

24 July 2020

To whom it may concern
Department of Trade, Industry and Competition
Consumer and Corporate Regulation Division

Attention:

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Dear Sir/Madam,

BASA Submission on the Discussion Document to the Regulations on the Removal of Adverse Consumer Credit Information

1. Introduction

The Department of Trade, Industry and Competition (“the dtic”) has requested written input from stakeholders in the credit industry on the discussion document pursuant to which the regulations will be published as the Removal of Adverse Consumer Credit Information in terms of the Disaster Management Act, 57 of 2002 (“the Discussion Document”). The Banking Association South Africa (“BASA”) would like to thank the dtic for involving the industry by requesting comments on the outline of the proposed regulations in respect of the removal of adverse consumer credit information, as per the Discussion Document. We are supportive of this inclusive approach of involving the industry but note the short timeline of 4 business days in which to do so. BASA notes that the draft Regulations that were to accompany the Discussion Document are not yet available for comment. We also make reference to the meeting held at 16h00 on 21 July 2020 with the dtic and the National Credit Regulator (NCR) during which stakeholders represented by members of the Credit Industry Forum (CIF) committee obtained further clarity on the purpose of the regulations and other issues (discussed below) pertaining to the Discussion Document.

In this meeting, the dtic advised the stakeholders present that the main purpose of the removal of adverse consumer credit information from the credit bureaus is to assist consumers negatively affected by the economic impact of the Covid-19 pandemic in terms of seeking rental accommodation and obtaining employment. The dtic also advised that comments received would be taken into account, but that the promulgation of the regulations is imminent, as the dtic is wanting to assist these financially distressed consumers.

2. General Comments on the Discussion Document

In this section, BASA discusses general comments that are applicable to the Discussion Document as a whole. For simplicity and conciseness, where general comments are applicable to specific paragraphs it is noted under these general comments and not repeated under each applicable paragraph.

- 2.1. In this document BASA has endeavoured to provide comments on the Discussion Document. However, it remains a difficult and abstract exercise to provide meaningful commentary on the Discussion Document (which we note is merely an outline or summary of the regulations) without the accompanying draft regulations being provided at the same time. In this regard, BASA and its members reserve our rights to comment when we receive line of sight of the actual regulations.
- 2.2. BASA would like to advise that the timing of the promulgation and effective date of the Regulations will be of crucial importance, as, if done before the end date of the amnesty or the national state of disaster period, this could lead to moral hazard. By way of example, an ordinarily paying consumer may stop making payments because the negative impact of his/her adverse consumer credit information will not be reflected on the credit bureaus and the perception may be that the consumer's credit bureau report would therefore not be impacted by the default. This poses systemic risk to the credit industry at large, post the amnesty period.
- 2.3. Furthermore, as at 18 July 2020, member banks have already extended (and continue to extend) voluntary debt relief to consumers (individual, small, medium and commercial enterprises) to the value of R30,9 billion and of this amount, R19,03 billion to individual consumers who have been financially impacted as a result of the COVID-19 pandemic. These consumers must continue to pay their restructured debt following the agreed payment breaks by the banks. If these consumers, were now to default on their restructured payments, this would create additional systemic risk to the credit industry.
- 2.4. Furthermore, any allegations by consumers regarding possible reckless lending would be impacted for this period, as the credit bureau information would have been altered (between when the credit agreement was concluded and after the amnesty).
- 2.5. BASA would like to advise that our members anticipate an increase in the number of consumer credit bureau disputes with respect to their credit profiles and would like to suggest that the statutory twenty (20) business days to resolve credit bureau disputes may be insufficient and a possible extension of this time period should be considered.
- 2.6. BASA recommends, in alignment with the discussion at the meeting held on 21 July 2020 with the dtic and the NCR, that the amnesty should be limited to the indicators of I, J, L and W (referred to as the "adverse block" on the credit bureaus, as listed in the table below), which reflects the intended scope for the purposes of the Discussion Document.

CODE	DESCRIPTION	DEFINITION
I	Facility Revoked	Supplier has revoked access to the facility
J	Repossession	Goods have been repossessed due to non-payment
L	Handed Over	Account handed over to attorney or collection agency for recovery but still owned by the Credit Provider.
W	Written Off	Account written off due to non-payment

- 2.7. BASA would appreciate clarity in confirming that the eligibility criteria are as follows: i) the time periods (1 April 2020 – 30 September 2020, or until the state of national disaster comes to an end, whichever is sooner) and ii) the requirement of the consumer being in good standing before the national state of disaster.
- 2.8. BASA would also like to caution that there is a possible unintended consequence, as the removal of the adverse information will mean less information is available to credit providers, resulting in a more conservative approach being taken in assessing credit and the application of more stringent credit assessment processes being implemented, which could have an unintended consequence of reducing access to credit for consumers. This could even delay the approval process because credit providers may not be in a position to apply automated credit scoring and assessment tools/strategies. The absence of sufficient consumer credit information could also lead to a decline of credit agreement applications. There could also be an increase in the average cost of credit, which is contrary to the objective of the removal of adverse consumer credit information. These consumers may be forced to obtain credit from the informal / illegal lending market i.e. shadow banking market at a much higher cost. Please also refer to ad paragraph 2.2 of the Discussion Document.
- 2.9. BASA recommends that the term "days" be amended to reflect that these are "business days" as defined in the National Credit Act, 34 of 2005 ("the NCA"). This is applicable to ad paragraphs 2.4, 2.5 and 2.9 of the Discussion Document.

3. Specific Comments on the Discussion Document

In this section BASA only comments on specific paragraphs in order to clarify certain items or provide additional comments, over and above those already mentioned in the General Comments above.

3.1. Ad Paragraph 1.3

- 3.1.1. BASA suggests that there are already mechanisms in the NCA and its regulations for the removal of adverse consumer credit information from the credit bureaus. These include:
- 3.1.1.1. Specified retention periods at the credit bureaus; and
 - 3.1.1.2. The removal of an adverse listing if the obligation under the credit agreement linked to this adverse listing is settled.

3.2. Ad Paragraph 1.4

- 3.2.1. BASA proposes that "in good standing" should encompass consumers that are in good standing as is evident from their consumer credit information), as at a specified date (kindly refer to 3.2.2 herein below). Consumers that have judgments, are under debt review, are under administration or have been sequestrated should be excluded. Please note that this is a customer-centric approach to defining "in good-standing", in that the consumer must be in "good standing" across all their accounts with their respective credit providers.
- 3.2.2. As per the information sharing session held on 21 July 2020, BASA would like to confirm the definition of "*in good standing*", as the consumer's account was not in arrears and was up to date as at 1 April 2020, this would also include consumer's accounts that have been restructured and/or debt that has been rescheduled.



3.3. Ad Paragraph 1.5

- 3.3.1. BASA’s members are major role-players within the credit industry and would have to prepare to implement and to play this important role in the removal of adverse consumer credit information.
- 3.3.2. There is a risk in promulgating the regulations without enough lead time, as credit providers may not be operationally ready to comply with the requirements, due to credit providers having automated processes which may require system enhancements. This may result in consumers not receiving the intended relief.
- 3.3.3. Kindly refer to our general comments herein above at paragraph 2.2.

3.4. Ad Paragraph 1.7

- 3.4.1. BASA notes that there may not be alignment with the dates of the national state of disaster, which was declared on 15 March 2020 to 15 August 2020, as opposed to the date proposed in the Discussion Document that refers to 1 April 2020 to 30 September 2020 (or when the national state of disaster comes to an end, whichever is sooner) and seeks clarity and confirmation regarding the reasons and rationale, which may have informed and supported the proposed inclusion of the 30 September 2020, referred to herein.

3.5. Ad Paragraph 2.1

- 3.5.1. BASA confirms our understanding that the definition of “*Adverse consumer credit information*” is aligned to the definitions as contained in the National Credit Act (Section 71A(4) and Regulation 19(4)), but should specifically frame the scope to refer to the table included under point 2.6 above.
- 3.5.2. BASA confirms our understanding of the definition of “*In good standing*”, as per our comments at ad paragraph 1.4 herein above, in this respect.

3.6. Ad Paragraph 2.2

- 3.6.1. BASA confirms our understanding that the purpose as articulated in terms of the Discussion Document and the draft regulations seeks, is to benefit consumers who have been blacklisted and as a result would otherwise not be able to obtain employment or seek rental accommodation, whilst being impacted through no fault of their own by the national state of disaster. The purpose should be set out in sufficient detail so as to ensure consistent understanding and implementation thereof by the relevant stakeholders.

3.7. Ad Paragraph 2.3

- 3.7.1. BASA confirms that the purpose of the consultation and commentary period is to take stakeholders input into account for the imminent publication of the regulations and that once these regulations are published, they will be effective immediately.
- 3.7.2. BASA seeks clarity on the misalignment of dates as stated in ad paragraph 1.7 herein above.
- 3.7.3. BASA confirms that “*Service Providers*” are not referred to in the NCA, but that the Regulations will clarify the service providers as being utilities, rentals etc.
- 3.7.4. BASA confirms that our understanding of the removal of adverse consumer credit information is, that this is a once off process that will be attended to by the credit bureaus, but clarification is required in terms of credit providers not loading adverse information on the credit bureaus during the applicable period (between 1 April 2020 and 30 September 2020), as consumers who were in good standing as at 1 April 2020 will need to be identified.



3.8. Ad Paragraph 2.4

- 3.8.1. Kindly refer to our general comments herein above at paragraph 2.9.
- 3.8.2. Credit provider systems are automated to do uploads to the various credit bureaus. A period of 14 business days is inadequate for credit providers to make the necessary changes to their systems. Systems changes typically take between 6 to 9 months to made, fully tested and implemented. BASA would like to caution that there may be room for error and misinterpretation, and this may result in different treatment of a consumers across different credit providers.
- 3.8.3. BASA would like to confirm our understanding that any consumer who had an adverse consumer credit information listing during the applicable period will never have the adverse recorded on the credit bureaus, given the preclusion from loading post expiry of the applicable period.

3.9. Ad Paragraph 2.5

- 3.9.1. Kindly refer to our general comments herein above at paragraph 2.9.

3.10. Ad Paragraph 2.6

- 3.10.1. In terms of credit providers using or resubmitting adverse consumers credit information, please refer to comments under ad Paragraph 2.4, point 3.8.2

3.11. Ad Paragraph 2.7

- 3.11.1. BASA understands that it is the credit bureaus that will be attending to the initial removal of the adverse consumer credit information from the credit bureaus and that in terms of ad paragraph 2.6 above, credit providers may not re-submit this information on a monthly basis as it was removed by the credit bureaus.
- 3.11.2. Regarding the timeframes for making system changes, please refer to our comments under ad paragraph 2.4, point 3.8.2.
- 3.11.3. Kindly refer to our general comments herein above at paragraph 2.2.

3.12. Ad Paragraph 2.8

- 3.12.1. Kindly refer to our general comments herein above at paragraph 2.2.

3.13. Ad Paragraph 2.9

- 3.13.1. Kindly refer to our general comments herein above at paragraph 2.9.

4. Alternatives for Consideration

- 4.1. As per the meeting held on 21 July 2020 (referred to above), BASA understands that the dtic is seeking to assist consumers negatively affecting by the state of national disaster due to the COVID-19 pandemic in terms of obtaining employment and seeking rental accommodation.
- 4.2. In respect of seeking employment, BASA recommends that Regulation 18 of the National Credit Regulations, 2006, be enforced. This regulation prescribes that the only purpose for which a credit bureau report may be issued, as per 18(4)(c) is when: *“considering a candidate for employment in a position that requires honesty in dealing with cash or finances”; and is therefore not applicable to all employment applications. [underlining inserted for emphasis]*
- 4.3. In respect of consumers seeking rental accommodation, BASA recommends that the dtic consider publishing a regulation which disallows rental firms, rental agencies and landlords from obtaining or using a consumer’s adverse credit information when assessing rental applications for the period of the amnesty (1 April 2020 to 30 September 2020 or when the state of national disaster is no longer applicable, whichever is sooner).
- 4.4. These recommendations will enable a faster implementation of the regulation as outlined in 4.3 above and will ensure a succinct solution that avoids potential systemic risk in terms of credit extension.



5. In Conclusion

BASA appreciates the clarity provided by the dtic during the aforementioned meeting on 21 July 2020 that although the intention of the dtic is to remove adverse consumer credit information listings, the payment profile information which reflects how an account is paid on a monthly basis, will remain untouched and will not be removed from the credit record of consumers.

BASA would like to implore the dtic to give due consideration to our alternatives (as outlined in paragraph 4. above), as we are of the opinion that this is a much more realistic and feasible solution that would be much easier to implement.

BASA would like to thank the dtic for the opportunity to submit our comments on the Discussion Document. BASA also extends our willingness to engage with the dtic further on this matter and to clarify any of the points above if required.

Kind regards

Bongi Kunene
MANAGING DIRECTOR

