

GUIDELINE
FOR CREDIT
PROVIDERS
AND CREDIT
BUREAUX IN
RESPECT OF DEBT
THAT IS ON-SOLD

001/2017

04 APRIL 2017

This Guideline is applicable to all credit providers (including debt collectors) and credit bureaux.

The purpose of this Guideline is to set out the principles in relation to the listing of debt on a credit bureau and to ensure that credit providers and credit bureaux meet their obligations in terms of the National Credit Act, 2005, as amended (“the NCA”).

Your attention is referred to the following provisions in the NCA:

Regulation 17: This Regulation sets out the maximum period for which consumer credit information must be displayed on the records of the credit bureaux, inter alia, adverse information for one year, judgments and payment profile information for five years.

Regulation 55: This Regulation requires credit providers to hold and retain information relating to a credit agreement, in particular, the original credit agreement reflecting the commencement of the agreement, record of payments made and documentation in support of steps taken after default of consumer, until a period of three years has elapsed after the termination of the respective credit agreement.

The definition of a “credit provider” in the NCA includes any person who acquires the rights of a credit provider under a credit agreement after it has been entered into, in other words a person to whom a credit agreement is sold, that is, a debt collector is a credit provider. All credit providers are required to be registered with the National Credit Regulator (“NCR”).

The NCR has noted that the aforementioned provisions of the NCA are not being adhered to, and thus issues this Guideline to remind all parties of their obligations under the NCA:

1. A debt arising out of a credit agreement may only be sold to a third party who is registered with the NCR as a credit provider.
2. No adverse information, including payment profile information that is not current, as well as judgments (“adverse information”) in relation to a debt arising out of a credit agreement may be listed for longer than the maximum period set out in Regulation 17.
3. No party who acquires a debt under a credit agreement may list any information set out in Regulation 17 if such information has already been listed by another party for the maximum period set out in Regulation 17.
4. No party who acquires a debt under a credit agreement may list any information set out in Regulation 17, unless it has the requisite documentation in respect of such debt as set out in Regulation 55.
5. Credit providers must submit credible evidence to credit bureaux in the form of the mandatory documentation required to be retained by a credit provider in terms of Regulation 55, that is, the original credit agreement as well as documentation in respect of any action taken after default by the consumer, in such instances where the consumer disputes the relisting of a debt under a credit agreement. Failure by the credit provider to provide such documentation will result in the disputed information being removed from the records of the credit bureaux.
6. A debt that is sold by Credit Provider A to Credit Provider B must be reflected on the records of the credit bureau as set out below:
 - 6.1 As settled on the payment profile line of Credit Provider A, with all adverse listings being removed and a clear indication that the debt has been sold and to whom;
 - 6.2 In respect of Credit Provider B, as a debt that has been purchased by Credit Provider B, with the adverse listings as depicted on the consumer’s record with Credit Provider A now listed under Credit Provider B, for the remaining time period (taking into account the period that the adverse information was listed under Credit Provider A) provided in Regulation 17; and
 - 6.3 No adverse information may be reflected on the credit bureaux by a subsequent credit provider where such adverse listing has already been reflected by a prior credit provider for the maximum period allowed in terms of Regulation 17 of the NCA.
7. A credit provider remains legally responsible for all debt outsourced to a third party for collection. Credit providers outsourcing the collection of their debt are obliged to have adequate systems and processes to ensure that submission of information to the credit bureaux in relation to outstanding debt at no time exceeds the maximum display periods set out in Regulation 17, regardless of whether such debt is outsourced or not.

FURTHER INFORMATION

Please contact **Alison Magrath** on **011 554 2822** or **Mmbatho Senyarelo** on **011 554 2786** should you have any queries.

Disclaimer:

While the NCR has taken reasonable care to ensure the factual accuracy of this Guideline, it cannot guarantee such accuracy, especially with regards to future events. Accordingly, NCR does not accept any liability for damages incurred by any party as a result of decisions or actions taken pursuant to this Guideline.