AFFORDABILITY ASSESSMENT GUIDELINES FOR CREDIT PROVIDERS IN TERMS OF SECTION 82(2)(b) OF THE NATIONAL CREDIT ACT, ACT 34 OF 2005

Definitions

SECTION A: DEFINITIONS, INTRODUCTION AND APPLICATION

1. Definitions

In these guidelines, unless the context otherwise indicates:

*"the Act" means the National Credit Act, Act No 34 of 2005;

*"Credit Bureau" means a person required to apply for registration as such in terms of section 43(1) of the Act;

*"Credit Provider" in respect of a Credit Agreement to which the Act applies, means –

(a) the party who supplies goods or services under a discount transaction, Incidental Credit Agreement or Instalment agreement;
(b) the party who advances money or credit under a pawn transaction;
(c) the party who extends credit under a credit facility;
(d) the mortgagee under a mortgage agreement;
(e) the lender under a secured loan;
(f) the lessor under a lease;
(g) the party to whom an assurance or promise is made under a credit guarantee;
(h) the party who advances money or credit to another under any other Credit Agreement; or
(i) any other person who acquires the rights of a credit provider under a Credit Agreement after

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It has been entered into; and (i) a person required to apply for registration as such in terms of section 40(1) of the Act;

"Prospective Consumer or Consumer" in respect of a Credit Agreement to which the Act applies, means

(a) the party to whom goods or services are sold under a discount transaction, incidental Credit Agreement or instalment agreement;
(b) the party to whom money is paid, or credit granted, under a pawn transaction;
(c) the party to whom credit is granted under a credit facility;
(d) the mortgagor under a mortgage agreement;
(e) the borrower under a secured loan;
(f) the lessee under a lease;
(g) the guarantor under a credit guarantee; or
(h) the party to whom or at whose direction money is advanced or credit granted under any other Credit Agreement;

"Joint Prospective Consumers or Joint Consumers" means the Prospective Consumers or Consumers that are co-principal debtors and jointly and severally liable with regard to the same Credit Agreement and applies jointly for the Credit Agreement. Prospective Consumers or Consumers married in community of property that apply separately for a Credit Agreement and Sureties are specifically excluded from the definition;

"Credit Agreement" means an agreement that meets all the criteria set out in section 8 of the Act;

"Discretionary Income" means gross income (as confirmed in terms of paragraph 5.1 below) less statutory deductions (such as Income tax, UIF), less Necessary Expenses (at a minimum as defined herein); less all other committed payment obligations including such as may appear from the credit applicant's credit records as held by any Credit Bureau (where such Credit Bureau has access to the data collected and/or collated by or in conjunction with the Credit Providers' Association)

"Allocatable Income" means gross income (as confirmed in terms of paragraph 5.1 below) less statutory deductions (such as income tax, UIF), less Necessary Expenses (at a minimum as defined herein);

"Allocatable Income Buffer" means a percentage of the Allocatable Income which Credit Providers are required to allow for changes in the Consumer's financial circumstances;

"NCR" means the National Credit Regulator established in terms of section 12 of the Act;

"Necessary Expenses" means the Prospective Consumer's minimum living expenses in regards to food, transport and accommodation as determined in accordance with paragraph 5.2;

"Unsecured Term Credit Agreement" means a credit transaction (excluding a pawn transaction, discount transaction; incidental Credit Agreement; instalment agreement; mortgage agreement; secured loan and lease) in respect of which the deferred amount is not secured by a pledge of movable property, cession of a thing of value or rights, mortgage over immovable property, suretyship or other personal security or a right in property other than credit insurance.
"Secured Credit Agreement" means a Credit Agreement in respect of which the deferred amount is secured by a pledge of movable property, cession of a thing of value or rights, mortgage over immovable property, suretyship or other personal security or a right in property other than credit insurance.

2. **Introduction**

In terms of section 82(2)(b) of the Act, the NCR may publish guidelines proposing evaluative mechanisms, models and procedures to be used in terms of section 81 of the Act. Such guidelines aim, in part, to assist Credit Providers to undertake the required assessments on a more consistent and sustainable basis so as to achieve the purposes of the Act.

The NCR hereby issues the guidelines set out below in terms of section 82(2)(b) of the Act ("Affordability Guidelines" or "Guidelines").

The Guidelines may be amended by the NCR from time to time after due consultation with impacted parties within the credit industry. The NCR shall notify Credit Providers of any amendment to the Guidelines as well as the implementation periods by publishing them on its website and by sending them via e-mail, facsimile or prepaid registered post to the contact details provided by Credit Providers to the NCR.

3. **Application**

3.1 These Guidelines apply to all Credit Providers.

3.2 These Guidelines apply to all Credit Agreements to which the Act applies.

3.3 These Guidelines do not apply to a Credit Agreement in respect of which the Prospective Consumer or Consumer is a juristic person as defined in section 1 of the Act.

3.4 Where indicated, parts of these Guidelines may have limited application to Secured Credit Agreements.

3.5 The Guidelines do not apply to:

(a) A developmental Credit Agreement;
(b) A school loan or a student loan;
(c) A public interest Credit Agreement;
(d) A pawn transaction;
(e) An Incidental Credit Agreement;
(f) An emergency loan;
(g) A temporary increase in the credit limit under a credit facility;
(h) An unilateral credit limit increase in terms of section 119(1)(c); 119(4) and 119(5) of the Act under a credit facility; and
(i) A pre-existing Credit Agreement in terms of Schedule 3 Item 4(2) of the Act.

**SECTION B: THE GUIDELINES**

4. **Introduction**

While Credit Providers often grant credit largely on the basis of the Prospective Consumer's probability of default, the Act requires in section 81(2) that Credit Providers also take reasonable steps to assess the
Prospective Consumer’s existing financial means, prospects and obligations, as defined in section 78(3).
[Note: Credit Providers may need to consider the existing financial means, prospects and obligations of more than one Prospective Consumer where credit is applied for jointly, thus in the event of Joint Prospective Consumers. In such circumstances, the Prospective Consumers should be able to show that they are collectively able to afford the monthly debt repayment instalments in regards to the credit for which they have applied.]

This calculation is more comprehensive than assessing the probability of default and constitutes what may be termed an "affordability assessment". In addition to calculating the Prospective Consumer’s ability to repay the debt, the Act also requires Credit Providers to take reasonable steps to assess the Prospective Consumer’s debt repayment history as a Consumer under other Credit Agreements.

5. Calculation of the Consumer’s existing financial means, prospects and obligations as envisaged in section 81(2)(a)(ii) read with section 78(3) of the Act ("Affordability Assessment")

The Guidelines are intended to establish calculation norms for Credit Providers to take the reasonable steps in assessing the Prospective Consumer’s existing financial means, prospects and obligations as contemplated in section 81(2)(a)(iii) of the Act.

5.1 Existing financial means and prospects

5.1.1 The NCR is of the view that the Act requires all Credit Providers to take reasonable steps to assess the Prospective Consumer’s Allocatable Income as well as their Discretionary Income to determine whether the Prospective Consumer has the financial means and prospects to pay the proposed credit instalments.

5.1.2 To this end, Credit Providers are required to take reasonable steps to validate income by referring to the Prospective Consumer’s payslips and/or bank statements and/or by obtaining other credible confirmation either written or electromagnetically recorded of the Prospective Consumer’s Income. Where the Prospective Consumer’s monthly income shows variance, the average income over the period of not less than three months preceding must be utilized.

5.1.3 The aforementioned principles with regard to existing financial means and prospects also apply to Joint Prospective Consumers or Joint Consumers.

5.2 Existing financial obligations

5.2.1 Table 1 below reflects the minimum living expense norms (Necessary Expenses), broken down by annual gross Income, that may be accepted by Credit Providers, absent evidence to the contrary, when Credit Providers calculate the existing financial obligations of Prospective Consumers in terms of 81(2)(a)(iii) of the Act. [Note: Table 1 will be periodically reviewed by the NCR]
Table 1

<table>
<thead>
<tr>
<th>Annual Gross Income</th>
<th>Annual Fixed Factor (Food, Transport, Accommodation)</th>
<th>Annual Fixed Factor + % of Income above Band Min</th>
</tr>
</thead>
<tbody>
<tr>
<td>Min</td>
<td>Max</td>
<td></td>
</tr>
<tr>
<td>R0</td>
<td>R14,400</td>
<td>0</td>
</tr>
<tr>
<td>R14,400.01</td>
<td>R75,000</td>
<td>R14,400</td>
</tr>
<tr>
<td>R75,000.01</td>
<td>R180,000</td>
<td>R18,500</td>
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<tr>
<td>R180,000.01</td>
<td>R600,000</td>
<td>R40,500</td>
</tr>
<tr>
<td>R600,000.01</td>
<td>High</td>
<td>R65,100</td>
</tr>
</tbody>
</table>

* By way of example, should the Prospective Consumer have an annual gross income of R24,000 the Credit Provider may not accept annual Necessary Expenses of less than R14,400 plus R648 (being 6.75% of R9,600) unless same is evidenced as required in these Affordability Guidelines.

5.2.2 Where Prospective Consumer’s claim to have transport, accommodation or food expenses which are cumulatively less than that set out in Table 1 above, they should be required by the Credit Provider to evidence their claimed lower Necessary Expenses by means of appropriate documentation.

5.2.3 In regards to Unsecured Term Credit Agreements, Credit Providers are required to ensure that every Prospective Consumer’s disclosed Necessary Expenses equal or exceed those reflected in Table 1 above. Alternatively, the Credit Provider must obtain credible written evidence that the Prospective Consumer’s disclosed Necessary Expenses are below those set out in Table 1. Examples of credible evidence would include but would not be limited to payments reflected on bank statements, lease agreements, home loan statements, unencumbered deeds of title, personal credit records, vehicle leases or finance agreements, letters from a tribal authority or other similar documents.

5.2.4 Any Credit Provider that enters into an Unsecured Term Credit Agreement with a Consumer where such Consumer’s Necessary Expenses are below that set out in Table 1, without credible evidence in support of same, may be referred by the NCR to the National Consumer Tribunal on the basis that they have lent recklessly as that concept is envisaged in section 80(1)(b)(i) of the Act. This excludes all other Credit Agreements and more specifically Secured Credit Agreements.

5.2.5 The aforementioned principles with regard to existing financial obligations also apply to Joint Prospective Consumers or Joint Consumers.

6. Debt re-payment history as a Consumer under Credit Agreements as envisaged in section 81(2)(a)(ii) of the Act.
The Industry Trends, Practices and Developments

6.1 The Prospective Consumer’s debt repayment history as a Consumer under Credit Agreements will usually be reflected on the credit record of the Consumer as held by one or more Credit Bureaus.

6.2 Credit Providers must take into consideration all debt, including the monthly debt repayment obligations in terms of Credit Agreements, as reflected on the Prospective Consumer’s credit profile held by a Credit Bureau when calculating the Prospective Consumer’s Allocatable Income and Discretionary Income and in making an Affordability Assessment. This Affordability Assessment calculation must include the minimum payments due under credit facilities.

6.3 In addition, Credit Providers must ensure that the requirements of paragraph 6.2 above are performed during the seven business days immediately prior to the initial granting of credit or to the increasing of an existing credit limit.

6.4 The aforementioned principles with regard to debt re-payment history under Credit Agreements also apply to Joint Prospective Consumers or Joint Consumers.

7. Avoiding double counting in calculating the Allocatable Income

7.1 Many Credit Agreements are entered into on a substitutionary basis, in order to pay off one or more existing Credit Agreements. Where this is the case, Credit Providers should record that the credit being applied for is to replace other existing Credit Agreement/s and take reasonable steps to ensure that such credit is properly used for such purpose.

8. Credit Literacy

8.1 Credit Providers shall take reasonable steps to display such credit literacy posters and make available such credit literacy materials to their clients and Prospective Consumers, as the NCR may issue from time to time.

8.2 Credit Providers shall perform such credit literacy surveys as the NCR may require from time to time.

9. Credit Providers’ Code of Conduct to Combat Over-indebtedness in terms of section 48(1)(b) of the Act (“the Code of Conduct”)

9.1 These Guidelines should be read with the Credit Providers’ Code of Conduct to Combat Over-indebtedness.

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DRAFT AMENDMENTS TO CREDIT PROVIDERS' CODE OF CONDUCT TO COMBAT OVER-INDEBTEDNESS

Definitions

"LIFO" means the Credit Agreements which were entered into last should be restructured first i.e. in reverse sequence in which the Credit Agreements were granted thus requiring a later Credit Provider to fully apply DCRS and other concessions before the other Credit Provider.

1. The Guidelines issued pursuant to section 82(2)(b) of the National Credit Act

1.1 The Guidelines issued pursuant to section 82(2)(b) of the National Credit Act (Act 34 of 2005) (the "Act") (the "Affordability Guidelines") should be followed by Credit Providers that have undertaken to combat over-indebtedness of Consumers in terms of this Code of Conduct.

2. All Credit Providers to report credit information to Credit Bureaux

2.1 The availability and accuracy of credit information on Credit Bureaux plays a significant role in combating the over-indebtedness of Consumers.

2.2 Accordingly, all Credit Providers must report:

2.2.1 The details of all new, entered into or amended or closed, terminated or settled Credit Agreements, to which the Act applies, to Credit Bureaux in the required format (as may be published by and/or endorsed by the National Credit Regulator ("NCR") from time to time)

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which information must be updated within 48 (forty eight) hours of the Credit Agreement being entered
into, amended, closed, terminated or settled. [Note: Credit facilities are only settled when the outstanding
balance is repaid in full and the credit facility closed.]; and

2.2.2 Information relating to the Consumer’s non-compliance with the terms and conditions
of Credit Agreements which include inter alia payment profile information, adverse classifications
of Consumer behaviour and adverse classifications of enforcement action which information
must be updated on a monthly basis.

3. Collection by means of Emolument Attachment Orders (“EOA”)

3.1 Duration of EOA

3.1.1 Credit Providers shall not collect any EAO for more than a maximum duration of 5 years from date
of granting of the EAO by the Magistrates’ Court where after the EAO deduction should expire.
The Credit Provider should advise the Consumer’s employer in writing within the thirty (30)
day period immediately prior to the expiry of such 5 year period to cease the deductions. Where the
outstanding balance has not been paid off during the five year period, the Credit Provider may
consider alternate debt collections mechanisms.

3.2 Eligibility criteria

3.2.1 An EAO may not be sought for any Credit Agreement where the cumulative monthly repayment
amount of all in-force Credit Agreements initiated prior and up to such debt obligation exceeds 30% of
the current monthly gross income of the Consumer. The maximum utilisation of a credit facility
must be assumed when determining the monthly repayment amount mentioned above. The
eligibility criteria would be determined during the financial assessment conducted by the Credit
Provider as envisaged in paragraph 3.3 below.

3.2.2 An EAO may not be sought for any Credit Agreement where the Credit Provider failed to conduct
an Affordability Assessment as required in terms of the Affordability Guidelines.

3.3 Affordability criteria - Application of living expense norms and Allocatable Income buffer
as part of the EAO affordability assessment

3.3.1 At the time of seeking an EAO, a financial assessment of the Consumer’s current financial position
must be conducted by the Credit Provider. Such assessment should consider the income, living
expenses, all payment obligations (credit agreements) and all other existing EAOs issued in respect
of the Consumer. The maximum utilisation of a credit facility must be assumed when determining
the payment obligations under credit agreements. The living expenses taken into consideration in
such assessment should be equal to or greater than the living expense norms (Necessary Expenses)
set out in Table 1 of the Affordability Guidelines and the Credit Provider should allow and make

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provision for a Allocatable Income buffer equal to 10% (ten percent) of the Consumer’s Allocatable Income, as defined in the Affordability Guidelines, when calculating what amount to request from the court as part of an EAO.

3.3.2 The cumulative EAOs deducted from the Consumer’s salary monthly may not exceed 30% of the Consumer’s current gross income.

3.4 Reporting on EAOs

3.4.1 Credit Providers must report to the NCR on all active EAOs issued in respect of their Credit Agreements in terms of the additional reporting provisions of the Act or regulations pursuant thereto. In addition, all new EAOs granted should be recorded on the Consumer’s Credit Bureau profile.

4. Concessions in Debt Review

4.1 The measures set out below should be read with the NCR Task Team Report of May 2010 and are not aimed at replacing the agreed recommendations but rather aim to make appropriate adjustments to same. Credit Providers should continue with the implementation of such agreed measures, subject to the modifications stipulated below.

Eligibility and Affordability

4.2 The Debt Counselling Rules System ("DCRS") was created by Credit Providers in consultation with debt counsellors and payment distribution agents after the publication of the NCR Task Team Report in May 2010 by the NCR. This system contains the voluntary concessions on interest rates; fees and charges; repayment terms and repayment instalments provided by Credit Providers to Consumers in the statutory debt review process. Any Consumer may benefit from these voluntary concessions as long as the eligibility and affordability criteria are met as set out in the NCR Task Team Report of May 2010, more particularly Annexure C thereof and the Debt Review Joint Stakeholder Forum agreed paper entitled "Affordability and Eligibility”.

4.3 In order to address those instances where Consumers apply for debt review in order to support a lifestyle beyond their reasonable means, utilizing the 2010 NCR Task Team Report and Debt Review Joint Stakeholder Forum agreed paper, it is required that a set of eligibility and affordability criteria be applied to ensure that the rehabilitation of the Consumer is achieved. To this end the following principles should be applied:

4.3.1 Consumers should receive an income and the income should be determined in line with the 2010 NCR Task Team Report.

4.3.2 Consumers should prepare a list of assets to be sold as part of the process to reduce indebtedness. Such list of assets should not include their primary residence.
4.3.3 Insurance policies should be reviewed to ensure that these are in place where this is a condition of the contract or Credit Agreement. However, where excessive insurance is in place, this should be considered for reduction / consolidation to ensure only sufficient cover is carried.

4.3.4 Spending patterns should be reviewed with a view of including spending on essential items and reducing spending on luxury expenses.

4.3.5 Minimum debt repayment

4.3.5.1 In line with the 2010 NCR Task Team Report for minimum debt repayment, all Credit Providers with Consumers in debt review shall be entitled to limit the concessions granted to Consumers in debt review unless such Consumers make a certain minimum amount available for repayment of debt, as is set out in Table A below.

Table A

<table>
<thead>
<tr>
<th>After tax income percentage of monthly household income to be made available as a minimum for repayment of debt</th>
</tr>
</thead>
<tbody>
<tr>
<td>R0 — R 2 000</td>
</tr>
<tr>
<td>R 2 001 — R 5 000</td>
</tr>
<tr>
<td>R 5 001 — R 10 000</td>
</tr>
<tr>
<td>R 10 001 — R 20 000</td>
</tr>
<tr>
<td>R 20 001 — R 40 000</td>
</tr>
<tr>
<td>R 40 001 — R 60 000</td>
</tr>
<tr>
<td>R 60 001+</td>
</tr>
</tbody>
</table>

DCRS

4.4 Currently the DCRS concessions are applied equally to all Credit Providers irrespective of when the credit was granted. This is evidently not equitable. It is the NCR's view that the LIFO principle as defined herein should be applied in the statutory debt review process and DCRS to the effect that Credit Agreements are restructured successively starting with the most recently entered into or increased limit Credit Agreement. Thereafter should the Consumer's debt rearrangement proposal not resolve the remaining Credit Agreements should be successively restructured until the Consumer's debt payment rearrangement proposal solved. This process should aim to ensure that Credit Providers are treated fairly and that the Credit Providers that bear more responsibility for over-leveraging Consumers are more appropriately penalized.
4.5 Moreover, the DCRS is hereby amended to be more punitive towards Credit Providers that over-leverage Consumers by applying the following rules in addition to the LIFO principle defined herein:

4.5.1 The term of any Unsecured Term Credit Agreement should be extended by the greater of 60 months or one and a half (1.5) times the remaining term of the Credit Agreement at the time of the Consumer applying for debt review.

4.5.2 These concessions are subject to the Consumer complying with the eligibility criteria; affordability criteria and minimum payment repayment requirements as stated above; For those Consumers that have been significantly over-geared and where application of the DCRS (including LIFO and term extension mentioned above) does not result in the Consumer solving with a restructure proposal, even after applying maximum concessions, the following should take place:

4.5.3 Credit Providers that entered into Credit Agreements where the cumulative monthly debt repayment of prior originated in-force Credit Agreements does not allow for the Necessary Expenses as specified in Table 1 of the Affordability Assessment Guidelines when considering the Consumer's current gross income, would be required to write off up to 50% (fifty percent) of the capital extended as a further punitive measure to discourage over-leveraging Consumers. The percentage write-off would be applied equally to all Credit Agreements up to the point where the repayment proposal solves.

4.5.4 Paragraph 4.5.3 will only be applied to Secured Credit Agreements after the security has been realised thus on any residual debt that may remain.

5. Credit life insurance

5.1 Calculation and disclosure

5.1.1 Where credit life insurance, as defined in section 1 of the Act ("credit life insurance"), is required as part of any Credit Agreement, Credit Providers must:

5.1.1.1 Separately disclose the premium of such credit life insurance as a Rand value per R1,000 cover purchased (for example R3.95 per R1,000.00).

5.1.1.2 Include and disclose the total cost of such credit life insurance for the envisaged duration of the Credit Agreement in the total cost of credit calculation in all documentation provided to the Consumers.

5.2 Minimum cover

5.2.1 The terms of credit life insurance vary greatly in regards to the cover provided. Any mandatory credit life insurance sold in association with a Credit Agreement must as a minimum provide outstanding balance settlement for permanent disability or death as well as comprehensive repayment cover equalling at least six months of repayment instalments in the event of retrenchment.
5.3 The reasonable cost of credit life insurance

5.3.1 Section 106(2)(b) of the Act states that insurance should not be provided at an unreasonable cost to the Consumer. The NCR is of the opinion that the maximum reasonable premium that may be charged for credit life insurance as envisaged in section 106(2)(b) of the Act should be an all-inclusive premium equal to no more than R4.00 per R1,000.00 of the deferred amount at the time of entering into the Credit Agreement. Any premium above this threshold is likely unjustified and is considered unreasonable.

5.3.2 Accordingly, no credit life insurance with a premium in excess of R4.00 per R1,000.00 should be sold as a requirement for granting any credit.

6. Disclosure of the credit cost multiple

6.1 Credit Providers shall disclose the credit cost multiple in the pre-agreement statement and quotation. Where "credit cost multiple" means the ratio of the total cost of credit (Section 101(1)(b) to (g) of the Act) to the principal debt advanced that is the total cost of credit divided by the principal debt advanced.

6.2 Credit Providers should ensure that they draw the attention of the Prospective Consumer to the credit cost multiple and that the cost of credit, as disclosed, is understood by the Prospective Consumer.

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