

DEPARTMENT OF TRADE AND INDUSTRY
NOTICE 224 OF 2018

This Guideline will be published in the Government Gazette and is open for public comment until 31 May 2018. Please send your comments by 31 May 2018 to compliance@ncr.org.za

FOR PUBLIC COMMENT:
GUIDELINES FOR
ASCERTAINING CONSUMERS'
GROSS INCOMES AND
DISCRETIONARY INCOMES
FOR THE PURPOSES OF
REGULATION 23A OF
THE NATIONAL CREDIT
REGULATIONS INCLUDING
THE AFFORDABILITY
ASSESSMENT REGULATIONS

GUIDELINES FOR CREDIT
PROVIDERS

1. Background

- 1.1 The affordability assessment regulations came into effect in 2015. The regulations were preceded by a review of the weaknesses in affordability assessments conducted by the National Credit Regulator ("NCR"). The review established the following principles -
- (a) credit should be extended to consumers on the basis of income that has been verified or validated;
 - (b) credit providers should make reference to consumers' credit records held by credit bureaux to determine consumers' debt obligations;
 - (c) minimum living expenses should be introduced according to consumers' gross income categories;
 - (d) consistency of consumers' income should be established.

These principles form the basis of the affordability assessment rules in the regulations

- 1.2. Regulation 23A(12)(a) states that when conducting the affordability assessment, the credit provider must calculate the consumer's discretionary income. Discretionary income is defined in regulation 1 as Gross Income less statutory deductions such as income tax, unemployment insurance fund contributions, maintenance payments, necessary expenses and less all other committed payment obligations disclosed by the consumer, including such as may appear from the consumer's credit records held by the credit bureaux, which income is the amount available to fund the proposed credit instalment.
- 1.3. Discretionary income is therefore the income that the consumer has to repay instalments under a credit agreement after making appropriate deductions from the consumer's gross income.
- 1.4. Regulation 23A(3) requires a credit provider to take practicable steps to assess the consumer or joint consumer's discretionary income to determine whether the consumer has the financial means and prospects to pay the proposed credit instalments.
- 1.5. Regulation 23A(9) requires a credit provider to utilise the minimum expense norms table broken down by monthly gross income when calculating the existing financial obligations of consumers. Regulation 23A(10)(a) requires credit providers to ascertain gross income when calculating the minimum expense norms applicable to consumers.
- 1.6. The regulations referred to above remain in force and have not been set aside by the court in *Truworthe & others v Minister of Trade and Industry & others*. Credit providers are still required to ascertain consumers' gross incomes and discretionary incomes when conducting affordability assessments on credit applications.

2. Ascertaining consumers' gross income and calculating consumers' discretionary income

- 2.1. Credit providers should ascertain consumers' gross incomes and discretionary incomes before extending credit to consumers. This is required by the regulations.
- 2.2. The gross income of a consumer who is employed in the formal sector of the economy should be ascertained with reference to such consumer's payslip. If the consumer has a bank account into which the consumer's salary is deposited, the consumer's net income can be ascertained with reference to the consumer's bank statement. Living expenses and debt obligations will then be deducted from the consumer's net income to ascertain the discretionary income. In order to establish the consistency of the consumer's income, three (3) months' bank statements or payslips should be obtained by credit providers. For this category of consumers, credit providers can use either payslips or bank statements to calculate the consumers' discretionary incomes.
- 2.3. Where the consumer has been employed for less than three (3) months, the credit provider should obtain the consumer's latest payslip at the time of the credit application, or a letter of employment confirmation from the employer detailing the salary and its frequency of payment or a bank statement showing the latest salary deposit.

2.4. For consumers who are self-employed, informally employed or consumers that have income other than from formal employment and which is not evidenced by payslips or bank statements, credit providers should use such other verification of the consumer's income that will provide validation of income sufficient to meet the consumer's payment obligations in respect of the proposed credit. The credit provider must submit its affordability assessment models, procedures and mechanism in respect of this category of consumers to the NCR.

2.5. For consumers referred to in paragraph 2.4, the credit provider should ascertain from the consumer whether the consumer has a bank account through which their income flows.

3. Application

3.1. These guidelines apply to credit providers when they conduct affordability assessments on credit applications to ascertain consumers' gross incomes and discretionary incomes.

Comments on these guidelines should be submitted to compliance@ncr.org.za by 31 May 2018.

Issued by the National Credit Regulator
April 2018