

The Credit Contracts and Consumer Finance Act

# Initial disclosure under a consumer credit contract



This fact sheet explains what disclosure lenders must provide at the start of a consumer credit contract,<sup>1</sup> and how they must provide it.

Any lender entering into a consumer credit contract with a borrower must give them key information about the terms of the contract at the start of the contract. This is known as initial disclosure.

A lender must also provide initial disclosure to anyone who has agreed to pay back the debt if the borrower doesn't (the guarantor).

## When does a lender have to provide initial disclosure?

A lender must provide initial disclosure before the contract is made.

## What information does a lender have to provide for initial disclosure?

A lender must give the borrower (and any guarantor) a written disclosure statement that includes any of the information in the table overleaf that applies to the contract.

### Disclosure under a consumer credit contract

A lender must provide disclosure:

- at the start of the contract (**initial** disclosure)
- to the borrower and to anyone who is guaranteeing the borrower's obligations under a contract (**guarantee** disclosure).

A lender may also have to provide disclosure to the borrower and any guarantor:

- during the term of the contract (**continuing** disclosure)
- any time the contract is altered (**variation** disclosure)
- if the borrower (or guarantor) asks for it (**request** disclosure).

You can read more about the different types of disclosure at [www.comcom.govt.nz](http://www.comcom.govt.nz)



1. From 1 June 2020 credit sale contracts entered into by mobile traders will also be treated as consumer credit contracts. 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. See section 16A of the CCCF Act.

| Key information   | Additional details   |
|---|--|
| <p><b>Lender's full name and address</b></p>  | <p>The lender must disclose its full name and address. It must also disclose its trading name, if this is different from the legal name it is using in its credit documents.</p>   |
| <p><b>Initial unpaid balance</b><br/>The amount the borrower owes on the day specified in the initial disclosure statement.</p>   | <p>The lender must set out the initial unpaid balance and:</p> <ul style="list-style-type: none"> <li>→ any money already given to the borrower, or the cash price of any goods or services the borrower has already received</li> <li>→ any charges included in the initial unpaid balance, including optional services such as insurance or extended warranties, and/or</li> <li>→ any payments the borrower has already made that are accounted for in the initial unpaid balance, including the agreed price of any trade-ins or deposits.</li> </ul>  |
| <p><b>Any subsequent advances</b><br/>Any money the lender will be lending to the borrower under the contract after the date of the initial disclosure statement.</p>   | <p>The lender must describe each subsequent advance it will make, including the amount and timing of the advance. For a revolving credit contract, where the borrower can draw down money when they choose, the amount and timing of subsequent advances will not be known and cannot be disclosed.</p>  |
| <p><b>Total advances</b><br/>The sum of all advances the lender will make over the course of the contract.</p>  | <p>The lender must calculate the total of all advances that will be made over the course of the contract. For a revolving credit contract, where the borrower can draw down money when they choose, the total of advances made under the contract will not be known and cannot be disclosed.</p>   |
| <p><b>Credit limit of the contract</b><br/>The maximum amount the lender is prepared to loan the borrower over the course of the contract.</p>  | <p>The lender must state the maximum amount it is prepared to lend to the borrower over the course of the contract. This will need to be disclosed for all loans including revolving credit contracts.</p>   |
| <p><b>Annual interest rate</b><br/>The annual interest rate is the rate that interest will be charged, expressed as a percentage rate for the year. An interest charge is a charge that accrues over time and is determined by applying a rate to an amount owing under a contract.</p> | <p>The lender must set out the annual interest rate or rates that apply, as a percentage. If there is more than one rate, the lender must describe how and when each rate will apply.</p> <p>If the rate is fixed for the term of the contract or any part of its term, the lender must set out the period the rate is fixed for.</p> <p>If the annual interest rate is calculated according to a base rate, the lender must describe the base rate including:</p> <ul style="list-style-type: none"> <li>→ where and when it is published, or if its not published, how the borrower can find it</li> <li>→ the margin (if any) that will be applied to the base rate to work out the annual interest rate, and</li> <li>→ the current annual interest rate.</li> </ul> |
| <p><b>Method of charging interest</b><br/>How the lender calculates interest charges.</p>   | <p>The lender must set out how interest is calculated and how often interest will be charged.</p>  |
| <p><b>Total interest charges</b><br/>The sum of all interest charges the borrower must pay over the course of the contract.</p>   | <p>The lender must set out the total amount of interest payable, if known, for contracts due to be repaid within seven years.</p>  |

| Key information  | Additional details  |
|--|---|
| <p><b>Interest-free period</b><br/>A period where, under the terms of the contract, the lender does not charge the borrower interest.</p>  | <p>The lender must give the length of any interest-free period and state when they will start charging interest.</p>  |
| <p><b>Credit fees and charges</b><br/>Any charges the borrower must pay under the contract or to the lender in connection with the contract (other than interest).</p>   | <p>The lender must:</p> <ul style="list-style-type: none"> <li>→ describe any credit fees or charges that apply to the contract, unless they have already been included in the initial unpaid balance</li> <li>→ set out when the borrower must pay the fee or charge (if known), and</li> <li>→ set out either the amount of the fee or charge or how the lender will calculate it.</li> </ul> <p>From 1 May 2020, if the contract is a high-cost consumer credit contract the lender must:</p> <ul style="list-style-type: none"> <li>→ include a statement clearly stating that it is a high-cost consumer credit contract, and</li> <li>→ provide a statement detailing the effect of section 45E, which must include: <ul style="list-style-type: none"> <li>– the maximum costs of borrowing<sup>2</sup></li> <li>– how the costs of borrowing are being calculated, and</li> <li>– the total amount that is recoverable by the lender under the contract.</li> </ul> </li> </ul> <p>From 1 June 2020, the lender must include a statement of the rate of charge relevant to the specific contract.<sup>3</sup></p> |
| <p><b>Payments required</b><br/>What payments the borrower must make under the contract.</p>   | <p>If the borrower is to make more than one payment under the contract, the lender must set out:</p> <ul style="list-style-type: none"> <li>→ the amount of each payment or how the lender will calculate each payment</li> <li>→ when the first payment is due</li> <li>→ how often the borrower must make payments</li> <li>→ how many payments the borrower must make, if known, and</li> <li>→ the total amount of all payments over the course of the contract, if known, for contracts due to be repaid within seven years.</li> </ul>  |
| <p><b>Any full prepayment charge</b><br/>A charge payable by the borrower to the lender to cover a reasonable estimate of the lender's loss for a fixed rate contract if the borrower repays their debt early.</p> | <p>If the contract allows a full prepayment charge, the lender must describe how it will calculate it. The lender should state whether it will use the "safe harbour" method provided in applicable regulations.<sup>4</sup></p>  |

2. See Schedule 1, paragraph (nb) for an example.

3. See Schedule 1, paragraph (nc): the rate of charge should be calculated in accordance with section 45H and the relevant regulations. For further information please refer to the high cost credit guidelines available at <https://comcom.govt.nz/business/your-responsibilities-if-you-provide-credit/high-cost-loans>.

4. Credit Contracts and Consumer Finance Regulations 2004, regulations 8-11.

| Key information  | Additional details  |
|--|---|
| <p><b>Security interest</b><br/>An interest in property created or provided for by a transaction that, in substance, secures payment or performance of an obligation under a consumer credit contract.</p>   | <p>If a security interest is or may be taken under the consumer credit contract the lender must provide a clear explanation of:</p> <ul style="list-style-type: none"> <li>→ the nature of the security interest</li> <li>→ the property that is or is proposed to be subject to the security interest</li> <li>→ the extent to which the debt or obligation is secured, including whether the borrower would still owe money to the lender if the lender exercised its rights under the security interest, and</li> <li>→ the consequences if the borrower breaches the contract and gives another person a security interest over the property, including whether the property would be repossessed.</li> </ul> |
| <p><b>Disabling devices</b><br/>Details of any device the lender may attach to consumer goods that are subject to a security interest where the functions of that device when activated:</p> <ul style="list-style-type: none"> <li>→ prevents the borrower from using the goods</li> <li>→ limits the borrower's use of the goods, and/or</li> <li>→ enables the lender to locate the goods.</li> </ul>   | <p>If a disabling device is to be attached to consumer goods that are subject to a security interest, the lender must give a clear description of:</p> <ul style="list-style-type: none"> <li>→ how the device functions</li> <li>→ when the device might be activated, and</li> <li>→ how, if the consumer goods are required in an emergency situation, the borrower may obtain use of the goods.</li> </ul>  |
| <p><b>Default interest charges and fees</b><br/>Any fee or higher rate of interest a borrower must pay if they breach their contract.</p>  | <p>The lender must describe any default interest charge or default fee that a borrower may have to pay, and how and when these may apply.</p>   |
| <p><b>Statement of right to cancel</b><br/>A statement about the borrower's right under the Act to cancel the contract.</p>  | <p>The lender must provide a statement of the borrower's right to cancel under section 27 of the Act.</p> <p>From 1 June 2020, if the consumer credit contract is also a layby agreement, then the lender must set out the borrower's cancellation rights under section 36F(1) of the Fair Trading Act 1986 (FTA).<sup>5</sup> The lender must also state whether they will impose a cancellation charge. If they do intend to impose a cancellation charge, the lender must disclose how much it will be or how it will be calculated.<sup>6</sup></p>   |
| <p><b>Unforeseen hardship</b><br/>A borrower is entitled to make a hardship application where the following two conditions are met:</p> <ul style="list-style-type: none"> <li>→ the borrower is unable reasonably, because of illness, injury, loss of employment, the end of a relationship, or other reasonable cause, to meet their obligations under the consumer credit contract; and</li> <li>→ the borrower reasonably expects to be able to do so if the terms of the contract were changed.</li> </ul> | <p>The lender must provide a statement of the borrower's rights to make a hardship application and explain how an application may be made.</p>  |

5. Credit Contracts Legislation Amendment Act 2019, section 2.

6. If the consumer credit contract is also a layby agreement, from 1 October 2020 the lender must only disclose the FTA cancellation rights (this is because from 1 October 2020 section 27 of the Act does not apply to layby agreements).

| Key information  | Additional details   |
|--|--|
| <p><b>Dispute resolution scheme</b><br/>All lenders of consumer credit are required by the Financial Service Providers (Registration and Dispute Resolution) Act 2008 to be members of a financial service dispute resolution scheme.</p>                | <p>The lender must disclose the name and contact details of the financial service dispute resolution scheme of which it is a member.</p> <p>From 1 May 2020, a high-cost consumer credit lender must also state that the dispute resolution scheme will not charge for any complaint, or any investigation into, or any resolution of a complaint.<sup>7</sup></p> |
| <p><b>Financial Service Provider registration</b><br/>The lender must disclose its registration number, and the name under which it is registered, under the Financial Service Providers (Registration and Dispute Resolution) Act 2008.<sup>8</sup></p> | <p>The lender must state the name under which it is registered so that the borrower is able to properly access the relevant dispute resolution scheme.</p>   |
| <p><b>Continuing disclosure statements</b><br/>A periodic statement to the borrower setting out prescribed information about the consumer credit contract.</p>   | <p>The lender must state how often it will provide continuing disclosure statements to the borrower.</p>   |
| <p><b>Consent to electronic communications</b></p>   | <p>If the lender consents to receive notices or other electronic communication from the borrower, it must set this out.</p>  |
| <p><b>Other items</b></p>  | <p>A lender must set out any other information or warnings prescribed by regulations.</p>  |

## How does a lender provide initial disclosure?

A lender must provide initial disclosure in writing, either in a single document or in a series of related documents. The information must be clear and concise so that a reasonable person will see it. The overall effect must not be misleading or deceptive.

No specific form is required to be used for disclosure to comply with the Act's disclosure requirements, but the Regulations make available model initial disclosure forms for contracts and revolving credit contracts.<sup>9</sup> Lenders who use these model forms are deemed to comply with the disclosure standards in the Act although they must still provide all of the information required by the Act.



### EXAMPLES

A mobile trader selling consumer goods was fined \$330,000 and ordered to pay \$10,800 in statutory damages after pleading guilty to 24 charges for breaching:

- section 17 of the Credit Contracts and Consumer Finance Act 2003 (the Act) for failing to disclose to debtors key information required under Schedule 1 of the Act;
- section 32(1)(c) of the Act for failing to provide disclosure which was clear, concise and presented in a manner likely to bring the required information to the attention of a reasonable person; and
- section 13(i) of the Fair Trading Act 1986 for making false or misleading representations about debtors' rights under the Consumer Guarantees Act 1993.

7. **Credit Contracts Legislation Amendment Act 2019, section 2, and COVID-19 Response (Taxation and Other Regulatory Urgent Measures) Act 2020.** For further information please refer to the high cost credit guidelines available at <https://comcom.govt.nz/business/your-responsibilities-if-you-provide-credit/high-cost-loans>.
8. **There are some exceptions and exemptions from the requirements to be registered and to be a member of a dispute resolution scheme in section 7 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 and the Financial Service Providers (Exemption) Regulations 2010.** For more information on these exceptions and exemptions, refer to <http://www.business.govt.nz/fsp/about-the-fspr/frequently-asked-questions-faqs>.
9. **See Schedule 2 (Model Disclosure Statements) in the Credit Contracts and Consumer Finance Regulations 2004** available online at <http://www.legislation.govt.nz/regulation/public/2004/0240/latest/DLM278413.html>.

Disclosure may be given to the borrower or guarantor by either:<sup>10</sup>

- giving a written disclosure statement containing the information required by the Act to the borrower or guarantor in person
- posting a disclosure statement to the borrower's or guarantor's last known place of residence or to an address specified by the borrower or guarantor for this purpose, or
- using electronic communications, provided the borrower or guarantor has agreed to this, and that the information remains readily and reasonably accessible, stored in a permanent and legible form so that it can be referred to again throughout the life of the contract.<sup>11</sup>  
This includes:

- emailing or texting the borrower a link to the lender's website, or an electronic communication that otherwise allows the borrower or guarantor to access the disclosure statement
- emailing (or faxing) a disclosure statement to the borrower or guarantor, and
- any other electronic means of communications that may be agreed between the borrower or guarantor and the lender notifies the borrower or guarantor of how to access the disclosure statement.<sup>12</sup>

If a place of residence, or electronic information system (like an email address or fax machine) are the same for two or more persons, a disclosure statement sent to that residence or stored in that system is to be treated as disclosure to all people living at the residence or using those systems.<sup>13</sup>

## Need to know more about disclosure?

We have a series of fact sheets on disclosure available at [www.comcom.govt.nz](http://www.comcom.govt.nz), including:

- Disclosure
- Continuing disclosure under a consumer credit contract
- Guarantee disclosure under a consumer credit contract
- Request disclosure under a consumer credit contract
- Variation disclosure under a consumer credit contract

## Lenders and borrowers

The CCCF Act uses a number of different terms to describe lenders and borrowers, depending on the transaction:

- consumer credit contracts – creditors and debtors
- consumer leases – lessors and lessees
- buy-back transactions – transferees and occupiers.

In these fact sheets we use the terms **lender** and **borrower** to talk generally about credit transactions, but use the specific terms for consumer leases and buy-back transactions where it makes things clearer.

10. Section 35.

11. Section 35(1A).

12. Section 35(1)(c)-(e). Amendments to section 35 apply to the process for the disclosure of information under existing agreements where disclosure is made after commencement, see Schedule 1, 8(3). Commencement is from 20 December 2019; see Credit Contracts Legislation Amendment Act 2019, section 2.

13. Section 35(2).

This fact sheet provides guidance only. It is not intended to be definitive and should not be used in place of legal advice. You are responsible for staying up to date with legislative changes.

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