

EXPLANATORY NOTE TO THE WITHDRAWAL GUIDELINES 1 OF 2021



01/2022

FEBRUARY 2022

EXPLANATORY NOTE TO THE WITHDRAWAL GUIDELINE¹ OF 2021

INTRODUCTION

On 27 May 2021, **the National Credit Regulator (“the NCR”)** issued revised Guidelines 01/2021 for the withdrawal from debt review following legal clarity obtained in the full bench High Court matter: *Van Vuuren v Roets and Others* (37407/2018) [2019] ZAGPJHC 286; [2019] 4 All

SA 583 (GJ); 2019 (6) SA 506 (GJ) (3 September 2019) (“Van Vuuren Judgment”).

Subsequently, implementation challenges were experienced by the industry regarding the voluntary withdrawal of consumers after application for debt review but prior to the issuance of a Form 17.2.

PURPOSE

This explanatory note is intended to clarify application and address this specific aspect.

EXPLANATORY NOTE

1. RELEVANT CASE LAW

- 1.1 In the judgment of the *National Credit Regulator v Lamara* (NCT/102200/2018/57(1)) [2019] ZANCT 180 (13 December 2019), the **National Consumer Tribunal (“the NCT”)** at paragraph 145 states that there needs to be a clear indication and date when the consumer applied for debt review. This will be in the form of a duly completed and signed form 16, or a clear record of when the consumer furnished all information to the debt counsellor as contemplated

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.

in regulation 24(1)(b). This will be the date when the debt counsellor received the application as contemplated under sections 86(1) and (4) of the National Credit Act (NCA).

- 1.2 In addition, the Van Vuuren judgment at paragraph 28 states that section 88(1) has the function of freezing the consumer's rights to contract in credit. Upon notice of receipt of the debt review application the freeze is immediately effective.
- 1.3 In light of these judgments, a consumer is considered under debt review when he/she has applied for debt review in the prescribed manner as set out in section 86 of the NCA. Therefore, a consumer cannot voluntarily withdraw or terminate the debt review process prior to the issuance of a Form 17.2 as a result of the duly completed and signed Form 16 and/or submission of the relevant information and documentation to the debt counsellor as contemplated under regulations 24(1)(a) and (b).
- 1.4 Debt Counsellors are encouraged to inform and explain this position to the consumers prior to the application for debt counselling is being accepted by the debt counsellor.

2. CHANGES TO THE CURRENT WITHDRAWAL GUIDELINES 01 OF 2021

- 2.1 Prior to the above mentioned position in 1.3 above, a consumer was able to voluntarily withdraw from debt counselling prior to being declared over indebted. When this happened, the debt counsellor issued a Form 17.W(a) and updated the Debt Help System(DHS) to the status code A1 (Voluntary withdrawal by the consumer prior to being declared over-indebted).

- 2.2 Therefore, in light of the above mentioned position in 1.3 which comes into effect on 21 February 2022, the DHS status code A1 will be disabled, and the current Form 17.W amended to exclude the 17.W(a) option. This amended Form 17.W is attached as Annexure A hereto and replaces the previous Form 17W, as contained in the Withdrawal Guideline 01 of 2021.

For more information, please contact [Timmy Van Der Grijp](mailto:tvandergrijp@ncr.org.za) on 011 554 2802, tvandergrijp@ncr.org.za.

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d) Application for Debt Review rejected by Magistrate - Not over-indebted. Credit Bureaus have been updated via the NCR Debt Help System.

Signed at.....on this..... day.....of

Debt Counsellor Signature.....