

APRIL 2022

Disclosure for Lenders Guidelines

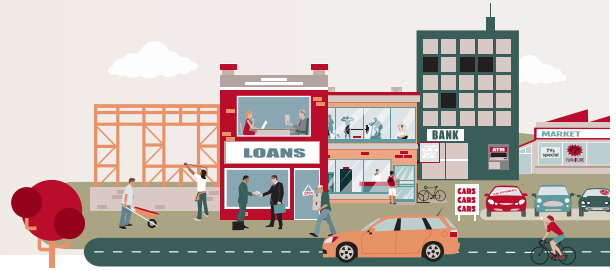


Contents



PART A: General guidance on disclosure	3
What is disclosure?	3
Lender responsibility principles	
What are the different kinds of disclosure?	5
Standard form contract terms and costs of borrowing	
Other kinds of disclosure	
How disclosure must be made	6
Timing of disclosure	
The specific disclosure rules	7
PART B: Initial disclosure	8
Timing of initial disclosure	8
What information must be disclosed	8
How initial disclosure must be made	11
PART C: Continuing disclosure	12
When a lender must provide continuing disclosure	12
What information must be disclosed	12
Exceptions to continuing disclosure	13
Credit cards	13
PART D: Request disclosure	14
When a lender must provide request disclosure	14
What information must be disclosed	15
Exceptions to request disclosure	15
PART E: Variation disclosure	16
Agreed changes	16
Timing of agreed variation disclosure	
What and how information must be disclosed	
Unilateral changes	19
Timing of unilateral variation disclosure	
What and how information must be disclosed	
PART F: Transfer of loan disclosure	21
When a lender must provide transfer disclosure	21
What information must be disclosed	21
Exceptions to transfer disclosure	21

Contents



PART G: Guarantee disclosure	22
When a lender has specific disclosure obligations to a guarantor	22
What information must be disclosed	22
Initial disclosure	
Subsequent loan to which guarantee applies	
Agreed and unilateral variation disclosure	
Request disclosure	
Transfer disclosure	
How must information be disclosed	24
Timing of guarantee disclosure	24
Exceptions to guarantor disclosure	24

PART H: Dispute resolution scheme and financial mentoring services disclosure	25
How must information be disclosed	25

PART I: The lender responsibility principles	26
What are the lender responsibility principles?	26
Responsible Lending Code	26
Lender responsibilities relevant to disclosure	26
Borrowers	
Guarantors	
Lender responsibility principles and disclosure requirements	

PART J: Penalties and consequences for breach of lender responsibility principles and disclosure provisions	28
Enforcement prohibited unless correct disclosure made	28
Reduction of consequences for failing to make disclosure	28
Infringement offences	29
Criminal prosecution for other offences	30
Civil remedies for disclosure breaches	30

PART A: General guidance on disclosure

- 1 Lenders must provide key information to borrowers at the beginning of a loan, and at certain times during its term. This is called disclosure. This guidance explains the disclosure rules and how the lender responsibility principles might apply to disclosure.
- 2 The guidance covers:
 - what disclosure is;
 - the different kinds of disclosure lenders must provide;
 - how and when lenders must provide disclosure; and
 - how the lender responsibility principles apply to lenders when providing disclosure.
- 3 These guidelines are not exhaustive and are not intended to be legally binding. We may revise the guidelines from time to time based on our experience, or legislative or case law changes.

What is disclosure?

- 4 **Disclosure** is the key information about a loan which lenders must give to borrowers. The Credit Contracts and Consumer Finance Act 2003 (the Act)¹ prescribes what information must be given and when.
- 5 Disclosure helps borrowers understand what the loan will cost them and what the lender's and borrower's obligations are under the loan.
- 6 The disclosure rules ensure the borrower sees the details of their loan before they enter into it, and ensure they have a written record of the key terms of their contract. The disclosure rules also help the borrower keep track of their debt throughout the term of the loan and gives them rights to key information if their loan is transferred to another lender.

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

Most credit transactions entered into by consumers are called “**consumer credit contracts**” under the Act. These are 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;
- the lender charges interest;
- the lender charges fees; and/or
- the lender takes or may take a security interest² under the contract.

From 1 June 2020 contracts entered into by mobile traders will also be treated as consumer credit contracts whether or not they meet the criteria set out above. See our mobile trader guidelines for information about what is a mobile trader.³

This guidance uses the term **loan** to cover all these kinds of transactions.⁴

1. <http://www.legislation.govt.nz/act/public/2003/0052/latest/DLM211512.html>.
2. “Security interest” is defined in section 5 and essentially means an interest in property that is taken to secure payment of a debt. For more on security interests and a lender's exercise of its rights under a security interest, see our repossession guidelines at <http://www.comcom.govt.nz/consumer-credit/guidelines-post/repossession-guidelines/>.
3. You are a mobile trader if outside of fixed premises, and in person, you offer or agree to supply consumer goods to an individual and payment of any part of the purchase price of those goods is deferred or financed by a consumer credit contract under which the lender is an associated person of the seller. For more information refer to the mobile trader guidelines available at <http://www.comcom.govt.nz/business/dealing-with-typical-situations/selling-goods-and-services/mobile-traders>.
4. Section 11 of the Act fully defines a consumer credit contract.

- 7 Disclosure rules also apply to lenders when taking guarantees of loans, and when entering into buy-back transactions and consumer leases. We include guidance on lenders' obligations to guarantors in this fact sheet.
- 8 Some of the disclosure rules that apply to loans, as set out in this guidance, also apply to consumer leases or buy-back transactions and some do not.⁵ For guidance on lenders' disclosure obligations when entering into **consumer leases**, see our fact sheet on consumer leases.⁶ For guidance on lenders' disclosure obligations when entering into **buy-back transactions**, see:
 - our fact sheet on buy-back transactions;⁷ and
 - our overview fact sheet for a summary of the lender responsibility principles (<http://www.comcom.govt.nz/consumer-credit/consumer-credit-fact-sheets/overview-of-changes-to-consumer-credit-law/>).

Lender responsibility principles

- 9 When providing disclosure, lenders must ensure that they are complying with the lender responsibility principles. The lender responsibility principles are contained in section 9C of the Act and impose obligations on lenders when they deal with borrowers. These obligations include that:
 - 9.1 Lenders must exercise the care, diligence and skill of a responsible lender throughout all stages of the loan and comply with the other specific responsibilities listed in the Act.
 - 9.2 Lenders must assist borrowers to be reasonably aware of the full implications of entering into their loans and to reach informed decisions when they enter into their loans and subsequently. For example, lenders must ensure that they draw borrowers' attention to the key characteristics of the loan, such as the fact that the interest rate is variable or that the lender has the right to unilaterally vary it.
- 10 The **Responsible Lending Code**⁸ (the Code) sets out useful guidance to lenders on how to comply with the lender responsibility principles. The Code includes guidance on the information and communications lenders should provide to borrowers before and after the loan is entered into.⁹
- 11 Please refer to Part I of this guidance for more information on how the lender responsibilities apply to lenders when meeting their disclosure obligations.



5. We do not identify when the rules set out in this guidance do or do not apply to consumer leases or buy-back transactions.

6. <http://www.comcom.govt.nz/consumer-credit/consumer-credit-fact-sheets/consumer-leases/>.

7. <http://www.comcom.govt.nz/consumer-credit/consumer-credit-fact-sheets/buy-back-transactions/>.

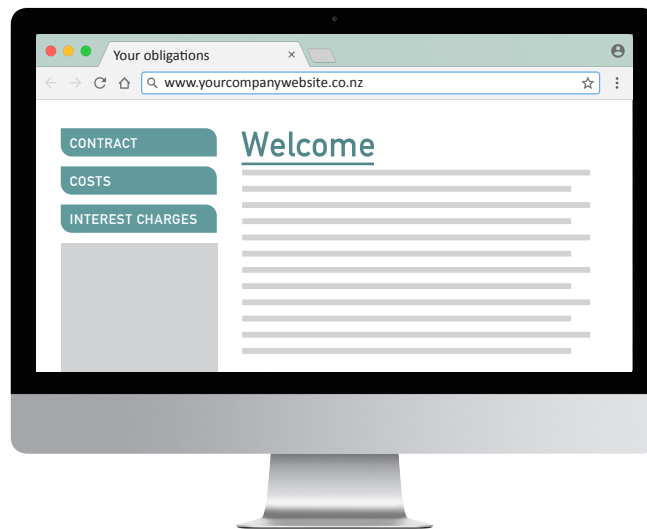
8. <http://www.consumeraffairs.govt.nz/legislation-policy/policy-development/credit-review/responsible-lending-code>.

9. Responsible Lending Code (February 2021), Chapters 2, 11, and 12.

What are the different kinds of disclosure?

Standard form contract terms and costs of borrowing

- 12 Lenders' obligations begin before they have started discussing a loan with a particular borrower. Lenders must publish their standard form contract terms¹⁰ and costs of borrowing,¹¹ for certain loans they offer (and other transactions). This can be done in three ways:
 - 12.1 If the lender has an **internet site**, the lender must display their standard form contract terms and costs of borrowing prominently and clearly on that site.
 - 12.2 If the lender operates from **premises** that are accessible to the public, the lender must display prominently and clearly a notice that a copy of their standard form contract terms and/or costs of borrowing is available on request.
 - 12.3 If anyone makes a **request**, the lender must immediately supply a copy of its standard form contract terms and/or costs of borrowing, free of charge. This applies regardless of whether the lender has already publicly displayed the information on their website or at their premises.¹²
- 13 It is possible for all of these disclosure requirements to apply to a lender: it may be required to make disclosure on its website, at its premises, and when asked for its standard terms and/or costs of borrowing.
- 14 For more, see our guidance <http://www.comcom.govt.nz/consumer-credit/consumer-credit-fact-sheets-post/publication-of-standard-form-contract-terms-and-cost-of-borrowing/>



10. Section 9J. The obligations to publish standard form contract terms also apply to buy-back transactions, and to security agreements, repayment waivers and extended warranties taken out in connection with the contract. Lenders do not have to publish standard form contract terms for consumer leases.
11. Section 9K sets out lenders' obligations regarding the costs of borrowing. The costs of borrowing are credit fees, default fees, and interest charges, including default interest charges. The obligation to disclose costs of borrowing applies only to loans as defined in this guidance. Lenders do not have to publish costs of borrowing for buy-back transactions and consumer leases.
12. Section 9J(4).

Other kinds of disclosure

- 15 Other types of disclosure that must be provided are:
 - 15.1 **Initial disclosure** before the loan is entered into. This is covered in Part B of this guidance.
 - 15.2 **Continuing disclosure** at intervals during the term of the loan. This is covered in Part C of this guidance.
 - 15.3 **Request disclosure** when the borrower asks for it. This is covered in Part D of this guidance.
 - 15.4 **Variation disclosure** when the loan is changed, either unilaterally by the lender or when agreed between the lender and borrower. This is covered in Part E of this guidance.
 - 15.5 **Transfer disclosure** when the lender transfers the loan to a new lender. This is covered in Part F of this guidance.
 - 15.6 **Guarantee disclosure** when the lender takes a guarantee to ensure performance of a loan. This is covered in Part G of this guidance.
 - 15.7 **Dispute resolution scheme and financial mentoring disclosure** when the borrower misses a payment or makes a complaint. This is covered in Part H of this guidance.
 - 15.8 **Disclosure about debt collection** before debt collection begins.¹³
- 16 What information must be disclosed and when depends on the type of disclosure and is described in each of Parts A to H of this guidance. Part I contains more information on how the lender responsibilities apply to lenders when meeting their disclosure obligations.

How disclosure must be made

- 17 Section 32 of the Act sets out disclosure standards which describe how lenders must disclose information to borrowers. Disclosure must:
 - 17.1 be in writing in what is referred to as a disclosure statement, and it must contain the information required by the Act;
 - 17.2 express the information clearly and concisely and in a way that is likely to bring the information to the attention of a reasonable person;
 - 17.3 not be likely to mislead or deceive a reasonable person in relation to any material information; and
 - 17.4 be in the form prescribed by regulation, if any regulations apply.¹⁴
- 18 Some forms have been made available for lenders' use. In regulations made under the Act, there are (at the time of issuing this guidance) two model forms that lenders can use:¹⁵
 - 18.1 initial disclosure form for consumer credit contracts (other than revolving credit contracts); and
 - 18.2 Initial disclosure form for revolving credit contracts.
- 19 More forms may be made available under regulations. Where the lender uses the forms in the regulations, that lender is deemed to have complied with the disclosure standards set out in section 32 (lenders will still need to ensure that the required information is provided in the model forms).¹⁶

13. For further information please refer to the separate disclosure requirements when engaging in debt collection guidelines.

14. See in particular Credit Contracts and Consumer Finance Regulations 2004 (the Regulations), regulations 12-16. The Regulations describe the rules relating to the use of model disclosure statements, which are provided as Forms 1 and 2 of Schedule 2 to the Act.

15. See Schedule 2 (Model Disclosure Statements) in the Regulations available online at: <http://www.legislation.govt.nz/regulation/public/2004/0240/latest/DLM278413.html>.

16. Section 32(1A).

- 20 However, these forms are not mandatory. There are no specific forms or formats that lenders must use to provide disclosure in order to comply with the disclosure requirements. What is key is that whatever form lenders use, they comply with the section 32 disclosure standards.
- 21 Disclosure may be given to the borrower or guarantor by either:¹⁷
- 21.1 giving a written disclosure statement containing the information required by the Act to the borrower or guarantor in person;
 - 21.2 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
 - 21.3 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 contract¹⁸ This includes:
 - 21.3.1 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;
 - 21.3.2 emailing (or faxing) a disclosure statement to the borrower or guarantor; and
 - 21.3.3 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.¹⁹
- 22 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.²⁰

Timing of disclosure

- 23 For most purposes, whether disclosure is made by post or electronic means, disclosure is treated as having been made on the day on which the statement is posted or sent.²¹

The specific disclosure rules

- 24 The remainder of this guidance sets out, for each kind of disclosure described above:
- 24.1 when (the timing and/or the circumstances under which) disclosure must be provided;
 - 24.2 what information must be provided;
 - 24.3 any particular rules about how disclosure must be provided, over and above meeting the disclosure standards set out in section 32 of the Act; and
 - 24.4 any exceptions when disclosure is not required.

17. Section 35.

18. Section 35(1A).

19. 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 1AA, 8(3). Commencement is from 20 December 2019; see Credit Contracts Legislation Amendment Act 2019, section 2.

20. Section 35(2).

21. See section 35(3) where if the disclosure is posted (subsection (1)(b)) it is treated as received on the fourth working day after it was posted, and subsection (4) which relates to electronic disclosure to a specified information system under subsections (1)(c) – (1)(e) which treats the disclosure as received on the second working day after it was sent. Also see section 35(5) for the general rule.

PART B: Initial disclosure

- 25 Initial disclosure is the key information about the lender and the terms of the loan that the lender must disclose to the borrower before the loan is entered into. This information includes all fees and interest payable, information about how to make payments, any security interest taken and cancellation rights, and a range of other information as set out in the table below.²²

Timing of initial disclosure

- 26 The lender must provide initial disclosure before the borrower enters into a loan.

What information must be disclosed

- 27 Before a loan contract is entered into, the lender must:
- 27.1 Disclose to the borrower as much of the key information prescribed in Schedule 1 of the Act (summarised in the table below) as applies to the loan.²³
- 27.2 Give or send to the borrower a copy of all the terms of the contract that have not already been disclosed as 'key information' above.²⁴

Key information required by Schedule 1

Lender's full name and address	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.
Initial unpaid balance The amount the borrower owes on the day specified in the initial disclosure statement.	The lender must set out the initial unpaid balance and: <ul style="list-style-type: none">any money already given to the borrower, or the cash price of any goods or services the borrower has already received;any charges included in the initial unpaid balance, including optional services such as insurance or extended warranties; and/orany 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.
Any subsequent advances Any money the lender will be lending to the borrower under the contract after the date of the initial disclosure statement.	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.
Total advances The sum of all advances the lender will make over the course of the contract	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.
Credit limit of the contract The maximum amount the lender is prepared to lend to the borrower over the course of the contract.	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.

22. Section 17(1) and Schedule 1.

23. The key information for initial disclosure for consumer credit contracts is set out in Schedule 1 of the Act. Different key information requirements for consumer leases are set out in Schedule 2, and for buy-back transactions, Schedule 3.

24. Section 17(2).

<p>Annual interest rate 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"> • where and when it is published, or if it is not published, how the borrower can find it; • the margin (if any) that will be applied to the base rate to work out the annual interest rate; and • the current annual interest rate.
<p>Method of charging interest 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>Total interest charges 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>
<p>Interest-free period 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>Credit fees and charges 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"> • describe any credit fees or charges that apply to the contract, unless they have already been included in the initial unpaid balance; • set out when the borrower must pay the fee or charge (if known); and • set out either the amount of the fee or charge or how the lender will calculate it. <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"> • include a statement clearly stating that it is a high-cost consumer credit contract; and • provide a statement detailing the effect of section 45E, which must include: <ul style="list-style-type: none"> – the maximum costs of borrowing;²⁵ – how the costs of borrowing are being calculated; and – the total amount that is recoverable by the lender under the contract. <p>From 1 June 2020, the lender must include a statement of the rate of charge relevant to the specific contract.²⁶</p>
<p>Payments required 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"> • the amount of each payment or how the lender will calculate each payment; • when the first payment is due; • how often the borrower must make payments; • how many payments the borrower must make, if known; and • the total amount of all payments over the course of the contract, if known, for contracts due to be repaid within seven years of the date on which credit is first provided under the contract.

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

26. 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>.

<p>Any full prepayment fee 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.²⁷</p>
<p>Security interest 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"> • the nature of the security interest; • the property that is or is proposed to be subject to the security interest; • 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 • 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.
<p>Disabling devices 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"> • prevents the borrower from using the goods; • limits the borrower’s use of the goods; and/or • enables the lender to locate the goods. 	<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"> • how the device functions; • when the device might be activated; and • how, if the consumer goods are required in an emergency situation, the borrower may obtain use of the goods.
<p>Default interest charges and fees 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>Statement of right to cancel 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).²⁸</p> <p>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.²⁹</p>
<p>Unforeseen hardship A borrower is entitled to make a hardship application where the following two conditions are met:</p> <ul style="list-style-type: none"> • 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 • the borrower reasonably expects to be able to do so if the terms of the contract were changed. 	<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>

27. The Regulations, regulations 8-11.

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

29. 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).

<p>Dispute resolution scheme 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. 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.³⁰</p>
<p>Financial Service Provider registration 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 2008.³¹</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>Continuing disclosure statements 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 a continuing disclosure statement to the borrower.</p>
<p>Consent to electronic communications</p>	<p>If the lender consents to receive notices or other electronic communication from the borrower, it must set this out.</p>
<p>Other items</p>	<p>A lender must set out any other information or warnings prescribed by regulations.</p>

How initial disclosure must be made

- 28 As above, 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 (see above at paragraph 20).³² 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.



30. 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>.
31. 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 <https://fsp-register.companiesoffice.govt.nz/help-centre/registering-a-financial-service-provider-fsp/preparing-to-register/>.
32. See Schedule 2 (Model Disclosure Statements) in the Regulations available online at: <http://www.legislation.govt.nz/regulation/public/2004/0240/latest/DLM278413.html>.

PART C: Continuing disclosure

- 29 The lender must regularly give the borrower key information about their account during the lifetime of the loan, except where some limited exceptions apply. This is known as **continuing disclosure**. Monthly bank statements or credit card statements are examples of continuing disclosure. The requirements relating to continuing disclosure are set out in sections 18 to 21 of the Act. The key information that must be disclosed is contained in section 19.

When a lender must provide continuing disclosure

- 30 Continuing disclosure must be made at least:³³
- 30.1 every six months for most loans; or
 - 30.2 every 45 working days for a revolving consumer credit contract.
- 31 A **revolving consumer credit contract** is a credit contract that:³⁴
- 31.1 anticipates multiple loan advances, to be made when requested by the borrower under the contract; and
 - 31.2 does not limit the total amount to be advanced to the borrower under the contract.
- 32 An arranged overdraft on a cheque account and a credit card are examples of revolving consumer credit contracts.

What information must be disclosed

- 33 The lender must include the following information in each continuing disclosure statement:³⁵
- 33.1 the opening and closing dates of the period covered by the statement;
 - 33.2 the opening and closing unpaid balances;
 - 33.3 the date, amount and description of each advance during the statement period;
 - 33.4 the date and amount of each interest charge, and each fee or other charge debited during the statement period;
 - 33.5 the date and amount of each payment made by the borrower during the statement period;
 - 33.6 the amount and timing of the next payment that must be made;
 - 33.7 the annual interest rate or rates applying during the statement period (expressed as a percentage); and
 - 33.8 in the case of a credit card contract, a prescribed minimum repayment warning must be included (see paragraphs 38-39 below for more details).

33. Section 18(2).

34. The definition of revolving credit contract is contained in section 5.

35. Section 19(1)(a)-(i) sets out the required information for the continuing disclosure statement.

Exceptions to continuing disclosure

- 34 The lender does not have to provide continuing disclosure in some situations:
- 34.1 If the borrower has agreed to access the information on a website and this information is kept up to date by the lender.³⁶
 - 34.2 Where the borrower does not have to pay any interest charges or fees under the contract (for example, in a “free credit” deal).³⁷
 - 34.3 During a period in which the borrower:
 - 34.3.1 cannot reasonably be located;³⁸
 - 34.3.2 has not made any debits or credits during the period covered by the disclosure statement and the unpaid balance is nil or has been written off;³⁹
 - 34.3.3 has breached the loan and the lender has commenced enforcement proceedings;⁴⁰ and/or
 - 34.3.4 has been declared bankrupt or has died, and the Official Assignee or the executor or trustee of the borrower’s estate have not requested continuing disclosure.⁴¹
- 35 The continuing disclosure obligation resumes if the position changes and the exemption no longer applies; the next disclosure statement must cover every preceding period during which disclosure was not made.⁴² For example, the borrower may have changed their address without notifying the lender and the lender had stopped sending continuing disclosure statements. As soon as the lender learns of the borrower’s new address, the lender must provide a disclosure statement covering the whole period since the last one.
- 36 The opening unpaid balance of each continuing disclosure statement must not exceed the closing balance of the last one. This means that there should never be any period of time during the loan which is not covered by a continuing disclosure statement unless one of the exceptions continues to apply.

Credit cards

- 37 Continuing disclosure statements for credit cards are also required to include a **minimum repayment warning**.⁴³ A credit card is a revolving credit contract and includes conventional credit cards and “store cards” issued by businesses to their customers to enable them to buy goods or services from the business on credit.⁴⁴
- 38 The minimum repayment warning prescribed in regulations is as follows:⁴⁵
- “If you only make the minimum payment each month [or other payment period] you will pay more interest and it will take you longer to pay off your balance. Visit www.sorted.org.nz/creditcards to calculate how you can pay off your credit card balance faster and pay less in interest.”*

36. Section 21(1)(b).

37. Section 21(1)(c).

38. Section 21(2)(a).

39. Section 21(2)(b)(i) and (ii).

40. Section 21(2)(b)(iii).

41. Section 21(2)(b)(iv).

42. Section 21(3).

43. Section 19(1)(i).

44. Section 19(2).

45. The Regulations, regulation 4E.

- 39 The format, font and font size of the minimum repayment warning must be easily readable. The warning must be presented reasonably close to the amount stated as the minimum payment for each payment period.⁴⁶
- 40 No minimum repayment warning is needed where:⁴⁷
 - 40.1 the closing unpaid balance of the credit card is under \$100;
 - 40.2 an interest free period applies to the closing unpaid balance; or
 - 40.3 the lender and borrower have arranged a different payment amount to that which would otherwise be required.

PART D: Request disclosure

- 41 Whenever the borrower makes a request in writing to the lender to ask for specific information about their loan, the lender must provide disclosure.⁴⁸ This is known as **request disclosure**. The obligation to provide request disclosure and the information that it must contain are described in section 24 of the Act.
- 42 Borrowers who enter into contracts with mobile traders after 1 June 2020 are also entitled to make a request in writing for information about their loan that the lender must then disclose.⁴⁹

When a lender must provide request disclosure

- 43 Request disclosure must be provided free of charge, unless the lender has the right under the contract to charge a fee for it. If the lender receives a request for disclosure they should tell the borrower if any fee is payable for providing that disclosure. Any fee charged for providing request disclosure must be reasonable.⁵⁰
- 44 Lenders must ensure that borrowers receive the request disclosure within 15 working days of the lender receiving the request, or (if a fee is payable under the contract for providing request disclosure) within 15 days of receiving payment of that fee.⁵¹



46. Ibid.

47. Ibid.

48. Section 24(1). Note that under section 20 of the Electronic Transactions Act 2002 a legal requirement to request or give information in writing is fulfilled by doing so in an electronic form.

49. Sections 16A and 45C.

50. Section 24(3)(b).

51. Section 24(3).

What information must be disclosed

- 45 If requested by the borrower, the lender must disclose:⁵²
- 45.1 a copy of the contract between the lender and the borrower;
 - 45.2 any disclosure statement that the lender has already provided, or should have provided, before the request was made;
 - 45.3 a copy of any continuing disclosure statement (a loan statement) for any reasonable statement period specified by the borrower;
 - 45.4 the effect if the borrower repays some of their debt early;
 - 45.5 the amount required for full prepayment at a specified date and how that amount was calculated;
 - 45.6 the amount of any fee payable on full or partial prepayment and how this is calculated;
 - 45.7 full details of any changes to the loan since it was made;
 - 45.8 the unpaid balance, including any outstanding interest charge (calculated at the date the disclosure statement is prepared);
 - 45.9 what payments the borrower must make (and how those payments were calculated);
 - 45.10 how often the borrower must make payments;
 - 45.11 the number of payments the borrower must make; and/or
 - 45.12 the total amount of payments the borrower must make under the contract (for contracts due to be paid within seven years).

Exceptions to request disclosure

- 46 The lender does not have to comply with the request for disclosure if:⁵³
- 46.1 the lender has already given the same information to the requestor within the previous three months; or
 - 46.2 the borrower asks for the information more than a year after the loan contract has ended.



52. Section 24(2) and (2B).

53. Section 24(4).

PART E: Variation disclosure

- 47 **Variation disclosure** is the disclosure that lenders must provide when the loan contract is varied unilaterally or by agreement. The rules relating to variation disclosure are set out in sections 22 and 23 of the Act.
- 48 Mobile traders who enter into contracts with borrowers after 1 June 2020 are also required to disclose relevant information following a variation to the loan contract.⁵⁴
- 49 Different variation disclosure rules apply according to whether:
 - 49.1 the lender and borrower agree to change the contract, including where the lender agrees to change a contract as a result of a hardship application (**agreed changes**);
 - 49.2 the contract gives the lender the right to vary parts of the contract, and the lender does so (**unilateral changes**); or
 - 49.3 the contract is **transferred** from one lender to another (please refer to Part F of this guidance for the rules on transfer disclosure) on transfer of loan disclosure.

Agreed changes

Timing of agreed variation disclosure

- 50 Where the lender and borrower agree to change the contract, generally the lender must disclose details of the change **before** it takes effect.⁵⁵ This includes where agreed changes are made to a contract because of a hardship application.
- 51 In some limited circumstances, the lender can choose to disclose the change to the borrower when providing the next continuing disclosure statement,⁵⁶ or within 5 working days of the date that the change takes effect.⁵⁷ These circumstances are when the change:
 - 51.1 reduces the borrower's obligations (for example by reducing an administration fee);
 - 51.2 gives the borrower more time to make a payment;
 - 51.3 releases some or all of a security; or
 - 51.4 increases or decreases the borrower's credit limit.⁵⁸ From 1 December 2021 if the parties to the contract agree to increase the credit limit, then the lender must conduct reasonable inquiries into the affordability and suitability of the change.⁵⁹
- 52 These exceptions do not apply to high-cost consumer credit contracts.⁶⁰ Instead, lenders must disclose the information relating to high-cost consumer credit contracts before any agreed changes take effect.⁶¹

54. Sections 16A and 45C.

55. Section 22(2).

56. For some variations, the lender must also give details of the change to any guarantor.

57. Section 22(3) and (4).

58. Section 22(3)(d). This amendment applies to existing agreements from 20 December 2019, see Schedule 1AA, 8(1) of the Act for application.

59. Sections 9C(8)(a) and 9C(3)(a). For more guidance on this see <https://comcom.govt.nz/business/your-responsibilities-if-you-provide-credit/the-lender-responsibility-principles>.

60. Section 22(5).

61. Section 22(2).

What and how information must be disclosed

- 53 The lender must provide **full particulars of the change** and comply with the rules about how disclosure must be made.⁶² The Commission considers that the words “full particulars of the change” in section 22(1)(a) require lenders to disclose:
- 53.1 the change; and
- 53.2 the effect of the change.
- 54 The Commission’s view is that for lenders to comply with section 22(1)(a), they must provide borrowers with full particulars of any agreed change that would alter the key information of the contract.
- 55 This means that before 1 December 2021, the Commission’s view is that lenders must have disclosed:
- 55.1 the agreed change; and
- 55.2 the effect of the agreed change on any of the remaining key information in Schedule 1.
- 56 From 1 December 2021 regulation 4F provides that in addition to the full particulars of the change, lenders must also disclose the following information to the extent that it has changed, or will change, as a result of the variation:⁶³

Disclosure of agreed changes

<p>Credit limit of the contract The maximum amount the lender is prepared to lend to 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 to the extent it has changed, or will change, as a result of the agreed variation.</p>
<p>Annual interest rate 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 and the extent it has changed, or will change, as a result of the variation.</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 and the extent it has changed, or will change, as a result of the variation.</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"> • where and when it is published, or if it is not published, how the borrower can find it; • the margin (if any) that will be applied to the base rate to work out the annual interest rate; • the current annual interest rate; and • the extent it has changed, or will change, as a result of the variation.
<p>Total interest charges 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 in the future, if known, for contracts due to be repaid within seven years of the date on which the credit is first provided under the contract and the extent it has changed, or will change, as a result of the variation.</p>
<p>Credit fees and charges Any charges the borrower must pay under the contract or to the lender in connection with the contract (other than interest).</p>	<p>If the contract is a high-cost consumer credit contract, the lender must disclose a statement of the rate of charge under the contract (calculated in accordance with section 45H and the regulations).</p>

62. Section 22(1)(a) together with information prescribed in regulations. For discussion of the standard requirements for disclosure set out in section 32, refer to Part A of this guidance.

63. The Regulations, regulation 4F.

<p>Payments required 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"> • the amount of each future payment or how the lender will calculate each payment; • when the next payment is due; • how often the borrower must make the future payments; • how many future payments the borrower must make, if known; • the total amount of all future payments over the course of the contract, if known, for contracts due to be repaid within seven years of the date on which credit is first provided under the contract; and • the extent it has changed, or will change, as a result of the variation.
--	---

57 This means that after 1 December 2021, the Commission’s view is that lenders must disclose:

- 57.1 the agreed change;
- 57.2 the effect of the change on any of the information set out in the table above (if applicable) as required by regulation 4F, together with the information prescribed in that table; and
- 57.3 the effect of the change on any other key information that is not covered by regulation 4F.⁶⁴

58 The Commission recommends that lenders consider disclosing the agreed changes in a way that shows the borrower the full effect of the change. While the Act does not require comparative information to be provided, providing this information enables borrowers to understand the full impact of the variation and to make an informed decision about whether they are content with the variation. For example, a lender could disclose an agreed repayment amount change in the following way:⁶⁵

	Current	Change requested
Repayment amount	\$1,060.66	\$711.55

	Current	Effect of the change
Total no. of monthly future payments to be paid from date of change	60 (60 payments of \$1,060.66)	96 (96 payments of \$711.55)
Length of loan	10 years (5 years remaining)	13 years (8 years remaining)
Total interest to be paid from date of change	\$7,434.43	\$12,103.85 (increase of \$4,669.42) ⁶⁶
Total payments to be paid from date of change	\$63,639.30	\$68,308.71 (increase of \$4,669.42)

64. The Commission considers that in most circumstances, changes which have an effect on key information will affect one of the matters covered by regulation 4F.

65. In this example the loan amount was \$100,000, interest rate 5%, 10 year term, monthly repayments and no fees payable.

66. Again, the Act does not require the lender to disclose how much the payment has increased by; this is something lenders may wish to consider disclosing in order to further help borrowers understand the full effect of the variation.

Unilateral changes

Timing of unilateral variation disclosure

- 59 Some contracts specifically give the lender the power to make a unilateral change to terms of a contract without having to agree the change with the borrower. For example, a contract might expressly state that the lender can change the amount of a particular fee.
- 60 The lender must disclose the required information within 5 working days of the date the change takes effect⁶⁷ if the change is to:⁶⁸
 - 60.1 the interest rate or the way interest is calculated or charged;
 - 60.2 the amount, frequency, timing or method of calculating fees or charges or any payment; or
 - 60.3 the amount of a credit limit under the contract.⁶⁹
- 61 Where the change reduces the borrower's obligations, or gives them more time to pay, disclosure must be provided:
 - 61.1 if the contract is a high-cost consumer credit contract, within 5 working days of the date the change takes effect;⁷⁰ or
 - 61.2 for all other consumer credit contracts, either:⁷¹
 - 61.2.1 within 5 working days of the date that the change takes effect; or
 - 61.2.2 with the next continuing disclosure statement.
- 62 A lender is not required to disclose the changes to a particular borrower if the lender cannot reasonably locate that borrower.⁷² The Commission's view is that a borrower cannot be reasonably located where a lender:
 - 62.1 Has evidence that a borrower has not received previous disclosure made under section 35 (for example: if disclosure sent to the borrower's last known place of residence is returned via post or if the lender is advised that email disclosure sent to an information system previously specified by the borrower has not been delivered).
 - 62.2 Can demonstrate that they have taken other reasonable steps to locate the borrower (for example by searching all records held by the lender for contact details, attempting to contact the borrower by phone, using notifications in internet banking facilities, etc).

67. Section 23(3).

68. Section 23(1).

69. From 1 December 2021, if the unilateral change includes an increase of the credit limit under the contract the lender must make reasonable inquiries so as to be satisfied that the agreement meets the borrower's requirements and objectives and that the borrower can make repayments without suffering substantial hardship (see sections 9C(8)(b) and 9C(3)(a)). For more guidance on this see <https://comcom.govt.nz/business/your-responsibilities-if-you-provide-credit/the-lender-responsibility-principles>.

70. Section 23(8).

71. Section 23(5) and (6).

72. Section 23(7). This section applies from 20 December 2019 to pre-existing agreements, for more on commencement see Credit Contracts Legislation Amendment Act 2019, section 17(1).

What and how information must be disclosed

- 63 The lender must provide **full particulars of the change** and comply with the rules about how disclosure must be made.⁷³ As with the Commission’s approach to section 22(1)(a), the Commission considers that the words “full particulars of the change” require lenders to disclose:
- 63.1 the change; and
 - 63.2 the effect of the change.
- 64 This means that before 1 December 2021, the Commission’s view is that lenders must have disclosed:
- 64.1 the unilateral change; and
 - 64.2 the effect of the unilateral change on any of the remaining key information in Schedule 1.
- 65 The Commission’s view is that for lenders to comply with section 23(2) after 1 December 2021, they must disclose:
- 65.1 the unilateral change;
 - 65.2 if the contract is a high-cost consumer contract, a statement of the rate of charge under the contract (as required by regulation 4G);⁷⁴ and
 - 65.3 the effect of the unilateral change on any other key information that is not covered by regulation 4G.
- 66 Where the lender is unilaterally changing the interest rate, fees or charges payable under a contract, the lender must meet the standard disclosure obligations set out in sections 32 and 35 of the Act. The lender can choose to make the disclosure of those unilateral changes via general publication of the changes by:⁷⁵
- 66.1 displaying information about the changes prominently at their place of business;
 - 66.2 advertising the changes at least once in the daily newspapers published in all the following areas in which they do business: Whangarei, Auckland, Hamilton, Rotorua, Hawkes Bay, New Plymouth, Palmerston North, Wellington, Nelson, Christchurch, Dunedin and Invercargill; and
 - 66.3 posting information about the changes on their website (if they have one).
- 67 From 1 May 2020 high-cost consumer credit lenders are not able to make disclosure by publishing their unilateral changes or by providing the disclosure to their borrowers with the next continuing disclosure statements. Instead, high-cost consumer credit lenders must provide disclosure of unilateral changes within 5 working days of the change taking effect.⁷⁶
- 68 In practice, the Commission considers that the circumstances in which publication of unilateral changes can be advertised are likely to be limited. Most unilateral changes will result in consequential changes to particular contracts, for example changes to the total amount payable under the contract or the regular repayment amount, which are required to be disclosed as “full particulars of the change”. We therefore expect most unilateral changes will need to be disclosed individually to particular borrowers.

73. Section 23(2), together with any information also prescribed in regulations. The standard requirements for disclosure set out in section 32 apply; refer to [54] and Part A of this guidance.

74. This rate of charge must have also been calculated in accordance with section 45H of the Act.

75. Section 23(4) and The Regulations, regulation 5.

76. Section 23(8).

PART F: Transfer of loan disclosure

- 69 Key information must be provided to the borrower when the lender transfers a loan to a new lender, by assignment or operation of the law.⁷⁷ This is called **transfer disclosure**. The requirements for transfer disclosure are set out in section 26A of the Act.

When a lender must provide transfer disclosure

- 70 The lender must disclose information relating to the transfer within 10 working days of the date on which the transfer takes effect.⁷⁸

What information must be disclosed

- 71 If the lender transfers its rights to another party (the new lender), the transferring lender has an obligation to disclose to every borrower (and guarantor):⁷⁹
- 71.1 the name, address and contact details of the new lender;
 - 71.2 the new lender's registration number under the Financial Service Providers Register and the name under which the lender is registered;
 - 71.3 the name and contact details of the new lender's dispute resolution scheme;
 - 71.4 the date that the loan was or is intended to be transferred;
 - 71.5 the impact (if any) of the transfer on the borrower; and
 - 71.6 that the transfer does not otherwise affect the terms of the loan that the borrower entered into.

Exceptions to transfer disclosure

- 72 Transfer disclosure is not required if the transfer is for securitisation or covered bond arrangements, or similar arrangements.⁸⁰
- 73 Transfer disclosure is not required if a particular borrower or guarantor cannot be reasonably located.⁸¹



77. Section 26A(1).

78. Section 26A(2).

79. Section 26A(1).

80. Section 26A(3) and the Regulations, regulation 19.

81. Section 26A(4). This section applies from 20 December 2019 to pre-existing agreements, for more on commencement see Schedule 1AA, 8(2) of the Act.

PART G: Guarantee Disclosure

- 74 The requirement to disclose information to guarantors applies to all lenders. From 1 June 2020 mobile traders and high-cost consumer credit lenders will also be required to follow the sections on guarantor disclosure.⁸²

When a lender has specific disclosure obligations to a guarantor

- 75 There are five situations where the lender has specific disclosure obligations to a guarantor:⁸³
- 75.1 when the lender takes the guarantee at the start of the loan (initial disclosure);
 - 75.2 if the lender enters into any subsequent loan with the borrower to which the guarantee applies;
 - 75.3 if the lender makes a change to the loan (variation disclosure);
 - 75.4 if a guarantor requests information about the loan (request disclosure); and/or
 - 75.5 if the lender transfers the loan (transfer disclosure).

What information must be disclosed

Initial disclosure

- 76 The lender must provide the following information to the guarantor **before**⁸⁴ the guarantee is given:⁸⁵
- 76.1 a copy of all of the terms of the guarantee (other than the terms implied by law); and
 - 76.2 as much of the key information (set out in Schedule 1 of the Act) as is applicable to each loan that the borrower and the lender enter into and to which the guarantee applies.
- 77 In other words, the lender must provide the guarantor with the same initial disclosure about the loan that it gives to the borrower, plus the terms of the guarantee, and this must be done before the guarantee is given. Refer to Part B of this guidance for the key information required for initial disclosure.

Subsequent loan to which guarantee applies⁸⁶

- 78 If the lender enters into any subsequent loan with that borrower to which the guarantee applies, the lender must also make disclosure of the key information concerning that subsequent loan to the guarantor. Refer to Part B of this guidance for the key information that must be provided to the guarantor about any such subsequent loan.

82. Sections 16A and 45C.

83. Sections 25 and 26.

84. Section 25(2).

85. Section 25(1).

86. Section 25(3).

Agreed and unilateral variation disclosure⁸⁷

- 79 If the lender makes a change to a loan, whether unilaterally or agreed with the borrower, which either:
- 79.1 increases the borrower's obligations; or
 - 79.2 reduces the time for the borrower to make payment under the contract; then
- the lender has the same disclosure obligations to the guarantor as it has to the borrower (section 26 of the Act).
- 80 This means that before 1 December 2021, the Commission's view is that lenders must have disclosed to the guarantor:
- 80.1 the agreed and/or unilateral change(s); and
 - 80.2 the effect of the agreed and/or unilateral change(s) on any of the remaining key information in Schedule 1.
- 81 The Commission's view is that for lenders to comply with section 26(2) after 1 December 2021, lenders must disclose:
- 81.1 the agreed and/or unilateral change(s);
 - 81.2 if the contract is a high-cost consumer contract, a statement of the rate of charge under the contract (as required by regulation 4H);⁸⁸ and
 - 81.3 the effect of the agreed and/or unilateral change(s) on any other key information that is not covered by regulation 4H.

Request disclosure

- 82 If the guarantor asks the lender for information about the loan, and the guarantor is entitled to this information under the Act, the lender must provide it within 15 working days of the request.
- 83 There are two exceptions where the lender does not have to provide request disclosure:
- 83.1 when the information has already been given to the guarantor in the previous three months; and
 - 83.2 when the information is requested more than a year after the consumer credit contract has ended.⁸⁹
- 84 For more on request disclosure, including timing and charging for such disclosure, refer to Part D of this guidance.

Transfer disclosure

- 85 If the lender transfers their rights in relation to a particular loan to another lender, the transferring lender has the same disclosure obligations to the guarantor as it does to the borrower. These obligations are set out in Part F of this guidance.
- 86 Transfer disclosure is not required if the transfer is merely for securitisation or covered bond arrangements or similar arrangements.⁹⁰

87. Section 26.

88. This rate of charge must have also been calculated in accordance with section 45H of the Act.

89. Section 24(4).

90. Section 26A(3) and The Regulations, regulation 19.

How must information be disclosed

- 87 The lender must in the regular course follow the procedure in sections 32 and 35. However, if the lender has exercised a power under the contract to change the amount of an interest rate, or to change the amount of a fee or charge payable, the lender may instead make disclosure by:⁹¹
- 87.1 displaying information about the changes prominently at their place of business;
 - 87.2 advertising the changes at least once in the daily newspapers published in all the following areas in which they do business: Whangarei, Auckland, Hamilton, Rotorua, Hawkes Bay, New Plymouth, Palmerston North, Wellington, Nelson, Christchurch, Dunedin and Invercargill; and
 - 87.3 posting information about the changes on their website (if they have one).
- 88 From 1 May 2020 high-cost consumer credit lenders are not able to make disclosure by publishing their unilateral changes or by providing the disclosure to their borrowers with the next continuing disclosure statements. Instead, high-cost consumer credit lenders must provide disclosure of unilateral changes within 5 working days of the change taking effect.⁹²

Timing of guarantee disclosure

- 89 In relation to the first guarantee that the lender takes from a guarantor, the lender must provide the information specified in paragraphs 73.1 and 73.2 to the guarantor before the guarantee is taken.
- 90 In relation to any subsequent loan the lender takes from a guarantor to which the guarantee applies, the lender must provide to the guarantor the information specified in paragraph 73.2. This must be done within 5 days of the day that any further loan is entered into.⁹³
- 91 In relation to agreed and unilateral changes to a loan, the lender must make disclosure:
- 91.1 within 5 working days of the day on which the change is **agreed to** by the borrower and the lender; or
 - 91.2 within 5 working days of the change taking effect in the case of unilateral changes.
- 92 In relation to transfer disclosure, the lender must disclose information relating to the transfer within 10 working days of the date on which the transfer takes effect.⁹⁴

Exceptions to guarantor disclosure

- 93 A lender is not required to disclose the relevant information to a particular guarantor if the lender cannot reasonably locate that guarantor.⁹⁵

91. Section 26(4) and The Regulations, regulation 5.

92. Section 26(6). This section came into effect on 1 June 2020 and applies to all pre-existing high-cost consumer credit contracts from commencement.

93. Section 25(3).

94. Section 26A(2).

95. Section 26(5). This section applies from 20 December 2019 to pre-existing agreements, for more on commencement see Schedule 1AA, 8(2) of the Act.

PART H: Dispute resolution scheme and financial mentoring services disclosure

- 94 A lender must disclose information about their dispute resolution scheme:⁹⁶
- 94.1 in every notice acknowledging receipt of a hardship application under section 57A(1)(a);
 - 94.2 in response to any written complaint received by a lender from a borrower in relation to any enforcement action under Part 3A of the Act; and
 - 94.3 in response to any other type of complaint described in the regulations that the lender receives from the borrower.⁹⁷
- 95 A lender must disclose information about financial mentoring services:
- 95.1 if a borrower has defaulted on a payment, or has caused their credit limit under the contract to be exceeded;
 - 95.2 in every notice acknowledging receipt of a hardship application under section 57A(1)(a); and
 - 95.3 if and when a lender declines an application for a high-cost consumer credit contract.⁹⁸

How must information be disclosed

- 96 The regular disclosure process in Subpart 4 of the Act (sections 32 and 35) does not apply to the disclosure of information under sections 26B(1) and (2).⁹⁹ Instead, the disclosure must be made in a prominent manner, and in accordance with regulations made under section 138(1)(dba).¹⁰⁰
- 97 This Part applies equally to existing and new agreements.¹⁰¹



96. Section 26B applies from 1 December 2021.

97. Section 26B(1).

98. Section 26N(2).

99. Section 26B(4).

100. Section 26B(3).

101. Schedule 1AA, 10(2).

PART I: The lender responsibility principles

- 98 When providing disclosure, lenders must ensure that they are complying with the lender responsibility principles. The lender responsibility principles are contained in section 9C(2) and impose obligations on lenders when advertising, before entering into a loan, and during all subsequent dealings with borrowers and guarantors.

What are the lender responsibility principles?

- 99 There are two lender responsibility principles:¹⁰²
- 99.1 Lenders must exercise the care, diligence and skill of a responsible lender in all its dealings with borrowers and guarantors. This includes when advertising, before entering into a loan, and in all subsequent dealings relating to the loan or guarantee.
 - 99.2 Lenders must comply with the **specific listed lender responsibilities** set out in section 9C(3)-(5) of the Act.

Responsible Lending Code

- 100 The Code sets out useful guidance to lenders on how they can comply with the lender responsibility principles.¹⁰³ The Code includes guidance on the information and communications lenders should provide to borrowers and guarantors before and during the loan.¹⁰⁴
- 101 In particular, useful guidance relevant to a lender's disclosure obligations is contained in Chapters 3 (advertising), 7 (assisting borrowers to make informed decisions) and 8 (assisting guarantors to make informed decisions).

Lender responsibilities relevant to disclosure

Borrowers

- 102 The lender responsibilities that are most relevant to lenders when meeting their disclosure obligations to borrowers include:
- 102.1 Assisting borrowers to **reach an informed decision** whether or not to enter into the loan and to be reasonably aware of the implications of entering into the contract, including ensuring that:¹⁰⁵
 - 102.1.1 advertising is not, or is not likely to be, misleading, deceptive or confusing to borrowers; and
 - 102.1.2 the terms of the loan contract, and any changes made to it, are expressed in **plain language** in a clear, concise and intelligible manner.
 - 102.2 Ensuring that:
 - 102.2.1 the agreement does not contain oppressive terms and the lender has not induced the borrower to enter the contract by oppressive means; and
 - 102.2.2 the agreement complies with all **other legal obligations**, including obligations relating to disclosure.¹⁰⁶

102. Section 9C(3) sets out lenders' responsibilities towards borrowers, section 9C(4) sets out lenders' responsibilities towards guarantors, and section 9C(5) sets out lenders' responsibilities towards borrowers purchasing credit-related insurance.

103. <http://www.consumeraffairs.govt.nz/legislation-policy/policy-development/credit-review/responsible-lending-code>.

104. Responsible Lending Code, Chapters 3, 7 and 8.

105. Section 9C(3)(b). Note also the specific rules for disclosure statements in section 32.

106. Section 9C(3)(f).

Guarantors

- 103 In relation to guarantors, the relevant lender responsibilities are to:
- 103.1 Assist guarantors to reach an informed decision whether or not to enter into the guarantee and to be reasonably aware of the implications of entering into the contract. This includes ensuring that the terms of the loan contract, and any changes made to it, are expressed in plain language in a clear, concise and intelligible manner.¹⁰⁷
 - 103.2 Make reasonable inquiries so as to be satisfied that it is likely that guarantors – just like borrowers – will be able to comply with the guarantee without suffering substantial hardship.¹⁰⁸
 - 103.3 Treat guarantors reasonably and in an ethical manner, including when breaches of a credit contract to which the guarantee applied have occurred or may occur or when other problems arise.¹⁰⁹
 - 103.4 Ensure the agreement does not contain oppressive terms and lenders have not induced guarantors to give the guarantee by oppressive means.
 - 103.5 Comply with all other legal obligations, including obligations relating to disclosure.¹¹⁰

Lender responsibility principles and disclosure requirements

- 104 The lender responsibility principle that lenders must not provide misleading, deceptive and confusing information applies to lenders' dealings with borrowers in relation to advertising and other information provided to borrowers,¹¹¹ but does not apply to the initial disclosure statements. This is because the disclosure documents are subject to the disclosure standards set out in section 32.¹¹² Therefore, any misleading and deceptive disclosure statements will be an offence in breach of section 32 rather than a breach of the lender responsibility principles.
- 105 Section 32 of the Act sets out disclosure standards which describe how lenders must disclose the information specified in the Act to borrowers, in their initial disclosure statements. Disclosure must:
- 105.1 be in writing in what is referred to as a disclosure statement, and it must contain the information required by the Act;
 - 105.2 express the information clearly and concisely and in a way that is likely to bring the information to the attention of a reasonable person;
 - 105.3 not be likely to mislead or deceive a reasonable person in relation to any material information; and
 - 105.4 be in the form prescribed by regulation, if any regulations apply.¹¹³

107. Section 9C(3)(b). Note also the specific rules for disclosure statements in section 32.

108. Section 9C(4)(a).

109. Section 9C(4)(c).

110. Section 9C(3)(f).

111. Section 9C(3)(i) and (ii).

112. See section 9C(6) which exempts the lender responsibilities from applying to information that is subject to the section 32 disclosure standards.

113. See in particular the Regulations, regulations 12-16. These regulations describe the rules relating to the use of model disclosure statements, which are provided as Forms 1 and 2 of Schedule 2 to the Act.

- 106 Other lender responsibilities may also be relevant before and after extending credit to the borrower – it is the lender’s obligation to be familiar with these responsibilities and with the guidance in the Code.
- 107 For example, where a variation materially changes an existing loan (such as by increasing a credit limit or advancing further credit) a responsible lender can be expected to take steps to be satisfied that the credit provided will meet the borrower’s requirements and objectives, and that the borrower can make the payments without suffering substantial hardship.¹¹⁴

PART J: Penalties and consequences for breach of lender responsibility principles and disclosure provisions

- 108 Breach of the disclosure requirements and responsible lending principles relating to disclosure can give rise to criminal and civil legal consequences.

Enforcement prohibited unless correct disclosure made

- 109 If the disclosure rules are not followed:
- 109.1 The lender cannot enforce the contract until the lender makes correct disclosure under sections 17 and 22. This means that the lender cannot recover any interest or fees for the period of non-compliant disclosure.¹¹⁵
 - 109.2 The borrower can also cancel the contract at any time, without penalty, if the lender fails to make correct initial disclosure.¹¹⁶ The borrower may still need to pay some fees and interest, depending on the contract.
- 110 It is an offence for a lender to misrepresent its rights under the contract. If a lender misrepresents its right to enforce the contract where it has not made correct disclosure, the lender is likely to breach the FTA.¹¹⁷

Reduction of consequences for failing to make disclosure

- 111 A lender under a consumer credit contract may apply to the court for a reduction of the effect of an order made under section 48 (for the recovery of payments that the lender is not entitled to retain), or section 99(1A) (for the release of liability for costs of borrowing when disclosure is not made).¹¹⁸
- 112 The court may reduce or extinguish the amount the lender owes if the court regards the reduction or extinction as just and equitable.¹¹⁹ The court may make the order with any terms and conditions it sees fit.¹²⁰

114. Section 9C(3).

115. Section 99(1A).

116. Section 27(1).

117. Section 13(i) of the FTA.

118. Section 95A(1). This section came in to force on 20 December 2019. Schedule 1AA, 8(6) of the Credit Contracts Legislation Amendment Act 2019 specifies that section 95A applies to pre-existing agreements after the date of commencement, but only in respect of costs of borrowing in relation to the period after commencement.

119. Section 95A(1).

120. Section 95A(4).

Infringement offences

- 113** The Commerce Commission can issue infringement notices requiring lenders to pay an infringement fee for some breaches of the disclosure provisions that occurred after 6 June 2015.¹²¹
- 114** Lenders commit an infringement offence if they fail to:¹²²
- 114.1** include one or more of the required pieces of information in a disclosure statement;
 - 114.2** give or send borrowers or guarantors a copy of the relevant terms within the timeframes specified in the relevant section;¹²³ and/or
 - 114.3** provide request disclosure when asked.¹²⁴
- 115** Note that if a lender completely fails to give or send a disclosure statement to the borrower or guarantor in accordance with a disclosure provision, this is not an infringement offence but instead is an offence of the kind liable to prosecution as discussed below.¹²⁵
- 116** An infringement notice will impose an infringement fee where:
- 116.1** the Commission considers, on reasonable grounds, that a person is committing or has committed an infringement offence;¹²⁶ and
 - 116.2** no criminal proceedings or infringement notices have already been issued for the offence.
- 117** The infringement fee is currently set at \$1,000 for any single infringement offence and can be changed by regulation.¹²⁷ The recipient of an infringement notice must either pay the fee or challenge the notice within 28 days of receiving the infringement notice.
- 118** If a notice is challenged, and the Commission does not accept that the challenge is valid, the matter will proceed to a court hearing.¹²⁸
- 119** Instead of issuing an infringement notice, the Commission can choose to prosecute lenders for committing an infringement offence. In making the decision whether to prosecute, the kinds of factors that the Commission would consider include whether the alleged offence was part of a pattern of offending by that lender or whether infringement notices had been issued to that lender previously. If convicted of an infringement offence, an individual is subject to a fine not exceeding \$10,000 and for a company, a fine not exceeding \$30,000.¹²⁹



121. Section 105A.

122. Section 102A(1)(a) and (b).

123. See Part B and C of this guidance for timing for disclosure to borrowers, and Part G of this guidance for timing of disclosure to guarantors.

124. Sections 102A(3) and 24.

125. Section 102A(2).

126. Section 105C.

127. Section 105A. Credit Contracts and Consumer Finance (Infringement Offences) Regulations 2015, regulation 4.

128. Section 21 of the Summary Proceedings Act 1957.

129. Section 102A(8).

Criminal prosecution for other offences

- 120 The Act creates a range of offences that the Commission can prosecute criminally,¹³⁰ including those where no infringement offence is provided or where the Commission decides that the matter cannot be adequately addressed by imposing an infringement fee. For example, a complete failure to give or send a disclosure statement is not an infringement offence and proceedings must take the form of a criminal prosecution.¹³¹ Only more minor disclosure breaches can lead to an infringement offence, and in those cases the Commission can choose whether to issue an infringement fee or take criminal proceedings.
- 121 Lenders who are convicted of a criminal offence can be subject to fines of up to \$200,000 for an individual, and up to \$600,000 for companies.¹³²

Civil remedies for disclosure breaches

- 122 In addition to the penalties for infringement and criminal offences, the Act allows the Court to make a wide range of compensation and other orders to remedy the breach. Lenders can be ordered to pay damages, refund money, pay compensation, or take any other steps that the Court thinks fit.
- 123 If the lender has failed more than once to comply with any of the provisions of the Act, including the lender responsibility principles, the Commission may also apply to the District Court for an order restricting or banning a lender from participating in the credit industry.¹³³

130. Section 103.

131. Section 102A(2).

132. Section 103(1), fines at this level apply to offences from 6 June 2015.

133. Sections 9A(2) and 108(1)(a)(v).

ISBN 978-1-869454-87-6

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.

You can subscribe for information updates at www.comcom.govt.nz/subscribe

Contact us with information about possible breaches of the laws we enforce:

Phone: 0800 943 600

Write: Enquiries Team, PO Box 2351, Wellington 6140

Email: contact@comcom.govt.nz

www.comcom.govt.nz

