

# Dynamic Affordability Assessment



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# Reckless credit

- Introduction
- National Credit Act 34 of 2005 came into full effective operation on 1 June 2007
- Introduction of novel provisions regarding reckless credit and over-indebtedness
- Prohibition re reckless credit granting
- Mandatory pre-agreement assessment: section 81
- Consumer to answer fully and truthfully failing which credit provider has complete defence against reckless credit
- Set point determination
- 3 types of reckless credit
- Sanctions and remedies

# Evolution of Affordability Assessment

- Section 81: credit provider could determine **own evaluative** models, mechanisms and procedures – had to result in **fair and objective** assessment
- National Credit Regulator could issue **non-binding guidelines** re assessment
- Lack of guidance – courts had to intervene
- November 2012: Treasury, BASA and NCR media statement
- May 2013 - draft Guidelines
- September 2013 – more complete set of draft guidelines
- February 2014 - Credit Amnesty
- May 2014 –National Credit Amendment Act (only put in operation in March 2015)
- August 2014- draft Affordability Assessment Regulations
- March 2015 – Final Affordability Assessment Regulations put into effect on same date as National Credit Amendment Act
- Operative date for compliance with affordability assessment extended

# Salient features of Final Affordability Assessment regulations (March 2015)

- Provides **minimum standards** with which credit provider must comply when doing affordability assessment to section 81
- **Features:**
  - - applies to natural person consumers only
  - - no distinction between secured and unsecured debt
  - - certain exempt agreements
  - - credit provider to assess consumer's discretionary income (to determine whether consumer has FMP to pay instalments)
  - - validation of gross income
  - - consumer must accurately disclose all financial obligations
  - - consumer must provide authentic documentation
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## Salient features (continued)

- - credit provider to calculate consumer's existing FMPO
- - **MUST** use minimum living expense norms table, broken down by monthly gross income for various income bands (Table 1) when calculating obligations
- - methodology
- - adversity buffer
- - questionnaire if living expenses less than set out in Table 1
- - 'summary' of obligations of credit provider
- - mandatory consultation of credit bureaux information + time limits
- - avoidance of double counting
- - disclosure of credit cost multiple + total cost of credit
- - "grievance procedure" regarding outcome of assessment

# Table 1

| <b>Minimum</b> | <b>Maximum</b> | <b>Minimum monthly Fixed Factor</b> | <b>Monthly Fixed Factor = % of Income Above Band minimum</b> |
|----------------|----------------|-------------------------------------|--|
| R0.00          | R800.00        | R0.00                               | 100%   |
| R800.01        | R6,250.00      | R800.00                             | 6.75%  |
| R6250.01       | R25,000.00     | R1, 167.88                          | 9.00%  |
| R25, 000.01    | R50,000.00     | R2,855.38                           | 8.20%  |
| R50,000.01     | Unlimited      | R4905.38                            | 6.75%  |

## Problematic aspects

- Affordability assessment regulations are mandatory
- Sets minimum standards
- Very rigid one size-fits-all approach: does not take individual factors into account eg age, gender, number of dependants etc
- No indication of exactly what has been taken into account in determining living expenses
- Minimum living expense norms appear unrealistically low
- Adversity buffer appears unrealistically low
- Application of table unclear
- Set point determination – not dynamic