

GUIDELINE FOR THE
IMPLEMENTATION OF
SECTIONS 69(2), 70(1),
70(2), AND 71(5) OF
THE ACT, READ
TOGETHER WITH
REGULATION 19(13),
IN RESPECT OF
CONSUMERS WHO
ARE UNDER DEBT
REVIEW



National Credit Regulator

Advocating For Inclusive Credit

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1. INTRODUCTION

Section 16(1)(b) of the National Credit Act 34 of 2005 ("Act"), empowers the National Credit Regulator ("NCR") to provide guidance to the credit market and industry by issuing explanatory notices on the interpretation of the Act.

2. PURPOSE OF THIS GUIDELINE

The purpose of this guideline is to provide guidance to credit providers on the update of payment information at the credit bureaus in relation to consumers who have applied for debt review in terms of Section 86(1) of the Act.

3. BACKGROUND

3.1. The NCR has become aware of a prevalent practice by credit providers, in terms of which some credit providers do not submit payment profile information of consumers who are under debt review to credit bureaus as required by the Act.

3.2. As a result of the failure by credit providers to submit such payment profile information to credit bureaus, consumers who are issued with clearance certificates after having partaken and completed the debt review process, do not have any payment profile information recorded on their credit bureau reports.

3.3. The absence of payment profile information recorded on the consumers credit bureau reports, makes it difficult for consumers to be considered for new credit applications, due to the fact that credit providers do not have any payment profile information to enable them to conduct credit risk assessments on these consumers. Essentially these consumers are incorrectly treated as thin file consumers by credit providers.

4. THE LEGAL PROVISIONS

4.1. Section 69(2) of the Act states that:

"(2) Upon entering into or amending a credit agreement, other than a pawn transaction or an incidental credit agreement, the credit provider must report either directly to the national register established in terms of this section, or to a credit bureau, in the prescribed manner and form, and within the prescribed time the following information..."

4.2. Regulation 19(13) of the Act (read together with guidelines that have been issued under this regulation) states that:

"(13) A credit provide must submit credit information to the credit bureaus in the manner and form prescribed by the National Credit Regulator through conditions of registration and any guidelines that may be issued by the National Credit Regulator from time to time."

4.3. Section 70(1)(a) read with Section 70(2)(d) states that:

"In this section, "consumer credit information" means information concerning a person's credit history ... (and) pattern of payment or default..."

"A registered credit bureau must retain any consumer credit information reported to it for the prescribed period ..."

4.4. Section 71(5) of the Act states that:

"(5) Upon receiving a copy of a clearance certificate, a credit bureau, or the national credit register, must expunge from its records—

(a) the fact that the consumer was subject to the relevant debt rearrangement order or agreement;

(b) any information relating to any default by the consumer that may have—

(i) precipitated the debt rearrangement; or

(ii) been considered in making the debt rearrangement order or agreement; and

(c) any record that a particular credit agreement was subject to the relevant debt rearrangement order or agreement."

5. IMPLEMENTATION OF SECTIONS 69(2) AND 71(5) OF THE ACT READ TOGETHER WITH REGULATION 19(13) IN RESEPECT OF CONSUMERS WHO ARE UNDER DEBT REVIEW

5.1. Credit providers must continue to submit payment records of consumers who have applied for debt review, to credit bureaus as required by Sections 69(2) and 70(1) and (2) of the Act read together with Regulation 19(13), and Guidelines issued by the NCR in terms of Regulation 19(13) of the Act.

5.2. Once the court has made an order restructuring that consumer's debts or the consumer and each credit provider concerned have accepted a proposal made by the debt counsellor restructuring that consumer's debts, the credit provider must submit the restructured credit information to credit bureaus as required by Section 69(2) read together with Regulation 19(13) of the Act.

5.3. Only the following information must be expunged from the credit bureau records in respect of a consumer who has been issued with a clearance certificate, as required by Section 71 (5) of the Act:

5.3.1. the fact that the consumer was subject to the relevant debt rearrangement order or agreement, i.e. the consumer's debt review flag.

5.3.2. any information relating to any default by the consumer that may have

5.3.2.1. *precipitated the debt rearrangement been considered in making the debt rearrangement order or agreement, i.e. any information relating to any default by the consumer preceding the debt review process; or*

5.3.2.2. *been considered before the commencement of the debt review process (i.e. default information before (or during) date of Form 16); and*

5.3.3. any record/information that a particular credit agreement was subject to debt review.

5.4. During the expungement process resulting from the issuance of a clearance certificate, no payment profile information or history must be expunged from the credit bureau records of a consumer, except as prescribed by the retention periods in terms of Regulation 17 of the Act.

6. EFFECTIVE DATE

This Guideline is effective immediately.

FOR MORE INFORMATION, QUESTIONS OR CLARITY RELATING TO THIS GUIDELINE:

Please address all queries to the **Executive Legal Unit** at ExecutiveLegalUnit@ncr.org.za



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.