

NEW YORK CITY  
DEPARTMENT OF CONSUMER AND WORKER PROTECTION  
DCWP DEBT COLLECTOR RULES VIRTUAL PUBLIC HEARING

December 19, 2022

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1 MR. CHARLIE DRIVER: Okay, it's 11:03, we're  
2 going to get this started officially. So if you'll  
3 bear with me, I have to read a little bit and then we  
4 can dive right into taking your testimony. Just give  
5 me one second to find the document that I need. Okay.

6 Good morning, all. My name is Charlie Driver  
7 and I have been designated as the hearing officer for  
8 this public hearing of the Department of Consumer and  
9 Worker Protection on the amendment of rules relating  
10 to debt collectors.

11 This hearing is being held by teleconference  
12 call on Microsoft Teams, and it is now 11:03 a.m. on  
13 Monday, December 19, 2022 and I am hereby convening  
14 the public hearing on this proposed rule.

15 The proposed rule was published in the City  
16 Record on November 4, 2022. The published notice and  
17 rules are available online and on the NYC Rules  
18 website and the department's website. The department  
19 has proposed these rules pursuant to the authority  
20 vested in the commissioner of the Department of  
21 Consumer and Worker Protection by sections 1043 and  
22 2203F of the New York City Charter and section 20-1 of  
23 4B, 20-493A and 20-702 of the New York City  
24 Administrative Code.

25 This hearing affords the public the

1 opportunity to comment on all aspects of the rules the  
2 department has proposed. The department will carefully  
3 review all testimony and written comments received at  
4 this hearing and will give due weight and  
5 consideration to proposals and recommendations that  
6 are submitted for the record at this hearing.

7 At this time, I'll just go through a few  
8 ground rules before we get started. To ensure seeking  
9 to testify will have an opportunity to do so, please  
10 make sure you are muted when you are not speaking.  
11 Keeping your camera on or off is completely optional  
12 whether you're testifying or not. I have a list of  
13 people who are, who have reached out to me previously  
14 looking to testify. If you are looking to testify and  
15 you didn't reach out to DCWP in some way, shape or  
16 form, you think you're not on the list for whatever  
17 reason, please use the raise hand function on Teams.  
18 If you go into the reactions tab on the top of your  
19 screen if you're on a computer, you'll be able to see  
20 a little raised hand. I will then make sure that you  
21 are on my list of people to testify.

22 For each witness, you'll have a maximum of  
23 three minutes to give an oral testimony. I'm not going  
24 to cut you off directly at three, but I will keep you  
25 honest on that time limit. If you have remarks that

1           you think are going to go longer than three minutes,  
2           you can always submit written testimony. There is no  
3           length limit on the written testimony that we can  
4           take. And Carlene, if you could put a link in the chat  
5           when you have a chance, a link to the NYC rules  
6           website page for this, we'll make sure that you have  
7           access to the website where you can submit written  
8           comments.

9                         Someone has unmuted themselves. Can they  
10           just correct that? I think I just handled it myself,  
11           so.

12                        So yes, you'll have three minutes and I will  
13           cut you off if you go too far over, so just bear that  
14           in mind. Okay. So one final reminder, please make sure  
15           you that mute yourself and thank you Carlene, for  
16           putting that in the chat below and we'll get right  
17           into this. First up on my list, I have Arthur Sanders.  
18           Arthur, are you on the call? People are still unmuted.  
19           Alright, I'm muting everyone. Anita, you're raising  
20           your hand. What's up?

21                        MS. ANITA MANGHISI: Arthur Sanders won't be  
22           testifying today.

23                        MR. DRIVER: Okay. Totally fine. I'm just  
24           going to keep moving down. David Reed, I see you're  
25           here. Whenever you're ready, you'll have three

1 minutes.

2 MR. DAVID REED: Good morning, my name is  
3 David Reed and I am general counsel at the Receivables  
4 Management Association International. RMAI is the  
5 nonprofit trade association that represents more than  
6 600 companies that support the purchase, sale and  
7 collection of performing and nonperforming receivables  
8 on the secondary market. Our members include banks,  
9 credit unions, debt buying companies, collection  
10 agencies and collection law firms.

11 I'll be the first of several speakers from a  
12 diverse coalition of concerned participants within the  
13 receivables management industry who will provide an  
14 overview of our top concerns with the rule as drafted.  
15 In order to reduce repetition, we will be attempting  
16 to address separate elements of the rule in our  
17 testimony, but we all equally share the concerns  
18 raised by each presenter.

19 Speaking on behalf of the coalition will be  
20 David Peltan from the New York Collectors Association,  
21 Anita Manghisi from ACA International, Sonia Gibson,  
22 Ann Thomas and Don Maurice from RMAI and Scott Morris  
23 from the New York State Creditors Bar Association.

24 The receivables management industry applauds  
25 DCWP's efforts to update and improve the city's

1 collections rules. The receivables management industry  
2 recognizes that the current rule is dated and enhanced  
3 consumer protections in alignment with federal and  
4 state rules are needed.

5 What the industry respectfully seeks in the  
6 permanent rule is consistency. Consistency with the  
7 uniform and robust consumer protections that have been  
8 adopted in the past nine years in ten different states  
9 with new federal consumer protections contained in  
10 Regulation F, and with the revised rules being  
11 developed by the New York State Department of  
12 Financial Services.

13 This is a very complex and highly regulated  
14 industry and what we want to avoid at all costs is a  
15 scenario where we have 52 different sets of laws  
16 covering the nation. Our goal is to provide DCWP with  
17 detailed and actionable proposals that will align the  
18 rules with the latest state and federal standards of  
19 best practice. To that end, each of us will attached  
20 the same red-lined version of the rule that provides  
21 suggested revisions and improvements to the text with  
22 detailed explanations in the margin notes.

23 Before ending, I would like to very briefly  
24 mention the importance of balance itemization and  
25 request that the rule follow the same principles as

1 the federal government and every other state,  
2 including New York's recently adopted Consumer Credit  
3 Fairness Act, which for credit cards requires balance  
4 itemization from the point of charge off.

5 The industry also respectfully requests a  
6 date certain that the revised rules take effect.  
7 Given the significant changes to the rules, we request  
8 that they be applied prospectively.

9 Thank you for your time today. The  
10 receivables management industry looks forward to  
11 working with DCWP and other stakeholders in the  
12 adoption of the amended rules for the protection of  
13 the city's residents.

14 MR. DRIVER: Thank you so much, David. I  
15 appreciate it. And we'll move to another David here,  
16 David Peltan, whenever you're ready, feel free to  
17 unmute and you'll have three minutes.

18 MR. DAVID PELTAN: Alright, as they say, can  
19 you hear me now?

20 MR. DRIVER: I can hear you loud and clear.

21 MR. PELTAN: Thank you. My name is Davie  
22 Peltan and I'm the president of the New York State  
23 Collectors Association. That's the Empire State's  
24 Association of Debt Collectors. I'm also a lawyer and  
25 the majority of my practice is compliance work,



1 helping debt collectors comply with the statutes,  
2 rules and regulations that apply to collecting  
3 consumer debts.

4 Debt collectors must juggle statutes, rules  
5 and regulations at the federal, state and municipal  
6 levels, especially here in New York. Unfortunately,  
7 these levels are not in sync. This puts debt  
8 collectors and consumers in an uncomfortable spot. Debt  
9 collectors must sometimes choose which required  
10 disclosures to use and which to disregard, because  
11 including all the request disclosures on a letter is  
12 confusing to consumers, especially where the  
13 disclosures conflict. Actually including all the  
14 disclosures means consumers will have to wade through  
15 three to four pages of legal content rather than a  
16 single page of easy to use information.

17 The Consumer Financial Protection Bureau or  
18 the CFPB, came out with a model letter to use and  
19 published it in Regulation F. It's been in effect for  
20 more than a year. They have a simple, easy to use  
21 letter that is on a single page with perhaps a couple  
22 of paragraphs of disclosures on the back for an older  
23 debt. The CFPB developed this letter after years of  
24 research and investigation, so why should anything  
25 else be required? Was there something that CFPB

1 missed? No, I think they were very thorough, so let's  
2 keep it simple for the consumers and just required the  
3 CFPB's model validation notice and adopt a similar  
4 approach for subsequent letters in the consumer debt  
5 collection process. And this would include disclosures  
6 when the account is past the statute of limitations.

7 The confusion and difficulty from three  
8 levels of regulation also applies to the means of  
9 communications with consumers. I think it's helpful  
10 too and debt collectors begin with the assumption that  
11 consumers want to address their debts, although they  
12 may not want to have an actual conversation with a  
13 debt collector. More and more consumers prefer to  
14 communicate by email and text. But where there's a  
15 requirement to first get their consent by telephone or  
16 letter, consumers may never get the email or text that  
17 they want. They're not answering their phone, they're  
18 not necessarily responding to letters, but they will  
19 respond to an email or a text if we could begin the  
20 process at that stage.

21 Again, let's make it easy and comfortable  
22 for consumers. Under the CFPB's Regulation F, all  
23 electronic communications must provide the consumer  
24 with the ability to opt out, even if the consumers  
25 have previously provided consent and have been

1 communicating electronically. Isn't that sufficient  
2 protection, and it allows consumers to receive the  
3 information they need and want through the means that  
4 they want. Making it difficult or burdensome for  
5 consumers to opt in is actually to their  
6 disadvantage.

7 And then finally, I'd like to talk about  
8 finding the right balance for consumers between  
9 extensive record keeping requirements and the  
10 protection of their private nonpublic information.  
11 These proposed rules require keeping more information  
12 for a longer period of time, well beyond the  
13 applicable statute of limitations.

14 The more information that is kept and the  
15 longer that it's kept increases the risk that the  
16 consumers' confidential information will be  
17 inadvertently disclosed, hacked or stolen, which  
18 increases the risk of identity theft and fraud.

19 Why do we need to exceed the requirements  
20 under Regulation F, when that extra effort actually  
21 increases the risk to consumers without any  
22 measurable benefit to them. Let's do what is best for  
23 the consumers and stay consistent with Regulation F  
24 across the board.

25 MR. DRIVER: David, I'm going to have to

1 cut you off. I guess you were finishing anyway, but  
2 thank you.

3 MR. PELTAN: Yes, thank you.

4 MR. DRIVER: Great, next up, we'll have  
5 Anita Manghisi. Anita, whenever you're ready, you'll  
6 have three minutes.

7 MS. ANITA MANGHISI: Thank you, Charlie. I  
8 appreciate the opportunity to speak with you this  
9 morning. I've been in the debt collection industry  
10 for 30 years. I'm a board member for ACA  
11 International, which is the Association of Credit and  
12 Collection Professionals, with over 2,100 members in  
13 the industry. I am the New York State collections  
14 association legislative chairwoman and I'm also a  
15 small business owner. I am a New York City certified  
16 MWBEED which is a minority women owned economically  
17 disadvantaged business. Our members, including  
18 myself, serve New York State and New York City  
19 authorities and agencies, including New York City  
20 Health + Hospitals, Department of Transportation and  
21 Bureau of Parking Violations.

22 I believe that DCPW and myself and our  
23 industry share a common goal, which is to protect the  
24 consumers and service providers alike. Businesses and  
25 governmental agencies need appropriate funding to

1 fulfill their obligations. Consumers who purchase  
2 goods and services or incur a financial obligation  
3 are expected to pay. When payment does not occur,  
4 those consumers do have an absolute right to be  
5 treated with dignity, compassion and respect.  
6 However, we do have a job to do and we expect to do  
7 that in the most ethical way.

8 Portions of these proposed rules are  
9 extremely burdensome to our members, especially the  
10 small and disadvantaged members. I'm going to focus  
11 on a specific single area within the proposal. It is  
12 section 2-193A6, records to be maintained by debt  
13 collection agency. The proposed language states a  
14 log of all communications, attempted communication or  
15 exchanges, the term log is not currently defined. I  
16 suggest you require a system of record keeping  
17 instead. A log implies to a physical document rather  
18 than a system of records, which could be extremely  
19 difficult to produce in one physical log. I've  
20 included a recommendation of such a definition in my  
21 written testimony.

22 A log of all communications can be  
23 extremely challenging especially to our smaller  
24 agencies, who may not have the means to track that  
25 data securely. Attempted communication must be

1 further defined with precision. If a communication is  
2 initiated but fails, what value does that bring or  
3 what purpose does it serve to log it. If the consumer  
4 doesn't know you attempted to reach them, I don't see  
5 the benefit of that.

6 Also, the CFPB does not require such a  
7 requirement. I'm hoping my testimony today will  
8 provide both information and be helpful in your  
9 consideration for medications and clarifications. In  
10 conclusion, I would like to reiterate that our  
11 members provide a valuable service to the city. It is  
12 my belief that if we work together on these rules,  
13 both consumer interests and business interests can be  
14 served in a competent manner. Please accept my  
15 testimony as an invitation to discuss these  
16 amendments further. I hope that if you do go forward  
17 with these amendments that you will give the industry  
18 time, ample time to digest these, review them and so  
19 that we can be successful in implementing them. Thank  
20 you.

21 MR. DRIVER: Great, thank you so much,  
22 Anita, I appreciate it. Next up, we'll have Sonia  
23 Gibson. Sonia, whenever you're ready. I don't have  
24 any audio from you right now. I don't know what the  
25 deal is with that. I still can hear you. Do you want

1 to try just jump off and jump back on and we'll go to  
2 the next witness and then come back to you. Great.  
3 Next up will be Ann Thomas, Ann, whenever you're  
4 ready.

5 MS. ANN THOMAS: Great, good morning, just  
6 want to make sure you're able to hear me.

7 MR. DRIVER: Yeah, loud and clear.

8 MS. THOMAS: Great. Thank you, Charlie and  
9 thank you for the members of DCDP for working with us  
10 in the industry to testify and discuss these rules to  
11 be sure that these rules are fair to consumers and  
12 also fair to business. It has been quite some time  
13 since the New York City rules were put into effect  
14 and we want to commend the city for taking action  
15 early when many other agencies were not in the debt  
16 collection space. And we are happy to see that the  
17 city is recognizing a need to make updates to align  
18 with Regulation F.

19 I'm going to touch on a few sections,  
20 particularly those related to the validation notice  
21 and keeping in mind that we now, 13 years late, have  
22 New York City rules, New York State Department of  
23 Financial Services rules, a new rule making process  
24 at the state level and Regulation F at the CFPB. So  
25 we are compacting a lot of that into what we're

1 giving you as feedback to try to be sure that they're  
2 aligned to prevent consumer confusion.

3 So, kicking off on the validation notice  
4 regarding the additional consumer rights section,  
5 much of what is in this section is already covered by  
6 Regulation F which is the federal law. There is a  
7 reference in this particular section that says that  
8 debt collectors must follow all -- or must provide  
9 all information required by federal or state law,  
10 which makes much of this particular section  
11 unnecessary because there is already a requirement  
12 under Regulation F.

13 There are some disclosures in the  
14 additional consumer rights section that are different  
15 from the federal and state requirements, which will  
16 be confusing to consumers and do lead to a need to  
17 try at the debt collector level to marry the  
18 differences and overcome the conflicts. This also  
19 prevents a mechanism for consumer attorneys to  
20 challenge the city's law, which has happened in many  
21 cases in the current out of statute disclosure.

22 Additionally, this information is required  
23 by federal and state law, and we currently have rule  
24 making at the DFS state level which prevents us and  
25 makes it very challenging to comment on some sections



1 in the rule, in particular, the out of statute  
2 disclosure section.

3 So, as we know, we have the statewide  
4 disclosures, which were enacted in 2014, we now have  
5 the Consumer Credit Fairness Act, which was enacted  
6 in 2021 and we have the current New York City rules  
7 and the proposed rules. We know New York is also  
8 proposing amendments to their rules. So rather than  
9 having three different out of statute disclosures at  
10 the state level, we respectfully request that the  
11 city work with us to create one uniform statewide out  
12 of statute disclosure. That will prevent consumer  
13 confusion.

14 Additionally, with the requirements in the  
15 validation notice section and the out of statute  
16 disclosure, a validation notice could be as big as an  
17 11 x 17 paper with consumer notices all over the  
18 place. This could be greatly overwhelming and would  
19 likely increase the likelihood that consumers will  
20 not read all of the disclosures in their entirety and  
21 will miss opportunities to understand their rights.

22 If we can work, as David said earlier, to  
23 create simplified disclosures following what the  
24 bureau has done, we believe that these will be more  
25 helpful to consumers than providing information that

1 is inconsistent with state and federal law. Lastly, I  
2 just want to touch on the natural person reference.

3 MR. DRIVER: I'm sorry, Ann, I'm just going  
4 to have to cut you off. You're just at your time  
5 limit.

6 MS. THOMAS: Sure, understood.

7 MR. DRIVER: But thank you.

8 MS. THOMAS: Thank you.

9 MR. DRIVER: We'll go over to Sonia now, if  
10 you're back on. Let's give it a try. I cannot hear  
11 you. Do you want try talking just now?

12 MS. SONIA GIBSON: Can everyone hear me  
13 okay?

14 MR. DIVER: Yeah, we can hear you now.  
15 Thanks for bearing with the tech.

16 MS. GIBSON: Thank you, everyone. Good  
17 morning. My name is Sonia Gibson with RMAI State  
18 Legislative Affairs Committee. I'm going to focus on  
19 the proposed communication restrictions and I want to  
20 start off by explaining the importance of strong  
21 communication between debt collectors and consumers.

22 They allow a collector to explain the debt  
23 owed, answer the consumer's questions and offer a  
24 flexible payment plan based on an individual's  
25 situation. But when a collector is unable to connect

1 with the consumer, the consumer missed out on  
2 learning about payment plan options that can put the  
3 debt behind them. When communications attempt fail,  
4 the debt will be credit reported, potentially lower a  
5 consumer's credit score and unfortunately will more  
6 often lead to a debt collection lawsuit against the  
7 consumer.

8 To address the importance of fostering  
9 communication while protecting consumers, the federal  
10 regulator CFPB spent seven years updating the federal  
11 collection laws. They reviewed over 14,000 comments,  
12 met with consumer advocates and industry reps. And  
13 they came up with clear, strong rules on  
14 communication that would prevent harassment but also  
15 recognized the importance of communicating with  
16 consumers between collectors.

17 Last year, these new rules took effect and  
18 capped the number of calls a debt collector can make  
19 up to seven per week per account. Once a  
20 communication happens, no more calls can be made for  
21 another week unless the consumer asks for one. The  
22 CFPB also recognized that consumers benefit greatly  
23 from electronic communications, like email and  
24 texting, and so they specifically allowed collectors  
25 to email and text consumers outside of the phone call

1 caps as long as the consumers had the option to opt  
2 out of such communication.

3 When the department issued its proposed  
4 rules, it's stating that it's proposing to update its  
5 debt collection rules due to changes in federal  
6 regulations and then the department went on to state  
7 they wanted to adopt similar protections as the  
8 federal rules.

9 Currently New York City's restriction on  
10 communications of two contacts every week is actually  
11 less restrictive than the new CFPB standard of seven  
12 attempts in a week. To make two contacts in a week,  
13 it will almost always take more than seven attempts.  
14 The language that's been proposed in the department's  
15 draft however, three communication attempts per week  
16 muddles together calls with electronic communications  
17 and is so extremely restrictive, it will hinder  
18 effective communication between collectors and their  
19 consumers.

20 We must remember the unintended  
21 consequences of a standard that's more restrictive  
22 than the CFPB's well thought out rule, and that  
23 consumers won't learn of payment plan options to  
24 repay their debts, there will be more negative trade  
25 lines on consumers credit reports and there will be

1 more litigation flooding the city's court system. And  
2 without being able to speak to consumers, individuals  
3 in a hardship situation won't have the chance to  
4 notify us of their circumstances and stop the  
5 collections process.

6 These are serious unintended consequences  
7 that will impact hundreds of thousands of New  
8 Yorkers. On behalf of our coalition, we urge the  
9 department to adopt the federal standard regarding  
10 debt collection phone call limitations instead of  
11 this new restrictive standard on all forms of  
12 communication. Thank you for your time today.

13 MR. DRIVER: Great, thank you, glad we  
14 could make that work. Next up, we have Don Maurice,  
15 Don, whenever you're ready.

16 MR. DON MAURICE: Good morning, thank you,  
17 Charlie and hello everyone. I'm Don Maurice, I'm  
18 outside counsel to the Receivables Management  
19 Association. I appreciate the opportunity to testify  
20 on these important proposed regulations. My testimony  
21 this morning is supplemented by the joint industry  
22 red-line. I'll talk about hopefully four things, but  
23 I know I'll get to three, Charlie. Arthur Sanders did  
24 not speak, so maybe I could have a minute of his  
25 time.

1           But the first is verification of debts, F5,  
2           one of the most important means to ensure accuracy  
3           and integrity in debt collection is verification. Get  
4           it wrong, consumers are confused. The proposed rule  
5           on verification would confuse consumers in the case  
6           of a judgment. So to verify a judgment you would  
7           think you would propose providing the consumer with  
8           the judgment. That's not what the proposed  
9           regulations call for though. They call for providing  
10          the consumer with the original instrument. This  
11          doesn't help the consumer identify the obligation. It  
12          will confuse the consumer. Our red-line fixes this.

13                 Call recording disclosure, this is  
14                 contained in sub-D20. In order to comply with various  
15                 state laws, a debt collector at the beginning of a  
16                 recorded call must inform the person that the call is  
17                 being recorded. The proposed regulations say you must  
18                 also tell that person that the purpose of the call is  
19                 debt collection. This likely will lead to inadvertent  
20                 third party disclosure of debt collection activities.

21                 Our members protect against this  
22                 inadvertent disclosure by identifying first whether  
23                 the party with whom they've connected is the right  
24                 party. And only then will they inform that person  
25                 that the purpose of the call is debt collection. This

1 needs too be fixed and our proposed red-line does  
2 that.

3 And on fair practice, identified in sub-E3,  
4 is causing charges for a mode of communication. Well,  
5 certainly the federal FDCPA as well as present law in  
6 the city does that. But the proposed regulation has a  
7 twist in it. If the consumer requests that they be  
8 contacted through a particular medium that causes  
9 them to be charged for that medium, such as a text  
10 message, debt collectors should not be prohibited  
11 from communicating with the consumer through that  
12 mode of communication. But that's what the proposed  
13 regulation would prohibit. It would prohibit debt  
14 collectors from communicating with the consumer in a  
15 mode of communication they selected and ostensibly  
16 would understand they're being charged for it. This  
17 red-line that we made fixes that problem as well.

18 And finally, Charlie, sub-B3, communicating  
19 with a consumer at their place of employment. We  
20 really need a fix here. The world has changed, work  
21 from home is quite usual. When a consumer works from  
22 their residence, it can also be their place of  
23 employment. And if that is unknown to the debt  
24 collector, a debt collector who is communicating with  
25 the consumer at their residence while they work from

1 home would ostensibly be communicating with a  
2 consumer at the place of employment. We need to fix  
3 this and our proposed red-line does that. It reflects  
4 that a debt collector is not prohibited from  
5 communicating with a consumer in such circumstances  
6 if they know the employer prohibits the  
7 communications, a simple fix, it reflects reality.  
8 Thank you, Charlie.

9 MR. DRIVER: Great, thank you so much, Don,  
10 I appreciate it. We're going to keep moving. Scott  
11 Morris, next up, Scott, whenever you're ready, you  
12 have three minutes.

13 MR. SCOTT MORRIS: Can you hear me okay,  
14 Charlie?

15 MR. DRIVER: Yep. I can hear you fine.

16 MR. MORRIS: Great. Good morning. My name  
17 is Scott Morris and I am a board member of the New  
18 York State Creditors Bar Association, an association  
19 of legal professionals in the area of consumer and  
20 commercial debt resolution. I'd like to discuss the  
21 need to carve out legal activity for the parts of the  
22 proposed rules to continue to allow lawyers to  
23 perform their functions under the judiciary laws of  
24 this state. As the department is aware, the  
25 definition of debt collection agency under section



1           20-4895 of the New York City Admin code, specifically  
2           excludes any attorney at law or law firm collecting  
3           debt in such capacity on behalf of and in the name of  
4           a client's [unintelligible] [00:28:11] activities  
5           that may be performed by a licensed attorney. Let's  
6           not forget that attorneys practicing law have long  
7           been regulated and disciplined by the states highest  
8           courts that license them. States, including New York  
9           have an effective regulation system that includes  
10          high admission standards, strict rules of  
11          professional conduct and disciplinary rules that  
12          govern virtually every aspect of an attorney's  
13          professional life that can include penalties up to  
14          and including monetary sanctions, suspensions and  
15          disbarment.

16                        With that said, our organization concedes  
17                        that the DCWP has the authority to regulate  
18                        attorneys' conduct for non-legal services rendered by  
19                        an attorney. Therefore, we ask the DCWP to consider  
20                        some exclusions or clarifying language to make sure  
21                        that the DCWP doesn't prevent an attorney from  
22                        performing their professional conduct  
23                        responsibilities of zealously asserting the client's  
24                        position under the rules of the adversary system.

25                        Some examples that create conflicts under

1 the proposed rules are as follows. Under Section 5-  
2 77A3 and 4, it sets forth a specific amount of time a  
3 debt collector and mandates that a cease and desist  
4 is strictly administered. While we don't disagree  
5 with both rules, they directly affect our ability to  
6 lawyer. Would a stipulation of settlement being  
7 delivery to a consumer within five days of last  
8 communication violate the rules? Further what if the  
9 matter is adversarial and the consumer sends a cease  
10 and desist. Would service of a motion, discovery or  
11 other legal documents be considered a violation of  
12 the rule?

13 Number two, verification under 5-77FI,  
14 state said a copy of a judgment is no longer  
15 effective for verification purposes. Judgments in New  
16 York State are good for 20 years, which may exceed  
17 the documentation retention policies of a creditor or  
18 law firm. Are exemplified judgments from another  
19 state that have been given full faith and credit  
20 under the U.S. constitution also another example  
21 where if we don't have documentation, it won't be  
22 allowed to be effectuated?

23 And number three, the DCWP defines a new  
24 document called the unverified debt notice that is  
25 required if the debt collector is unable to validate

1 a debt within 30 days. What if the creditor is able  
2 to obtain the documentation to support validation and  
3 that constitutes prima facie proof for a lawsuit  
4 thereafter. Is an attorney forbidden from filing such  
5 a lawsuit on the creditor's behalf? Wouldn't that  
6 document overshadow the attorney's judicial and  
7 ethical rights to advocate for their client?

8 Therefore we ask that paragraph six be  
9 added to the exceptions of debt collection under  
10 section four that states, any communications,  
11 letters, pleadings or other correspondence that are  
12 delivered by an attorney licensed within the state of  
13 New York while performing their duties as an officer  
14 of the court during the pendency of an active court  
15 matter that is overseen and supervised by the New  
16 York State Unified Court System. I thank you for your  
17 time.

18 MR. DRIVER: Great, thank you so much,  
19 Scott. Next up, we have Donald Valenzano, if you're  
20 on, you'll have three minutes whenever you're ready.

21 MR. DONALD VALENZANO: Good morning, is  
22 this working?

23 MR. DRIVER: Yeah.

24 MR. VALENZANO: So on behalf of the New  
25 York State Creditors Bar Association, I'm a lawyer

1 from the firm of Pressler, Felt & Warshaw. We  
2 respectfully submit that submitting a copy of a  
3 judgment as part of the debt validation should be  
4 construed as sufficient and the proposed requirement  
5 of including original account level documentation as  
6 both unreasonable and unduly burdensome.

7 Accordingly, we respectfully request that  
8 the proposed rules be revised so as to indicate that  
9 a copy of the judgment is sufficient debt  
10 verification on the proposed rules. What is the  
11 issue? The new proposed rule will require as part of  
12 debt verification that the debt collector provide  
13 within 30 days their charge off statement and their  
14 most recent monthly statement recording a purchase  
15 transaction, payment or balance transfer. But failure  
16 to provide such information would preclude a debt  
17 collector from proceeding to collect a debt if such  
18 information cannot be furnished.

19 However, we respectfully submit a judgment  
20 is proof of a debt, as defined by the CPLR as quote,  
21 "a determination of the rights of the parties in an  
22 action or special proceeding," that's CPLR 5011. As  
23 such, where a judgment has been entered, there has  
24 already been a judicial termination as to the debt  
25 owed by the debtor to the judgment creditor. And in

1 the case of a consumer credit transaction, the amount  
2 owed to the judgment creditor. A judgment in New York  
3 State is valid for 20 years.

4 The proposed rules ostensibly seek to  
5 sidestep the legal effect of a judgment by requiring  
6 that the underlying account documentation be  
7 presented within 30 days to demonstrate the existence  
8 of a debt. Thus, a party could possess a judgment but  
9 be precluded from enforcing same without such  
10 documentation.

11 Additionally, I note that a consumer could  
12 actively litigate at a case, but still seek to  
13 invalidate a judgment by requiring the production of  
14 such documentation. It's further noted that the  
15 present and evidentiary requirements for a default  
16 judgment applications and consumer credit matters was  
17 only recently set forth in September 15, 2014,  
18 effective on or about October 1, 2014.

19 As such, some of the requested  
20 documentation was previously not required for entry  
21 of judgment and may not be available. Respectfully, I  
22 submit it is unjust to require a debt collector to  
23 possess documentation that was not previously  
24 mandated by court rule or statute in order to enforce  
25 a validly obtained judgment. We further note that the

1 requirement to possess or maintain documentation for  
2 up to 20 years on a case where judgment has been  
3 obtained is far outside the norm for record  
4 retention. Examples being that under the CFR, that  
5 creditor is only required to keep records for three  
6 years. The IRS can only go back approximately three  
7 years for an audit.

8 Based on the foregoing, we respectfully  
9 request that the rules be modified to  
10 [unintelligible] [00:33:45] a judgment that  
11 constitutes sufficient debt verification.

12 MR. DRIVER: Great, thank you so much. Next  
13 up, we have Michael Peters.

14 MR. MICHAEL PETERS: Am I on?

15 MR. DRIVER: Yes, whenever you're ready.

16 MR. PETERS: Great. My name is Michael  
17 Peters. I'm an attorney for the firm of Pressler,  
18 Felt & Warshaw, LLP and I'm speaking on behalf of the  
19 New York State Creditors Bar Association. I will  
20 address my comments specially to Section 5-77F2V. In  
21 sum the proposed modification two significant  
22 departures from the Federal Fair Debt Collection  
23 Practices Act. First, it permits requests for  
24 verification at any time, second it permits them by  
25 any means. With the [unintelligible] [00:34:28]

1 notice, collectors now have a model form that they  
2 can use to safely disclose the FDCPA's validation  
3 requirements and maintain a safe harbor for those  
4 disclosures which previously generated significant  
5 litigation.

6 However, the DCWP's proposed modifications  
7 run contrary to the model validation notices'  
8 disclosure requirements. Reg F allows a consumer 30  
9 days from receipt or presumed receipt to request  
10 verification. In fact, debt collectors have to  
11 disclose a date certain by which the consumer must  
12 write to request verification in the model form. The  
13 DCWP's amendment would render the disclosure of that  
14 date meaningless because the consumer can dispute the  
15 debt any time under the amendment. Debt collectors  
16 may not overshadow or make inconsistent disclosures  
17 with the consumer's rights under the FDCA during the  
18 validation period. The standard by which this is  
19 evaluated is the least sophisticated data standard.  
20 On the model form, state required disclosures must go  
21 on the back of that notice.

22 By requiring a specific date when the  
23 consumer must write to the debt collector to request  
24 verification on the front of the model notice and  
25 then disclosing on the reverse sides state law that

1           permits disputes at any time is a clear inconsistency  
2           with the FDCPA's rights.

3                       Next, the amendment would allow consumers  
4           to make a dispute orally, in writing or  
5           electronically. Even the model notice gives debt  
6           collectors the option to provide an electronic  
7           dispute method if they permit and accept electronic  
8           disputes. This amendment would require any debt  
9           collector that has a valid email address to accept  
10          electronic disputes and requests for verification.  
11          How far could a consumer's attorney take this  
12          amendment? Could a consumer post a Google review of  
13          the debt collector's business [unintelligible]  
14          [00:36:02] verification of a debt? The Consumer Bar  
15          will argue that the words by any means have no  
16          limitation.

17                      Moreover, this would again vitiate a  
18          significant difference in the FDCPA's requirements.  
19          Specifically, under 1692GA3, a consumer can dispute a  
20          debt orally or in writing which no longer allows the  
21          debt collector to assume the debt is valid. On the  
22          contrary, a consumer must request of debt in writing.  
23          In fact, significant law is developed on the  
24          interpretation of these requirements under the FDCPA  
25          because a written dispute places heavier obligations



1 on the debt collector such as ceasing communication  
2 until the debt collector provides verification of  
3 debt.

4 The proposed amendment would render this  
5 heavily litigated distinction meaningless. The DCWP's  
6 intended purpose is to align with Reg F and the DFS.  
7 However the conflicts identified will create  
8 litigation on overshadowing and inconsistency by the  
9 Consumer Bar from mere compliance with the amendment.

10 On behalf of the New York State Creditors  
11 Bar Association, we respectfully request that the  
12 DCWP strike the entirety of 5-77F2V. Thank you.

13 MR. DRIVER: Great, thank you so much. Next  
14 up, we have Nicole Cabanez. Nicole, whenever you're  
15 ready.

16 MS. NICOLE CABANEZ: Can you hear me?

17 MR. DRIVER: Yeah.

18 MS. CABANEZ: Great, good morning. My name  
19 is Nicole Cabanez and I'm a Skadden Fellow at the  
20 National Consumer Law Center. My work focus is on  
21 consumer law issues impacting immigrant communities  
22 including language access for consumers with limited  
23 English proficiency.

24 Thank you for the opportunity to testify  
25 today. My testimony will focus on the proponents of

1 the proposed amendments that address language access,  
2 but our written comments address a broader range of  
3 topics.

4 DCWP's current rules lay the groundwork for  
5 debt collectors to offer language access in the  
6 future, by requiring debt collectors to request and  
7 record a consumer's language preference before  
8 attempting to collect a debt and to transfer that  
9 information whenever debt is sold, transferred or  
10 referred to debt collection litigation. This is  
11 extremely important. Asking consumers about their  
12 language preference is the very first step to  
13 offering effect language access, as it enables debt  
14 collectors to direct consumers to the resources that  
15 they need.

16 We applaud DCWP's leadership in requiring  
17 debt collectors to maintain these records and hope  
18 that other jurisdictions will follow New York City's  
19 example. Additionally, we encourage DCWP to consider  
20 expanding on these rules to require debt collectors  
21 that do not offer any language services to begin  
22 somewhere.

23 On January 1st, the District of Columbia  
24 will require debt collectors to provide validation  
25 notices to consumers in both English and Spanish

1 unless another language was principally used in the  
2 original contract with the consumer. Similarly, we  
3 recommend that DCWP require debt collectors to send  
4 translated validation notices whenever the debt  
5 collector is both aware of a consumer's language  
6 preference and there is a government issued  
7 translation in that language.

8 Thus, as the number of languages included  
9 in the pool of government provided translations grows  
10 and as debt collectors continue to track and transfer  
11 consumer language preference, language access in debt  
12 collection will also continue to expand.

13 Without these mandates, we worry that  
14 proposed section 5-77F2 will disincentivize debt  
15 collector from using the CFPB Spanish translation of  
16 the model validation notice and any future  
17 translations provided by government sources by  
18 requiring debt collector to respond to consumer  
19 requests for verification or dispute letters in the  
20 same language as the translated notice.

21 These amendments require more of those debt  
22 collectors that choose to do the right thing while  
23 simultaneously allowing debt collectors that  
24 currently use translations to discontinue their use  
25 to avoid these additional requirements.

1                   Finally, we suggest that DCWP work with the  
2                   CFPB and relevant New York State government agencies  
3                   to translate notices into additional languages beyond  
4                   Spanish. DCWP has already taken steps towards serving  
5                   [unintelligible] [00:40:03] consumers by providing a  
6                   glossary of commonly used terms in debt collection in  
7                   11 languages and building out a repository of  
8                   translated notices of disclosures would be a natural  
9                   next step. Thank you again for the opportunity to  
10                  testify.

11                  MR. DRIVER: Great, thank you so much,  
12                  Nicole. Next up, we have James Scully. James,  
13                  whenever you're ready.

14                  MR. JAMES SCULLY: You got me Charlie?

15                  MR. DRIVER: Yeah.

16                  MR. SCULLY: Good morning. My name is James  
17                  Scully. I'm with the law firm of Kirschenbaum &  
18                  Phillips, which is a member of the New York State  
19                  Creditors Bar. I'd like to bring to your attention a  
20                  concern of the bar as it relates to the use of the  
21                  term originating creditor throughout the proposed  
22                  rule changes, as opposed to the term original  
23                  creditor.

24                  As you know, earlier this year, New York  
25                  State promulgated into law the Consumer Credit

1 Fairness Act, which amongst other things specifically  
2 defines the term original creditor as the entity that  
3 owned a consumer credit account at the date of  
4 default, given rise to a cause of action. Both the  
5 prior and the recent revision of the DCA rules do use  
6 the term original creditor primarily in the context  
7 of the validation notice provisions similar to that  
8 of the Fair Debt Collection Practices Act.

9 For example, under validation of debts, if  
10 the debt collector is not the original creditor, and  
11 the consumer requests the name and address of the  
12 original creditor, it shall be provided to the  
13 consumer. Where we think some confusion may lie is  
14 in the introduction of the term originating creditor,  
15 specifically in the new debt verification provisions  
16 wherein a debt collector must provide a copy of the  
17 debt document issued by the originating creditor  
18 evidencing the transaction resulting in the  
19 indebtedness to the originating creditor.

20 The new proposed changes also require the  
21 debt collector to provide the name and address of the  
22 originating creditor within 30 days of any request by  
23 a consumer. By virtue of this, the term originating  
24 creditor seems to be used synonymously with original  
25 creditor, wherein under the existing heading, a

1 validation of debts, a consumer is given the right to  
2 request the name and address of the original  
3 creditor. Yet the changes are having us provide the  
4 name and address of the originating creditor.

5 This interchangeable use of the term brings  
6 uncertainty and confusion for consumers and debt  
7 collectors who are trying in good faith to comply  
8 with the law. To create certainty, the department  
9 should consider using the original creditor term only  
10 and throughout the rules and also provide an  
11 identical definition of original creditor to that  
12 which is now codified under New York State law in the  
13 Consumer Credit Fairness Act.

14 I'd also like to touch on the itemization  
15 requirements. The Bar is requesting that the new  
16 itemization requirements should be made consistent  
17 with the itemization required under the Consumer  
18 Credit Fairness Act. This itemization as written  
19 doesn't provide the needed transparency to the  
20 consumer of any charges or fees that have been added  
21 to the consumer's balance by the debt collector.

22 Under the proposed rule, in order to  
23 complete a verification request, the debt collector  
24 must provide a document itemizing the total amount  
25 remaining due on the total principal balance of the

1           indebtedness to the originating creditor and each  
2           additional charge or fee claimed or alleged to be due  
3           that separately list the total for each charge or fee  
4           and the date that each charge or fee was incurred and  
5           identifies and describes the basis of the consumer's  
6           obligation to pay it.

7                         The rule does not define what the total  
8           principal balance of the indebtedness to the  
9           originating creditor is. So there's no clarity as to  
10          what constitutes the total principal balance to the  
11          originating creditor. It is not clear as to when the  
12          additional charges or fees begin to accrue. For  
13          instance, assume that the initial creditor who  
14          entered into the obligation with the consumer assigns  
15          the loan prior to default as is common in a number of  
16          different financial products.

17                        Does the total principal balance begin to  
18          accrue at the time of first assigned --

19                        MR. DRIVER:   Hey, James, I'm going to have  
20          to cut you off there, I'm sorry.

21                        MR. SCULLY:   Alright. Thanks

22                        MR. DRIVER:   You can always, if you haven't  
23          already, feel free to submit written comments. Those  
24          can be of any length. We just have a time limit for  
25          the oral comments.

1 MR. SCULLY: Thanks, Charlie.

2 MR. DRIVER: Yep. Next up, we have Frank  
3 Rothman. Frank, whenever you're ready.

4 MR. FRANK ROTHMAN: Hello. Can you hear me?

5 MR. DRIVER: Yeah.

6 MR. ROTHMAN: Thank you. Hi, my name is  
7 Frank Rothman. I am an attorney a member of the New  
8 York State Creditors Bar Association. I would like to  
9 thank the department for the opportunity to provide  
10 these comments. My comments relate to four distinct  
11 areas of concern for our members. The first area  
12 relates to a 60, to the 60 day requirement for emails  
13 under Section 577B7IB. This proposed amendment  
14 requires that the collector receive an email from the  
15 consumer within 60 days and then that email is  
16 treated as consent to communicate with the consumer.  
17 If the collector doesn't receive an email within 60  
18 days, the collector is, no longer has consent to  
19 communicate with the consumer.

20 In the context of litigation, this becomes  
21 concerning for our members because we typically  
22 communicate with consumers via email, you know,  
23 during, as we approach court dates and court dates  
24 can often be spread out much further than 60 days. So  
25 our association is recommending that the receipt of



1 an email from a consumer be considered consent to  
2 communicate via that email address until that email  
3 address is affirmatively revoked by the consumer.

4 The second area is the record keeping  
5 requirements that have been added under section 2193.  
6 These record keeping requirements are quite broad and  
7 present a number of operational challenges for some  
8 of our members. Typically, our members maintain, as  
9 attorneys, our members maintain records on a case  
10 level. These record keeping requirements require  
11 compiling new logs that are really at the firm level.  
12 This is very, this can be very burdensome for members  
13 that are smaller law firms. And we'd request a larger  
14 amount of time to be able to implement these  
15 requirements for these members.

16 The third issue is our request that the  
17 regulations be prospective and not retroactively  
18 applied to debts that have been occurred in the past.  
19 You'll see in the red-line that was submitted, we've  
20 requested that the regulations apply going -- to  
21 debts that have charged off or that have been in  
22 default going forward. This will allow our members to  
23 ensure that we are able to apply these requirements  
24 consistently.

25 The final area is requesting a significant

1 -- a period of time for implementation of the rules.  
2 We'd request at least 180 days from the effective  
3 date -- from the date of the final rules to implement  
4 the requirements and perhaps longer to implement some  
5 of the record keeping requirements.

6 There have, as a lot of the other speakers  
7 have mentioned, there have been a number of rules  
8 changes in New York that our members are currently  
9 operationalizing, including the Regulation F through  
10 the CFCB, the rules under the Consumer Credit  
11 Fairness Act, and the upcoming state rulemaking that  
12 is ongoing. I appreciate the opportunity to provide  
13 these comments, and thank you.

14 MR. DRIVER: Great. Thank you so much. At  
15 this time, that's the end of our list. If there's  
16 anyone who is on the call who has not had a chance to  
17 testify and would like to, please sue the raise hand  
18 feature on Teams that's in the reactions tab.  
19 Regardless of what happens, if no one volunteers or  
20 wants to testify at the current moment, we'll keep  
21 the Zoom, or the Teams call going until noon, when  
22 we'll end it. Again, Carlene, can you reshare the  
23 link to the NYC Rules website? So the NYC Rules  
24 website is the place where you can go, or one of the  
25 options you have to submit written testimony. You can

1 do so up until midnight tonight. That is the end of  
2 the comment period for this rule. And we will keep  
3 you apprised of any changes that happen when we have  
4 either a notice of adoption or anything else. We, the  
5 reason we ask you to register for these meetings with  
6 your email address is we'll send you out an email.  
7 So, yeah, that's all from that end. We don't have  
8 anyone else right now. I'm going to turn my camera  
9 off and go on mute, and then we will end the hearing  
10 at noon. Thank you all. All right, folks, we're  
11 going to wrap this up now. Thank you for attending  
12 this hearing and sharing testimony, if you did so.  
13 Keep an eye out for any update about these rules  
14 going forward, and Happy Holidays.

15 [END OF HEARING]  
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CERTIFICATE OF ACCURACY

I, Ryan Manaloto, certify that the foregoing transcript of DCWP Debt Collector Rules Hearing on December 19, 2022 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



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Date: February 13, 2023

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