

EARLY SETTLEMENT GUIDANCE NOTE

**LENDING ACTIVITIES GUIDANCE NOTE OF NBFIRA
FOR MICRO LENDERS**

NBFIRA/RS/LAD/GN01

Effective: July 1, 2024

NBFIRA

Non-Bank Financial
Institutions Regulatory
Authority



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1. Introduction

- 1.1 The Non-Bank Financial Institution Regulatory Authority (“NBFIRA”) is empowered by Section 53 of the NBFIRA Act, 2023, to publish an interpretation Guidance Note relating to the interpretation or application of a provision in any financial services law to provide clarity, consistency and certainty in the interpretation of the financial services law.
- 1.2 Section 56(1)(f) of the NBFIRA Act, 2023, empowers the *Regulatory Authority* to give a non-bank financial institution a written direction on the manner in which the affairs of the non-bank financial institution may be conducted if it appears to the *Regulatory Authority* that the direction is necessary to protect the interests of clients of such non-bank financial institution and the public.
- 1.3 In this regard, the *Regulatory Authority* hereby issues an interpretation Guidance Note to micro lenders on the application of Regulation 14(4) of the Micro Lending Regulations, 2012.

2. The Current Practice

- 2.1 There is no stipulated general procedure for charging early settlement fees in terms of loan agreements for loans issued by micro lenders. Some micro lenders grant borrowers the option to give a notice period, whereas some do not accord borrowers that option. Generally, micro lenders apply different methods when charging fees for early settlement. Some micro lenders charge a prescribed standard fee, whereas others charge a fee equivalent to a pro-rated interest for the respective month, depending on the settlement date. Therefore, the methods applied by micro lenders when charging fees for early settlement are not standardized.

3. The Law

- 3.1 In terms of Part I of the NBFIRA Act, 2023, “*micro lender*” means a person who advances money to another person, where the money does not exceed the prescribed amount, but does not include a person licensed in terms of the Banking Act or Building Societies Act.
- 3.2 Section 53 of the NBFIRA Act, 2023, empowers the *Regulatory Authority* to publish an interpretation Guidance Note relating to the interpretation or application of a provision in any financial services law to provide clarity, consistency and certainty.

3.3 According to Section 56 of the NBFIRA Act, 2023, the *Regulatory Authority* may give a non-bank financial institution a written direction on the manner in which the affairs of the non-bank financial institution may be conducted.

3.4 In terms of section 56(7) of the NBFIRA Act, 2023, "A person who, without reasonable cause, fails to comply with a direction given in terms of this section commits an offence and is liable to a civil penalty not exceeding P250 000 to be imposed by the *Regulatory Authority*".

3.5 Regulation 10(3) of the Micro Lending Regulations, 2012, provides guidance on how penalties may be handled, including a requirement for micro lenders to provide for early settlement conditions and procedures in their loan agreements (Form 5), amongst other things.

3.6 Regulation 14(4) of the NBFIRA Micro Lending Regulations, 2012, provides that, a micro lender shall not charge a borrower any fee for early settlement in terms of the agreement, unless a reasonable amount is stipulated in the agreement.

4. Conclusion

4.1 It is apparent that there is no standardization with regards to early settlement fees across the industry, thus the need for the Regulatory Authority to provide guidance on the application of the provision. In addition, this Guidance Note serves as an intervention to mitigate the expected interest rate risk and the loss in expected interest income that micro lenders incur when borrowers make early settlements, particularly for larger agreements with loan tenor of more than a year.

5. The Guidance Note

5.1 Therefore, pursuant to Section 53 of the NBFIRA Act, 2023, the Regulatory Authority hereby gives guidance to micro lenders, through this Guidance Note, that reasonability of the amount stipulated in the loan agreement in terms of Regulation 14(4) is that the amount should not be more than 30 calendar days' interest on the outstanding principal amount and should only be charged where a borrower has elected not to give notice in writing, of 30 calendar days or shorter period as may be prescribed by the micro lender.

5.2 Micro lenders who choose to stipulate early settlement amounts in their loan agreements in terms of Regulation 14(4) of the NBFIRA Micro Lending Regulations, 2012, are directed to amend their loan application forms to indicate that such a fee is applicable only where customers elect not to give 30 calendar days' notice or give a shorter notification period, and the maximum fee shall not exceed 30 days interest on the outstanding principal, as guided above.

5.3 This Guidance Note shall come into effect on July 1, 2024 and shall not be applicable to loans obtained before the aforementioned date. NBFIRA remains committed and available to assist micro lenders to comply with the NBFIRA Regulatory Framework.

Oduetse A. Motshidisi
CHIEF EXECUTIVE OFFICER