



**The New York City Department of Consumer Affairs’
Comments to the
New York State Department of Financial Services
Regarding
Proposed Rule Making on
Debt Collection Practices
(I.D. No. DFS-34-13-00002-RP)**

August 15, 2014

The New York City Department of Consumer Affairs (DCA) commends the Department of Financial Services (DFS) for proposing regulations to address abusive debt collection practices. DFS’s proposed regulations complement New York City’s local law and rules and extend important protections against abusive debt collection practices to consumers across the State.

The below comments are based on DCA’s experience regulating and enforcing consumer protections in the debt collection industry, mediating consumer complaints, and providing financial counseling to consumers struggling with debts. In the past five calendar years, DCA has received more than 3,000 complaints against debt collectors, making it the top complaint category for the past five years overall. As we have seen in New York City, effective laws and regulations can mitigate harassing, abusive, and deceptive debt collection practices and the harm that such practices cause consumers. Consequently, in the past five calendar years, DCA’s mediation has erased more than \$5 million in consumer debt. Based on our extensive experience described above, DCA offers the following comments and recommendations regarding DFS’s proposed rules:

- 1. The initial disclosures required under proposed Section 1.2 should include additional references to protections for New York City consumers afforded by local law and rules.** New York City’s law and rules provide consumers with some of the strongest protections in the country. These include, for example, requiring debt collection agencies to provide consumers with a call-back number to a phone that is answered by a natural person¹ and prohibiting debt collectors from contacting consumers about a debt until verification is provided after it is requested by a consumer.² New York City’s local law also provides DCA with the authority to effectively mediate consumer complaints about improper debt collection. In addition, under the City’s Consumer Protection Law, consumers in New York City are provided the same rights against unfair and deceptive trade practices by debt collectors as under the Fair Debt Collection Practices Act (FDCPA).³

DFS’s proposed rules require debt collectors to provide initial disclosures to consumers that include information about protections under the federal FDCPA against abusive, misleading and deceptive debt collection efforts. However, many consumers in New York

¹ N.Y. City Admin. Code § 20-493.1

² N.Y. City Admin. Code § 20-493.2

³ 6 RCNY § 5-77

City are unaware that local laws may afford them even greater protections than under the FDCPA and that contacting DCA with consumer complaints may be the best way to have issues mediated and resolved. The proposed rules should be amended to include a requirement that, in addition to referencing the FDCPA, all initial disclosures to New York City residents must also reference consumers' rights under the City's laws and rules.

2. **DFS regulations should require that all mandated disclosures debt collectors provide to New York City residents include a DCA license number.** Debt collection agencies collecting personal or household debts from New York City consumers are required to have a DCA license, whether they collect directly or indirectly through the services of another and regardless of where the agency is located.⁴ In addition, a debt collector must be licensed by DCA to bring a collection action in New York City courts against New York City consumer and must disclose this information in the complaint initiating the collection action.⁵ An unlicensed debt collector's false representation in the complaint for a collection action that it is licensed is a deceptive practice that may result in restitution to a consumer of any monies collected. Accordingly, to ensure consumers are enabled to assert their full legal rights, debt collectors should be required to provide its DCA license number(s) in all disclosures mandated by the DFS rules.
3. **Proposed Section 1.3 should specify that disclosures made pursuant to New York City's laws and rules regarding statute of limitations satisfy the requirements of the section.** New York City's Administrative Code specifically prohibits a debt collection agency from contacting a consumer about a debt on which the statute of limitations may be expired unless the agency provides a disclosure of the consumer's legal rights.⁶ New York City's rules provide specific language for such a disclosure to the consumer.⁷ In order to prevent any confusion and to ensure there is no undue regulatory burden, DFS's proposed regulations should specify that, for collectors subject to New York City's licensure requirements, the statute of limitations disclosures under the City's rules satisfy the requirements set forth in proposed §1.3(a).
4. **Proposed Section 1.4 should permit consumer to request verification on more than one occasion.** DFS should not unduly limit consumers' ability to request substantiation on multiple occasions. Concerns about consumer abuse of the substantiation process should be

⁴ N.Y. City Admin. Code § 20-490.

⁵ NY CPLR Rule 3015. For example, following revocation and surrender of its two debt collection agency licenses, a debt collection agency continued to file consumer credit lawsuits in New York City courts claiming to be licensed in its complaints. DCA brought an enforcement action against this debt collection agency charging it with unlicensed activity and sought restitution for the consumers for any monetary amount collected from the consumers resulting from the lawsuits.

⁶ N.Y. City Admin. Code § 20-493.2

⁷ 6 RCNY § 2-191 specifies the following disclosure: "WE ARE REQUIRED BY LAW TO GIVE YOU THE FOLLOWING INFORMATION ABOUT THIS DEBT. The legal time limit (statute of limitations) for suing you to collect this debt has expired. However, if somebody sues you anyway to try to make you pay this debt, court rules REQUIRE YOU to tell the court that the statute of limitations has expired to prevent the creditor from obtaining a judgment. Even though the statute of limitations has expired, you may CHOOSE to make payments. However, BE AWARE: if you make a payment, the creditor's right to sue you to make you pay the entire debt may START AGAIN."

addressed in a manner that would not inhibit consumers' ability to request substantiation more than once if necessary.

5. **DFS should clarify Proposed Section 1.5 to ensure that debt collectors do not affirmatively seek payments from consumers agreeing to a debt payment schedule or other settlement before furnishing the required written disclosure.** Proposed Section 1.5 creates important requirements for collectors to furnish, in writing, key information about debt payment schedules and consumer rights regarding statutorily exempt income. We recognize that some consumers who agree to a payment plan may wish to make an initial payment on the phone, without waiting five days for the written disclosure to be furnished. While we do not see a need for a debt collector to refuse such payments if they are initiated by the consumer, we recommend that DFS clarify that debt collectors must not affirmatively seek payments from consumers before furnishing the required disclosure.
6. **DFS should strengthen requirements in Section 1.6 governing email communications by mandating additional disclosures to consumers and requiring a clear opt-out mechanism.** DFS should not only require that debt collectors receive permission from consumers to communicate by email, but also that they disclose to consumers the implications of using email to communicate confidential or sensitive information. The current proposed rules do not contain substantive procedures or required disclosures that debt collectors must use when obtaining consumer consent for electronic communication. DFS should require that debt collectors disclose to consumers before they opt in to email communications important information including: what sensitive information might be transmitted via email; whether the agency will be using a special email service to communicate; and how the consumer can verify that a collection agency has received her/her email correspondence. Additionally, consumers should be reminded in all email communications that the same prohibition against abusive practices applies to email communication and that they have the right to cease communication with the debt collector. The rules should also specify that all email communications include a clear and conspicuous mechanism for consumers to opt out of email communications at any time.
7. **DFS should make clear that these regulations would in no way preempt local laws and rules that provide greater consumer protections.** DFS's proposed rules, as drafted, would not preempt DCA's local authority with regard to the licensure and regulation of debt collectors and debt buyers. Nonetheless, DCA recommends that DFS includes following specific language to provide greater clarity to consumers and to the industry: "These rules shall not be construed to limit in any way the authority of a political subdivision to enact, implement and enforce local laws and rules governing the licensure and regulation of debt collection agencies or to enact, implement and enforce any amendments thereto."
8. **DFS should include a language access component in its proposed regulations.** Approximately 2.5 million New Yorkers have limited-English proficiency,⁸ which can present a significant barrier to communication between consumers and debt collectors. Recognizing the importance of providing language access, steps have been taken at both the City and State levels to require government agencies to offer translations in the six most

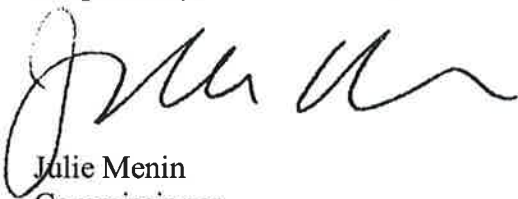
⁸See, e.g., NY Exec. Order No. 26, <http://www.governor.ny.gov/executiveorder/26>

common non-English languages spoken by individuals with limited-English proficiency.⁹ Laws have also been enacted at the City and State levels to require chain pharmacies to provide written and oral interpretation and translation services for limited English proficient consumers.¹⁰

Debt collectors often convey time-sensitive information about important financial matters. We would welcome the opportunity to meet with DFS to discuss approaches to incorporating important language access considerations into these proposed regulations.

We urge DFS to finalize strong regulations that complement New York City's laws and rules and to protect consumers. We appreciate DFS's consideration of these recommendations and DCA's feedback to the initial proposed rule submitted in October 2013, and look forward to working together to protect consumers in New York City and throughout the State from abusive debt collection practices.

Respectfully,



Julie Menin
Commissioner

⁹ NY Exec. Order No. 26, <http://www.governor.ny.gov/executiveorder/26>; NYC Exec Order No. 120, http://www.nyc.gov/html/om/pdf/2008/pr282-08_eo_120.pdf

¹⁰ NY Education Law § 6829; N.Y City Admin. Code §20-620