

# Guideline for Credit Providers

## Assurance Engagement for Non-Audited Credit Providers

### Summary

**Guidelines in respect of the Assurance Engagement report for Credit Providers who are not required by law to appoint an auditor to conduct an audit of its annual financial statements.**

This document constitutes guidelines issued by the National Credit Regulator, in terms of Section 16 (1)(b) of the National Credit Act and Regulations 67 and 68 thereto.

These guidelines are intended for credit providers who are not required by law to appoint a registered auditor to conduct an audit of its annual financial statements.

This document provides guidelines on the Assurance Engagement and the subsequent report that must be prepared by either an accounting officer or where the entity is not required to appoint an accounting officer, a member of one of the following professional bodies as listed in Regulation 67: South African Institute of Chartered Accountants (SAICA); Commercial and Financial Accountants (CFA) – currently South African Institute of Professional Accountants (SAIPA); South African Institute of Secretaries and Administrators (ICSA); Institute of Administration and Commerce (IAC); Chartered Institute of Management Accountants (CIMA).

The person appointed is required to perform an Assurance Engagement in terms of Regulation 68 and to report to the National Credit Regulator on the findings of that person's engagement in the format prescribed in Appendix A.

*These guidelines should be read with the relevant sections of the National Credit Act and Regulations.*

*These guidelines may be updated from time to time. Credit Providers will be informed of such changes by publishing them on the NCR web site, or by forwarding them by e-mail, fax or mail to the address provided by the credit provider as per the NCR records.*

*For further information, please contact the responsible registration officer at the Registrations Department of the NCR.*

1. Definitions.....	2
2. Introduction.....	2
3. Guidelines.....	2
4. Confirmation to be signed by the credit provider.....	9
5. Effective dates and schedule for submission.....	9
6. More information.....	9
Appendix A: Illustrative Report.....	10

## 1. Definitions

**“accounting officer”** means a person appointed and fulfilling the duties and responsibilities of an Accounting Officer as set out in the Close Corporations Act, 69 of 1984.

**“the Act”** means the National Credit Act, No 34 of 2005.

**“assurance engagement”** means, for the purpose of these guidelines (Guideline 003/2010), an engagement in terms of Regulation 68 of the National Credit Act, 34 of 2005 performed by a “practitioner”.

**“auditor”** means a registered auditor, registered with the Independent Regulatory Board for Auditors (IRBA).

**“compliance report”** means the compliance report that must be submitted by a credit provider to the National Credit Regulator on an annual basis within 6 months after the financial year-end of the credit provider in terms of Regulation 63 of the Regulations made in terms of the National Credit Act, 34 of 2005.

**“the credit provider”** means the credit provider in respect of whom the assurance engagement is to be completed.

**“practitioner”** means an accounting officer or member of a professional body listed in terms of Regulation 67, and appointed to perform an assurance engagement in terms of Regulation 68 of the National Credit Act, 34 of 2005.

**“the Regulations”** means Regulations made in terms of the National Credit Act, 34 of 2005.

## 2. Introduction

In terms of Regulations 67 and 68, made in terms of the National Credit Act, 34 of 2005 (the Act), a credit provider must appoint an auditor, accounting officer, or where the entity is not required to appoint an auditor or accounting officer, a member of one of the following professional bodies as listed in Regulation 67, to perform an assurance engagement:

- Commercial and Financial Accountants (CFA) – Currently the South African Institute of Professional Accountants (SAIPA);
- South African Institute of Chartered Accountants (SAICA);
- South African Institute of Secretaries and Administrators (ICSA);
- Institute of Administration and Commerce (IAC);
- Chartered Institute of Management Accountants (CIMA).

These guidelines apply to credit providers that are not required by law to appoint an auditor to perform the assurance engagement and have appointed an accounting officer, or a member of one of the professional bodies mentioned above to perform the engagement.

Please note that separate guidelines apply to audited credit providers. Refer to Guideline 001/2007 Assurance Engagement, available on the NCR website.

## 3. Guidelines

### 3.1 The Purpose of the Assurance Engagement in terms of Guideline 003/2010

The purpose of this assurance engagement is to identify areas of non-compliance with the Act, Regulations and conditions of registration of the credit provider. The procedures provided in these guidelines are designed to assist the practitioner to issue a report on his / her findings with regard to the aforementioned.

### **3.2 Procedures to be performed**

The practitioner must have knowledge and understanding of the following:

- a) The Act;
- b) The Regulations;
- c) Compliance Report Guidelines (Guideline 002/2010);
- d) The latest compliance report submitted by the credit provider in terms of Regulation 63;
- e) The credit provider's conditions of registration.

The practitioner is required to perform the following assurance engagement procedures:

- a) The practitioner should obtain an engagement letter from the credit provider in respect of the assurance engagement, which should set out the terms of the assurance engagement.
- b) The practitioner should obtain a representation letter from the credit provider in respect of the assurance engagement. The recommended format of the representation letter is contained in section 4 of this document.
- c) The practitioner must obtain a signed copy of the compliance report and the conditions of registration of the credit provider and review the content thereof.
- d) Furthermore, the practitioner may, where considered necessary, review a sample of credit agreements, marketing or advertising materials, enforcement notices and any other documents that would assist in the assessment of areas of non-compliance and the production of the assurance engagement report.
- e) The practitioner should make use of the tables that are set out in parts 3.2.1 to 3.2.4 of this document. These contain questions that should be discussed with management and the answers thereto recorded. There are 4 possible answers, namely "Yes", "No", "Area for Improvement" and "Not Applicable".

The answer "Yes" serves to indicate a positive answer to a question.

The answer "No" serves to indicate a negative answer to a question.

The answer "Area for Improvement" serves to indicate instances where a credit provider's procedures are not adequate or fully effective in ensuring compliance with the Act and / or Regulations and require some development, but have not or are not likely to result in significant instances of non-compliance.

The answer "Not Applicable" is only intended for those credit providers to whom the relevant section or regulation of the Act does not apply.

Where "No", "Area for Improvement" or "Not Applicable" answers are provided, the credit provider should give an explanation therefore.

- f) The practitioner should discuss appropriate steps or measures to be implemented by the credit provider to comply with the Act and / or Regulations in respect of business activities. Any remedial action should be appropriately recorded by the credit provider, together with timelines relating to the implementation thereof.

#### **3.2.1 Compliance with credit marketing practices; Disclosure, form and effect of credit agreements; Interest charges and fees**

By way of discussion with management and, where considered necessary, a review of marketing and / or advertising material the practitioner must ascertain whether:

- a) The credit provider adheres to the requirements of the Act and / or Regulations relating to credit marketing practices;
- b) Disclosure in credit agreements, pre-agreement statements and quotations is made in accordance with the requirements of the Act and / or the Regulations; and
- c) Interest and fees are calculated in accordance with the requirements of the Act and / or the Regulations.

The following table is to be used for the discussion with management. Any commentary required to explain an answer should be recorded and appropriately referenced to such record in the column headed "Reference No.":

Relevant Section / Regulation	Question No.	Question	Yes	No	Area for Improvement	Not	Reference No.
92(1)	1	In terms of section 92(1) a credit provider must provide a consumer with a pre-agreement statement and quotation in Form 20 when entering into a small credit agreement. Do you comply with this requirement?					
92(2) Reg 29	2	When entering into an intermediate or large credit agreement with a consumer the credit provider must provide the consumer with a pre-agreement statement and a quotation in accordance with section 92(2) and regulation 29. Do you comply with this requirement?					
102(2)	3	Section 102(1) allows certain fees and costs to be included in the principal debt in respect of installment agreements, mortgage agreements, secured loans or leases. The credit provider may not charge the consumer more than the actual amount paid or the fair market value of the service. Do you comply with this requirement?					
Reg 40	4	Regulation 40 prescribes the manner in which interest must be calculated. Do you ensure that interest on a credit agreement is calculated in accordance with this requirement?					
Reg 42	5	Regulation 42 prescribes the maximum interest rate and initiation fee that may be levied. Do you ensure that these are not exceeded in respect of a credit agreement?					
101(1)	6	A credit provider may not require a consumer to pay any costs other than that allowed in terms of the section 101(1). Do you comply with this requirement?					
101, 105, Reg 44	7	Service fees charged in terms of section 101 may not exceed a maximum prescribed in terms of section 105 and regulation 44. Do you ensure that the prescribed maximum fees are not exceeded?					
Reg 46	8	The credit provider may require payment by the consumer of default administration charges in respect of each letter necessarily written in terms of Part C of Chapter 6 of the Act. Do amounts charged in respect of the aforementioned comply with regulation 46?					
Reg 47	9	For all categories of credit agreement, collection costs may not exceed the collection costs incurred by the credit provider in collecting the debt in terms of regulation 47. Do amounts charged in respect of the aforementioned comply with regulation 47?					

Relevant Section / Regulation	Question No.	Question	Yes	No	Area for Improvement	Not	Reference No.
Reg 48	10	If the credit provider is entitled to charge any amount referred to in section 102(1)(b) to (e), the credit provider must not charge the consumer a higher price than that charged by that credit provider for the same or substantially similar goods or services provided or arranged in the ordinary course of business on the basis of a cash transaction. Do amounts charged in respect of the aforementioned comply with regulation 48?					
106, Reg 33	11	A credit provider may require a consumer to maintain insurance in terms of section 106, which specifies requirements relating thereto. Regulation 33 stipulates disclosure requirements which may be made in Forms 21, 22 and 23. Do you comply with the disclosure requirements set out in section 106 and regulation 33?					
76 Reg 21 Reg 22	12	Advertising practices are regulated in terms of section 76 and regulations 21 and 22. If you make use of advertisements, brochures, leaflets or similar material, is the cost of credit disclosed as required?					

### 3.2.2 Compliance with requirements relating to debt enforcement by repossession or judgment

By way of discussion with management, confirm whether the credit provider took enforcement action and ascertain whether the credit provider:

- a) Issues enforcement notices in accordance with Section 129;
- b) Retains bank cards or pin numbers in contravention of Section 133.

The following table is to be used for the discussion with management. Any commentary required to explain an answer should be recorded and appropriately referenced to such record in the column headed "Reference No.":

Relevant Section / Regulation	Question No.	Question	Yes	No	Area for Improvement	Not Applicable	Reference No.
	1	Do you take action to enforce debt? <i>If the answer is Yes, answer questions 2 to 4 below-</i>					
129(1)	2	In terms of section 129(1) the credit provider must give the consumer notice before commencing legal proceedings to enforce a credit agreement? Do you comply with this requirement?					
129(1)	3	In terms of section 129(1) the notice referred to in question 2 above must include a proposal that the consumer refer the credit agreement to a debt counsellor, alternative dispute resolution agent, consumer court or ombud with jurisdiction? Do you comply with this requirement?					
133	4	Prohibited collection and enforcement practices are specified in terms of section 133. A credit provider, or any agent of the credit provider, must not, amongst other things, make use of the consumer's original identity document, credit or debit card, bank account or ATM card or any such similar device and / or the personal identification number used to access such card or device in any manner whatsoever when collecting on or enforcing a credit agreement? Do you comply with this requirement?					

**3.2.3 Compliance with submission of statutory reports and payment of renewal of fees (Regulation 62-68 and Schedule 2 Part 4(4) of the Regulations)**

By way of discussion confirm that the following reports have been submitted (where applicable):

- a) Statistical returns (Form 39);
- b) Annual financial and operational return (Form 40);
- c) Annual financial statements; and
- d) Compliance report.

The following table is to be used for the discussion with management. Any commentary required to explain an answer should be recorded and appropriately referenced to such record in the column headed "Reference No.":

Relevant Section / Regulation	Question No.	Question	Yes	No	Area for Improvement	Not Applicable	Reference No.
Reg 62, 64, 65 & 66.	1	Various reports must be submitted to the National credit Regulator in terms of the Act and / or Regulations. Are the following reports submitted timeously and in accordance with the Act and / or Regulations, as applicable? <ul style="list-style-type: none"> <li>• Statistical return (Form 39);</li> <li>• Annual financial and operational return (Form 40);</li> <li>• Annual financial statements; and</li> <li>• Compliance report.</li> </ul>					
Reg 62, 64, 65 & 66.	2	Is the information submitted in the reports referred to in question 1 above consistently presented in all such reports, where applicable?					
Reg 68	3	Is the information obtained by you in respect of this assurance engagement consistent with the information presented in the relevant compliance report?					
51(1), Reg 4 GN 949	4	An annual registration renewal fee must be paid by registrants in terms of section 51(1) as prescribed. Have you timeously paid the annual registration renewal fee in accordance with section 51(1)?					

**3.2.4 Compliance with consumer affordability assessment and right to access and challenge credit records and information (Sections 81, 72 and Regulation 19)**

By way of discussion with management, ascertain whether the credit provider:

- a) Performs affordability assessments; and
- b) Notifies the consumer before adverse information is submitted to a credit bureau.

The following table is to be used for the discussion with management. Any commentary required to explain an answer should be recorded and appropriately referenced to such record in the column headed "Reference No.":

Relevant Section / Regulation	Question No.	Question	Yes	No	Area for Improvement	Not Applicable	Reference No.
81(2)	1	<p>A credit provider must not enter into a credit agreement without first taking reasonable steps to assess:</p> <p>a) The proposed consumer's:</p> <ul style="list-style-type: none"> <li>• General understanding and appreciation of the risks and costs of the proposed credit, and of the rights and obligations of a consumer under a credit agreement;</li> <li>• Debt re-payment history as a consumer under credit agreements;</li> <li>• Existing financial means, prospects and obligations; and</li> </ul> <p>b) Whether there is a reasonable basis to conclude that any commercial purpose may prove to be successful, if the consumer has such a purpose for applying for that credit agreement.</p> <p>Is an assessment performed before entering into a credit agreement with the consumer as required in terms of section 81(2)?</p>					
72(1)(a) Reg19(4)	2	<p>A consumer must be notified before adverse information is submitted to a credit bureau in accordance with section 72(1)(a) and regulation 19(4)?</p> <p>Do you comply with this requirement?</p>					

### Other matters

The assurance engagement report (the report) should also identify and record:

- Matters which constitute non-compliance with the Act and Regulations over and above the ones identified in parts 3.2.1 to 3.2.4 above. This should be identified with reference to the compliance report submitted by the credit provider.
- Corrective action to be taken together with related time frames developed to ensure that compliance is achieved in those matters that constitute non-compliance with the above-mentioned parts.

### **Format of the Assurance Engagement report**

The format of the report is set out in Appendix A to these guidelines.



### 4. Representation to be signed by the credit provider

The practitioner should obtain written representation that the credit provider has complied with the relevant sections of the Act and / or Regulations or whether any areas of non-compliance have been identified. A recommended format for such representation is set out below:

I, [representative of credit provider], hereby declare that, other than listed below:

1. [Name of credit provider] has complied with the requirements pertaining to credit market practices; disclosure form and effect of credit agreements, interest charges and fees as stipulated in the Act and / or Regulations;
2. [Name of credit provider] has complied with the requirements pertaining to collection and repayment practices as stipulated in the Act and / or Regulations;
3. [Name of credit provider] has complied with the requirements pertaining to the submission of returns as stipulated in the Act and / or Regulations; and
4. [Name of credit provider] has complied with the requirements pertaining to affordability assessments as stipulated in the Act and / or Regulations;

Any non-compliance of which I am aware is listed as follows: [insert areas of non-compliance and procedures in place to rectify and date by which non-compliance will be resolved].

This assurance engagement representation is for the period [insert period].

To the best of my knowledge, I certify that the above is true and correct.

Signed at [insert location] this the [insert day] of [insert month and year].

\_\_\_\_\_  
[Representative of credit provider]  
[Designation]  
[Date]

### 5. Effective dates and schedule for submission

The reporting requirement in terms of Regulation 68 is effective from **1 January 2011**. The report must be submitted by the credit provider to the National Credit Regulator within 6 months of the credit provider's financial year-end for the financial year ending after 1 January 2011.

For example:

- Credit providers with a year-end 30 November 2010 will be required to submit their first report for the financial year ending 30 November 2011 and the report will be due by 31 May 2012. This report will cover compliance for the financial year ending 30 November 2011.
- Credit providers with a year-end 30 June 2011 will be required to submit their first report before the 31 December 2011. This report will cover compliance for the financial year ending 30 June 2011.
- Credit providers with a 28 February 2011 year-end will be required to submit their first report by 31 August 2011. This report will cover compliance over the financial year ending 28 February 2011.

### 6. More information

For further information please contact the Registration Officer responsible for the registration of the credit provider.

## Appendix A: Illustrative Report

### **Issued to:**

The Members of the Close Corporation or  
The Owners of the Business Entity  
<Credit Provider>  
<Insert Address>

And:

The National Credit Regulator  
C/o The Registration Division  
127 – 15<sup>th</sup> Road  
Randjespark  
Midrand  
1685

*Dear Sirs*

**ASSURANCE REPORT OF THE [ACCOUNTING OFFICER] OR [MEMBER OF A LISTED PROFESSIONAL BODY] OF [NAME OF CREDIT PROVIDER] TO THE MEMBERS OF THE CLOSE CORPORATION / OWNERS OF THE BUSINESS ENTITY AND THE NATIONAL CREDIT REGULATOR (THE "NCR") IN COMPLIANCE WITH REGULATION 68 OF THE REGULATIONS TO THE NATIONAL CREDIT ACT, 2006 ("THE REGULATIONS")**

### **Introduction**

- a) We have performed the procedures as set out in the guidelines for the Assurance Engagement for non-audited credit providers and report below in respect of [name of credit provider]'s compliance with the provisions of the National Credit Act and Regulations to the Act applicable to [name of credit provider].
- b) We performed certain procedures as set out in part A below and found that no area of non-compliance with the National Credit Act and / or Regulations to the Act has come to our attention, except as set out in part B, below.

### **Part A – Procedures followed**

We obtained a copy of the compliance report completed by the management of .....  
(name of credit provider), and assessed compliance in respect of parts 3.2.1 to 3.2.5 of the NCR guideline no  
..... (compliance report guidelines).

This assessment consisted of:

- a) Holding discussions with management; and
- b) Where considered necessary by the accounting officer or member of <name of professional body>, a review of a sample of credit agreements, marketing or advertising materials, enforcement notices and any other documents.

**Part B - Areas of non-compliance**

We found that the credit provider is not compliant with the following sections of the Act and / or the Regulations to the Act and that management has indicated that steps or measures have been or will be taken to address non-compliance in this regard:

Item	Section of the Act / Regulation	Area of non-compliance	Step(s) or measures taken / to be taken to address non-compliance – As indicated by management	Time frames
1.				
2.				
3.				
4.				

Or

We report that <no / certain><sup>1</sup> matters relating to non-compliance with the Act and / or the Regulations have come to our attention and that management has indicated that steps or measures have been or will be taken to address non-compliance in this regard:

[State matters, if applicable] .....

As the practitioner simply provides a report based on discussions with management and, if applicable, a review of certain information and documents, no assurance is expressed. Instead, users of the report assess for themselves the procedures and findings reported by the practitioner and draw their own conclusions from the practitioner's work.

Our report is solely for the purpose set out in this report and for your information and for the information of the National Credit Regulator and is not to be used for any other purpose or to be distributed to any other parties. This report relates only to the accounts and items specified above and does not extend to any financial statements of [insert name of credit provider], taken as a whole.

\_\_\_\_\_  
Yours faithfully  
(Signature)

Date: \_\_\_\_\_  
 Name of practitioner: \_\_\_\_\_  
 Professional body: \_\_\_\_\_  
 Practice number: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Contact details: \_\_\_\_\_

<sup>1</sup> Delete whichever is not applicable

