On the day she drew down the loan, Sylvia received \$100, and an additional \$25 was charged to her loan for establishment and third-party fees.

The first advance under Sylvia’s loan is \$100 and the maximum costs of borrowing that HC Loans can recover is \$100 – even if Sylvia should go into default. The establishment fee of \$25 is included within the costs of borrowing, so for the balance of the loan Sylvia cannot be required to pay more than \$75 in costs of borrowing.

Example 12

Tyrone entered into a revolving high-cost loan with HC Loans, under which Tyrone could draw down any amount up to \$250. On the day he first drew down on the loan, Tyrone received \$100. Although he made subsequent drawdowns up to the agreed maximum \$250, the first advance under Tyrone’s loan was \$100 and the maximum costs of borrowing that HC Loans can recover over the life of the loan is \$100.

- 39 Where there are related loans, the first advance is the amount paid to the borrower (excluding any fees or charges) when the borrower first drew down on the earliest high-cost loan in the series.

Example 13

As above in Example 11, Sylvia borrowed \$125 from HC Loans under a high-cost loan (Loan A). On the day she drew down on Loan A, Sylvia received \$100 (the first advance), and \$25 was charged for fees.

Sylvia repays Loan A within one week including the \$25 fee, but five days later enters into a new loan (Loan B) under which she borrows \$250. Because the Loan B contract was entered into within 15 days of the expiry of a previous high-cost loan, it is a related loan.

The maximum costs of borrowing recoverable by HC Loans under Loan B is \$75: that is the amount of the first advance under Loan A (\$100) less what Sylvia has already paid in costs of borrowing (the \$25 in fees that she paid under Loan A).

- 40 The Act also provides the following example:¹⁷

Example 14

On 2 February, Ms D borrows \$100 from a lender (C) under a consumer credit contract that has an annual interest rate of 500% pa and a term of 6 weeks. The maximum costs of borrowing that Ms D will have to pay under that contract and any contract that replaces that contract is \$100.

On 2 March, Ms D has paid \$92, consisting of \$32 in interest and fees and \$60 of principal. Her unpaid balance is \$40.

Ms D refinances by entering into a further high-cost consumer credit contract with C to repay the remaining \$40, and will receive a further advance of \$50, ie, \$90 in total. The first advance of \$100 caps the maximum costs of borrowing. The maximum costs of borrowing that Ms D will have to pay under the new contract is $\$100 - \$32 = \$68$ (ie, the amount in interest and fees charged on the first contract (\$32) is subtracted from the first advance of \$100 to give a remaining cap of \$68).

C is not entitled to receive more than \$68. If Ms D does pay \$120 (instead of \$68), C must refund \$52 to Ms D, or give Ms D a credit for \$52 against other money owing (see section 48). In addition, C is liable in other ways, for example, to a pecuniary penalty, statutory damages, and other court orders.

Loans entered into before 1 May 2020

- 41 You will need to consider loans entered into **before** 1 May 2020 when you are working out the first advance and whether a loan is a related loan.¹⁸

Example 15

Ms D borrows \$100 from HC Loans but 1 week before 1 May 2020 – when the high cost lending rules start. Section 45E does not limit the amount that can be recovered under that contract.

If Ms D enters into a high cost loan on 1 May, the first advance of \$100 in the pre-commencement contract caps the maximum costs of borrowing under the new contract. The maximum costs of borrowing that Ms D will have to pay under the new contract is \$100 – less the total amount of fees or interest she has paid on the first loan.

Application of interest and fee caps to pre 1 May contracts

- 42 The interest and fees cap can also apply to loans that you entered into before 1 May 2020 if you agree this with the borrower. You will need to provide variation disclosure to the borrower if you decide that the cap on total interest and fees will apply.

17. At section 45E of the Act inserted by section 24 CCLAA.

18. Schedule 1AA 9(2) of the Act inserted by Schedule 1 CCLAA.

The daily rate of charge cap

- 43 From 1 June 2020 the high-cost lending rules also restrict the **maximum daily rate of charge** that can be provided for or recovered under a high-cost loan.¹⁹
- 44 The **daily rate of charge** is the amount a high-cost lender charges daily for providing credit, expressed as a percentage of the loan's unpaid balance.

The maximum daily rate of charge

- 45 Under the high-cost lending rules, the maximum daily rate of charge that can be provided for or recovered under a high-cost loan is 0.8% per day; lenders cannot impose a rate of charge that exceeds 0.8% on any day over the life of the loan (unless that maximum rate is exceeded only because of a part or full prepayment of the loan).²⁰
- 46 The daily rate of charge cap is therefore 0.8% (292% expressed as an annualised percentage).
- 47 A high-cost loan with weekly repayments and no costs of borrowing other than interest will only exceed the 0.8% daily rate of charge cap if its annual interest rate is 292% or higher.
- 48 This rule means that you must:
- 48.1 calculate the rate of charge for each high-cost loan; and
 - 48.2 ensure that it does not exceed the maximum daily rate of charge on any day over the term of loan.

How to calculate the daily rate of charge

- 49 The formula for calculating the rate of charge for a loan is set out in 6B of the Credit Contracts and Consumer Finance Regulations 2004 (as amended by the CCLAA) and is at **Attachment 3** of these guidelines.
- 50 **Step one** is to calculate the costs of borrowing.²¹
- 51 The costs of borrowing you need to consider when calculating the rate of charge cap are:
- credit fees;
 - interest charges;
 - charges for optional services; and
 - fees or charges passed on by the creditor.

19. Section 45H(1) and (2).

20. Section 45H(6).

21. Defined in section 45H.

- 52 **Please note** that the costs of borrowing used for calculating the daily rate of charge are different from the costs of borrowing used to calculate the total cap on interest and fees: the former excludes any default fees that may be payable under the loan.

Example 16

Phillip enters into a loan with HC Loans, under which he borrows \$1,000 to be repaid in four equal weekly repayments. The loan has an interest rate of 200% per annum and an establishment fee of \$20. The costs of borrowing total \$119.65 (\$99.65 interest payable over the 4-week loan duration + \$20 establishment fee). The daily rate of charge is 0.66%, which is under the 0.8% daily rate of charge cap.

The calculation for the maximum daily rate of charge for Phillip's loan is set out in the Example at **Attachment 4**.

- 53 **Step two** in calculating the daily rate of charge is to then divide the costs of borrowing by the sum of the **unpaid daily credit balances** at the end of each day over the life of the loan.
- 54 The unpaid daily credit balance is the first advance excluding any other charges added to the loan balance, less all repayments of principal received at the end of each day. Any payment applied to the costs of borrowing cannot be included in the calculation of the unpaid daily balance when determining whether the daily charge cap has been complied with.

Ban on compound interest

- 55 A high-cost loan must not provide for, and a lender cannot charge, compound interest.²²
- 56 **Compound interest** is interest calculated on the principal plus accrued interest, and includes interest on any amount of additional credit that has been provided to repay accrued interest. This means that lenders under a high-cost loan may only charge **simple interest**,²³ which is calculated on the principal, or on that portion of the principal that remains outstanding.

Default fees over \$30 are presumed unreasonable

- 57 The fee restrictions in the Act contain a general rule that the default fees provided for and charged under any consumer loan must not be unreasonable.²⁴ For more guidance see the Commission's Credit Fees Guidelines at https://comcom.govt.nz/_data/assets/pdf_file/0024/90078/Consumer-credit-fees-guidelines-June-2017.pdf
- 58 The high-cost lending rules now further restrict default fees under high-cost loans.
- 59 In these rules, a default fee provided for or charged under a high-cost loan is presumed to be unreasonable if it exceeds \$30 on its own or in combination with other default fees charged under the contract or any related loan.²⁵
- 60 To displace the presumption of unreasonableness, the lender must prove²⁶ that the fee is reasonable. To do so, the lender must prove each of the things in section 44A of the Act, including that it was necessary to take the action that incurred the cost to which the fee relates (for example, referring a default to a debt collection agency).²⁷

22. Section 45I(1) and (2) inserted by section 25 CCLAA.

23. Section 45I(4) inserted by section 25 CCLAA.

24. Sections 41, 41A and 44A.

25. Section 45J(3) and (7) inserted by section 25 CCLAA.

26. Proof to the civil standard (balance of probabilities) is required.

27. Section 45J(4) inserted by section 25 CCLAA.

Consequences of breaching caps

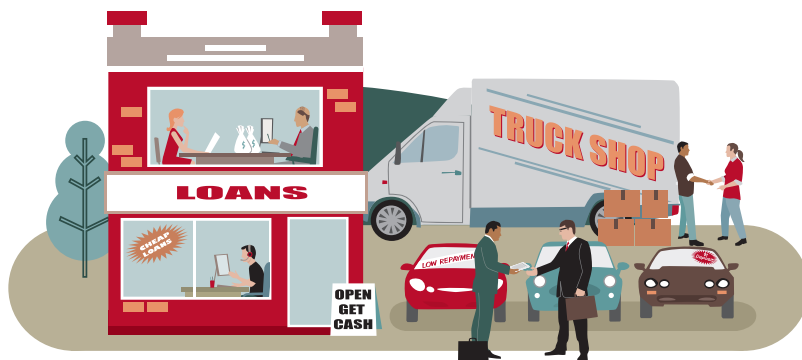
- 61 If you breach one of the cap restrictions (the interest and fees cap, the daily rate of charge cap, the ban on compound interest or the \$30 cap on default fees) the Court may impose penalties of up to \$600,000 (companies) and \$200,000 (individuals).²⁸ In addition you may also be required to refund any payment made by the borrower, and or pay damages to the borrower.²⁹
- 62 If you do, for some reason, charge in excess of the caps, you must refund or credit the borrower as soon as practicable.³⁰

Ban on avoidance of the restrictions

- 63 The high-cost lending rules prohibit lenders entering into any scheme (an avoidance scheme) that has the purposes of defeating, evading or circumventing the high-cost lending rules.³¹
- 64 An **avoidance scheme** is any contract, arrangement, or other act (singly or in combination) that has the effect of, in any way, directly or indirectly:
 - 64.1 resulting in a transaction that is in substance or economic effect a high-cost loan or related loan being instead a transaction to which the high-cost lending rules do not apply; or
 - 64.2 otherwise avoiding the application of the high-cost lending rules.³²

Consequences of breach

- 65 The same penalties as at [61] above apply to those who use an avoidance scheme.



28. Subpart 5A of Part 4 of the Act, inserted by s43 CCLAA.

29. Section 94 of the Act as amended by s34 CCLAA.

30. Section 48 of the Act.

31. Section 45K(1) inserted by section 25 CCLAA.

32. Section 45K(2) inserted by section 25 of the CCLAA.

Additional disclosure requirements for high-cost loans

Initial disclosure

- 66 From 1 May 2020 lenders will need to update the initial disclosure provided to borrowers before they enter into a high-cost loan. The initial disclosure must include the information set out in Schedule 1 of the Act – but for high-cost loans that information must additionally include:
- 66.1 A statement that the contract is a high-cost loan contract.³³
 - 66.2 A statement of the effect of the cap of the total interest and fees payable under the contract, which must include the maximum costs of borrowing, how the costs are calculated, and the total amount that is recoverable. The Act gives this example.³⁴

Example 17

On 1 February 2023, Ms D borrows \$100 from a HC Lender. By 1 March 2023, Ms D has paid \$32 in interest and fees and \$60 of the principal. Ms D refinances by entering into a further high-cost consumer credit contract with C to repay the remaining \$40, and will receive a further advance of \$160, ie, \$200 in total. C includes the following in the initial disclosure statement:

“The maximum costs of borrowing that you can be charged under this contract is \$68. No other costs of borrowing may be charged or debited to your account.

“The maximum amount is calculated as follows: your first advance under this contract or a related contract – previous interest and fees charged on related contracts.

“Your first advance was \$100 under the contract dated 1 February 2023. Your previous interest and fees were \$32, paid under that contract. The total amount that you can be required to pay under this contract is \$268. This is the \$200 advanced to you plus the \$68 maximum amount.”

- 66.3 A statement that the lender’s dispute resolution scheme will not charge a fee to any complainant to investigate or resolve a complaint, if the loan is a high-cost loan or a related loan.³⁵
- 67 From 1 June 2020 lenders will also need to ensure that initial disclosure contains a statement of the rate of charge under the contract.³⁶

Consequences of breach

- 68 Failing to include any item of this information on the initial disclosure form (partial disclosure breach) is an infringement offence. Lenders can be issued an infringement notice for each disclosure statement that does not contain the required information, or can be fined up to \$30,000 (companies) or \$10,000 (individuals) if the Commission instead charges the lender with an infringement offence in Court.
- 69 In addition, lenders can be liable for statutory damages payable to the borrower or can be required to refund the costs of borrowing under the loan to the borrower.

33. Schedule 1 (na) inserted by section 55 of the CCLAA.

34. Schedule 1 (nb) inserted by section 55 of the CCLAA.

35. Schedule 1 (uaa) inserted by section 55 of the CCLAA.

36. Schedule 1 (nc) inserted by section 55 of the CCLAA.

- 70 For further guidance about how the Commission makes enforcement decisions and what factors are taken into account please see our Enforcement Response Guidelines https://comcom.govt.nz/_data/assets/pdf_file/0030/62589/Enforcement-Response-Guidelines-October-2013.pdf.
- 71 Completely failing to provide initial disclosure (total disclosure breach) is a more serious offence with maximum fines of \$600,000 (companies) and \$200,000 (individuals).

Disclosure of changes

- 72 If you enter into a high-cost loan after 1 May 2020, you will not be able to provide information about changes to the contract by publishing in newspapers, or with a continuing disclosure statement.³⁷

Disclosure of agreed changes

- 73 You will need to disclose agreed changes to a high-cost loan before the change takes effect, even if the variation benefits the borrower, eg by reducing the borrower's obligations, extending the borrower's time for payment, releasing a security interest or changing a credit limit.³⁸
- 74 This is stricter than the general obligation under the Act, which allows lenders to provide variation disclosure in these circumstances within 5 working days of making an agreed variation, or with the next continuing disclosure statement.³⁹

Disclosure after exercise of a power

- 75 You need to disclose to the borrower changes that occur as a result of you exercising a power under a high-cost loan within 5 working days of the change taking effect.⁴⁰ This rule applies even if the change is to an interest rate or fee and even if the change is to the borrower's benefit.
- 76 This is stricter than the general obligation under the Act, which allows lenders to make disclosure by publication (if the change is to an interest rate or fee) and with the next continuing disclosure statement (if the change reduces the borrower's obligations or extends the time for payment).⁴¹

Disclosure of changes to guarantors

- 77 You will need to disclose to every guarantor changes that increase the borrower's obligations or reduce the time for payment, where the change occurs either as a result of you exercising a power or as a result of agreement with the borrower within 5 working days of the change taking effect.⁴² This rule applies even if the change is to an interest rate or fee.
- 78 This is stricter than the general obligation under the Act, which allows lenders to make disclosure by publication if the changes are to an interest rate or fee.⁴³

Consequences of breach

- 79 The same penalties as at [61] above apply to those lenders who fail to make compliant disclosure.⁴⁴

37. Schedule 1AA clause 7 and 11(1).

38. Section 22(5) inserted by section 16(2) of the CCLA Act.

39. Section 22(4).

40. Section 22(8) by section 17(2) of the CCLA Act.

41. Section 23(4) and (6).

42. Section 26(5) inserted by section 18(2) of the CCLAA.

43. Section 26(4).

44. But under s103 of the Act. In addition, Borrowers are not liable for costs of borrowing charged under a loan for breaches of s22.

Changes from 1 December 2021

- 80 There will be more changes to the Act from 1 December 2021. Some of the changes apply to all lenders, but some apply particularly to lenders advertising or entering into high-cost loans. A summary of the changes that apply to all lenders can be found <https://comcom.govt.nz/business/your-responsibilities-if-you-provide-credit/changes-to-credit-laws>.
- 81 Changes that will affect lenders under high-cost loans may include:⁴⁵
- 81.1 Specific rules and restrictions on advertising high-cost loans;
 - 81.2 A restriction on entering into high-cost loans with borrowers who have defaulted on loans in the last 90 days;
 - 81.3 New information that will need to be provided to borrowers when the loan is varied; and
 - 81.4 Requirements to provide information to borrowers about financial mentoring and dispute resolution schemes in certain circumstances.



45. Subject to regulation – see exposure draft regulations <https://www.mbie.govt.nz/dmsdocument/7314-credit-contracts-and-consumer-finance-amendment-regulations-no-2-2020-draft-for-consultation-pdf>.

Glossary

Credit fees

- 1 A **credit fee** is defined as any fee or charge payable by the borrower under a loan, or payable by the borrower to, or for the benefit of, the lender in connection with a loan.⁴⁶ Credit fees include:
 - 1.1 establishment fees;
 - 1.2 prepayment fees (whether for part or full prepayment);
 - 1.3 insurance premiums payable for credit-related insurance if the lender requires the borrower to obtain insurance cover from a particular insurer; and
 - 1.4 fees and charges payable to a third-party, if that third-party is an associated person⁴⁷ of the lender.
- 2 For more guidance, please see the Commission's Credit Fees Guidelines at https://comcom.govt.nz/_data/assets/pdf_file/0024/90078/Consumer-credit-fees-guidelines-June-2017.pdf.

Default fees

- 3 A **default fee** is defined as any fee or charge payable on a breach of a loan by a borrower, or on the enforcement of a loan by a lender.⁴⁸

Interest charges

- 4 An **interest charge** is defined as a charge that accrues over time and is determined by applying a rate to an amount owing under a loan (and includes a default interest charge).⁴⁹

Charges for an optional service

- 5 A **charge for an optional service** is defined as a fee or charge for a service or benefit that the borrower does not have to accept as a condition of entering into the loan.
- 6 These charges are likely to include services that do not relate to the provision of credit, and services that are genuinely additional in that they are not a functionality or use that is integrated into the credit offering. Common examples of optional services include:
 - 6.1 Optional payment protection insurance, where a borrower can choose to insure or not.
 - 6.2 Optional extended warranties, where a borrower can choose to purchase an extended warranty or not.

46. Section 5 of the Act.

47. Section 8A of the Act.

48. Section 5 of the Act.

49. Section 5 of the Act.

6.3 Functionality that the borrower applies to add on to a credit product.

Example 18

Hinerau borrows money to buy a car. She elects to purchase optional payment protection insurance and an extended mechanical warranty, the costs of which are added to the outstanding balance and charged as fees. The insurance and warranty are optional services. Hinerau has chosen to purchase them but could have entered into the loan without doing so.

- 7 A service or benefit that forms part of the loan offering and is not genuinely separate from the loan offering is not an optional service – even if the borrower is free to choose whether or not to utilise the service.

Example 19

Hinerau borrows money to buy a car. She elects to purchase optional payment protection insurance and an extended mechanical warranty, the costs of which are added to the outstanding balance and charged as fees. The insurance and warranty are optional services. Hinerau has chosen to purchase them but could have entered into the loan without doing so.

Fees or other charges passed on by the lender

- 8 A lender is entitled to recover **a fee or charge for an amount payable to a third-party**, or to reimburse an amount paid by the lender to a third-party.⁵⁰ A common example is a broker's fee.
- 9 However, for the purposes of the high-cost lending rules, any such fee or charge payable under a high-cost loan is included in the calculation of the maximum costs of borrowing recoverable under the loan.

50. Section 45 of the Act.

Attachment 1:

Definition of weighted average annual interest rate

For the purposes of the definition of high-cost consumer credit contract, the weighted average annual interest rate must be calculated as follows:⁵¹

$$\text{Weighted average annual interest rate} = \frac{\sum_{n=1}^R [(r_n \times U_n)]}{U}$$

where—

R is the number of annual interest rates applying on a day

r_n is each annual interest rate

U_n is the unpaid balance to which r_n applies

U is the total unpaid balance.

Example 20

Ms C has a credit card that says that the first \$1,000 was charged at an interest rate of 20%, and the rest of the unpaid balance (say, the next \$2,000) was charged at an annual interest rate of 30%.

$$R = 2$$

$$r_1 = 20\%; r_2 = 30\%$$

$$U_1 = \$1,000; U_2 = \$2,000$$

$$U = \$3,000$$

This gives a weighted average annual interest rate that day of 26.7%. The contract is not a high-cost consumer credit contract.

Example 21

An interest rate of 40% applies to the first \$1,000 of the unpaid balance, and another 45% applies to the entire unpaid balance of \$3,000.

$$R = 2$$

$$r_1 = 40\%; r_2 = 45\%$$

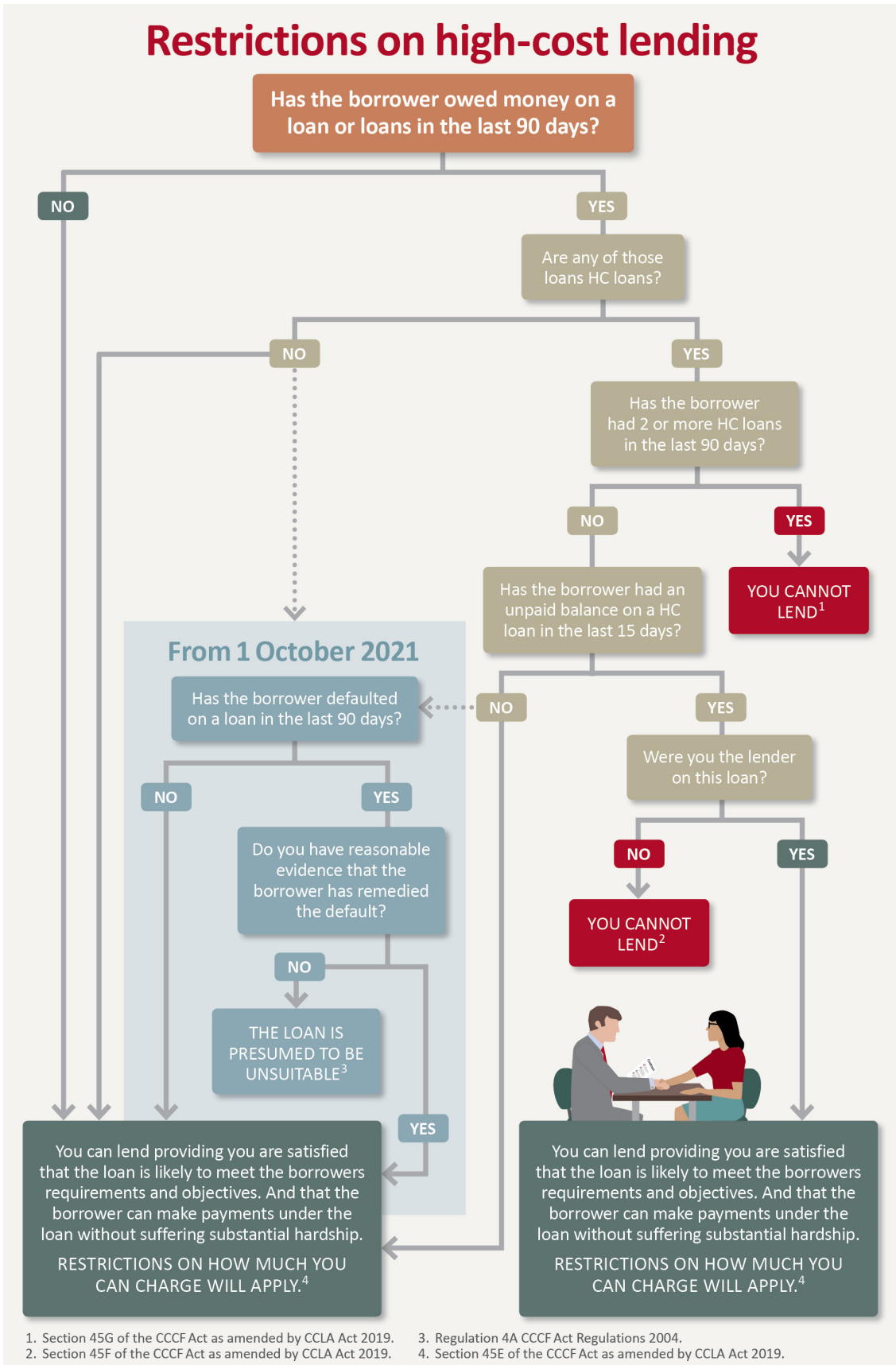
$$U_1 = \$1,000; U_2 = \$3,000$$

$$U = \$3,000$$

This gives a weighted average annual interest rate that day of 58.3% — so it will be a high-cost consumer credit contract, even though each individual annual interest rate is below 50%.

51. Regulation 6 of the Regulations inserted by section 69 CCLAA.

Attachment 2: Flow Chart



Attachment 3: Calculating the rate of charge

Rate of charge

6B Rate of charge

- (1) For the purposes of section 45H of the Act, the rate of charge must be calculated as follows:

$$r = \left(c \div \sum_{t=0}^T U_t \right) \times 100$$

where—

- c** is the total amount of charges (as defined in section 45H(5) of the Act) that is payable under the contract
- r** is the rate of charge (percent)
- T** is the number of days between the first advance under the contract and the final payment made, or anticipated to be made, under the contract
- t** is day *t*
- U_t** is the unpaid daily balance on that day excluding the amount of the costs of borrowing within the meaning of section 45E of the Act that have accrued under the contract.

Example 22

A contract provides for a \$500 loan with 200% interest pa and a \$20 establishment fee with 4 weekly repayments. The contract provides for total interest and fees of \$70.80 to be charged under the contract. The rate of charge calculation requires that amount to be divided by the sum of the daily balances of credit provided. In this case, that sum is \$9,131.19. So the rate of charge is 0.775%.

- (2) For purposes of the definition of **credit provided** in section 45H(5) of the Act, the amount that must be excluded from the unpaid balance is the amount of the costs of borrowing within the meaning of section 45E of the Act that have accrued under the contract.

Attachment 4: Worked Example

Rate of Charge Calculation for \$1000 loan with annual interest rate of 200% over 4 weeks with \$20 establishment fee (see Example 16)

Week	Day	Principal	Fees	Accrued Fee	Unpaid Balance	Sum of unpaid balance	Interest	Accrued Interest	Total Owed	Payment	
1	1	\$1,000.00	\$20.00	\$20.00	\$1,020.00	\$1,000.00	\$5.59	\$5.59	\$1,025.59		
	2	\$1,000.00		\$20.00	\$1,020.00	\$1,000.00	\$5.59	\$11.18	\$1,031.18		
	3	\$1,000.00		\$20.00	\$1,020.00	\$1,000.00	\$5.59	\$16.77	\$1,036.77		Principal
	4	\$1,000.00		\$20.00	\$1,020.00	\$1,000.00	\$5.59	\$22.36	\$1,042.36		Annual interest rate
	5	\$1,000.00		\$20.00	\$1,020.00	\$1,000.00	\$5.59	\$27.95	\$1,047.95		Establishment Fee
	6	\$1,000.00		\$20.00	\$1,020.00	\$1,000.00	\$5.59	\$33.53	\$1,053.53		Weekly Fee
	7	\$1,000.00	\$-	\$20.00	\$1,020.00	\$1,000.00	\$5.59	\$39.12	\$1,059.12	\$279.91	Payment
2	1	\$779.21		-	\$779.21	\$779.21	\$4.27	\$4.27	\$783.48		End balance
	2	\$779.21		-	\$779.21	\$779.21	\$4.27	\$8.54	\$787.75		Total Costs of Borrowing
	3	\$779.21		-	\$779.21	\$779.21	\$4.27	\$12.81	\$792.02		Sum of daily unpaid balances
	4	\$779.21		-	\$779.21	\$779.21	\$4.27	\$17.08	\$796.29		Rate of Charge
	5	\$779.21		-	\$779.21	\$779.21	\$4.27	\$21.35	\$800.56		
	6	\$779.21		-	\$779.21	\$779.21	\$4.27	\$25.62	\$804.83		
	7	\$779.21	\$-	-	\$779.21	\$779.21	\$4.27	\$29.89	\$809.10	\$279.91	
3	1	\$529.19		-	\$529.19	\$529.19	\$2.90	\$2.90	\$532.09		
	2	\$529.19		-	\$529.19	\$529.19	\$2.90	\$5.80	\$534.99		
	3	\$529.19		-	\$529.19	\$529.19	\$2.90	\$8.70	\$537.89		
	4	\$529.19		-	\$529.19	\$529.19	\$2.90	\$11.60	\$540.79		
	5	\$529.19		-	\$529.19	\$529.19	\$2.90	\$14.50	\$543.69		
	6	\$529.19		-	\$529.19	\$529.19	\$2.90	\$17.40	\$546.58		
	7	\$529.19	\$-	-	\$529.19	\$529.19	\$2.90	\$20.30	\$549.48	\$279.91	
4	1	\$269.57		-	\$269.57	\$269.57	\$1.48	\$1.48	\$271.05		
	2	\$269.57		-	\$269.57	\$269.57	\$1.48	\$2.95	\$272.53		
	3	\$269.57		-	\$269.57	\$269.57	\$1.48	\$4.43	\$274.00		
	4	\$269.57		-	\$269.57	\$269.57	\$1.48	\$5.91	\$275.48		
	5	\$269.57		-	\$269.57	\$269.57	\$1.48	\$7.39	\$276.96		
	6	\$269.57		-	\$269.57	\$269.57	\$1.48	\$8.86	\$278.43		
	7	\$269.57	\$-	-	\$269.57	\$269.57	\$1.48	\$10.34	\$279.91	\$279.91	
		\$18,045.79			\$18,185.79	\$18,045.79	\$99.65		\$-		

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