

NEW YORK CITY  
DEPARTMENT OF CONSUMER AND WORKER PROTECTION

DCWP RULES HEARING  
DEBT COLLECTORS

VIRTUAL PUBLIC HEARING

REMOTE - VIA TELECONFERENCE

November 29, 2023

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1 MS. KARLINE JUNG: Alright, we'll get  
2 started. Good morning, everyone. My name is Karline  
3 Jung. I have been designated as the Hearing Officer  
4 for the Public Hearing of the Department of Consumer  
5 and Worker Protection on the proposed rules related to  
6 debt collectors. This hearing is being held by  
7 teleconference call. It is now 11:02 a.m. on  
8 Wednesday, November 29th, and I am hereby convening  
9 the public hearing on this proposed rule.

10 The proposed rule was published in The City  
11 Record on September 29, 2023. The published notice  
12 and rules are available online on the NYC Rules  
13 website and the Department's website. The Department  
14 has proposed these rules pursuant to the authority  
15 vested in the Commissioner of the Department of  
16 Consumer and Worker Protection by sections 1043 and  
17 2203(f) of the New York City Charter -- Charter, and  
18 sections 20-104(b), 20-493(a) and 20-702 of the New  
19 York City Administrative Code.

20 This hearing affords the public the  
21 opportunity to comment on all aspects of the rule the  
22 Department has proposed. The Department will  
23 carefully review all testimony and written comments  
24 received at this hearing and will give due weight and  
25 consideration to proposals and recommendations that

1 are submitted for the record at this hearing.

2 To ensure that everyone seeking to testify  
3 will have an opportunity to do so, I ask that we all  
4 follow these ground rules. During the hearing, all  
5 participants should give due respect and consideration  
6 to the folks offering their testimony. Please mute  
7 your lines if you are not speaking. Each witness will  
8 have a maximum of three minutes to provide oral  
9 testimony. If your comments take longer than three  
10 minutes, please synthesize your oral testimony and  
11 leave a written copy for the record. Unlike the limit  
12 on the time for oral testimony, there is no limit on  
13 the number of pages you can submit as written  
14 testimony or as documents for the record. The written  
15 submission will be made part of the public record.

16 If you are looking to testify today and you  
17 have not yet let me know, please do so now in the  
18 chat. Before we begin, I'll remind folks to please  
19 mute their lines until called to provide testimony.  
20 Thank you.

21 I will now call the first witness. Everyone  
22 will have three minutes for testimony, and you may  
23 begin whenever you're ready. First up, I have Katie  
24 Borchers.

25 MS. KATIE BORCHERS: Good morning,

1           everybody. My name is Katie Borchers. I'm a  
2           collection agency owner in New York State, and also  
3           the current vice president of the New York State  
4           Collectors Association.

5                   I have a, a very unique background. I've  
6           spent 20 years as a registered nurse, and I'm actually  
7           still using my license actively. My background in  
8           healthcare is in bedside nursing, mostly pediatrics,  
9           education and training, and healthcare IT, all before  
10          starting my collection agency.

11                   And you know what I think about as I move  
12          farther from the bedside? It's always been my  
13          intention and purpose to make a positive impact on  
14          patients and the community. And, as a collection  
15          agency owner, I'm really proud that I'm still able to  
16          do that every day. And that's really where I  
17          approached the rules and the regulations and my  
18          customers and their clients.

19                   I'd, I'd like to talk a lot about empathy in  
20          collection. Having a great collection agency that is  
21          impactful in the community requires, you know,  
22          compassion and empathy, and really grace, to support  
23          those consumers who are going through difficult times,  
24          as well as support those small businesses that are my  
25          clients. I'm, I'm not the agency that people would

1 typically think of. I don't have, you know, credit  
2 card companies, I don't have large hospital or other  
3 large institutions. Ninety-nine percent of my clients  
4 are small businesses, like myself, you know, with, you  
5 know, anywhere from 10 to 100 employees. And, so, my  
6 focus is on supporting them and helping their clients  
7 resolve their financial issues.

8 So I, I love to talk about the levels of  
9 impact that happen to somebody like me, who owns a  
10 small business and is trying to support consumers and  
11 clients. There are regulations that we abide by in  
12 multiple levels, both federal, state, and then, of  
13 course, city, like New York City. And there's a lot  
14 of changes happening in my industry, most recently  
15 Regulation F was impactful at the federal level. It  
16 was years in the making, a very collaborative  
17 approach. It really changed and gave our, industries  
18 like mine guidance as to how to approach consumers.  
19 But it hasn't been around that long. It, it actually  
20 hasn't even been around long enough for long-term data  
21 to show the impact of all that collaboration. Some of  
22 the early data is showing a decrease in CFPB  
23 complaints, so we know that it was the right  
24 decisions, it was the right guidance.

25 So, with all of that, my request is twofold.

1           The first one is, let's, let's give it more time.  
2           Let's see the impact of those years and years of hard  
3           work and collaboration, and hope that that trend  
4           continues to go down, which means it is having a  
5           positive impact on consumers.

6                     The second request that I have is to  
7           consider and please refrain from creating multiple-  
8           level regulations. When that happens, there is an  
9           increase in costs, there's an increase in confusion,  
10          and, and that leads to a lot of unintended impact on  
11          the consumer. Things like increased costs for small  
12          businesses means that has to be passed on to their  
13          consumers. It could lead to decreased opportunity for  
14          those services in the area that is going through that,  
15          you know, confusion in regulation and is really  
16          pushing away agencies like mine that work really hard  
17          to provide great customer service within the rules and  
18          regulations.

19                    So, with all of that, I really do look  
20          forward to a collaborative relationship and developing  
21          that with New York City and the DCWP. As a new vice  
22          president to New York State, I'm certainly open to  
23          conversations and, and learning from one another.  
24          Thank you all for your time and, and for listening to  
25          my perspective. And I look forward to hearing from

1 others.

2 MS. JUNG: Thank you. For those of you that  
3 just came in, please let me know, again in the chat,  
4 if you would like to testify today and you've not yet  
5 let me know. Next up, we have Carrie Tracy.

6 MS. CARRIE TRACY: Hi, I'm Carrie Tracy.  
7 I'm Senior Director of Health Initiatives at the  
8 Community Service Society of New York, and I'd like to  
9 thank the Department for this opportunity to comment  
10 on the proposed amendments to the Rules.

11 CSS is a 175-year-old nonprofit dedicated to  
12 fighting poverty and improving the lives of New  
13 Yorkers. And in our, the Health Initiatives  
14 Department, which is where I work, we help New Yorkers  
15 enroll in health insurance, we help them use their  
16 insurance, if they have it, and we help them find,  
17 otherwise access healthcare if they don't have  
18 insurance. Annually, we and our partners serve about  
19 130,000 New Yorkers and save them over \$80 million in  
20 healthcare costs. And one of the programs that we do  
21 this through is Community Health Advocates, which is  
22 New York State's dedicated consumer assistance  
23 program.

24 And in 2019, cha- staff realized --  
25 identified a 64 percent spike in, in consumers asking



1 us for help with medical debt. We realized that this  
2 was a growing program and we did a, a bunch of  
3 research into it. So our policy team pulled and  
4 reviewed a random sample of court records of hospital  
5 lawsuits against patients between 2015 and 2022. This  
6 resulted in a six-report series of reports called  
7 Discharged into Debt. We found that a relatively  
8 small number of hospitals was responsible for suing  
9 more than 75,000 patients. And a recent Urban  
10 Institute study found that over 740,000 New Yorkers  
11 have medical debt, and that this medical debt is,  
12 within every region of the state, disproportionately  
13 concentrated among people of color and low-income  
14 people.

15 Another recent study found that 31 percent  
16 of New Yorkers said that they questioned or appealed a  
17 healthcare bill, and 20 percent -- I find this very  
18 shocking, as many times as I've said it -- 20 percent  
19 have paid a bill they did not believe that they owed  
20 because they were so afraid of being sued or harassed  
21 for not paying the bill that they did not believe that  
22 they owed. So we know that this is a serious problem,  
23 so we really applaud the Department for proposing this  
24 language for a notice of consumer rights to be  
25 included in all the validation notices. It's an

1 important opportunity to make sure that patients know  
2 about things like hospital financial assistance when  
3 the hospitals fail to inform them. And looking at the  
4 thousands of court cases that we looked at, we never  
5 found a single pleading in a lawsuit against, from a  
6 hospital against a patient saying we reviewed this  
7 patient, we are certain that they don't qualify for  
8 hospital financial assistance, and that's why we're  
9 suing them.

10 So it's important the proposed rules that  
11 require the debt collectors to treat any statement by  
12 a consumer that a medical debt should have been  
13 covered by insurance, by a third-party payer, or  
14 financial assistance as a dispute and request for a  
15 veri- verification is very important.

16 In the few cases where we found patients  
17 responding to these lawsuits, many of them said I  
18 didn't pay this bill because my insurance company was  
19 paying it, or when we talked to patients who have  
20 medical bills they need help with from CHA, they,  
21 they've never heard of hospital financial assistance  
22 before a CHA advocate works with them. So we think  
23 it's very important that, that this Department require  
24 debt collectors to inform people about hospital  
25 financial assistance and to take seriously these

1 records that, to pause in the, the debt collection.  
2 We think, in fact, it should be extended to situations  
3 in which the debt collector has reason to know, or  
4 knows, that the con- consumer has an ongoing insurance  
5 appeal or if the consumer simply says I can't pay this  
6 bill. At that point, when the cons-, when the  
7 collector hears I can't pay this bill, they should be  
8 telling the patient, do you qualify for hospital  
9 financial assistance? Here's how you apply for  
10 hospital financial assistance.

11 And we think that notifications about  
12 hospital financial assistance should be included in  
13 all communications with consumers, not just the  
14 validation notices.

15 We also applaud the Department for including  
16 all medical providers, and not just hospitals, in  
17 these regulations because consumers do come to us with  
18 debts from a number of medical providers that are not  
19 hospitals -- you know, dentists, other kinds of  
20 medical providers. But the state and federal law does  
21 impose a stronger burden on hospitals than other  
22 providers to make sure that patients know about  
23 hospital financial assistance and that they are found  
24 eligible for -- that they are screened before they  
25 send the patient for any kind of extraordinary

1 collection action.

2 So we would urge the Department --

3 MS. JUNG: We would ask to wrap up --

4 MS. TRACY: Is, am I out of time?

5 MS. JUNG: Yeah.

6 MS. TRACY: Okay, thank you. Sorry.

7 MS. JUNG: Yeah. Next up, we have David  
8 Peltan.

9 MR. DAVID PELTAN: Thank You. My name is  
10 David Peltan. I'm the president of the New York State  
11 Collectors Association. And I appreciate the  
12 opportunity to speak on behalf of the Association  
13 regarding these proposed rules, and to note that the  
14 details are in our written comments.

15 But the, the broader stroke is that the  
16 Association wants to do what's best for the consumers,  
17 in particular, to communicate with consumers in the  
18 cha- channels of their choice. It goes against the  
19 consumer to have to first answer a phone call or send  
20 something in writing before we attempt to reach them  
21 by e-mail or text, if that is not the way that they  
22 want to communicate.

23 Some consumers change their mailing  
24 addresses, and electronic communications, I'm more  
25 likely to reach them. We want to make things as easy

1 and convenient on the consumer as possible And if we  
2 reach them in a channel that they don't like, they can  
3 easily tell us so or just not answer the phone, which  
4 most of them are doing because they'd prefer to  
5 receive text messages.

6 Also, the rule should be consistent with  
7 Regulation F. The CFPB and the FTC literally spent  
8 many, many years and hours of comments and public  
9 testimony and really working hard to develop standards  
10 carefully designed to work well for all parties,  
11 including the consumer. In the two years since  
12 Regulation F went into effect, the complaints and  
13 lawsuits have compli- con-, have declined, which  
14 indicates Regulation F is, indeed, working well. It  
15 strikes the proper balance between having enough  
16 communication, but not too much. Having enough  
17 disclosures without being confusing. Too little  
18 communication leaves everyone involved un- unable to  
19 connect and work together the find the best solutions  
20 for each individual consumer.

21 And a final example is the recordkeeping  
22 requirements need to be reasonable and not too  
23 expensive and burdensome. The requirements need to  
24 actually be feasible. Not all attempts are even  
25 captured by phone systems, much left -- much less the

1 account management systems. Debt collectors benefit  
2 the economy and keep credit cheaper and more  
3 available. By overtaxing collectors and actually  
4 expecting things that are, are not, they're not able  
5 to, to do because the technology is not there yet, it  
6 ultimately hurts consumers and makes their credit more  
7 expensive, if they can even get credit.

8 So we would appreciate taking a, a more  
9 balanced approach and taking our, our comments into  
10 consideration. Thank you.

11 MS. JUNG: Great. Thank you. Next up, we  
12 have Jonathan Grossman. Oh, I think you're on mute.

13 UNIDENTIFIED MALE 1: Still, still on mute.

14 MS. JUNG: Yeah.

15 UNIDENTIFIED MALE 1: I think the mic is  
16 working. Jonathan is just muted on Teams.

17 MS. JUNG: Okay. While we wait for  
18 Jonathan, I will move on to Andrew Madden.

19 MR. ANDREW MADDEN: Hey, thank you. My name  
20 is Andy Madden. And on behalf of ACA International,  
21 I'd like to thank the Department for the opportunity  
22 for, to provide these comments. In addition to my  
23 comments, I would also encourage the Department to  
24 consider the industry redline, which many of us are  
25 attaching to our written comments today.

1           ACA is a trade association representing  
2           approximately 1,700 member companies, including  
3           creditors, third-party collection agencies, asset  
4           buyers, attorneys, and their vendors. ACA members are  
5           both large and small, but an overwhelming majority are  
6           small businesses. Forty percent of our membership  
7           have fewer than nine employees. Eighty-five percent  
8           of our membership has fewer than 49 employees. I say  
9           that because regulations tend to impact smaller  
10          businesses more than larger business, quite often.

11           I won't be able to cover everything in my  
12          three minutes today, so maybe what I'll do is start at  
13          the end. The ACA would request a delayed effective  
14          date. The compliance systems, the recording systems,  
15          the training programs needed to comply with all local,  
16          state and federal laws are very complex and they  
17          cannot be changed overnight. So ACA would request a  
18          delayed effective date and a clarification that the  
19          rule be applied prospectively.

20           In section 3, the definition of clear and  
21          conspicuous, we would request the clarification be  
22          added, stating that disclosures may be added on  
23          another page, if not possible to fit on the first  
24          page. Adding this clarify -- adding, also, clarity  
25          that hyperlinks would be acceptable would be helpful

1 as well. This would allow agencies to comply with all  
2 federal, state and local laws without jamming  
3 everything onto one giant piece of paper.

4 The itemi- itemization reference date, we,  
5 we would request that this be brought in line with  
6 Regulation F, which provides that the itemization date  
7 may be one of five reference dates. These options,  
8 they were prescribed by the CFPB, because different  
9 dates are applicable to different types of debt. For  
10 example, a charged off debt is fundamental for credit  
11 card debt, but it is not applicable for other types of  
12 debt.

13 As, as to frequency, we would encourage the  
14 Department to modify the call cap section in the  
15 proposed rule to mirror Regulation F. As David and  
16 Katie pointed out, the call caps, it's in its infancy  
17 right now. This is a new national call cap. It  
18 appears to be working. Let's let this play out.

19 And then, also, on the validation notice in  
20 section F-2, ACA would request the Department add a  
21 provision to allow for electronic communications.  
22 Right now, as it's written, it would require the  
23 initial written communication to be sent via U.S.  
24 mail, clarifying that electronic communications would  
25 be permitted, would best meet consumers' preferences



1 at this point.

2 Thank you again for the opportunity to  
3 comment.

4 MS. JUNG: Okay, thank you. We'll go back  
5 to Jonathan.

6 MR. JONATHAN GROSSMAN: Is my, my audio  
7 working now?

8 MS. JUNG: Yep, good to go. No problem.

9 MR. GROSSMAN: Okay, so it's al-, it's  
10 always the [unintelligible] [00:19:51] that kills you.

11 MS. JUNG: Yeah.

12 MR. GROSSMAN: Okay. As I was saying, good  
13 afternoon. My name is Jonathan Grossman and I am here  
14 representing the Estate Debt Coalition, which is  
15 comprised of a number of the largest companies that  
16 focus on representing creditors in the estate  
17 resolution process. We appreciate the opportunity to  
18 testify on the Department's proposed amendments and  
19 its rules related to debt collection -- collectors.

20 When a New York resident, City resident  
21 dies, his or her assets become part of an estate. In  
22 most circumstances, New York Law requires that the  
23 debts of the decedent be paid out of the assets of the  
24 estate prior to the distributions being made to  
25 beneficiaries. As a result, whomever is responsible

1 for handling the estate has the obligation to identify  
2 and pay the debts of the estate.

3 When the decedent has substantial assets or  
4 owns real property, estates are normally resolved  
5 through a formal probate process which a court  
6 oversees and approves the distribution of assets to  
7 both creditors and beneficiaries. And in such cases,  
8 EDC members submit claims through that process.

9 The majority of estates, however, are not  
10 formally resolved through probate courts, but  
11 informally through family members. And this is  
12 particularly true in jurisdictions like New York City,  
13 where most people rent their homes. And in such  
14 instances, Estate Debt Coalition members play an  
15 important role in working with family members to  
16 resolve the estate's obligation and assisting members  
17 in administration of their estate. As a result, this  
18 unique form of what people call debt collection raises  
19 very different regulatory issues than most other forms  
20 of debt collection. But, unfortunately, the plain  
21 language of the FDCPA did not squarely address many of  
22 these issues and Congress did not grant any agency  
23 rulemaking authority under the FDCPA to address these  
24 issues.

25 To close this gap, in 2011, the FTC issued a

1 policy statement regarding communications in  
2 collection with the, with -- in connection with the  
3 collection of decedent debts, and the EDC was formed  
4 to work with the FTC in issuing that statement. And,  
5 in the meantime, Dodd-Frank, which granted the F-, the  
6 CFPB rulemaking authority as to debt collection was  
7 passed, so the C- CFPB ultimate, eventually,  
8 promulgated rules related to a estate debt collection  
9 as part of Reg F.

10 Relevant to why we're here today is that the  
11 CFPB and the FTC were in complete agreement on two  
12 points. Number one, the FTC defined consumer to  
13 include the consumer's executor or administrator. But  
14 neither of those terms is capitalized or defined. And  
15 both agencies, however, determined that those terms  
16 should be interpreted to include family members acting  
17 informally in similar capacities.

18 Also, both agencies agreed, and the EDC  
19 supports this, that no collector or creditor should  
20 ever state or imply to a family member of a deceased  
21 consumer that they are personally responsible for the  
22 debts of the decedent. In our view, however, the  
23 proposed rules contain three instances that are  
24 inconsistent with the above points. And we have,  
25 therefore, submitted extended comments, written

1           comments, explaining in detail these three instances  
2           and proposing alternative language.

3                         In closing, I'd just like to thank the  
4           Department for considering our testimony today and our  
5           extended written comments, and I'd be glad to be,  
6           respond to any questions that you may have.

7                         MS. JUNG: Great. Thank you. Next up, we  
8           have Donald Maurice.

9                         MR. DONALD MAURICE: Good morning, everyone.  
10          My name is Don Maurice. I serve as outside counsel to  
11          the Receivables Management Association International.  
12          It is a trade association composed of more than 600  
13          companies that purchase or support the purchase of  
14          performing and non-performing receivables. These  
15          include banks, credit unions, non-bank lenders, debt  
16          buying companies, collection agencies, and even  
17          collection law firms. Our experience comes from the  
18          millions of interactions our members have with  
19          consumers every year. I appreciate the opportunity to  
20          address you today.

21                         The proposed amendments to the Department's  
22          debt collection rules pose a real and significant harm  
23          to both consumers and the credit and collection  
24          industry. These were specifically outlined in the  
25          industry redline that is submitted with my written

1           comments, as well s the comments of others. But I  
2           want to highlight here one proposal. That's the  
3           proposal of how a debt should be verified in response  
4           to a consumer's dispute.

5                        When the rule was first adopted nearly 40  
6           years ago, it, like its federal equivalent, the Fair  
7           Debt Collection Practices Act, is silent as to what  
8           information a debt collector should provide a person  
9           who disputes a debt. There is a well-founded reason  
10          or this. A person may receive a dunning letter for a  
11          debt they've never owed. My written comments outline  
12          several examples of how this happens through  
13          misdirected mail and postal theft.

14                      A recent United States Postal Service audit  
15          found that during a six-month period of March 1  
16          through September 30, 2020, Postal Service misrouted  
17          73 million first-class letters. These Postal Service  
18          mistakes result in the wrong people receiving dunning  
19          letters. And it was widely reported by local media  
20          here that there is, and I quote, a growing mail theft  
21          epidemic plaguing New York City.

22                      For these reasons, verification is  
23          understood as requiring no more than confirming the  
24          amount of the debt and the name of the creditor and  
25          relaying that information to the consumer. Courts

1 have declined to require verification to include the  
2 disclosure of non-public personal information,  
3 especially when the consumer can verify the debt  
4 through less sensitive means. Consumers deserve to  
5 have control over the release of this information.  
6 The proposal, however, would require a debt collector  
7 to respond to any dispute from any person with a  
8 document dump of highly confidential credit  
9 information, like account statements and even credit  
10 applications. It's naïve to assume that a person who  
11 receives misdirected mail is not going to open it.  
12 It's even more naïve to assume that the persons  
13 engaged in this epidemic of postal theft are not going  
14 to use this information to commit identity theft.

15 A similar process was proposed and  
16 ultimately rejected by the District of Columbia for  
17 these reasons. A debt collector should confirm the  
18 person who is making the dispute is, in fact, the true  
19 debtor before releasing sensitive credit information.  
20 The proposed rule, though, strips consumers of any  
21 ability to protect the wrongful disclosure of their  
22 credit information. Thank you.

23 MS. JUNG: Thank you. Next up, we have  
24 Sonia Gibson.

25 MS. SONIA GIBSON: Hello. My name is Sonia

1 Gibson with Encore Capital Group, a debt purchasing  
2 and collections company. And li-, I'd like to express  
3 four top priority concerns with these proposed rules  
4 on behalf of my company.

5 First, we urge the Department to make  
6 changes to the extremely restrictive caps on  
7 communicating with consumers. Responsible debt  
8 collectors are not trying to bother consumers about a  
9 false debt. They're seeking to work with consumers to  
10 pay off a legitimate debt. If collectors can't reach  
11 their consumers, they can't collect on the outstanding  
12 debt, which, in turn, will lead to creditors  
13 restricting the extension of credit and making it more  
14 costly to get credit in the first place.

15 Also, there are direct consequences to the  
16 consumer. Negative credit reporting, interest and  
17 fees that may potentially accrue, and the potential to  
18 get sued. We urge to change the communication caps to  
19 the national CFPB's 2021 standards, which allow up to  
20 seven attempted calls per week per account. Also,  
21 these rules differentiate between caps on phone calls  
22 versus other methods of communication.

23 Second, we ask to modify the balance  
24 itemization reference ta- date to provide that the  
25 federally regulated charge-off date is the correct

1 reference date. Creating a new standard only one year  
2 after the New York State's Consumer Credit Fairness  
3 Act and CFPB's Regulation F standards will be  
4 confusing to the City's consumers. Consistency in  
5 standards is critical, and providing itemization as of  
6 the final statement date instead of the charge-off  
7 date will provide an accurate view of the balance and  
8 charge-off, and any post-charge-off payments, credits,  
9 interest or fees.

10 Third, this rulemaking would require a  
11 complete overhaul of how we communicate with  
12 consumers, record information in our systems and  
13 respond to consumers. Also, how we obtain and retain  
14 data and documents from issuers. We ask to please  
15 adopt an effective date to apply to accounts charged  
16 on or after January 1, 2025. Without specifying that  
17 the effective date is for newly charged-off accounts,  
18 compliance with the proposed standards would be  
19 impossible for accounts already in the collections  
20 process.

21 Take, for example, a default judgment  
22 obtained years ago. If the consumer requests  
23 verification, under the proposal, a copy of the  
24 judgment won't be sufficient and collectors would need  
25 to obtain other forms of documents to verify



1 judgments, an impossibility in some cases for older  
2 accounts. Applying the new rules to accounts  
3 purchased prior to the effective date would be a  
4 retroactive, unconstitutional application of the law.

5 And, finally, we ask that after the initial  
6 written notice of time-barred debt disclosures are  
7 sent, to allow collectors to provide verbal  
8 disclosures of future time-barred debt rather than  
9 always in writing. Hearing a disclosure verbally via  
10 the phone at the time of a conversation with the  
11 collector would be more informative to most consumers  
12 than receiving a piece of mail that they're unlikely  
13 to read and may not understand without speaking with a  
14 collection agent.

15 Thank you for your time today.

16 MS. JUNG: Thank you. Next up, we have  
17 Frank Rothman.

18 MR. FRANK ROTHMAN: Hi. Good afternoon.  
19 Thank you for -- my name is Frank Rothman. I am a co-  
20 chair of the New York State Creditors Bar Association,  
21 and I'm also an attorney and practitioner in this  
22 space. I'd like to thank the Department for the  
23 opportunity to provide these comments and, you know,  
24 for its continued engagement on these very important  
25 issues to our members.

1 My comments today are going to focus on the  
2 significant changes to the model validation notice  
3 envisioned by these proposed rules. You know, it goes  
4 without saying, but when collectors provide notices to  
5 consumers, it is essential for all parties that the  
6 notice is easily understood by the consumer and that  
7 it accurately informs the consumer of their rights and  
8 of the rel-, required account information.

9 As we've, you know, previously discussed,  
10 the CFPB drafted the model validation notice following  
11 several years of stakeholder input, as well as after  
12 conducting extensive qualitative testing, which  
13 ensured that the notice was easily understood by  
14 consumers and that disclosures were properly relayed.

15 You know, the propo-, the Department's  
16 proposal requires three significant changes to the  
17 model validation notice, and these changes risk  
18 harming consumers. The first change is the change to  
19 the itemization reference date. After extensive  
20 review, the CFPB determined that five itemization  
21 reference dates are appropriate because they are  
22 quantifiable dates that are recognizable to the  
23 consumer and the ability to choose different dates  
24 fits into different financial products that are  
25 available. Limiting the available dates will require

1 collectors to apply a complex accounting to get from  
2 the new itemization reference date to the current, to  
3 the current amount due as of the date of the letter.  
4 This is going to require providing extraneous  
5 information which has been established by the CFPB's  
6 qualitative testing to confused consumers. You know,  
7 for instance, you know, the CFPB, in its qualitative  
8 testing, determined that consumers were often confused  
9 by accumulated balance buckets for amounts that were  
10 applied between the itemization start date and the  
11 amount of debt that's due as of the date of the  
12 letter.

13 Additionally, New York State law already  
14 requires an itemization as of the charge-off date  
15 under the Department of Financial Services rules. So,  
16 under this proposal, collectors would be required to  
17 provide two itemizations on the same letter, you know,  
18 the only con-, with providing -- you know, risking  
19 confusing consumers and really not providing any  
20 additional information that will inform consumer  
21 decision making.

22 The second change that is impactful to  
23 consumers is the itemization of all charges, fees,  
24 interest and payments applied since the itemization  
25 start date required under F-17(b) and F-2-, and F-

1           27(c). This will require providing, you know,  
2           extensive account information in the initial letter.  
3           This additional information, you know, risks confusing  
4           consumers and it does not inform consumer decision  
5           making. I think this information is probably better  
6           provided in response to a validation of debt request  
7           where the consumer has specific dis-, has a specific  
8           dispute as to the amount that's due.

9                        The third change is the required additional  
10           disclosure that relates to the amount of time that the  
11           consumer has to request verification of the debt.  
12           That disclosure conflicts with the front of the model  
13           validation notice and with federal law that provides  
14           for a, an end date for the validation of debt period.  
15           You know, since the two disclosures will conflict with  
16           each other, you know, we recommend drafting a  
17           disclosure that, you know, that would comply with both  
18           the model validation notice and, you know, and also  
19           communicate the intent of the, the Department's  
20           disclosure.

21                        Yeah, I appreciate the opportunity to  
22           provide these comments, and thank you.

23                        MS. JUNG: Great. Thank you. Next up, we  
24           have Kristine Flynn.

25                        MS. KRISTINE FLYNN: Hi, good morning. I am

1 a member of the New York State Creditors Bar  
2 Association, and also an attorney practicing in that  
3 area. I wanted to just thank everybody for the  
4 opportunity to discuss these proposed rule changes.

5 So we were just looking, really, to try and  
6 effectuate some changes that just may help the  
7 industry and avoid confusion for consumers. The  
8 itemization date should remain aligned with Regulation  
9 F, and the charge-off date really should remain an  
10 option for itemizing consumer credit. And requiring  
11 otherwise that the final statement date be used for  
12 consumer credit would go against not only Regulation F  
13 with federal law, but it would also go against current  
14 New York State law. So it would, in effect, require  
15 two different itemizations to be used in New York  
16 State. That would also have to be further broken down  
17 with additional information and really would end up  
18 onto two different pages of the initial validation  
19 notice, which leads to just further confusion for a  
20 consumer. Too much information can overwhelm or  
21 distract attention from key content.

22 Also, the additional disclosures that are  
23 required would also be so lengthy that they may go  
24 onto a, a second page. And saying that medical, you  
25 know, one of the disclosures that is regarding medical

1 debt also doesn't apply to every type of debt and  
2 should only be used when something is actually medical  
3 debt.

4 The -- a copy of a judgment also should  
5 remain to be sufficient verification of a debt just to  
6 avoid unconstitution-, you know, being  
7 unconstitutional. Other states, every, every judgment  
8 should be entitled to full faith in credit, and  
9 requiring that additional docs be used to enforce a  
10 judgment would be unconstitutional because actions do  
11 merge into a judgment when one is awarded.

12 We would also just require, or request that  
13 the current breakdown when we are itemizing a debt  
14 just be left as is rather than having to add needless  
15 information that really would just cause further  
16 confusion. Sometimes simple and uniform is the most  
17 understandable and effective for consumers.

18 Thank you so much.

19 MS. JUNG: Great. Thank you. At this time,  
20 we've reached the end of the list of people wanting to  
21 testify today. I will also be dropping a link in the  
22 chat for those who would like to provide written  
23 comments. And, as a reminder, the deadline to provide  
24 any comments is today.

25 If anyone else is looking to testify, please

1 let me know. Okay. Seeing no one present to offer  
2 testimony, I will go off camera and adjourn the  
3 hearing until an individual appears to offer testimony  
4 or until 12:00 p.m., whichever comes first. Thank  
5 you.

6 [OFF THE RECORD] [00:38:11]

7 [ON THE RECORD] [00:58:50]

8 MS. JUNG: Alright. Seeing that it is now  
9 12:00 p.m., I will adjourn the hearing. Thank you,  
10 everyone, for participating.

11 [END OF PUBLIC HEARING]

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CERTIFICATE OF ACCURACY

I, Ryan Manaloto, certify that the foregoing transcript of Rules Hearing - Debt Collectors on November 29, 2023, was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



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Date: January 12, 2024

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