

GUIDELINES FOR DEBT COUNSELLORS ON THE SUBMISSION OF FORMS 41 AND 42



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1. INTRODUCTION

The National Credit Act No 34 of 2005 (NCA) in regulation 69(1), requires every registered debt counsellor(DC) to submit an annual compliance report/return using Form 41, to the National Credit Regulator (NCR) by the 15th of February each year for the period 1 January to 31 December. In addition, regulation 69(2) requires all registered DCs to complete and submit the statistical return using Form 42 to the NCR on a quarterly basis as set out below:

Quarters	Reporting period	Due date for statutory reporting
Quarter 1	1 January to 31 March	15 May
Quarter 2	1 April to 30 June	15 August
Quarter 3	1 July to 30 September	15 November
Quarter 4	1 October to 31 December	15 February

Accurate and timeous submission of these reports is a compulsory provision for all registered DCs and failure to comply is a direct contravention of the provisions of the NCA and DCs' conditions of registration.

2. PURPOSE OF THE GUIDELINES

The purpose of the guidelines is to provide clarity and guidance on the manner in which DCs should compile and complete the Form 41 and Form 42. Accurate completion and timeous submission will enable the NCR to fulfil its obligation in terms of section 16(1) (c) of the NCA to conduct research and monitor socio-economic patterns of consumer credit activities in the credit market.

3. GUIDELINES

Please note that we attach **“Annexure A”** which is a Form 42 checklist intended to serve as tool for DCs to assess the accuracy and completeness of the data captured prior to submission of the Form 42.

3.1 FORM 41- ANNUAL COMPLIANCE REPORT/RETURN

3.1.1. The submission of the annual compliance report/return is compulsory in terms of regulation 69(1) whether the DC is compliant with all the provisions of the NCA or not as far as it relates to the conduct and compliance of the registered DC.

3.1.2. DCs that are not actively operating or those who are employed and not using their registration details to operate have an obligation to submit the annual Form 41 stating a true reflection of their status of operation as it relates to the conduct and compliance thereof (e.g., employed by DC1234).

3.1.3 Form 41 is divided into four (4) sections as follows:

(1) The top section of the form numbered 1 to 5 requires the DC to complete his/her registration details, current contact details and the applicable reporting period (i.e. 1 Jan to 31 Dec). Please note that the NCR requires the full DC name and surname and not the trading name of the DC practice.

(2) The bottom section of the table has two (2) parts. The first part (second section of the form 41) requires the DC to make a declaration of non-compliance with the applicable provisions of the NCA, should there be no non-compliance to report, this section should be marked as "Not Applicable".

(3) The second part of the bottom section (third section of the form 41) requires the DC to provide reasons for non-compliance with the provisions of the NCA. Should there be no areas of non-compliance to report, this part should be marked as "Not Applicable".

(4) The fourth section is the last part of the table and requires the DC to append his/her signature to the form and the date on which the form was completed and signed.

3.1.4 The NCR's approach to address self-reported areas of non-compliance is corrective in nature, therefore DCs are encouraged to act in good faith and report accurately.

3.2 FORM 42 – QUARTERLY STATISTICAL RETURN

3.2.1 The submission of the quarterly statistical return is compulsory in terms of regulation 69(2) even if the DC does not have any new consumers who have applied for debt counselling and registered on the Debt Help System(DHS) for the reporting period.

3.2.2 It should be noted that **Part 2.1 and 2.2** of the Form 42, require the DC to provide related statistics for the specific reporting period as well as the cumulative total since the start of the debt counselling operation, hence the obligation for DCs to complete this form on a quarterly basis for as long as the DC remains actively registered.

3.2.3 DCs that are not actively operating or those employed and not using their registration details to operate (i.e., be stated as the DC on record for the consumer on DHS and prescribed forms) have an obligation to submit the quarterly Form 42 stating true reflection of their status of operation (e.g., employed by NCRDC1234). In this case, the DC will mark all relevant parts of the form as "Not Applicable".

3.2.4 Form 42 quarterly statistical report is divided into four sections/parts, each with a unique and specific purpose as follows:

3.2.4.1 Part: 1 Details of the registered debt counsellor

The **purpose** of this section/part is to establish the identity of the DC. Should the DC decide to delegate the responsibility of completing the Form 42 to his/her employees, the DC remains accountable for the accuracy and reliability of the return submitted. Please note that where the form provides for the name of the registered entity, the NCR requires the DC to complete the full DC name and surname and not the trading name of the DC practice.

3.2.4.2 Part 2: Case Analysis

The **purpose** of this section/part is to obtain data from debt counsellors for the NCR to conduct a comprehensive statistical analysis of the debt review enquiries made, applications received, rejected, accepted and finalised for a specified/defined period of time and since the start of the provision of the debt review service.

Your attention is drawn to the following requirements that must be applied each time this section/part is completed:

3.2.4.2.1 The DC is required to account for all debt review related enquiries made within the specified period of reporting (i.e. the quarterly and cumulative figures) as well as to record the outcome of such enquiries (i.e. rejected application and reasons thereof and the accepted applications as well as the progress of such accepted applications).

3.2.4.2.2 It is important for the DC to ensure that the total recorded in the form 42 under part 2.2.3 (**number of cases rejected**) corresponds with the total of the **“reasons for rejection” under i – iv of Part 2** of the form.

3.2.4.2.3 The total in 2.3 of the form must correspond with the total in 2.2.1 (number of cases accepted) of the form.

3.2.4.2.4 Take note that the columns as contained in 2.3 of the form, represents the totals of the comprehensive information to be provided in Table A of the form. Therefore, the DC should first complete Table A and thereafter ONLY transfer the totals to the columns as contained in 2.3 (Analysis of work in progress) of the form.

3.2.4.2.5 In 2.4 (Clearance Certificates issued), the DC is required to provide the number of clearance certificates issued for the specific reporting period as well as the cumulative total since the start of the debt counselling operation.

3.2.4.2.6 Finally, under 2.5 (client defaults) of the form, the NCR requests that the DC only report one (1) instance of default by the consumer, should the consumer have multiple defaults within the same reporting period, please do not report the multiple instances, but only report on 1 instance.

3.2.4.3 Part 3: Social economic profile of consumers accepted

The purpose of this section/part is to obtain data for statistical analysis of the social economic profile of consumers accepted under debt review. This includes provision of the income bracket, race, gender, age and employment sector for consumers accepted under debt review. **Important to note:** The total amount of consumers in this section/part should always be the same as the total recorded under 2.2.1 of Part 2 (number of cases accepted) of the form.

3.2.4.4 Part 4: Indebtedness profile and reckless lending

The purpose of this section/part is to obtain data for statistical analysis of income, expenses and debt repayment amounts of consumers under debt review, as well as data on credit agreements found to be reckless during the last reporting period. Your attention is drawn to the following to be applied each time this section/part is completed:

3.2.4.4.1 Information to be captured under section/part 4.1 of the form should be readily available from the debt re-arrangement proposals drafted during the Form 17.2(c) process. The DC is expected to use the gross and net income as well as the minimum living expense information recorded on the consumers' debt re-arrangement proposals to complete information as set out in Table B (indebtedness profile of cases accepted this quarter) of the form. Amount available to pay off debt is calculated by using the “Net Income” (referred to as NI) less “Minimum Living Expenses” (referred to as MLE) as recorded within Table B of the form. Total monthly debt payments refer to the total contractual monthly instalments (i.e. before restructure).

3.2.4.4.2 Information to be captured under section/part 4.2 of the form. The information to be completed in this section/part refers to the total number of cases in which one or more reckless credit agreements were found. The total number of cases in this section/part should match the details as contained in section/part 4.3 and recorded in Table C (reckless agreements) of the form. Carefully consider the required and relevant information to be captured in Table C on 3.2.4.4.3 below.

3.2.4.4.3 Information to be captured under section 4.3 and Table C of the form. Section 83(1) of the NCA provides that only a Court or Tribunal may declare an agreement reckless. Therefore, in this section/part the DC is required to list the individual credit agreement(s) in which only a Court or Tribunal made a finding of recklessness (debt re-arrangement or consent order was granted).

Table C (reckless agreements) is completed by listing the name of the credit provider, and selecting the type of accounts as reflected on the bottom of the form. The amount outstanding and instalment amount is as contained in the Certificate of Balance as received from such credit provider. The % of over-indebtedness calculation is done by dividing the cumulative contractual instalments for that consumer by the amount available to pay debt as reported in Table B.

FURTHER INFORMATION:

Form 41 and 42 must be completed and timeously submitted to the NCR via electronic mail on

DCreturns@ncr.org.za.

As a reference/subject on email, DCs are requested to use their registration number and the type of the form being submitted (i.e., **NCRDC123-Form 41 or NCRDC1234-Form 42**) to the NCR.

Should you not have a copy of the Form 41 or 42 or need further clarity on the guidelines, please contact **Tshepa**

Makhaya on **011 554 2627** or **Tsepo Marageni** on **011 554 2801** or send an email to **DCreturns@ncr.org.za** .

ANNEXURE A- Form 42 checklist

Name of Debt Counsellor:

NCRDC Number:

Reporting Period:

Part 1: Details of registered debt counsellor

Check	Y	N	Comment
1) a) Part 1 is completed in line with the guidelines			

Part 2 : Case Analysis

Check	Y	N	Comment
2) (i) <u>This quarter</u> : 2.1 (Number of enquiries received) 2.2 (Number of applications received) 2.2.1(Number of cases accepted (social contracts signed) 2.3.1(Analysis of Work in progress)-this is cumulative.	Previous quarter numbers must increase by the current quarter's numbers: (ii) <u>Since Start of Services</u> : 2.1 (Number of enquiries received) 2.2 (Number of applications received) this is cumulative. 2.2.1(Number of cases accepted (social contracts signed) this is cumulative. 2.3.1(Analysis of Work in progress)-this is cumulative.		
2.4 <u>This quarter</u> : (i) Clearance certificates issued 2.5 <u>This quarter</u> : (i) Client defaults	<u>Since Start of Services</u> : (i) Clearance certificates issued (this is cumulative) <u>Since Start of Services</u> : (i) Client defaults (this is cumulative)		

Part 3 : Social economic profile of consumers accepted

Check	Y	N	Comment
3) i) 3.1(Gross Income) equals 2.2.1(Number of cases accepted (social contracts signed) this quarter ii) 3.2 (Race classification) equals 2.2.1(Number of cases accepted (social contracts signed) this quarter iii) 3.3 (Gender) equals 2.2.1(Number of cases accepted (social contracts signed) this quarter iv) 3.4 (Age) equals (Number of cases accepted (social contracts signed) this quarter v) 3.5 (Economic Sector of employment) equals 2.2.1(Number of cases accepted(social contracts signed) this quarter			

ANNEXURE A- Form 42 checklist

Part 4 : Indebtedness profile and reckless credit

<i>Check</i>	<i>Y</i>	<i>N</i>	<i>Comment</i>
a) 4.1(Total names of consumers as per Table B) equals 2.2.1(Number of cases accepted (social contracts signed) <u>this quarter</u>			
b) 4.2 (Number of cases accepted with reckless credit (social contracts signed) <u>last quarter</u>			
c) 4.3 (Number of reckless credit agreements as per Table C (social contracts signed) <u>this quarter</u>			