

# The DebtSafe Reckless Lending Indicator

► (April – July 2018)

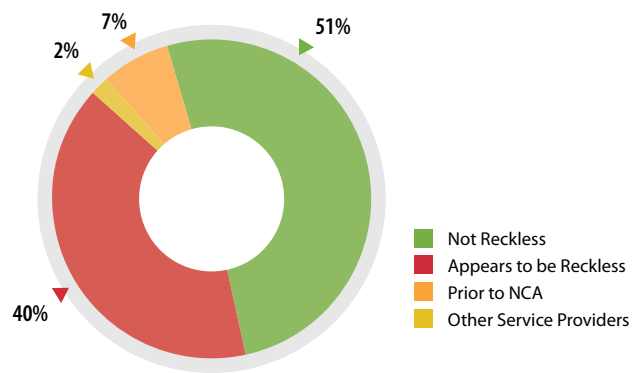
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## Introduction

DebtSafe is proud to announce that the *DebtSafe Reckless Lending Indicator* is the first of its kind in the South African Debt Review / Counselling industry.

The information shared in this edition of the *DebtSafe Reckless Lending Indicator* reflects the period 1 April 2018 to 31 July 2018, and is based on the debt review applications data that is held exclusively by DebtSafe.

The purpose of this report is to promote awareness of Reckless Lending and its implications, paving the way for future discussions on the causes, effects and prevention of Reckless Lending in South Africa.



## Summary

- As of 1 April 2018, the National Credit Regulator (NCR)\* implemented a new fee structure to encourage Reckless Lending investigations of all credit agreements for new applications under the Debt Review / Counselling process.
- During the period 1 April 2018 to 31 July 2018, DebtSafe investigated 5 591 credit agreements\* for Reckless Lending practices / behaviour.
- According to the indicator's data, 2 878 (51%) of the investigated agreements **appear NOT to be reckless\*** while 2 255 (40%) of the agreements **appear to be reckless\***. The remainder of the investigated agreements refer to **agreements signed prior to the establishment of the National Credit Act (NCA)** - amounting to 7% - as well as other **service agreements\*** comprising a total of 2%. Please note: Agreements prior to the NCA and service agreements are not pertinent to this report and will not be discussed in detail.
- The Debt Counsellor requires the necessary information - as stipulated by the NCA - to conduct a Reckless Lending investigation. The majority of the credit providers\* that were contacted by the Debt Counsellor (DebtSafe) between April 2018 and July 2018, failed to respond despite numerous attempts. The Debt Counsellor, therefore, conducted the investigation with the information at its disposal at that time.
- Since the majority of the credit providers did not comply with the investigation requests, the *DebtSafe Reckless Lending Indicator* use the terms: **appear NOT to be reckless** and **appear to be reckless**.
- Credit agreements investigated for Reckless Lending were unsecured loans\* and secured loans\* (namely Home Loans and Vehicle Finance).

## The DebtSafe Reckless Lending Indicator's In-depth Findings

DebtSafe investigated 5 591 credit agreements for Reckless Lending practices / behaviour for the period 1 April 2018 to 31 July 2018. According to the indicator's data, 2 878 (51%) of these agreements appear **NOT to be reckless** while 2 255 (40%) of the agreements **appear to be reckless**. Regarding the remainder of the investigated agreements: one portion reflects **agreements prior to the establishment of the NCA** (amounting to 375 [7%] agreements) and the other portion of the remaining agreements (2%) refers to other **service agreements**.

For the purposes of the *DebtSafe Reckless Lending Indicator*, DebtSafe reports on the indicator's ten (10) credit providers with the most credit agreements investigated during the period 1 April 2018 to 31 July 2018 that **appear NOT to be reckless** and that **appear to be reckless**. DebtSafe furthermore shares feedback on the top five (5) credit providers based on loan classifications - namely unsecured loans and secured loans (such as Home Loans and Vehicle Finance).

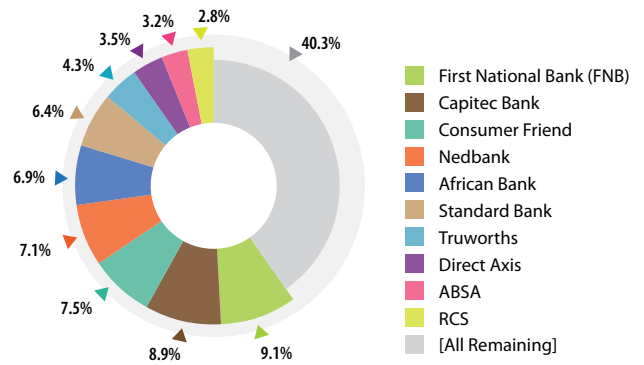
### Top 10 Credit Providers Based on Agreements That Appear to Be NOT Reckless

The data indicates that 51% of all the inspected agreements (5 591 agreements) **do NOT appear to be reckless**.

Therefore, the total number of inspected agreements that appear to be NOT reckless is 2878.

From these 2878 agreements, data was extracted of the ten (10) credit providers with the most credit agreements investigated.

\*Percentages rounded off to the first decimal.



**Below is a breakdown of the top 10 credit agreements investigated that appear to be NOT reckless:**

CREDIT PROVIDER	CREDIT AGREEMENTS	PERCENTAGE
First National Bank (FNB)	262	(9,1%)
Capitec Bank	255	(8,9%)
Consumer Friend	215	(7,5%)
Nedbank	204	(7,1%)
African Bank	200	(6,9%)
Standard Bank	185	(6,4%)
Truworths	123	(4,3%)
Direct Axis	102	(3,5%)
ABSA	93	(3,2%)
RCS	82	(2,8%)
[All Remaining]	1157	(40,3%)

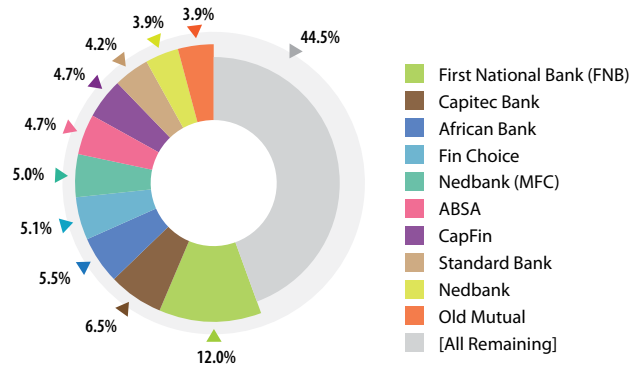
### Top 10 Credit Providers Based on Agreements That Appear to Be Reckless

The data indicates that 40% of all the inspected agreements (5 591 agreements) **appear to be reckless**.

Therefore, the total number of inspected agreements that appear to be reckless is 2255.

From these 2255 agreements, the data was pulled of the ten (10) credit providers with the most credit agreements investigated.

\*Percentages rounded off to the first decimal.



**Below is a breakdown of the top 10 credit agreements investigated that appear to be reckless:**

CREDIT PROVIDER	CREDIT AGREEMENTS	PERCENTAGE
First National Bank (FNB)	271	(12%)
Capitec Bank	146	(6,5%)
African Bank	123	(5,5%)
Fin Choice	115	(5,1%)
Nedbank (MFC)	112	(5,0%)
ABSA	105	(4,7%)
CapFin	105	(4,7%)
Standard Bank	95	(4,2%)
Nedbank	87	(3,9%)
Old Mutual	87	(3,9%)
[All Remaining]	1009	(44,5%)

## Top 5 Credit Providers Based on Agreements That Appear to Be NOT Reckless / Reckless Categorised Into Loan Classifications

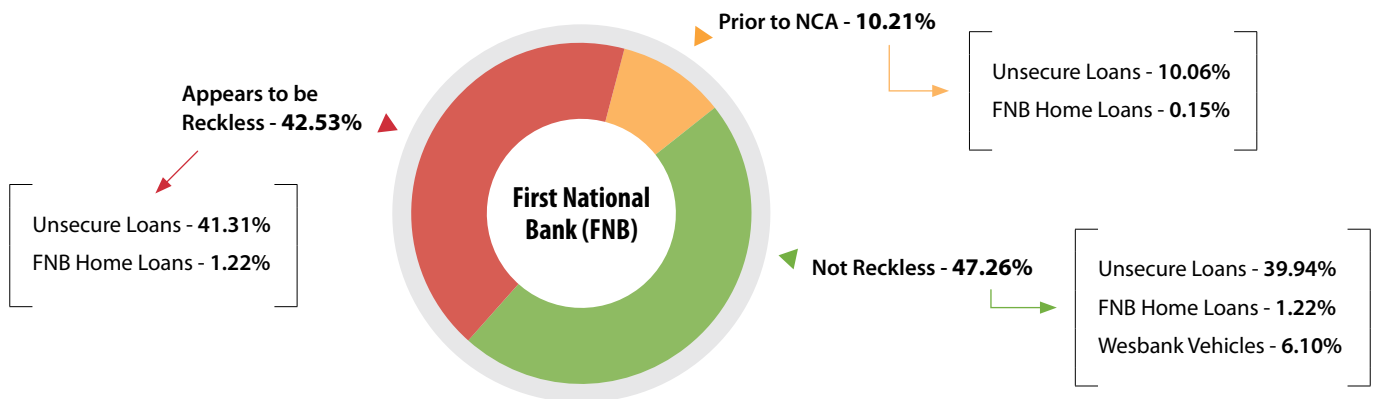
The top five (5) credit providers, based on the investigated credit agreements, contribute 40.39% (2 258 of the total 5 591) of the agreements in this report / indicator.

The following data indicate the investigated credit agreements of the top five (5) credit providers, categorised into loan classifications:

\*Percentages rounded off to the second decimal.

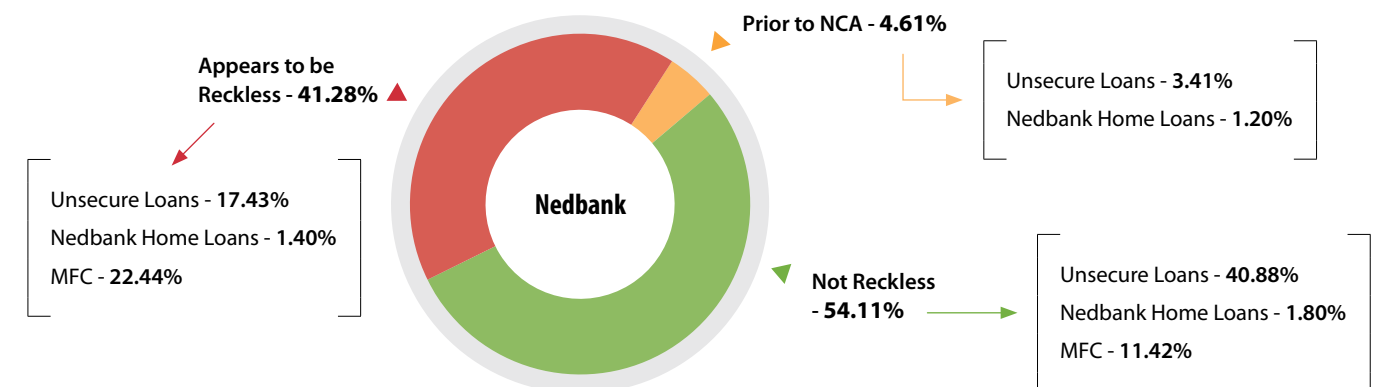
### 1. First National Bank (FNB) - 656 Agreements

	Agreements appear to be NOT reckless		Agreements appear to be reckless		Agreements investigated prior to the NCA	
Unsecured loans	262	(39.94%)	271	(41.31%)	66	(10.06%)
Secured loans (Home Loans)	8	(1.22%)	8	(1.22%)	1	(0.15%)
Secured loans (Vehicle Finance – WesBank)	40	(6.10%)	0	(0%)	0	(0%)
<b>Total:</b>	<b>310</b>	<b>(47.26%)</b>	<b>279</b>	<b>(42.53%)</b>	<b>67</b>	<b>(10.21%)</b>



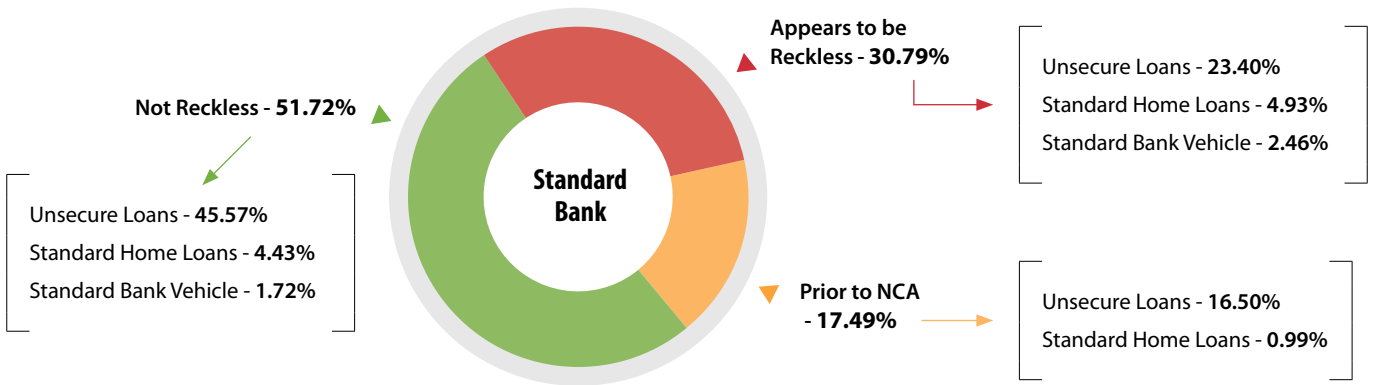
### 2. Nedbank - 499 Agreements

	Agreements appear to be NOT reckless		Agreements appear to be reckless		Agreements investigated prior to the NCA	
Unsecured loans	204	(40.88%)	87	(17.43%)	17	(3.41%)
Secured loans (Home Loans)	9	(1.80%)	7	(1.40%)	6	(1.20%)
Secured loans (Vehicle Finance – MFC)	57	(11.42%)	112	(22.44%)	0	(0%)
<b>Total:</b>	<b>270</b>	<b>(54.11%)</b>	<b>206</b>	<b>(41.28%)</b>	<b>23</b>	<b>(4.61%)</b>



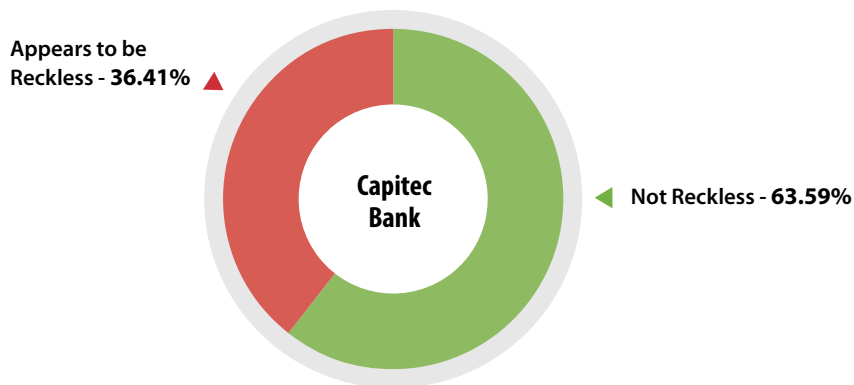
### 3. Standard Bank - 406 Agreements

	Agreements appear to be NOT reckless		Agreements appear to be reckless		Agreements investigated prior to the NCA	
Unsecured loans	185	(45.57%)	95	(23.40%)	67	(16.50%)
Secured loans (Home Loans)	18	(4.43%)	20	(4.93%)	4	(0.99%)
Secured loans (Vehicle Finance)	7	(1.72%)	10	(2.46%)	0	(0%)
<b>Total:</b>	<b>210</b>	<b>(51.72%)</b>	<b>125</b>	<b>(30.79%)</b>	<b>71</b>	<b>(17.49%)</b>



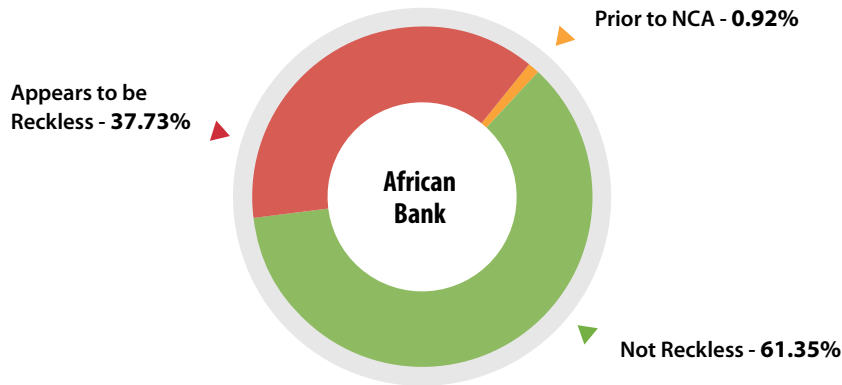
### 4. Capitec Bank - 401 Agreements

	Agreements appear to be NOT reckless		Agreements appear to be reckless		Agreements investigated prior to the NCA	
Unsecured loans	255	(63.59%)	146	(36.41%)	0	(0%)
<b>Total:</b>	<b>255</b>	<b>(63.59%)</b>	<b>146</b>	<b>(36.41%)</b>	<b>0</b>	<b>(0%)</b>



**5. African Bank - 326 Agreements**

	Agreements appear to be NOT reckless		Agreements appear to be reckless		Agreements investigated prior to the NCA	
Unsecured loans	200	(61.35%)	123	(37.73%)	3	(0.92%)
<b>Total:</b>	<b>200</b>	<b>(61.35%)</b>	<b>123</b>	<b>(37.73%)</b>	<b>3</b>	<b>(0.92%)</b>

**Credit Industry Trends**

The NCA aims to establish and maintain a responsible credit industry in South Africa. It introduced a number of new concepts to South African Law. Two of the most revolutionary concepts in the credit market are:

- Over-Indebtedness (when a consumer can't pay for his / her essential living expenses due to excessive credit obligations), and
- Reckless Lending (when a credit provider grants / extends credit to a consumer that he / she can't afford).

As a result, it is deemed the responsibility of the credit provider to ensure that when credit is granted, it is done in a responsible manner to avoid both Over-Indebtedness and Reckless Lending.

**What is Reckless Lending?**

The NCA - Section 80(1) - defines Reckless Lending as follows:

*"A credit agreement is reckless if, at the time that the agreement was made, or at the time when the amount approved in terms of the agreement is increased, other than an increase in terms of section 119(4) -*

- the credit provider failed to conduct an assessment as required by section 81(2), irrespective of what the outcome of such an assessment might have concluded at the time; or*
- the credit provider, having conducted an assessment as required by section 81(2), entered into the credit agreement with the consumer despite the fact that the preponderance of information available to the credit provider indicated that -*
  - the consumer did not generally understand or appreciate the consumer's risks, costs or obligations under the proposed credit agreement; or*

- entering into that credit agreement would make the consumer over-indebted."*

In summary, Reckless Lending according to the NCA is evident when (at that time):

- the credit provider (creditor) failed to conduct a proper credit (or affordability) assessment irrespective of the outcome;
- the credit provider entered into an agreement with the consumer who did not understand or appreciate the risks, cost or obligations of the agreement involved;
- the consumer became over-indebted due to the credit agreement with the credit provider; or
- the credit provider entered into a credit agreement with a client that was under Debt Review / Counselling or had applied for debt rearrangement.

## What Happens When a Credit Agreement is Deemed Reckless?

According to Section 83–85 of the NCA, when a Debt Review Application is submitted to the court with the Reckless Credit assessment from the Debt Counsellor (such as DebtSafe), the court may:

- set aside part of or all rights and obligations of the consumer and credit provider, or
- suspend the force and effect of the agreement.

## When is a Credit Agreement NOT Deemed Reckless?

As stated in Section 81(4) of the NCA, a credit agreement is NOT reckless if:

- the credit provider can prove that the consumer was untruthful and / or lied to obtain the credit during that moment in time, and
- a court or the Tribunal determines that the consumer's failure to do so materially affected the ability of the credit provider to make a proper assessment.

## The Importance of Reckless Lending Investigations for Consumers Under Debt Review

Reckless Lending investigations are in line with the purpose of the NCA and are the statutory duty of the court as well as the Debt Counsellor - defined in Sections 83 and 86(6) of the NCA.

The Debt Counsellor is responsible for investigating the respective credit agreements as stipulated in Section 86 - 88 of the NCA. The Debt Counsellor is required to reconstruct the circumstances when the debt was entered into between the credit provider and the consumer, specifically to consider the consumer's financial means to afford the credit at that time. In consequence, the cooperation of the credit provider is of the utmost importance to conclude the investigation. However, the majority of the credit providers failed to participate. Thus, the Debt Counsellor established the outcome of the investigation with the information at its disposal during the time period (April – July 2018).

## Conclusion

The *DebtSafe Reckless Lending* Indicator lays the foundation and groundwork for credit providers, debt counsellors and consumers to become aware of Reckless Lending and the implications thereof.

This report will be generated and distributed on a quarterly basis to provide feedback that will serve as a continuous indicator of Reckless Lending conduct in the Debt Review / Counselling environment.

The information presented in this report paves the way for additional research and feedback regarding Reckless Lending, its causes, its effects and ultimately its prevention.

### Definitions:

**\*credit regulator** – According to the NCA's definition credit regulator *"means a provincial credit regulator or the National Credit Regulator established by section 12;"*

#### **\*credit agreement**

– The NCA 8 (1) a – d, defines credit agreement as:"

- a credit facility, as described in subsection (3);
- a credit transaction, as described in subsection (4);
- a credit guarantee, as described in subsection (5); or
- any combination of the above."

**\*appear NOT to be reckless** - After the Reckless Lending investigation by the Debt Counsellor, the credit agreement *appear NOT to be reckless* according to the stipulations of the NCA and the National Credit Amendment Act (NCAA).

**\*appear to be reckless** – The information the registered Debt Counsellor requested was unavailable / limited due to no response from the relevant credit provider during the Reckless Lending investigation. The credit agreement, therefore, *appear to be reckless*.

**\*service agreements** - "service agreements" are agreements where the one party, the service provider, performs labour, services or duties for or on behalf of the other party against remuneration.

**\*credit provider** – The NCA explains:

*"in respect of a credit agreement to which this Act applies, means -*

- The party who supplies goods or services under a discount transaction, incidental credit agreement or instalment agreement;
- The party who advances money or credit under a pawn transaction;
- The party who extends credit under a credit facility;
- The mortgagee under a mortgage agreement;
- The lender under a secured loan;
- The lessor under a lease;
- The party who advances money or credit to another under any other credit agreement; or
- Any other person who acquires the rights of a credit provider under a credit agreement after it has been entered into;"

**\*unsecured loans** - An unsecured loan is a short-term loan and it has no guarantee attached to it. Unsecured loans include personal loans, credit cards and / or student loans.

**\*secured loans** – According to the definition stipulated in the NCA and the NCAA it refers to: *"an agreement, irrespective of its form but not including an instalment agreement, in terms of which a person (a) advances money or grants credit to another, and (b) retains, or receives a pledge [or cession of the title] to any movable property or other thing of value as security for all amounts due under that agreement;"*

Do not hesitate to contact DebtSafe for enquiries regarding the findings and compilation of the *DebtSafe Reckless Lending Indicator* (April – July 2018):

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