Consumer and Worker Protection

Comments Received by the Department of Consumer and Worker Protection on

Proposed Rules related to Debt Collectors

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November 29, 2023

via Electronic Delivery to Rulecomments@dca.nyc.gov

Department of Consumer and Worker Protection
42 Broadway
New York, NY 10004

Re: Comments on the Department of Consumer and Worker Protection's proposed amendments to its rules relating to debt collectors.

On behalf of ACA International, the Association of Credit and Collection Professionals, I would like to thank the Department of Consumer and Worker Protection (Department) for providing an opportunity to provide comments on the proposed amendments to its rules relating to debt collectors. Outlined below are concerns our members have regarding the impact these proposed amendments will have on New York City consumers and the businesses that our members serve.

In addition to the comments below, ACA encourages the Department to strongly consider the recommended changes detailed in the attached industry redline.

I. About ACA

ACA International is the leading trade association for credit and collection professionals, representing approximately 1,700 members, including credit grantors, third-party collection agencies, asset buyers, attorneys and vendor affiliates in an industry that employs nearly 125,000 employees worldwide.

ACA members include the smallest of businesses operating in a single state and the largest of publicly held, multinational corporations that operate in every state. Most ACA member debt collection companies, however, are small businesses. According to a recent survey of our

membership, approximately 44 percent of ACA member organizations have fewer than nine employees. Nearly 85 percent of members have 49 or fewer employees and 93 percent of members have 99 or fewer employees.

ACA also represents a diverse workforce. Women comprise nearly 70 percent of the total debt collection workforce, which is itself ethnically diverse. Racial and ethnic minorities account for 31 percent of the total U.S. workforce, but nearly 42 percent of debt collection employees. We are uniquely positioned to connect with, and serve, consumers of all backgrounds.

As part of the process of attempting to recover outstanding payments, ACA members are an extension of every community's business. ACA members work with these businesses, large and small, to obtain payment for the goods and services already received by consumers.

The collections process plays a critical role in a healthy credit ecosystem. Lenders rely on the ability to collect in order to lend to consumers of all means with diverse financial backgrounds. In a world without a collections process, consumers' ability to obtain credit cards or other unsecured credit would be greatly limited and, in many instances, consumers would only have the option to pay cash. This would be a disadvantage to many consumers, particularly to those who are low-income, and significantly limit options for credit and services. The work of ACA members allows lenders to continue to lend while keeping the cost of credit down, particularly for the riskiest borrowers.

II. Requested changes to the proposal

ACA supports efforts like those of the Department to modernize regulations while protecting consumers and ensuring changes in consumer preferences due to advancing technology are recognized.

ACA respectfully requested the following changes to the proposed amendments:

A. § 2-193. Records to be Maintained by Debt Collection Agency.

ACA respectfully requests the Department provide additional clarity under the proposed requirements regarding records that must be maintained by a collection agency.

ACA requests the addition of the following exception:

> *A communication that results in a busy signal, does not go through, or was made to a wrong number or address that is not affiliated with the consumer or the consumer's family is not required to be maintained in the log. A system or systems of record that records actions is sufficient to qualify as a log.*

There is no need to record a failed communication if a consumer has no way of knowing an attempted communication was ever made. Adding this clarifying language would keep the proposed amendments consistent with exceptions contained in Regulation F and the recently enacted debt collection law in Washington, D.C.

The addition of the sentence- *A system or systems of record that records actions is sufficient to qualify as a log,* would provide needed clarity that reflects the internal process agencies use to maintain and operate complex data management systems designed to securely protect consumers sensitive financial information.

B. Changes to § 3. Section 5-76 of Part 6 of Subchapter A of Chapter 5 of Title 6

Definition of Clear and Conspicuous
ACA respectfully requests the following be added to the definition of Clear and Conspicuous.

> *Provided that the disclosures may be on another page if it is not possible to provide it on the same page because of the length of the text. Hyperlinks in electronic communications related to modifications, explanations or clarifications are permitted.*

The addition of these exceptions would permit collection agencies to comply with federal, state and local requirements without forcing all required disclosures onto a single oversized sheet of paper. In many cases, all mandated disclosures will not fit on a single page and attempting to fit the legally required disclosures on one page will make the document difficult to read and likely confuse the consumer.

Definition of Debt Collector

ACA respectfully requests that an additional exception be added under the term debt collector.

> *The term "debt collector" does not include:*
>
> *(6) any communication, letters, pleadings, or other correspondence that are delivered by an attorney licensed within the State of New York while performing their duties as an officer of the court during the pendency of an active court matter that is overseen and supervised by the New York State Unified Court System.*

ACA requests a limited carve out for attorneys to permit licensed attorneys the ability to practice law without creating conflicts with the proposed amendments.

Itemization reference date
ACA respectfully requests the Department bring this in line with Regulation F to avoid confusing consumers and the businesses in New York City.

> *Itemization reference date. The term "itemization reference date" means any one of the following dates: (1) The last statement date, which is the date of the last periodic statement or written account statement or invoice provided to the consumer by a creditor; (2) The charge-off date, which is the date the debt was charged off; (3) The last payment date, which is the date the last payment was applied to the debt; (4) The transaction date, which is the date of the transaction that gave rise to the debt; or (5) The judgment date, which is the date of a final court judgment that determines the amount of the debt owed by the consumer.*

This approach would bring the proposed regulation in line with Regulation F by allowing the same five options to be used for the itemization date. In drafting Regulation F, the CFPB recognized that different dates are applicable to different types of debt. Charged off date is fundamental account information for credit card debt but it is not applicable for other types of debt. Account information available to debt collectors may vary by debt type because some account information is not universally tracked or used across product markets. The proposed regulations would unnecessarily limit the itemization options.

C. § 5-77. Unconscionable and Deceptive Trade Practices

Under the Unconscionable and Deceptive Trade Practices section, ACA respectfully requests the following changes.

Consumers Location

In section(b)(1)(i), ACA respectfully requests the Department change "*at the consumers location*" to "*in the eastern time zone*." This clarification is necessary because a debt collector has no way of knowing when or where a consumer has traveled out of New York City for any number of reasons. This clarification would accomplish the intended consumer protections without placing collection agencies in an impossible circumstance.

Communicating at a consumer's place of employment

In section (b)(1)(iii), ACA respectfully requests the Department add the word "*knowingly*" to the provision regarding attempts to communicate with the consumer at the consumer's place of employment.

> *(iii) knowingly communicate or attempt to communicate with the consumer at the consumer's place of employment*

This clarification would remove the impossibility of a collector knowing where a consumer is at any given time. Most consumers only use mobile cell phones, and an increasing number of employees work remotely or in hybrid remote systems and they often use their personal phones to conduct work. It is not possible for a collection agency to definitively know where the consumer is at any given time. The addition of "knowingly" removes that concern. The consumer still retains the ability to request a collector avoid calling at certain times or to cease calls all together.

Excessive frequency

Broad communication limitations ultimately harm the consumer by preventing the consumer from receiving important and timely financial information. ACA encourages the Department to foster an open line of communications with consumers to ensure consumers can receive important information in a timely manner.

ACA respectfully requests the Department modify section (b)(1)(iv)(A) Excessive Frequency to mirror Regulation F. ACA also requests the Department clarify that any mandated federal, state or local communication would not cause a collector to exceed any New York City communication limitations.

Restore Bona Fide Error Defense

ACA respectfully requests the Department restore the bona fide error defense that was deleted in the proposed amendments. Restoring the bona fide error defense would remain consistent with the Federal Debt Collection Practices Act and remove industry concerns that a simple, inadvertent and easily corrected clerical error that has not harmed any consumer would lead to unnecessary liability.

Unfair Practices

In section (e)(3), ACA requests the addition of an exception to clarify that a collector may communicate through a medium chosen by the consumer and not violate this provision.

> *(3) causing charges to be made to any person for communications by misrepresentation of the true purpose of the communication. Such charges include collect telephone calls and [telegram] text message or mobile phone data fees that have not been disclosed or accepted by the consumer, provided this paragraph does not apply if the consumer initiates the communication through the use of the medium;*

This clarification would give a consumer the flexibility to choose to communicate via text messages with the debt collection agency. If a consumer requests this form of communication a collector would have no way of knowing the details of a consumers phone plan and what charges may or may not apply.

Validation Notice

In section (f)(2), ACA respectfully requests the Department bring this requirement in line with Regulation F by adding a provision to allow for electronic communications. This addition will create a framework where agencies can communicate with consumers through the consumer's preferred medium.

> *Validation Notice - Within five days after the initial communication with a New York City consumer in connection with the collection of any debt, a debt collector [who is not a creditor and not employed by a creditor shall, unless the following information is contained in an initial written communication, or the consumer paid the debt, send the consumer a written notice containing] must send the consumer a written notice containing the following information in a clear and conspicuous manner, unless the consumer paid the debt or such information was contained, clearly and conspicuously, in an initial written communication sent by U.S. mail, or delivery service, or delivery service, or by electronic means consistent with 12 CFR Part 1006.34:*

Original Creditor

ACA respectfully requests the below changes to section (7) to avoid confusing the consumer and to allow the collection agency to provide information which will most help the consumer in identify a debt.

> (7) ~~Originating~~ Original Creditor. A debt collector must provide the consumer the address of the ~~originating~~ original creditor of a debt within 30 days of receiving a request from the

consumer for such address, provided that if the servicer is the name the consumer is most readily going to identify with the debt, that name and address may be provided,.

In the case of a fintech product, most New York City consumers will not recognize the original creditor. Instead, it would be more helpful to the consumer if the fintech servicer name was provided.

F. Delayed Effective Date

The accounts receivable industry and the diverse creditor clients our members serve throughout New York City, will need time to develop internal compliance procedures and to change their business operations to comply with any changes to New York City regulations.

ACA respectfully requests the Department add a delayed effective date which provides a date certain that the revised rules take effect. Any provision in the amended regulations should only be applied prospectively.

EFFECTIVE DATE: All new provisions contained in this rulemaking shall apply to debts charged-off on or after January 1, 2025, or for debts not charged off, the new provisions will apply to debts that defaulted on or after January 1, 2025..

III. Conclusion

ACA respectfully requests the Department consider the detailed amendments highlighted above as well as the requested edits included in the attached industry redline.

Thank you for your consideration of these important matters. If you have any questions concerning our comments, please feel free to contact me.

Submitted by:

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ACA International
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Attachment:

NEW YORK CITY
DEPARTMENT OF CONSUMER & WORKER PROTECTION
PROPOSED AMENDMENTS TO ITS DEBT COLLECTION RULES

Proposed Rule Amendments

Section 1. Section 2-191 Disclosure of Consumer's Legal Rights Regarding the Effect of the Statute of Limitations on Debt Payment, Subchapter S of Chapter 2 of Title 6 of the Rules of the City of New York, is repealed in its entirety.

Section 2. Section 2-193 of Subchapter S of Chapter 2 of Title 6 of the Rules of the City of New York is amended to read as follows:

§ 2-193. Records to be Maintained by Debt Collection Agency

(a) Unless otherwise prohibited by federal, state or local law, a debt collection agency [shall] must maintain a separate file for each debt that the debt collection agency attempts to collect from each New York City consumer, in a manner that is searchable or retrievable by the name, address and zip code of the consumer, and by the creditor who originated the debt the agency is seeking to collect. The debt collection agency [~~shall~~] must maintain in each debt file the following records to document its collection activities with respect to each consumer:

(1) A copy of all communications ~~and attempted communications~~ [~~or exchanges~~] with the consumer.

(2) A record of each payment received from the consumer that states the date of receipt, the method of payment and the debt to which the payment was applied.

(3) A copy of the debt payment schedule and/or settlement agreement reached with the consumer to pay the debt.

(4) With regard to any debt that the debt collection agency has purchased, a record of the name

Commented [DR1]: The industry would request the deletion of the phrase "attempted communications." The DCWP indicated that one of the reasons for proposing amendments to the existing rule is to come into alignment with Regulation F (Reg F) that was promulgated by the federal Consumer Financial Protection Bureau (CFPB) in 2021. There is no similar record keeping requirement in Reg F that requires the recording of attempted communications in a formal log. Systems of record would often have an entry of attempts but not in the complicated methodology being proposed. No other jurisdiction in the nation has a similar requirement. All references to this phraseology have been deleted in this proposed redline.

and address of the entity from which the debt collection agency purchased the debt, the date of the purchase and the amount of the debt at the time of such purchase.

(5) Any other records that are evidence of compliance or noncompliance with subchapter 30 of chapter 2 of title 20 of the Administrative Code and any rule promulgated thereunder, and of part 6 of subchapter A of chapter 5 of title 6 of the Rules of the City of New York.

(6) A log, account notes or record of all communications ~~and attempted communications~~ by any medium between a debt collection agency and a New York City consumer in connection with the collection of a debt. A communication that results in a busy signal, does not go through, or was made to a wrong number or address that is not affiliated with the consumer or the consumer's family is not required to be maintained in the log. For each communication ~~and attempted communication~~, the log, account notes or record must identify in a manner that is searchable and easily identifiable, the following:

(i) the date~~,~~ and the time ~~and duration~~ of the communication ~~or attempted communication, if applicable~~;

(ii) the medium of communication ~~or attempted communication~~; and

(iii) the names ~~and contact information~~ of the persons involved in the communication~~.; and~~

~~(iv) a contemporaneous summary in plain language of the communication or attempted communication.~~

(b) A debt collection agency [~~shall~~] must maintain the following records to document its collection activities with respect to all New York City consumers from whom it seeks to collect a debt:[~~(1) A monthly log of all calls made to consumers, listing the date, time and duration of each call, the number called and the name of the person reached during the call~~]

(1) Monthly logs or a record, in a form and format designated by the Commissioner, of the following:

(i) all complaints which were received by a debt collection agency that were filed by New York City consumers against the debt collection agency, including those filed with the agency directly or with any not-for-profit entity or governmental agency, identifying for each complaint the date, the consumer's name and account information, the source of the complaint, a summary of the consumer's complaint, the debt collection agency's response to the complaint, if any, and the current status of the complaint;

(ii) all written disputes or requests for verification made by New York City consumers, identifying each consumer's name and account information, the date of the dispute or request for verification, and the date and type of response, if any, sent by the debt collection agency; and

(iii) all written cease-and-desist requests made by New York City consumers, identifying the consumer's name and account information, the date of the request, and the date and purpose of any further contacts by the debt collection agency after receipt of the request from the consumer.

(2) Recordings of [~~complete conversations~~] all telephone ~~communications~~ conversations, including limited content messages, with all New York City consumers or with a randomly selected sample of at least 5% of all calls made or received by the debt collection agency or a third party on its behalf [~~and a copy of contemporaneous notes of all conversations with consumers~~]. The

Commented [DR2]: If the consumer has no ability to know an attempted communication was made because it did not go through or went to a wrong number or address, what would be the purpose of putting it in the log?

This language is consistent with exceptions contained in Regulation F and the newly adopted District of Columbia debt collection law.

Commented [DR3]: The word "duration" as this data element does not provide any benefit to the consumer and is a data element that cannot be maintained in the case of written communications.

Commented [DR4]: The deletion of the phrase "and a contemporaneous summary of the communication" as the requirement "to maintain a copy of all communications" in paragraph (1) above is sufficient.

Commented [DR5]: Debt collection agencies need to have received the complaint in order to be compliant with this paragraph. The way it reads right now, if a consumer filed a complaint with a non-profit or governmental entity but that complaint was never forwarded to the collection agency, the agency would be in violation for not maintaining it.

Commented [DR6]: The industry would respectfully request that disputes and cease and desist requests be in writing for this information to be included in the log. The intent of what is said in verbal communications can sometimes be subjective and result in different understandings between the two parties.

For example, if a consumer says in response to a request for a payment "yeah right" is that a complaint, dispute, request for verification, or a cease and desist request? Some might say yes and some might say no. Another example, could be when a consumer says "I thought that was paid" but then realizes it was not paid and pays the debt over the phone. Again, some might say "yes" and some might say "no" as to whether it would be applicable.

There tends to be no confusion when it is in writing.

Commented [DR7]: Given that written electronic communications can be received on telephones, it would be more appropriate to use the word "conversations" rather than "communications" in the context of making a recording.

method used for randomly selecting the recorded calls [~~shall~~] must be [~~included in the file where the tape recordings are~~] maintained by the debt collection agency and a record in each consumer's account must identify the calls by date and time recorded, and any third party assigned to handle such calls. If a debt collection agency elects to record a randomly-selected sample of at least 5% of all calls made or received by the debt collection agency, it must maintain a record of the total number of calls made or received on a monthly basis and the total number of such recorded calls. If the debt collection agency owns or has the right to collect on a debt before it refers such a debt to a third party to handle collections calls with consumers, the debt collection agency must ensure that:

(i) The third party complies with this section and the licensing rules and laws pertaining to debt collection in the City of New York; and

(ii) The third-party audio recordings are available upon request by the Department to the debt collection agency.

(3) A record of all cases filed in court to collect a debt. Such record [~~shall~~] must include, for each case filed, the name of the consumer, the identity of the ~~originating~~ original creditor, the amount claimed to be due, the [~~civil court~~] index number and the court and county where the case is filed, the date the case was filed, [~~the name of the process server who served process on the consumer, the date, location and method of service of process, the affidavit of service that was filed and~~] the disposition for each case filed, including whether a judgment was rendered on default or on the merits of the action. Such record [~~shall~~] must be filed in a manner that is searchable or retrievable by the name, address and zip code of the consumer and the creditors who originated the debts that the debt collection agency is seeking to collect.

(4) The original copy of each contract with a process server for the service of process, and copies of all documents involving traverse hearings relating to cases filed by or on behalf of the debt collection agency. Such records should be filed in a manner that is searchable by the name of the process server.

(5) A record indicating the language preference of the consumer, except where the debt collector is not aware of such preference despite reasonable attempts to obtain it.

(6) When provided, ~~A~~a record indicating which medium(s) of electronic communication are permitted or not permitted by each consumer ~~and, if known, the consumer's preferred medium of communication~~ in connection with the collection of a debt.

(7) A record of information on debt furnished to a consumer reporting agency, including the date the debt collection agency notified the consumer about the debt before furnishing information to the credit bureau on that debt and the period of time it waited to receive a notice of undeliverability.

(8) A record of any notice of unverified debt issued in accordance with section 5-77(f)(7) or received by the debt collection agency, including any such notice received from the consumer.

(c) A debt collection agency [~~shall~~] must maintain the following records relating to its operations and practices:

(1) A copy of all actions, proceedings or investigations by government agencies that resulted in the revocation or suspension of a license, the imposition of fines or restitution, a voluntary settlement, a court order, a criminal guilty plea or a conviction.

Commented [DR8]: This rule uses the term "original creditor" and the term "originating creditor" interchangeably. Given that the State of New York and the Department of Financial Services uses the term "original creditor" we would request consistency of use. We have changed all seven references of "originating" creditor to "original" creditor.

Commented [DR9]: This sentence is overly confusing. It starts by stating a record of permitted and not permitted mediums of communications should be recorded. That should be sufficient to accomplish what DCWP is seeking. But then it goes on to require "preferred medium of communication." Presumably if they have permitted the medium, it is a preferred medium? We recommend streamlining the sentence for clarity.

(2) A copy of all [~~policies,~~] training materials, manuals, and guides for employees or agents that direct, describe, suggest or promote how a collector is to interact with consumers in the course of seeking to collect a debt.

(3) An annual report, in a form made publicly available on the Department's website, identifying, by language, (i) the number of consumer accounts on which an employee collected or attempted to collect a debt owed or due or asserted to be owed or due [~~in a language other than English~~]; and (ii) the number of employees that collected or attempted to collect on such accounts [~~in a language other than English~~].

(4) A copy of all policies addressing the collection of time-barred debts.

(5) A copy of all policies addressing the verification of debts.

(6) A copy of all policies addressing the furnishing of information concerning consumer debt to credit reporting bureaus.

(7) If collecting medical debt on behalf of a covered medical entity, ~~A~~a copy of all policies addressing hospital financial assistance programs related to medical debt.

(d) The records required to be maintained pursuant to this section [~~shall~~] must be retained for [~~six years from the date the record was created by the debt collection agency, a document was obtained or received by the debt collection agency, a document was filed in a court action by the debt collection agency, or a training manual or employee guide was superseded, except that recordings of conversations with consumers shall be retained for one year after the date of the last conversation recorded on each completed recording tape~~] the following periods of time:

(1) For records required to be maintained pursuant to subdivisions (a) and (b) of this section, excluding recordings of calls with consumers, until three years after the date of the debt collection agency's last collection activity on the debt.

(2) For recordings of calls with consumers, until three years after the date of the call.

(3) For records required to be maintained pursuant to subdivision (c) of this section, until six years after the date the record was created.

Section 3. Section 5-76 of Part 6 of Subchapter A of Chapter 5 of Title 6 of the Rules of the City of New York is amended by adding the following definitions in alphabetical order:

~~**Attempted communication.** The term "attempted communication" means any act to initiate a communication or other contact about a debt with any person through any medium, including by soliciting a response from such person. An act to initiate a communication or other contact about a debt is an attempted communication regardless of whether the attempt, if successful, would be a communication that conveys information regarding a debt directly or indirectly to any person. A limited-content message is an attempted communication.~~

Clear and conspicuous. The term "clear and conspicuous" means readily understandable. In the case of written and electronic record disclosures, a clear and conspicuous statement, representation or element being disclosed is of such location, size, color and contrast to be readily noticeable and legible to consumers. In the case of oral disclosures, a clear and conspicuous disclosure is given at a volume and speed sufficient for a consumer to hear and comprehend it.

Commented [DR10]: "Debt" is not furnished, "information" is.

Commented [DR11]: Many debt collectors do not collect medical debt. If a debt collector does not collect this asset class, they should not be required to maintain policies addressing hospital financial assistance programs.

Commented [DR12]: Given that communications related to legal proceedings are covered by the court system, if this provision remains, the industry would respectfully request that these communications be excluded from the definition of legal proceedings. A sentence could be added that reads: "Communications related to legal proceedings shall not be considered an attempted communication."

Commented [DR13]: The industry would respectfully request that some reasonable exceptions be permitted. The industry is concerned that certain required disclosures that are required by the federal and state level have already filled up available space on the first page of communications. As such, we can envision a scenario where a clear and conspicuous notice will have to be addressed on another page in the document because to display it on the first page would prevent us from complying with the federal and state requirements for what needs to be on the first page.

In any clear and conspicuous disclosure, any required modifications, explanations or clarifications to other information are presented in close proximity to the information being modified, in a manner so as to be readily noticed and understood, provided that the disclosures may be on another page. Hyperlinks in electronic communications related to modifications, explanations or clarifications are permitted.

Covered medical entity. The term "covered medical entity" means a health care entity that is tax-exempt under federal or New York State law or qualifies for distributions from the Indigent Care Pool from the State of New York or any other such fund or distribution allocated to reduce the charges of medical services by granting financial assistance, through a financial assistance policy, to patients based on need or an inability to pay.

Electronic communication. The term "electronic communication" means communication by electronic means including, but not limited to, electronic mail, a text message, or instant message, rather than oral communication in person or by telephone, or hard copy communication by mail.

Electronic record. The term "electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

Financial assistance policy. The term "financial assistance policy" means a program to reduce or eliminate charges for medical services provided which was established by a nonprofit hospital or health care provider.

Itemization reference date. The term "itemization reference date" means any one of the following dates: (1) The last statement date, which is the date of the last periodic statement or written account statement or invoice provided to the consumer by a creditor; (2) The charge-off date, which is the date the debt was charged off; (3) The last payment date, which is the date the last payment was applied to the debt; (4) The transaction date, which is the date of the transaction that gave rise to the debt; or (5) The judgment date, which is the date of a final court judgment that determines the amount of the debt owed by the consumer.~~on revolving or open-end credit accounts, the date of the last written notification sent to the consumer which lists the total amount of the outstanding debt asserted to be owed by the consumer on or before the charge-off date of the debt; or (2) on closed-end accounts, either the date of the last payment, if such date is available, or the date of the last written notification sent to the consumer which lists the total amount of the outstanding debt asserted to be owed by the consumer on or before the charge-off date of the debt.~~

Language access services. The term "language access services" means any service made available by a debt collector to consumers in a language other than English. Language access services include, but are not limited to, the use of:

(1) collection letters using a language other than English;

(2) customer service representatives who collect or attempt to collect debt in a language other than English;

(3) a translation service for the collector's website or for written communications; and

(4) a service that interprets phone conversations in real time.

Limited-content message. The term "limited-content message" means an attempt to communicate with a consumer by leaving a voicemail message that includes all of the following

Commented [DR14]: We strongly urge the DCPW to modify its definition of the itemization reference date to reflect the language used by the federal government in their definition contained in Regulation F -- 12 CFR Part 1006.34(b)(3).

Using the charge off balance and charge off date as the standard for itemization is consistent with what the CFPB (Regulation F) and other states, such as California (Cal. Civ. Code § 1788.52), Colorado (CO Rev Stat § 5-16-111), and Maine (Title 32, Chapter 109-A, Subchapter 2 of Maine Revised Statutes), have codified. In New York State itself, in its court rules and affidavits for default judgment applications in consumer credit matters (located at https://www.nycourts.gov/LegacyPDFS/rules/ccr/AO_185.14.pdf), the date and amount of the charge off balance is required. In addition, under the New York Consumer Credit Fairness Act (Senate Bill 153) that took effect in 2022, itemization is required of the total amount of the debt due as of the charge-off.

Creating a new and unnecessary standard will only confuse NYC consumers and the business community.

content, which may include other content allowed by federal law, and that includes no other content:

(1) A business name for the debt collector that does not indicate that the debt collector is in the debt collection business;

(2) A request that the consumer reply to the message;

(3) The name of the natural person whom the consumer can contact to reply to the debt collector; and

(4) A call-back telephone number that is answered by a natural person.

Medical debt. The term "medical debt" means an obligation or alleged obligation of a consumer to pay any amount whatsoever related to the receipt of health care services, products or devices provided to a person by a hospital licensed under article twenty-eight of the New York Public Health Law, a health care professional authorized under title eight of the New York Education Law, or an ambulance service certified under article thirty of the New York Public Health Law. Medical debt does not include debt charged to a credit card.

Original creditor and originating creditor. The terms "original creditor" or "originating creditor" means the financial institution that owned the consumer credit account at the time the account was charged off, even if that financial institution did not originate the account. ~~any person, firm, corporation, or organization who originated the debt, including by extending credit and creating the debt.~~

Section 4. The definitions for "Communication" and "Debt collector" in Section 5-76 of Part 6 of Subchapter A of Chapter 5 of Title 6 of the Rules of the City of New York are amended to read as follows:

Communication. The term "communication" means the conveying of information regarding a debt directly or indirectly to any person through any medium, including by electronic means. The term communication excludes a limited-content message.

Debt collector. The term "debt collector" means [~~an individual who, as part of his or her job, regularly collects or seeks to collect a debt owed or due or alleged to be owed or due~~] any person engaged in any business with the principal purpose of which is the collection of any debts or who regularly collects, or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due to another person. The term does not include:

(1) any officer or employee of the United States, any State or any political subdivision of any State to the extent that collecting or attempting to collect any debt owed is in the performance of [~~his or her~~] their official duties;

(2) any person while engaged in performing an action required by law or regulation, or required by law or regulation in order to institute or pursue a legal remedy;

(3) any individual employed by a nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors; [~~or~~]

(4) any individual employed by a utility regulated under the provisions of the Public Service Law,

Commented [DR15]: This change is necessary to clarify that medical debt is not debt charged to a credit card. There is current legislation pending the Governor's signature that clarifies same. Delaware also recently passed legislation which clarified that credit card accounts are not in scope for medical debt.

Commented [DR16]: The industry would request that the definition of "original creditor" that both DFS and DCWP use is the definition adopted in state law in CPLR 105(q-1) in 2021 which reads:

"Original creditor means the financial institution that owned the consumer credit account at the time the account was charged off, even if that financial institution did not originate the account."

to the extent that New York Public Service Law or any regulation promulgated thereunder is inconsistent with this part; ~~or~~

(5) any person while performing the activity of serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt, or serving, filing or conveying formal legal pleadings, discovery requests, judgments, or other documents pursuant to the applicable rules of civil procedure, where such person is not a party, or providing legal representation to a party, to the action; ~~.~~

(6) any communication, letters, pleadings, or other correspondence that are delivered by an attorney licensed within the State of New York while performing their duties as an officer of the court during the pendency of an active court matter that is overseen and supervised by the New York State Unified Court System; or

(7) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor.

Where a provision of this part limits the number of times an action may be taken by the debt collector, or establishes as a prerequisite to taking an action that the debt collector has received or done something, or prohibits an action if the debt collector has knowledge of or reason to know something, the term "debt collector" includes any debt collector employed by the same employer.

Section 5. Section 5-77 of Part 6 of Subchapter A of Chapter 5 of Title 6 of the Rules of the City of New York is amended to read as follows:

§ 5-77. Unconscionable and Deceptive Trade Practices.

It is an unconscionable and deceptive trade practice for a debt collector to attempt to collect a debt owed, due, or asserted to be owed or due except in accordance with the following rules:

(a) ***Acquisition of location information***. Any debt collector communicating with any person other than the New York City consumer for the purpose of acquiring location information about the consumer in order to collect a debt[~~, after the institution of debt collection procedures shall~~] must:

(1) identify [~~himself or herself~~] themselves, state that [~~he or she is~~] they are confirming or correcting location information about the consumer and identify [~~his or her employer~~] the debt collector on whose behalf they are communicating when that identification connotes debt collection only if expressly requested;

(2) not state or imply that such consumer owes any debt;

(3) not communicate more than once, unless requested to do so by such person or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information, in which case the debt collector may communicate one additional time; for the purposes of this paragraph (3), the debt collector need not count as a communication returned unopened mail, an undelivered email message, or a message left with a party other than the person the debt collector is attempting to reach in order to acquire location information about the consumer, as long as the message is limited to a telephone number, the name of the debt collector and a request that the person sought telephone the debt collector;

Commented [DR17]: The industry requests a limited carve out for attorneys to permit licensed attorneys the ability to practice law without creating potential conflicts with the proposed regulations. Please see the New York State Creditors Bar Associations memo for additional explanation.

Commented [DR18]: This is intended to mitigate the risk that employees of the original creditor could be exposed personally under the current definition.

(4) not use any language or symbol on any envelope or in the contents of any communication effected by the mail or a delivery service that indicates that the debt collector is in the debt collection business or that the communication relates to the collection of a debt; provided that a debt collector may use [~~his or her~~] their business name or the name of a department within [~~his or her~~] their organization as long as any name used does not connote debt collection; and

(5) if the debt collector knows the consumer is represented by an attorney with regard to the subject debt and if the debt collector has knowledge of the attorney's name and address or can readily ascertain such attorney's name and address, not communicate with any person other than that attorney for the purpose of acquiring location information about the consumer unless the attorney fails to provide the consumer's location within a reasonable period of time after a request for the consumer's location from the debt collector and:

(i) informs the debt collector that [~~he or she~~] the attorney is not authorized to accept process for the consumer; or

(ii) fails to respond to the debt collector's inquiry about the attorney's authority to accept process within a reasonable period of time after the inquiry.

[~~The employer of a debt collector may not be held liable in any action brought under § 5-77(a)(3) or (5) if the employer shows by a preponderance of the evidence that the violation was not intentional and resulted despite the maintenance or procedures reasonably adapted to avoid any such violation.~~] The employer of a debt collector may not be held liable in any action brought under § 5-77(a)(3) or (5) if the employer shows by a preponderance of the evidence that the violation was not intentional and resulted despite the maintenance or procedures reasonably adapted to avoid any such violation.

(b) ***Communication in connection with debt collection***. A debt collector, in connection with the collection of a debt, [~~shall~~] must not:

(1) [~~After institution of debt collection procedures, without~~] Without the prior written or orally recorded consent of the New York City consumer given directly to the debt collector [~~after the institution of debt collection procedures~~], or without permission of a court of competent jurisdiction, [~~communicate with the consumer in connection with the collection of any debt;~~] engage in any of the following conduct:

(i) communicate or attempt to communicate with the consumer at any unusual time or place known, or which should be known, to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating or attempting to communicate with a consumer is after 8 a.m.[~~o'clock ante meridian~~] and before 9 p.m.[~~o'clock post meridian time~~] ~~at the consumer's location~~ in the eastern time zone;

(ii) except for any communication that is required by law, communicate or attempt to communicate directly with the consumer if the debt collector knows the consumer is represented by an attorney with respect to such debt and if the debt collector has knowledge of the attorney's name and address or can readily ascertain such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer[~~, except any communication which is required by law or chosen from among alternatives of which one is required by law is not hereby prohibited~~];

Commented [DR19]: The industry requests the restoration of the bona fide error defense. It is consistent with the FDCPA which DCWP indicates it wishes to seek. An inadvertent clerical error should not lead to liability, especially if such error has not harmed the consumer or can be easily corrected with no harm to the consumer.

Commented [DR20]: An orally recorded conversation where the consumer grants consent should hold the same level of integrity and legitimacy as a written document.

The proposed rule seems to have contradictory provisions as consumer instructions provided over the phone are permitted in some circumstances while prohibited in other places?

Commented [DR21]: A clarification is needed in this paragraph as consumers could leave New York City and the eastern time zone for vacation or work unbeknownst to the debt collector.

(iii) knowingly communicate or attempt to communicate with the consumer at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer or supervisor prohibits the consumer [~~from receiving~~] to receive such a communication; or

(iv) [~~with excessive frequency. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that more than twice during a seven-calendar-day period is excessively frequent. In making its calculation, the debt collector need not include any communication between a consumer and the debt collector which is in response to an oral or written communication from the consumer, or returned unopened mail, or a message left with a party other than one who is responsible for the debt as long as the message is limited to a telephone number, the name of the debt collector and a request that one who is responsible for the debt telephone the debt collector; or any communication which is required by law or chosen from among alternatives of which one is required by law~~] communicate or attempt to communicate, including by leaving limited- content messages, with the consumer with excessive frequency. Excessive frequency means any communication or attempted communication by the debt collector with a consumer in violation of 12 CFR Part 1006.14.

~~(A) Excessive frequency means either 1) any communication or attempted communication by the debt collector with a consumer, by any medium of communication or in person, in connection with the collection of debt more than three times during a seven-consecutive-calendar-day period, or 2) after already having had an interaction with the consumer within such seven-consecutive-calendar-day period.~~

~~(B) The date of the first day of such a seven-consecutive-calendar-day period is the day of the first such communication or attempted communication. Communication or attempted communication between a consumer and the debt collector that is initiated by or at the request of a consumer; in response to a communication from the consumer in the same email thread or live chat; not connected to the dialed number, returned mail or a bounced email; or required by law shall not be included in the calculation of excessively frequent communications.~~

~~(C) Any communication or attempted communication made by a person pursuant to the rules of civil procedure, such as serving, filing, or conveying formal legal pleadings, discovery requests, depositions, court conferences, communications with the consumer's attorney on a pending legal matter, or ordered by the New York State Unified Court System, shall not be included in the calculation of excessively frequent communications. Traditional debt-collection activities, such as sending a consumer a collection letter or placing a call, or using any other means, to contact the consumer to collect on debt, count toward the calculation of excessively frequent communications in section 5-77 (b)(1)(iv)(A).~~

[~~The employer of a debt collector may not be held liable in any action brought under 6 RCNY § 5-77(b)(1)(ii)-(iv) if the employer shows by a preponderance of the evidence that the violation was not intentional and resulted despite maintenance of procedures reasonably adapted to avoid any such violation~~] The employer of a debt collector may not be held liable in any action brought under 6 RCNY § 5- 77(b)(1)(ii)-(iv) if the employer shows by a preponderance of the evidence that the violation was not intentional and resulted despite maintenance of procedures reasonably adapted to avoid any such violation.

For the purpose of paragraph (1) of this subdivision, the term "consumer" includes the consumer's parent (if the consumer is a minor), guardian, executor, administrator, or spouse (unless the debt collector knows ~~or should know~~ that the consumer is legally separated from or no longer living with their spouse).

Commented [DR22]: Given the majority of consumers have dropped land lines in favor of cell phones, it is not possible to definitively know where the consumer is at any given time. The way this is drafted if one call's a cell phone and the consumer is at work, the collection agency is in violation of this provision. An easy way to solve the problem is by adding the word "knowingly." If a consumer tells a debt collector that they are always at work between 3pm-9pm and they are not permitted to receive calls, then the debt collector has been put on notice not to call during those hours.

Additionally, if a consumer provides the debt collector with their work number as the "best" or "preferred" number to be contacted but fails to mention that it is a work number, how would a debt collector know that they contacted a consumer at work?

Commented [DR23]: The industry would strongly recommend that New York City use the same requirement for "excessive frequency" as the federal government who spent almost a decade in the development of their requirements which are contained in Regulation F -- 12 CFR Part 1006.14. The industry would like to avoid confusion and accidental errors., given that most debt collectors operate regionally or nationally and must manage accounts in multiple states.

Commented [DR24]: The industry requests the restoration of the bona fide error defense. It is consistent with the FDCPA which DCWP indicates it wishes to seek. An inadvertent clerical error should not lead to liability, especially if such error has not harmed the consumer or can be easily corrected with no harm to the consumer.

Commented [DR25]: There is no way that a debt collection agency "should know" a consumer is legally separated or no longer lives with their spouse unless someone tells them. We respectfully request the deletion of this language.

(2) [~~In order to collect a debt, and except as provided by 6 RCNY § 5-77(a)~~] Except if otherwise permitted by law, communicate about a debt with any person other than the consumer who is obligated or allegedly obligated to pay the debt, [~~his or her~~] the consumer's attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, a debt collector to whom [~~or to whose employer~~] the debt has been assigned for collection[~~, a creditor who assigned the debt for collection,~~] or the attorney of that debt collector[~~, or the attorney for that debt collector's employer,~~] without the prior written or orally recorded consent of the consumer or their attorney given directly to the debt collector [~~after the institution of debt collection procedures, or without the prior written consent of the consumer's attorney~~], or without the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy.

(3) Communicate with any person other than [~~the consumer's attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, a debt collector to whom or to whose employer the debt has been assigned for collection, a creditor who assigned the debt for collection, or the attorney of that debt collector or the attorney for that debt collector's employer~~] those persons enumerated in paragraph (2) of this subdivision in a manner which would violate any provision of [~~this part~~] paragraph (1) of this subdivision if such person were a consumer.

(4) [~~After institution of debt collection procedures, communicate~~] Communicate with a consumer with respect to a debt if the consumer has notified the debt collector [~~in writing~~] in writing or the debt collector has an orally recorded conversation that the consumer wishes the debt collector to cease further communication with the consumer with respect to that debt, except [~~that~~] for any communication which is required by law [~~or chosen from among alternatives of which one is required by law is not hereby prohibited~~]. The debt collector shall have a reasonable period of time following receipt by the debt collector of the notification to comply with a consumer's request[~~, except that any debt collector who knows or has reason to know of the consumer's notification and who causes further communication shall have violated this provision~~]. The debt collector may, however:

(i) communicate with the consumer once in writing or by electronic means:

(A) to advise the consumer that the debt collector's further efforts are being terminated; or[~~:~~]

(B) [~~to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or;~~

(C) ~~where applicable~~] to the extent such notice was not previously provided, to notify the consumer that the debt collector or creditor intends to invoke a specific remedy, if it[~~that~~] is a remedy [~~he is~~]they are legally entitled to invoke and [~~if he~~] they actually [~~intends~~] intend to invoke it; and

(ii) respond to each subsequent [~~oral or written~~] communication from the consumer.

(5) [~~For the purpose of 6 RCNY § 5-77(b)(1)-(4), the term "consumer" includes the consumer's parent (if the consumer is a minor), guardian, executor, administrator, spouse (unless the debt collector knows or has reason to know that the consumer is legally separated from or no longer living with his or her spouse), or an individual authorized by the consumer to make purchases against the account which is the subject of the collection efforts. A request that the debt collector~~

Commented [DR26]: An orally recorded conversation where the consumer grants consent should hold the same level of integrity and legitimacy as a written document.

The proposed rule seems to have contradictory provisions as consumer instructions provided over the phone are permitted in some circumstances while prohibited in other places?

Commented [DR27]: While a written document would be clearer and remove any ambiguity that may come through an oral conversation, an orally recorded conversation would at least provide the opportunity to review the conversation to discern intent.

Phone calls could involve vague language such as "I really don't like getting these calls." Does that count? What if they say "stop calling me" to start the conversation but then agrees to set up a payment plan?

The proposed rule seems to have contradictory provisions as consumer instructions provided over the phone are permitted in some circumstances while prohibited in other places?

~~cease further communication, provided for under 6 RCNY § 5-77(b)(4), if made by the consumer's spouse or an individual authorized by the consumer to make purchases against the account, only affects the debt collector's ability to communicate further with the person making the request~~]Contact a New York City consumer by electronic communication unless the debt collector satisfies the following requirements:

(i) A debt collector may only use a specific email address, text message number, social media account, or specific electronic medium of communication if:

(A) such electronic communication is private and direct to the consumer; and

(B) the creditor or debt collector obtains revocable consent from the consumer in writing or orally recorded, given directly to the creditor or debt collector, to use such email address, text message number, social media account, or other electronic medium of communication to communicate about the debt, and the consumer has not since revoked the consent; or

(C) the consumer used such email address, text message number, social media account or other electronic medium of communication to communicate with the debt collector about a debt within the past 30 days and has not since opted out of communications to that email address, text message number, social media account or other electronic medium of communication or opted out of all electronic communications generally.

(ii) A person's electronic signature constitutes written consent under this section, provided it complies with all relevant state and federal laws and rules, including article three of the New York Technology Law (New York Electronic Signatures and Records Act) and chapter 96 of title 15 of the United States Code (Electronic Signatures in Global and National Commerce Act).

(iii) The written or orally recorded consent, revocable by the consumer, is retained by the debt collector until the debt is discharged, sold, or transferred.

(iv) A debt collector who sends any disclosures required by this subchapter electronically must do so in a manner that is reasonably expected to provide actual notice, and in a form that the consumer may keep and access later.

(v) The debt collector must include in every electronic mail communication to the consumer a clear and conspicuous written disclosure that the person may revoke consent to receive electronic communication at any time, and a reasonable and simple method by which the consumer can opt-out of further electronic communications or attempts to communicate by the debt collector, which may include replying "stop" or some other word(s) that reasonably indicates the consumer wishes to opt-out. The disclosure to the consumer must be in the same language as the rest of the communication and the debt collector must accept the consumer's response to opt-out in the same language as in the initial electronic mail that prompted the response from the consumer or in any language used by the debt collector to collect debt.

(vi) The debt collector may not require, directly or indirectly, that the consumer, in order to opt-out, pay any fee to the debt collector or provide any information other than the consumer's opt-out preferences and the email address or text message number subject to the opt-out request.

(6) Communicate with a consumer by sending an electronic message to an email address or a text message number that the debt collector knows ~~or should know~~ is provided to the consumer by the consumer's employer.

Commented [DR28]: Consent can be provided to the creditor as well, including within the original lending agreement. In fact, contact information provided to the creditor is always passed down to the debt collector. It is how the debt collector gets the consumer's name, address, telephone number, and email address. What would be the purpose of not allowing the least intrusive forms of contact (i.e. email or text), which is also often the consumers preferred medium of communication, while allowing the more intrusive forms of contact (i.e. phone calls and letters which can be intercepted by a third party living with the consumer)?

Commented [DR29]: An orally recorded conversation where the consumer grants consent should hold the same level of integrity and legitimacy as a written document.

The proposed rule seems to have contradictory provisions as consumer instructions provided over the phone are permitted in some circumstances while prohibited in other places?

Commented [DR30]: Often, there is no way that a debt collector would know a telephone number or email address is associated with a business unless the consumer tells the debt collector. For example, if a business uses a gmail account or the consumer provides a work cell phone for contact, how could you discern it was provided to the consumer by the employer?

(7) Communicate with a consumer on a social media platform, unless the debt collector obtains consent from the consumer to communicate on the specific social media platform, and the communication is not ~~viewable~~ accessible by anyone else other than the consumer, including but not limited to the general public or the consumer's social media contacts.

(8) Communicate with a consumer through a medium that the consumer has requested that the debt collector not use to communicate with the consumer.

(9) Communicate or attempt to communicate with a consumer to collect a debt for which the debt collector knows or should know that the consumer was issued a Notice of Unverified Debt pursuant to subdivision (f).

(c) ***Harassment or abuse***. A debt collector, in connection with the collection of a debt, shall not engage in conduct the natural consequence of which is to harass, oppress or abuse any person in connection with a debt. Such conduct includes:

(1) the use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person;

(2) the use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader;

(3) the advertisement for sale of any debt to coerce payment of the debt;

(4) causing a telephone to ring ~~or produce another sound or alert~~, or engaging any person [~~in~~] by any communication medium, including but not limited to telephone conversation, repeatedly or continuously with intent to annoy, abuse, or harass any person [~~at the called number~~] contacted by the debt collector;

(5) the publication of a list of consumers who allegedly refuse to pay debts, except to another employee of the debt collector's employer or to a consumer reporting agency or to persons meeting the requirements of 15 USC § 1681a(f) or 15 USC § 1681b(3); or

(6) except [~~as provided by 6 RCNY § 5-77(a), the placement of telephone calls without meaningful disclosure of the caller's identity~~] where expressly permitted by federal, state, or local law, communicating with a consumer without disclosing the debt collector's identity.

(d) ***False or misleading representations***. A debt collector, in connection with the collection of a debt, shall not make any false, deceptive, or misleading representation. Such representations include:

(1) the false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or identification[~~facsimile~~]thereof;

(2) the false representation or implication that any individual is an attorney or is employed by a law office or a legal department or unit, or any communication is from an attorney, a law office or a legal department or unit, or that an attorney conducted a meaningful review of the consumer's debt account;

(3) the representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or

Commented [DR31]: Edit is predicated upon the fact that messages, even sent privately, may be "viewable" to the general public if, for example, a consumer accesses the message at a public location (library computer, shared phone, etc.).

Commented [DR32]: Cell phones that get emails can be set up to produce a sound even though that was not the intent of the debt collector. There is also an evidentiary problem in that it is easy to prove when a debt collector made a phone call or sent a message but almost impossible to prove whether that communication actually caused a phone to "produce an alert or other sound." This addition makes no sense because only the consumer can control whether or not the phone produces an alert or other sound.

wages of any person unless such action is lawful and the debt collector or creditor intends to pursue such action;

(4) the threat to take any action that cannot legally be taken or that is not intended to be taken;

(5) the false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to:

(i) lose any claim or defense to payment of the debt; or

(ii) become subject to any practice prohibited by this part;

(6) the false representation [~~of~~] or implication made in order to disgrace the consumer that the consumer committed any crime or other conduct;

(7) the false representation or implication that accounts have been turned over to innocent purchasers for value;

(8) the false representation or implication that documents are legal process;

(9) the false representation or implication that documents are not legal process forms or do not require action by the consumer;

(10) the false representation or implication that a debt collector operates or is employed by a consumer reporting agency as defined by 15 U.S.C. § 1681a(f);

(11) the use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval;

(12) the use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer;

(13) the use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization, unless the general public knows the debt collector's business, company or organization by another name and to use the true name would be confusing;

(14) [~~after institution of debt collection procedures,~~] the false representation of the character, amount or legal status of any debt, or any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt[~~, except that the employer of a debt collector may not be held liable in any action brought under this provision if the employer shows by a preponderance of the evidence that the violation was not intentional and occurred despite the maintenance of procedures reasonably adapted to avoid any such violation~~], except that the employer of a debt collector may not be held liable in any action brought under this provision if the employer shows by a preponderance of the evidence that the violation was not intentional and occurred despite the maintenance of procedures reasonably adapted to avoid any such violation;

(15) except [~~as otherwise provided under 6 RCNY § 5-77(a) and except for any communication which is required by law or chosen from among alternatives of which one is required by law~~] for

Commented [DR33]: The FDCPA bona fide error defense should remain in the rule.

limited-content messages and where otherwise expressly permitted by federal, state, or local law, the failure to disclose clearly and conspicuously in all communications made to collect a debt [~~or to obtain information about a consumer,~~] that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose;

(16) the use of any [~~name that is not the debt collector's actual name; provided that a debt collector may use a name other than his actual name if he or she uses only that name in communications with respect to a debt and if the debt collector's employer has the name on file so that the true identity of the debt collector can be ascertained~~] assumed name; provided that an individual debt collector may use an assumed name when communicating or attempting to communicate with a consumer about a debt if that collector uses the assumed name consistently and is the only person using that assumed name, and the assumed name is on file so that the true identity of the collector can be ascertained;

(17) any conduct proscribed by New York General Business Law §§ 601(1), (3), (5), (7), (8), or (9);

(18) the false, inaccurate, or partial translation of any communication [~~when the debt collector provides translation services~~]; [~~or~~]

(19) after the institution of debt collection procedures, the false representation or omission of a consumer's language preference when returning, selling or referring for debt collection litigation any consumer account, where the debt collector [~~is aware~~] knows ~~or should know~~ of such preference; or

(20) except where expressly permitted by federal, state, or local law, the failure to disclose clearly and conspicuously in all ~~telephone communications~~ recorded verbal conversations with a consumer in connection with the collection of a debt ~~where the communication is recorded by the debt collector~~ that the communication is being recorded ~~and the recording may be used in connection with the collection of the debt~~.

(21) after the institution of debt collection procedures, the false representation that the consumer cannot dispute the debt or request verification of the debt from the debt collector by oral communication.

(e) ***Unfair and unconscionable practices***. A debt collector may not use any unfair or unconscionable means to collect or attempt to collect a debt. Such conduct includes:

(1) the collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law;

(2) the solicitation or use by a debt collector of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution;

(3) causing charges to be made to any person for communications by misrepresentation of the true purpose of the communication. Such charges include collect telephone calls and [~~telegram~~] text message or mobile phone data fees that have not been disclosed or accepted by the consumer, provided this paragraph does not apply if the consumer initiates the communication through the use of the medium;

(4) taking or threatening to take any nonjudicial action to effect dispossession or disablement

Commented [DR34]: There is no way that a debt collector "should know" a consumer's language preference unless someone tells them. We respectfully request the deletion of this language.

Commented [DR35]: Given that written electronic communications such as emails and text messages can be received on telephones, it would be more appropriate to use the word "conversations" rather than "communications" in the context of making a recording.

The statement that the "recording may be used in connection with the collection of the debt" could be a false statement and could be in violation of the FDCPA. We cannot disclose the purpose of the call until we have confirmed that the person who is engaged in conversation is the debtor.

Commented [DR36]: A consumer may choose to communicate via text messages with the debt collector. The debt collector will have no idea if the consumer is on a phone plan that charges for text messages. Consequently, an exception needs to be added to this language.

of property if:

(i) there is no present right to possession of the property claimed as collateral;

(ii) there is no present intention to take possession of the property; or

(iii) the property is exempt by law from such dispossession or disablement;

(5) after institution of debt collection procedures, when communicating with a consumer by [~~use of the mails~~] mail or [~~telegram~~] a delivery service, using any language or symbol other than the debt collector's address on any envelope, or using any language or symbol that indicates the debt collector is in the debt collection business or that the communication relates to the collection of a debt on a postcard, except that a debt collector may use [~~his or her~~] their business name or the name of a department within [~~his or her~~] their organization as long as any name used does not connote debt collection;

(6) after institution of debt collection procedures, [~~communicating with a consumer regarding a debt without identifying himself or herself and his or her employer or communicating in writing with a consumer regarding a debt without identifying himself or herself by name and address and in accordance with 6 RCNY § 5-77(e)(5)~~] except where expressly permitted by federal, state, or local law, communicating with a New York City consumer without disclosing the debt collector's name; [~~or~~]

(7) after institution of debt collection procedures, if a consumer owes multiple debts of which any one or portion of one is disputed, and the consumer makes a single payment with respect to such debts:

(i) applying a payment to a disputed portion of any debt; or

(ii) unless otherwise provided by law or contract, failing to apply such payments in accordance with the consumer's instructions accompanying payment[~~. If payment is made by mail, the consumer's instructions must be written. Any communication by a creditor made pursuant to 6 RCNY § 5-77(e)(7)(ii) shall not be deemed communication for the purpose of 6 RCNY § 5-77(b)(1)(iv). The employer of a debt collector may not be held liable in any action brought under 6 RCNY § 5-77(e)(7) if the employer shows by a preponderance of the evidence that the violation was not intentional and resulted despite maintenance of procedures reasonably adapted to avoid any such violation~~]. The employer of a debt collector may not be held liable in any action brought under 6 RCNY § 5-77(e)(7) if the employer shows by a preponderance of the evidence that the violation was not intentional and resulted despite maintenance of procedures reasonably adapted to avoid any such violation;

(8) engaging in any conduct prohibited by New York General Business Law §§ 601(2) or (4); [~~or~~]

(9) after institution of debt collection procedures, collecting or attempting to collect a debt without [~~first requesting and~~] recording the language preference of such consumer, except where the debt collector is not aware of such preference despite reasonable attempts to obtain it;

(10) furnishing to a consumer reporting agency, as defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. § 1681a(f)), information about a debt unless the debt collector has sent the consumer a validation notice pursuant to section 5-77(f) that states, in a clear and conspicuous manner, that the debt ~~will~~ may be reported to a consumer reporting agency and waited 14

Commented [DR37]: The industry requests the restoration of the bona fide error defense. It is consistent with the FDCPA which DCWP indicates it wishes to seek. An inadvertent clerical error should not lead to liability, especially if such error has not harmed the consumer or can be easily corrected with no harm to the consumer.

Commented [DR38]: "Will" is misleading to the consumer, and conflicts with other federal and state disclosures that state that debt "may" be credit reported.

consecutive days. During the waiting period, the debt collector must permit receipt of, and monitor for, notifications of undeliverability from communications providers. If the debt collector receives such notification during the waiting period, the debt collector must not furnish information about the debt to a consumer reporting agency until the debt collector satisfies this subdivision. If the debt collector previously furnished information to a consumer reporting agency, between January 1, 2021 and the effective date of the rule, and if the debt collector still has a right to collect on such debt, they must disclose in a validation notice to the consumer, by mail or delivery service within 5 days of the effective date of this rule, that the debt was furnished to a consumer reporting agency, unless such information was already disclosed, clearly and conspicuously, in a validation notice mailed by the debt collector to the consumer.

This subdivision does not apply to a debt collector's furnishing of information about a debt to a nationwide specialty credit reporting agency that compiles and maintains information on a consumer's check writing history, as described in section 603(x)(3) of the Fair Credit Reporting Act (15 U.S.C. § 1681a(x)(3));

(11) selling, transferring, or placing for collection or with an attorney or law firm to sue a New York City consumer to recover any debt where the debt collector knows or should know that the debt has been paid or settled or discharged in bankruptcy, except a debt collector may transfer a debt to the debt's owner or to a previous owner of the debt if:

(i) the transfer is authorized under the terms of the original contract between the debt collector and the debt's owner or previous owner, as a result of a merger, acquisition, purchase and assumption transaction, or as a transfer of substantially all of the debt collector's assets; and

(ii) the debt collector also transfers all information pertaining to whether the debt has been paid or settled or discharged in bankruptcy obtained during the time the debt was assigned to the debt collector for collection;

(12) selling, transferring, or placing for collection or with an attorney or law firm to recover any debt where the debt collector knows or should know that the time to sue on the debt has expired, without including a clear and conspicuous notice to the recipient of the debt that the statute of limitations on such debt has expired; or

(13) selling, transferring, or placing for collection or with an attorney or law firm to sue a New York City consumer to recover any debt for which the debt collector was unable to provide written verification of the debt, despite having received a dispute or request for verification of the debt from the consumer, without including a clear and conspicuous notice to the recipient of the debt that the debt was not verified and a copy of the "Notice of Unverified Debt" sent to the consumer pursuant to subdivision (f) of this section.

(f) ***Validation of debts.***

(1) [~~Upon acceleration of the unpaid balance of the debt or demand for the full balance due, the following validation procedures shall be followed by debt collectors who are creditors or who are employed by creditors as defined by 15 U.S.C. § 1602(f) (Truth in Lending Act) but who are not required to comply with 15 U.S.C. § 1637(a)(8) (Fair Credit Billing Act) and who do not provide consumers with an opportunity to dispute the debt which is substantially the same as that outlined in 15 U.S.C. § 1637(a)(8) and regulations promulgated thereunder: Within five days of any further attempt by the creditor itself to collect the debt, it shall send the customer a written notice containing:~~

~~(i) the amount of the debt;~~

~~(ii) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed valid by the debt collector;~~

~~(iii) a statement that, if the consumer notifies the debt collector in writing within the thirty- day period at the address designated by the debt collector in the notice, that the debt, or any portion thereof is disputed, the debt collector shall either:~~

~~(A) make appropriate corrections in the account and transmit to the consumer notification of such corrections and an explanation of any change and, if the consumer so requests, copies of documentary evidence of the consumer's indebtedness; or~~

~~(B) send a written explanation or clarification to the consumer, after having conducted an investigation, setting forth to the extent applicable the reason why the creditor believes the account of the consumer was correctly shown in the written notice required by 6 RCNY § 5-77(f)(1) and, upon the consumer's request, provide copies of documentary evidence of the consumer's indebtedness. In the case of a billing error where the consumer alleges that the creditor's billing statement reflects goods not delivered in accordance with the agreement made at the time of the transaction, a creditor may not construe such amount to be correctly shown unless it determines that such goods were actually delivered, mailed, or otherwise sent to the consumer and provides the consumer with a statement of such determination.~~

~~(i) if the debt collector is not the original creditor, a statement that, upon the consumer's written request within the thirty-day period, sent to the address designated by the debt collector in the notice, the debt collector will provide the consumer with the name and address of the original creditor;~~

~~(ii) an address to which the consumer should send any writing which disputes the validity of the debt or any portion thereof or any writing requesting the name and address of the original creditor.~~

~~(2)~~] *Validation notice.* Within five days after the initial communication with a New York City consumer in connection with the collection of any debt, a debt collector [~~who is not a creditor and not employed by a creditor shall, unless the following information is contained in an initial written communication, or the consumer paid the debt, send the consumer a written notice containing~~] must send the consumer a written notice containing the following information in a clear and conspicuous manner, unless the consumer paid the debt or such information was contained, clearly and conspicuously, in an initial written communication sent by U.S. mail, ~~or~~ delivery service, or by electronic means consistent with 12 CFR Part 1006.34:

(i) [~~the amount of the debt~~] all information required for validation notices by federal or state law;

(ii) [~~the name of the creditor to whom the debt is owed~~] the New York City Department of Consumer and Worker Protection license number assigned to the debt collection agency, if applicable;

(iii) [~~a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector~~] the name of a natural person for the consumer to contact;

(iv) a [~~statement that if the consumer notifies the debt collector in writing within the thirty- day period at the address designated by the debt collector in the notice that the debt, or any portion~~

Commented [DR39]: Regulation F provides detailed requirements for communicating a validation notice via electronic means. These provisions should align with federal law.

Commented [DR40]: The industry would request a small clarification by deleting the word "such" as it suggests that a specific person (the one referenced in paragraph iii above) has to answer a telephone. This is highly problematic as we cannot guarantee who might answer a phone at a place of business.

~~thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector~~] telephone number that is answered by ~~such~~ a natural person;

~~(v)~~ [a] ~~the following statement~~ [~~that, upon the consumer's written request within the thirty-day period sent to the address designated by the debt collector in the notice, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor~~]:

~~**PLEASE READ: Important Information About Your Rights as a New York City Consumer**~~

- ~~**There is no time limit to dispute the debt in collection.** You can let collectors know you dispute the debt using any of the ways they contact you, including by phone.~~
- ~~**You must get a response to the disputed debt in 45 days.** Once you dispute the debt, the collector must stop collection. In 45 days, the collector must give you either 1) verification of the debt, or 2) a "Notice of Unverified Debt" stating it can't verify the debt or continue collection.~~
- ~~**You can use a "Notice of Unverified Debt" to stop collection attempts by other debt collectors.** Be sure to keep a copy of all letters to exercise this right.~~
- ~~**You may qualify for financial assistance with medical debt.** If you have a low or limited income, ask the collector or the hospital if you qualify for help under the "Financial Assistance Policy."~~

(vi) [~~an address to which the consumer should send any writing which disputes the validity of the debt or any portion thereof or any writing requesting the name and address of the original creditor;~~

~~(vii)~~] a statement informing the consumer of any language access services available[, including whether the consumer may obtain from the debt collector a translation of any communication into a language other than English];

[~~(viii)~~] (vii) a statement that a [~~translation and description of commonly-used debt collection terms is~~]Glossary of Common Debt Collection Terms and other resources are available in [~~multiple~~]different languages at [~~available in multiple languages on the Department's website, www.nyc.gov/dca~~] www.nyc.gov/dcwp.

The information required under subdivisions (ii) through (vii) may be included on the reverse side of a written validation notice only if the debt collector includes them together under a heading entitled, "**Important Additional Consumer Rights Under New York City Law**" and includes a clear and conspicuous statement on the front of the validation notice referring to the disclosures on the reverse side. If included on the reverse side of the validation notice, the information must be positioned in a manner so it is readily noticeable and legible to consumers, even after a consumer tears off any response portion of the notice.

(viii) An itemization of the current amount of the debt asserted to be owed that allows the consumer to recognize the total amount of the outstanding debt as of the itemization reference date, and includes a breakdown of all additional amounts that have been assessed or applied to the amount of the debt since the itemization reference date, listing fields for: 1) interest; 2) fees;

Commented [DR41]: This paragraph is impossible to redline given that NYS DFS rulemaking is not complete. We would respectfully request that DCPW allow the state to finish and finalize their rules first. Otherwise, we risk conflicting consumer notices.

Debt collectors are already required to provide specific notices related to verification by both the federal government and the State of New York. The notice being suggested in this paragraph is different from both the federal and state notice requirements. This is thoroughly going to confuse the consumer. It should also be noted that this notice conflicts with the federal safe harbor provision.

Additionally, since roman numeral (i) above states "all information required by federal or state law" is required to be provided in the validation notice, this notice is not needed.

3) payments; and 4) credits, and the following information:

(A) The total amount of the outstanding debt asserted to be due on the itemization reference date.

~~(B) The date, amount, and description of each fee, payment, credit, or interest, applied to the debt since the itemization reference date. A debt collector must include all fields in the itemization, even if no additional amounts have accrued, or may state that no interest, fees, payments, or credits have been assessed or applied to the debt since the itemization reference date.~~

~~(C) The basis of the consumer's obligation to pay each separate charge, interest, or fee, including if allowed by a contract or by law.~~

(~~D~~B) The total amount asserted to be due on the date of the itemization.

A debt collector is permitted to add additional information in the itemization required in this subdivision or disclose the itemization on a separate page as allowed or required by federal or state law, provided the content required in this subdivision is clear and conspicuous to the consumer. Debt collection agencies that must comply with § 20-493.2 (a) of the Administrative Code and § 2-190 (b) shall be deemed to satisfy the requirement of furnishing an itemization under the licensing law by complying with this section and may list the "principal balance" as the total amount of the outstanding debt asserted to be owed by the consumer on the itemization reference date.

(2) *Delivery of validation notices.* A debt collector must deliver written disclosures under (f)(1) of this section in the following manner:

(i) A debt collector must deliver to consumers validation notices and the itemization of the debt by U.S. mail or delivery service. If a debt collector only delivers a validation notice or the itemization of the debt electronically or orally, it does not satisfy the requirement under subdivision § 5-77(f)(1).

(ii) A debt collector may deliver a duplicate copy of the validation notice and itemization of the debt by any other means, including electronic mail, provided it is in accordance with other sections or laws, such as section 101(c) of the Electronic Signatures in Global and National Commerce Act (E–SIGN Act)(15 U.S.C. 7001(c)) or their successor provisions.

(iii) If a debt collector delivers a duplicate validation notice to a consumer electronically, the debt collector must do so in accordance with § 5-77(b)(5) and the notice must include the debt collector's website, email address, and information on how the consumer can dispute the debt, seek verification of the debt, or request originating-creditor information electronically.

(3) Notices in languages other than English. If a debt collector offers consumers validation notices in a language other than English, and a consumer requests a notice in such language, the debt collector must mail a written notice to the consumer completely and accurately in the language requested within 30 days of receiving such a request. As required by section 1006.34(e)(2) of title 12 of the Code of Federal Regulations, a debt collector who receives a request from the consumer for a Spanish-language validation notice must provide the consumer with a validation notice completely and accurately translated into Spanish. A debt collector may not contact a consumer exclusively by telephone or orally in a language other than English to collect debt without providing the consumer, by U.S. mail or delivery service, a validation notice written accurately in the language used by the debt collector during the exchange with the

Commented [DR42]: These additional disclosures should be stricken as they require the inclusion of detailed extraneous data that will confuse consumers. Given the proposed narrowing of the itemization reference date, this section will require the inclusion of voluminous accounting information. In CFPB usability testing, it was determined that "…participants said they thought [the balance] would continue to increase based on the current interest and fee accumulations in the model validation notice." Consumers who receive an additional complex accounting in the initial communication will only be more confused about whether the balance is changing or how it was calculated. It is respectfully submitted that this information is more appropriate to be provided in response to a validation of debt request.

consumer, within 30 days of the first contact by the debt collector in the language other than English. A debt collector is not required to mail the validation notice, in a language other than English, to the consumer more than once during the period that the debt collector owns or has the right to collect the debt. If the debt collector sends a validation notice in a language other than English, it must also accept and respond to disputes, complaints, requests for verification of the debt and cease and desist requests by the consumer completely and accurately in the same language as the validation notice.

([~~3~~]4) [~~If, pursuant to 6 RCNY §§ 5-77(f)(1) or 5-77(f)(2) of this Regulation the consumer notifies the debt collector in writing within the thirty day period that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall not attempt to collect the amount in dispute until the debt collector obtains and mails to the consumer verification of the debt or a copy of the judgment or the name and address of the original creditor. The debt collector shall maintain for one year from the date the notice was mailed, records containing documentation of the date such notice was mailed, the date the response, if any, was received and any action taken following such response~~] *Validation Period.* The validation period extends for 30 consecutive days from the date a consumer receives or is assumed to receive a validation notice. For purposes of determining the validation period, the debt collector may assume that a consumer received the validation notice five days (excluding Saturdays, Sundays, and legal public holidays identified in 5 U.S.C. § 6103(a)) after the debt collector sent it.

([4]5) [~~The failure of a consumer to dispute the validity of a debt under 6 RCNY § 5-77(f) shall not be construed by any court as an admission of liability by the consumer~~] *Overshadowing of rights to dispute or request original-creditor information*. During the validation period, a debt collector must not engage in any collection activities or communications that overshadow or are inconsistent with the disclosure of the consumer's rights to dispute the debt and request the name and address of the original creditor.

(6) *Verification*. A debt collector must provide a New York City consumer verification of a debt or provide a notice of unverified debt in accordance with section 5-77(f)(7) within 45 days of receiving a dispute or a request for verification of the debt. The consumer may dispute the debt, or make such verification request orally or in writing, or electronically if the debt collector uses electronic communications to collect debt, at any time during the period in which the debt collector owns or has the right to collect the debt. The debt collector must treat a first dispute by the consumer as a request for verification of the debt, unless the debt collector has already provided the consumer with the verification information required in this subdivision. If a debt collector provides consumers the ability to submit written disputes electronically through a website, such a website must automatically generate a copy of each written dispute that a consumer can print, save, or have emailed to them. A consumer shall not be required to waive any rights to make use of such an online submission option. The debt collector must cease collection of the debt if an itemization of the debt was not previously provided to the consumer by the debt collector in compliance with section 5-77(f)(1)(vii) and if a timely written verification of the debt has not been provided to the consumer. A debt collector is not required to verify a debt pursuant to this section more than once during the period that the debt collector owns or has the right to collect the debt; provided, however, that the debt collector must send any such verification documents to the consumer one additional time upon request by the consumer. A debt collector must provide verification to the consumer in writing, by U.S. mail or delivery service, unless the consumer has consented to receive electronic communications in compliance with section 5-77(b)(5).

(i) Verification of debt must include the information and documents required by paragraph (j) of Rule 3016 of the Civil Practice Laws & Rules:

Commented [DR43]: In 2021, the Consumer Credit Fairness Act (CCFA) was signed into law by Governor Hochul. The CCFA provides in great detail what information is needed to bring suit on a debt in New York State. What is required in CCFA is more nuanced and detailed than what is provided in the text below. The industry strongly recommends that the rule be consistent with New York State law.

IF DCWP AGREES WITH THE EDIT ABOVE, PARAGRAPHS (A) THROUGH (C) BELOW WOULD BE DELETED. HOWEVER, IS DCWP DECIDES TO PROCEED WITH THE DRAFT LANGUAGE, THE INDUSTRY WOULD REQUEST THE FOLLOWING EDITS SO THAT IT CAN COMPLY WITH DCWP'S INTENT.

(A) a copy of the judgment if a court has reduced the facts to judgment, or a copy of the debt document issued by the ~~originating~~ original creditor or an original written confirmation evidencing the transaction resulting in the indebtedness to the ~~originating~~ original creditor, including the signed contract or signed application that created the debt or, if no signed contract or application exists, a copy of a document provided to the alleged debtor while the account was active, demonstrating that the debt was incurred by the consumer. For a revolving credit account, the charge-off account statement, and the most recent monthly statement recording a purchase transaction, payment, or balance transfer shall be deemed sufficient to satisfy this requirement; ~~. Documents created or generated after the time of charge-off of the debt or institution of debt collection procedures shall not qualify as such confirmation;~~

(B) records reflecting the amount and date of any prior settlement agreement reached in connection with the debt;

(C) the final account statement, or other such document that reflects the total outstanding balance, mailed to the consumer on or before the charge-off date and prior to the institution of debt collection procedures;

(ii) In matters involving a judgment obtained after adjudication on the merits of the case, there will be a rebuttable presumption that the debt collector complied with this section if it mails the consumer, by U.S. mail or delivery service, a copy of the judgment and any evidence of indebtedness that is part of the record of the lawsuit. ~~For this subdivision, a copy of a judgment obtained by default does not provide the consumer verification of the alleged debt~~; and

(iii) In matters involving medical debt arising from the receipt of health care services, medical products, or devices, ~~the~~ a debt collector collecting on behalf of a covered medical entity must provide, clearly and conspicuously, to the consumer any information in its possession or available to the debt collector required to be disclosed by federal, state or local law, including the relevant financial assistance policy.

(7) *Notice of unverified debt.* If a debt collector did not provide an itemization of the debt and cannot provide a consumer with a timely written verification of a debt in response to a dispute or request for verification, the debt collector must respond in writing to the consumer within 45 days of receiving the dispute or a request for verification, at any time during the collection process, that the debt collector is unable to verify the debt and will stop collecting on the debt, and provide the reason that the debt could not be verified. Debt collectors must deliver a notice of unverified debt to the consumer by U.S. mail or delivery service. The debt collector must permit receipt of, and monitor for, notifications of undeliverability from communications providers for at least 14 consecutive days after they place the notice of unverified debt in the mail or with the delivery service. If the debt collector receives such notification, the debt collector must re-send the notice of unverified debt to the consumer, by U.S. mail or delivery service, within 5 days if a new

Commented [DR44]: If a court has determined that a debt is rightfully owed and it is reduced to a judgment, that judgment becomes the applicable document that must be provided the consumer.

Commented [DR45]: Most documents and evidence are stored electronically today, not as physical copies maintained in a filing cabinet. This sentence would essentially invalidate almost all debt.

Additionally, the final sentence does not recognize that a number of admissible documents are generated after default, including but not limited to the charge-off statement (which is referenced earlier in the paragraph).

Commented [DR46]: The federal government, New York state, and the other 49 states recognizes the validity of a judgment for the verification of a debt. How does NYC have the authority to invalidate judgments recognized by all of those jurisdictions?

New York state just adopted in 2021 the Consumer Credit Fairness Act which provides extensive and detailed requirements for obtaining a judgment, including a default judgment. Additionally, included in section 306-d of the Civil Practice Law and Rules is the following provision: "No default judgment based on the defendant's failure to answer shall be entered unless there has been compliance with this section, and at least twenty days have elapsed from the date of mailing by the clerk. No default judgment based on the defendant's failure to answer shall be entered if the additional notice is returned to the court as undeliverable."

Commented [DR47]: Often if a notice is returned a new address is not provided. Therefore this requirement may not be something that we can actually do within the provided time frame. Recommend revising this to reflect this reality.

forwarding address for the consumer is provided by U.S. Mail or delivery service.

(8) ~~*Originating*~~ *Original creditor*. A debt collector must provide the consumer the address of the ~~originating~~ original creditor of a debt within 45 days of receiving a request from the consumer for such address, provided that if the servicer is the name the consumer is most readily going to identify with the debt, that name and address may be provided. The consumer may make such request orally or in writing, or electronically if the debt collector [~~permits~~]uses electronic communications to collect debt, at any time during the period in which the debt collector owns or has the right to collect the debt. After receiving such a request, the debt collector must cease collection of the debt until such address has been provided to the consumer. A debt collector is not required to provide this information more than once during the period that the debt collector owns or has the right to collect the debt.

(9) *Electronic communications.* If a debt collector delivers a duplicate copy of the validation notice to a consumer electronically, the debt collector must do so in accordance with § 5-77(b)(5) and the notice must include the debt collector's website, email address, and information on how the consumer can dispute the debt, seek verification of the debt, or request original~~-~~ creditor information electronically.

(10) *Dispute and verification of medical debt*. Medical debt includes debt collected on behalf of a covered medical entity arising from the receipt of health care services or medical products or devices.

(i) If, at any time during the debt collection process, the New York City consumer indicates that a public or private insurance plan, a third-party payer, or a financial assistance policy should have covered some or all of the charges on the medical debt, or that the debt is as a result of lack of price transparency at the time the services were rendered, or a violation of federal, state or local law, the debt collector must treat such communication by the consumer, received by any medium of communication and language used by the debt collector to collect the debt, as a dispute and a request for verification by the consumer on such medical debt.

(ii) A debt collector must respond to disputed medical debt by providing the consumer verification in accordance with section 5-77(f)(6) and by responding to the specific issue disputed by the consumer under paragraph (i) of this subdivision or deliver to the consumer a notice of unverified debt in accordance with section 5-77(f)(7).

(iii) If a New York City consumer disputes a medical debt, the debt collector must also do the following:

(A) treat all unverified accounts related to a discrete hospitalization or treatment of the consumer, provided such services were rendered within a six-month period, the same as the disputed medical debt by the consumer;

(B) note in all related medical accounts, unless written verification was already provided by the debt collector to the consumer or the consumer has acknowledged owing the amount claimed to be owed on such account, as disputed medical debt, in a manner that is easily identifiable and searchable in each of the consumer's related accounts; and

(C) furnish to the consumer verification on each related medical debt.

(iv) In addition to the requirements in section 5-77(j), before resuming debt collection activities on disputed medical debt arising from services provided by a covered medical entity, the debt

Commented [DR48]: Most consumers are going to have no idea who the original creditor is on a fintech product. Since this is in response to the NYC validation request specifically it would be more consumer friendly to provide the fintech servicer name.

collector must also verify that the covered medical entity met its obligations under federal, state, or local law and the financial assistance policy.

(g) Reserved.

(h) ***Public websites***. Any debt collector that utilizes, maintains, or refers New York City consumers to a website accessible to the public that relates to debts for which debt collection procedures have been instituted must clearly and conspicuously disclose, on the homepage of such website or on a page directly accessible from a hyperlink on the homepage labeled "**NYC Rules on Language Services and Rights**", the following disclosures:

(1) a statement informing the consumer of any language access services available[~~, including whether the consumer may obtain from the debt collector a translation of any communication into a language other than English~~]; and

(2) a statement that a [~~translation and description of commonly-used debt collection terms is~~]Glossary of Common Debt Collection Terms and other resources are available in [~~multiple~~]different languages at[~~on the Department's website, www.nyc.gov/dca www.~~] www.nyc.gov/dcwp.

(i) ***Time-barred debts***. In connection with the collection of a debt, the following requirements must be met:

(1) A debt collector must maintain reasonable procedures for determining the statute of limitations applicable to a debt it is collecting and whether such statute of limitations has expired.

(2) *Initial Written Notice*. if a debt collector, including a debt collection agency that must provide information to a New York City consumer pursuant to § 20-493.2(b) of the Administrative Code, seeks to collect on a debt for which the debt collector has determined, including pursuant to subdivision (a) of this section, or otherwise knows or has reason to know, that the statute of limitations for a debt has or may have expired, the debt collector must initially deliver the consumer a written notice, by U.S. mail or delivery service, that clearly and conspicuously discloses to the consumer substantially the same time-barred-debt disclosure below, before contacting a consumer about the expired debt by any other means:

- **The statute of limitations on this debt expired. This means you can't be sued to collect it. A court will not enforce collection**.

IF YOU ARE SUED:

- It is a violation of federal law (the Fair Debt Collection Practices Act).
- You may be able to prevent a judgment against you by telling the court that the statute of limitations on this debt expired.
- You are not required to admit that you owe this debt, promise to pay this debt, or waive the statute of limitations on this debt.
- Consult an attorney or a legal aid organization to learn more about your legal rights and options.

(3) *Waiting Period.* The debt collector must wait at least 14 consecutive days after they place the initial written notice in U.S. mail or delivery service to the consumer to receive notice of undeliverability. During the waiting period under this subdivision, the debt collector must permit

receipt of, and monitor for, notifications of undeliverability from communications providers. If the debt collector receives such notification during the waiting period, the debt collector must not contact the consumer, by any other means of communication, to collect the debt until the debt collector otherwise satisfies section 5-77(i)(2).

~~(4) *Subsequent Communications*. Unless otherwise permitted by law, the debt collector may not, without the prior written and revocable consent of the consumer given directly to the debt collector, contact such consumer in connection with the collection of an expired debt exclusively by telephone or by other means of oral or electronic communication. After mailing the Initial Written Notice required in section 5-77(i)(2), the debt collector must redeliver such notice to the consumer by U.S. mail or delivery service within 5 days after each oral communication with the consumer unless the debt collector has already mailed a hardcopy of such notice within a 30- day period. Any subsequent notice sent to the consumer electronically must be in accordance with other sections or laws, such as section 101(c) of the Electronic Signatures in Global and National Commerce Act (E- SIGN Act)(15 U.S.C. 7001(c)) or their successor provisions.~~

(~~5~~4) When such information is delivered in writing, the time-barred debt notice must be included for each debt that is beyond the applicable statute of limitations, in at least 12 point type that is set off in a sharply contrasting color from all other types on the communication, and placed on the first page adjacent to the identifying information about the amount claimed to be due or owed on such debt. A debt collector may include additional language to the time-barred-debt disclosure as may be required by the State of New York to send the consumer one disclosure notice.

(j) ***Medical debt from a covered medical entity.*** (1) In connection with the collection of medical debt arising from charges from a covered medical entity, a debt collector collecting on behalf of a covered medical entity is prohibited from collecting or attempting to collect on a medical debt from a New York City consumer asserted to be owed if the debt collector knows or should know that:

(i) To do so violates federal, state, or local law or the financial assistance policy of the covered medical entity.

(ii) The patient has an open application for financial assistance with the covered medical entity.

(iii) The financial assistance policy should have provided financial assistance to the patient to cover all, or a portion, of the medical debt.

(iv) A misrepresentation was made to the patient about the financial assistance policy or payment options regarding the medical debt, including, but not limited to:

(A) The patient was wrongly denied, or not given proper and timely notice of, available financial assistance.

(B) The patient was discouraged from applying for financial assistance.

(C) The patient was induced to agree to pay for all or part of the medical debt with misinformation about payment options or the financial assistance policy.

(D) The patient was only presented with options to pay or to agree to pay for all or part of the medical debt regardless of income level.

Commented [DR49]: Requiring a written disclosure to be sent out within 5 days of each oral communication or every 30 days will create unintended consequences in that: (1) consumers may likely feel harassed by the constant deluge of disclosures; (2) consumers are likely become desensitized to and unlikely to read the notices or future notices; (3) it will create significant environmental costs through excess and unneeded letters being mailed that are likely not to be read; and (4) it will reduce the availability of credit to consumers if the debt is deemed to be too complicated to collect.

How will this language benefit the consumer? Under New York state law: (1) the consumer will still owe the debt; (2) the creditor/debt collector is still allowed to attempt collection on the debt; (3) the debt collector is still prohibited from suing; and (4) the debt collector is still prohibited from reviving the statute of limitations through a payment or affirmation of the debt.

Specifically, section 214-I of the Civil Practice Law and Rules which was codified in 2021 by New York's Consumer Credit Fairness Act (CCFA) that states: "Notwithstanding any other provision of law, when the applicable limitations period expires, any subsequent payment toward, written or oral affirmation of or other activity on the debt does not revive or extend the limitations period."

Lastly, as the law is currently written in New York State and New York City, consumers are provided with notice of the legal status of their debt when debt collectors try to collect debt from them, which is when it makes sense to inform the consumer of the expiration of the Statute of limitations on their account so that they can make an informed decision about their next steps concerning that debt. Specifically, the New York State Department of Financial Services requirement in 23 NYCRR 1.3 reads that "if a debt collector knows or has reason to know that the statute of limitations for a debt may be expired, before accepting payment on the debt," the debt collector must inform the consumer that the Statute of Limitations on the debt has expired. Also, the current Rules of the City of New York in § 2-191 requires debt collectors to inform consumers that the Statute of Limitations has expired on their debt "…in every permitted communication for each debt that the debt collection agency is seeking to collect that is beyond the applicable statute of limitations…"

(2) In connection with the collection of medical debt from a New York City consumer arising from charges from a covered medical entity, a debt collector collecting on behalf of a covered medical entity must conduct reasonable corrective measures upon obtaining information that the financial assistance policy was not disclosed to the patient as required by law or that there is a violation of federal, state, or local law. A consumer may provide such information to the debt collector, by any means of communication or in any language used by the debt collector to collect debt, without the debt collector requiring the consumer to submit any supporting documentation to the debt collector. Corrective measures must be taken as follows:

(i) Inform the entity that placed the account with the debt collector within one business day that the debt may be subject to the covered medical entity's financial assistance policy or that there might be a violation of the law.

(ii) Provide and record in plain language the following statement: "**A FINANCIAL ASSISTANCE POLICY MAY APPLY TO THIS MEDICAL DEBT**", or a statement indicating the violation of law, in a manner readily noticeable and searchable, in the following records:

(A) all of the consumer's accounts arising from medical debt from the covered medical entity, from the same hospitalization or a discrete course of treatment or care;

(B) a written notification that must be sent by U.S. mail or delivery service to the consumer along with the verification of the debt in accordance with sections 5- 77(f)(6) and (f)(10); and

(C) a written notification that must be sent to any receiving party upon transferring any of the consumer's accounts with medical debt from the same covered medical entity.

(iii) Provide any disclosure to the consumer regarding the financial assistance policy, by U.S. mail or delivery service, clearly and conspicuously on the first page of any written communication from the debt collector to the consumer, and such disclosure must not be placed on the reverse side of the page or the second page. Any written notification to a consumer regarding the financial assistance policy may not be delivered exclusively by the debt collector through electronic means.

(iv) Maintain a monthly log or record of all consumer accounts in which the debt collector took corrective measures as required in section 5-77(j) and such measures must be easily identifiable and searchable in each consumer account.

(k) ***Record retention***. A debt collector must retain the following records to document its collection activities with New York City consumers:

(1) Records that are evidence of compliance or noncompliance with part 6 of subchapter A of chapter 5 of title 6 of the Rules of the City of New York starting on the date that the debt collector begins collection activity on the debt until three years after the debt collector's last collection activity on the debt.

(2) Monthly logs or a record of the following:

(i) all complaints filed by New York City consumers against the debt collector, including those filed with the agency directly or with any not-for-profit entity or governmental agency, identifying for each complaint the date, the consumer's name, and account information, the source of the complaint, a summary of the consumer's complaint, the debt collector's response to the complaint, if any, and the current status of the complaint;

(ii) all disputes or requests for verification made by New York City consumers, identifying each consumer's name and account information, the date of the dispute or request for verification, and the date and type of response, if any, sent by the debt collector; and

(iii) all cease-and-desist requests made by New York City consumers, identifying the consumer's name and account information, the date of the request, and the date and purpose of any further contacts by the debt collector after receipt of the request from the consumer.

To comply with this subdivision, debt collectors may combine all the monthly logs or records into one document or record or use a template: "Report for Consumer Activity" as made available on the Department's website at www.nyc.gov/dcwp.

EFFECTIVE DATE: All new provisions contained in this rulemaking shall apply to debts charged-off on or after January 1, 2025, or for debts not charged off, the new provisions will apply to debts that defaulted on or after January 1, 2025.

Commented [DR50]: The industry requests a date certain that the revised rules take effect. Given the significant changes to the rules, we respectfully request that they be applied prospectively. To not apply the rules prospectively, will automatically place the industry in non-compliance (example: the log). The industry cannot be expected to know what new requirements a future regulatory change will require.

November 29, 2023

DCWP
42 Broadway
New York, NY 10004
Via email: rulecomments@dcwp.nyc.gov

Re: Proposed amendments to DCWP rules relating to debt collectors

On behalf of the American Financial Services Association ("AFSA"),[1] thank you for the opportunity to provide comments on the Department of Consumer and Worker Protection's ("DCWP") updated proposed amendments to its rules relating to debt collectors. We share DCWP's goal of promoting fair debt collection practices, and we appreciate DCWP's efforts to clarify the requirements and conform them with state and federal requirements. We appreciate DCWP's consideration of our previous comments, but we believe some further clarity is necessary to ensure the rules are clear for the sake of consumers and financial institutions alike.

Definition of "Debt Collector"

We appreciate DCWP's proposed amendments narrowing the definition of "debt collector" and clarifying the scope of the rules. Congress recognized in establishing the federal Fair Debt Collection Practices Act ("FDCPA"), that creditors "generally are restrained by the desire to protect their good will when collecting past due accounts," which distinguishes them from debt collectors who are "likely to have no future contact with the consumer and often are unconcerned with the consumer's opinion of them." Creditors inherently operate differently than debt buyers or third-party debt collectors, because most creditors originate their own accounts or acquire accounts shortly after origination and well before default. In contrast to third-party debt collectors or debt buyers that usually collect mature, static, full-account balances from consumers with whom they have no prior or ongoing relationship, creditors usually collect more recent installments from consumers with whom they have a long-term and continuous relationship and who (absent acceleration) may carry other (current) balances with the creditor. Unlike creditors, debt buyers and third-party debt collectors may operate with very limited information regarding the consumer or the account involved and must rely on the data and documentation provided by the original creditor. Creditors may continue to service an account when the consumer is past due, while debt buyers and third-party debt collectors solely engage in debt management or debt collection activities and are more likely to collect charged-off debts.

We applaud the proposed amendments that would bring the definition of debt collector more in line with the FDCPA and the New York State Department of Financial Services' ("DFS") regulations and believe several additional revisions could make this renewed scope even clearer. Specific clarification related to creditors' employees and to persons collecting debt that was not in default at the time it was obtained, both of which are present in the federal and state requirements, are missing from DCWP's proposed amended rules. Such clarification is necessary for the rules to clearly exclude creditors' employees from scope—as it would not make sense for creditors to be excluded from scope but not their employees—and to ensure that the rules reflect

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DCWP's intent. For these reasons, to align the rules with the federal and state definitions, we respectfully request that the rules be further clarified to amend the definition of "debt collector" in Section 5-76 of Part 6 of Subchapter A of Chapter 5 of Title 6 of the Rules of the City of New York to read:

> Debt collector. The term "debt collector" means any person engaged in any business the principal purpose of which is the collection of any debts or who regularly collects, or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due to another person. The term does not include:
> (1) any officer or employee of the United States, any State or any political subdivision of any State to the extent that collecting or attempting to collect any debt owed is in the performance of their official duties;
> (2) any person while engaged in performing an action required by law or regulation, or required by law or regulation in order to institute or pursue a legal remedy;
> (3) any individual employed by a nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors;
> (4) any individual employed by a utility regulated under the provisions of the Public Service Law, to the extent that New York Public Service Law or any regulation promulgated thereunder is inconsistent with this part;
> (5) any person while performing the activity of serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt, or serving, filing or conveying formal legal pleadings, discovery requests, judgments or other documents pursuant to the applicable rules of civil procedure, where such person is not a party, or providing legal representation to a party, to the action;
> (6) <u>any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor; or</u>
> (7) <u>any person collecting or attempting to collect any debt owed or due, or asserted to be owed or due to another, to the extent such debt collection activity:</u>
>
> <u>(A) Is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement;</u>
>
> <u>(B) Concerns a debt that such person originated;</u>
>
> <u>(C) Concerns a debt that was not in default at the time such person obtained it; or</u>
>
> <u>(D) Concerns a debt that such person obtained as a secured party in a commercial credit transaction involving the creditor.</u>

Each of these additions aligns with the FDCPA[1] and would support the DCWP's mission without excluding persons that are members of the debt collection industry. Collection agencies that regularly seek repayment on behalf of others, debt buyers that make a business out of purchasing charged off debt and debt collection, and 'persons' that receive accounts and intend to sue to collect, all would still be within scope of the proposed amendments because they would either

[1] See 15 U.S. Code § 1692a(6)(a) and 15 U.S. Code § 1692a(6)(f)

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have a "principal" business of debt collection and/or they would regularly collect on behalf of another. These slight amendments would ensure the focus is on those that make a business out of collecting debts, rather than entities that extend credit and seek repayment as part of their regular business.

Definition of "Debt"

Notwithstanding changes to "debt collector," the DCWP should also consider amending its current definition of "debt," which does not currently distinguish between "obligations" currently owed and those that are in default. Because it does not, the current definition risks the unintended consequence of bringing in businesses that merely seek repayment at point-of-sale for goods provided or services rendered.[2]

Further, if a debt collector has to send Validation Notices for accounts in good standing, consumers could be easily confused with the differing tones between the NYC Validation Notice and their monthly billing statements. Both sets of disclosures would itemize the balance, inform the consumer of their dispute rights, and provide other important account information. However, one would be speaking about the account as if it is in good standing (billing statements) while the other speaks as if the account is in debt collection (the Validation Notice).

Accordingly, we would also suggest that the DCWP revise its definition of "debt" to only focus on an "obligation or alleged obligation" that is alleged to be in default at the time the demand for payment is made.

Definition of "Itemization reference date"

Section 3 of the proposed rules would add a definition of "itemization reference date" that is limited to the date of the last written notification for open-end accounts and the date of last payment or written notification for closed-end accounts. We suggest providing additional flexibility within the definition by amending it to include the charge-off date for either open-end or closed-end accounts. This change would be consistent with federal requirements, which allow for the use of the charge-off date and relieve some of the compliance burden of the new rules, while still providing the consumer with substantially similar information to what is already proposed.

Communication Restrictions

Section 5-77(b)(1)(iv) limits communicating or attempting communication by any medium with a consumer with "excessive frequency," which is subsequently defined as more than three times

[2] Examples may include store clerks asking a customer to pay for goods, home service companies like plumbers or electricians that are following up with an invoice for services rendered, book or movie rental stores that seek payment when an item is returned, and the multitude of other businesses of all sizes making point-of-sale requests for repayment. Each employee employed by these 'persons' that ask consumers to pay, per their obligation, as part of a consumer transaction could be within scope.

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in a seven-day period, or once within that same period after having had an "interaction" with the consumer.

In finalizing Regulation F, the Consumer Financial Protection Bureau (CFPB) declined to implement a communication frequency limit for debt collectors and instead restricted only the frequency of calls. Under the final rule, there is a presumption of compliance when a debt collector places no more than seven calls within a seven-day period. *See* 12 C.F.R. § 1006.14(b)(2). In doing so, the CFPB recognized that mediums of communication such as text and email are not as disruptive or intrusive to consumers as calling. That is especially true when you consider Regulation F's rules requiring clear and conspicuous opt-out instructions in texts and emails and that any such opt-outs be honored. Given the less intrusive nature of digital communications, the fact that consumers can easily opt-out of any such communications, and the fact that more and more customers prefer to receive texts or emails rather than phone calls, we respectfully request that the communication frequency restriction be revised to align with Regulation F—*i.e.*, creating a presumption of compliance by placing no more than seven calls within a seven-day period without restrictions on other mediums of communication.

The frequency limit proposed in the rules is also particularly problematic in that it seemingly applies *per customer* rather than *per debt*. Thus, a debt collector acting on behalf of a creditor attempting to communicate with a consumer who has multiple delinquent accounts with that creditor would still be limited to a total of three attempts in a seven-day period despite that consumer owing more than one debt. Further complicating matters, if a debt collector holds multiple accounts for a single customer from multiple creditors, the proposed restrictions will almost certainly mean one creditor's accounts might not get an attempted collection communication for a week's time. Not only does this put debt collectors in a difficult position of trying to determine which client's accounts to prioritize, but it could force creditors to sue earlier in the default cycle because the chances of recovery diminish the longer a debt remains unpaid. Furthermore, in order to ensure compliance with the 3x7 rule per customer, it will require debt collectors to create a central repository to track the call attempts potentially putting each creditor's data at risk.

A per consumer rather than per debt limitation is also inconsistent with the CFPB's approach in Regulation F, which excludes creditors and applies the seven-call limit *per debt*. *See* 12 C.F.R. §1006.14(b)(2). For these reasons, we propose that the rules be amended to adopt Regulation F's approach to communication frequency limitations.

Validation Notice - TILA, FCBA, & Regulation Z

DCWP's proposed revisions to Section 5-77(1) should be amended further to require a validation notice to be sent within 5 days after the first initial communication that occurs after the institution of debt collection procedures. Alternatively, the DCWP could keep its current exemption under 5-77(f) for entities that must comply with both TILA and the Fair Credit Billing Act ("FCBA").

Under the current proposal, a Validation Notice must be sent within five days of the initial communication with a New York City consumer in connection with seeking repayment for any

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consumer transaction. This broad requirement could mean that notices must be sent within days of account statements required by federal law or within days of a new transaction on a revolving credit account. Further, the statements required by federal law detail much of the same information that is being required under the proposed Section 5-77(f), so consumers could be left to have to reconcile two sets of disclosures sent around the same time that detail the same account differently.

This concern is particularly apparent for the co-brand and private label credit card industry.[3] These credit cards are commonly offered by issuers who partner with specific retailers or merchants. Sometimes, those retailers and merchants help with account servicing and/or sending billing statements in support of the issuer's TILA and FCBA compliance obligations. In those scenarios, the merchant or retail partner is not exempt under the proposed Sections 5-76 and 5-77, so they could be required to send Validation Notices after each initial communication. Per the statements above, depending on how often the consumer uses their account and communicates with the retailer about their balance or account, the consumer could get voluminous disclosures from the retailer-partner on top of their monthly billing statements.

Simply put, if a retailer or merchant partner discloses much of the same information required by Section 5-77(f) via monthly account statements, they should not be subject to the Validation Notice requirements as well just because they are not the Regulation Z issuer. Otherwise, consumers would again have to reconcile both sets of disclosures to understand their account's status, which could be overwhelming and confusing.

Accordingly, we recommend the DCWP requires the Validation Notice to be sent only after institution of debt collection procedures, or it should keep the existing language in the rule that exempts persons that comply with and provide the disclosures required by TILA and the FCBA. Monthly billing statements often end after an account is accelerated and charged off, so either revision would be positive for the consumer without keeping from them any relevant account information.

Itemization Requirements - Regulation F

The proposed amendment to Section 5-77(f)(1)(viii) requires an itemization of the current amount of the debt overlaps and partially conflicts with existing itemization requirements under federal Regulation F. Some of the information in this new itemization will be duplicative of the Regulation F requirements and is likely to create confusion for consumers. Additionally, because the itemization also differs from the Regulation F requirements by requiring individual transactions to be itemized, it will necessitate debt collectors having to provide two separate itemizations to consumers, one to comply with Regulation F and another to comply with Section 5-77(f)(1)(viii). Regulation F creates a safe harbor when the model validation notice form is used, meaning debt collectors will be forced to use the existing model form, but then create

[3] Co-brand accounts are general use credit cards that offer unique incentives to partner retailers or merchants. Consumers with co-brand credit cards often take advantage of incentives by using their card to accrue points, which are usable at the partner retailer or merchant business. Private label credit cards are similar except they can only be used at or with that specific retail/merchant partner. Both types of cards often incentivize engagement with that specific partner-retailer or merchant.

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separate page(s) of itemization to meet these requirements, thus creating more documents for consumers to read and adding a layer of confusion to the process. Because Regulation F already provides adequate itemization to allow the customer to understand the amount of the debt owed, these additional itemization requirements should be eliminated or similarly provide a safe harbor for the use of Regulation F's model validation notice.

Thank you in advance for your consideration of our comments. If you have any questions or would like to discuss this further, please do not hesitate to contact me at 202-469-3181 or mkownacki@afsamail.org at your convenience.

Sincerely,

Matthew Kownacki
Director, State Research and Policy
American Financial Services Association

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November 29, 2023
Re: DCWP Proposed Amendments to Rules Relating to Debt Collectors

To: Department of Consumer and Worker Protection
Submitted via email: rulecomments@dcwp.nyc.gov

Comment to Proposed Amendment of Rules Relating to Debt Collectors

The Consumer Relations Consortium (CRC) is an organization comprised of more than 60 national companies representing creditors, data and technology providers, and compliance-oriented debt collectors that are larger market participants. Established in 2013, CRC is dedicated to a consumer-centric shift in the debt collection paradigm. It engages with all stakeholders—including consumer advocates, federal and state regulators, academic and industry thought leaders, creditors, and debt collectors—and challenges them to move beyond talking points. The CRC focuses on fashioning real-world solutions that seek to improve the consumer's experience during debt collection. CRC's collaborative and candid approach is unique in the market.

CRC members exert substantial positive impact in the consumer debt space, servicing the largest U.S. financial institutions and consumer lenders, major healthcare organizations, telecom providers, government entities, hospitality, utilities, and other creditors. CRC members engage in millions of compliant and consumer-centric interactions every month at all stages of the revenue cycle. Our members subscribe to the following core principle:

"Consumer protection and debt collection are not mutually exclusive ideas; they can, *and should,* co-exist."

We appreciate the opportunity to respond to the Notice of Public Hearing and Opportunity to Comment on the Amendment of Rules Related to Debt Collectors, dated September 30, 2023. As explained in the enclosed comment, the CRC is concerned that the DCWP's proposed rule will (a) create unnecessary consumer confusion, (b) unreasonably burden debt collectors with little to no countervailing benefit to consumers, and (c) create other negative unintended consequences. The CRC believes the Proposed Amendment must be significantly updated to avoid these consequences.

Sincerely,

Missy Meggison

Missy Meggison
Co-Executive Director, Consumer Relations Consortium

250 W 34th St, Suite 209 New York, New York, 10119

CONSUMER RELATIONS CONSORTIUM COMMENT RE:
PROPOSED AMENDMENT OF RULES RELATED TO DEBT COLLECTORS

The Consumer Relations Consortium is submitting its comments, feedback, and suggestions in response to the New York City Department of Consumer and Worker Protection's Proposed Amendment of Rules Related to Debt Collectors, dated September 30, 2023.

As explained in further detail below, the CRC's position is that, the proposed amendment will (a) create unnecessary consumer confusion, (b) unreasonably burden debt collectors with little to no benefit to consumers, and (c) create other negative unintended consequences for the following reasons:

1. The proposed validation notice requirements are inconsistent with federal disclosure requirements and will Create Consumer Confusion.

2. The new validation period calculation will create consumer confusion because it does not align with Regulation F. (Page 6)

3. Verification requirements under the proposed rule cannot be reconciled with regulation F and will confuse consumers. (Page 7)

4. The contact frequency rules are unclear and should be clarified to apply "per person, per account" to avoid inconsistency with federal law. (Page 8)

5. The proposed rule harms consumers by eliminating their ability to choose a communication preference. (Page 10)

6. The proposed rules regarding medical debt are unnecessarily onerous, overbroad, and place unreasonable burdens on debt collectors. (Page 13)

7. The proposed credit reporting notice imposes tremendous costs on the debt collection industry with little countervailing benefit to consumers. (Page 16)

8. The proposal's use of clarifying language creates unintended negative consequences. (Page 22)

Within this comment, the CRC has included suggestions for the DWCP to achieve its goals without creating additional confusion, hardships, and other negative consequences.

1. The New Validation Notice Requirements Are Inconsistent with Federal Disclosure Requirements and Will Create Consumer Confusion

The proposed update to § 5-77(f)(2) contemplates a significant overhaul of the information required to be included in the validation notice in a way that interferes and potentially contradicts

federal law and will likely cause consumer confusion. The proposed rule should be amended to reconcile the City requirements with federal law and to eliminate potential consumer misunderstanding. This can be accomplished in at least the following ways:

a. Allow the validation notice to be sent electronically.

The proposed rule currently states that the notice must be "written" and "sent by U.S. mail or delivery service." *See § 5-77(f)(2).* For the reasons discussed in greater detail in Sections 4 and 5 below, the proposed rule should be amended to relax the rules for communicating electronically to provide consumers with better control over selecting the mode of communication.

b. Remove the "natural person for the consumer to contact" requirement.

Section 5-77(f)(2)(iii) and (iv) require the validation notice to include "the name of a natural person for the consumer to contact" and a "telephone number that is answered by such natural person" This requirement is unclear. For example, is providing the name of the individual who works regular hours sufficient, even when that person may not be working at the time of a consumer's call? If the person is not available – not working that day, no longer employed, or occupied on another call, is it acceptable for the call to be answered by a different person, or is a voicemail box required for that specific individual? Does the telephone number need to be a direct line, as most frontline agents do not have specific direct lines? Can the disclosure also include alternative contact information, like either a specific individual or company email address?

In addition to the challenges such a requirement creates, this disclosure is also unnecessary, as it presupposes that there is a specific individual responsible for collecting a specific account. Collection agencies are not generally built that way however, accounts are worked by teams and any agent on that team answering a call would be equally available and knowledgeable to discuss an account with the consumer. Of Course, consumers can elect to ask for a specific agent to whom they have established a relationship, but including a specific name for a specific account at the

outset does not benefit consumers and actually makes it less likely a consumer will be able to communicate with a natural person when calling the debt collector because it contemplates only one person being available, when that person may not be available when the consumer calls. This requirement should be removed from the proposed rule.

c. Remove Dispute disclosure requirements or conform them to the FDCPA

The disclosure in § 5-77(f)(2)(v) creates irreconcilable conflict with the Fair Debt Collection Practices Act (FDCPA). For example, the disclosure requires the debt collector to tell the consumer "**There is no time limit to dispute the debt in collection.**" (emphasis in original). This disclosure directly contradicts the FDCPA, which requires the debt collector to provide a specific date by which the validation period will end. *12 C.F.R. § 1006.34(c)(3)(i)-(iii).* Simultaneously telling a consumer that a request for validation is required by a date certain while notifying the consumer that there "is no time limit to dispute the debt" provides a consumer with two different and contradictory pieces of information, creating a high likelihood of consumer confusion on the timing and manner in which they may dispute their debt.

Further, the disclosure in § 5-77(f)(2)(v) requires that consumers be told that the dispute can be done in "any of the ways they contact you, including by phone." This language contradicts the FDCPA, which requires the verification request to be done in writing to trigger validation rights. *Se 15 U.S.C. 1692g(a)(4).* Again, consumers are told conflicting information under the proposed rule, which is likely to cause consumers to unknowingly forgo their federal dispute rights by disputing their debts in ways that do not trigger federal verification obligations.

d. Remove subjective and vague itemization language requirements.

The itemization proposal in § 5-77(f)(2)(viii) also creates potential confusion and misunderstanding. The proposed rule says the itemization is to be done in a way that "allows the consumer to recognize the total amount of the outstanding debt as of the itemization reference

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date." Establishing a standard on what will "allow" a consumer to recognize the amount of the debt is too subjective and uncertain. This language should be removed.

e. Allow itemization from any of the Regulation F itemization dates.

The specific itemization breakdown contemplated by the proposed rule is confusing and unnecessary as a detailed itemization is already required by federal law. The proposed rule says the itemization needs to be tied to the "itemization reference date", a term specifically defined in § 5-76(3) to be only "the date of the last written notification sent to the consumer "on an open-ended credit account, or "the date of last payment…or the date of the last written notification sent to the consumer" for a closed-end account." This itemization period is artificially limited and contradicts with Regulation F, which allows for 1 of 5 different itemization dates.

The specific dates required by the proposed rule are not always available to debt collectors, making the proposed itemization impossible and requiring greater flexibility on available itemization dates. Moreover, the proposed rule creates a possible scenario when the itemization for Regulation F will be different than the itemization done for New York City. This will likely cause additional consumer confusion when consumers receive different itemization tables. The proposed rule should be modified to allow the itemization from any of the Regulation F itemization dates.

f. Modify itemization requirements to avoid consumer confusion and the unintended consequence of requiring debt collectors to provide legal advice.

The itemization contained within § 5-77(f)(2)(v)(B) includes the "date, amount, and description of each fee, payment, credit, or interest applied to the debt since the itemization reference date" This is an unworkable level of detail for an initial notice and outside the knowledge or obtainable by debt collectors. For example, how is a debt collector reasonably expected to know the date of each interest charge since the itemization reference date? To what level of specificity

is the "description" of each charge required? Is each payment required to be individually stated and include the manner of the payment for example? Rather than burying the consumer in excessive detail at the outset, the proposed rule should be modified to simply require the amounts of each fee, payment, credit and interest charge.

Similarly, including the "basis of the consumer's obligation to pay each separate charge, interest, or fee, including if allow by contract or by law" is burdensome. The proposed rule is not limited in time or scope, and suggests a legal determination is to be performed by the debt collector on what the creditor is charging a consumer. A debt collector should not be required to exercise legal judgment in sending the validation notice to each consumer. At a minimum, the proposed rule should be modified to allow that, if accurate, stating that each charge is allowed by the consumer's agreement with the creditor or the law satisfies this obligation. Otherwise, debt collectors are required to articulate the basis for a charge applied by the creditor by expressing a legal conclusion.

2. <u>The New Validation Period Calculation Will Create Consumer Confusion Because it does not align with Regulation F</u>

Section § 5-77(f)(4) of the proposed rule defines the validation period as extending "for 30 consecutive days from the date a consumer receives or is assumed to receive a validation notice." Though the proposal seems to track the Regulation F validation period calculation methodology, the proposed rule should be clarified that a debt collector satisfies the obligation of providing a validation period by giving the consumer a specific end date that is at least 5 days after sending of the validation notice plus 30 consecutive business days consistent with Regulation F. In other words, the debt collector can provide the consumer a date certain when the validation period will end, provided that date meets the 5 delivery day plus 30 day requirement.

The proposed rule should clarify that debt collectors can allow for a validation period beyond this time as well. Otherwise, the proposed rule potentially creates two different validation periods under federal and New York City law. As a result, the proposed rule should allow the debt collector to calculate and provide a specific validation period of 5 days for delivery plus at least 30 days like Regulation F so as not to have 2 different validation periods. Such a revision of the proposed rule will only increase consumer benefits with more time while removing potential confusion.

3. Verification Requirements Under the Proposed Rule Cannot be Reconciled with Regulation F and will Confuse Consumers

Section 5-77(f)(6) of the proposed rule allows a consumer to dispute the debt or make a request for verification "orally or in writing, or electronically if the debt collector uses electronic communication to collect debt, at any time during the period in which the debt collector owns or has the right to collect the debt."

This proposal requires amendment, as it directly contradicts the FDCPA. Regulation F requires the debt collector to specifically tell the consumer that a request for verification must be made within a specific time period and in writing. The proposed rule undermines this specific disclosure and will lead to consumer confusion as it is not possible to reconcile federal disclosures with the proposed rule in a non-misleading way. The proposed rule should be modified to require that a request for verification cannot be effectively made verbally (though most debt collectors will honor a verbal request) and that the request must be made within the validation period so as to remove any contradiction with the FDCPA disclosure.

The requirement that the debt collector "must treat a first dispute by the consumer as a request for verification of the debt" should be removed. This proposal conflates a dispute with a request for verification, and requiring the debt collector to respond to a dispute, standing alone,

with verification is unnecessary. If a consumer simply disputes the debt, but does not ask for, or even rejects a request by the debt collector to send validation, the debt collector should not be compelled to respond to that dispute with a non-responsive, non-requested, and potentially unwanted verification.

Similarly, the enhanced verification requirements in § 5-77(f)(6)(i)(A) – (C) should be revised. Rather than requiring items like the underlying contract, evidence that an "account was active", prior settlement agreements, and a final account statement, these items should be identified as suggested documents, not required. In other words, the proposed rule should be revised to say that "Verification of the debt means providing information reasonably necessary to demonstrate that the consumer's obligation to the creditor of the amount claimed due. This demonstration can be made by, among other documentation…." followed by § (A) - § (C). This revision will equitably balance the challenges debt collectors may face in timely obtaining and providing the required documentation to the consumer while providing the consumer sufficient detail to substantiate the debt.

4. **The Contact Frequency Rules are Unclear and Should be Clarified to Apply "Per Person, Per Account" to Avoid Inconsistency with Federal Law**

Section 5-77(b)(1)(iv) of the proposed rule prohibits a debt collector from communicating with a consumer with "excessive frequency[.]" The rule describes "excessive frequency" as any communication (by any means) that is more than three times in a seven-day period or after having already interacted with the consumer within the seven-day period. The language of the proposed rule, however, is ambiguous.

First, it is unclear whether the proposed 3-in-7 rule applies on a "per consumer" or "per account" basis, or both. On the one hand, the preamble of the provision characterizes the prohibited conduct on a per-account basis ("A debt collector, in connection with the collection of **a debt**,

must not . . ."). On the other hand, the provision defining the frequency limitation characterizes the prohibited conduct as more than three communications "with **a consumer**" in a seven-day period or after already having had an interaction "with **the consumer**." In its current form, the rule is confusing and makes compliance difficult.

Due to this ambiguity, the rule should be clarified to expressly address whether the proposed 3-in-7 rule should be applied on a per account or per consumer basis or both. The CRC recommends that the 3-in-7 rule should be applied on a per account, per person basis, which is consistent with the application of the 7-in-7 rule under Regulation F. The 3-in-7 rule already significantly limits reasonable communications with consumers beyond what is defined under Regulation F as it includes all methods of communication (including electronic communications) and decreases the overall number of contact attempts by more than 50% of what is allowed by federal law. If it were to be construed as applying on a "per consumer" basis, it would unnecessarily limit communication attempts even further and unduly constrain agencies from making reasonable attempts to collect on unpaid accounts. Providing for collections on a per-account basis acknowledges the reality that consumers often have more than one unpaid account owed at any given time and recognizes that the definition of consumer (including parents of a minor, guardians, executors, and spouses) makes it difficult to determine contacts by "consumer."

Second, the proposed rule prohibits communications after a collector has already "interacted" with a consumer but fails to define what constitutes an "interaction." An "interaction" should be defined to avoid confusion. Specifically, the proposed rule should define an "interaction" as a conversation with the consumer regarding the debt and expressly exclude passive interactions such as "opened" or "viewed" electronic communications, Limited Content Messages, and/or disconnected calls to be consistent with Regulation F.

The contact frequency restrictions in the proposed rules severely restrict a debt collector's ability to communicate with consumers. The Department should consider the potential negative impact on consumers resulting from a debt collector's inability to communicate with consumers. Absent a detailed empirical study on the impact to consumers on a debt collector's ability to communicate with consumers, the Department risks imposing severe burdens on consumers as the result of a debt collector's inability to communicate with them. The longer it takes for a debt collector to reach a consumer, the longer a legitimate debt remains outstanding, remains on a consumer's credit report, remains unresolved, and inhibits the consumer's ability to secure future credit.

5. <u>The Proposed Rule Harms Consumers by Eliminating Their Ability to Choose a Communication Preference</u>

Section 5-77(b)(i)(5) of the proposed rule states that a debt collector may communicate with a consumer by

> ". . .email address, text message number, social media account, or specific electronic medium of communication if:
>
> ***
>
> (B) the debt collector obtains revocable consent from the consumer in writing, given directly to the debt collector, to use such email address, text message number, social media account, or other electronic medium of communication to communicate about the debt, and the consumer has not since revoked the consent;"

This proposal contravenes consumer preference, imposes an undue and unreasonable burden on collection agencies, and effectively eliminates the ability to communicate with consumers in a way preferred by many consumers. The proposed rule should be modified for at least 3 reasons:

First, eliminating the concept of a "pass-through" consent for email interferes with the relationship between the consumer and the creditor. Federal law gives a debt collector "safe harbor" when a creditor passes an email address for a consumer to a debt collector. *See 12 C.F.R.*

1006.64(d)(4). A debt collector communicating with a consumer on behalf of a creditor should be permitted to communicate with that same consumer in the manner that the consumer elected, including email address supplied to the creditor. In fact, a consumer's expectations would be that the agency would honor the same preferred communication channel. Prohibiting a debt collector from communicating with a consumer at an email address that is supplied by a creditor starts the collection process off in an adversarial manner, as consumers are likely to be frustrated by the inability to communicate in their preferred manner, such as an email voluntarily provided to the creditor, and removes some consumer choice on how and when to engage with the debt collector.

Second, imposing an "in writing" obligation for obtaining direct consent is unnecessarily onerous – to consumers. Though the proposed rule contemplated obtaining an "electronic signature" (*see* § 5-77(b)(ii)), that electronic "written consent" requires first satisfying "all relevant state and federal laws and rules, including article three of the New York Technology Law…and Electronic Signatures in Global National Commerce Act" (E-SIGN Act). This proposed solution is too limited though, as often, consumers will request that debt collectors "send me an email" during a telephone call. Complying with state law and the E-SIGN Act, including providing required disclosures and system verification to satisfy the E-SIGN Act, cannot reasonably be done during the course of a telephone call. Further such a process is anachronistic as consumers expect to immediately receive responsive mail when requested and not need to go through an E-SIGN Act verification process to simply get details about their debt. The rule unnecessarily burdens consumers' ability to choose email as their preferred method of communication.

Third, consumers want to communicate in modern forms, like e-mail and text messages. In the Consumer Financial Protection Bureau's 2023 Consumer Credit Card Market Report, for example, the CFPB found, regarding email communications, that:

- creditors reported that consumers provided a valid email address and agreed to be contacted at that email address in 76 to 97 percent of cases; and
- the number of email eligible accounts rose from 68.3% in 2018 to 87.6% in 2022.

As it relates to text messages, the report noted that:

- text messaging as a "collection strategy has continued to increase since the CFPB began tracking this figure in 2017";
- "text engagement rates "showed a significant increase, with the engagement rate rising from 36.6 percent in 2020 to 57.7 percent in 2022";
- "the text opt-out rate is notably low, at 1.3%";
- There has been a shift in consumer behavior in the past few years, with more consumers engaging in collection communications via text."

Overall, the CFPB's report from this year shows that consumers prefer electronic communications and barriers to text and email communications should be removed, not added.

A consumer who agreed to be contacted by a creditor, and potentially a debt collector, is not without recourse. Federal law, like the proposed rule, gives consumers ultimate control over how debt collectors can communicate, requiring clear and conspicuous disclosure of a simple opt out process. *12 C.F.R. 1006.6(e).* Because of this, allowing consent to communicate by email to flow from creditor to debt collector maximizes consumer preferences. Additionally, other parts of the proposed rule, including contact frequency limits and opt-out rights, place sufficient guardrails that consumer preferences continue to be honored.

Based on this, the proposed rule should be amended to remove an obligation to obtain any type of consent from the consumer prior to communicating electronically. Alternatively, the proposed rule should be revised to harmonize the New York City rules with the Fair Debt Collection Practices Act and the Telephone Consumer Protection Act in the following ways:

i. Allow a debt collector to obtain consent to communicate with a consumer in their preferred channel by stating in (B) that "the debt collector obtains revocable consent from the consumer when an email address, text message number, social media account, or other electronic medium of communication to communicate about the debt is passed to the debt collector by the creditor;"

ii. Allow a debt collector to obtain consent from a consumer either in writing, electronically or verbally.

6. **The Proposed Rules Regarding Medical Debt are Unnecessarily Onerous, Overbroad, and Place Unreasonable Burdens on Debt Collectors.**

There are several added requirements pertaining to medical debt collection efforts. In general, the proposed rule contains requirements that are onerous, overly broad, and improperly places unreasonable burdens on third-party collectors.

First, the proposed rule broadly defines "medical debts" as any "health care services or medical products or devices." As drafted, the rule applies to all medical debts - whether medically necessary or elective. The disclosure and verification requirements are onerous and appear to be focused on providing consumers with information regarding financial aid. Purely elective procedures, products, and services should not be encompassed in the proposed rule. The CRC recommends revising the definition of "medical debts" under § 5-77(f)(10) and § 5-77(j)(1) to limit application to "**medically necessary** health care services, or medical products or devices."

Second, the proposed rule should provide a proscribed time limit for the verification period under § 5-77(f)(10)(i). (See comments regarding verification above, Section 3.)

Third, § 5-77(f)(10)(iii)(A) of the proposed rule requires "all unverified accounts related to a discrete hospitalization or treatment" within a 6-month period to be treated as disputed (whether or not the account was ever actually disputed). The language is vague and unclear

regarding what constitutes a "discrete" or "related" treatment. A patient's medical care from a given provider is generally continuous, and treatments are often related. It is unclear what it means here to be "related." Do physical therapy appointments relate to the underlying surgery? Is a prescription for a pain medication related to the surgery? Is a flu shot related to later treatment for a sore throat? The current definition leaves these questions unanswered. CRC recommends striking this provision to require consideration of the application of an "unverified" dispute on a per account basis.

Fourth, the proposed rule places an unreasonable and undue burden on the collection agency to determine and assess the legal obligations of a provider and the financial aid status of a consumer. § 5-77(f)(10)(ii) requires the collection agency to verify any consumer dispute regarding a medical debt "by responding to the specific issue disputed by the consumer" including any information "available to the debt collector required to be disclosed by federal, state, or local law, including the relevant financial assistance policy" (§ 5-77(f)(6)(i)). The language is ambiguous and lacks clarity as to what would be adequate to address the "specific" issue and what might be required under applicable law. Typically, medical debts are verified by providing a comprehensive "Explanation of Benefits" and, if applicable, directing the consumer to the creditor to apply for financial assistance. Accordingly, the language should be modified to state that collector may verify the dispute by providing an explanation of benefits addressing the disputed account and providing information to the consumer regarding how to contact the creditor to apply for financial assistance.

Likewise, the rule places an undue burden on the collector to verify information uniquely within the provider's possession. § 5-77(f)(10)(iv) and § 5-77(j) prohibit a debt collector from attempting to collect a medical debt if the collectors "knows or **should** know" that the medical provider failed to provide certain financial assistance information or rights to the consumer,

violated the law, made a misrepresentation to the consumer regarding financial assistance, or that a financial assistance application is pending. If the collector "obtains information" regarding any of the above failures, it must complete various "corrective measures" including notifying the provider within **one day**[1]; documenting all account notes; mailing the consumer a written notice; and providing information to any transferring entity. The collector is also prohibited from resuming collection efforts until it has "verified" that the provider has "met its obligations" under all applicable law and its financial assistance policy.

The above requirements improperly place the legal obligations of the provider to comply with applicable law and its own financial aid policy onto the debt collector. Even more troubling, the obligations placed on the debt collector are based on vague descriptions such as what the collector "should know," what "information was obtained" from the consumer, and "verifying" that the provider "met all appliable legal obligations." These expectations are vague, ambiguous, and logically unrealistic and suggest that a collection agency make legal determinations on the compliance efforts of its client. The information needed to assess a provider's compliance with applicable law and a consumer's financial status uniquely rests with the providers – not the collectors, which generally do not even have legal departments. As such, CRC recommends the following:

- § 5-77(f)(10)(iv) should be stricken. It is improper to place the provider's legal obligations on the collector. A collector should not be required to make a legal determination regarding whether a provider has complied with **all** applicable law or the provider's **own** financial aid policy – that is the provider's (and its counsel's) responsibility.

[1] Even if the other CRC recommendations are not incorporated into the final rule, the CRC requests that the time period for notifying the provider be extended to 10 business days. Only providing a single day for the debt collector to assess the information obtained, make a determination, and notify the provider is unrealistic and unduly burdensome.

- § 5-77(j)(1) should be revised to omit the words "should know" and read as follows: "if the debt collector has **actual knowledge** that:". This limits the onerous requirements under the "corrective measures" subdivision (j)(2) to the debt collector's actual knowledge of the provider's unlawful conduct under (j)(1).
- The "corrective measures" detailed under § 5-77(j)(2) should be revised to limit the collector's obligations. Specifically, the language should be limited to provide that if the consumer raises concerns regarding financial assistance, the collector will provide the consumer with contact information for the provider to inquire about financial assistance offerings. To place any additional burdens on the collector is misplaced and unrealistic. The information described is uniquely in the provider's possession – not the collector's and a consumer will likely be more comfortable providing such information to the provider – not the collector.

7. The Proposed Credit Reporting Notice Imposes Tremendous Cost on the Debt Collection Industry with Little Countervailing Benefit to Consumers.

The Department proposes to amend Title 6 of the Rules of the City of New York §5-77(e) to make unlawful the reporting of a consumer debt to a consumer reporting agency by a debt collector without first providing consumers notice that the debt will be reported to a consumer reporting agency. The relevant portion of the proposed rule states:

> **"§5-77. Unconscionable and Deceptive Trade Practices**
> It is an unconscionable and deceptive trade practice for a debt collector to attempt to collect a debt owed, due, or asserted to be owed or due except in accordance with the following rules:
> ***
> (10) furnishing to a consumer reporting agency, as defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. § 1681a(f)), information about a debt unless the debt collector has sent the consumer a validation notice pursuant to section 5-77(f) that states,

in a clear and conspicuous manner, that the debt will be reported to a consumer reporting agency and waited 14 consecutive days. During the waiting period, the debt collector must permit receipt of, and monitor for, notifications of undeliverability from communications providers. If the debt collector receives such notification during the waiting period, the debt collector must not furnish information about the debt to a consumer reporting agency until the debt collector satisfies this subdivision. If the debt collector previously furnished information to a consumer reporting agency, between January 1, 2021 and the effective date of the rule, and if the debt collector still has a right to collect on such debt, they must disclose in a validation notice to the consumer, by mail or delivery service within 5 days of the effective date of this rule, that the debt was furnished to a consumer reporting agency, unless such information was already disclosed, clearly and conspicuously, in a validation notice mailed by the debt collector to the consumer."

a. Consumers Benefit from Being Made Aware of Their Unpaid Debts

Lawmakers and regulators have recognized the benefits associated with notifying consumers of the existence of their debts prior to those debts being reported to a consumer reporting agency. *See*, *Cal. Civ. Code § 1785.26, Utah Code Ann. § 70C-7-107(2),* 15 U.S.C.S. § 1681s-2(a)(7), 12 CFR PART 1022 APPENDIX B. Recently, the Consumer Financial Protection Bureau promulgated Regulation F to implement the Fair Debt Collection Practices Act and addressed the need for consumers to be aware of their debts prior to a debt collector's reporting of that debt to a consumer reporting agency. *12 CFR 1006.30(a)(1)*. Since November 30, 2021, all debt collectors have been required to communicate with consumers about their debt(s) *prior* to furnishing information about that debt to a consumer reporting agency. *Id.*

The proposed rule is not inconsistent with similar laws and regulations throughout the country which require debt collectors to make consumers aware of their debts prior to credit reporting. Notifying consumers about their unpaid debts helps consumers make informed decisions about how best to address their financial obligations.

b. A 14 Day Waiting Period Is Consistent with Federal Law

The proposed rule imposes a 14-day waiting period following a debt collector's notice to a consumer before the collector may report the debt to a consumer reporting agency. This

requirement is consistent with federal law wherein Regulation F requires a debt collector to wait a "reasonable period of time" after providing notice to a consumer of the existence of their debt before a debt collector may communicate with a consumer reporting agency about the debt. *12 C.F.R. 1006.30(a)(1).* The Consumer Financial Protection Bureau has provided official commentary on the meaning of "reasonable period" to mean 14 days or more. *12 CFR Part 1006 Supplement I, Section 1006.30 Note 2. ("A period of 14 consecutive days after the date that the debt collector places a letter in the mail or sends an electronic message is a reasonable period of time.")* The proposed rule also obligates collectors to permit receipt of and monitor for notifications of undeliverability of their communications to consumers about their debts. Regulation F contains a similar requirement. 12 C.F.R. 1006.30(a)(1)(ii). The purpose of the waiting period and the post-notice undeliverability monitoring is to give assurance to a debt collector that the consumer received the collector's notification about the debt. These assurances have been in place, by rule, since November 30, 2021.

c. The Proposed Rule Imposes Costly Redisclosure Requirements on Debt Collectors

Without considering the disclosures already provided to consumers pursuant to Regulation F, the proposed rule would require debt collectors to unconditionally re-disclose to consumers certain information about the debt and provide *new* disclosures to consumers not previously required. Specifically, the proposed rule imposes an absolute prohibition on reporting any information to a consumer reporting agency unless:

> ". . .the debt collector has sent the consumer a validation notice pursuant to section 5-77(f) that states, in a clear and conspicuous manner, that the debt will be reported to a consumer reporting agency and waited 14 consecutive days."

The validation notice requirements in proposed section 5-77(f) contain all of the same requirements imposed on debt collectors under Regulation F, 12 C.F.R. 1006.34(c), plus new

disclosures. As proposed, the rule would require debt collectors to unnecessarily duplicate the Regulation F Validation Information previously sent to consumers. Importantly, the information contained in the duplicate disclosure will not be identical to the information contained in the consumer's original validation notice. Among other information, dispute deadlines will be different and the itemization table will be different (to reflect payments and credits since the previous correspondence). This duplicate – but substantively different – validation notice will lead to consumer confusion because the two validation notices received by the consumer will not contain identical information.

Proposed Section 5-77(f) also contains *additional* disclosure requirements not previously required. This means no debt collector will have satisfied the requirement to have provided notice pursuant to 5-77(f) prior to any future credit reporting. The impact of this proposal is to require all debt collectors to resend *duplicate* Regulation F disclosures to all consumers via a new validation notice along with the new disclosures required by proposed 5-77(f). Such a notice would restart the dispute period, rejuvenate dispute and verification rights, and effectively re-start the entire collection process - much to the confusion and detriment of consumers.

The cost associated with requiring all debt collectors to send a new written notice to all consumers far outweighs the benefit of providing duplicate (and inconsistent) disclosures to consumers. Today, it costs more than $0.60 (postage plus paper) to send a single piece of 1 oz correspondence through the U.S. Postal Service system. Debt collectors who are reporting tens (or hundreds) of thousands of debts to the consumer reporting agencies would be required by this proposed rule to spend hundreds of thousands (potentially *millions*) of dollars to re-send the written disclosures required by this proposal. For the reasons explained below, the rule does not allow debt collectors to satisfy these requirements electronically.

d. The Marginal Benefit of A New Validation Notice is Small Considering Its Similarity to the Validation Information Required by Regulation F.

The differences between the new validation notice required by proposed 5-77(f) and the Validation Information required by 12 C.F.R. 1006.34(c) are small. As proposed, the new validation notice required by 5-77(f) would contain all information required by Regulation F. *See, proposed 5-77(f)(1)(i).* In addition to the Validation Information required by Regulation F, the proposal would require debt collectors to provide consumers new disclosures of the following information:

- a license number, if applicable (proposed 5-77(f)(1)(ii))
- the name and telephone number of a natural person (proposed 5-77(f)(1)(iii) and (iv))
- a consumer disclosure (which is confusingly inconsistent with 12 C.F.R. 1006.34(c)(3)(i)) (proposed 5-77(f)(1)(v))
- a new itemization table (which is again confusingly inconsistent with 12 C.F.R 1006.34(c)(ii)(viii) (proposed 5-77(f)(viii))

The marginal benefit to consumers would merely be the difference between the disclosures they already received from a debt collector pursuant to Regulation F and the new disclosures required by the proposal. Based on the new content required by the proposal, consumers would benefit very little from this additional information on accounts for which they have already received the Validation Information under Regulation F. Relative to the tremendous cost of re-sending a new validation notice to consumers, the benefit to consumers remains small.

Before imposing the tremendous cost of re-disclosure on debt collectors, the Department should conduct a consumer focus group study to measure the impact of these additional disclosures on consumers. The combination of Regulation F disclosures, existing New York City disclosures, and now the additional disclosures required by this proposal may very well have the opposite impact on consumers – that they do not read any of them at all, or worse, that they read them but

end up confused because of the inconsistent information contained the original and subsequent validation notices.

e. The January 1, 2021 Condition in The Proposal Does Not Eliminate the Requirement to Duplicate the Validation Notice but Instead, Compounds the Burden

No debt collector will have satisfied the requirements of the first sentence of proposed 5-77(e)(10) upon the effective date of the rule because it requires debt collectors to provide new disclosures not previously required. For all debt collectors reporting to a consumer reporting agency after January 1, 2021, they too will be required to provide a new validation notice to consumers because no New York City rule previously required a debt collector to include in its validation notice a statement that "the debt was furnished to a consumer reporting agency." Thus, validation notices before and after January 2, 2021, did not contain such disclosure, and the proposal would impose this requirement. Instead of reducing the burden on debt collectors who reported after January 1, 2021 (all of which were required effective November 30, 2021 to provide all consumers with federally defined Validation Information), the proposal multiplies the burden by requiring the new disclosure to be provided to the consumer within 5 days of the effective date of the rule.

In addition to the tremendous cost associated with sending another piece of mail correspondence to consumers, the 5 day rule is not workable for debt collectors who may not have accurate contact information for consumers and whose credit reporting cycle falls within the 5 day period. The proposal also fails to acknowledge that some consumers may be represented by counsel and others may already be involved in civil litigation, yet the proposal compels direct communication with the consumer by a debt collector. This obligation conflicts with the federal law prohibition on communicating with a consumer known to be represented by counsel.

f. CRC Proposes Alternative Language Which Achieves the Department's Goal Without Imposing Tremendous Burden on Debt Collectors

It is possible to achieve the Department's goal of protecting consumers while at the same time avoiding unnecessary cost on debt collectors. The CRC proposes the following alternative language to proposed section 5-77(e)(10):

> **"§5-77. Unconscionable and Deceptive Trade Practices**
>
> It is an unconscionable and deceptive trade practice for a debt collector to attempt to collect a debt owed, due, or asserted to be owed or due except in accordance with the following rules:
> ***
>
> (10) furnishing to a consumer reporting agency, as defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. § 1681a(f)), information about a debt <u>not previously furnished by the debt collector</u> unless the debt collector has sent the consumer a validation notice pursuant to section 5-77(f) that states, in a clear and conspicuous manner, that the debt will be reported to a consumer reporting agency and waited 14 consecutive days. During the waiting period, the debt collector must permit receipt of, and monitor for, notifications of undeliverability from communications providers. If the debt collector receives such notification during the waiting period, the debt collector must not furnish information about the debt to a consumer reporting agency until the debt collector satisfies this subdivision. ~~If the debt collector previously furnished information to a consumer reporting agency, between January 1, 2021 and the effective date of the rule, and if the debt collector still has a right to collect on such debt, they must disclose in a validation notice to the consumer, by mail or delivery service within 5 days of the effective date of this rule, that the debt was furnished to a consumer reporting agency, unless such information was already disclosed, clearly and conspicuously, in a validation notice mailed by the debt collector to the consumer~~."

This proposal imposes the new disclosure requirements prospectively, protecting all consumers about which a debt collector may communicate with a consumer reporting agency while simultaneously avoiding the unnecessary and costly expense to duplicating confusing consumer disclosures.

8. <u>The Proposal's Use of Clarifying Language Creates Unintended Negative Consequences</u>

a. The Proposal Rule Now Distinguishes Between "Consumer" And "New York City Consumer" Without Defining the Latter

For the first time in its rules for debt collectors, the Department uses the phrase "New York City" to modify the term "consumer" in several places throughout the proposal. Yet, the proposal

does not define the new term "New York City consumer" and does not explain how that term means something different than the defined term, "consumer." *See, 6 RCNY 5-76.* Although it may seem intuitive, the use of modifying language "New York City" to describe consumers effectively changes the definition of the unmodified term "consumer" throughout the City's rules. These terms cannot mean the same thing; else it would be superfluous to modify the term "consumer" with the phrase "New York City." *See 6 RCNY 5-76.* The Department's introduction of the phrase "New York City" to modify the term "consumer" may appear to serve as an attempt at linguistic precision, but could lead to unintended or confused interpretations of the rules if not used consistently (or otherwise specifically defined).

The proposal uses both terms "New York City consumer" and "consumer" throughout, but not interchangeably. For example, under proposed section 5-77(e)(6) a debt collector may not, after the institution of debt collection procedures, communicate with a New York City consumer without disclosing the debt collector's name. Does this mean debt collectors are not required to disclose their name *unless* they are communicating with a New York City consumer? What if the debt collector is communication only with a "consumer" and not a "New York City consumer?" Is disclosure of the collector's name required by the proposal when communicating only with a "consumer?"

A second example of how inconsistent use of these two terms leads to anomalous results can be found in proposed section 5-77(f)(2)(i) Delivery of Validation Notices. This section requires a debt collector to:

> ". . .deliver written disclosures under (f)(1) of this section in the following manner:
> (i) a debt collector must deliver to consumers validation notices and the itemization of the debt by U.S. Mail or delivery service."

However, the disclosure requirements described in the newly proposed section (f)(1) do not apply to *all consumers* but instead apply only to "New York City consumers," to wit:

> *"Validation Notice*. Within five days after the initial communication with a *New York City consumer* in connection with the collection of any debt, a debt collector must send the consumer a written notice. . . "

(Emphasis added.) The difference in these two terms creates an internal inconsistency in the rule resulting in confusion about which consumers should be receiving disclosures – all consumers, or only New York City consumers? If these terms mean the same thing, then the proposal should not use different language. Again, in proposed rule 5-77(f)(6), this section requires debt collectors to provide verification only to "New York City consumers" in the first sentence, but refers only to "the consumer" throughout the remainder of the paragraph.

b. CRC Proposes to Edit The Definition Of "Consumer" to Include A Reference To "New York City" And Then Eliminate All References to "New York City" Throughout The Proposal.

If the terms "consumer" and "New York City consumer" mean the same thing throughout the proposal, then clarity can be achieved by editing the definition of "consumer" to include "New York City consumer" instead of using the modifying language "New York City" ad hoc throughout the proposal. The current definition of "consumer" under the rules is:

> "Consumer. The term "consumer" means any natural person obligated or allegedly obligated to pay any debt." *6 RCNY 5-76.*

CRC proposes to edit this definition as follows:

"Consumer. The term "consumer" means any natural person, residing in New York City, obligated or allegedly obligated to pay any debt.

By adding the language, "residing in New York City," to the definition of "consumer," the rules make clear that each time the word "consumer" is used throughout the rules, it means a New York City consumer. This language solves the problem of inconsistent use of the two terms and eliminates the possibility that those terms might have different meanings.

c. The Proposed Rule Now Prohibits Electronic Communications From Being "Writings"

Proposed section 5-77(b)(4)(i) now removes the possibility that an electronic communication may satisfy the obligation to do something "in writing." The proposed section states in part:

> "(b) **Communication in connection with debt collection.** A debt collector, in connection with the collection of a debt, must not:
>
> ***
> (4) Communicate with a consumer with respect to a debt if the consumer has notified the debt collector that the consumer wishes the debt collector to cease further communication with the consumer with respect to that debt. . . .The debt collector may, however:
>
> (i) Communicate with the consumer once in writing or by electronic means:
> 1. to advise the consumer that . . ."

(Emphasis added.) This section effectively, albeit unintentionally, changes the meaning of "in writing" throughout the entirety of section 5-77 by adding the language "or by electronic means" after the phrase "in writing." The language creates *two* methods of communicating with consumers under this section, the first method is "in writing" and the second "by electronic means." Communicating with a consumer "in writing" must necessarily exclude communicating with the consumer "by electronic means" else there would be no need to add this language i.e. the added language would be superfluous. Under the proposed language, "writings" necessarily exclude electronic communications.

The impact of this language is to change the meaning of "in writing" *everywhere else* the phrase "in writing" is used to exclude the possibility that "in writing" could also be electronic. If the phrase "in writing" is to bear the same meaning throughout the rules, then anything that must be done "in writing" elsewhere in the rules may not be done electronically. For example, consistent interpretation of "in writing" would prohibit a consumer from providing revocable consent via email, or through a web site, or via a text message under proposed section 5-77(b)(5)(i)(B) ("the

debt collector obtains revocable consent from the consumer *in writing. . .").* This result is hardly consistent with the subject matter of proposed sections 5-77(b)(5)(i)(B) and (C) which specifically contemplate a consumer's use of electronic mail, text messaging, and social media to communicate with a debt collector.

A more significant example of the unintended impact of excluding electronic communications from the meaning of "in writing" is found in section 5-77(f)(1)(iii) wherein the rule describes how a consumer may exercise their rights to dispute a debt by notifying "the debt collector *in writing* within the thirty-day period . . ." If "in writing" excludes electronic communications, then consumers cannot exercise their rights under 5-77(f)(1)(iii) via email, text message, social media, or any other form of communication fairly considered to be "electronic" in nature. This is not how the rules operated prior to this proposal and not likely the intended consequence of adding the otherwise benign "or by electronic means" to the end of section 5-77(b)(4)(i).

d. CRC Proposes to Eliminate The Words "or by electronic means" to Proposed Section 5-77(b)(4)(i) To Avoid Confusion About The Meaning of "in writing."

Elimination of the words "or by electronic means" in proposed section 5-77(b)(4)(i) avoids confusion about the meaning of the phrase "in writing." CRC proposes to remove that language from the proposal as follows:

> (i) Communicate with the consumer once in writing ~~or by electronic means~~:
> 2. to advise the consumer that . . ."

Community Service Society

Powering a more equitable New York

Testimony on the New York City Department of Consumer and Worker Protection Proposed Rules Relating to Debt Collectors

November 29, 2023

The Community Service Society of New York (CSS) would like to thank the Department of Consumer and Worker Protection (DCWP) for the opportunity to comment on the proposed amendments to its rules relating to debt collectors. CSS is a 175-year-old non-profit dedicated to fighting poverty and improving the lives of working New Yorkers. Our health programs help New Yorkers enroll into health insurance coverage, find health care if they are ineligible or cannot afford coverage, and help them use their coverage or otherwise access the healthcare system. We do this through a live-answer helpline and through our partnerships with over 50 community-based organizations working in every county of New York State. Annually, CSS and its partners serve approximately 130,000 New Yorkers, saving them over $80 million in healthcare costs.

The Burden of Medical Debt in New York

Nationally, medical debt has a disproportionate impact on low-income people and people of color. In 2021, the Journal of the American Medical Association published an analysis of the medical debt of nearly 40 million unique individuals. The researchers found that medical debt predominately impacts patients who live in low-income zip codes.[1] In 2022, the federal Consumer Financial Protection Bureau (CFPB) issued an analysis that describes how $88 billion of medical debt accounts for 58 percent of all consumer debt. The CFPB study also found that Black and Hispanic people and low-income people of all races and ethnicities are more likely to have medical debt than the national average.[2]

In New York, over 740,000 New Yorkers have medical debt according to the Urban Institute.[3] Medical debt is a serious problem for many New Yorkers. The Urban researchers found that within each region, people of color and people living in households with lower median incomes disproportionately experienced medical debt.[4] While an average of 3.8

percent of New York City residents overall have medical debt, some low-income neighborhoods around the city have much higher levels: up to 7.2 percent in areas of the Bronx, 4.4 percent in Northern Manhattan, and 5.4 percent in parts of Brooklyn.[5]

The Urban Institute study of medical debt in New York determined that medical debt appears to be correlated with hospital litigation hotspots identified by CSS.[6] A related study determined that 73 percent of adults with medical debt owed some or all of that debt to hospitals—providing further evidence that hospital debt collection practices are largely responsible for New Yorkers' medical debt burdens.[7]

A 2022 PerryUndem survey funded by the Robert Wood Johnson Foundation found that 53 percent of New Yorkers say they are not confident they can afford routine health care, and 70 percent are not confident they can afford costs related to a major illness.[8] The survey found that 38 percent of respondents said they or a family member avoid medical care because they are afraid of bills. Thirty-four percent said they are facing financial hardships because of medical debt, including being put into collections, using up their savings, or being unable to pay for basic necessities. The survey also showed that the medical billing system can be error-prone and stressful for patients. Almost a third (31%) said they had questioned or appealed a health care bill and 20 percent said they paid a bill they thought they did not owe because they were afraid of being sued or harassed for not paying.

CSS administers Community Health Advocates (CHA), New York's consumer health assistance program. In 2019, CHA staff identified a 64 percent increase in the number of consumers asking for help with medical debt.

In an effort to learn more about consumer experiences with medical debt in New York, CSS researchers pulled and reviewed a random sample of court records of hospital lawsuits against patients between 2015 to 2022. This research resulted in a series of six *Discharged into Debt* reports. CSS research has determined that a relatively small number of hospitals were responsible for more than 75,000 lawsuits against patients. The random sample of cases found that almost all cases were won on default; lawsuits disproportionately affected low-income communities and communities of color; and hospitals were placing liens on patient homes and garnishing wages of patients with low-wage jobs.[9]

New York's Hospital Financial Assistance Law (HFAL) requires non-profit hospitals to provide discounts to patients with incomes below 300 percent of the federal poverty level (FPL).[10] Internal Revenue Service (IRS) regulations require non-profit hospitals to make reasonable efforts to determine whether a patient is eligible for HFA before taking any extraordinary collection actions, including lawsuits.[11] The majority of patients who had been

sued lived in zip codes where the median income is below 300 percent FPL, suggesting that many New York nonprofit hospitals failed to screen these patients for eligibility for hospital financial assistance.[12] None of the thousands of court files reviewed for the reports indicated that the patient being sued had been evaluated for hospital financial assistance eligibility and found ineligible in advance of being sued.[13]

CSS has also published three reports studying New York hospitals' compliance with the 2007 HFAL. These reports found that hospitals continue to fail to comply with the HFAL, despite state guidance and an annual compliance audit conducted for the State Department of Health.[14]

Proposed Rule Amendments

CSS lauds DCWP for proposing amendments to the rule that will significantly increase consumer protections relating to debt collection. CSS's testimony will focus on the amendments relating to collection of medical debt.

§ 5-77. Unconscionable and Deceptive Trade Practices

In §5-77(f)(2)(v), DCWP proposes language for a notice of consumer rights to be included in all validation notices. The proposed notice language includes the following information for consumers with medical debt:

> You may qualify for financial assistance with medical debt. If you have a low or limited income, ask the collector or the hospital if you qualify for help under the "Financial Assistance Policy."

CSS supports this proposed language, which will provide critical information for consumers with medical debt. These notices are an important opportunity to educate patients about their potential eligibility for financial assistance when hospitals fail to inform them. As described above, in CSS's review of thousands of court files from cases in which a hospital sued a patient for medical debt, not one pleading stated that the patient had been screened and found ineligible for hospital financial assistance prior to undertaking suing the patient.

Patients who ask for CHA's help with hospitals bills in collection often say that they were not told about hospital financial assistance until they spoke to a CHA Advocate. CSS has documented hospitals' failure to comply with state and federal requirements in three reports.[15] In 2012, CSS searched hospital websites, sent letters to hospitals, and wrote to the state hospital association in an attempt to obtain financial assistance applications, summaries, and policies. Ten percent of hospitals failed to provide any information about their financial

assistance policies.[16] A 2012 requirement from the State Department of Health that hospitals post these materials on their websites has made the materials somewhat more available to patients, but many hospitals in New York City still do not post their financial assistance applications and policies on their websites.[17]

The proposed language could be even stronger. If a hospital has referred a bill to a debt collector, the debt collector would not be able to determine whether the patient qualified for hospital financial assistance. Instead of saying "ask the collector or the hospital if you qualify for help," it would be better to say, "ask the collector or the hospital to assist you with filling out a hospital financial assistance application."

In §5-77(f)(10), the proposed rules require that debt collectors treat any statement by a consumer that a medical debt should have been covered by insurance, a third-party payer, or financial assistance, or that the debt resulted from a lack of price transparency or a violation of federal, state, or local law as a dispute and a request for verification. It requires the collector to treat all accounts related to a discrete hospitalization the same as the disputed bill, note in all related accounts that the patient has disputed the bill, and furnish the consumer verification on each related medical debt. Additionally, it requires the debt collector to verify that the covered medical entity has met its obligations under federal, state, and local law and the facility's financial assistance policy.

CSS supports this proposed amendment. In its review of court filings related to medical debt lawsuits, CSS found that many of the patients who responded to the lawsuits said that they had not paid the bill in dispute because they thought that their insurance had covered it. Medical providers and insurance carriers frequently take months to resolve billing disputes, and patients are often left in the dark about the outcome. This provision will protect patients who are not responsible for a bill. Moreover, the requirement that bill collectors verify that the medical provider has complied with federal, state, and local law and the provider's financial assistance policy will ensure that eligible patients are screened for financial assistance before being penalized with collection actions.

In §5-77(j), the proposed amendments prohibit a debt collector from collecting a medical debt if the debt collector knows or should know that: collecting would violate federal, state, or local law or the provider's financial assistance policy; the patient has an open application for financial assistance; the patient should have been provided financial assistance for all or part of the debt; or a misrepresentation was made to the patient about their eligibility for financial assistance. A debt collector would be required to take reasonable corrective measures, including informing the provider that placed the debt that the debt might be subject to the financial assistance policy or a violation of law. The debt collector would be

required to add a statement that "A FINANCIAL ASSISTANCE POLICY MAY APPLY TO THIS MEDICAL DEBT" in the patient's accounts, notify the patient in writing by mail or delivery service, and notifying any receiving party. Finally, the debt collector would be required to provide disclosure to the consumer about the financial assistance policy clearly and conspicuously in written communication by mail or delivery service.

CSS supports this provision. As stated above, consumers with medical debt that has been submitted for collections or a lawsuit frequently say that they were unaware that hospitals are required to provide hospital financial assistance to low-income patients. This provision would ensure that eligible patients are able to apply for financial assistance and receive relief from burdensome medical debt. CSS also supports extending this provision to include situations in which the collector knows or should know that the consumer has an ongoing insurance appeal.

Finally, CSS supports requiring debt collectors to include information about hospital financial assistance in all communications with consumers, not just with validation notices. Debt collectors should also be required to tell consumers about financial assistance when a consumer says that they are unable to pay the bill, even if the consumer does not ask about financial assistance.

Hospital-specific requirements

CSS applauds DCWP for including medical providers other than hospitals in its medical debt consumer protections. However, state and federal law impose a higher level of responsibility on hospitals than other providers to ensure that financial assistance eligible patients are not subject to extraordinary collections actions. As described above, New York's Hospital Financial Assistance Law requires non-profit hospitals to provide discounts to eligible patients.[18] IRS regulations implementing a provision of the Affordable Care Act require non-profit hospitals to make reasonable efforts to determine whether a patient is eligible for HFA before taking any extraordinary collection actions.[19]

Accordingly, CSS urges DCWP to add a section to the rules specifying that a hospital may not engage in extraordinary collection actions or refer a medical debt to a debt collector without first making an affirmative determination that the patient does not qualify for hospital financial assistance. Hospitals can approve a patient for financial assistance in three ways: (1) processing an financial assistance application from the patient; (2) using credit scoring software or other methods to determine a patient's income; or (3) accepting the income determination made by the New York State of Health website when a patient applies

for coverage through the marketplace.[20] A hospital may not deny a patient hospital financial assistance, however, based on factors other than an application.[21]

Thank you again for providing this opportunity to testify and your consideration of our concerns. Please contact Carrie Tracy (ctracy@cssny.org) with any questions.

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[1] Raymond Kluender et al, "Medical Debt in the US, 2009-2020," Journal of the American Medical Association, 2021, pages 250-256.
[2] Consumer Financial Protection Bureau, "Medical Debt Burden in the United States," February 2022.
[3] Michael Karpman, Fredric Blavin, Dulce Gonzalez, Jennifer Andre, Breno Braga, "Medical Debt in New York State and Its Unequal Burden across Communities," July 2023, page 11.
[4] Id. at vi.
[5] Id. at 3, 13.
[6] Jennifer Andre, Michael Karpman, Fredric Blavin, Dulce Gonzalez, and Breno Braga "Medical Debt in New York State: Estimates for Large Cities and Towns, State Legislative Districts, Congressional Districts, and Other Geographic Areas," October 2023.
[7] Michael Karpman, Most Adults with Past-Due Medical Debt Owe Money to Hospitals, March 2023, https://www.urban.org/sites/default/files/2023-03/Most%20Adults%20with%20Past-Due%20Medical%20Debt%20Owe%20Money%20to%20Hospitals_0.pdf.
[8] Robert Wood Johnson Foundation, "How New Yorkers Feel about Affordability and Healthcare Reform: Results from a Statewide Survey," March 2022, https://www.rwjf.org/en/library/research/2021/11/healthcare-affordability-majority-of-adults-support-significant-changes-to-the-health-system.html.
[9] Amanda Dunker and Elisabeth Benjamin, "Discharged into Debt: New York's Nonprofit Hospitals are Suing Patients," March 2020; Amanda Dunker and Elisabeth Benjamin, "How Structural Inequalities in New York's Health Care System Exacerbate Health Disparities During the COVID-19 Pandemic: A Call for Equitable Reform," June 2020; Amanda Dunker and Elisabeth Benjamin, "Discharged Into Debt: A Pandemic Update," January 2021; "Discharged Into Debt: Medical Debt and Racial Disparities in Albany County," March 2021; Elisabeth Benjamin and Amanda Dunker, "Discharged into Debt: Nonprofit Hospitals File Liens on Patients' Homes," November 2021; Amanda Dunker and Elisabeth Benjamin, Amanda Dunker and Elisabeth Benjamin, "Discharged into Debt: New York's Nonprofit Hospitals Garnish Patients' Wages," July 2022; Elisabeth Benjamin and Amanda Dunker, "Discharged Into Debt: Hospital Profile - Upstate University Hospital," December 2022.
[10] N.Y. Pub. Health L. Section 2807-k(9-a)(a).
[11] 26 CFR § 1.501(r)-6, https://www.irs.gov/charities-non-profits/billing-and-collections-section-501r6.
[12] Elisabeth Benjamin and Amanda Dunker, "Discharged into Debt: Nonprofit Hospitals File Liens on Patients' Homes," November 2021; Amanda Dunker and Elisabeth Benjamin, "Discharged into Debt: New York's Nonprofit Hospitals Garnish Patients' Wages," July 2022.
[13] Amanda Dunker and Elisabeth Benjamin, "Discharged into Debt: New York's Nonprofit Hospitals Garnish Patients' Wages," July 2022.
[14] Elisabeth Ryden Benjamin, Arianne Slagle, Carrie Tracy, "Incentivizing Patient Financial Assistance: How to Fix New York's Hospital Indigent Care Program," January 2012; Carrie Tracy, Elisabeth Benjamin, Amanda Dunker, " Unintended Consequences - How New York State patients and safety-net hospitals are short changed," January 2018; Amanda Dunker and Carrie Tracy, "An Ounce of Prevention: Reforming the Hospital Financial Assistance Law Could Save Pounds of Patient Debt," April 2023.

[15] Elisabeth Ryden Benjamin, Arianne Slagle, Carrie Tracy, "Incentivizing Patient Financial Assistance: How to Fix New York's Hospital Indigent Care Program," January 2012; Carrie Tracy, Elisabeth Benjamin, Amanda Dunker, " Unintended Consequences - How New York State patients and safety-net hospitals are short changed," January 2018; Amanda Dunker and Carrie Tracy, "An Ounce of Prevention: Reforming the Hospital Financial Assistance Law Could Save Pounds of Patient Debt," April 2023.
[16] Elisabeth Ryden Benjamin, Arianne Slagle, Carrie Tracy, "Incentivizing Patient Financial Assistance: How to Fix New York's Hospital Indigent Care Program," January 2012, page 7.
[17] *See, e.g.,* SUNY Downstate website https://www.downstate.edu/patient-care/patient-family-support/insurance-billing/index.html; NYC H+H website, https://www.nychealthandhospitals.org/financial-assistance/; Calvary Hospital website, https://www.calvaryhospital.org/.
[18] N.Y. Pub. Health L. Section 2807-k(9-a)(a).
[19] 26 CFR § 1.501(r)-6, https://www.irs.gov/charities-non-profits/billing-and-collections-section-501r6.
[20] Letter from James W. Clyne, Jr., Deputy Commissioner, Office of Health Systems Management, New York State Department of Health, May 11, 2009, page 2.
[21] Letter from James W. Clyne, Jr., Deputy Commissioner, Office of Health Systems Management, New York State Department of Health, May 11, 2009, page 2. "As another strategy for reducing or eliminating documentation, hospitals may use credit scoring software for purposes of establishing income eligibility and approving financial assistance, but only if the hospital makes clear to patients that social security numbers are helpful but not mandatory, and the scoring does not negatively impact the patient's FICO. Credit scoring software cannot be used to deny applications for financial aid, and language referring to credit scoring should not appear on financial assistance applications."

November 28, 2023

DCWP Committee

I look forward to speaking with your team at the upcoming November 29th hearing. In anticipation of this meeting, I would like to share my thoughts on the proposed amendment to the New York City Rules of Debt Collection.

I have owned a debt collection agency in New York State for almost three years. Previously, my background was healthcare. My 18 years in healthcare was spent at the bedside as a pediatric nurse and post-anesthesia recovery room nurse, in information technology as an instructional designer and bedside workflow "translator," and as an IT project director. As I have moved farther from the bedside, my goal has always been to have a positive impact on the patient experience.

As an agency owner who supports small healthcare businesses and consumers in healthcare, my focus continues to be on the patient experience. Themes such as information sharing, respectful communication, and access to quality care are discussions I have on a regular basis through the organizations I participate in. As a member of ACA International, New York State Collector's Association, HFMA, and local chambers of commerce in my area, I have the opportunity to discuss collections with collection agency owners, small business owners, patients, and more. There is a resounding theme that I hear; rules and regulations that make it easy for a patient or consumer to not pay their bill ultimately harms those who access care. Collections has the responsibility and ability to both hold patients accountable to pay their bills and provide options to allow them to do so with dignity and compassion.

There are many rules for debt collection now that have attempted to create a balance between collecting with respect and dignity and allowing healthcare and other businesses get paid for their work. Many of these rules, like Regulation F, have not been implemented for enough time to see the long term impact.

I am hoping the DCWP considers the following when amending the Rules;

1. Regulation F statistics are just beginning to be available. Early data shows a decrease in CFPB complaints. Our industry and consumers need time for data to be collected and reviewed; time ensures agencies can develop respectful collections within those regulations.
2. Rules at multiple levels (federal, state, municipality) that are in conflict create confusion for consumers and those trying to serve them. It may also lead to businesses within those conflicting areas to have less access to collection support or higher costs of services due to the increased costs of meeting unique regulations in said areas.
3. Rules that make it harder for businesses to recover payment for goods and services provided makes it hard to stay in business. This may decrease their employee numbers, decrease services offered, cause them to leave the area, decrease overall consumerism in their area, and more. This ultimately hurts consumers by decreasing their access and options.

I thank the DCWP for their work and desire to advocate for consumers and patients. I look forward to discussing ways we can improve the quality of service in collections without creating new consumer disparities.

Please reference the attached suggested revisions.

Respectfully,
Katie Borchers, RN

Owner President, Beyond Green Solutions, LLC

Vice President, New York State Collectors Association

NEW YORK CITY
DEPARTMENT OF CONSUMER & WORKER PROTECTION
PROPOSED AMENDMENTS TO ITS DEBT COLLECTION RULES

Proposed Rule Amendments

Section 1. Section 2-191 Disclosure of Consumer's Legal Rights Regarding the Effect of the Statute of Limitations on Debt Payment, Subchapter S of Chapter 2 of Title 6 of the Rules of the City of New York, is repealed in its entirety.

Section 2. Section 2-193 of Subchapter S of Chapter 2 of Title 6 of the Rules of the City of New York is amended to read as follows:

§ 2-193. Records to be Maintained by Debt Collection Agency

(a) Unless otherwise prohibited by federal, state or local law, a debt collection agency [shall] must maintain a separate file for each debt that the debt collection agency attempts to collect from each New York City consumer, in a manner that is searchable or retrievable by the name, address and zip code of the consumer, and by the creditor who originated the debt the agency is seeking to collect. The debt collection agency [~~shall~~] must maintain in each debt file the following records to document its collection activities with respect to each consumer:

(1) A copy of all communications ~~and attempted communications~~ [~~or exchanges~~] with the consumer.

(2) A record of each payment received from the consumer that states the date of receipt, the method of payment and the debt to which the payment was applied.

(3) A copy of the debt payment schedule and/or settlement agreement reached with the consumer to pay the debt.

(4) With regard to any debt that the debt collection agency has purchased, a record of the name

Commented [DR1]: The industry would request the deletion of the phrase "attempted communications." The DCWP indicated that one of the reasons for proposing amendments to the existing rule is to come into alignment with Regulation F (Reg F) that was promulgated by the federal Consumer Financial Protection Bureau (CFPB) in 2021. There is no similar record keeping requirement in Reg F that requires the recording of attempted communications in a formal log. Systems of record would often have an entry of attempts but not in the complicated methodology being proposed. No other jurisdiction in the nation has a similar requirement. All references to this phraseology have been deleted in this proposed redline.

and address of the entity from which the debt collection agency purchased the debt, the date of the purchase and the amount of the debt at the time of such purchase.

(5) Any other records that are evidence of compliance or noncompliance with subchapter 30 of chapter 2 of title 20 of the Administrative Code and any rule promulgated thereunder, and of part 6 of subchapter A of chapter 5 of title 6 of the Rules of the City of New York.

(6) A log, account notes or record of all communications ~~and attempted communications~~ by any medium between a debt collection agency and a New York City consumer in connection with the collection of a debt. A communication that results in a busy signal, does not go through, or was made to a wrong number or address that is not affiliated with the consumer or the consumer's family is not required to be maintained in the log. For each communication ~~and attempted communication~~, the log, account notes or record must identify in a manner that is searchable and easily identifiable, the following:

(i) the date~~,~~ and the time ~~and duration~~ of the communication ~~or attempted communication, if applicable~~;

(ii) the medium of communication ~~or attempted communication~~; and

(iii) the names ~~and contact information~~ of the persons involved in the communication~~.; and~~

~~(iv) a contemporaneous summary in plain language of the communication or attempted communication.~~

(b) A debt collection agency [~~shall~~] must maintain the following records to document its collection activities with respect to all New York City consumers from whom it seeks to collect a debt:[~~(1) A monthly log of all calls made to consumers, listing the date, time and duration of each call, the number called and the name of the person reached during the call~~]

(1) Monthly logs or a record, in a form and format designated by the Commissioner, of the following:

(i) all complaints which were received by a debt collection agency that were filed by New York City consumers against the debt collection agency, including those filed with the agency directly or with any not-for-profit entity or governmental agency, identifying for each complaint the date, the consumer's name and account information, the source of the complaint, a summary of the consumer's complaint, the debt collection agency's response to the complaint, if any, and the current status of the complaint;

(ii) all written disputes or requests for verification made by New York City consumers, identifying each consumer's name and account information, the date of the dispute or request for verification, and the date and type of response, if any, sent by the debt collection agency; and

(iii) all written cease-and-desist requests made by New York City consumers, identifying the consumer's name and account information, the date of the request, and the date and purpose of any further contacts by the debt collection agency after receipt of the request from the consumer.

(2) Recordings of [~~complete conversations~~] all telephone ~~communications~~ conversations, including limited content messages, with all New York City consumers or with a randomly selected sample of at least 5% of all calls made or received by the debt collection agency or a third party on its behalf [~~and a copy of contemporaneous notes of all conversations with consumers~~]. The

Commented [DR2]: If the consumer has no ability to know an attempted communication was made because it did not go through or went to a wrong number or address, what would be the purpose of putting it in the log?

This language is consistent with exceptions contained in Regulation F and the newly adopted District of Columbia debt collection law.

Commented [DR3]: The word "duration" as this data element does not provide any benefit to the consumer and is a data element that cannot be maintained in the case of written communications.

Commented [DR4]: The deletion of the phrase "and a contemporaneous summary of the communication" as the requirement "to maintain a copy of all communications" in paragraph (1) above is sufficient.

Commented [DR5]: Debt collection agencies need to have received the complaint in order to be compliant with this paragraph. The way it reads right now, if a consumer filed a complaint with a non-profit or governmental entity but that complaint was never forwarded to the collection agency, the agency would be in violation for not maintaining it.

Commented [DR6]: The industry would respectfully request that disputes and cease and desist requests be in writing for this information to be included in the log. The intent of what is said in verbal communications can sometimes be subjective and result in different understandings between the two parties.

For example, if a consumer says in response to a request for a payment "yeah right" is that a complaint, dispute, request for verification, or a cease and desist request? Some might say yes and some might say no. Another example, could be when a consumer says "I thought that was paid" but then realizes it was not paid and pays the debt over the phone. Again, some might say "yes" and some might say "no" as to whether it would be applicable.

There tends to be no confusion when it is in writing.

Commented [DR7]: Given that written electronic communications can be received on telephones, it would be more appropriate to use the word "conversations" rather than "communications" in the context of making a recording.

method used for randomly selecting the recorded calls [~~shall~~] must be [~~included in the file where the tape recordings are~~] maintained by the debt collection agency and a record in each consumer's account must identify the calls by date and time recorded, and any third party assigned to handle such calls. If a debt collection agency elects to record a randomly-selected sample of at least 5% of all calls made or received by the debt collection agency, it must maintain a record of the total number of calls made or received on a monthly basis and the total number of such recorded calls. If the debt collection agency owns or has the right to collect on a debt before it refers such a debt to a third party to handle collections calls with consumers, the debt collection agency must ensure that:

(i) The third party complies with this section and the licensing rules and laws pertaining to debt collection in the City of New York; and

(ii) The third-party audio recordings are available upon request by the Department to the debt collection agency.

(3) A record of all cases filed in court to collect a debt. Such record [~~shall~~] must include, for each case filed, the name of the consumer, the identity of the ~~originating~~ original creditor, the amount claimed to be due, the [~~civil court~~] index number and the court and county where the case is filed, the date the case was filed, [~~the name of the process server who served process on the consumer, the date, location and method of service of process, the affidavit of service that was filed and~~] the disposition for each case filed, including whether a judgment was rendered on default or on the merits of the action. Such record [~~shall~~] must be filed in a manner that is searchable or retrievable by the name, address and zip code of the consumer and the creditors who originated the debts that the debt collection agency is seeking to collect.

(4) The original copy of each contract with a process server for the service of process, and copies of all documents involving traverse hearings relating to cases filed by or on behalf of the debt collection agency. Such records should be filed in a manner that is searchable by the name of the process server.

(5) A record indicating the language preference of the consumer, except where the debt collector is not aware of such preference despite reasonable attempts to obtain it.

(6) When provided, ~~A~~a record indicating which medium(s) of electronic communication are permitted or not permitted by each consumer ~~and, if known, the consumer's preferred medium of communication~~ in connection with the collection of a debt.

(7) A record of information on debt furnished to a consumer reporting agency, including the date the debt collection agency notified the consumer about the debt before furnishing information to the credit bureau on that debt and the period of time it waited to receive a notice of undeliverability.

(8) A record of any notice of unverified debt issued in accordance with section 5-77(f)(7) or received by the debt collection agency, including any such notice received from the consumer.

(c) A debt collection agency [~~shall~~] must maintain the following records relating to its operations and practices:

(1) A copy of all actions, proceedings or investigations by government agencies that resulted in the revocation or suspension of a license, the imposition of fines or restitution, a voluntary settlement, a court order, a criminal guilty plea or a conviction.

Commented [DR8]: This rule uses the term "original creditor" and the term "originating creditor" interchangeably. Given that the State of New York and the Department of Financial Services uses the term "original creditor" we would request consistency of use. We have changed all seven references of "originating" creditor to "original" creditor.

Commented [DR9]: This sentence is overly confusing. It starts by stating a record of permitted and not permitted mediums of communications should be recorded. That should be sufficient to accomplish what DCWP is seeking. But then it goes on to require "preferred medium of communication." Presumably if they have permitted the medium, it is a preferred medium? We recommend streamlining the sentence for clarity.

(2) A copy of all [~~policies,~~] training materials, manuals, and guides for employees or agents that direct, describe, suggest or promote how a collector is to interact with consumers in the course of seeking to collect a debt.

(3) An annual report, in a form made publicly available on the Department's website, identifying, by language, (i) the number of consumer accounts on which an employee collected or attempted to collect a debt owed or due or asserted to be owed or due [~~in a language other than English~~]; and (ii) the number of employees that collected or attempted to collect on such accounts [~~in a language other than English~~].

(4) A copy of all policies addressing the collection of time-barred debts.

(5) A copy of all policies addressing the verification of debts.

(6) A copy of all policies addressing the furnishing of information concerning consumer debt to credit reporting bureaus.

(7) If collecting medical debt on behalf of a covered medical entity, ~~A~~a copy of all policies addressing hospital financial assistance programs related to medical debt.

(d) The records required to be maintained pursuant to this section [~~shall~~] must be retained for [~~six years from the date the record was created by the debt collection agency, a document was obtained or received by the debt collection agency, a document was filed in a court action by the debt collection agency, or a training manual or employee guide was superseded, except that recordings of conversations with consumers shall be retained for one year after the date of the last conversation recorded on each completed recording tape~~] the following periods of time:

(1) For records required to be maintained pursuant to subdivisions (a) and (b) of this section, excluding recordings of calls with consumers, until three years after the date of the debt collection agency's last collection activity on the debt.

(2) For recordings of calls with consumers, until three years after the date of the call.

(3) For records required to be maintained pursuant to subdivision (c) of this section, until six years after the date the record was created.

Section 3. Section 5-76 of Part 6 of Subchapter A of Chapter 5 of Title 6 of the Rules of the City of New York is amended by adding the following definitions in alphabetical order:

~~**Attempted communication.** The term "attempted communication" means any act to initiate a communication or other contact about a debt with any person through any medium, including by soliciting a response from such person. An act to initiate a communication or other contact about a debt is an attempted communication regardless of whether the attempt, if successful, would be a communication that conveys information regarding a debt directly or indirectly to any person. A limited-content message is an attempted communication.~~

Clear and conspicuous. The term "clear and conspicuous" means readily understandable. In the case of written and electronic record disclosures, a clear and conspicuous statement, representation or element being disclosed is of such location, size, color and contrast to be readily noticeable and legible to consumers. In the case of oral disclosures, a clear and conspicuous disclosure is given at a volume and speed sufficient for a consumer to hear and comprehend it.

Commented [DR10]: "Debt" is not furnished, "information" is.

Commented [DR11]: Many debt collectors do not collect medical debt. If a debt collector does not collect this asset class, they should not be required to maintain policies addressing hospital financial assistance programs.

Commented [DR12]: Given that communications related to legal proceedings are covered by the court system, if this provision remains, the industry would respectfully request that these communications be excluded from the definition of legal proceedings. A sentence could be added that reads: "Communications related to legal proceedings shall not be considered an attempted communication."

Commented [DR13]: The industry would respectfully request that some reasonable exceptions be permitted. The industry is concerned that certain required disclosures that are required by the federal and state level have already filled up available space on the first page of communications. As such, we can envision a scenario where a clear and conspicuous notice will have to be addressed on another page in the document because to display it on the first page would prevent us from complying with the federal and state requirements for what needs to be on the first page.

In any clear and conspicuous disclosure, any required modifications, explanations or clarifications to other information are presented in close proximity to the information being modified, in a manner so as to be readily noticed and understood, provided that the disclosures may be on another page. Hyperlinks in electronic communications related to modifications, explanations or clarifications are permitted.

Covered medical entity. The term "covered medical entity" means a health care entity that is tax-exempt under federal or New York State law or qualifies for distributions from the Indigent Care Pool from the State of New York or any other such fund or distribution allocated to reduce the charges of medical services by granting financial assistance, through a financial assistance policy, to patients based on need or an inability to pay.

Electronic communication. The term "electronic communication" means communication by electronic means including, but not limited to, electronic mail, a text message, or instant message, rather than oral communication in person or by telephone, or hard copy communication by mail.

Electronic record. The term "electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

Financial assistance policy. The term "financial assistance policy" means a program to reduce or eliminate charges for medical services provided which was established by a nonprofit hospital or health care provider.

Itemization reference date. The term "itemization reference date" means any one of the following dates: (1) The last statement date, which is the date of the last periodic statement or written account statement or invoice provided to the consumer by a creditor; (2) The charge-off date, which is the date the debt was charged off; (3) The last payment date, which is the date the last payment was applied to the debt; (4) The transaction date, which is the date of the transaction that gave rise to the debt; or (5) The judgment date, which is the date of a final court judgment that determines the amount of the debt owed by the consumer.~~on revolving or open-end credit accounts, the date of the last written notification sent to the consumer which lists the total amount of the outstanding debt asserted to be owed by the consumer on or before the charge-off date of the debt; or (2) on closed-end accounts, either the date of the last payment, if such date is available, or the date of the last written notification sent to the consumer which lists the total amount of the outstanding debt asserted to be owed by the consumer on or before the charge-off date of the debt.~~

Language access services. The term "language access services" means any service made available by a debt collector to consumers in a language other than English. Language access services include, but are not limited to, the use of:

(1) collection letters using a language other than English;

(2) customer service representatives who collect or attempt to collect debt in a language other than English;

(3) a translation service for the collector's website or for written communications; and

(4) a service that interprets phone conversations in real time.

Limited-content message. The term "limited-content message" means an attempt to communicate with a consumer by leaving a voicemail message that includes all of the following

Commented [DR14]: We strongly urge the DCPW to modify its definition of the itemization reference date to reflect the language used by the federal government in their definition contained in Regulation F -- 12 CFR Part 1006.34(b)(3).

Using the charge off balance and charge off date as the standard for itemization is consistent with what the CFPB (Regulation F) and other states, such as California (Cal. Civ. Code § 1788.52), Colorado (CO Rev Stat § 5-16-111), and Maine (Title 32, Chapter 109-A, Subchapter 2 of Maine Revised Statutes), have codified. In New York State itself, in its court rules and affidavits for default judgment applications in consumer credit matters (located at https://www.nycourts.gov/LegacyPDFS/rules/ccr/AO_185.14.pdf), the date and amount of the charge off balance is required. In addition, under the New York Consumer Credit Fairness Act (Senate Bill 153) that took effect in 2022, itemization is required of the total amount of the debt due as of the charge-off.

Creating a new and unnecessary standard will only confuse NYC consumers and the business community.

content, which may include other content allowed by federal law, and that includes no other content:

(1) A business name for the debt collector that does not indicate that the debt collector is in the debt collection business;

(2) A request that the consumer reply to the message;

(3) The name of the natural person whom the consumer can contact to reply to the debt collector; and

(4) A call-back telephone number that is answered by a natural person.

Medical debt. The term "medical debt" means an obligation or alleged obligation of a consumer to pay any amount whatsoever related to the receipt of health care services, products or devices provided to a person by a hospital licensed under article twenty-eight of the New York Public Health Law, a health care professional authorized under title eight of the New York Education Law, or an ambulance service certified under article thirty of the New York Public Health Law. Medical debt does not include debt charged to a credit card.

Original creditor and originating creditor. The terms "original creditor" or "originating creditor" means the financial institution that owned the consumer credit account at the time the account was charged off, even if that financial institution did not originate the account. ~~any person, firm, corporation, or organization who originated the debt, including by extending credit and creating the debt.~~

Section 4. The definitions for "Communication" and "Debt collector" in Section 5-76 of Part 6 of Subchapter A of Chapter 5 of Title 6 of the Rules of the City of New York are amended to read as follows:

Communication. The term "communication" means the conveying of information regarding a debt directly or indirectly to any person through any medium, including by electronic means. The term communication excludes a limited-content message.

Debt collector. The term "debt collector" means [~~an individual who, as part of his or her job, regularly collects or seeks to collect a debt owed or due or alleged to be owed or due~~] any person engaged in any business with the principal purpose of which is the collection of any debts or who regularly collects, or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due to another person. The term does not include:

(1) any officer or employee of the United States, any State or any political subdivision of any State to the extent that collecting or attempting to collect any debt owed is in the performance of [~~his or her~~] their official duties;

(2) any person while engaged in performing an action required by law or regulation, or required by law or regulation in order to institute or pursue a legal remedy;

(3) any individual employed by a nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors; [~~or~~]

(4) any individual employed by a utility regulated under the provisions of the Public Service Law,

Commented [DR15]: This change is necessary to clarify that medical debt is not debt charged to a credit card. There is current legislation pending the Governor's signature that clarifies same. Delaware also recently passed legislation which clarified that credit card accounts are not in scope for medical debt.

Commented [DR16]: The industry would request that the definition of "original creditor" that both DFS and DCWP use is the definition adopted in state law in CPLR 105(q-1) in 2021 which reads:

"Original creditor means the financial institution that owned the consumer credit account at the time the account was charged off, even if that financial institution did not originate the account."

to the extent that New York Public Service Law or any regulation promulgated thereunder is inconsistent with this part; ~~or~~

(5) any person while performing the activity of serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt, or serving, filing or conveying formal legal pleadings, discovery requests, judgments, or other documents pursuant to the applicable rules of civil procedure, where such person is not a party, or providing legal representation to a party, to the action; ~~.~~

(6) any communication, letters, pleadings, or other correspondence that are delivered by an attorney licensed within the State of New York while performing their duties as an officer of the court during the pendency of an active court matter that is overseen and supervised by the New York State Unified Court System; or

(7) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor.

Where a provision of this part limits the number of times an action may be taken by the debt collector, or establishes as a prerequisite to taking an action that the debt collector has received or done something, or prohibits an action if the debt collector has knowledge of or reason to know something, the term "debt collector" includes any debt collector employed by the same employer.

Section 5. Section 5-77 of Part 6 of Subchapter A of Chapter 5 of Title 6 of the Rules of the City of New York is amended to read as follows:

§ 5-77. Unconscionable and Deceptive Trade Practices.

It is an unconscionable and deceptive trade practice for a debt collector to attempt to collect a debt owed, due, or asserted to be owed or due except in accordance with the following rules:

(a) ***Acquisition of location information***. Any debt collector communicating with any person other than the New York City consumer for the purpose of acquiring location information about the consumer in order to collect a debt[~~, after the institution of debt collection procedures shall~~] must:

(1) identify [~~himself or herself~~] themselves, state that [~~he or she is~~] they are confirming or correcting location information about the consumer and identify [~~his or her employer~~] the debt collector on whose behalf they are communicating when that identification connotes debt collection only if expressly requested;

(2) not state or imply that such consumer owes any debt;

(3) not communicate more than once, unless requested to do so by such person or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information, in which case the debt collector may communicate one additional time; for the purposes of this paragraph (3), the debt collector need not count as a communication returned unopened mail, an undelivered email message, or a message left with a party other than the person the debt collector is attempting to reach in order to acquire location information about the consumer, as long as the message is limited to a telephone number, the name of the debt collector and a request that the person sought telephone the debt collector;

Commented [DR17]: The industry requests a limited carve out for attorneys to permit licensed attorneys the ability to practice law without creating potential conflicts with the proposed regulations. Please see the New York State Creditors Bar Associations memo for additional explanation.

Commented [DR18]: This is intended to mitigate the risk that employees of the original creditor could be exposed personally under the current definition.

(4) not use any language or symbol on any envelope or in the contents of any communication effected by the mail or a delivery service that indicates that the debt collector is in the debt collection business or that the communication relates to the collection of a debt; provided that a debt collector may use [~~his or her~~] their business name or the name of a department within [~~his or her~~] their organization as long as any name used does not connote debt collection; and

(5) if the debt collector knows the consumer is represented by an attorney with regard to the subject debt and if the debt collector has knowledge of the attorney's name and address or can readily ascertain such attorney's name and address, not communicate with any person other than that attorney for the purpose of acquiring location information about the consumer unless the attorney fails to provide the consumer's location within a reasonable period of time after a request for the consumer's location from the debt collector and:

(i) informs the debt collector that [~~he or she~~] the attorney is not authorized to accept process for the consumer; or

(ii) fails to respond to the debt collector's inquiry about the attorney's authority to accept process within a reasonable period of time after the inquiry.

[~~The employer of a debt collector may not be held liable in any action brought under § 5-77(a)(3) or (5) if the employer shows by a preponderance of the evidence that the violation was not intentional and resulted despite the maintenance or procedures reasonably adapted to avoid any such violation.~~] The employer of a debt collector may not be held liable in any action brought under § 5-77(a)(3) or (5) if the employer shows by a preponderance of the evidence that the violation was not intentional and resulted despite the maintenance or procedures reasonably adapted to avoid any such violation.

(b) ***Communication in connection with debt collection***. A debt collector, in connection with the collection of a debt, [~~shall~~] must not:

(1) [~~After institution of debt collection procedures, without~~] Without the prior written or orally recorded consent of the New York City consumer given directly to the debt collector [~~after the institution of debt collection procedures~~], or without permission of a court of competent jurisdiction, [~~communicate with the consumer in connection with the collection of any debt;~~] engage in any of the following conduct:

(i) communicate or attempt to communicate with the consumer at any unusual time or place known, or which should be known, to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating or attempting to communicate with a consumer is after 8 a.m.[~~o'clock ante meridian~~] and before 9 p.m.[~~o'clock post meridian time~~] ~~at the consumer's location~~ in the eastern time zone;

(ii) except for any communication that is required by law, communicate or attempt to communicate directly with the consumer if the debt collector knows the consumer is represented by an attorney with respect to such debt and if the debt collector has knowledge of the attorney's name and address or can readily ascertain such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer[~~, except any communication which is required by law or chosen from among alternatives of which one is required by law is not hereby prohibited~~];

Commented [DR19]: The industry requests the restoration of the bona fide error defense. It is consistent with the FDCPA which DCWP indicates it wishes to seek. An inadvertent clerical error should not lead to liability, especially if such error has not harmed the consumer or can be easily corrected with no harm to the consumer.

Commented [DR20]: An orally recorded conversation where the consumer grants consent should hold the same level of integrity and legitimacy as a written document.

The proposed rule seems to have contradictory provisions as consumer instructions provided over the phone are permitted in some circumstances while prohibited in other places?

Commented [DR21]: A clarification is needed in this paragraph as consumers could leave New York City and the eastern time zone for vacation or work unbeknownst to the debt collector.

(iii) knowingly communicate or attempt to communicate with the consumer at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer or supervisor prohibits the consumer [~~from receiving~~] to receive such a communication; or

(iv) [~~with excessive frequency. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that more than twice during a seven-calendar-day period is excessively frequent. In making its calculation, the debt collector need not include any communication between a consumer and the debt collector which is in response to an oral or written communication from the consumer, or returned unopened mail, or a message left with a party other than one who is responsible for the debt as long as the message is limited to a telephone number, the name of the debt collector and a request that one who is responsible for the debt telephone the debt collector; or any communication which is required by law or chosen from among alternatives of which one is required by law~~] communicate or attempt to communicate, including by leaving limited- content messages, with the consumer with excessive frequency. Excessive frequency means any communication or attempted communication by the debt collector with a consumer in violation of 12 CFR Part 1006.14.

~~(A) Excessive frequency means either 1) any communication or attempted communication by the debt collector with a consumer, by any medium of communication or in person, in connection with the collection of debt more than three times during a seven-consecutive-calendar-day period, or 2) after already having had an interaction with the consumer within such seven-consecutive-calendar-day period.~~

~~(B) The date of the first day of such a seven-consecutive-calendar-day period is the day of the first such communication or attempted communication. Communication or attempted communication between a consumer and the debt collector that is initiated by or at the request of a consumer; in response to a communication from the consumer in the same email thread or live chat; not connected to the dialed number, returned mail or a bounced email; or required by law shall not be included in the calculation of excessively frequent communications.~~

~~(C) Any communication or attempted communication made by a person pursuant to the rules of civil procedure, such as serving, filing, or conveying formal legal pleadings, discovery requests, depositions, court conferences, communications with the consumer's attorney on a pending legal matter, or ordered by the New York State Unified Court System, shall not be included in the calculation of excessively frequent communications. Traditional debt-collection activities, such as sending a consumer a collection letter or placing a call, or using any other means, to contact the consumer to collect on debt, count toward the calculation of excessively frequent communications in section 5-77 (b)(1)(iv)(A).~~

[~~The employer of a debt collector may not be held liable in any action brought under 6 RCNY § 5-77(b)(1)(ii)-(iv) if the employer shows by a preponderance of the evidence that the violation was not intentional and resulted despite maintenance of procedures reasonably adapted to avoid any such violation~~] The employer of a debt collector may not be held liable in any action brought under 6 RCNY § 5- 77(b)(1)(ii)-(iv) if the employer shows by a preponderance of the evidence that the violation was not intentional and resulted despite maintenance of procedures reasonably adapted to avoid any such violation.

For the purpose of paragraph (1) of this subdivision, the term "consumer" includes the consumer's parent (if the consumer is a minor), guardian, executor, administrator, or spouse (unless the debt collector knows ~~or should know~~ that the consumer is legally separated from or no longer living with their spouse).

Commented [DR22]: Given the majority of consumers have dropped land lines in favor of cell phones, it is not possible to definitively know where the consumer is at any given time. The way this is drafted if one call's a cell phone and the consumer is at work, the collection agency is in violation of this provision. An easy way to solve the problem is by adding the word "knowingly." If a consumer tells a debt collector that they are always at work between 3pm-9pm and they are not permitted to receive calls, then the debt collector has been put on notice not to call during those hours.

Additionally, if a consumer provides the debt collector with their work number as the "best" or "preferred" number to be contacted but fails to mention that it is a work number, how would a debt collector know that they contacted a consumer at work?

Commented [DR23]: The industry would strongly recommend that New York City use the same requirement for "excessive frequency" as the federal government who spent almost a decade in the development of their requirements which are contained in Regulation F -- 12 CFR Part 1006.14. The industry would like to avoid confusion and accidental errors., given that most debt collectors operate regionally or nationally and must manage accounts in multiple states.

Commented [DR24]: The industry requests the restoration of the bona fide error defense. It is consistent with the FDCPA which DCWP indicates it wishes to seek. An inadvertent clerical error should not lead to liability, especially if such error has not harmed the consumer or can be easily corrected with no harm to the consumer.

Commented [DR25]: There is no way that a debt collection agency "should know" a consumer is legally separated or no longer lives with their spouse unless someone tells them. We respectfully request the deletion of this language.

(2) [~~In order to collect a debt, and except as provided by 6 RCNY § 5-77(a)~~] Except if otherwise permitted by law, communicate about a debt with any person other than the consumer who is obligated or allegedly obligated to pay the debt, [~~his or her~~] the consumer's attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, a debt collector to whom [~~or to whose employer~~] the debt has been assigned for collection[~~, a creditor who assigned the debt for collection,~~] or the attorney of that debt collector[~~, or the attorney for that debt collector's employer,~~] without the prior written or orally recorded consent of the consumer or their attorney given directly to the debt collector [~~after the institution of debt collection procedures, or without the prior written consent of the consumer's attorney~~], or without the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy.

(3) Communicate with any person other than [~~the consumer's attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, a debt collector to whom or to whose employer the debt has been assigned for collection, a creditor who assigned the debt for collection, or the attorney of that debt collector or the attorney for that debt collector's employer~~] those persons enumerated in paragraph (2) of this subdivision in a manner which would violate any provision of [~~this part~~] paragraph (1) of this subdivision if such person were a consumer.

(4) [~~After institution of debt collection procedures, communicate~~] Communicate with a consumer with respect to a debt if the consumer has notified the debt collector [~~in writing~~] in writing or the debt collector has an orally recorded conversation that the consumer wishes the debt collector to cease further communication with the consumer with respect to that debt, except [~~that~~] for any communication which is required by law [~~or chosen from among alternatives of which one is required by law is not hereby prohibited~~]. The debt collector shall have a reasonable period of time following receipt by the debt collector of the notification to comply with a consumer's request[~~, except that any debt collector who knows or has reason to know of the consumer's notification and who causes further communication shall have violated this provision~~]. The debt collector may, however:

(i) communicate with the consumer once in writing or by electronic means:

(A) to advise the consumer that the debt collector's further efforts are being terminated; or[~~:~~]

(B) [~~to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or;~~

(C) ~~where applicable~~] to the extent such notice was not previously provided, to notify the consumer that the debt collector or creditor intends to invoke a specific remedy, if it[~~that~~] is a remedy [~~he is~~]they are legally entitled to invoke and [~~if he~~] they actually [~~intends~~] intend to invoke it; and

(ii) respond to each subsequent [~~oral or written~~] communication from the consumer.

(5) [~~For the purpose of 6 RCNY § 5-77(b)(1)-(4), the term "consumer" includes the consumer's parent (if the consumer is a minor), guardian, executor, administrator, spouse (unless the debt collector knows or has reason to know that the consumer is legally separated from or no longer living with his or her spouse), or an individual authorized by the consumer to make purchases against the account which is the subject of the collection efforts. A request that the debt collector~~

Commented [DR26]: An orally recorded conversation where the consumer grants consent should hold the same level of integrity and legitimacy as a written document.

The proposed rule seems to have contradictory provisions as consumer instructions provided over the phone are permitted in some circumstances while prohibited in other places?

Commented [DR27]: While a written document would be clearer and remove any ambiguity that may come through an oral conversation, an orally recorded conversation would at least provide the opportunity to review the conversation to discern intent.

Phone calls could involve vague language such as "I really don't like getting these calls." Does that count? What if they say "stop calling me" to start the conversation but then agrees to set up a payment plan?

The proposed rule seems to have contradictory provisions as consumer instructions provided over the phone are permitted in some circumstances while prohibited in other places?

~~cease further communication, provided for under 6 RCNY § 5-77(b)(4), if made by the consumer's spouse or an individual authorized by the consumer to make purchases against the account, only affects the debt collector's ability to communicate further with the person making the request~~]Contact a New York City consumer by electronic communication unless the debt collector satisfies the following requirements:

(i) A debt collector may only use a specific email address, text message number, social media account, or specific electronic medium of communication if:

(A) such electronic communication is private and direct to the consumer; and

(B) the creditor or debt collector obtains revocable consent from the consumer in writing or orally recorded, given directly to the creditor or debt collector, to use such email address, text message number, social media account, or other electronic medium of communication to communicate about the debt, and the consumer has not since revoked the consent; or

(C) the consumer used such email address, text message number, social media account or other electronic medium of communication to communicate with the debt collector about a debt within the past 30 days and has not since opted out of communications to that email address, text message number, social media account or other electronic medium of communication or opted out of all electronic communications generally.

(ii) A person's electronic signature constitutes written consent under this section, provided it complies with all relevant state and federal laws and rules, including article three of the New York Technology Law (New York Electronic Signatures and Records Act) and chapter 96 of title 15 of the United States Code (Electronic Signatures in Global and National Commerce Act).

(iii) The written or orally recorded consent, revocable by the consumer, is retained by the debt collector until the debt is discharged, sold, or transferred.

(iv) A debt collector who sends any disclosures required by this subchapter electronically must do so in a manner that is reasonably expected to provide actual notice, and in a form that the consumer may keep and access later.

(v) The debt collector must include in every electronic mail communication to the consumer a clear and conspicuous written disclosure that the person may revoke consent to receive electronic communication at any time, and a reasonable and simple method by which the consumer can opt-out of further electronic communications or attempts to communicate by the debt collector, which may include replying "stop" or some other word(s) that reasonably indicates the consumer wishes to opt-out. The disclosure to the consumer must be in the same language as the rest of the communication and the debt collector must accept the consumer's response to opt-out in the same language as in the initial electronic mail that prompted the response from the consumer or in any language used by the debt collector to collect debt.

(vi) The debt collector may not require, directly or indirectly, that the consumer, in order to opt-out, pay any fee to the debt collector or provide any information other than the consumer's opt-out preferences and the email address or text message number subject to the opt-out request.

(6) Communicate with a consumer by sending an electronic message to an email address or a text message number that the debt collector knows ~~or should know~~ is provided to the consumer by the consumer's employer.

Commented [DR28]: Consent can be provided to the creditor as well, including within the original lending agreement. In fact, contact information provided to the creditor is always passed down to the debt collector. It is how the debt collector gets the consumer's name, address, telephone number, and email address. What would be the purpose of not allowing the least intrusive forms of contact (i.e. email or text), which is also often the consumers preferred medium of communication, while allowing the more intrusive forms of contact (i.e. phone calls and letters which can be intercepted by a third party living with the consumer)?

Commented [DR29]: An orally recorded conversation where the consumer grants consent should hold the same level of integrity and legitimacy as a written document.

The proposed rule seems to have contradictory provisions as consumer instructions provided over the phone are permitted in some circumstances while prohibited in other places?

Commented [DR30]: Often, there is no way that a debt collector would know a telephone number or email address is associated with a business unless the consumer tells the debt collector. For example, if a business uses a gmail account or the consumer provides a work cell phone for contact, how could you discern it was provided to the consumer by the employer?

(7) Communicate with a consumer on a social media platform, unless the debt collector obtains consent from the consumer to communicate on the specific social media platform, and the communication is not ~~viewable~~ accessible by anyone else other than the consumer, including but not limited to the general public or the consumer's social media contacts.

(8) Communicate with a consumer through a medium that the consumer has requested that the debt collector not use to communicate with the consumer.

(9) Communicate or attempt to communicate with a consumer to collect a debt for which the debt collector knows or should know that the consumer was issued a Notice of Unverified Debt pursuant to subdivision (f).

(c) ***Harassment or abuse***. A debt collector, in connection with the collection of a debt, shall not engage in conduct the natural consequence of which is to harass, oppress or abuse any person in connection with a debt. Such conduct includes:

(1) the use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person;

(2) the use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader;

(3) the advertisement for sale of any debt to coerce payment of the debt;

(4) causing a telephone to ring ~~or produce another sound or alert~~, or engaging any person [~~in~~] by any communication medium, including but not limited to telephone conversation, repeatedly or continuously with intent to annoy, abuse, or harass any person [~~at the called number~~] contacted by the debt collector;

(5) the publication of a list of consumers who allegedly refuse to pay debts, except to another employee of the debt collector's employer or to a consumer reporting agency or to persons meeting the requirements of 15 USC § 1681a(f) or 15 USC § 1681b(3); or

(6) except [~~as provided by 6 RCNY § 5-77(a), the placement of telephone calls without meaningful disclosure of the caller's identity~~] where expressly permitted by federal, state, or local law, communicating with a consumer without disclosing the debt collector's identity.

(d) ***False or misleading representations***. A debt collector, in connection with the collection of a debt, shall not make any false, deceptive, or misleading representation. Such representations include:

(1) the false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or identification[~~facsimile~~]thereof;

(2) the false representation or implication that any individual is an attorney or is employed by a law office or a legal department or unit, or any communication is from an attorney, a law office or a legal department or unit, or that an attorney conducted a meaningful review of the consumer's debt account;

(3) the representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or

Commented [DR31]: Edit is predicated upon the fact that messages, even sent privately, may be "viewable" to the general public if, for example, a consumer accesses the message at a public location (library computer, shared phone, etc.).

Commented [DR32]: Cell phones that get emails can be set up to produce a sound even though that was not the intent of the debt collector. There is also an evidentiary problem in that it is easy to prove when a debt collector made a phone call or sent a message but almost impossible to prove whether that communication actually caused a phone to "produce an alert or other sound." This addition makes no sense because only the consumer can control whether or not the phone produces an alert or other sound.

wages of any person unless such action is lawful and the debt collector or creditor intends to pursue such action;

(4) the threat to take any action that cannot legally be taken or that is not intended to be taken;

(5) the false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to:

(i) lose any claim or defense to payment of the debt; or

(ii) become subject to any practice prohibited by this part;

(6) the false representation [~~of~~] or implication made in order to disgrace the consumer that the consumer committed any crime or other conduct;

(7) the false representation or implication that accounts have been turned over to innocent purchasers for value;

(8) the false representation or implication that documents are legal process;

(9) the false representation or implication that documents are not legal process forms or do not require action by the consumer;

(10) the false representation or implication that a debt collector operates or is employed by a consumer reporting agency as defined by 15 U.S.C. § 1681a(f);

(11) the use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval;

(12) the use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer;

(13) the use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization, unless the general public knows the debt collector's business, company or organization by another name and to use the true name would be confusing;

(14) [~~after institution of debt collection procedures,~~] the false representation of the character, amount or legal status of any debt, or any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt[~~, except that the employer of a debt collector may not be held liable in any action brought under this provision if the employer shows by a preponderance of the evidence that the violation was not intentional and occurred despite the maintenance of procedures reasonably adapted to avoid any such violation~~], except that the employer of a debt collector may not be held liable in any action brought under this provision if the employer shows by a preponderance of the evidence that the violation was not intentional and occurred despite the maintenance of procedures reasonably adapted to avoid any such violation;

(15) except [~~as otherwise provided under 6 RCNY § 5-77(a) and except for any communication which is required by law or chosen from among alternatives of which one is required by law~~] for

Commented [DR33]: The FDCPA bona fide error defense should remain in the rule.

limited-content messages and where otherwise expressly permitted by federal, state, or local law, the failure to disclose clearly and conspicuously in all communications made to collect a debt [~~or to obtain information about a consumer,~~] that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose;

(16) the use of any [~~name that is not the debt collector's actual name; provided that a debt collector may use a name other than his actual name if he or she uses only that name in communications with respect to a debt and if the debt collector's employer has the name on file so that the true identity of the debt collector can be ascertained~~] assumed name; provided that an individual debt collector may use an assumed name when communicating or attempting to communicate with a consumer about a debt if that collector uses the assumed name consistently and is the only person using that assumed name, and the assumed name is on file so that the true identity of the collector can be ascertained;

(17) any conduct proscribed by New York General Business Law §§ 601(1), (3), (5), (7), (8), or (9);

(18) the false, inaccurate, or partial translation of any communication [~~when the debt collector provides translation services~~]; [~~or~~]

(19) after the institution of debt collection procedures, the false representation or omission of a consumer's language preference when returning, selling or referring for debt collection litigation any consumer account, where the debt collector [~~is aware~~] knows ~~or should know~~ of such preference; or

(20) except where expressly permitted by federal, state, or local law, the failure to disclose clearly and conspicuously in all ~~telephone communications~~ recorded verbal conversations with a consumer in connection with the collection of a debt ~~where the communication is recorded by the debt collector~~ that the communication is being recorded ~~and the recording may be used in connection with the collection of the debt~~.

(21) after the institution of debt collection procedures, the false representation that the consumer cannot dispute the debt or request verification of the debt from the debt collector by oral communication.

(e) ***Unfair and unconscionable practices***. A debt collector may not use any unfair or unconscionable means to collect or attempt to collect a debt. Such conduct includes:

(1) the collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law;

(2) the solicitation or use by a debt collector of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution;

(3) causing charges to be made to any person for communications by misrepresentation of the true purpose of the communication. Such charges include collect telephone calls and [~~telegram~~] text message or mobile phone data fees that have not been disclosed or accepted by the consumer, provided this paragraph does not apply if the consumer initiates the communication through the use of the medium;

(4) taking or threatening to take any nonjudicial action to effect dispossession or disablement

Commented [DR34]: There is no way that a debt collector "should know" a consumer's language preference unless someone tells them. We respectfully request the deletion of this language.

Commented [DR35]: Given that written electronic communications such as emails and text messages can be received on telephones, it would be more appropriate to use the word "conversations" rather than "communications" in the context of making a recording.

The statement that the "recording may be used in connection with the collection of the debt" could be a false statement and could be in violation of the FDCPA. We cannot disclose the purpose of the call until we have confirmed that the person who is engaged in conversation is the debtor.

Commented [DR36]: A consumer may choose to communicate via text messages with the debt collector. The debt collector will have no idea if the consumer is on a phone plan that charges for text messages. Consequently, an exception needs to be added to this language.

of property if:

(i) there is no present right to possession of the property claimed as collateral;

(ii) there is no present intention to take possession of the property; or

(iii) the property is exempt by law from such dispossession or disablement;

(5) after institution of debt collection procedures, when communicating with a consumer by [~~use of the mails~~] mail or [~~telegram~~] a delivery service, using any language or symbol other than the debt collector's address on any envelope, or using any language or symbol that indicates the debt collector is in the debt collection business or that the communication relates to the collection of a debt on a postcard, except that a debt collector may use [~~his or her~~] their business name or the name of a department within [~~his or her~~] their organization as long as any name used does not connote debt collection;

(6) after institution of debt collection procedures, [~~communicating with a consumer regarding a debt without identifying himself or herself and his or her employer or communicating in writing with a consumer regarding a debt without identifying himself or herself by name and address and in accordance with 6 RCNY § 5-77(e)(5)~~] except where expressly permitted by federal, state, or local law, communicating with a New York City consumer without disclosing the debt collector's name; [~~or~~]

(7) after institution of debt collection procedures, if a consumer owes multiple debts of which any one or portion of one is disputed, and the consumer makes a single payment with respect to such debts:

(i) applying a payment to a disputed portion of any debt; or

(ii) unless otherwise provided by law or contract, failing to apply such payments in accordance with the consumer's instructions accompanying payment[~~. If payment is made by mail, the consumer's instructions must be written. Any communication by a creditor made pursuant to 6 RCNY § 5-77(e)(7)(ii) shall not be deemed communication for the purpose of 6 RCNY § 5-77(b)(1)(iv). The employer of a debt collector may not be held liable in any action brought under 6 RCNY § 5-77(e)(7) if the employer shows by a preponderance of the evidence that the violation was not intentional and resulted despite maintenance of procedures reasonably adapted to avoid any such violation~~]. The employer of a debt collector may not be held liable in any action brought under 6 RCNY § 5-77(e)(7) if the employer shows by a preponderance of the evidence that the violation was not intentional and resulted despite maintenance of procedures reasonably adapted to avoid any such violation;

(8) engaging in any conduct prohibited by New York General Business Law §§ 601(2) or (4); [~~or~~]

(9) after institution of debt collection procedures, collecting or attempting to collect a debt without [~~first requesting and~~] recording the language preference of such consumer, except where the debt collector is not aware of such preference despite reasonable attempts to obtain it;

(10) furnishing to a consumer reporting agency, as defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. § 1681a(f)), information about a debt unless the debt collector has sent the consumer a validation notice pursuant to section 5-77(f) that states, in a clear and conspicuous manner, that the debt ~~will~~ may be reported to a consumer reporting agency and waited 14

Commented [DR37]: The industry requests the restoration of the bona fide error defense. It is consistent with the FDCPA which DCWP indicates it wishes to seek. An inadvertent clerical error should not lead to liability, especially if such error has not harmed the consumer or can be easily corrected with no harm to the consumer.

Commented [DR38]: "Will" is misleading to the consumer, and conflicts with other federal and state disclosures that state that debt "may" be credit reported.

consecutive days. During the waiting period, the debt collector must permit receipt of, and monitor for, notifications of undeliverability from communications providers. If the debt collector receives such notification during the waiting period, the debt collector must not furnish information about the debt to a consumer reporting agency until the debt collector satisfies this subdivision. If the debt collector previously furnished information to a consumer reporting agency, between January 1, 2021 and the effective date of the rule, and if the debt collector still has a right to collect on such debt, they must disclose in a validation notice to the consumer, by mail or delivery service within 5 days of the effective date of this rule, that the debt was furnished to a consumer reporting agency, unless such information was already disclosed, clearly and conspicuously, in a validation notice mailed by the debt collector to the consumer.

This subdivision does not apply to a debt collector's furnishing of information about a debt to a nationwide specialty credit reporting agency that compiles and maintains information on a consumer's check writing history, as described in section 603(x)(3) of the Fair Credit Reporting Act (15 U.S.C. § 1681a(x)(3));

(11) selling, transferring, or placing for collection or with an attorney or law firm to sue a New York City consumer to recover any debt where the debt collector knows or should know that the debt has been paid or settled or discharged in bankruptcy, except a debt collector may transfer a debt to the debt's owner or to a previous owner of the debt if:

(i) the transfer is authorized under the terms of the original contract between the debt collector and the debt's owner or previous owner, as a result of a merger, acquisition, purchase and assumption transaction, or as a transfer of substantially all of the debt collector's assets; and

(ii) the debt collector also transfers all information pertaining to whether the debt has been paid or settled or discharged in bankruptcy obtained during the time the debt was assigned to the debt collector for collection;

(12) selling, transferring, or placing for collection or with an attorney or law firm to recover any debt where the debt collector knows or should know that the time to sue on the debt has expired, without including a clear and conspicuous notice to the recipient of the debt that the statute of limitations on such debt has expired; or

(13) selling, transferring, or placing for collection or with an attorney or law firm to sue a New York City consumer to recover any debt for which the debt collector was unable to provide written verification of the debt, despite having received a dispute or request for verification of the debt from the consumer, without including a clear and conspicuous notice to the recipient of the debt that the debt was not verified and a copy of the "Notice of Unverified Debt" sent to the consumer pursuant to subdivision (f) of this section.

(f) ***Validation of debts.***

(1) [~~Upon acceleration of the unpaid balance of the debt or demand for the full balance due, the following validation procedures shall be followed by debt collectors who are creditors or who are employed by creditors as defined by 15 U.S.C. § 1602(f) (Truth in Lending Act) but who are not required to comply with 15 U.S.C. § 1637(a)(8) (Fair Credit Billing Act) and who do not provide consumers with an opportunity to dispute the debt which is substantially the same as that outlined in 15 U.S.C. § 1637(a)(8) and regulations promulgated thereunder: Within five days of any further attempt by the creditor itself to collect the debt, it shall send the customer a written notice containing:~~

~~(i) the amount of the debt;~~

~~(ii) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed valid by the debt collector;~~

~~(iii) a statement that, if the consumer notifies the debt collector in writing within the thirty- day period at the address designated by the debt collector in the notice, that the debt, or any portion thereof is disputed, the debt collector shall either:~~

~~(A) make appropriate corrections in the account and transmit to the consumer notification of such corrections and an explanation of any change and, if the consumer so requests, copies of documentary evidence of the consumer's indebtedness; or~~

~~(B) send a written explanation or clarification to the consumer, after having conducted an investigation, setting forth to the extent applicable the reason why the creditor believes the account of the consumer was correctly shown in the written notice required by 6 RCNY § 5-77(f)(1) and, upon the consumer's request, provide copies of documentary evidence of the consumer's indebtedness. In the case of a billing error where the consumer alleges that the creditor's billing statement reflects goods not delivered in accordance with the agreement made at the time of the transaction, a creditor may not construe such amount to be correctly shown unless it determines that such goods were actually delivered, mailed, or otherwise sent to the consumer and provides the consumer with a statement of such determination.~~

~~(i) if the debt collector is not the original creditor, a statement that, upon the consumer's written request within the thirty-day period, sent to the address designated by the debt collector in the notice, the debt collector will provide the consumer with the name and address of the original creditor;~~

~~(ii) an address to which the consumer should send any writing which disputes the validity of the debt or any portion thereof or any writing requesting the name and address of the original creditor.~~

~~(2)~~] *Validation notice.* Within five days after the initial communication with a New York City consumer in connection with the collection of any debt, a debt collector [~~who is not a creditor and not employed by a creditor shall, unless the following information is contained in an initial written communication, or the consumer paid the debt, send the consumer a written notice containing~~] must send the consumer a written notice containing the following information in a clear and conspicuous manner, unless the consumer paid the debt or such information was contained, clearly and conspicuously, in an initial written communication sent by U.S. mail, ~~or~~ delivery service, or by electronic means consistent with 12 CFR Part 1006.34:

(i) [~~the amount of the debt~~] all information required for validation notices by federal or state law;

(ii) [~~the name of the creditor to whom the debt is owed~~] the New York City Department of Consumer and Worker Protection license number assigned to the debt collection agency, if applicable;

(iii) [~~a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector~~] the name of a natural person for the consumer to contact;

(iv) a [~~statement that if the consumer notifies the debt collector in writing within the thirty- day period at the address designated by the debt collector in the notice that the debt, or any portion~~

Commented [DR39]: Regulation F provides detailed requirements for communicating a validation notice via electronic means. These provisions should align with federal law.

Commented [DR40]: The industry would request a small clarification by deleting the word "such" as it suggests that a specific person (the one referenced in paragraph iii above) has to answer a telephone. This is highly problematic as we cannot guarantee who might answer a phone at a place of business.

~~thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector~~] telephone number that is answered by ~~such~~ a natural person;

~~(v)~~ [a] ~~the following statement~~ [~~that, upon the consumer's written request within the thirty-day period sent to the address designated by the debt collector in the notice, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor~~]:

~~**PLEASE READ: Important Information About Your Rights as a New York City Consumer**~~

- ~~**There is no time limit to dispute the debt in collection.** You can let collectors know you dispute the debt using any of the ways they contact you, including by phone.~~

- ~~**You must get a response to the disputed debt in 45 days.** Once you dispute the debt, the collector must stop collection. In 45 days, the collector must give you either 1) verification of the debt, or 2) a "Notice of Unverified Debt" stating it can't verify the debt or continue collection.~~

- ~~**You can use a "Notice of Unverified Debt" to stop collection attempts by other debt collectors.** Be sure to keep a copy of all letters to exercise this right.~~

- ~~**You may qualify for financial assistance with medical debt.** If you have a low or limited income, ask the collector or the hospital if you qualify for help under the "Financial Assistance Policy."~~

(vi) [~~an address to which the consumer should send any writing which disputes the validity of the debt or any portion thereof or any writing requesting the name and address of the original creditor;~~

~~(vii)~~] a statement informing the consumer of any language access services available[, including whether the consumer may obtain from the debt collector a translation of any communication into a language other than English];

[~~(viii)~~] (vii) a statement that a [~~translation and description of commonly-used debt collection terms is~~]Glossary of Common Debt Collection Terms and other resources are available in [~~multiple~~]different languages at [~~available in multiple languages on the Department's website, www.nyc.gov/dca~~] www.nyc.gov/dcwp.

The information required under subdivisions (ii) through (vii) may be included on the reverse side of a written validation notice only if the debt collector includes them together under a heading entitled, "**Important Additional Consumer Rights Under New York City Law**" and includes a clear and conspicuous statement on the front of the validation notice referring to the disclosures on the reverse side. If included on the reverse side of the validation notice, the information must be positioned in a manner so it is readily noticeable and legible to consumers, even after a consumer tears off any response portion of the notice.

(viii) An itemization of the current amount of the debt asserted to be owed that allows the consumer to recognize the total amount of the outstanding debt as of the itemization reference date, and includes a breakdown of all additional amounts that have been assessed or applied to the amount of the debt since the itemization reference date, listing fields for: 1) interest; 2) fees;

Commented [DR41]: This paragraph is impossible to redline given that NYS DFS rulemaking is not complete. We would respectfully request that DCPW allow the state to finish and finalize their rules first. Otherwise, we risk conflicting consumer notices.

Debt collectors are already required to provide specific notices related to verification by both the federal government and the State of New York. The notice being suggested in this paragraph is different from both the federal and state notice requirements. This is thoroughly going to confuse the consumer. It should also be noted that this notice conflicts with the federal safe harbor provision.

Additionally, since roman numeral (i) above states "all information required by federal or state law" is required to be provided in the validation notice, this notice is not needed.

3) payments; and 4) credits, and the following information:

(A) The total amount of the outstanding debt asserted to be due on the itemization reference date.

~~(B) The date, amount, and description of each fee, payment, credit, or interest, applied to the debt since the itemization reference date. A debt collector must include all fields in the itemization, even if no additional amounts have accrued, or may state that no interest, fees, payments, or credits have been assessed or applied to the debt since the itemization reference date.~~

~~(C) The basis of the consumer's obligation to pay each separate charge, interest, or fee, including if allowed by a contract or by law.~~

(~~D~~B) The total amount asserted to be due on the date of the itemization.

A debt collector is permitted to add additional information in the itemization required in this subdivision or disclose the itemization on a separate page as allowed or required by federal or state law, provided the content required in this subdivision is clear and conspicuous to the consumer. Debt collection agencies that must comply with § 20-493.2 (a) of the Administrative Code and § 2-190 (b) shall be deemed to satisfy the requirement of furnishing an itemization under the licensing law by complying with this section and may list the "principal balance" as the total amount of the outstanding debt asserted to be owed by the consumer on the itemization reference date.

(2) *Delivery of validation notices.* A debt collector must deliver written disclosures under (f)(1) of this section in the following manner:

(i) A debt collector must deliver to consumers validation notices and the itemization of the debt by U.S. mail or delivery service. If a debt collector only delivers a validation notice or the itemization of the debt electronically or orally, it does not satisfy the requirement under subdivision § 5-77(f)(1).

(ii) A debt collector may deliver a duplicate copy of the validation notice and itemization of the debt by any other means, including electronic mail, provided it is in accordance with other sections or laws, such as section 101(c) of the Electronic Signatures in Global and National Commerce Act (E–SIGN Act)(15 U.S.C. 7001(c)) or their successor provisions.

(iii) If a debt collector delivers a duplicate validation notice to a consumer electronically, the debt collector must do so in accordance with § 5-77(b)(5) and the notice must include the debt collector's website, email address, and information on how the consumer can dispute the debt, seek verification of the debt, or request originating-creditor information electronically.

(3) Notices in languages other than English. If a debt collector offers consumers validation notices in a language other than English, and a consumer requests a notice in such language, the debt collector must mail a written notice to the consumer completely and accurately in the language requested within 30 days of receiving such a request. As required by section 1006.34(e)(2) of title 12 of the Code of Federal Regulations, a debt collector who receives a request from the consumer for a Spanish-language validation notice must provide the consumer with a validation notice completely and accurately translated into Spanish. A debt collector may not contact a consumer exclusively by telephone or orally in a language other than English to collect debt without providing the consumer, by U.S. mail or delivery service, a validation notice written accurately in the language used by the debt collector during the exchange with the

Commented [DR42]: These additional disclosures should be stricken as they require the inclusion of detailed extraneous data that will confuse consumers. Given the proposed narrowing of the itemization reference date, this section will require the inclusion of voluminous accounting information. In CFPB usability testing, it was determined that "…participants said they thought [the balance] would continue to increase based on the current interest and fee accumulations in the model validation notice." Consumers who receive an additional complex accounting in the initial communication will only be more confused about whether the balance is changing or how it was calculated. It is respectfully submitted that this information is more appropriate to be provided in response to a validation of debt request.

consumer, within 30 days of the first contact by the debt collector in the language other than English. A debt collector is not required to mail the validation notice, in a language other than English, to the consumer more than once during the period that the debt collector owns or has the right to collect the debt. If the debt collector sends a validation notice in a language other than English, it must also accept and respond to disputes, complaints, requests for verification of the debt and cease and desist requests by the consumer completely and accurately in the same language as the validation notice.

([~~3~~]4) [~~If, pursuant to 6 RCNY §§ 5-77(f)(1) or 5-77(f)(2) of this Regulation the consumer notifies the debt collector in writing within the thirty day period that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall not attempt to collect the amount in dispute until the debt collector obtains and mails to the consumer verification of the debt or a copy of the judgment or the name and address of the original creditor. The debt collector shall maintain for one year from the date the notice was mailed, records containing documentation of the date such notice was mailed, the date the response, if any, was received and any action taken following such response~~] *Validation Period.* The validation period extends for 30 consecutive days from the date a consumer receives or is assumed to receive a validation notice. For purposes of determining the validation period, the debt collector may assume that a consumer received the validation notice five days (excluding Saturdays, Sundays, and legal public holidays identified in 5 U.S.C. § 6103(a)) after the debt collector sent it.

([4]5) [~~The failure of a consumer to dispute the validity of a debt under 6 RCNY § 5-77(f) shall not be construed by any court as an admission of liability by the consumer~~] *Overshadowing of rights to dispute or request original-creditor information*. During the validation period, a debt collector must not engage in any collection activities or communications that overshadow or are inconsistent with the disclosure of the consumer's rights to dispute the debt and request the name and address of the original creditor.

(6) *Verification*. A debt collector must provide a New York City consumer verification of a debt or provide a notice of unverified debt in accordance with section 5-77(f)(7) within 45 days of receiving a dispute or a request for verification of the debt. The consumer may dispute the debt, or make such verification request orally or in writing, or electronically if the debt collector uses electronic communications to collect debt, at any time during the period in which the debt collector owns or has the right to collect the debt. The debt collector must treat a first dispute by the consumer as a request for verification of the debt, unless the debt collector has already provided the consumer with the verification information required in this subdivision. If a debt collector provides consumers the ability to submit written disputes electronically through a website, such a website must automatically generate a copy of each written dispute that a consumer can print, save, or have emailed to them. A consumer shall not be required to waive any rights to make use of such an online submission option. The debt collector must cease collection of the debt if an itemization of the debt was not previously provided to the consumer by the debt collector in compliance with section 5-77(f)(1)(vii) and if a timely written verification of the debt has not been provided to the consumer. A debt collector is not required to verify a debt pursuant to this section more than once during the period that the debt collector owns or has the right to collect the debt; provided, however, that the debt collector must send any such verification documents to the consumer one additional time upon request by the consumer. A debt collector must provide verification to the consumer in writing, by U.S. mail or delivery service, unless the consumer has consented to receive electronic communications in compliance with section 5-77(b)(5).

(i) Verification of debt must include the information and documents required by paragraph (j) of Rule 3016 of the Civil Practice Laws & Rules:

Commented [DR43]: In 2021, the Consumer Credit Fairness Act (CCFA) was signed into law by Governor Hochul. The CCFA provides in great detail what information is needed to bring suit on a debt in New York State. What is required in CCFA is more nuanced and detailed than what is provided in the text below. The industry strongly recommends that the rule be consistent with New York State law.

IF DCWP AGREES WITH THE EDIT ABOVE, PARAGRAPHS (A) THROUGH (C) BELOW WOULD BE DELETED. HOWEVER, IS DCWP DECIDES TO PROCEED WITH THE DRAFT LANGUAGE, THE INDUSTRY WOULD REQUEST THE FOLLOWING EDITS SO THAT IT CAN COMPLY WITH DCWP'S INTENT.

(A) a copy of the judgment if a court has reduced the facts to judgment, or a copy of the debt document issued by the ~~originating~~ original creditor or an original written confirmation evidencing the transaction resulting in the indebtedness to the ~~originating~~ original creditor, including the signed contract or signed application that created the debt or, if no signed contract or application exists, a copy of a document provided to the alleged debtor while the account was active, demonstrating that the debt was incurred by the consumer. For a revolving credit account, the charge-off account statement, and the most recent monthly statement recording a purchase transaction, payment, or balance transfer shall be deemed sufficient to satisfy this requirement; ~~. Documents created or generated after the time of charge-off of the debt or institution of debt collection procedures shall not qualify as such confirmation;~~

(B) records reflecting the amount and date of any prior settlement agreement reached in connection with the debt;

(C) the final account statement, or other such document that reflects the total outstanding balance, mailed to the consumer on or before the charge-off date and prior to the institution of debt collection procedures;

(ii) In matters involving a judgment obtained after adjudication on the merits of the case, there will be a rebuttable presumption that the debt collector complied with this section if it mails the consumer, by U.S. mail or delivery service, a copy of the judgment and any evidence of indebtedness that is part of the record of the lawsuit. ~~For this subdivision, a copy of a judgment obtained by default does not provide the consumer verification of the alleged debt~~; and

(iii) In matters involving medical debt arising from the receipt of health care services, medical products, or devices, ~~the~~ a debt collector collecting on behalf of a covered medical entity must provide, clearly and conspicuously, to the consumer any information in its possession or available to the debt collector required to be disclosed by federal, state or local law, including the relevant financial assistance policy.

(7) *Notice of unverified debt.* If a debt collector did not provide an itemization of the debt and cannot provide a consumer with a timely written verification of a debt in response to a dispute or request for verification, the debt collector must respond in writing to the consumer within 45 days of receiving the dispute or a request for verification, at any time during the collection process, that the debt collector is unable to verify the debt and will stop collecting on the debt, and provide the reason that the debt could not be verified. Debt collectors must deliver a notice of unverified debt to the consumer by U.S. mail or delivery service. The debt collector must permit receipt of, and monitor for, notifications of undeliverability from communications providers for at least 14 consecutive days after they place the notice of unverified debt in the mail or with the delivery service. If the debt collector receives such notification, the debt collector must re-send the notice of unverified debt to the consumer, by U.S. mail or delivery service, within 5 days if a new

Commented [DR44]: If a court has determined that a debt is rightfully owed and it is reduced to a judgment, that judgment becomes the applicable document that must be provided the consumer.

Commented [DR45]: Most documents and evidence are stored electronically today, not as physical copies maintained in a filing cabinet. This sentence would essentially invalidate almost all debt.

Additionally, the final sentence does not recognize that a number of admissible documents are generated after default, including but not limited to the charge-off statement (which is referenced earlier in the paragraph).

Commented [DR46]: The federal government, New York state, and the other 49 states recognizes the validity of a judgment for the verification of a debt. How does NYC have the authority to invalidate judgments recognized by all of those jurisdictions?

New York state just adopted in 2021 the Consumer Credit Fairness Act which provides extensive and detailed requirements for obtaining a judgment, including a default judgment. Additionally, included in section 306-d of the Civil Practice Law and Rules is the following provision: "No default judgment based on the defendant's failure to answer shall be entered unless there has been compliance with this section, and at least twenty days have elapsed from the date of mailing by the clerk. No default judgment based on the defendant's failure to answer shall be entered if the additional notice is returned to the court as undeliverable."

Commented [DR47]: Often if a notice is returned a new address is not provided. Therefore this requirement may not be something that we can actually do within the provided time frame. Recommend revising this to reflect this reality.

forwarding address for the consumer is provided by U.S. Mail or delivery service.

(8) ~~*Originating*~~ *Original creditor*. A debt collector must provide the consumer the address of the ~~originating~~ original creditor of a debt within 45 days of receiving a request from the consumer for such address, provided that if the servicer is the name the consumer is most readily going to identify with the debt, that name and address may be provided. The consumer may make such request orally or in writing, or electronically if the debt collector [~~permits~~]uses electronic communications to collect debt, at any time during the period in which the debt collector owns or has the right to collect the debt. After receiving such a request, the debt collector must cease collection of the debt until such address has been provided to the consumer. A debt collector is not required to provide this information more than once during the period that the debt collector owns or has the right to collect the debt.

(9) *Electronic communications.* If a debt collector delivers a duplicate copy of the validation notice to a consumer electronically, the debt collector must do so in accordance with § 5-77(b)(5) and the notice must include the debt collector's website, email address, and information on how the consumer can dispute the debt, seek verification of the debt, or request original~~-~~ creditor information electronically.

(10) *Dispute and verification of medical debt*. Medical debt includes debt collected on behalf of a covered medical entity arising from the receipt of health care services or medical products or devices.

(i) If, at any time during the debt collection process, the New York City consumer indicates that a public or private insurance plan, a third-party payer, or a financial assistance policy should have covered some or all of the charges on the medical debt, or that the debt is as a result of lack of price transparency at the time the services were rendered, or a violation of federal, state or local law, the debt collector must treat such communication by the consumer, received by any medium of communication and language used by the debt collector to collect the debt, as a dispute and a request for verification by the consumer on such medical debt.

(ii) A debt collector must respond to disputed medical debt by providing the consumer verification in accordance with section 5-77(f)(6) and by responding to the specific issue disputed by the consumer under paragraph (i) of this subdivision or deliver to the consumer a notice of unverified debt in accordance with section 5-77(f)(7).

(iii) If a New York City consumer disputes a medical debt, the debt collector must also do the following:

(A) treat all unverified accounts related to a discrete hospitalization or treatment of the consumer, provided such services were rendered within a six-month period, the same as the disputed medical debt by the consumer;

(B) note in all related medical accounts, unless written verification was already provided by the debt collector to the consumer or the consumer has acknowledged owing the amount claimed to be owed on such account, as disputed medical debt, in a manner that is easily identifiable and searchable in each of the consumer's related accounts; and

(C) furnish to the consumer verification on each related medical debt.

(iv) In addition to the requirements in section 5-77(j), before resuming debt collection activities on disputed medical debt arising from services provided by a covered medical entity, the debt

Commented [DR48]: Most consumers are going to have no idea who the original creditor is on a fintech product. Since this is in response to the NYC validation request specifically it would be more consumer friendly to provide the fintech servicer name.

collector must also verify that the covered medical entity met its obligations under federal, state, or local law and the financial assistance policy.

(g) Reserved.

(h) ***Public websites***. Any debt collector that utilizes, maintains, or refers New York City consumers to a website accessible to the public that relates to debts for which debt collection procedures have been instituted must clearly and conspicuously disclose, on the homepage of such website or on a page directly accessible from a hyperlink on the homepage labeled "**NYC Rules on Language Services and Rights**", the following disclosures:

(1) a statement informing the consumer of any language access services available[~~, including whether the consumer may obtain from the debt collector a translation of any communication into a language other than English~~]; and

(2) a statement that a [~~translation and description of commonly-used debt collection terms is~~]Glossary of Common Debt Collection Terms and other resources are available in [~~multiple~~]different languages at[~~on the Department's website, www.nyc.gov/dca www.~~] www.nyc.gov/dcwp.

(i) ***Time-barred debts***. In connection with the collection of a debt, the following requirements must be met:

(1) A debt collector must maintain reasonable procedures for determining the statute of limitations applicable to a debt it is collecting and whether such statute of limitations has expired.

(2) *Initial Written Notice*. if a debt collector, including a debt collection agency that must provide information to a New York City consumer pursuant to § 20-493.2(b) of the Administrative Code, seeks to collect on a debt for which the debt collector has determined, including pursuant to subdivision (a) of this section, or otherwise knows or has reason to know, that the statute of limitations for a debt has or may have expired, the debt collector must initially deliver the consumer a written notice, by U.S. mail or delivery service, that clearly and conspicuously discloses to the consumer substantially the same time-barred-debt disclosure below, before contacting a consumer about the expired debt by any other means:

- **The statute of limitations on this debt expired. This means you can't be sued to collect it. A court will not enforce collection**.

IF YOU ARE SUED:

- It is a violation of federal law (the Fair Debt Collection Practices Act).
- You may be able to prevent a judgment against you by telling the court that the statute of limitations on this debt expired.
- You are not required to admit that you owe this debt, promise to pay this debt, or waive the statute of limitations on this debt.
- Consult an attorney or a legal aid organization to learn more about your legal rights and options.

(3) *Waiting Period.* The debt collector must wait at least 14 consecutive days after they place the initial written notice in U.S. mail or delivery service to the consumer to receive notice of undeliverability. During the waiting period under this subdivision, the debt collector must permit

receipt of, and monitor for, notifications of undeliverability from communications providers. If the debt collector receives such notification during the waiting period, the debt collector must not contact the consumer, by any other means of communication, to collect the debt until the debt collector otherwise satisfies section 5-77(i)(2).

~~(4) *Subsequent Communications*. Unless otherwise permitted by law, the debt collector may not, without the prior written and revocable consent of the consumer given directly to the debt collector, contact such consumer in connection with the collection of an expired debt exclusively by telephone or by other means of oral or electronic communication. After mailing the Initial Written Notice required in section 5-77(i)(2), the debt collector must redeliver such notice to the consumer by U.S. mail or delivery service within 5 days after each oral communication with the consumer unless the debt collector has already mailed a hardcopy of such notice within a 30- day period. Any subsequent notice sent to the consumer electronically must be in accordance with other sections or laws, such as section 101(c) of the Electronic Signatures in Global and National Commerce Act (E- SIGN Act)(15 U.S.C. 7001(c)) or their successor provisions.~~

(~~5~~4) When such information is delivered in writing, the time-barred debt notice must be included for each debt that is beyond the applicable statute of limitations, in at least 12 point type that is set off in a sharply contrasting color from all other types on the communication, and placed on the first page adjacent to the identifying information about the amount claimed to be due or owed on such debt. A debt collector may include additional language to the time-barred-debt disclosure as may be required by the State of New York to send the consumer one disclosure notice.

(i) ***Medical debt from a covered medical entity***. (1) In connection with the collection of medical debt arising from charges from a covered medical entity, a debt collector collecting on behalf of a covered medical entity is prohibited from collecting or attempting to collect on a medical debt from a New York City consumer asserted to be owed if the debt collector knows or should know that:

(i) To do so violates federal, state, or local law or the financial assistance policy of the covered medical entity.

(ii) The patient has an open application for financial assistance with the covered medical entity.

(iii) The financial assistance policy should have provided financial assistance to the patient to cover all, or a portion, of the medical debt.

(iv) A misrepresentation was made to the patient about the financial assistance policy or payment options regarding the medical debt, including, but not limited to:

(A) The patient was wrongly denied, or not given proper and timely notice of, available financial assistance.

(B) The patient was discouraged from applying for financial assistance.

(C) The patient was induced to agree to pay for all or part of the medical debt with misinformation about payment options or the financial assistance policy.

(D) The patient was only presented with options to pay or to agree to pay for all or part of the medical debt regardless of income level.

Commented [DR49]: Requiring a written disclosure to be sent out within 5 days of each oral communication or every 30 days will create unintended consequences in that: (1) consumers may likely feel harassed by the constant deluge of disclosures; (2) consumers are likely become desensitized to and unlikely to read the notices or future notices; (3) it will create significant environmental costs through excess and unneeded letters being mailed that are likely not to be read; and (4) it will reduce the availability of credit to consumers if the debt is deemed to be too complicated to collect.

How will this language benefit the consumer? Under New York state law: (1) the consumer will still owe the debt; (2) the creditor/debt collector is still allowed to attempt collection on the debt; (3) the debt collector is still prohibited from suing; and (4) the debt collector is still prohibited from reviving the statute of limitations through a payment or affirmation of the debt.

Specifically, section 214-I of the Civil Practice Law and Rules which was codified in 2021 by New York's Consumer Credit Fairness Act (CCFA) that states: "Notwithstanding any other provision of law, when the applicable limitations period expires, any subsequent payment toward, written or oral affirmation of or other activity on the debt does not revive or extend the limitations period."

Lastly, as the law is currently written in New York State and New York City, consumers are provided with notice of the legal status of their debt when debt collectors try to collect debt from them, which is when it makes sense to inform the consumer of the expiration of the Statute of limitations on their account so that they can make an informed decision about their next steps concerning that debt. Specifically, the New York State Department of Financial Services requirement in 23 NYCRR 1.3 reads that "if a debt collector knows or has reason to know that the statute of limitations for a debt may be expired, before accepting payment on the debt," the debt collector must inform the consumer that the Statute of Limitations on the debt has expired. Also, the current Rules of the City of New York in § 2-191 requires debt collectors to inform consumers that the Statute of Limitations has expired on their debt "…in every permitted communication for each debt that the debt collection agency is seeking to collect that is beyond the applicable statute of limitations…"

(2) In connection with the collection of medical debt from a New York City consumer arising from charges from a covered medical entity, a debt collector collecting on behalf of a covered medical entity must conduct reasonable corrective measures upon obtaining information that the financial assistance policy was not disclosed to the patient as required by law or that there is a violation of federal, state, or local law. A consumer may provide such information to the debt collector, by any means of communication or in any language used by the debt collector to collect debt, without the debt collector requiring the consumer to submit any supporting documentation to the debt collector. Corrective measures must be taken as follows:

(i) Inform the entity that placed the account with the debt collector within one business day that the debt may be subject to the covered medical entity's financial assistance policy or that there might be a violation of the law.

(ii) Provide and record in plain language the following statement: "**A FINANCIAL ASSISTANCE POLICY MAY APPLY TO THIS MEDICAL DEBT**", or a statement indicating the violation of law, in a manner readily noticeable and searchable, in the following records:

(A) all of the consumer's accounts arising from medical debt from the covered medical entity, from the same hospitalization or a discrete course of treatment or care;

(B) a written notification that must be sent by U.S. mail or delivery service to the consumer along with the verification of the debt in accordance with sections 5- 77(f)(6) and (f)(10); and

(C) a written notification that must be sent to any receiving party upon transferring any of the consumer's accounts with medical debt from the same covered medical entity.

(iii) Provide any disclosure to the consumer regarding the financial assistance policy, by U.S. mail or delivery service, clearly and conspicuously on the first page of any written communication from the debt collector to the consumer, and such disclosure must not be placed on the reverse side of the page or the second page. Any written notification to a consumer regarding the financial assistance policy may not be delivered exclusively by the debt collector through electronic means.

(iv) Maintain a monthly log or record of all consumer accounts in which the debt collector took corrective measures as required in section 5-77(j) and such measures must be easily identifiable and searchable in each consumer account.

(k) ***Record retention***. A debt collector must retain the following records to document its collection activities with New York City consumers:

(1) Records that are evidence of compliance or noncompliance with part 6 of subchapter A of chapter 5 of title 6 of the Rules of the City of New York starting on the date that the debt collector begins collection activity on the debt until three years after the debt collector's last collection activity on the debt.

(2) Monthly logs or a record of the following:

(i) all complaints filed by New York City consumers against the debt collector, including those filed with the agency directly or with any not-for-profit entity or governmental agency, identifying for each complaint the date, the consumer's name, and account information, the source of the complaint, a summary of the consumer's complaint, the debt collector's response to the complaint, if any, and the current status of the complaint;

(ii) all disputes or requests for verification made by New York City consumers, identifying each consumer's name and account information, the date of the dispute or request for verification, and the date and type of response, if any, sent by the debt collector; and

(iii) all cease-and-desist requests made by New York City consumers, identifying the consumer's name and account information, the date of the request, and the date and purpose of any further contacts by the debt collector after receipt of the request from the consumer.

To comply with this subdivision, debt collectors may combine all the monthly logs or records into one document or record or use a template: "Report for Consumer Activity" as made available on the Department's website at www.nyc.gov/dcwp.

EFFECTIVE DATE: All new provisions contained in this rulemaking shall apply to debts charged-off on or after January 1, 2025, or for debts not charged off, the new provisions will apply to debts that defaulted on or after January 1, 2025.

Commented [DR50]: The industry requests a date certain that the revised rules take effect. Given the significant changes to the rules, we respectfully request that they be applied prospectively. To not apply the rules prospectively, will automatically place the industry in non-compliance (example: the log). The industry cannot be expected to know what new requirements a future regulatory change will require.

November 29, 2023

Attn: New York City Department of Consumer and Worker Protection

Sent via email to **Rulecomments@dcwp.nyc.gov**

Re: Comments on Proposed Rule Amendments to Sections 2-191 and 2-193 of Subchapter S of Chapter 2 of Title 6 of the Rules of the City of New York, and to Sections 5-76 and 5-77 of Part 6 of Subchapter A of Chapter 5 of Title 6 of the Rules of the City of New York

To Whom It May Concern:

On behalf of Encore Capital Group, Inc., and its wholly-owned subsidiaries (collectively, "Encore"), we are submitting this comment letter to the Department of Consumer and Worker Protection's ("DCWP") proposed amendments to its rules relating to debt collectors. Also enclosed is a redline of the proposed rules outlining our concerns and suggested changes.

We Urge the DCWP to Make Changes to the Extremely Restrictive Proposed Caps on Communicating with Consumers

The DCWP has not made meaningful changes to communication caps as initially proposed, and we have grave concerns that codifying this language will strangle the ability of debt collectors and NYC consumers to have critical conversations necessary to resolve debt.

From the outset, we think it's important to acknowledge that responsible debt collection is a valuable part of the consumer credit economy. The value add is to consumers and creditors alike, not just to the collectors themselves. Responsible debt collectors are not trying to bother consumers about a false debt, nor are they trying to sell or market a service or product to the consumer. Debt collectors are seeking to work with consumers to pay off a legitimate debt obligation that the consumer incurred but has failed to pay back. As the CFPB stated when it issued its 2021 national debt collection rules, "Collection efforts may directly recover some or all of the overdue amounts owed to debt owners and thereby may indirectly help to keep consumer credit available and more affordable to consumers. Collection activities also can lead to repayment plans or debt restructuring that may provide consumers with additional time to make payments or resolve their debts on more manageable terms."[1]

Encouraging responsible debt collection – which cannot exist without adequate communication with consumers – is important for several reasons. If collectors do not collect on outstanding debt, creditors are impacted harmfully and will in turn be more restrictive going forward in offering credit. If consumers don't repay their debt, creditors are not going to be as willing to lend in the first place. Unbiased academic research has backed up this statement. As Visiting Scholar at the Federal Reserve Bank of Philadelphia, Viktar Fedaseyeu, has found, "stricter

[1] Regulation F, 86 Fed. Reg. 5766 (Jan. 19, 2021).

third-party debt collection laws reduce the effectiveness of contract enforcement in consumer credit markets and decrease the availability of new revolving debt."[2]

Moreover, if consumers don't repay their debt obligations, the consequence is not just a general reduction in credit availability to NYC consumers. There are direct consequences to the consumer herself: negative credit reporting, interest and fees, and the potential to get sued.

When communication declines, debt collection litigation necessarily rises. Litigation is a last resort – it is costly for the plaintiff debt-owner and a poor outcome for the consumer. However, the primary reason debt collection lawsuits are filed is because the consumer and collector are unable to effectively communicate to resolve the debt. Collectors want to avoid filing a lawsuit, and the best way to do so is to be able to effectively communicate with the consumer. Whether that communication is via phone, email, text or letter, collectors will notify consumers of their debt obligations (including detailed account information to demonstrate that the account is valid and the balance is accurate), and will offer consumers different options for payment arrangements. Debt collectors also notify consumers of hardship options, if applicable. It may be counterintuitive, but ***more communication between collectors and consumers most often produces better outcomes for consumers***.

Protections already exist under federal and state law if a consumer wants a collector to no longer contact them.[3] There are also existing call caps under federal law, under the CFPB's 2021 national rules for debt collectors ("Regulation F"), which resulted from seven years of deliberation by the CFPB and review of thousands of comments.[4] Other jurisdictions that have communication caps include Massachusetts, West Virginia, and Washington DC.[5] These restrictions relate specifically to ***calls*** (not ***all*** types of communications), and are far less restrictive than what the DCWP is proposing.

There is good reason that the federal government and other states differentiate between caps on phone calls versus other methods of communication. Calls are considered "active" communications, in that a ringing phone may be disruptive to the consumer and demand an immediate response (*i.e.*, make the decision to answer or decline the call). By contrast, letters, emails and texts are considered "passive" forms of communication, because consumers are not immediately interrupted in the same way a ringing phone presents, and can easily ignore a letter, email or text. In addition, under the CFPB's Regulation F, consumers have the ability to simply opt out of receiving emails and text messages. More broadly, the consumer also always has the option to request that a collector cease

[2] https://www.philadelphiafed.org/-/media/frbp/assets/working-papers/2020/wp20-06.pdf
[3] Under the FDCPA (15 U.S. Code § 1692c), when a consumer refuses, in writing, to pay a debt or requests that the debt collector cease further communication, the collector must cease all further communication, except to advise the consumer that: (a) the collection effort is being stopped, or (b) certain specified remedies ordinarily invoked may be pursued or, if appropriate, that a specific remedy will be pursued.
[4] 12 CFR Part 1006 (Regulation F).
[5] Massachusetts law provides that debt collectors cannot call a consumer at home more than twice for each debt in any seven-day period, or more than twice for each debt in any 30-day period at some place other than your home, such as your place of work (940 Code of Massachusetts Regulations 7.04(1)(f)). West Virginia law prohibits a debt collector from calling any person more than 30 times per week or engaging any person in telephone conversation more than 10 times per week. (Section 46A-2-125 of the West Virginia Consumer Credit and Protection Act.) Washington, DC's law restricts debt collectors from making in excess of 4 phone calls per account, inclusive of all phone numbers the debt collector has for the consumer, in any 7-day period (DC Law L24-0154).

all communications (including those by phone and letters).[6] More stringent communication caps, therefore, aren't necessary because there already exist ample legal protections for consumers against too many communications. Under the FDCPA, in addition to the weekly cap of seven call attempts, if a consumer wants a collector to stop communicating with them, or only use a certain method of communication (*e.g.*, letters but not phone), the consumer simply has to state that and the collector must, under the law, comply with the consumer's request.

With the federal standard and a small handful of state standards in place for call caps, there is not currently an epidemic of consumers receiving too many debt collection calls. Complaints about communication tactics represent a very small percentage of complaints to the CFPB about our industry. As reflected in the CFPB's latest annual report on complaint trends, which analyzes and publishes consumer complaint data, complaints nationwide against debt collectors relating to communication tactics constituted only 7% of all complaints.[7] From 2021 to 2022, the percentage of complaints against debt collectors regarding communication tactics remained extremely stable, from 4,000 to 4,200 complaints nationwide (or about 7% of all complaints about debt collection in 2022).

In sum, we urge the DCWP to change its proposed communication caps to the national standard, which restricts debt collectors to seven attempted calls per week, per account. Once a right party contact is made, the collector may not call back the consumer for a week, unless the consumer provides consent for an earlier call back. This rule has been in effect since 2021, and we need more time to see if it provides sufficient protection for consumers before drastic changes are made that have the potential for significant unintended consequences for the consumers the rules are intended to protect.

The DCWP Should Clarify That the Charge Off Date is the Starting Point for the Itemization Reference Date

We urge the DCWP to modify its definition of the itemization reference date, to provide that the federally-regulated charge off date is the correct reference date. Using the charge off balance and charge off date as the standard for itemization is consistent with what the CFPB (in Regulation F) and other states, such as California[8], Colorado[9], and Maine[10] have codified. In New York State court rules and affidavits for default judgment applications in consumer credit matters,[11] the date and amount of the charge off balance is required. In addition, under the New York Consumer Credit Fairness Act[12] that took effect in 2022, itemization is required of the total amount of the debt due as of the charge-off.

Creating a new standard only one year after the NY and CFPB standards were created is not only rash, but can be confusing for New York consumers. A new and different itemization standard does not give consumers the time or clarity to understand the information provided to them. Consistency in standards is critical for the consumer, and providing itemization as of the final statement date, not the charge off date, will provide an

[6] FDCPA Section 805(c).
[7] https://files.consumerfinance.gov/f/documents/cfpb_2022-consumer-response-annual-report_2023-03.pdf, at 25.
[8] Cal. Civ. Code § 1788.52.
[9] CO Rev Stat § 5-16-111.
[10] Title 32, Chapter 109-A, Subchapter 2 of Maine Revised Statutes.
[11] Located at https://www.nycourts.gov/LegacyPDFS/rules/ccr/AO_185.14.pdf.
[12] NY State Senate Bill 153 (2021).

inaccurate view of the balance. As adopted by California in its comprehensive Fair Debt Buying Practices Act, any post-charge off itemization should explain "the debt balance at charge off and an explanation of the amount, nature and reason for all post-charge-off interest and fees, if any, imposed by the charge-off creditor or any subsequent purchaser of the debt…"[13]

A Prospective Effective Date is Critical, Given the Enormous Operational Changes Being Proposed as Well as the Fact that the Verification Proposal Would Necessitate that Debt Collectors Produce Documents That Have Not Been Required in the Past

As in its first draft, the latest draft of proposed rules does not specify an effective date. This is a major concern for our company, and our industry as a whole. This extremely comprehensive rulemaking would require a complete overhaul how we communicate with consumers, capture communications information in our recordkeeping systems, respond to consumer disputes and requests for verification, retain data and documents, and the data and documents we would need to obtain from the original creditors.

Below are a few of the many examples of massive operational changes being proposed:

- Recordkeeping changes, including keeping a monthly log of cease and desist requests and capturing consumers' preferred methods of communication, if known
- Creation of a new letter called the "Unverified Debt Notice"
- Overhauling our validation letters by adding time barred debt notices and a list of other disclosures for NY City consumers
- Responding to requests for verification within 45 days, instead of 60 days
- Modifying our website so that, if we accept disputes on our website, the website automatically generates a copy of the dispute that can be printed, saved or emailed

In addition to the operational changes, the proposed rules should also clarify that they are not retroactive. The proposed rules would allow for consumers to request verification at any time (up from 30 days under existing law), consumers may request verification for accounts that are many years old. Take, for example, a default judgment obtained ten years ago, which the consumer has been steadily paying off. If the consumer requests verification, under the proposed rules a copy of the judgment – an order issued by a judge – will no longer be sufficient to verify the debt. As other documents aside from the judgment have never been needed to verify a debt, in many cases judgment creditors would be unable to verify a judgment under the new standard. Going forward, debt collectors would need to ensure they obtain other forms of documentation to verify judgments, but applying the new rules to accounts purchased prior to the effective date would be an unconstitutional retroactive application of the law.

[13] Cal. Civ. Code § 1788.52

For the same reasons identified above, when other states have enacted new requirements for our industry, the changes have been made prospectively, to accounts opened or charged off on or after the effective date. Some examples include:

- California Fair Debt Buying Practices Act – applied to debts sold or resold on or after January 1, 2014.[14]
- California Assembly Bill 1414 – requires that consumer credit collection lawsuits are based on a breach of contract theory rather than account stated theory. This will require that plaintiffs in a debt collection lawsuit submit a copy of the terms and conditions and other documents that, under account stated, were not necessary. As a result, the law applies to accounts opened on or after July 1, 2024.[15]
- New York Court Rules and Affidavits for Judgment Applications in Consumer Credit Matters – for debt buyer actions, the rules apply to debt purchased from an original creditor on or after October 1, 2014.[16]

The above examples provide clarity and fairness to the industry, by ensuring that new rules aren't created for debt previously purchased before the effective date. Recently, New York State passed legislation relating to post judgment interest rate on consumer debt that did not provide for a prospective effective date.[17] Since April 2022, class action litigation has been pending challenging that law as a violation of the Takings Clause of the Fifth Amendment and the Due Process Clause of the Fourteenth Amendment, as the effective date of the law would deprive debt owners of their property without just compensation or due process.[18] Given the history of other consumer debt laws and rules ensuring that any new rules apply to debt sold or charged off on or after the effective date, and the confusion and ensuing litigation over the New York law's retroactivity, it is critically important that any new rules apply to accounts charged off on or after the effective date of the rules. **We urge the DCWP to adopt an effective date for this rulemaking to apply to accounts charged off on or after January 1, 2025.**

Verbal Disclosures, Instead of Repetitive, Costly Written Disclosures, Should Be Permitted for Time-Barred Debt

We urge the DCWP to allow, after the initial written notice of time-barred debt disclosures is sent, collectors to provide future time-barred debt disclosures verbally, rather than in writing. As drafted, the proposed language would require a written disclosure to be sent out within five days of each oral communication, or every 30 days. This would, in no uncertain terms, be cost-prohibitive and create significant environmental waste.

[14] *Id*.
[15] https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240AB1414
[16] https://www.nycourts.gov/LegacyPDFS/rules/ccr/AO_185.14.pdf
[17] S.B. 5724A, 244th Leg. Sess., c. 831 (N.Y. 2021).
[18] Greater Chautauqua Federal Credit Union v. Marks (S.D.N.Y., Case No. 22-cv-2753).

Moreover, there would be no extra benefit to consumers of providing disclosures via mail rather than verbally. Hearing a disclosure by phone, at the time of a conversation with a collector, would be more informative to most consumers than receiving a piece of mail that they are unlikely to read, or may not understand without speaking with a collection agent. For written communications that are mailed on time-barred debt, the time-barred disclosure should be included, but we do not think that a constant flow of mailing written disclosures for time-barred accounts is merited.

For these reasons, for time-barred debt, after the initial written disclosure is sent, verbal disclosures in each communication should replace a constant stream of written disclosures.

* * *

With the above concerns in mind, we urge the DCWP to amend its proposed regulations. Should you have questions or request additional information, please don't hesitate to contact me at tamar.yudenfreund@encorecapital.com.

Sincerely,

Tamar Yudenfreund
Senior Director, Public Policy

Enclosure

cc: Sonia Gibson
Director, National Government Affairs
Encore Capital Group

Encore Capital Group's Requested Changes to the Proposed Rule Amendments

Section 1. Section 2-191 Disclosure of Consumer's Legal Rights Regarding the Effect of the Statute of Limitations on Debt Payment, Subchapter S of Chapter 2 of Title 6 of the Rules of the City of New York, is repealed in its entirety.

Section 2. Section 2-193 of Subchapter S of Chapter 2 of Title 6 of the Rules of the City of New York is amended to read as follows:

§ 2-193. Records to be Maintained by Debt Collection Agency

(a) Unless otherwise prohibited by federal, state or local law, a debt collection agency [shall] must maintain a separate file for each debt that the debt collection agency attempts to collect from each New York City consumer, in a manner that is searchable or retrievable by the name, address and zip code of the consumer, and by the creditor who originated the debt the agency is seeking to collect. The debt collection agency [shall] must maintain in each debt file the following records to document its collection activities with respect to each consumer:

(1) A copy of all communications and attempted communications [or exchanges] with the consumer.

(2) A record of each payment received from the consumer that states the date of receipt, the method of payment and the debt to which the payment was applied.

(3) A copy of the debt payment schedule and/or settlement agreement reached with the consumer to pay the debt.

(4) With regard to any debt that the debt collection agency has purchased, a record of the name and address of the entity from which the debt collection agency purchased the debt, the date of the purchase and the amount of the debt at the time of such purchase.

(5) Any other records that are evidence of compliance or noncompliance with subchapter 30 of chapter 2 of title 20 of the Administrative Code and any rule promulgated thereunder, and of part 6 of subchapter A of chapter 5 of title 6 of the Rules of the City of New York.

(6) A log, account notes or record of all communications and attempted communications by any medium between a debt collection agency and a New York City consumer in connection with the collection of a debt. For each communication and attempted communication, the log, account notes or record must identify in a manner that is searchable and easily identifiable, the following:

(i) the date, and the time and duration of the communication or attempted communication, if applicable;

(ii) the medium of communication or attempted communication;

(iii) the names and contact information of the persons involved in the communication; and

(iv) a contemporaneous summary in plain language of the communication or attempted communication.

(b) A debt collection agency [shall] must maintain the following records to document its collection activities with respect to all New York City consumers from whom it seeks to collect a debt:[(1) A monthly log of all calls made to consumers, listing the date, time and duration of each call, the number called and the name of the person reached during the call]

(1) Monthly logs or a record, in a form and format designated by the Commissioner, of the following:

(i) all complaints filed by New York City consumers against the debt collection agency, including those filed with the agency directly or with any not-for-profit entity or governmental agency, identifying for each complaint the date, the consumer's name and account information, the source of the complaint, a summary of the consumer's complaint, the debt collection agency's response to the complaint, if any, and the current status of the complaint;

(ii) all disputes or requests for verification made by New York City consumers, identifying each consumer's name and account information, the date of the dispute or request for verification, and the date and type of response, if any, sent by the debt collection agency; and

(iii) all cease-and-desist requests made by New York City consumers, identifying the consumer's name and account information, the date of the request, and the date and purpose of any further contacts by the debt collection agency after receipt of the request from the consumer.

(2) Recordings of [complete conversations] all telephone communications, including limited content messages, with all New York City consumers or with a randomly selected sample of at least 5% of all calls made or received by the debt collection agency or a third party on its behalf [and a copy of contemporaneous notes of all conversations with consumers]. The method used for randomly selecting the recorded calls [shall] must be [included in the file where the tape recordings are] maintained by the debt collection agency and a record in each consumer's account must identify the calls by date and time recorded, and any third party assigned to handle such calls. If a debt collection agency elects to record a randomly-selected sample of at least 5% of all calls made or received by the debt collection agency, it must maintain a record of the total number of calls made or received on a monthly basis and the total number of such recorded calls. If the debt collection agency owns or has the right to collect on a debt before it refers such a debt to a third party to handle collections calls with consumers, the debt collection agency must ensure that:

(i) The third party complies with this section and the licensing rules and laws pertaining to debt collection in the City of New York; and

(ii) The third-party audio recordings are available upon request by the Department to the debt collection agency.

(3) A record of all cases filed in court to collect a debt. Such record [shall] must include, for each case filed, the name of the consumer, the identity of the originating creditor, the amount claimed to be due, the [civil court] index number and the court and county where the case is filed, the date the case was filed, [the name of the process server who served process on the consumer, the date, location and method of service of process, the affidavit of service that was filed and] the disposition for each case filed, including whether a judgment was rendered on default or on the merits of the action. Such record [shall] must be filed in a manner that is searchable or retrievable by the name, address and zip code of the consumer and the creditors who originated the debts that the debt collection agency is seeking to collect.

(4) The original copy of each contract with a process server for the service of process, and copies of all documents involving traverse hearings relating to cases filed by or on behalf of the debt collection agency. Such records should be filed in a manner that is searchable by the name of the process server.

(5) A record indicating the language preference of the consumer, except where the debt collector is not aware of such preference despite reasonable attempts to obtain it.

(6) A record indicating which medium(s) of electronic communication are permitted or not permitted by each consumer and, if known, the consumer's preferred medium of communication in connection with the collection of a debt.

(7) A record of information on debt furnished to a consumer reporting agency, including the date the debt collection agency notified the consumer about the debt before furnishing information to the credit bureau on that debt and the period of time it waited to receive a notice of undeliverability.

(8) A record of any notice of unverified debt issued in accordance with section 5-77(f)(7) or received by the debt collection agency, including any such notice received from the consumer.

(c) A debt collection agency [shall] must maintain the following records relating to its operations and practices:

(1) A copy of all actions, proceedings or investigations by government agencies that resulted in the revocation or suspension of a license, the imposition of fines or restitution, a voluntary settlement, a court order, a criminal guilty plea or a conviction.

(2) A copy of all [policies,] training materials, manuals, and guides for employees or agents that direct, describe, suggest or promote how a collector is to interact with consumers in the course of seeking to collect a debt.

(3) An annual report, in a form made publicly available on the Department's website, identifying, by language, (i) the number of consumer accounts on which an employee collected or attempted to collect a debt owed or due or asserted to be owed or due [in a language other than English]; and (ii) the number of employees that collected or attempted to collect on such accounts [in a language other than English].

(4) A copy of all policies addressing the collection of time-barred debts.

(5) A copy of all policies addressing the verification of debts.

(6) A copy of all policies addressing the furnishing of consumer debt to credit reporting bureaus.

(7) A copy of all policies addressing hospital financial assistance programs related to medical debt.

(d) The records required to be maintained pursuant to this section [shall] must be retained for [six years from the date the record was created by the debt collection agency, a document was obtained or received by the debt collection agency, a document was filed in a court action by the debt collection agency, or a training manual or employee guide was superseded, except that recordings of conversations with consumers shall be retained for one year after the date of the last conversation recorded on each completed recording tape] the following periods of time:

(1) For records required to be maintained pursuant to subdivisions (a) and (b) of this section, excluding recordings of calls with consumers, until three years after the date of the debt collection agency's last collection activity on the debt.

(2) For recordings of calls with consumers, until three years after the date of the call.

(3) For records required to be maintained pursuant to subdivision (c) of this section, until six years after the date the record was created.

Section 3. Section 5-76 of Part 6 of Subchapter A of Chapter 5 of Title 6 of the Rules of the City of New York is amended by adding the following definitions in alphabetical order:

Attempted communication. The term "attempted communication" means any act to initiate a communication or other contact about a debt with any person through any medium, including by soliciting a response from such person. An act to initiate a communication or other contact about a debt is an attempted communication regardless of whether the attempt, if successful, would be a communication that conveys information regarding a debt directly or indirectly to any person. A limited-content message is an attempted communication.

Clear and conspicuous. The term "clear and conspicuous" means readily understandable. In the case of written and electronic record disclosures, a clear and conspicuous statement, representation or element being disclosed is of such location, size, color and contrast to be readily noticeable and legible to consumers. In the case of oral disclosures, a clear and conspicuous disclosure is given at a volume and speed sufficient for a consumer to hear and comprehend it. In any clear and conspicuous disclosure, any required modifications, explanations or clarifications to other information are presented in close proximity to the information being modified, in a manner so as to be readily noticed and understood.

Covered medical entity. The term "covered medical entity" means a health care entity that is tax-exempt under federal or New York State law or qualifies for distributions from the Indigent Care Pool from the State of New York or any other such fund or distribution allocated to reduce the charges of medical services by granting financial assistance, through a financial assistance policy, to patients based on need or an inability to pay.

Electronic communication. The term "electronic communication" means communication by electronic means including, but not limited to, electronic mail, a text message, or instant message, rather than oral communication in person or by telephone, or hard copy communication by mail.

Electronic record. The term "electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

Financial assistance policy. The term "financial assistance policy" means a program to reduce or eliminate charges for medical services provided which was established by a nonprofit hospital or health care provider.

Itemization reference date. The term "itemization reference date" means any one of the following dates: (1) on revolving or open-end credit accounts, the ~~date of the last written notification sent to the consumer which lists the total amount of the outstanding debt asserted to be owed by the consumer on or before the~~ charge-off date of the debt; or (2) on closed-end accounts, either the date of the last payment, if such date is available, or the ~~date of the last written notification sent to the consumer which lists the total amount of the outstanding debt asserted to be owed by the consumer on or before the~~ charge-off date of the debt.

Language access services. The term "language access services" means any service made available by a debt collector to consumers in a language other than English. Language access services include, but are not limited to, the use of:

(1) collection letters using a language other than English;

(2) customer service representatives who collect or attempt to collect debt in a language other than English;

(3) a translation service for the collector's website or for written communications; and

(4) a service that interprets phone conversations in real time.

Limited-content message. The term "limited-content message" means an attempt to communicate with a consumer by leaving a voicemail message that includes all of the following content, which may include other content allowed by federal law, and that includes no other content:

(1) A business name for the debt collector that does not indicate that the debt collector is in the debt collection business;

(2) A request that the consumer reply to the message;

(3) The name of the natural person whom the consumer can contact to reply to the debt collector; and

(4) A call-back telephone number that is answered by a natural person.

Commented [TY1]: We urge the DCWP to modify its definition of the itemization reference date, to provide that the federally-regulated charge off date is the correct reference date.

Using the charge off balance and charge off date as the standard for itemization is consistent with what the CFPB (Regulation F) and other states, such as California (Cal. Civ. Code § 1788.52), Colorado (CO Rev Stat § 5-16-111), and Maine (Title 32, Chapter 109-A, Subchapter 2 of Maine Revised Statutes), have codified. In New York State itself, in its court rules and affidavits for default judgment applications in consumer credit matters (located at https://www.nycourts.gov/LegacyPDFS/rules/ccr/AO_185.14.pdf), the date and amount of the charge off balance is required. In addition, under the New York Consumer Credit Fairness Act (Senate Bill 153) that took effect in 2022, itemization is required of the total amount of the debt due as of the charge-off.

Creating a new standard only one year after the NY and CFPB standards is not only rash, but can be confusing for NY consumers. A new and different itemization standard does not give consumers the time or clarity to understand the information provided to them.

Original creditor and originating creditor. The terms "original creditor" or "originating creditor" means any person, firm, corporation, or organization who originated the debt, including by extending credit and creating the debt.

Section 4. The definitions for "Communication" and "Debt collector" in Section 5-76 of Part 6 of Subchapter A of Chapter 5 of Title 6 of the Rules of the City of New York are amended to read as follows:

Communication. The term "communication" means the conveying of information regarding a debt directly or indirectly to any person through any medium, including by electronic means. The term communication excludes a limited-content message.

Debt collector. The term "debt collector" means [an individual who, as part of his or her job, regularly collects or seeks to collect a debt owed or due or alleged to be owed or due] any person engaged in any business with the principal purpose of which is the collection of any debts or who regularly collects, or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due to another person. The term does not include:

(1) any officer or employee of the United States, any State or any political subdivision of any State to the extent that collecting or attempting to collect any debt owed is in the performance of [his or her] their official duties;

(2) any person while engaged in performing an action required by law or regulation, or required by law or regulation in order to institute or pursue a legal remedy;

(3) any individual employed by a nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors; [or]

(4) any individual employed by a utility regulated under the provisions of the Public Service Law, to the extent that New York Public Service Law or any regulation promulgated thereunder is inconsistent with this part; or

(5) any person while performing the activity of serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt, or serving, filing or conveying formal legal pleadings, discovery requests, judgments, or other documents pursuant to the applicable rules of civil procedure, where such person is not a party, or providing legal representation to a party, to the action.

Where a provision of this part limits the number of times an action may be taken by the debt collector, or establishes as a prerequisite to taking an action that the debt collector has received or done something, or prohibits an action if the debt collector has knowledge of or reason to know something, the term "debt collector" includes any debt collector employed by the same employer.

Section 5. Section 5-77 of Part 6 of Subchapter A of Chapter 5 of Title 6 of the Rules of the City of New York is amended to read as follows:

§ 5-77. Unconscionable and Deceptive Trade Practices.

It is an unconscionable and deceptive trade practice for a debt collector to attempt to collect a debt owed, due, or asserted to be owed or due except in accordance with the following rules:

(a) ***Acquisition of location information***. Any debt collector communicating with any person other than the New York City consumer for the purpose of acquiring location information about the consumer in order to collect a debt[, after the institution of debt collection procedures shall] must:

(1) identify [himself or herself] themselves, state that [he or she is] they are confirming or correcting location information about the consumer and identify [his or her employer] the debt collector on whose behalf they are communicating when that identification connotes debt collection only if expressly requested;

(2) not state or imply that such consumer owes any debt;

(3) not communicate more than once, unless requested to do so by such person or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information, in which case the debt collector may communicate one additional time; for the purposes of this paragraph (3), the debt collector need not count as a communication returned unopened mail, an undelivered email message, or a message left with a party other than the person the debt collector is attempting to reach in order to acquire location information about the consumer, as long as the message is limited to a telephone number, the name of the debt collector and a request that the person sought telephone the debt collector;

(4) not use any language or symbol on any envelope or in the contents of any communication effected by the mail or a delivery service that indicates that the debt collector is in the debt collection business or that the communication relates to the collection of a debt; provided that a debt collector may use [his or her] their business name or the name of a department within [his or her] their organization as long as any name used does not connote debt collection; and

(5) if the debt collector knows the consumer is represented by an attorney with regard to the subject debt and if the debt collector has knowledge of the attorney's name and address or can readily ascertain such attorney's name and address, not communicate with any person other than that attorney for the purpose of acquiring location information about the consumer unless the attorney fails to provide the consumer's location within a reasonable period of time after a request for the consumer's location from the debt collector and:

(i) informs the debt collector that [he or she] the attorney is not authorized to accept process for the consumer; or
(ii) fails to respond to the debt collector's inquiry about the attorney's authority to accept process within a reasonable period of time after the inquiry.

[The employer of a debt collector may not be held liable in any action brought under § 5-77(a)(3) or (5) if the employer shows by a preponderance of the evidence that the violation was not intentional and resulted despite the maintenance or procedures reasonably adapted to avoid any such violation.]

(b) ***Communication in connection with debt collection***. A debt collector, in connection with the collection of a debt, [shall] must not:

(1) [After institution of debt collection procedures, without] Without the prior written consent of the New York City consumer given directly to the debt collector [after the institution of debt collection procedures], or without permission of a court of competent jurisdiction, [communicate with the consumer in connection with the collection of any debt;] engage in any of the following conduct:

(i) communicate or attempt to communicate with the consumer at any unusual time or place known, or which should be known, to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating or attempting to communicate with a consumer is after 8 a.m.[o'clock ante meridian] and before 9 p.m.[o'clock post meridian time] at the consumer's location;

(ii) except for any communication that is required by law, communicate or attempt to communicate directly with the consumer if the debt collector knows the consumer is represented by an attorney with respect to such debt and if the debt collector has knowledge of the attorney's name and address or can readily ascertain such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer[, except any communication which is required by law or chosen from among alternatives of which one is required by law is not hereby prohibited];

(iii) communicate or attempt to communicate with the consumer at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer or supervisor prohibits the consumer [from receiving] to receive such a communication; or

(i) [with excessive frequency. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that more than twice during a seven-calendar-day period is excessively frequent. In making its calculation, the debt collector need not include any communication between a consumer and the debt collector which is in response to an oral or written communication from the consumer, or returned unopened mail, or a message left with a party other than one who is responsible for the debt as long as the message is limited to a telephone number, the name of the debt collector and a request that one who is responsible for the debt telephone the debt collector; or any communication which is required by law or chosen from among alternatives of which one is required by law] communicate or attempt to communicate, including by leaving limited content messages, with the consumer with excessive frequency. Excessive frequency means either any communication or attempted communication by the debt collector with a consumer in violation of 12 CFR Part 1006.14(b).

~~(iv)~~

~~(A) Excessive frequency means either 1) any communication or attempted communication by the debt collector with a consumer, by any medium of communication or in person, in connection with the collection of debt more than three times during a seven-consecutive-calendar-day period, or 2) after already~~

Commented [TY2]: It is critical that communication caps are aligned with the recently-enacted federal standard under the CFPB's regulation F.

having had an interaction with the consumer within such seven-consecutivecalendar-day period.

(B) The date of the first day of such a seven-consecutive-calendar-day period is the day of the first such communication or attempted communication. Communication or attempted communication between a consumer and the debt collector that is initiated by or at the request of a consumer; in response to a communication from the consumer in the same email thread or live chat; not connected to the dialed number, returned mail or a bounced email; or required by law shall not be included in the calculation of excessively frequent communications.

(C) Any communication or attempted communication made by a person pursuant to the rules of civil procedure, such as serving, filing, or conveying formal legal pleadings, discovery requests, depositions, court conferences, communications with the consumer's attorney on a pending legal matter, or ordered by the New York State Unified Court System, shall not be included in the calculation of excessively frequent communications. Traditional debt collection activities, such as sending a consumer a collection letter or placing a call, or using any other means, to contact the consumer to collect on debt, count toward the calculation of excessively frequent communications in section 5-77 (b)(1)(iv)(A).

[The employer of a debt collector may not be held liable in any action brought under 6 RCNY § 577(b)(1)(ii)-(iv) if the employer shows by a preponderance of the evidence that the violation was not intentional and resulted despite maintenance of procedures reasonably adapted to avoid any such violation]

For the purpose of paragraph (1) of this subdivision, the term "consumer" includes the consumer's parent (if the consumer is a minor), guardian, executor, administrator, or spouse (unless the debt collector knows or should know that the consumer is legally separated from or no longer living with their spouse).

(2) [In order to collect a debt, and except as provided by 6 RCNY § 5-77(a)] Except if otherwise permitted by law, communicate about a debt with any person other than the consumer who is obligated or allegedly obligated to pay the debt, [his or her] the consumer's attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, a debt collector to whom [or to whose employer] the debt has been assigned for collection[, a creditor who assigned the debt for collection,] or the attorney of that debt collector[, or the attorney for that debt collector's employer,] without the prior written consent of the consumer or their attorney given directly to the debt collector [after the institution of debt collection procedures, or without the prior written consent of the consumer's attorney], or without the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy.

(3) Communicate with any person other than [the consumer's attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, a debt collector to whom or to whose employer the debt has been assigned for collection, a creditor who assigned the debt for collection, or the attorney of that debt collector or the attorney for that debt collector's employer] those persons enumerated in paragraph (2) of this subdivision in a manner

which would violate any provision of [this part] paragraph (1) of this subdivision if such person were a consumer.

(4) [After institution of debt collection procedures, communicate] Communicate with a consumer with respect to a debt if the consumer has notified the debt collector [in writing] that the consumer wishes the debt collector to cease further communication with the consumer with respect to that debt, except [that] for any communication which is required by law [or chosen from among alternatives of which one is required by law is not hereby prohibited]. The debt collector shall have a reasonable period of time following receipt by the debt collector of the notification to comply with a consumer's request[, except that any debt collector who knows or has reason to know of the consumer's notification and who causes further communication shall have violated this provision]. The debt collector may, however:

(i) communicate with the consumer once in writing or by electronic means:

(A) to advise the consumer that the debt collector's further efforts are being terminated; or[;]

(B) [to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or;

(C) where applicable] to the extent such notice was not previously provided, to notify the consumer that the debt collector or creditor intends to invoke a specific remedy, if it[that] is a remedy [he is]they are legally entitled to invoke and [if he they actually intends] intend to invoke it; and

(ii) respond to each subsequent [oral or written] communication from the consumer.

(5) [For the purpose of 6 RCNY § 5-77(b)(1)-(4), the term "consumer" includes the consumer's parent (if the consumer is a minor), guardian, executor, administrator, spouse (unless the debt collector knows or has reason to know that the consumer is legally separated from or no longer living with his or her spouse), or an individual authorized by the consumer to make purchases against the account which is the subject of the collection efforts. A request that the debt collector cease further communication, provided for under 6 RCNY § 5-77(b)(4), if made by the consumer's spouse or an individual authorized by the consumer to make purchases against the account, only affects the debt collector's ability to communicate further with the person making the request]Contact a New York City consumer by electronic communication unless the debt collector satisfies the following requirements:

(i) A debt collector may only use a specific email address, text message number, social media account, or specific electronic medium of communication if:

(A) such electronic communication is private and direct to the consumer; and

(B) the debt collector obtains revocable consent from the consumer in writing, given directly to the debt collector, to use such email address, text message number, social media account, or other electronic medium of communication

to communicate about the debt, and the consumer has not since revoked the consent; or

(C) the consumer used such email address, text message number, social media account or other electronic medium of communication to communicate with the debt collector about a debt within the past 30 days and has not since opted out of communications to that email address, text message number, social media account or other electronic medium of communication or opted out of all electronic communications generally.

(ii) A person's electronic signature constitutes written consent under this section, provided it complies with all relevant state and federal laws and rules, including article three of the New York Technology Law (New York Electronic Signatures and Records Act) and chapter 96 of title 15 of the United States Code (Electronic Signatures in Global and National Commerce Act).

(iii) The written consent, revocable by the consumer, is retained by the debt collector until the debt is discharged, sold, or transferred.

(iv) A debt collector who sends any disclosures required by this subchapter electronically must do so in a manner that is reasonably expected to provide actual notice, and in a form that the consumer may keep and access later.

([v) The debt collector must include in every electronic mail communication to the consumer a clear and conspicuous written disclosure that the person may revoke consent to receive electronic communication at any time, and a reasonable and simple method by which the consumer can opt-out of further electronic communications or attempts to communicate by the debt collector, which may include replying "stop" or some other word(s) that reasonably indicates the consumer wishes to opt-out. The disclosure to the consumer must be in the same language as the rest of the communication and the debt collector must accept the consumer's response to opt-out in the same language as in the initial electronic mail that prompted the response from the consumer or in any language used by the debt collector to collect debt.

(vi) The debt collector may not require, directly or indirectly, that the consumer, in order to opt-out, pay any fee to the debt collector or provide any information other than the consumer's opt-out preferences and the email address or text message number subject to the opt-out request.

(6) Communicate with a consumer by sending an electronic message to an email address or a text message number that the debt collector knows or should know is provided to the consumer by the consumer's employer.

(7) Communicate with a consumer on a social media platform, unless the debt collector obtains consent from the consumer to communicate on the specific social media platform, and the communication is not viewable by anyone else other than the consumer, including but not limited to the general public or the consumer's social media contacts.

(8) Communicate with a consumer through a medium that the consumer has requested that the debt collector not use to communicate with the consumer.

(9) Communicate or attempt to communicate with a consumer to collect a debt for which the debt collector knows or should know that the consumer was issued a Notice of Unverified Debt pursuant to subdivision (f).

(c) ***Harassment or abuse***. A debt collector, in connection with the collection of a debt, shall not engage in conduct the natural consequence of which is to harass, oppress or abuse any person in connection with a debt. Such conduct includes:

(1) the use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person;

(2) the use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader;

(3) the advertisement for sale of any debt to coerce payment of the debt;

(4) causing a telephone to ring or produce another sound or alert, or engaging any person [in] by any communication medium, including but not limited to telephone conversation, repeatedly or continuously with intent to annoy, abuse, or harass any person [at the called number] contacted by the debt collector;

(5) the publication of a list of consumers who allegedly refuse to pay debts, except to another employee of the debt collector's employer or to a consumer reporting agency or to persons meeting the requirements of 15 USC § 1681a(f) or 15 USC § 1681b(3); or

(6) except [as provided by 6 RCNY § 5-77(a), the placement of telephone calls without meaningful disclosure of the caller's identity] where expressly permitted by federal, state, or local law, communicating with a consumer without disclosing the debt collector's identity.

(d) ***False or misleading representations***. A debt collector, in connection with the collection of a debt, shall not make any false, deceptive, or misleading representation. Such representations include:

(1) the false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or identification[facsimile]thereof;

(2) the false representation or implication that any individual is an attorney or is employed by a law office or a legal department or unit, or any communication is from an attorney, a law office or a legal department or unit, or that an attorney conducted a meaningful review of the consumer's debt account;

(3) the representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any

property or wages of any person unless such action is lawful and the debt collector or creditor intends to pursue such action;

(4) the threat to take any action that cannot legally be taken or that is not intended to be taken;

(5) the false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to:

(i) lose any claim or defense to payment of the debt; or

(ii) become subject to any practice prohibited by this part;

(6) the false representation [of] or implication made in order to disgrace the consumer that the consumer committed any crime or other conduct;

(7) the false representation or implication that accounts have been turned over to innocent purchasers for value;

(8) the false representation or implication that documents are legal process;

(9) the false representation or implication that documents are not legal process forms or do not require action by the consumer;

(10) the false representation or implication that a debt collector operates or is employed by a consumer reporting agency as defined by 15 U.S.C. § 1681a(f);

(11) the use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval;

(12) the use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer;

(13) the use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization, unless the general public knows the debt collector's business, company or organization by another name and to use the true name would be confusing;

(14) [after institution of debt collection procedures,] the false representation of the character, amount or legal status of any debt, or any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt[, except that the employer of a debt collector may not be held liable in any action brought under this provision if the employer shows by a preponderance of the evidence that the violation was not intentional and occurred despite the maintenance of procedures reasonably adapted to avoid any such violation];

(15) except [as otherwise provided under 6 RCNY § 5-77(a) and except for any communication which is required by law or chosen from among alternatives of which one is required by law] for limited-content messages and where otherwise expressly permitted by federal, state, or local law, the failure to disclose clearly and conspicuously in all communications made to collect a debt [or to obtain information about a consumer,] that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose;

(16) the use of any [name that is not the debt collector's actual name; provided that a debt collector may use a name other than his actual name if he or she uses only that name in communications with respect to a debt and if the debt collector's employer has the name on file so that the true identity of the debt collector can be ascertained] assumed name; provided that an individual debt collector may use an assumed name when communicating or attempting to communicate with a consumer about a debt if that collector uses the assumed name consistently and is the only person using that assumed name, and the assumed name is on file so that the true identity of the collector can be ascertained;

(17) any conduct proscribed by New York General Business Law §§ 601(1), (3), (5), (7),
(8), or (9);

(18) the false, inaccurate, or partial translation of any communication [when the debt collector provides translation services]; [or]

(19) after the institution of debt collection procedures, the false representation or omission of a consumer's language preference when returning, selling or referring for debt collection litigation any consumer account, where the debt collector [is aware] knows or should know of such preference; or

(20) except where expressly permitted by federal, state, or local law, the failure to disclose clearly and conspicuously in all telephone communications in connection with the collection of a debt where the communication is recorded by the debt collector that the communication is being recorded and the recording may be used in connection with the collection of the debt.

(21) after the institution of debt collection procedures, the false representation that the consumer cannot dispute the debt or request verification of the debt from the debt collector by oral communication.

(e) ***Unfair and unconscionable practices***. A debt collector may not use any unfair or unconscionable means to collect or attempt to collect a debt. Such conduct includes:

(1) the collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law;

(2) the solicitation or use by a debt collector of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution;

(3) causing charges to be made to any person for communications by misrepresentation of the true purpose of the communication. Such charges include collect telephone calls and [telegram] text message or mobile phone data fees;

(4) taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if:

(i) there is no present right to possession of the property claimed as collateral;

(ii) there is no present intention to take possession of the property; or

(iii) the property is exempt by law from such dispossession or disablement;

(5) after institution of debt collection procedures, when communicating with a consumer by [use of the mails] mail or [telegram] a delivery service, using any language or symbol other than the debt collector's address on any envelope, or using any language or symbol that indicates the debt collector is in the debt collection business or that the communication relates to the collection of a debt on a postcard, except that a debt collector may use [his or her] their business name or the name of a department within [his or her] their organization as long as any name used does not connote debt collection;

(6) after institution of debt collection procedures, [communicating with a consumer regarding a debt without identifying himself or herself and his or her employer or communicating in writing with a consumer regarding a debt without identifying himself or herself by name and address and in accordance with 6 RCNY § 5-77(e)(5)] except where expressly permitted by federal, state, or local law, communicating with a New York City consumer without disclosing the debt collector's name; [or]

(7) after institution of debt collection procedures, if a consumer owes multiple debts of which any one or portion of one is disputed, and the consumer makes a single payment with respect to such debts:

(i) applying a payment to a disputed portion of any debt; or

(ii) unless otherwise provided by law or contract, failing to apply such payments in accordance with the consumer's instructions accompanying payment[. If payment is made by mail, the consumer's instructions must be written. Any communication by a creditor made pursuant to 6 RCNY § 5-77(e)(7)(ii) shall not be deemed communication for the purpose of 6 RCNY § 5-77(b)(1)(iv). The employer of a debt collector may not be held liable in any action brought under 6 RCNY § 5-77(e)(7) if the employer shows by a preponderance of the evidence that the violation was not intentional and resulted despite maintenance of procedures reasonably adapted to avoid any such violation];

(8) engaging in any conduct prohibited by New York General Business Law §§ 601(2) or
(4); [or]

(9) after institution of debt collection procedures, collecting or attempting to collect a debt without [first requesting and] recording the language preference of such consumer, except where the debt collector is not aware of such preference despite reasonable attempts to obtain it;

(10) furnishing to a consumer reporting agency, as defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. § 1681a(f)), information about a debt unless the debt collector has sent the consumer a validation notice pursuant to section 5-77(f) that states, in a clear and conspicuous manner, that the debt will be reported to a consumer reporting agency and waited 14 consecutive days. During the waiting period, the debt collector must permit receipt of, and monitor for, notifications of undeliverability from communications providers. If the debt collector receives such notification during the waiting period, the debt collector must not furnish information about the debt to a consumer reporting agency until the debt collector satisfies this subdivision. If the debt collector previously furnished information to a consumer reporting agency, between January 1, 2021 and the effective date of the rule, and if the debt collector still has a right to collect on such debt, they must disclose in a validation notice to the consumer, by mail or delivery service within 5 days of the effective date of this rule, that the debt was furnished to a consumer reporting agency, unless such information was already disclosed, clearly and conspicuously, in a validation notice mailed by the debt collector to the consumer.

This subdivision does not apply to a debt collector's furnishing of information about a debt to a nationwide specialty credit reporting agency that compiles and maintains information on a consumer's check writing history, as described in section 603(x)(3) of the Fair Credit Reporting Act (15 U.S.C. § 1681a(x)(3));

(11) selling, transferring, or placing for collection or with an attorney or law firm to sue a New York City consumer to recover any debt where the debt collector knows or should know that the debt has been paid or settled or discharged in bankruptcy, except a debt collector may transfer a debt to the debt's owner or to a previous owner of the debt if:

(i) the transfer is authorized under the terms of the original contract between the debt collector and the debt's owner or previous owner, as a result of a merger, acquisition, purchase and assumption transaction, or as a transfer of substantially all of the debt collector's assets; and

(ii) the debt collector also transfers all information pertaining to whether the debt has been paid or settled or discharged in bankruptcy obtained during the time the debt was assigned to the debt collector for collection;

(12) selling, transferring, or placing for collection or with an attorney or law firm to recover any debt where the debt collector knows or should know that the time to sue on the debt has expired, without including a clear and conspicuous notice to the recipient of the debt that the statute of limitations on such debt has expired; or

(13) selling, transferring, or placing for collection or with an attorney or law firm to sue a New York City consumer to recover any debt for which the debt collector was unable to provide written verification of the debt, despite having received a dispute or request for verification of the debt from the consumer, without including a clear and conspicuous notice to the recipient of the

debt that the debt was not verified and a copy of the "Notice of Unverified Debt" sent to the consumer pursuant to subdivision (f) of this section.

(f) ***Validation of debts.***

(1) [Upon acceleration of the unpaid balance of the debt or demand for the full balance due, the following validation procedures shall be followed by debt collectors who are creditors or who are employed by creditors as defined by 15 U.S.C. § 1602(f) (Truth in Lending Act) but who are not required to comply with 15 U.S.C. § 1637(a)(8) (Fair Credit Billing Act) and who do not provide consumers with an opportunity to dispute the debt which is substantially the same as that outlined in 15 U.S.C. § 1637(a)(8) and regulations promulgated thereunder: Within five days of any further attempt by the creditor itself to collect the debt, it shall send the customer a written notice containing:

(i) the amount of the debt;

(ii) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed valid by the debt collector;

(iii) a statement that, if the consumer notifies the debt collector in writing within the thirtyday period at the address designated by the debt collector in the notice, that the debt, or any portion thereof is disputed, the debt collector shall either:

(A) make appropriate corrections in the account and transmit to the consumer notification of such corrections and an explanation of any change and, if the consumer so requests, copies of documentary evidence of the consumer's indebtedness; or

(B) send a written explanation or clarification to the consumer, after having conducted an investigation, setting forth to the extent applicable the reason why the creditor believes the account of the consumer was correctly shown in the written notice required by 6 RCNY § 5-77(f)(1) and, upon the consumer's request, provide copies of documentary evidence of the consumer's indebtedness. In the case of a billing error where the consumer alleges that the creditor's billing statement reflects goods not delivered in accordance with the agreement made at the time of the transaction, a creditor may not construe such amount to be correctly shown unless it determines that such goods were actually delivered, mailed, or otherwise sent to the consumer and provides the consumer with a statement of such determination.

(iv) if the debt collector is not the original creditor, a statement that, upon the consumer's written request within the thirty-day period, sent to the address designated by the debt collector in the notice, the debt collector will provide the consumer with the name and address of the original creditor;

(v) an address to which the consumer should send any writing which disputes the validity of the debt or any portion thereof or any writing requesting the name and address of the original creditor.

(2)] *Validation notice*. Within five days after the initial communication with a New York City consumer in connection with the collection of any debt, a debt collector [who is not a creditor and not employed by a creditor shall, unless the following information is contained in an initial written communication, or the consumer paid the debt, send the consumer a written notice containing] must send the consumer a written notice containing the following information in a clear and conspicuous manner, unless the consumer paid the debt or such information was contained, clearly and conspicuously, in an initial written communication sent by U.S. mail or delivery service:

(i) [the amount of the debt] all information required for validation notices by federal or state law;

(ii) [the name of the creditor to whom the debt is owed] the New York City Department of Consumer and Worker Protection license number assigned to the debt collection agency, if applicable;

(iii) [a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector] the name of a natural person for the consumer to contact;

(iv) a [statement that if the consumer notifies the debt collector in writing within the thirtyday period at the address designated by the debt collector in the notice that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector] telephone number that is answered by such natural person;

(v) [a] the following statement [that, upon the consumer's written request within the thirtyday period sent to the address designated by the debt collector in the notice, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor]:

PLEASE READ: Important Information About Your Rights as a New York City Consumer

- **There is no time limit to dispute the debt in collection**. You can let collectors know you dispute the debt using any of the ways they contact you, including by phone.

- **You must get a response to the disputed debt in 45 days**. Once you dispute the debt, the collector must stop collection. In 45 days, the collector must give you either 1) verification of the debt, or 2) a “Notice of Unverified Debt” stating it can’t verify the debt or continue collection.

- **You can use a "Notice of Unverified Debt" to stop collection attempts by other debt collectors**. Be sure to keep a copy of all letters to exercise this right.

- **You may qualify for financial assistance with medical debt**. If you have a low or limited income, ask the collector or the hospital if you qualify for help under the "Financial Assistance Policy."

(vi) [an address to which the consumer should send any writing which disputes the validity of the debt or any portion thereof or any writing requesting the name and address of the original creditor;

(vii)] a statement informing the consumer of any language access services available[, including whether the consumer may obtain from the debt collector a translation of any communication into a language other than English];

[(viii)] (vii) a statement that a [translation and description of commonly-used debt collection terms is]Glossary of Common Debt Collection Terms and other resources are available in [multiple]different languages at [available in multiple languages on the Department's website, www.nyc.gov/dca] www.nyc.gov/dcwp.

The information required under subdivisions (ii) through (vii) may be included on the reverse side of a written validation notice only if the debt collector includes them together under a heading entitled, "**Important Additional Consumer Rights Under New York City Law**" and includes a clear and conspicuous statement on the front of the validation notice referring to the disclosures on the reverse side. If included on the reverse side of the validation notice, the information must be positioned in a manner so it is readily noticeable and legible to consumers, even after a consumer tears off any response portion of the notice.

(viii) An itemization of the current amount of the debt asserted to be owed that allows the consumer to recognize the total amount of the outstanding debt as of the itemization reference date, and includes a breakdown of all additional amounts that have been assessed or applied to the amount of the debt since the itemization reference date, listing fields for: 1) interest; 2) fees; 3) payments; and 4) credits, and the following information:

(A) The total amount of the outstanding debt asserted to be due on the itemization reference date.

(B) The date, amount, and description of each fee, payment, credit, or interest, applied to the debt since the itemization reference date. A debt collector must include all fields in the itemization, even if no additional amounts have accrued, or may state that no interest, fees, payments, or credits have been assessed or applied to the debt since the itemization reference date.

(C) The basis of the consumer's obligation to pay each separate charge, interest, or fee, including if allowed by a contract or by law.

(D) The total amount asserted to be due on the date of the itemization.

A debt collector is permitted to add additional information in the itemization required in this subdivision or disclose the itemization on a separate page as allowed or required by federal or state law, provided the content required in this subdivision is clear and conspicuous to the consumer. Debt collection agencies that must comply with § 20-493.2 (a) of the Administrative Code and § 2-190 (b) shall be deemed to satisfy the requirement of furnishing an itemization under the licensing law by complying with this section and may list the "principal balance" as the total amount of the outstanding debt asserted to be owed by the consumer on the itemization reference date.

(2) *Delivery of validation notices.* A debt collector must deliver written disclosures under (f)(1) of this section in the following manner:

(i) A debt collector must deliver to consumers validation notices and the itemization of the debt by U.S. mail or delivery service. If a debt collector only delivers a validation notice or the itemization of the debt electronically or orally, it does not satisfy the requirement under subdivision § 5-77(f)(1).

(ii) A debt collector may deliver a duplicate copy of the validation notice and itemization of the debt by any other means, including electronic mail, provided it is in accordance with other sections or laws, such as section 101(c) of the Electronic Signatures in Global and National Commerce Act (E–SIGN Act)(15 U.S.C. 7001(c)) or their successor provisions.

(iii) If a debt collector delivers a duplicate validation notice to a consumer electronically, the debt collector must do so in accordance with § 5-77(b)(5) and the notice must include the debt collector's website, email address, and information on how the consumer can dispute the debt, seek verification of the debt, or request originating-creditor information electronically.

(3) *Notices in languages other than English.* If a debt collector offers consumers validation notices in a language other than English, and a consumer requests a notice in such language, the debt collector must mail a written notice to the consumer completely and accurately in the language requested within 30 days of receiving such a request. As required by section 1006.34(e)(2) of title 12 of the Code of Federal Regulations, a debt collector who receives a request from the consumer for a Spanish-language validation notice must provide the consumer with a validation notice completely and accurately translated into Spanish. A debt collector may not contact a consumer exclusively by telephone or orally in a language other than English to collect debt without providing the consumer, by U.S. mail or delivery service, a validation notice written accurately in the language used by the debt collector during the exchange with the consumer, within 30 days of the first contact by the debt collector in the language other than English. A debt collector is not required to mail the validation notice, in a language other than English, to the consumer more than once during the period that the debt collector owns or has the right to collect the debt. If the debt collector sends a validation notice in a language other than English, it must also accept and respond to disputes, complaints, requests for verification of the debt and cease and desist requests by the consumer completely and accurately in the same language as the validation notice.

([3]4) [If, pursuant to 6 RCNY §§ 5-77(f)(1) or 5-77(f)(2) of this Regulation the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall not attempt to collect the amount in dispute until the debt collector obtains and mails to the consumer verification of the debt or a copy of the judgment or the name and address of the original creditor. The debt collector shall maintain for one year from the date the notice was mailed, records containing documentation of the date such notice was mailed, the date the response, if any, was received and any action taken following such response] *Validation Period.* The validation period extends for 30 consecutive days from the date a consumer receives or is assumed to receive a validation notice. For purposes of determining the validation period, the debt collector may assume that a consumer received the validation notice five days (excluding Saturdays, Sundays, and legal public holidays identified in 5 U.S.C. § 6103(a)) after the debt collector sent it.

([4]5) [The failure of a consumer to dispute the validity of a debt under 6 RCNY § 5-77(f) shall not be construed by any court as an admission of liability by the consumer] *Overshadowing of rights to dispute or request original-creditor information*. During the validation period, a debt collector must not engage in any collection activities or communications that overshadow or are inconsistent with the disclosure of the consumer's rights to dispute the debt and request the name and address of the original creditor.

(6) *Verification*. A debt collector must provide a New York City consumer verification of a debt or provide a notice of unverified debt in accordance with section 5-77(f)(7) within 45 days of receiving a dispute or a request for verification of the debt. The consumer may dispute the debt, or make such verification request orally or in writing, or electronically if the debt collector uses electronic communications to collect debt, at any time during the period in which the debt collector owns or has the right to collect the debt. The debt collector must treat a first dispute by the consumer as a request for verification of the debt, unless the debt collector has already provided the consumer with the verification information required in this subdivision. If a debt collector provides consumers the ability to submit written disputes electronically through a website, such a website must automatically generate a copy of each written dispute that a consumer can print, save, or have emailed to them. A consumer shall not be required to waive any rights to make use of such an online submission option. The debt collector must cease collection of the debt if an itemization of the debt was not previously provided to the consumer by the debt collector in compliance with section 5-77(f)(1)(vii) and if a timely written verification of the debt has not been provided to the consumer. A debt collector is not required to verify a debt pursuant to this section more than once during the period that the debt collector owns or has the right to collect the debt; provided, however, that the debt collector must send any such verification documents to the consumer one additional time upon request by the consumer. A debt collector must provide verification to the consumer in writing, by U.S. mail or delivery service, unless the consumer has consented to receive electronic communications in compliance with section 5-77(b)(5).

(i) Verification of debt must include:

(A) a copy of the debt document issued by the originating creditor or an original written confirmation evidencing the transaction resulting in the indebtedness to the originating creditor, including the signed contract or signed application that created the debt or, if no signed contract or application exists, a copy of a document provided to the alleged debtor

while the account was active, demonstrating that the debt was incurred by the consumer. For a revolving credit account, the charge-off account statement, the most recent monthly statement recording a purchase transaction, payment, or balance transfer shall be deemed sufficient to satisfy this requirement. Documents created or generated after the time of charge-off of the debt or institution of debt collection procedures shall not qualify as such confirmation;

(B) records reflecting the amount and date of any prior settlement agreement reached in connection with the debt;

(C) the final account statement, or other such document that reflects the total outstanding balance, mailed to the consumer on or before the charge-off date and prior to the institution of debt collection procedures;

(ii) In matters involving a judgment obtained after adjudication on the merits of the case, there will be a rebuttable presumption that the debt collector complied with this section if it mails the consumer, by U.S. mail or delivery service, a copy of the judgment and any evidence of indebtedness that is part of the record of the lawsuit. For this subdivision, a copy of a judgment obtained by default does not provide the consumer verification of the alleged debt; and

(iii) In matters involving debt arising from the receipt of health care services, medical products, or devices, the debt collector must provide, clearly and conspicuously, to the consumer any information in its possession or available to the debt collector required to be disclosed by federal, state or local law, including the relevant financial assistance policy.

(7) *Notice of unverified debt.* If a debt collector did not provide an itemization of the debt and cannot provide a consumer with a timely written verification of a debt in response to a dispute or request for verification, the debt collector must respond in writing to the consumer within 45 days of receiving the dispute or a request for verification, at any time during the collection process, that the debt collector is unable to verify the debt and will stop collecting on the debt, and provide the reason that the debt could not be verified. Debt collectors must deliver a notice of unverified debt to the consumer by U.S. mail or delivery service. The debt collector must permit receipt of, and monitor for, notifications of undeliverability from communications providers for at least 14 consecutive days after they place the notice of unverified debt in the mail or with the delivery service. If the debt collector receives such notification, the debt collector must re-send the notice of unverified debt to the consumer, by U.S. mail or delivery service, within 5 days.

(8) *Originating creditor*. A debt collector must provide the consumer the address of the originating creditor of a debt within 45 days of receiving a request from the consumer for such address. The consumer may make such request orally or in writing, or electronically if the debt collector [permits]uses electronic communications to collect debt, at any time during the period in which the debt collector owns or has the right to collect the debt. After receiving such a request, the debt collector must cease collection of the debt until such address has been provided to the consumer. A debt collector is not required to provide this information more than once during the period that the debt collector owns or has the right to collect the debt.

(9) *Electronic communications.* If a debt collector delivers a duplicate copy of the validation notice to a consumer electronically, the debt collector must do so in accordance with § 5-77(b)(5) and the notice must include the debt collector's website, email address, and information on how the consumer can dispute the debt, seek verification of the debt, or request originalcreditor information electronically.

(10) *Dispute and verification of medical debt*. Medical debt includes debt arising from the receipt of health care services or medical products or devices.

(i) If, at any time during the debt collection process, the New York City consumer indicates that a public or private insurance plan, a third-party payer, or a financial assistance policy should have covered some or all of the charges on the medical debt, or that the debt is as a result of lack of price transparency at the time the services were rendered, or a violation of federal, state or local law, the debt collector must treat such communication by the consumer, received by any medium of communication and language used by the debt collector to collect the debt, as a dispute and a request for verification by the consumer on such medical debt.

(ii) A debt collector must respond to disputed medical debt by providing the consumer verification in accordance with section 5-77(f)(6) and by responding to the specific issue disputed by the consumer under paragraph (i) of this subdivision or deliver to the consumer a notice of unverified debt in accordance with section 5-77(f)(7).

(iii) If a New York City consumer disputes a medical debt, the debt collector must also do the following:

(A) treat all unverified accounts related to a discrete hospitalization or treatment of the consumer, provided such services were rendered within a six-month period, the same as the disputed medical debt by the consumer;

(B) note in all related medical accounts, unless written verification was already provided by the debt collector to the consumer or the consumer has acknowledged owing the amount claimed to be owed on such account, as disputed medical debt, in a manner that is easily identifiable and searchable in each of the consumer's related accounts; and

(C) furnish to the consumer verification on each related medical debt.

(iv) In addition to the requirements in section 5-77(j), before resuming debt collection activities on disputed medical debt arising from services provided by a covered medical entity, the debt collector must also verify that the covered medical entity met its obligations under federal, state, or local law and the financial assistance policy.

(g) Reserved.

(h) ***Public websites***. Any debt collector that utilizes, maintains, or refers New York City consumers to a website accessible to the public that relates to debts for which debt

collection procedures have been instituted must clearly and conspicuously disclose, on the homepage of such website or on a page directly accessible from a hyperlink on the homepage labeled "**NYC Rules on Language Services and Rights**", the following disclosures:

(1) a statement informing the consumer of any language access services available[, including whether the consumer may obtain from the debt collector a translation of any communication into a language other than English]; and

(2) a statement that a [translation and description of commonly-used debt collection terms is]Glossary of Common Debt Collection Terms and other resources are available in [multiple]different languages at[on the Department's website, www.nyc.gov/dca www.] www.nyc.gov/dcwp.

(i) ***Time-barred debts***. In connection with the collection of a debt, the following requirements must be met:

(1) A debt collector must maintain reasonable procedures for determining the statute of limitations applicable to a debt it is collecting and whether such statute of limitations has expired.

(2) *Initial Written Notice.* if a debt collector, including a debt collection agency that must provide information to a New York City consumer pursuant to § 20-493.2(b) of the Administrative Code, seeks to collect on a debt for which the debt collector has determined, including pursuant to subdivision (a) of this section, or otherwise knows or has reason to know, that the statute of limitations for a debt has or may have expired, the debt collector must initially deliver the consumer a written notice, by U.S. mail or delivery service, that clearly and conspicuously discloses to the consumer substantially the same time-barred-debt disclosure below, before contacting a consumer about the expired debt by any other means:

- **The statute of limitations on this debt expired. This means you can't be sued to collect it. A court will not enforce collection**.

  IF YOU ARE SUED:

  - It is a violation of federal law (the Fair Debt Collection Practices Act).
  - You may be able to prevent a judgment against you by telling the court that the statute of limitations on this debt expired. ○ You are not required to admit that you owe this debt, promise to pay this debt, or waive the statute of limitations on this debt.
  - Consult an attorney or a legal aid organization to learn more about your legal rights and options.

(3) *Waiting Period.* The debt collector must wait at least 14 consecutive days after they place the initial written notice in U.S. mail or delivery service to the consumer to receive notice of undeliverability. During the waiting period under this subdivision, the debt collector must permit receipt of, and monitor for, notifications of undeliverability from

communications providers. If the debt collector receives such notification during the waiting period, the debt collector must not contact the consumer, by any other means of communication, to collect the debt until the debt collector otherwise satisfies section 5-77(i)(2).

(4) *Subsequent Communications*. ~~Unless otherwise permitted by law,~~If the debt collector has determined that the statute of limitations has expired, after mailing the Initial Written Notice required in section 5.77(i)(2), the debt collector must, in each subsequent oral communication with the consumer, remind the consumer that the statute of limitations has expired, provided, however, that such disclosure does not need to be provided if it has already been communicated orally or in writing within a 30 day period. ~~may not, without the prior written and revocable consent of the consumer given directly to the debt collector, contact such consumer in connection with the collection of an expired debt exclusively by telephone or by other means of oral or electronic communication. After mailing the Initial Written Notice required in section 5-77(i)(2), the debt collector must redeliver such notice to the consumer by U.S. mail or delivery service within 5 days after each oral communication with the consumer unless the debt collector has already mailed a hardcopy of such notice within a 30day period.~~ Any subsequent notice sent to the consumer electronically must be in accordance with other sections or laws, such as section 101(c) of the Electronic Signatures in Global and National Commerce Act (E–SIGN Act)(15 U.S.C. 7001(c)) or their successor provisions.

(5) When such information is delivered in writing, the time-barred debt notice must be included for each debt that is beyond the applicable statute of limitations, in at least 12 point type that is set off in a sharply contrasting color from all other types on the communication, and placed on the first page adjacent to the identifying information about the amount claimed to be due or owed on such debt. A debt collector may include additional language to the time-barred-debt disclosure as may be required by the State of New York to send the consumer one disclosure notice.

(j) ***Medical debt from a covered medical entity***. (1) In connection with the collection of medical debt arising from charges from a covered medical entity, a debt collector is prohibited from collecting or attempting to collect on a medical debt from a New York City consumer asserted to be owed if the debt collector knows or should know that:

(i) To do so violates federal, state, or local law or the financial assistance policy of the covered medical entity.

(ii) The patient has an open application for financial assistance with the covered medical entity.

(iii) The financial assistance policy should have provided financial assistance to the patient to cover all, or a portion, of the medical debt.

(iv) A misrepresentation was made to the patient about the financial assistance policy or payment options regarding the medical debt, including, but not limited to:

Commented [TY3]: Requiring a written disclosure to be sent out within 5 days of each oral communication or every 30 days will be cost prohibitive, create significant environmental costs through excess letters being mailed, and provide no extra benefit to consumers. Moreover, with a constant deluge of disclosures, consumers would become desensitized to them and unlikely to read them. The cost to business and environmental impact outweighs any benefits to consumers. Verbal disclosures in each communication should replace a constant stream of written disclosures.

(A) The patient was wrongly denied, or not given proper and timely notice of, available financial assistance.

(B) The patient was discouraged from applying for financial assistance.

(C) The patient was induced to agree to pay for all or part of the medical debt with misinformation about payment options or the financial assistance policy.

(D) The patient was only presented with options to pay or to agree to pay for all or part of the medical debt regardless of income level.

(2) In connection with the collection of medical debt from a New York City consumer arising from charges from a covered medical entity, a debt collector must conduct reasonable corrective measures upon obtaining information that the financial assistance policy was not disclosed to the patient as required by law or that there is a violation of federal, state, or local law. A consumer may provide such information to the debt collector, by any means of communication or in any language used by the debt collector to collect debt, without the debt collector requiring the consumer to submit any supporting documentation to the debt collector. Corrective measures must be taken as follows:

(i) Inform the entity that placed the account with the debt collector within one business day that the debt may be subject to the covered entity's financial assistance policy or that there might be a violation of the law.

(ii) Provide and record in plain language the following statement: "**A FINANCIAL ASSISTANCE POLICY MAY APPLY TO THIS MEDICAL DEBT**", or a statement indicating the violation of law, in a manner readily noticeable and searchable, in the following records:

(A) all of the consumer's accounts arising from medical debt from the covered medical entity, from the same hospitalization or a discrete course of treatment or care;

(B) a written notification that must be sent by U.S. mail or delivery service to the consumer along with the verification of the debt in accordance with sections 577(f)(6) and (f)(10); and

(C) a written notification that must be sent to any receiving party upon transferring any of the consumer's accounts with medical debt from the same covered medical entity.

(iii) Provide any disclosure to the consumer regarding the financial assistance policy, by U.S. mail or delivery service, clearly and conspicuously on the first page of any written communication from the debt collector to the consumer, and such disclosure must not be placed on the reverse side of the page or the second page. Any written notification to a consumer regarding the financial assistance policy may not be delivered exclusively by the debt collector through electronic means.

(iv) Maintain a monthly log or record of all consumer accounts in which the debt collector took corrective measures as required in section 5-77(j) and such measures must be easily identifiable and searchable in each consumer account.

(k) ***Record retention***. A debt collector must retain the following records to document its collection activities with New York City consumers:

(1) Records that are evidence of compliance or noncompliance with part 6 of subchapter A of chapter 5 of title 6 of the Rules of the City of New York starting on the date that the debt collector begins collection activity on the debt until three years after the debt collector's last collection activity on the debt.

(2) Monthly logs or a record of the following:

(i) all complaints filed by New York City consumers against the debt collector, including those filed with the agency directly or with any not-for-profit entity or governmental agency, identifying for each complaint the date, the consumer's name, and account information, the source of the complaint, a summary of the consumer's complaint, the debt collector's response to the complaint, if any, and the current status of the complaint;

(ii) all disputes or requests for verification made by New York City consumers, identifying each consumer's name and account information, the date of the dispute or request for verification, and the date and type of response, if any, sent by the debt collector; and

(iii) all cease-and-desist requests made by New York City consumers, identifying the consumer's name and account information, the date of the request, and the date and purpose of any further contacts by the debt collector after receipt of the request from the consumer.

To comply with this subdivision, debt collectors may combine all the monthly logs or records into one document or record or use a template: "Report for Consumer Activity" as made available on the Department's website at www.nyc.gov/dcwp.

EFFECTIVE DATE: All new provisions contained in this rulemaking shall apply to accounts charged off on or after January 1, 2025, or for accounts not charged off, the new provisions will apply to accounts that are delinquent on or after January 1, 2025.

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Commented [TY4]: It is critical that the rules apply prospectively, so as to avoid creating new requirements for previously purchased accounts that the industry could not comply with, and to ensure there is adequate time to get into compliance with the numerous recordkeeping, document, and communication changes being proposed.

Testimony of Jonathan Grossman
Estate Debt Coalition (EDC)

before the

New York City Department of Consumer and Worker Protection
RE: Rules relating to debt collectors

November 29, 2023

Good afternoon, representatives of the Department of Consumer and Worker Protection. My name is Jonathan Grossman and I am here today representing the Estate Debt Coalition ("EDC"), which is comprised of a number of the largest companies that focus on representing creditors in the estate resolution process. We appreciate the opportunity to testify on DCWP's proposed amendments to its rules related to debt collectors (the "Proposed Rules").

When a New York City resident dies, his or her assets become part of an estate. In most circumstances, New York law requires that the debts of the decedent be paid out of the assets of the estate prior to distributions being made to beneficiaries. As a result, whomever is responsible for handling the estate has the obligation to identify and pay the debts of the estate. When the decedent has substantial assets, or owns real property, estates are usually resolved through a formal probate process in which a court oversees and approves the distribution of assets to both creditors and beneficiaries. In such cases, EDC members submit claims through the formal probate process.

The majority of estates, however, are not formally resolved through probate courts, but rather informally by family members, and this is particularly true in jurisdictions like New York City where most people rent their homes. In such instances, EDC members play an important role in working with family members to resolve the estate's obligation, thereby assisting family members in their administration of the estate. Indeed, these communications are often welcomed by family members because they cannot close out the estate and distribute net assets to beneficiaries until all debts are identified and resolved.

As a result, this unique form of "debt collection" raises very different regulatory issues than most other debt collection. And unfortunately, the plain language of the Fair Debt Collection Practices Act ("FDCPA"), did not squarely address many of these issues.

In 2011, the Federal Trade Commission ("FTC") sought to address some of these issues in its Statement of Policy Regarding Communications in Connection With the Collection of Decedents' Debts ("FTC Statement").[1] Two of the key points in the FTC Statement are relevant to the Proposed Rules:

1. Section 805(b) of the FDCPA generally prohibits disclosure of a consumer's debt to third parties. Section 805(d) defines "consumer" for these purposes to include consumer's "executor" and "administrator" but does not define those terms and does not address the situations in which jurisdictions do not use those terms or in which family members seek to resolve the estate outside of the formal probate process. The FTC addressed this issue by taking the position that it would not enforce against estate debt collectors who communicated with the person "who is authorized to pay debts from the estate of the deceased."

2. In communicating with such persons, the FTC stated that "it would violate Section 5 of the FTC Act and Section 807 of the FDCPA to mislead those persons about whether they are personally liable for those debts …." The FTC went on to express the concern that even in the absence of any specific misrepresentations, an estate collector's communications "might convey the misimpression that the individual is personally liable for the decedent's debts." The FTC concluded that it may therefore be necessary for the collector to make affirmative disclosures that it was seeking payment from the assets in the decedent's estate and not from the individual. EDC strongly supports this principle and all of our members specifically tell family members in every communication that they are not personally liable for the debts of the estate. We do not believe that any estate collectors are making such statements, but to the extent that any collector in our industry makes such a statement, we support strong enforcement by the CFPB, FTC and/or the state or district attorneys general.

In the middle of the FTC's process of publishing it's Statement, Congress passed the Dodd-Frank Act, which authorized the Consumer Financial Protection Bureau ("CFPB") to promulgate debt collection rules. In 2020, it revised Regulation F, which implements the FDCPA. Regulation

[1] See https://www.ftc.gov/news-events/press-releases/2011/07/ftc-issues-final-policy-statement-collecting-debts-deceased for links to the proposed and final FTC Statements and associated documents.

F addressed a number of issues related to estate debt and was largely consistent with the FTC Statement. Regulation F addressed two points relevant to the Proposed Rules.

1. The CFPB defined, as used in the FDCPA, "[t]he terms executor or administrator [to] include the personal representative of the consumer's estate. A personal representative is any person who is authorized to act on behalf of the deceased consumer's estate. Persons with such authority may include personal representatives under the informal probate and summary administration procedures of many States, persons appointed as universal successors, persons who sign declarations or affidavits to effectuate the transfer of estate assets, and persons who dispose of the deceased consumer's financial assets or other assets of monetary value extrajudicially."

2. The CFPB published a model validation notice for debt collectors and stated that use of [that form or a "substantially similar" form] would entitle the collector to a safe harbor under the FDCPA. In Comment 34(d)(2)(iii)-1(i), the CFPB clarified that, in the estate debt context, permissible changes to the model notice include "[m]odifications to remove language that could suggest liability for the debt if such language is not applicable. For example, if a debt collector sends a validation notice to a person who is authorized to act on behalf of the deceased consumer's estate … and that person is not liable for the debt, the debt collector may use the name of the deceased consumer instead of "you".

With this background as context, EDC is concerned that The Proposed Rules in their current form would result in unintended consequences that would actually be counter to the interests of families seeking to resolve the estates of their loved ones. We are therefore proposing three changes that we believe are consistent with both the intent of DCWP and the positions of the FTC and CFPB, but avoid these adverse consequences. Specifically,

1. The new definition of "Consumer" applicable to § 5-77(b)(1) includes the consumers "executor" and "administrator" but, like the FDCPA, does not define those terms or indicate whether individuals performing those functions unofficially are covered. To clarify that they are, we have proposed adding a parenthetical including the CFPB's language from Regulation F indicating that a "person who is authorized to act on behalf

of [a] deceased consumer's estate" is also a "Consumer" for the purposes of this paragraph. (SEE PAGE 12)

2. Similarly, amended § 5-77(b)(2) prohibits communications regarding a debt with any person other than the consumer and a list of certain other persons who merit exceptions for one reason or another. Consistent with the FDCPA, the FTC Statement, and Regulation F, we propose adding "the executor or administrator of a deceased consumer's estate or the person who is authorized to act on behalf of the estate" to this list of exceptions. Absent this change, an estate debt collector would, quite literally, have no living person with whom it could discuss the debt. (SEE PAGE 12)

3. Finally, the final mandatory disclosures required by § 5-77(f)(2)(v) related to medical debt is concerning in the estate collection context because it uses the pronoun "you" in a way that implies (or at least may be misunderstood by an unsophisticated consumer) that the executor, administrator, or person performing such functions is personally responsible for the debt of the deceased. This is something that all interested parties – consumer groups, government enforcers, the credit industry, and EDC – all agree should be avoided. In addition, NY Gen Bus. Law § 601-a prohibits creditors and debt collectors from making "any representation that a person is required to pay the debt of a family member in a way that contravenes with the [FDCPA]" and states that creditors and collectors "shall not make any misrepresentation about the family member's obligation to pay such debts." Because the recipient of the disclosures in the estate context is likely a family member, we propose that the bullet related to medical debt may be deleted from the mandatory disclosures if the debtor is deceased. (SEE PAGE 21)

A markup of our proposed changes is attached.

In closing, I'd like to again thank DCWP for considering our testimony today and also for working productively with all stakeholders on the Proposed Rules. I would be glad to respond to any questions that you may have.

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Statement of Basis and Purpose of Proposed Rule

The Department of Consumer and Worker Protection ("DCWP" or "Department") is proposing to amend its rules relating to debt collectors.

In June 2020, the Department added new rules requiring debt collectors to inform consumers about whether certain language access services are available and to retain records relating to language access services. After these rule changes took effect, the industry provided additional questions and feedback to the Department. In response, the Department is now proposing these amendments.

The Department is also proposing to update its debt collection rules in response to changes in federal regulations. In late 2020, the Consumer Financial Protection Bureau ("CFPB") promulgated new debt collection rules updating the Fair Debt Collection Practices Act of 1977. The CFPB's new debt collection rules address current industry collection practices, the changing forms of communication, unfair practices, and debt collection problems facing consumers today at a national level.

On November 4, 2022, the Department proposed amendments to adopt similar protections as those provided to consumers at the federal and state levels, and included provisions based on the Department's insight from its regulation of the debt industry for decades as it pertains to NYC consumers. In response to its Notice of Proposed Rulemaking, the Department received comments from national and local industry associations, individual debt collection agencies, debt buying companies, debt collection law firms, national consumer advocacy groups, and local legal services organizations. After a public hearing on December 19, 2022, and a review of all the comments, the Department is re-noticing the proposed amendments to further address trade practices and consumer protection concerns as it pertains to debt collection from New York City residents.

Specifically, this proposed rule includes the following amendments:

- Section 2-191 requires debt collection agencies to give consumers certain disclosures when collecting on time-barred debt. The Department is proposing to repeal this section in its entirety. (Section 1)
- Section 2-193(c) requires a debt collection agency to maintain, in a language other than English, an annual report identifying, by language, certain actions taken by the agency. Because the report is organized by language, the contents of the report need not be limited to actions taken in a language other than English. The Department is proposing to amend the subdivision so that it applies to actions taken in any language. (Section 2)
- The amendments to Section 2-193 also require debt collection agencies to maintain other records. These proposed amendments would extend the requirements to cover all records showing compliance with relevant laws and rules as well as monthly logs documenting certain consumer interactions. (Section 2)
- The Department is proposing to add various definitions to Section 5-76 of its rules. These amendments would provide guidance and clarity to the industry on new requirements in Section 5-77 concerning communications with consumers in connection with debt collection. (Sections 3 and 4)
- The Department is also proposing more substantive edits to Section 5-77. These amendments would

- clarify what information debt collectors must provide consumers at the outset of debt collection communications;
- place limits on the frequency of debt collection communications;
- require debt collectors to disclose the existence of a debt to consumers before reporting information about the debt to a consumer reporting agency;
- clarify the disclosures that debt collectors must give consumers when collecting on time-barred debt;
- clarify the requirements that debt collectors are obligated to comply with when collecting on medical debt; and
- clarify how debt collectors may employ modern communication technologies in compliance with the law, including voicemails, email, text messages, and social media. (Section 5)

Sections 1043 and 2203(f) of the New York City Charter, and Sections 20-104(b), 20-493(a), and 20-702 of the New York City Administrative Code authorize the Department to make these proposed amendments.

New material is underlined.
[Deleted material is in brackets.]

"Shall" and "must" denote mandatory requirements and may be used interchangeably in the rules of the Department, unless otherwise specified or unless the context clearly indicates otherwise.

Proposed Rule Amendments

Section 1. Section 2-191 Disclosure of Consumer's Legal Rights Regarding the Effect of the Statute of Limitations on Debt Payment, Subchapter S of Chapter 2 of Title 6 of the Rules of the City of New York, is repealed in its entirety.

Section 2. Section 2-193 of Subchapter S of Chapter 2 of Title 6 of the Rules of the City of New York is amended to read as follows:

§ 2-193. Records to be Maintained by Debt Collection Agency

(a) Unless otherwise prohibited by federal, state or local law, a debt collection agency [shall] must maintain a separate file for each debt that the debt collection agency attempts to collect from each New York City consumer, in a manner that is searchable or retrievable by the name, address and zip code of the consumer, and by the creditor who originated the debt the agency is seeking to collect. The debt collection agency [shall] must maintain in each debt file the following records to document its collection activities with respect to each consumer:

(1) A copy of all communications and attempted communications [or exchanges] with the consumer.

(2) A record of each payment received from the consumer that states the date of receipt, the method of payment and the debt to which the payment was applied.

(3) A copy of the debt payment schedule and/or settlement agreement reached with the consumer to pay the debt.

(4) With regard to any debt that the debt collection agency has purchased, a record of the name and address of the entity from which the debt collection agency purchased the debt, the date of the purchase and the amount of the debt at the time of such purchase.

(5) Any other records that are evidence of compliance or noncompliance with subchapter 30 of chapter 2 of title 20 of the Administrative Code and any rule promulgated thereunder, and of part 6 of subchapter A of chapter 5 of title 6 of the Rules of the City of New York.

(0) A log, account notes or record of all communications and attempted communications by any medium between a debt collection agency and a New York City consumer in connection with the collection of a debt. For each communication and attempted communication, the log, account notes or record must identify in a manner that is searchable and easily identifiable, the following:

(i) the date, and the time and duration of the communication or attempted communication, if applicable;

(ii) the medium of communication or attempted communication;

(iii) the names and contact information of the persons involved in the communication; and

(iv) a contemporaneous summary in plain language of the communication or attempted communication.

(b) A debt collection agency [shall] must maintain the following records to document its collection activities with respect to all New York City consumers from whom it seeks to collect a debt:[(1) A monthly log of all calls made to consumers, listing the date, time and duration of each call, the number called and the name of the person reached during the call]

(1) Monthly logs or a record, in a form and format designated by the Commissioner, of the following:

(i) all complaints filed by New York City consumers against the debt collection agency, including those filed with the agency directly or with any not-for-profit entity or governmental agency, identifying for each complaint the date, the consumer's name and account information, the source of the complaint, a summary of the consumer's complaint, the debt collection agency's response to the complaint, if any, and the current status of the complaint;

(ii) all disputes or requests for verification made by New York City consumers, identifying each consumer's name and account information, the date of the dispute or request for verification, and the date and type of response, if any, sent by the debt collection agency; and

(v) all cease-and-desist requests made by New York City consumers, identifying the consumer's name and account information, the date of the request, and the date and purpose of any further contacts by the debt collection agency after receipt of the request from the consumer.

(2) Recordings of [complete conversations] all telephone communications, including limited content messages, with all New York City consumers or with a randomly selected sample of at

least 5% of all calls made or received by the debt collection agency or a third party on its behalf [and a copy of contemporaneous notes of all conversations with consumers]. The method used for randomly selecting the recorded calls [shall] must be [included in the file where the tape recordings are] maintained by the debt collection agency and a record in each consumer's account must identify the calls by date and time recorded, and any third party assigned to handle such calls. If a debt collection agency elects to record a randomly-selected sample of at least 5% of all calls made or received by the debt collection agency, it must maintain a record of the total number of calls made or received on a monthly basis and the total number of such recorded calls. If the debt collection agency owns or has the right to collect on a debt before it refers such a debt to a third party to handle collections calls with consumers, the debt collection agency must ensure that:

(i) The third party complies with this section and the licensing rules and laws pertaining to debt collection in the City of New York; and

(ii) The third-party audio recordings are available upon request by the Department to the debt collection agency.

(3) A record of all cases filed in court to collect a debt. Such record [shall] must include, for each case filed, the name of the consumer, the identity of the originating creditor, the amount claimed to be due, the [civil court] index number and the court and county where the case is filed, the date the case was filed, [the name of the process server who served process on the consumer, the date, location and method of service of process, the affidavit of service that was filed and] the disposition for each case filed, including whether a judgment was rendered on default or on the merits of the action. Such record [shall] must be filed in a manner that is searchable or retrievable by the name, address and zip code of the consumer and the creditors who originated the debts that the debt collection agency is seeking to collect.

(4) The original copy of each contract with a process server for the service of process, and copies of all documents involving traverse hearings relating to cases filed by or on behalf of the debt collection agency. Such records should be filed in a manner that is searchable by the name of the process server.

(5) A record indicating the language preference of the consumer, except where the debt collector is not aware of such preference despite reasonable attempts to obtain it.

(1) A record indicating which medium(s) of electronic communication are permitted or not permitted by each consumer and, if known, the consumer's preferred medium of communication in connection with the collection of a debt.

(6) A record of information on debt furnished to a consumer reporting agency, including the date the debt collection agency notified the consumer about the debt before furnishing information to the credit bureau on that debt and the period of time it waited to receive a notice of undeliverability.

(7) A record of any notice of unverified debt issued in accordance with section 5-77(f)(7) or received by the debt collection agency, including any such notice received from the consumer.

(c) A debt collection agency [shall] must maintain the following records relating to its operations and practices:

(1) A copy of all actions, proceedings or investigations by government agencies that resulted in the revocation or suspension of a license, the imposition of fines or restitution, a voluntary settlement, a court order, a criminal guilty plea or a conviction.

(2) A copy of all [policies,] training materials, manuals, and guides for employees or agents that direct, describe, suggest or promote how a collector is to interact with consumers in the course of seeking to collect a debt.

(3) An annual report, in a form made publicly available on the Department's website, identifying, by language, (i) the number of consumer accounts on which an employee collected or attempted to collect a debt owed or due or asserted to be owed or due [in a language other than English]; and (ii) the number of employees that collected or attempted to collect on such accounts [in a language other than English].

(4) A copy of all policies addressing the collection of time-barred debts.

(5) A copy of all policies addressing the verification of debts.

(6) A copy of all policies addressing the furnishing of consumer debt to credit reporting bureaus.

(7) A copy of all policies addressing hospital financial assistance programs related to medical debt.

(d) The records required to be maintained pursuant to this section [shall] must be retained for [six years from the date the record was created by the debt collection agency, a document was obtained or received by the debt collection agency, a document was filed in a court action by the debt collection agency, or a training manual or employee guide was superseded, except that recordings of conversations with consumers shall be retained for one year after the date of the last conversation recorded on each completed recording tape] the following periods of time:

(1) For records required to be maintained pursuant to subdivisions (a) and (b) of this section, excluding recordings of calls with consumers, until three years after the date of the debt collection agency's last collection activity on the debt.

(2) For recordings of calls with consumers, until three years after the date of the call.

(3) For records required to be maintained pursuant to subdivision (c) of this section, until six years after the date the record was created.

Section 3. Section 5-76 of Part 6 of Subchapter A of Chapter 5 of Title 6 of the Rules of the City of New York is amended by adding the following definitions in alphabetical order:

Attempted communication. The term "attempted communication" means any act to initiate a communication or other contact about a debt with any person through any medium, including by soliciting a response from such person. An act to initiate a communication or other contact about a debt is an attempted communication regardless of whether the attempt, if successful, would be a communication that conveys information regarding a debt directly or indirectly to any person. A limited-content message is an attempted communication.

Clear and conspicuous. The term "clear and conspicuous" means readily understandable. In the case of written and electronic record disclosures, a clear and conspicuous statement, representation or element being disclosed is of such location, size, color and contrast to be readily noticeable and legible to consumers. In the case of oral disclosures, a clear and conspicuous disclosure is given at a volume and speed sufficient for a consumer to hear and comprehend it. In any clear and conspicuous disclosure, any required modifications, explanations or clarifications to other information are presented in close proximity to the information being modified, in a manner so as to be readily noticed and understood.

Covered medical entity. The term "covered medical entity" means a health care entity that is tax-exempt under federal or New York State law or qualifies for distributions from the Indigent Care Pool from the State of New York or any other such fund or distribution allocated to reduce the charges of medical services by granting financial assistance, through a financial assistance policy, to patients based on need or an inability to pay.

Electronic communication. The term "electronic communication" means communication by electronic means including, but not limited to, electronic mail, a text message, or instant message, rather than oral communication in person or by telephone, or hard copy communication by mail.

Electronic record. The term "electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

Financial assistance policy. The term "financial assistance policy" means a program to reduce or eliminate charges for medical services provided which was established by a nonprofit hospital or health care provider.

Itemization reference date. The term "itemization reference date" means any one of the following dates: (1) on revolving or open-end credit accounts, the date of the last written notification sent to the consumer which lists the total amount of the outstanding debt asserted to be owed by the consumer on or before the charge-off date of the debt; or (2) on closed-end accounts, either the date of the last payment, if such date is available, or the date of the last written notification sent to the consumer which lists the total amount of the outstanding debt asserted to be owed by the consumer on or before the charge-off date of the debt.

Language access services. The term "language access services" means any service made available by a debt collector to consumers in a language other than English. Language access services include, but are not limited to, the use of:

(1) collection letters using a language other than English;

(2) customer service representatives who collect or attempt to collect debt in a language other than English;

(3) a translation service for the collector's website or for written communications; and

(4) a service that interprets phone conversations in real time.

Limited-content message. The term "limited-content message" means an attempt to communicate with a consumer by leaving a voicemail message that includes all of the following content, which may include other content allowed by federal law, and that includes no other content:

(1) A business name for the debt collector that does not indicate that the debt collector is in the debt collection business;

(2) A request that the consumer reply to the message;

(3) The name of the natural person whom the consumer can contact to reply to the debt collector; and

(4) A call-back telephone number that is answered by a natural person.

Original creditor and originating creditor. The terms "original creditor" or "originating creditor" means any person, firm, corporation, or organization who originated the debt, including by extending credit and creating the debt.

Section 4. The definitions for "Communication" and "Debt collector" in Section 5-76 of Part 6 of Subchapter A of Chapter 5 of Title 6 of the Rules of the City of New York are amended to read as follows:

Communication. The term "communication" means the conveying of information regarding a debt directly or indirectly to any person through any medium, including by electronic means. The term communication excludes a limited-content message.

Debt collector. The term "debt collector" means [an individual who, as part of his or her job, regularly collects or seeks to collect a debt owed or due or alleged to be owed or due] any person engaged in any business with the principal purpose of which is the collection of any debts or who regularly collects, or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due to another person. The term does not include:

(1) any officer or employee of the United States, any State or any political subdivision of any State to the extent that collecting or attempting to collect any debt owed is in the performance of [his or her] their official duties;

(2) any person while engaged in performing an action required by law or regulation, or required by law or regulation in order to institute or pursue a legal remedy;

(3) any individual employed by a nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors; [or]

(4) any individual employed by a utility regulated under the provisions of the Public Service Law, to the extent that New York Public Service Law or any regulation promulgated thereunder is inconsistent with this part; or

(5) any person while performing the activity of serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt, or serving, filing or conveying formal legal pleadings, discovery requests, judgments, or other documents pursuant to the applicable rules of civil procedure, where such person is not a party, or providing legal representation to a party, to the action.

Where a provision of this part limits the number of times an action may be taken by the debt collector, or establishes as a prerequisite to taking an action that the debt collector has received or done something, or prohibits an action if the debt collector has knowledge of or reason to know something, the term "debt collector" includes any debt collector employed by the same employer.

Section 5. Section 5-77 of Part 6 of Subchapter A of Chapter 5 of Title 6 of the Rules of the City of New York is amended to read as follows:

§ 5-77. Unconscionable and Deceptive Trade Practices.

It is an unconscionable and deceptive trade practice for a debt collector to attempt to collect a debt owed, due, or asserted to be owed or due except in accordance with the following rules:

(a) ***Acquisition of location information***. Any debt collector communicating with any person other than the New York City consumer for the purpose of acquiring location information about the consumer in order to collect a debt[, after the institution of debt collection procedures shall] must:

(1) identify [himself or herself] themselves, state that [he or she is] they are confirming or correcting location information about the consumer and identify [his or her employer] the debt collector on whose behalf they are communicating when that identification connotes debt collection only if expressly requested;

(2) not state or imply that such consumer owes any debt;

(3) not communicate more than once, unless requested to do so by such person or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information, in which case the debt collector may communicate one additional time; for the purposes of this paragraph (3), the debt collector need not count as a communication returned unopened mail, an undelivered email message, or a message left with a party other than the person the debt collector is attempting to reach in order to acquire location information about the consumer, as long as the message is limited to a telephone number, the name of the debt collector and a request that the person sought telephone the debt collector;

(4) not use any language or symbol on any envelope or in the contents of any communication effected by the mail or a delivery service that indicates that the debt collector is in the debt collection business or that the communication relates to the collection of a debt; provided that a debt collector may use [his or her] their business name or the name of a department within [his or her] their organization as long as any name used does not connote debt collection; and

(5) if the debt collector knows the consumer is represented by an attorney with regard to the subject debt and if the debt collector has knowledge of the attorney's name and address or can readily ascertain such attorney's name and address, not communicate with any person other than that attorney for the purpose of acquiring location information about the consumer unless the attorney fails to provide the consumer's location within a reasonable period of time after a request for the consumer's location from the debt collector and:

(i) informs the debt collector that [he or she] the attorney is not authorized to accept process for the consumer; or

(ii) fails to respond to the debt collector's inquiry about the attorney's authority to accept process within a reasonable period of time after the inquiry.

[The employer of a debt collector may not be held liable in any action brought under § 5-77(a)(3) or (5) if the employer shows by a preponderance of the evidence that the violation was not intentional and resulted despite the maintenance or procedures reasonably adapted to avoid any such violation.]

(b) ***Communication in connection with debt collection***. A debt collector, in connection with the collection of a debt, [shall] must not:

(1) [After institution of debt collection procedures, without] Without the prior written consent of the New York City consumer given directly to the debt collector [after the institution of debt collection procedures], or without permission of a court of competent jurisdiction, [communicate with the consumer in connection with the collection of any debt;] engage in any of the following conduct:

(i) communicate or attempt to communicate with the consumer at any unusual time or place known, or which should be known, to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating or attempting to communicate with a consumer is after 8 a.m.[o'clock ante meridian] and before 9 p.m.[o'clock post meridian time] at the consumer's location;

(ii) except for any communication that is required by law, communicate or attempt to communicate directly with the consumer if the debt collector knows the consumer is represented by an attorney with respect to such debt and if the debt collector has knowledge of the attorney's name and address or can readily ascertain such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer[, except any communication which is required by law or chosen from among alternatives of which one is required by law is not hereby prohibited];

(iii) communicate or attempt to communicate with the consumer at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer or supervisor prohibits the consumer [from receiving] to receive such a communication; or

(iv) [with excessive frequency. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that more than twice during a seven-calendar-day period is excessively frequent. In making its calculation, the debt collector need not include any communication between a consumer and the debt collector which is in response to an oral or written communication from the consumer, or returned unopened mail, or a message left with a party other than one who is responsible for the debt as long as the message is limited to a telephone number, the name of the debt collector and a request that one who is responsible for the debt telephone the debt collector; or any communication which is required by law or chosen from among alternatives of which one is required by law] communicate or attempt to communicate, including by leaving limited-content messages, with the consumer with excessive frequency.

(A) Excessive frequency means either 1) any communication or attempted communication by the debt collector with a consumer, by any medium of communication or in person, in connection with the collection of debt more than three times during a seven-consecutive-calendar-day period, or 2) after already having had an interaction with the consumer within such seven-consecutive-calendar-day period.

(B) The date of the first day of such a seven-consecutive-calendar-day period is the day of the first such communication or attempted communication. Communication or attempted communication between a consumer and the debt collector that is initiated by or at the request of a consumer; in response to a communication from the consumer in the same email thread or live chat; not connected to the dialed number, returned mail or a bounced email; or required by law shall not be included in the calculation of excessively frequent communications.

(C) Any communication or attempted communication made by a person pursuant to the rules of civil procedure, such as serving, filing, or conveying formal legal pleadings, discovery requests, depositions, court conferences, communications with the consumer's attorney on a pending legal matter, or ordered by the New York State Unified Court System, shall not be included in the calculation of excessively frequent communications. Traditional debt-collection activities, such as sending a consumer a collection letter or placing a call, or using any other means, to contact the consumer to collect on debt, count toward the calculation of excessively frequent communications in section 5-77 (b)(1)(iv)(A).

[The employer of a debt collector may not be held liable in any action brought under 6 RCNY § 5-77(b)(1)(ii)-(iv) if the employer shows by a preponderance of the evidence that the violation was not intentional and resulted despite maintenance of procedures reasonably adapted to avoid any such violation]

For the purpose of paragraph (1) of this subdivision, the term "consumer" includes the consumer's parent (if the consumer is a minor), guardian, executor, administrator, (or the person who is authorized to act on behalf of a deceased consumer's estate) or spouse (unless the debt collector knows or should know that the consumer is legally separated from or no longer living with their spouse).

(2) [In order to collect a debt, and except as provided by 6 RCNY § 5-77(a)] Except if otherwise permitted by law, communicate about a debt with any person other than the consumer who is obligated or allegedly obligated to pay the debt, [his or her] the consumer's attorney, the executor or administrator of a deceased consumer's estate or the person who is authorized to act on behalf of the estate, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, a debt collector to whom [or to whose employer] the debt has been assigned for collection[, a creditor who assigned the debt for collection,] or the attorney of that debt collector[, or the attorney for that debt collector's employer,] without the prior written consent of the consumer or their attorney given directly to the debt collector [after the institution of debt collection procedures, or without the prior written consent of the consumer's attorney], or without the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy.

(3) Communicate with any person other than [the consumer's attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, a debt collector to whom or to whose employer the debt has been assigned for collection, a creditor who assigned the debt for collection, or the attorney of that debt collector or the attorney for that debt

collector's employer] those persons enumerated in paragraph (2) of this subdivision in a manner which would violate any provision of [this part] paragraph (1) of this subdivision if such person were a consumer.

(4) [After institution of debt collection procedures, communicate] Communicate with a consumer with respect to a debt if the consumer has notified the debt collector [in writing] that the consumer wishes the debt collector to cease further communication with the consumer with respect to that debt, except [that] for any communication which is required by law [or chosen from among alternatives of which one is required by law is not hereby prohibited]. The debt collector shall have a reasonable period of time following receipt by the debt collector of the notification to comply with a consumer's request[, except that any debt collector who knows or has reason to know of the consumer's notification and who causes further communication shall have violated this provision]. The debt collector may, however:

(i) communicate with the consumer once in writing or by electronic means:

(A) to advise the consumer that the debt collector's further efforts are being terminated; or[;]

(B) [to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or;

(C) where applicable] to the extent such notice was not previously provided, to notify the consumer that the debt collector or creditor intends to invoke a specific remedy, if it[that] is a remedy [he is]they are legally entitled to invoke and [if he they actually intends] intend to invoke it; and

(ii) respond to each subsequent [oral or written] communication from the consumer.

(5) [For the purpose of 6 RCNY § 5-77(b)(1)-(4), the term "consumer" includes the consumer's parent (if the consumer is a minor), guardian, executor, administrator, spouse (unless the debt collector knows or has reason to know that the consumer is legally separated from or no longer living with his or her spouse), or an individual authorized by the consumer to make purchases against the account which is the subject of the collection efforts. A request that the debt collector cease further communication, provided for under 6 RCNY § 5-77(b)(4), if made by the consumer's spouse or an individual authorized by the consumer to make purchases against the account, only affects the debt collector's ability to communicate further with the person making the request]Contact a New York City consumer by electronic communication unless the debt collector satisfies the following requirements:

(i) A debt collector may only use a specific email address, text message number, social media account, or specific electronic medium of communication if:

(A) such electronic communication is private and direct to the consumer; and

(B) the debt collector obtains revocable consent from the consumer in writing, given directly to the debt collector, to use such email address, text message number, social media account, or other electronic medium of communication to communicate about the debt, and the consumer has not since revoked the consent; or

(C) the consumer used such email address, text message number, social media account or other electronic medium of communication to communicate with the debt collector about a debt within the past 30 days and has not since opted out of communications to that email address, text message number, social media account or other electronic medium of communication or opted out of all electronic communications generally.

(ii) A person's electronic signature constitutes written consent under this section, provided it complies with all relevant state and federal laws and rules, including article three of the New York Technology Law (New York Electronic Signatures and Records Act) and chapter 96 of title 15 of the United States Code (Electronic Signatures in Global and National Commerce Act).

(iii) The written consent, revocable by the consumer, is retained by the debt collector until the debt is discharged, sold, or transferred.

(iv) A debt collector who sends any disclosures required by this subchapter electronically must do so in a manner that is reasonably expected to provide actual notice, and in a form that the consumer may keep and access later.

([v) The debt collector must include in every electronic mail communication to the consumer a clear and conspicuous written disclosure that the person may revoke consent to receive electronic communication at any time, and a reasonable and simple method by which the consumer can opt-out of further electronic communications or attempts to communicate by the debt collector, which may include replying "stop" or some other word(s) that reasonably indicates the consumer wishes to opt-out. The disclosure to the consumer must be in the same language as the rest of the communication and the debt collector must accept the consumer's response to opt-out in the same language as in the initial electronic mail that prompted the response from the consumer or in any language used by the debt collector to collect debt.

(vi) The debt collector may not require, directly or indirectly, that the consumer, in order to opt-out, pay any fee to the debt collector or provide any information other than the consumer's opt-out preferences and the email address or text message number subject to the opt-out request.

(6) Communicate with a consumer by sending an electronic message to an email address or a text message number that the debt collector knows or should know is provided to the consumer by the consumer's employer.

(7) Communicate with a consumer on a social media platform, unless the debt collector obtains consent from the consumer to communicate on the specific social media platform, and the communication is not viewable by anyone else other than the consumer, including but not limited to the general public or the consumer's social media contacts.

(8) Communicate with a consumer through a medium that the consumer has requested that the debt collector not use to communicate with the consumer.

(9) Communicate or attempt to communicate with a consumer to collect a debt for which the debt collector knows or should know that the consumer was issued a Notice of Unverified Debt pursuant to subdivision (f).

(c) ***Harassment or abuse***. A debt collector, in connection with the collection of a debt, shall not engage in conduct the natural consequence of which is to harass, oppress or abuse any person in connection with a debt. Such conduct includes:

(1) the use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person;

(2) the use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader;

(3) the advertisement for sale of any debt to coerce payment of the debt;

(4) causing a telephone to ring or produce another sound or alert, or engaging any person [in] by any communication medium, including but not limited to telephone conversation, repeatedly or continuously with intent to annoy, abuse, or harass any person [at the called number] contacted by the debt collector;

(5) the publication of a list of consumers who allegedly refuse to pay debts, except to another employee of the debt collector's employer or to a consumer reporting agency or to persons meeting the requirements of 15 USC § 1681a(f) or 15 USC § 1681b(3); or

(6) except [as provided by 6 RCNY § 5-77(a), the placement of telephone calls without meaningful disclosure of the caller's identity] where expressly permitted by federal, state, or local law, communicating with a consumer without disclosing the debt collector's identity.

(d) ***False or misleading representations***. A debt collector, in connection with the collection of a debt, shall not make any false, deceptive, or misleading representation. Such representations include:

(1) the false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or identification[facsimile]thereof;

(2) the false representation or implication that any individual is an attorney or is employed by a law office or a legal department or unit, or any communication is from an attorney, a law office or a legal department or unit, or that an attorney conducted a meaningful review of the consumer's debt account;

(3) the representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to pursue such action;

(4) the threat to take any action that cannot legally be taken or that is not intended to be taken;

(5) the false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to:

(i) lose any claim or defense to payment of the debt; or

(ii) become subject to any practice prohibited by this part;

(6) the false representation [of] or implication made in order to disgrace the consumer that the consumer committed any crime or other conduct;

(7) the false representation or implication that accounts have been turned over to innocent purchasers for value;

(8) the false representation or implication that documents are legal process;

(9) the false representation or implication that documents are not legal process forms or do not require action by the consumer;

(10) the false representation or implication that a debt collector operates or is employed by a consumer reporting agency as defined by 15 U.S.C. § 1681a(f);

(11) the use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval;

(12) the use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer;

(13) the use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization, unless the general public knows the debt collector's business, company or organization by another name and to use the true name would be confusing;

(14) [after institution of debt collection procedures,] the false representation of the character, amount or legal status of any debt, or any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt[, except that the employer of a debt collector may not be held liable in any action brought under this provision if the employer shows by a preponderance of the evidence that the violation was not intentional and occurred despite the maintenance of procedures reasonably adapted to avoid any such violation];

(15) except [as otherwise provided under 6 RCNY § 5-77(a) and except for any communication which is required by law or chosen from among alternatives of which one is required by law] for limited-content messages and where otherwise expressly permitted by federal, state, or local law, the failure to disclose clearly and conspicuously in all communications made to collect a debt [or to obtain information about a consumer,] that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose;

(16) the use of any [name that is not the debt collector's actual name; provided that a debt collector may use a name other than his actual name if he or she uses only that name in communications with respect to a debt and if the debt collector's employer has the name on file so that the true identity of the debt collector can be ascertained] assumed name; provided that an individual debt collector may use an assumed name when communicating or attempting to communicate with a consumer about a debt if that collector uses the assumed name consistently and is the only person using that assumed name, and the assumed name is on file so that the

true identity of the collector can be ascertained;

(17) any conduct proscribed by New York General Business Law §§ 601(1), (3), (5), (7), (8), or (9);

(18) the false, inaccurate, or partial translation of any communication [when the debt collector provides translation services]; [or]

(19) after the institution of debt collection procedures, the false representation or omission of a consumer's language preference when returning, selling or referring for debt collection litigation any consumer account, where the debt collector [is aware] knows or should know of such preference; or

(20) except where expressly permitted by federal, state, or local law, the failure to disclose clearly and conspicuously in all telephone communications in connection with the collection of a debt where the communication is recorded by the debt collector that the communication is being recorded and the recording may be used in connection with the collection of the debt.

(21) after the institution of debt collection procedures, the false representation that the consumer cannot dispute the debt or request verification of the debt from the debt collector by oral communication.

(e) ***Unfair and unconscionable practices***. A debt collector may not use any unfair or unconscionable means to collect or attempt to collect a debt. Such conduct includes:

(1) the collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law;

(2) the solicitation or use by a debt collector of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution;

(3) causing charges to be made to any person for communications by misrepresentation of the true purpose of the communication. Such charges include collect telephone calls and [telegram] text message or mobile phone data fees;

(4) taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if:

(i) there is no present right to possession of the property claimed as collateral;

(ii) there is no present intention to take possession of the property; or

(iii) the property is exempt by law from such dispossession or disablement;

(5) after institution of debt collection procedures, when communicating with a consumer by [use of the mails] mail or [telegram] a delivery service, using any language or symbol other than the debt collector's address on any envelope, or using any language or symbol that indicates the debt collector is in the debt collection business or that the communication relates to the collection of a debt on a postcard, except that a debt collector may use [his or her] their business name or the name of a department within [his or her] their organization as long as any name used does not connote debt collection;

(6) after institution of debt collection procedures, [communicating with a consumer regarding a debt without identifying himself or herself and his or her employer or communicating in writing with a consumer regarding a debt without identifying himself or herself by name and address and in accordance with 6 RCNY § 5-77(e)(5)] except where expressly permitted by federal, state, or local law, communicating with a New York City consumer without disclosing the debt collector's name; [or]

(7) after institution of debt collection procedures, if a consumer owes multiple debts of which any one or portion of one is disputed, and the consumer makes a single payment with respect to such debts:

(i) applying a payment to a disputed portion of any debt; or

(ii) unless otherwise provided by law or contract, failing to apply such payments in accordance with the consumer's instructions accompanying payment[. If payment is made by mail, the consumer's instructions must be written. Any communication by a creditor made pursuant to 6 RCNY § 5-77(e)(7)(ii) shall not be deemed communication for the purpose of 6 RCNY § 5-77(b)(1)(iv). The employer of a debt collector may not be held liable in any action brought under 6 RCNY § 5-77(e)(7) if the employer shows by a preponderance of the evidence that the violation was not intentional and resulted despite maintenance of procedures reasonably adapted to avoid any such violation];

(8) engaging in any conduct prohibited by New York General Business Law §§ 601(2) or (4); [or]

(9) after institution of debt collection procedures, collecting or attempting to collect a debt without [first requesting and] recording the language preference of such consumer, except where the debt collector is not aware of such preference despite reasonable attempts to obtain it;

(10) furnishing to a consumer reporting agency, as defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. § 1681a(f)), information about a debt unless the debt collector has sent the consumer a validation notice pursuant to section 5-77(f) that states, in a clear and conspicuous manner, that the debt will be reported to a consumer reporting agency and waited 14 consecutive days. During the waiting period, the debt collector must permit receipt of, and monitor for, notifications of undeliverability from communications providers. If the debt collector receives such notification during the waiting period, the debt collector must not furnish information about the debt to a consumer reporting agency until the debt collector satisfies this subdivision. If the debt collector previously furnished information to a consumer reporting agency, between January 1, 2021 and the effective date of the rule, and if the debt collector still has a right to collect on such debt, they must disclose in a validation notice to the consumer, by mail or delivery service within 5 days of the effective date of this rule, that the debt was furnished to a consumer reporting agency, unless such information was already disclosed, clearly and conspicuously, in a validation notice mailed by the debt collector to the consumer.

This subdivision does not apply to a debt collector's furnishing of information about a debt to a nationwide specialty credit reporting agency that compiles and maintains information on a consumer's check writing history, as described in section 603(x)(3) of the Fair Credit Reporting Act (15 U.S.C. § 1681a(x)(3));

(11) selling, transferring, or placing for collection or with an attorney or law firm to sue a New York City consumer to recover any debt where the debt collector knows or should know that the debt has been paid or settled or discharged in bankruptcy, except a debt collector may transfer a debt to the debt's owner or to a previous owner of the debt if:

(i) the transfer is authorized under the terms of the original contract between the debt collector and the debt's owner or previous owner, as a result of a merger, acquisition, purchase and assumption transaction, or as a transfer of substantially all of the debt collector's assets; and

(ii) the debt collector also transfers all information pertaining to whether the debt has been paid or settled or discharged in bankruptcy obtained during the time the debt was assigned to the debt collector for collection;

(12) selling, transferring, or placing for collection or with an attorney or law firm to recover any debt where the debt collector knows or should know that the time to sue on the debt has expired, without including a clear and conspicuous notice to the recipient of the debt that the statute of limitations on such debt has expired; or

(13) selling, transferring, or placing for collection or with an attorney or law firm to sue a New York City consumer to recover any debt for which the debt collector was unable to provide written verification of the debt, despite having received a dispute or request for verification of the debt from the consumer, without including a clear and conspicuous notice to the recipient of the debt that the debt was not verified and a copy of the "Notice of Unverified Debt" sent to the consumer pursuant to subdivision (f) of this section.

(f) ***Validation of debts.***

(1) [Upon acceleration of the unpaid balance of the debt or demand for the full balance due, the following validation procedures shall be followed by debt collectors who are creditors or who are employed by creditors as defined by 15 U.S.C. § 1602(f) (Truth in Lending Act) but who are not required to comply with 15 U.S.C. § 1637(a)(8) (Fair Credit Billing Act) and who do not provide consumers with an opportunity to dispute the debt which is substantially the same as that outlined in 15 U.S.C. § 1637(a)(8) and regulations promulgated thereunder: Within five days of any further attempt by the creditor itself to collect the debt, it shall send the customer a written notice containing:

(i) the amount of the debt;

(ii) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed valid by the debt collector;

(iii) a statement that, if the consumer notifies the debt collector in writing within the thirty-day period at the address designated by the debt collector in the notice, that the debt, or any portion thereof is disputed, the debt collector shall either:

(A) make appropriate corrections in the account and transmit to the consumer notification of such corrections and an explanation of any change and, if the consumer so requests, copies of documentary evidence of the consumer's indebtedness; or

(B) send a written explanation or clarification to the consumer, after having conducted an investigation, setting forth to the extent applicable the reason why the creditor believes the account of the consumer was correctly shown in the written notice required by 6 RCNY § 5-77(f)(1) and, upon the consumer's request, provide copies of documentary evidence of the consumer's indebtedness. In the case of a billing error where the consumer alleges that the creditor's billing statement reflects goods not delivered in accordance with the agreement made at the time of the transaction, a creditor may not construe such amount to be correctly shown unless it determines that such goods were actually delivered, mailed, or otherwise sent to the consumer and provides the consumer with a statement of such determination.

(iv) if the debt collector is not the original creditor, a statement that, upon the consumer's written request within the thirty-day period, sent to the address designated by the debt collector in the notice, the debt collector will provide the consumer with the name and address of the original creditor;

(v) an address to which the consumer should send any writing which disputes the validity of the debt or any portion thereof or any writing requesting the name and address of the original creditor.

(2)] *Validation notice*. Within five days after the initial communication with a New York City consumer in connection with the collection of any debt, a debt collector [who is not a creditor and not employed by a creditor shall, unless the following information is contained in an initial written communication, or the consumer paid the debt, send the consumer a written notice containing] must send the consumer a written notice containing the following information in a clear and conspicuous manner, unless the consumer paid the debt or such information was contained, clearly and conspicuously, in an initial written communication sent by U.S. mail or delivery service:

(i) [the amount of the debt] all information required for validation notices by federal or state law;

(ii) [the name of the creditor to whom the debt is owed] the New York City Department of Consumer and Worker Protection license number assigned to the debt collection agency, if applicable;

(iii) [a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector] the name of a natural person for the consumer to contact;

(iv) a [statement that if the consumer notifies the debt collector in writing within the thirty-day period at the address designated by the debt collector in the notice that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector] telephone number that is answered by such natural person;

(v) [a] the following statement [that, upon the consumer's written request within the thirty-day period sent to the address designated by the debt collector in the notice, the debt collector will provide the consumer with the name and address of the original creditor, if

different from the current creditor]:

PLEASE READ: Important Information About Your Rights as a New York City Consumer

- **There is no time limit to dispute the debt in collection**. You can let collectors know you dispute the debt using any of the ways they contact you, including by phone.

- **You must get a response to the disputed debt in 45 days**. Once you dispute the debt, the collector must stop collection. In 45 days, the collector must give you either 1) verification of the debt, or 2) a "Notice of Unverified Debt" stating it can't verify the debt or continue collection.

- **You can use a "Notice of Unverified Debt" to stop collection attempts by other debt collectors**. Be sure to keep a copy of all letters to exercise this right.

- **You may qualify for financial assistance with medical debt**. If you have a low or limited income, ask the collector or the hospital if you qualify for help under the "Financial Assistance Policy."

(vi) [an address to which the consumer should send any writing which disputes the validity of the debt or any portion thereof or any writing requesting the name and address of the original creditor;

(vii)] a statement informing the consumer of any language access services available[, including whether the consumer may obtain from the debt collector a translation of any communication into a language other than English];

[(viii)] (vii) a statement that a [translation and description of commonly-used debt collection terms is]Glossary of Common Debt Collection Terms and other resources are available in [multiple]different languages at [available in multiple languages on the Department's website, www.nyc.gov/dca] www.nyc.gov/dcwp.

The information required under subdivisions (ii) through (vii) may be included on the reverse side of a written validation notice only if the debt collector includes them together under a heading entitled, "**Important Additional Consumer Rights Under New York City Law**" and includes a clear and conspicuous statement on the front of the validation notice referring to the disclosures on the reverse side. If included on the reverse side of the validation notice, the information must be positioned in a manner so it is readily noticeable and legible to consumers, even after a consumer tears off any response portion of the notice.

The final bullet point related to medical debt may be deleted from the statement if the debtor is deceased.

(viii) An itemization of the current amount of the debt asserted to be owed that allows the consumer to recognize the total amount of the outstanding debt as of the itemization reference date, and includes a breakdown of all additional amounts that have been assessed or applied to the amount of the debt since the itemization reference date, listing fields for: 1) interest; 2) fees; 3) payments; and 4) credits, and the following information:

(A) The total amount of the outstanding debt asserted to be due on the itemization reference date.

(B) The date, amount, and description of each fee, payment, credit, or interest, applied to the debt since the itemization reference date. A debt collector must include all fields in the itemization, even if no additional amounts have accrued, or may state that no interest, fees, payments, or credits have been assessed or applied to the debt since the itemization reference date.

(C) The basis of the consumer's obligation to pay each separate charge, interest, or fee, including if allowed by a contract or by law.

(D) The total amount asserted to be due on the date of the itemization.

A debt collector is permitted to add additional information in the itemization required in this subdivision or disclose the itemization on a separate page as allowed or required by federal or state law, provided the content required in this subdivision is clear and conspicuous to the consumer. Debt collection agencies that must comply with § 20-493.2 (a) of the Administrative Code and § 2-190 (b) shall be deemed to satisfy the requirement of furnishing an itemization under the licensing law by complying with this section and may list the "principal balance" as the total amount of the outstanding debt asserted to be owed by the consumer on the itemization reference date.

(2) *Delivery of validation notices.* A debt collector must deliver written disclosures under (f)(1) of this section in the following manner*:*

(i) A debt collector must deliver to consumers validation notices and the itemization of the debt by U.S. mail or delivery service. If a debt collector only delivers a validation notice or the itemization of the debt electronically or orally, it does not satisfy the requirement under subdivision § 5-77(f)(1).

(ii) A debt collector may deliver a duplicate copy of the validation notice and itemization of the debt by any other means, including electronic mail, provided it is in accordance with other sections or laws, such as section 101(c) of the Electronic Signatures in Global and National Commerce Act (E–SIGN Act)(15 U.S.C. 7001(c)) or their successor provisions.

(iii) If a debt collector delivers a duplicate validation notice to a consumer electronically, the debt collector must do so in accordance with § 5-77(b)(5) and the notice must include the debt collector's website, email address, and information on how the consumer can dispute the debt, seek verification of the debt, or request originating-creditor information electronically.

(3) *Notices in languages other than English.* If a debt collector offers consumers validation notices in a language other than English, and a consumer requests a notice in such language, the debt collector must mail a written notice to the consumer completely and accurately in the language requested within 30 days of receiving such a request. As required by section 1006.34(e)(2) of title 12 of the Code of Federal Regulations, a debt collector who receives a request from the consumer for a Spanish-language validation notice must provide the consumer with a validation notice completely and accurately translated into Spanish. A debt collector may not contact a consumer exclusively by telephone or orally in a language other than English to collect debt without providing the consumer, by U.S. mail or delivery service, a validation notice written accurately in the language used by the debt collector during the exchange with the consumer, within 30 days of the first contact by the debt collector in the language other than

English. A debt collector is not required to mail the validation notice, in a language other than English, to the consumer more than once during the period that the debt collector owns or has the right to collect the debt. If the debt collector sends a validation notice in a language other than English, it must also accept and respond to disputes, complaints, requests for verification of the debt and cease and desist requests by the consumer completely and accurately in the same language as the validation notice.

([3]4) [If, pursuant to 6 RCNY §§ 5-77(f)(1) or 5-77(f)(2) of this Regulation the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall not attempt to collect the amount in dispute until the debt collector obtains and mails to the consumer verification of the debt or a copy of the judgment or the name and address of the original creditor. The debt collector shall maintain for one year from the date the notice was mailed, records containing documentation of the date such notice was mailed, the date the response, if any, was received and any action taken following such response] *Validation Period.* The validation period extends for 30 consecutive days from the date a consumer receives or is assumed to receive a validation notice. For purposes of determining the validation period, the debt collector may assume that a consumer received the validation notice five days (excluding Saturdays, Sundays, and legal public holidays identified in 5 U.S.C. § 6103(a)) after the debt collector sent it.

([4]5) [The failure of a consumer to dispute the validity of a debt under 6 RCNY § 5-77(f) shall not be construed by any court as an admission of liability by the consumer] *Overshadowing of rights to dispute or request original-creditor information*. During the validation period, a debt collector must not engage in any collection activities or communications that overshadow or are inconsistent with the disclosure of the consumer's rights to dispute the debt and request the name and address of the original creditor.

(6) *Verification*. A debt collector must provide a New York City consumer verification of a debt or provide a notice of unverified debt in accordance with section 5-77(f)(7) within 45 days of receiving a dispute or a request for verification of the debt. The consumer may dispute the debt, or make such verification request orally or in writing, or electronically if the debt collector uses electronic communications to collect debt, at any time during the period in which the debt collector owns or has the right to collect the debt. The debt collector must treat a first dispute by the consumer as a request for verification of the debt, unless the debt collector has already provided the consumer with the verification information required in this subdivision. If a debt collector provides consumers the ability to submit written disputes electronically through a website, such a website must automatically generate a copy of each written dispute that a consumer can print, save, or have emailed to them. A consumer shall not be required to waive any rights to make use of such an online submission option. The debt collector must cease collection of the debt if an itemization of the debt was not previously provided to the consumer by the debt collector in compliance with section 5-77(f)(1)(vii) and if a timely written verification of the debt has not been provided to the consumer. A debt collector is not required to verify a debt pursuant to this section more than once during the period that the debt collector owns or has the right to collect the debt; provided, however, that the debt collector must send any such verification documents to the consumer one additional time upon request by the consumer. A debt collector must provide verification to the consumer in writing, by U.S. mail or delivery service, unless the consumer has consented to receive electronic communications in compliance with section 5-77(b)(5).

(i) Verification of debt must include:

(A) a copy of the debt document issued by the originating creditor or an original written confirmation evidencing the transaction resulting in the indebtedness to the originating creditor, including the signed contract or signed application that created the debt or, if no signed contract or application exists, a copy of a document provided to the alleged debtor while the account was active, demonstrating that the debt was incurred by the consumer. For a revolving credit account, the charge-off account statement, the most recent monthly statement recording a purchase transaction, payment, or balance transfer shall be deemed sufficient to satisfy this requirement. Documents created or generated after the time of charge-off of the debt or institution of debt collection procedures shall not qualify as such confirmation;

(B) records reflecting the amount and date of any prior settlement agreement reached in connection with the debt;

(C) the final account statement, or other such document that reflects the total outstanding balance, mailed to the consumer on or before the charge-off date and prior to the institution of debt collection procedures;

(ii) In matters involving a judgment obtained after adjudication on the merits of the case, there will be a rebuttable presumption that the debt collector complied with this section if it mails the consumer, by U.S. mail or delivery service, a copy of the judgment and any evidence of indebtedness that is part of the record of the lawsuit. For this subdivision, a copy of a judgment obtained by default does not provide the consumer verification of the alleged debt; and

(iii) In matters involving debt arising from the receipt of health care services, medical products, or devices, the debt collector must provide, clearly and conspicuously, to the consumer any information in its possession or available to the debt collector required to be disclosed by federal, state or local law, including the relevant financial assistance policy.

(7) Notice of unverified debt. If a debt collector did not provide an itemization of the debt and cannot provide a consumer with a timely written verification of a debt in response to a dispute or request for verification, the debt collector must respond in writing to the consumer within 45 days of receiving the dispute or a request for verification, at any time during the collection process, that the debt collector is unable to verify the debt and will stop collecting on the debt, and provide the reason that the debt could not be verified. Debt collectors must deliver a notice of unverified debt to the consumer by U.S. mail or delivery service. The debt collector must permit receipt of, and monitor for, notifications of undeliverability from communications providers for at least 14 consecutive days after they place the notice of unverified debt in the mail or with the delivery service. If the debt collector receives such notification, the debt collector must re-send the notice of unverified debt to the consumer, by U.S. mail or delivery service, within 5 days.

(8) Originating creditor. A debt collector must provide the consumer the address of the originating creditor of a debt within 45 days of receiving a request from the consumer for such address. The consumer may make such request orally or in writing, or electronically if the debt collector [permits]uses electronic communications to collect debt, at any time during the period in which the debt collector owns or has the right to collect the debt. After receiving such a request, the debt collector must cease collection of the debt until such address has been provided to the

consumer. A debt collector is not required to provide this information more than once during the period that the debt collector owns or has the right to collect the debt.

(9) *Electronic communications.* If a debt collector delivers a duplicate copy of the validation notice to a consumer electronically, the debt collector must do so in accordance with § 5-77(b)(5) and the notice must include the debt collector's website, email address, and information on how the consumer can dispute the debt, seek verification of the debt, or request original-creditor information electronically.

(10) *Dispute and verification of medical debt*. Medical debt includes debt arising from the receipt of health care services or medical products or devices.

(i) If, at any time during the debt collection process, the New York City consumer indicates that a public or private insurance plan, a third-party payer, or a financial assistance policy should have covered some or all of the charges on the medical debt, or that the debt is as a result of lack of price transparency at the time the services were rendered, or a violation of federal, state or local law, the debt collector must treat such communication by the consumer, received by any medium of communication and language used by the debt collector to collect the debt, as a dispute and a request for verification by the consumer on such medical debt.

(ii) A debt collector must respond to disputed medical debt by providing the consumer verification in accordance with section 5-77(f)(6) and by responding to the specific issue disputed by the consumer under paragraph (i) of this subdivision or deliver to the consumer a notice of unverified debt in accordance with section 5-77(f)(7).

(iii) If a New York City consumer disputes a medical debt, the debt collector must also do the following:

(A) treat all unverified accounts related to a discrete hospitalization or treatment of the consumer, provided such services were rendered within a six-month period, the same as the disputed medical debt by the consumer;

(B) note in all related medical accounts, unless written verification was already provided by the debt collector to the consumer or the consumer has acknowledged owing the amount claimed to be owed on such account, as disputed medical debt, in a manner that is easily identifiable and searchable in each of the consumer's related accounts; and

(C) furnish to the consumer verification on each related medical debt.

(iv) In addition to the requirements in section 5-77(j), before resuming debt collection activities on disputed medical debt arising from services provided by a covered medical entity, the debt collector must also verify that the covered medical entity met its obligations under federal, state, or local law and the financial assistance policy.

(g) Reserved.

(h) Public websites*.* Any debt collector that utilizes, maintains, or refers New York City consumers to a website accessible to the public that relates to debts for which debt collection procedures have been instituted must clearly and conspicuously disclose, on the homepage of

such website or on a page directly accessible from a hyperlink on the homepage labeled "**NYC Rules on Language Services and Rights**", the following disclosures:

(1) a statement informing the consumer of any language access services available[, including whether the consumer may obtain from the debt collector a translation of any communication into a language other than English]; and

(2) a statement that a [translation and description of commonly-used debt collection terms is]Glossary of Common Debt Collection Terms and other resources are available in [multiple]different languages at[on the Department's website, www.nyc.gov/dca www.] www.nyc.gov/dcwp.

(i) ***Time-barred debts***. In connection with the collection of a debt, the following requirements must be met:

(1) A debt collector must maintain reasonable procedures for determining the statute of limitations applicable to a debt it is collecting and whether such statute of limitations has expired.

(2) Initial Written Notice. if a debt collector, including a debt collection agency that must provide information to a New York City consumer pursuant to § 20-493.2(b) of the Administrative Code, seeks to collect on a debt for which the debt collector has determined, including pursuant to subdivision (a) of this section, or otherwise knows or has reason to know, that the statute of limitations for a debt has or may have expired, the debt collector must initially deliver the consumer a written notice, by U.S. mail or delivery service, that clearly and conspicuously discloses to the consumer substantially the same time-barred-debt disclosure below, before contacting a consumer about the expired debt by any other means:

- **The statute of limitations on this debt expired. This means you can't be sued to collect it. A court will not enforce collection**.

  IF YOU ARE SUED:

  - It is a violation of federal law (the Fair Debt Collection Practices Act).
  - You may be able to prevent a judgment against you by telling the court that the statute of limitations on this debt expired.
  - You are not required to admit that you owe this debt, promise to pay this debt, or waive the statute of limitations on this debt.
  - Consult an attorney or a legal aid organization to learn more about your legal rights and options.

(3) *Waiting Period.* The debt collector must wait at least 14 consecutive days after they place the initial written notice in U.S. mail or delivery service to the consumer to receive notice of undeliverability. During the waiting period under this subdivision, the debt collector must permit receipt of, and monitor for, notifications of undeliverability from communications providers. If the debt collector receives such notification during the waiting period, the debt collector must not contact the consumer, by any other means of communication, to collect the debt until the debt collector otherwise satisfies section 5-77(i)(2).

(4) Subsequent Communications. Unless otherwise permitted by law, the debt collector may not, without the prior written and revocable consent of the consumer given directly to the debt collector, contact such consumer in connection with the collection of an expired debt exclusively by telephone or by other means of oral or electronic communication. After mailing the Initial Written Notice required in section 5-77(i)(2), the debt collector must redeliver such notice to the consumer by U.S. mail or delivery service within 5 days after each oral communication with the consumer unless the debt collector has already mailed a hardcopy of such notice within a 30-day period. Any subsequent notice sent to the consumer electronically must be in accordance with other sections or laws, such as section 101(c) of the Electronic Signatures in Global and National Commerce Act (E–SIGN Act)(15 U.S.C. 7001(c)) or their successor provisions.

(5) When such information is delivered in writing, the time-barred debt notice must be included for each debt that is beyond the applicable statute of limitations, in at least 12 point type that is set off in a sharply contrasting color from all other types on the communication, and placed on the first page adjacent to the identifying information about the amount claimed to be due or owed on such debt. A debt collector may include additional language to the time-barred-debt disclosure as may be required by the State of New York to send the consumer one disclosure notice.

(j) ***Medical debt from* a *covered medical entity***. (1) In connection with the collection of medical debt arising from charges from a covered medical entity, a debt collector is prohibited from collecting or attempting to collect on a medical debt from a New York City consumer asserted to be owed if the debt collector knows or should know that:

(i) To do so violates federal, state, or local law or the financial assistance policy of the covered medical entity.

(ii) The patient has an open application for financial assistance with the covered medical entity.

(iii) The financial assistance policy should have provided financial assistance to the patient to cover all, or a portion, of the medical debt.

(iv) A misrepresentation was made to the patient about the financial assistance policy or payment options regarding the medical debt, including, but not limited to:

(A) The patient was wrongly denied, or not given proper and timely notice of, available financial assistance.

(B) The patient was discouraged from applying for financial assistance.

(C) The patient was induced to agree to pay for all or part of the medical debt with misinformation about payment options or the financial assistance policy.

(D) The patient was only presented with options to pay or to agree to pay for all or part of the medical debt regardless of income level.

(2) In connection with the collection of medical debt from a New York City consumer arising from charges from a covered medical entity, a debt collector must conduct reasonable corrective measures upon obtaining information that the financial assistance policy was not disclosed to the

patient as required by law or that there is a violation of federal, state, or local law. A consumer may provide such information to the debt collector, by any means of communication or in any language used by the debt collector to collect debt, without the debt collector requiring the consumer to submit any supporting documentation to the debt collector. Corrective measures must be taken as follows:

(i) Inform the entity that placed the account with the debt collector within one business day that the debt may be subject to the covered entity's financial assistance policy or that there might be a violation of the law.

(ii) Provide and record in plain language the following statement: "**A FINANCIAL ASSISTANCE POLICY MAY APPLY TO THIS MEDICAL DEBT**", or a statement indicating the violation of law, in a manner readily noticeable and searchable, in the following records:

(A) all of the consumer's accounts arising from medical debt from the covered medical entity, from the same hospitalization or a discrete course of treatment or care;

(B) a written notification that must be sent by U.S. mail or delivery service to the consumer along with the verification of the debt in accordance with sections 5-77(f)(6) and (f)(10); and

(C) a written notification that must be sent to any receiving party upon transferring any of the consumer's accounts with medical debt from the same covered medical entity.

(iii) Provide any disclosure to the consumer regarding the financial assistance policy, by U.S. mail or delivery service, clearly and conspicuously on the first page of any written communication from the debt collector to the consumer, and such disclosure must not be placed on the reverse side of the page or the second page. Any written notification to a consumer regarding the financial assistance policy may not be delivered exclusively by the debt collector through electronic means.

(iv) Maintain a monthly log or record of all consumer accounts in which the debt collector took corrective measures as required in section 5-77(j) and such measures must be easily identifiable and searchable in each consumer account.

(k) ***Record retention***. A debt collector must retain the following records to document its collection activities with New York City consumers:

(1) Records that are evidence of compliance or noncompliance with part 6 of subchapter A of chapter 5 of title 6 of the Rules of the City of New York starting on the date that the debt collector begins collection activity on the debt until three years after the debt collector's last collection activity on the debt.

(2) Monthly logs or a record of the following:

(i) all complaints filed by New York City consumers against the debt collector, including those filed with the agency directly or with any not-for-profit entity or governmental agency, identifying for each complaint the date, the consumer's name, and account

information, the source of the complaint, a summary of the consumer's complaint, the debt collector's response to the complaint, if any, and the current status of the complaint;

(ii) all disputes or requests for verification made by New York City consumers, identifying each consumer's name and account information, the date of the dispute or request for verification, and the date and type of response, if any, sent by the debt collector; and

(iii) all cease-and-desist requests made by New York City consumers, identifying the consumer's name and account information, the date of the request, and the date and purpose of any further contacts by the debt collector after receipt of the request from the consumer.

To comply with this subdivision, debt collectors may combine all the monthly logs or records into one document or record or use a template: "Report for Consumer Activity" as made available on the Department's website at www.nyc.gov/dcwp.

NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028

CERTIFICATION PURSUANT TO

CHARTER §1043(d)

RULE TITLE: Amendment of Rules Related to Debt Collectors

REFERENCE NUMBER: 2023 RG 047

RULEMAKING AGENCY: Department of Consumer and Worker Protection

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

(i) is drafted so as to accomplish the purpose of the authorizing provisions of law;

(ii) is not in conflict with other applicable rules;

(iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and

(iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN Date: September 20, 2023
Senior Counsel

NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400

CERTIFICATION / ANALYSIS PURSUANT TO CHARTER SECTION 1043(d)

RULE TITLE: Amendment of Rules Related to Debt Collectors

REFERENCE NUMBER: DCWP-36

RULEMAKING AGENCY: Department of Consumer and Worker Protection

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

(i) Is understandable and written in plain language for the discrete regulated community or communities;

(ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and

(iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco X. Navarro *September 20, 2023*
Mayor's Office of Operations Date

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Via email to: Rulecomments@dcwp.nyc.gov

November 29. 2023

Re: Proposed Revised Amendments to New York City Department of Consumer and Worker Protection Rules Relating to Debt Collectors

To Whom It May Concern:

Mobilization for Justice (MFJ) appreciates the opportunity to comment again on the Department of Consumer and Worker Protection's (DCWP) revised proposed amendments to its debt collection rules. The proposed amendments, along with the Consumer Credit Fairness Act, which addresses certain unfair practices in the collection of debt through lawsuits, will help curb debt collection abuses by third-party debt collectors, and will address some of the gaps left by the Consumer Financial Protection Bureau's debt collection rule, Regulation F.

MFJ's mission is to achieve justice for all. MFJ prioritizes the needs of people who are low-income, disenfranchised, or have disabilities as they struggle to overcome the effects of social injustice and systemic racism. We provide the highest-quality free, direct civil legal assistance, conduct community education and build partnerships, engage in policy advocacy, and bring impact litigation. We assist more than 14,000 New Yorkers each year, benefitting over 24,000. MFJ's Consumer Rights Project regularly provides legal advice and assistance to low-income New Yorkers facing debt collection. Abusive debt collection is a pressing racial justice problem and the country's deep racial wealth gap and the lack of financial resources within communities of color--which are lasting consequences of slavery, segregation, and redlining—disadvantage Black and Brown New Yorkers and make them more vulnerable to economic setbacks. As a result, communities of color are disproportionately targeted for predatory financial products and services and are thus disproportionately impacted by resulting debt collection efforts.

The proposed amendments include vital protections for New Yorkers, including communities of color. However, as we noted in our prior comments, the New York State Department of Financial Services (DFS) has not issued its own proposed amendments to its debt collection rules, which may, when finalized, affect our comments below. We urge DCWP to work with DFS to ensure that both sets of rules complement each other and provide the strongest protections possible for New Yorkers. Further, no inference should be drawn from the limited number of comments submitted from consumers and consumer advocates: the proposed rules are detailed and difficult to parse for the average consumer, and many consumer law practitioners at legal services organizations lack the necessary resources to be able to take the time to analyze or submit comment on these lengthy proposed rules. With this in mind, MFJ endorses the more detailed comments from the National Consumer Law Center, Community Service Society, and New Economy Project, in particular.

Provisions that DCWP Should Adopt

In particular, we strongly support the following proposed amendments, which would:

- Add important provisions regarding the collection of medical debt;
- Apply protections to debt collectors' attempted communications, not just communications (*e.g.*, sections 2-193 and 5-77);
- Limit debt collectors to three communications or attempted communications per consumer within a seven-day period (section 5-77(b)(1)(iv)(A));
- Require debt collectors, before furnishing a debt to a consumer reporting agency, to notify consumers that they may report the debt to a consumer reporting agency (section 5-77(e)(10));
- Require debt collectors to include notices to buyer/transferee/assignee regarding debts that were paid or discharged in bankruptcy or could not be verified (sections 5-77(e)(11) and (13));
- Require debt collectors to provide the validation notice in writing (section 5-77(f)(1)) and bar debt collectors from providing the validation notice exclusively by electronic means (section 5-77(f)(2)(i));
- Require debt collectors to verify a debt within 45 days of receiving a dispute or request for verification from a consumer, including an oral request (section 5-77(f)(6));
- Require debt collectors to include in their records whether a judgment in a case was obtained on default or on the merits (section 2-193(b)(3));
- Prohibit debt collectors from falsely representing that consumers may not dispute a debt or request verification by oral communication (section 5-77(d)(21)); and
- Update the language of the rules to be gender neutral.

Provisions That DCWP Should Further Amend

We urge DCWP to make the following important changes, which will help ensure that the protections intended by the proposed amendments are meaningful to everyday New Yorkers.

1. **Prohibit the collection and sale of time-barred debt.**

We urge DCWP to improve upon Regulation F and New York State requirements by prohibiting the collection of time-barred debt, rather than merely requiring disclosures that a debt is time-barred. If DCWP does not prohibit the collection of time-barred debt, we recommend that DCWP require all debt collection communications on time-barred debt to be made in writing, not orally. We also urge DCWP to prohibit selling, transferring, or placing time-barred debt for collection, rather than merely requiring debt collectors to include notices to debt buyers or subsequent debt collectors that the debts are expired (section 5-77(e)(12)).

2. **Clarify the statute of limitations disclosure (section 5-77(i)).**

To the extent that DCWP continues to allow the collection of time-barred debt, we support requiring disclosure of the fact that a debt is time-barred. We recommend, however, that DCWP amend the proposed language, which is confusing and contradictory. The proposed disclosure contains conflicting information, including an assurance to the consumer that "you can't be sued to collect [this debt]" as well as advice for the consumer "IF YOU ARE SUED." The statement "A court will not enforce collection" is also confusing because courts do not "enforce collection." Further, the statement is misleading because it is quite likely that a debt collector will obtain a judgment on a time-barred debt if the consumer/defendant does not raise the defense of statute of limitations or the debt collector obtains a judgment on default, and upon obtaining a judgment, a debt collector will most certainly try to enforce it.

To address the above concerns, we suggest the following distinct disclosures, which we previously suggested to DCWP and which have also been proposed in nearly identical form to DFS:

- For time-barred debts on which the statute of limitations cannot be revived by payment or acknowledgment under CPLR 214-i: "NYC regulations require us to disclose the following: It is illegal for a creditor or debt collector to sue you to collect on this debt because this debt is too old. To learn more about your legal rights and options, consult an attorney or a legal assistance or legal aid organization."

- For time-barred debts on which the statute of limitations may be revived by payment or by written acknowledgement pursuant to General Obligations Law section 17-101: "NYC regulations require us to disclose the following: It is illegal for a creditor or debt collector to sue you to collect on this debt because this debt is too old. However, be aware that if you make a payment on this debt or admit in writing that you owe this debt, then you will give the creditor or debt collector more time under the law to sue you to collect on this debt. To learn more about your legal rights and options, consult an attorney or a legal assistance or legal aid organization."

3. **Do not weaken recordkeeping requirements regarding service of process** (**section 2-193(b)(3**)).

We urge DCWP not to remove the requirement that debt collectors maintain a record the name of the process server who served process on the consumer, the date, location, and method of service of process, and the affidavit of service that was filed as part of the record of debt collection cases filed in court that debt collectors must maintain. Information about process servers is important for consumers sued in debt collection cases, for holding debt collectors responsible for the process servers they hire, and provides important data for DCWP in its regulatory and enforcement roles with regard to both the debt collection and process serving industries.

4. **Require employer liability (section 5-77(g)).**

We oppose deleting all references to employer liability from section 5-77, including sections (a), (b), (d), (e)(7) and most troubling (g). Section (g) in the proposed rules is labeled "Reserved," and misleadingly does not include the deleted material, which currently reads: "*Liability.* The employer of a debt collector is liable for the debt collector's violation of § 5-77." Employers of debt collectors must be held accountable for their employees' acts and take measures to ensure their employees' compliance with all applicable debt collection rules.

5. **Require debt collectors to provide meaningful language access services.**

As we commented previously, in our experience, debt collectors do not provide written notices and other correspondence in a consumer's primary language. DCWP's current rules do not, and its proposed amendments would not, affirmatively require debt collectors to have and offer language access services. Although we strongly support DCWP's proposed requirement that a validation notice and verification letter or "unable to verify notice" be translated into the language requested by the consumer, this proposed requirement would apply only to those debt collectors that in fact offer language access services; it is meaningless if debt collectors may simply choose not to offer language access services as a way to avoid DCWP's language access requirements. Especially in a place as diverse as New York City, debt collectors should be required to provide language access services in at least the most common languages spoken in New York City. At a minimum, DCWP should require that where the original contract giving rise to the alleged debt is in a language other than English or where a debt collector uses a language other than English in the initial oral communication with a consumer, the debt collector must provide required notices in that language.

6. **Provide a private right of action.**

DCWP's rules are meant to protect New York City consumers and deter bad actors, and noncompliance may subject debt collectors to enforcement actions. However, because DCWP has limited enforcement capacity, the rules should include a private right of action, in order to extend the reach of these rules, alleviate the burden on DCWP, and ensure that New Yorkers harmed by debt collectors violating the rules are fully able to vindicate their rights.

Upon promulgation, we also urge DCWP to publicize its complaint procedures so that consumers may report debt collectors that do not comply with these rules, and so that DCWP can take swift enforcement measures against any debt collectors that violate the rules. Thank you for the opportunity to submit comments.

Sincerely,
Carolyn E. Coffey
Director of Litigation for Economic Justice
212-417-3701 | ccoffey@mfjlegal.org

November 29, 2023

Re: Proposed Amendments to DCWP rules relating to debt collectors

The New York State Creditors Bar Association (the "NYSCBA")[1] would like to thank the New York City Department of Consumer and Worker Protection (the "DCWP" or "Department") for this opportunity to comment on the Department's proposed amendments to its rules relating to debt collectors. These regulations are vitally important to our members and their businesses. We appreciate the opportunity to engage in a constructive dialog regarding these important updates.

Our organization applauds the effort of the Department to seek further feedback in response to its prior proposed amendments. NYSCBA's comments reflect a continuing effort to harmonize, as much as possible, the implementation of these new city regulations, state laws and federal regulations by keeping a consistent set of definitions and avoiding duplicative or inconsistent requirements that create confusion for consumers and debt collectors alike.

1. The itemization reference date should align with existing CFPB rules.

The itemization reference date should be left in a manner consistent with Federal law. Federal law allows itemization as of five different reference dates.[2] These dates were selected by the CFPB following extensive usability testing of the consumer impact of using these dates.[3] Further modification to the itemization reference date will have no positive consumer impact.

Regulation F came into effect over one year ago following extensive engagement between the CFPB, consumer advocates, creditors and debt collectors. The five reference dates allowed under

[1] The New York State Creditors Bar Association is an organization of legal professionals in the area of consumer and commercial debt resolution. The attorneys and their firms who make up the Bar Association run professional practices that operate under an ethical framework promulgated by the judiciary in search of durable and equitable post-judgment debt resolutions.

[2] Itemization date means any one of the following five reference dates for which a debt collector can ascertain the amount of the debt:

(i) The last statement date, which is the date of the last periodic statement or written account statement or invoice provided to the consumer by a creditor;
(ii) The charge-off date, which is the date the debt was charged off;
(iii) The last payment date, which is the date the last payment was applied to the debt;
(iv) The transaction date, which is the date of the transaction that gave rise to the debt; or
(v) The judgment date, which is the date of a final court judgment that determines the amount of the debt owed by the consumer.

12 CFR § 1006.34(b)(3). See also, Debt Collection Rule: Disclosing the Model Validation Notice Itemization Table, October 29, 2021, https://files.consumerfinance.gov/f/documents/cfpb_debt-collection_disclosing-the-MVN-itemization-table.pdf

[3] Consumer Financial Protection Bureau (CFPB) Usability Testing Report: Model Validation Notice, November 20, 2020, https://files.consumerfinance.gov/f/documents/cfpb_model-validation-notice_report_2020-12.pdf

Regulation F are designed to "reflect routine and recurring events and that correspond to notable events in the debt's history that consumers may recall or be able to verify with record."[4] The CFPB conducted qualitative testing to support that all itemization types are easily understood by consumer.[5] The CFPB acknowledged that it would be "difficult to identify a single reference date that applies to all debt types across all relevant markets"[6] and therefore proposed the use of multiple itemization dates.

These five dates are reliable and recognizable to consumers across all types of debts. While OCC regulations govern charge off for credit cards, charge off across all product types is a consistent date required for tax and securities reporting purposes for publicly traded companies and is therefore highly reliable. The charge off amount is the amount of debt that exists right before collections and allows transparency into any post charge off fees or costs added to the balance. The charge off date is reported to the credit bureaus by the creditor and is therefore recognizable to consumers. The statement date is allowed under the rules and aligns with account started requirements. The transaction date is the date of the financial transaction that created the debt and certainly a reliable and recognizable date for consumers. The judgment date aligns with the starting balance of the judgment, it is reliable as the judgment has been awarded by the court and recognizable to consumers because the judgment has previously been provided. Each reference date within the CFPB requirements has been thoroughly thought through and now been used in practice without incident for over one year.

By narrowing these itemization reference options, the DCWP will force collectors to provide a complex accounting of accounting changes to the debt that accrued after the itemization reference date envisioned by the department. For instance, the balance on an account with a judgment may be different than the amount printed on the last statement prior to charge off as a result of awarded statutory costs and disbursements. This increase is already itemized in the judgment and available to the consumer when the judgment was entered or in response to a verification of debt request. Including an itemization from the judgment amount to the last statement amount may not be possible if the statements were destroyed after the judgment was entered. This complex accounting will provide extraneous information that will ultimately confuse consumers.

Finally, this proposal conflicts with state law and will result in consumers receiving *two* conflicting itemizations. Existing New York State law requires an itemization as of the charge off date.[7] The rule as currently drafted would require the debt collectors provide an additional itemization that complies with the reference dates allowed under the proposal. As a result, consumers will receive two different itemizations in the same letter. Given the volume of disclosures required by existing state and city law, there is not enough physical space within the initial letter to provide an additional itemization and accounting detail. This extra information risks causing consumer confusion and harm.

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[4] Notice of Public Rule Making, Consumer Financial Protection Bureau, Page 223 at https://files.consumerfinance.gov/f/documents/cfpb_debt-collection-NPRM.pdf

[5] "Across all rounds, participants were overwhelmingly able to use the Debt Information Boxes to correctly answer questions about the amount owed, the amount of interest on the debt, and whether fees were owed." Debt Collection Validation Notice Research: Summary of Focus Groups, Cognitive Interviews, and User Experience Testing, Consumer Financial Protection Bureau, February 2016, Page 22 at https://files.consumerfinance.gov/f/documents/cfpb_debt-collection_fmg-summary-report.pdf.

[6] Notice of Public Rule Making at 224

[7] 23 NYCRR 1.2(b)(2)

2. The requirement under 5-77(f)(1)(vii)(B) and 5-77(f)(2)(vii)(C) will cause confusion and should be stricken.

The additional disclosures under section 5-77(f)(2)(vii)(B) and 5-77(f)(2)(vii)(C) should be stricken as they will further confuse consumers.[8] Given the proposed narrowing of the itemization reference date, this section will require the inclusion of voluminous accounting information that exceeds the pleading requirements under the NY CCFA. It is understood when designing disclosures to inform consumers that "too much information can overwhelm consumers or distract their attention from key content."[9] In fact, in CFPB usability testing, it was determined that participants said they thought the balance would continue to increase based on the current interest and fee accumulation.[10] reflected in the notice. Consumers who receive additional complex and voluminous data in the initial communication will, therefore, only be more confused about whether the balance is changing or how it was calculated.

Additionally, as reflected in the model letter provided as Exhibit A, there is simply no room to provide this information in the existing model validation letter template. Since there isn't enough room in the page of the additional notice, collectors would have to provide the itemization on a second page. Receipt of a second page of accounting data may confuse consumers as to the origin of the data and be overwhelming without conducting usability testing to determine the effectiveness of these additional disclosures.

It is respectfully submitted that this information is more appropriate to be provided in response to a validation of debt request. When a consumer disputes the debt, the consumer is engaged in the debt and may at that point seek an itemized accounting of the charges to the account. As a result, this requirement should be moved to 5-77(f)(6)(i)(A).

3. The disclosure under § 5-77 (f)(1)(v) conflicts with federal law and should be eliminated or modified.

While the NYSCBA appreciates the revisions made to the disclosure from the first draft, the disclosure contemplated under this amendment conflicts with the requirements of federal law, will confuse consumers and generate litigation risk for debt collectors who attempt in good faith to comply with the rule.

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[8] "The date, amount, and description of each fee, payment, credit, or interest, applied to the debt since the itemization reference date. A debt collector must include all fields in the itemization, even if no additional amounts have accrued, or may state that no interest, fees, payments, or credits have been assessed or applied to the debt since the itemization reference date." 5-77(f)(2)(vii)(B); "The basis of the consumer's obligation to pay each separate charge, interest, or fee, including if allowed by a contract or by law." 5-77(f)(2)(vii)(C)

[9] Designing Disclosures to Inform Consumer Financial Decision making: Lessons Learned from Consumer Testing, Jeanne M. Hogarth and Ellen A. Merry, Federal Reserve Bulletin, at https://www.federalreserve.gov/pubs/bulletin/2011/articles/designingdisclosures/default.htm

[10] Debt Collection Cognitive Interviews, Consumer Financial Protection Bureau, February 2016, Page 13 at https://files.consumerfinance.gov/f/documents/cfpb_debt-collection_fmg-cognitive-report.pdf

As the DCWP is aware, the Consumer Financial Protection Bureau published the Model Validation Notice (the "MVN"). The MVN provides a safe harbor for compliance with the validation information content and format requirements.[11] The Model Validation Notice includes specific language that ensures compliance with 12 CFR § 1006.34(c)(3)(i) and 34(c)(3)(v) which govern the consumer's right to request validation of the debt under the FDCPA. Federal law holds that the End Date of Validation period is "30 days after the consumer receives or is assumed to receive the validation information."[12] To comply with these requirements, the MVN language reads: "If you write to us by <End Date of Validation Period>, we must stop collection on any amount you dispute until we send you information that shows you owe the debt…"[13]

The disclosure required by § 5-77 (f)(1)(v) is inconsistent with the language in Model Form B-1.[14] First, the disclosure states there is "no time limit" to dispute the debt rather than prior to the end of the validation period as envisioned by federal law. Secondly, the disclosure states that the consumer may request verification of debt "using any of the way [the debt collector] contacts you" rather than in writing as required by federal law.

This conflicting language violates federal law and risks confusing consumers. During the validation period, the debt collector must not engage in any collection activities or communications that overshadow or are inconsistent with the disclosure of the consumer's rights to dispute the debt and to request the name and address of the original creditor.[15] Under these proposed rules, consumers would see one set of federal requirements on the front of the MVN and another set of conflicting City requirements on the back of the MVN, with no clarifying language, generating inevitable confusion.

This conflict will cause litigation against debt collectors who attempt in good faith to comply with these requirements. The FDCPA "is being privately enforced mostly on the hyper-technical margins of permissible collection activity…hav[ing] drifted quite far from the truly awful collection practices—threatening violence, disclosing a consumer's personal affairs to others, impersonating public officials—that prompted Congress to enact the FDCPA…The courts are to some extent simply burdening the collection industry with a continuing portfolio of litigation that potentially raises the cost of credit for all consumers."[16] Further, Senior District Court Judge Leo Glasser noted that the volume of alleged FDCPA violations has "quintupled…This standard prohibits not only abuse but also imprecise language, and it

[11] 12 CFR § 1006.34(d)(2); see also 12 CFR § 1006.34(c) and 34(d)(1).
[12] 12 CFR § 1006.34(b)(3)(i).
[13] Model Form B-1, Appendix B to 12 CFR § 1006(Regulation F).
[14] PLEASE READ: Important Information About Your Rights as a New York City Consumer

- There is no time limit to dispute the debt in collection. You can let collectors know you dispute the debt using any of the ways they contact you, including by phone.
- You must get a response to the disputed debt in 45 days. Once you dispute the debt, the collector must stop collection. In 45 days, the collector must give you either 1) verification of the debt, or 2) a "Notice of Unverified Debt" stating it can't verify the debt or continue collection.
- You can use a "Notice of Unverified Debt" to stop collection attempts by other debt collectors. Be sure to keep a copy of all letters to exercise this right.
- You may qualify for financial assistance with medical debt. If you have a low or limited income, ask the collector or the hospital if you qualify for help under the "Financial Assistance Policy."

[15] 12 CFR § 1006.38(b)(1).
[16] Islam v. Am. Recovery Serv. Inc., No. 17-CV-4228 (BMC), 2017 WL 4990570, at *3 (E.D.N.Y. Oct. 31, 2017).

has turned FDCPA litigation into a glorified game of 'gotcha,' with a cottage industry of plaintiffs' lawyers filing suits over fantasy harms the statute was never intended to prevent."[17]

Additionally, the disclosure includes specific information about medical debt that is not applicable to instances where the debt is not medical debt. This additional information should only be required where the debt is medical debt.

As a result, the NYSCBA recommends the disclosure requirement be stricken or modified to include an additional explanation as to why the disclosure conflicts with the front of the model validation notice:

> **PLEASE READ: Important Information About Your Rights as a New York City Consumer. Despite the information included on the front of the letter, under NYC DCWP regulations:**
>
> - **There is no time limit to dispute the debt in collection.** You can let collectors know you dispute the debt using any of the ways they contact you, including by phone.
> - **You must get a response to the disputed debt in 45 days.** Once you dispute the debt, the collector must stop collection. Within 45 days, the collector must give you either 1) verification of the debt, or 2) a "Notice of Unverified Debt" stating it can't verify the debt or continue collection.
> - **You can use a "Notice of Unverified Debt" to stop collection attempts by other debt collectors.** Be sure to keep a copy of all letters to exercise this right.
>
> If the debt is medical debt include:
>
> - **You may qualify for financial assistance with medical debt.** If you have a low or limited income, ask the collector or the hospital if you qualify for help under the "Financial Assistance Policy.

Finally, there is additional concern that given the volume of disclosures required by the state and the city there is simply not enough room on the back of the initial letter to include all required disclosures. Please see Exhibit A.

4. The Notice of Unverified Debt should only be required for debt charged off after the effective date of these rules.

The Notice of Unverified Debt creates new requirements that were not known at the time a creditor may have determined its record retention requirements. The creditor, therefore, may not have retained records sufficient to fulfil these new validation requirements in circumstances where a judgment was entered or where the validation period under federal law expired. As a result, the notice of unverified debt should be required solely for debts charged off after implementation of these requirements.

5. A Copy of the Judgment Must be Sufficient Verification of the Debt.

When a court reduces the facts of the case to a judgment, the judgment becomes the applicable document. The judgment is entitled to the full faith and credit of every other state. By requiring that

[17] Kraus v. Prof'l Bureau of Collections of Maryland, Inc., 281 F. Supp. 3d 312, 322 (E.D.N.Y. 2017).

additional documentation be provided in order to enforce a judgment, this provision is unconstitutional. As a result, the provision should be modified.

This will be exploited as a tactic to impair our client's rights by requiring attorneys to have in their possession additional documentation long after judgment has been entered and documentation that may not be available if the judgment is entered from a sister state. The regulations create an extra-judicial stalling tactic that far exceeds the scope of CPLR Article 31. This will force attorneys to discontinue the action or seek a delay in legal proceedings, impairing the rights of creditors to seek redress in court. As it is currently written, consumer attorneys can counsel their clients to invoke this tactic not only post-discovery or after a dispositive motion has been granted but even after a judgment has been entered by the court. This defeats the finality accorded to matters that have been reduced to judgment by the courts.[18]

The finality of judgments has also been recognized and addressed in the FDCPA, which specifically provides that verification of a debt already reduced to judgment is satisfied by providing a copy of the judgment.[19] The proposed regulation has the effect of requiring attorneys to engage in post-judgment discovery, even after a court has validly reduced a creditor's claim to a judgment. This may even be long after the relevant document retention period has expired for the creditor, making verification impossible.

The result of this requirement, perhaps years after judgment has been entered, further impairs our clients' rights to enforce judgments entered by the courts of this state. Creditors who have already successfully litigated their claims will be prevented from exercising their rights. Indeed, the proposed disclosure and verification requirements post-judgment are unnecessary, as the legislature and the courts already provide consumers with the ability to address judgments that consumers believe were entered improperly. New York State trial courts are held with the responsibility of vacating default judgments if the facts establish a reasonable excuse for the default and the possibility of a meritorious defense to the action.[20]

6. Implementation Challenges

a. Record Keeping Requirements

The requirement that the debt collector keep monthly logs under § 2-193(a)(6) and § 2-193(b) creates a substantial burden on small and medium size businesses operating in this industry. The requirement to create monthly logs will result in debt collectors engaging in time consuming and expensive efforts to design procedures to compile these logs. The logs themselves do not serve a benefit to consumers but merely require the collector to collate information at the collector level that is already available within the individual records for each debt.

b. Effective Date

[18] O'Brien v. Lehigh Valley R. Co., 176 Misc. 404 (Sup. Ct. Erie County 1941).
[19] *See* 15 USC §1692g(a)(4); 12 CFR § 1006.34(c)(3).
[20] *See* NY CPLR §5015.

The NYSCBA respectfully requests that these rules are made effective no earlier than 180 days after being published in the NYC Register in order to implement the requirements of this rules. These proposed rules are far reaching and require substantial time to develop procedures and work with clients to bring firms into compliance.

c. Prospective Nature

The NYSCBA respectfully requests that the DCWP clarify that these rules apply only to debt collection activity that takes place after the effective date of the rule.

Thank you again for the opportunity to provide these comments.

North Shore Group
P.O. Box 123456
Pasadena, CA 91111-2222
(800) 123-4567 from 8am to 8pm EST,
Monday to Saturday
www.example.com

To: Person A
[ADDRESS]
[CITY] [STATE] [ZIP]

Reference: [FILE #]
[DATE]

North Shore Group is a debt collector. We are trying to collect a debt that you owe to Bank of Rockville. We will use any information you give us to help collect the debt.

Our information shows:

You had a Main Street Department Store credit card from Bank of Rockville with account numberr 123-456-789.

As of January 2, 2017 you owed:		$2,234.56
Between January 2, 2017 and today:		
You were charged this amount in interest:	+	$75.00.
You were charged this amount in fees:	+	$25.00
You paid or were credited this amount towards the debt:	-	$50.00
Total amount of the debt now:		**$**2,284.56

How can you dispute the debt?

- **Call or write to us by January 5, 2024, to dispute all or part of the debt.** If you do not, we will assume that our information is correct.
- **If you write to us by January 5, 2024**, we must stop collection on any amount you dispute until we send you information that shows you owe the debt. You may use the form below or you may write to us without the form. You may also include supporting documents. We accept disputes electronically at www.example.com/dispute.

What else can you do?

- **Write to ask for the name and address of the original creditor, if different from the original creditor.** If you write by January 5, 2024, we will stop collection until we send you that information. You may use the form below or write to us without the form. We accept such requests electronically at www.example.com/request.
- **Go to** www.cfpb.gov/debt-collection **to learn more about you rights under federal law.** For instance, you have the right to stop or limit how we contact you.
- Contact us about your payment options.
- Póngase en contacto con nosotros para solicitar una copia de este formulario en español.

Notice: See reverse side for important information.

How do you want to respond?

Check all that apply:

☐ **I want to dispute the debt because I think:**

- ☐ This is not my debt.
- ☐ The amount is wrong.
- ☐ Other (please describe on reverse or attach additional information).

☐ **I want you to send me the name and address of the original creditor.**

☐ **I enclosed this amount:** $

Make your check payable to North Shore Group
Include the reference number [FILE #]

☐ **Quiero este formulario en español.**

Mail this form to:
North Shore Group
P.O. Box 123456
Pasadena, CA 91111-2222

Person A
[ADDRESS]
[CITY] [STATE] [ZIP]

CALL: [PHONE #] [CONTACT NAME] EXT: [EXT #]
DCWP: [License number]

Debt collectors, in accordance with the Fair Debt Collection Practices Act, 15 U.S.C. S 1692 et seq., are prohibited from engaging in abusive, deceptive, and unfair debt collection efforts, including but not limited to:

1. the use or threat of violence;
2. the use of obscene or profane language; and
3. repeated phone calls made with the intent to annoy, abuse, or harass.

If a creditor or debt collector receives a money judgment against you in court, state and federal laws may prevent the following types of income from being taken to pay the debt:

1. Supplemental security income, (SSI);
2. Social security;
3. Public assistance (welfare);
4. Spousal support, maintenance (alimony) or child support;
5. Unemployment benefits;
6. Disability benefits;
7. Workers' compensation benefits;
8. Public or private pensions;
9. Veterans' benefits;
10. Federal student loans, federal student grants, and federal work study funds; and
11. Ninety percent of your wages or salary earned in the last sixty days

Our website Northshoregroup.com is available in Spanish. A translation and description of commonly-used debt collection terms is available in multiple languages on www.nyc.gov/dca.

You may request that we send you this letter, and future letters, in an alternative reasonably accommodative format selected by this office, such as large print or other means, by calling us at (800) 123-4567 or by writing us at North Shore Group, P.O. Box 123456 Pasadena, CA 91111-2222.

PLEASE READ: Important Information About Your Rights as a New York City Consumer

- **There is no time limit to dispute the debt in collection**. You can let collectors know you dispute the debt using any of the ways they contact you, including by phone.
- **You must get a response to the disputed debt in 45 days**. Once you dispute the debt, the collector must stop collection. In 45 days, the collector must give you either 1) verification of the debt, or 2) a "Notice of Unverified Debt" stating it can't verify the debt or continue collection.
- **You can use a "Notice of Unverified Debt" to stop collection attempts by other debt collectors**. Be sure to keep a copy of all letters to exercise this right.
- **You may qualify for financial assistance with medical debt.** If you have a low or limited income, ask the collector or the hospital if you qualify for help under the "Financial Assistance Policy."

Please provide any changes to your contact information:

NAME_____

STREET ADDRESS_____

CITY_____STATE_____ZIP_____

HOME PHONE_____BUSINESS PHONE_____

PERSONAL EMAIL ADDRESS: _____

Email Notice – Please be advised by providing us with your personal email address, you are agreeing that this is a personal email and you are authorizing us to use it to contact you in relation to this debt.

I want to dispute the debt because _____

_____

_____

_____

_____

_____

NEW YORK CITY
DEPARTMENT OF CONSUMER & WORKER PROTECTION
PROPOSED AMENDMENTS TO ITS DEBT COLLECTION RULES

Proposed Rule Amendments

Section 1. Section 2-191 Disclosure of Consumer's Legal Rights Regarding the Effect of the Statute of Limitations on Debt Payment, Subchapter S of Chapter 2 of Title 6 of the Rules of the City of New York, is repealed in its entirety.

Section 2. Section 2-193 of Subchapter S of Chapter 2 of Title 6 of the Rules of the City of New York is amended to read as follows:

§ 2-193. Records to be Maintained by Debt Collection Agency

(a) Unless otherwise prohibited by federal, state or local law, a debt collection agency [shall] must maintain a separate file for each debt that the debt collection agency attempts to collect from each New York City consumer, in a manner that is searchable or retrievable by the name, address and zip code of the consumer, and by the creditor who originated the debt the agency is seeking to collect. The debt collection agency [~~shall~~] must maintain in each debt file the following records to document its collection activities with respect to each consumer:

(1) A copy of all communications ~~and attempted communications~~ [~~or exchanges~~] with the consumer.

(2) A record of each payment received from the consumer that states the date of receipt, the method of payment and the debt to which the payment was applied.

(3) A copy of the debt payment schedule and/or settlement agreement reached with the consumer to pay the debt.

(4) With regard to any debt that the debt collection agency has purchased, a record of the name

Commented [DR1]: The industry would request the deletion of the phrase "attempted communications." The DCWP indicated that one of the reasons for proposing amendments to the existing rule is to come into alignment with Regulation F (Reg F) that was promulgated by the federal Consumer Financial Protection Bureau (CFPB) in 2021. There is no similar record keeping requirement in Reg F that requires the recording of attempted communications in a formal log. Systems of record would often have an entry of attempts but not in the complicated methodology being proposed. No other jurisdiction in the nation has a similar requirement. All references to this phraseology have been deleted in this proposed redline.

and address of the entity from which the debt collection agency purchased the debt, the date of the purchase and the amount of the debt at the time of such purchase.

(5) Any other records that are evidence of compliance or noncompliance with subchapter 30 of chapter 2 of title 20 of the Administrative Code and any rule promulgated thereunder, and of part 6 of subchapter A of chapter 5 of title 6 of the Rules of the City of New York.

(6) A log, account notes or record of all communications ~~and attempted communications~~ by any medium between a debt collection agency and a New York City consumer in connection with the collection of a debt. A communication that results in a busy signal, does not go through, or was made to a wrong number or address that is not affiliated with the consumer or the consumer's family is not required to be maintained in the log. For each communication ~~and attempted communication~~, the log, account notes or record must identify in a manner that is searchable and easily identifiable, the following:

(i) the date~~,~~ and the time ~~and duration~~ of the communication ~~or attempted communication, if applicable~~;

(ii) the medium of communication ~~or attempted communication~~; and

(iii) the names ~~and contact information~~ of the persons involved in the communication~~.; and~~

~~(iv) a contemporaneous summary in plain language of the communication or attempted communication.~~

(b) A debt collection agency [~~shall~~] must maintain the following records to document its collection activities with respect to all New York City consumers from whom it seeks to collect a debt:[~~(1) A monthly log of all calls made to consumers, listing the date, time and duration of each call, the number called and the name of the person reached during the call~~]

(1) Monthly logs or a record, in a form and format designated by the Commissioner, of the following:

(i) all complaints which were received by a debt collection agency that were filed by New York City consumers against the debt collection agency, including those filed with the agency directly or with any not-for-profit entity or governmental agency, identifying for each complaint the date, the consumer's name and account information, the source of the complaint, a summary of the consumer's complaint, the debt collection agency's response to the complaint, if any, and the current status of the complaint;

(ii) all written disputes or requests for verification made by New York City consumers, identifying each consumer's name and account information, the date of the dispute or request for verification, and the date and type of response, if any, sent by the debt collection agency; and

(iii) all written cease-and-desist requests made by New York City consumers, identifying the consumer's name and account information, the date of the request, and the date and purpose of any further contacts by the debt collection agency after receipt of the request from the consumer.

(2) Recordings of [~~complete conversations~~] all telephone ~~communications~~ conversations, including limited content messages, with all New York City consumers or with a randomly selected sample of at least 5% of all calls made or received by the debt collection agency or a third party on its behalf [~~and a copy of contemporaneous notes of all conversations with consumers~~]. The

Commented [DR2]: If the consumer has no ability to know an attempted communication was made because it did not go through or went to a wrong number or address, what would be the purpose of putting it in the log?

This language is consistent with exceptions contained in Regulation F and the newly adopted District of Columbia debt collection law.

Commented [DR3]: The word "duration" as this data element does not provide any benefit to the consumer and is a data element that cannot be maintained in the case of written communications.

Commented [DR4]: The deletion of the phrase "and a contemporaneous summary of the communication" as the requirement "to maintain a copy of all communications" in paragraph (1) above is sufficient.

Commented [DR5]: Debt collection agencies need to have received the complaint in order to be compliant with this paragraph. The way it reads right now, if a consumer filed a complaint with a non-profit or governmental entity but that complaint was never forwarded to the collection agency, the agency would be in violation for not maintaining it.

Commented [DR6]: The industry would respectfully request that disputes and cease and desist requests be in writing for this information to be included in the log. The intent of what is said in verbal communications can sometimes be subjective and result in different understandings between the two parties.

For example, if a consumer says in response to a request for a payment "yeah right" is that a complaint, dispute, request for verification, or a cease and desist request? Some might say yes and some might say no. Another example, could be when a consumer says "I thought that was paid" but then realizes it was not paid and pays the debt over the phone. Again, some might say "yes" and some might say "no" as to whether it would be applicable.

There tends to be no confusion when it is in writing.

Commented [DR7]: Given that written electronic communications can be received on telephones, it would be more appropriate to use the word "conversations" rather than "communications" in the context of making a recording.

method used for randomly selecting the recorded calls [~~shall~~] must be [~~included in the file where the tape recordings are~~] maintained by the debt collection agency and a record in each consumer's account must identify the calls by date and time recorded, and any third party assigned to handle such calls. If a debt collection agency elects to record a randomly-selected sample of at least 5% of all calls made or received by the debt collection agency, it must maintain a record of the total number of calls made or received on a monthly basis and the total number of such recorded calls. If the debt collection agency owns or has the right to collect on a debt before it refers such a debt to a third party to handle collections calls with consumers, the debt collection agency must ensure that:

(i) The third party complies with this section and the licensing rules and laws pertaining to debt collection in the City of New York; and

(ii) The third-party audio recordings are available upon request by the Department to the debt collection agency.

(3) A record of all cases filed in court to collect a debt. Such record [~~shall~~] must include, for each case filed, the name of the consumer, the identity of the ~~originating~~ original creditor, the amount claimed to be due, the [~~civil court~~] index number and the court and county where the case is filed, the date the case was filed, [~~the name of the process server who served process on the consumer, the date, location and method of service of process, the affidavit of service that was filed and~~] the disposition for each case filed, including whether a judgment was rendered on default or on the merits of the action. Such record [~~shall~~] must be filed in a manner that is searchable or retrievable by the name, address and zip code of the consumer and the creditors who originated the debts that the debt collection agency is seeking to collect.

Commented [DR8]: This rule uses the term "original creditor" and the term "originating creditor" interchangeably. Given that the State of New York and the Department of Financial Services uses the term "original creditor" we would request consistency of use. We have changed all seven references of "originating" creditor to "original" creditor.

(4) The original copy of each contract with a process server for the service of process, and copies of all documents involving traverse hearings relating to cases filed by or on behalf of the debt collection agency. Such records should be filed in a manner that is searchable by the name of the process server.

(5) A record indicating the language preference of the consumer, except where the debt collector is not aware of such preference despite reasonable attempts to obtain it.

(6) When provided, ~~A~~a record indicating which medium(s) of electronic communication are permitted or not permitted by each consumer ~~and, if known, the consumer's preferred medium of communication~~ in connection with the collection of a debt.

Commented [DR9]: This sentence is overly confusing. It starts by stating a record of permitted and not permitted mediums of communications should be recorded. That should be sufficient to accomplish what DCWP is seeking. But then it goes on to require "preferred medium of communication." Presumably if they have permitted the medium, it is a preferred medium? We recommend streamlining the sentence for clarity.

(7) A record of information on debt furnished to a consumer reporting agency, including the date the debt collection agency notified the consumer about the debt before furnishing information to the credit bureau on that debt and the period of time it waited to receive a notice of undeliverability.

(8) A record of any notice of unverified debt issued in accordance with section 5-77(f)(7) or received by the debt collection agency, including any such notice received from the consumer.

(c) A debt collection agency [~~shall~~] must maintain the following records relating to its operations and practices:

(1) A copy of all actions, proceedings or investigations by government agencies that resulted in the revocation or suspension of a license, the imposition of fines or restitution, a voluntary settlement, a court order, a criminal guilty plea or a conviction.

(2) A copy of all [~~policies,~~] training materials, manuals, and guides for employees or agents that direct, describe, suggest or promote how a collector is to interact with consumers in the course of seeking to collect a debt.

(3) An annual report, in a form made publicly available on the Department's website, identifying, by language, (i) the number of consumer accounts on which an employee collected or attempted to collect a debt owed or due or asserted to be owed or due [~~in a language other than English~~]; and (ii) the number of employees that collected or attempted to collect on such accounts [~~in a language other than English~~].

(4) A copy of all policies addressing the collection of time-barred debts.

(5) A copy of all policies addressing the verification of debts.

(6) A copy of all policies addressing the furnishing of information concerning consumer debt to credit reporting bureaus.

(7) If collecting medical debt on behalf of a covered medical entity, ~~A~~a copy of all policies addressing hospital financial assistance programs related to medical debt.

(d) The records required to be maintained pursuant to this section [~~shall~~] must be retained for [~~six years from the date the record was created by the debt collection agency, a document was obtained or received by the debt collection agency, a document was filed in a court action by the debt collection agency, or a training manual or employee guide was superseded, except that recordings of conversations with consumers shall be retained for one year after the date of the last conversation recorded on each completed recording tape~~] the following periods of time:

(1) For records required to be maintained pursuant to subdivisions (a) and (b) of this section, excluding recordings of calls with consumers, until three years after the date of the debt collection agency's last collection activity on the debt.

(2) For recordings of calls with consumers, until three years after the date of the call.

(3) For records required to be maintained pursuant to subdivision (c) of this section, until six years after the date the record was created.

Section 3. Section 5-76 of Part 6 of Subchapter A of Chapter 5 of Title 6 of the Rules of the City of New York is amended by adding the following definitions in alphabetical order:

~~**Attempted communication.** The term "attempted communication" means any act to initiate a communication or other contact about a debt with any person through any medium, including by soliciting a response from such person. An act to initiate a communication or other contact about a debt is an attempted communication regardless of whether the attempt, if successful, would be a communication that conveys information regarding a debt directly or indirectly to any person. A limited-content message is an attempted communication.~~

Clear and conspicuous. The term "clear and conspicuous" means readily understandable. In the case of written and electronic record disclosures, a clear and conspicuous statement, representation or element being disclosed is of such location, size, color and contrast to be readily noticeable and legible to consumers. In the case of oral disclosures, a clear and conspicuous disclosure is given at a volume and speed sufficient for a consumer to hear and comprehend it.

Commented [DR10]: "Debt" is not furnished, "information" is.

Commented [DR11]: Many debt collectors do not collect medical debt. If a debt collector does not collect this asset class, they should not be required to maintain policies addressing hospital financial assistance programs.

Commented [DR12]: Given that communications related to legal proceedings are covered by the court system, if this provision remains, the industry would respectfully request that these communications be excluded from the definition of legal proceedings. A sentence could be added that reads: "Communications related to legal proceedings shall not be considered an attempted communication."

Commented [DR13]: The industry would respectfully request that some reasonable exceptions be permitted. The industry is concerned that certain required disclosures that are required by the federal and state level have already filled up available space on the first page of communications. As such, we can envision a scenario where a clear and conspicuous notice will have to be addressed on another page in the document because to display it on the first page would prevent us from complying with the federal and state requirements for what needs to be on the first page.

In any clear and conspicuous disclosure, any required modifications, explanations or clarifications to other information are presented in close proximity to the information being modified, in a manner so as to be readily noticed and understood, provided that the disclosures may be on another page. Hyperlinks in electronic communications related to modifications, explanations or clarifications are permitted.

Covered medical entity. The term "covered medical entity" means a health care entity that is tax-exempt under federal or New York State law or qualifies for distributions from the Indigent Care Pool from the State of New York or any other such fund or distribution allocated to reduce the charges of medical services by granting financial assistance, through a financial assistance policy, to patients based on need or an inability to pay.

Electronic communication. The term "electronic communication" means communication by electronic means including, but not limited to, electronic mail, a text message, or instant message, rather than oral communication in person or by telephone, or hard copy communication by mail.

Electronic record. The term "electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

Financial assistance policy. The term "financial assistance policy" means a program to reduce or eliminate charges for medical services provided which was established by a nonprofit hospital or health care provider.

Itemization reference date. The term "itemization reference date" means any one of the following dates: (1) The last statement date, which is the date of the last periodic statement or written account statement or invoice provided to the consumer by a creditor; (2) The charge-off date, which is the date the debt was charged off; (3) The last payment date, which is the date the last payment was applied to the debt; (4) The transaction date, which is the date of the transaction that gave rise to the debt; or (5) The judgment date, which is the date of a final court judgment that determines the amount of the debt owed by the consumer.~~on revolving or open-end credit accounts, the date of the last written notification sent to the consumer which lists the total amount of the outstanding debt asserted to be owed by the consumer on or before the charge-off date of the debt; or (2) on closed-end accounts, either the date of the last payment, if such date is available, or the date of the last written notification sent to the consumer which lists the total amount of the outstanding debt asserted to be owed by the consumer on or before the charge-off date of the debt.~~

Language access services. The term "language access services" means any service made available by a debt collector to consumers in a language other than English. Language access services include, but are not limited to, the use of:

(1) collection letters using a language other than English;

(2) customer service representatives who collect or attempt to collect debt in a language other than English;

(3) a translation service for the collector's website or for written communications; and

(4) a service that interprets phone conversations in real time.

Limited-content message. The term "limited-content message" means an attempt to communicate with a consumer by leaving a voicemail message that includes all of the following

Commented [DR14]: We strongly urge the DCPW to modify its definition of the itemization reference date to reflect the language used by the federal government in their definition contained in Regulation F -- 12 CFR Part 1006.34(b)(3).

Using the charge off balance and charge off date as the standard for itemization is consistent with what the CFPB (Regulation F) and other states, such as California (Cal. Civ. Code § 1788.52), Colorado (CO Rev Stat § 5-16-111), and Maine (Title 32, Chapter 109-A, Subchapter 2 of Maine Revised Statutes), have codified. In New York State itself, in its court rules and affidavits for default judgment applications in consumer credit matters (located at https://www.nycourts.gov/LegacyPDFS/rules/ccr/AO_185.14.pdf), the date and amount of the charge off balance is required. In addition, under the New York Consumer Credit Fairness Act (Senate Bill 153) that took effect in 2022, itemization is required of the total amount of the debt due as of the charge-off.

Creating a new and unnecessary standard will only confuse NYC consumers and the business community.

content, which may include other content allowed by federal law, and that includes no other content:

(1) A business name for the debt collector that does not indicate that the debt collector is in the debt collection business;

(2) A request that the consumer reply to the message;

(3) The name of the natural person whom the consumer can contact to reply to the debt collector; and

(4) A call-back telephone number that is answered by a natural person.

Medical debt. The term "medical debt" means an obligation or alleged obligation of a consumer to pay any amount whatsoever related to the receipt of health care services, products or devices provided to a person by a hospital licensed under article twenty-eight of the New York Public Health Law, a health care professional authorized under title eight of the New York Education Law, or an ambulance service certified under article thirty of the New York Public Health Law. Medical debt does not include debt charged to a credit card.

Original creditor and originating creditor. The terms "original creditor" or "originating creditor" means the financial institution that owned the consumer credit account at the time the account was charged off, even if that financial institution did not originate the account. ~~any person, firm, corporation, or organization who originated the debt, including by extending credit and creating the debt.~~

Section 4. The definitions for "Communication" and "Debt collector" in Section 5-76 of Part 6 of Subchapter A of Chapter 5 of Title 6 of the Rules of the City of New York are amended to read as follows:

Communication. The term "communication" means the conveying of information regarding a debt directly or indirectly to any person through any medium, including by electronic means. The term communication excludes a limited-content message.

Debt collector. The term "debt collector" means [~~an individual who, as part of his or her job, regularly collects or seeks to collect a debt owed or due or alleged to be owed or due~~] any person engaged in any business with the principal purpose of which is the collection of any debts or who regularly collects, or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due to another person. The term does not include:

(1) any officer or employee of the United States, any State or any political subdivision of any State to the extent that collecting or attempting to collect any debt owed is in the performance of [~~his or her~~] their official duties;

(2) any person while engaged in performing an action required by law or regulation, or required by law or regulation in order to institute or pursue a legal remedy;

(3) any individual employed by a nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors; [~~or~~]

(4) any individual employed by a utility regulated under the provisions of the Public Service Law,

Commented [DR15]: This change is necessary to clarify that medical debt is not debt charged to a credit card. There is current legislation pending the Governor's signature that clarifies same. Delaware also recently passed legislation which clarified that credit card accounts are not in scope for medical debt.

Commented [DR16]: The industry would request that the definition of "original creditor" that both DFS and DCWP use is the definition adopted in state law in CPLR 105(q-1) in 2021 which reads:

"Original creditor means the financial institution that owned the consumer credit account at the time the account was charged off, even if that financial institution did not originate the account."

to the extent that New York Public Service Law or any regulation promulgated thereunder is inconsistent with this part; ~~or~~

(5) any person while performing the activity of serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt, or serving, filing or conveying formal legal pleadings, discovery requests, judgments, or other documents pursuant to the applicable rules of civil procedure, where such person is not a party, or providing legal representation to a party, to the action; ~~.~~

(6) any communication, letters, pleadings, or other correspondence that are delivered by an attorney licensed within the State of New York while performing their duties as an officer of the court during the pendency of an active court matter that is overseen and supervised by the New York State Unified Court System; or

(7) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor.

Where a provision of this part limits the number of times an action may be taken by the debt collector, or establishes as a prerequisite to taking an action that the debt collector has received or done something, or prohibits an action if the debt collector has knowledge of or reason to know something, the term "debt collector" includes any debt collector employed by the same employer.

Section 5. Section 5-77 of Part 6 of Subchapter A of Chapter 5 of Title 6 of the Rules of the City of New York is amended to read as follows:

§ 5-77. Unconscionable and Deceptive Trade Practices.

It is an unconscionable and deceptive trade practice for a debt collector to attempt to collect a debt owed, due, or asserted to be owed or due except in accordance with the following rules:

(a) ***Acquisition of location information***. Any debt collector communicating with any person other than the New York City consumer for the purpose of acquiring location information about the consumer in order to collect a debt[~~, after the institution of debt collection procedures shall~~] must:

(1) identify [~~himself or herself~~] themselves, state that [~~he or she is~~] they are confirming or correcting location information about the consumer and identify [~~his or her employer~~] the debt collector on whose behalf they are communicating when that identification connotes debt collection only if expressly requested;

(2) not state or imply that such consumer owes any debt;

(3) not communicate more than once, unless requested to do so by such person or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information, in which case the debt collector may communicate one additional time; for the purposes of this paragraph (3), the debt collector need not count as a communication returned unopened mail, an undelivered email message, or a message left with a party other than the person the debt collector is attempting to reach in order to acquire location information about the consumer, as long as the message is limited to a telephone number, the name of the debt collector and a request that the person sought telephone the debt collector;

Commented [DR17]: The industry requests a limited carve out for attorneys to permit licensed attorneys the ability to practice law without creating potential conflicts with the proposed regulations. Please see the New York State Creditors Bar Associations memo for additional explanation.

Commented [DR18]: This is intended to mitigate the risk that employees of the original creditor could be exposed personally under the current definition.

(4) not use any language or symbol on any envelope or in the contents of any communication effected by the mail or a delivery service that indicates that the debt collector is in the debt collection business or that the communication relates to the collection of a debt; provided that a debt collector may use [~~his or her~~] their business name or the name of a department within [~~his or her~~] their organization as long as any name used does not connote debt collection; and

(5) if the debt collector knows the consumer is represented by an attorney with regard to the subject debt and if the debt collector has knowledge of the attorney's name and address or can readily ascertain such attorney's name and address, not communicate with any person other than that attorney for the purpose of acquiring location information about the consumer unless the attorney fails to provide the consumer's location within a reasonable period of time after a request for the consumer's location from the debt collector and:

(i) informs the debt collector that [~~he or she~~] the attorney is not authorized to accept process for the consumer; or

(ii) fails to respond to the debt collector's inquiry about the attorney's authority to accept process within a reasonable period of time after the inquiry.

[~~The employer of a debt collector may not be held liable in any action brought under § 5-77(a)(3) or (5) if the employer shows by a preponderance of the evidence that the violation was not intentional and resulted despite the maintenance or procedures reasonably adapted to avoid any such violation.~~] The employer of a debt collector may not be held liable in any action brought under § 5-77(a)(3) or (5) if the employer shows by a preponderance of the evidence that the violation was not intentional and resulted despite the maintenance or procedures reasonably adapted to avoid any such violation.

(b) ***Communication in connection with debt collection***. A debt collector, in connection with the collection of a debt, [~~shall~~] must not:

(1) [~~After institution of debt collection procedures, without~~] Without the prior written or orally recorded consent of the New York City consumer given directly to the debt collector [~~after the institution of debt collection procedures~~], or without permission of a court of competent jurisdiction, [~~communicate with the consumer in connection with the collection of any debt;~~] engage in any of the following conduct:

(i) communicate or attempt to communicate with the consumer at any unusual time or place known, or which should be known, to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating or attempting to communicate with a consumer is after 8 a.m.[~~o'clock ante meridian~~] and before 9 p.m.[~~o'clock post meridian time~~] ~~at the consumer's location~~ in the eastern time zone;

(ii) except for any communication that is required by law, communicate or attempt to communicate directly with the consumer if the debt collector knows the consumer is represented by an attorney with respect to such debt and if the debt collector has knowledge of the attorney's name and address or can readily ascertain such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer[~~, except any communication which is required by law or chosen from among alternatives of which one is required by law is not hereby prohibited~~];

Commented [DR19]: The industry requests the restoration of the bona fide error defense. It is consistent with the FDCPA which DCWP indicates it wishes to seek. An inadvertent clerical error should not lead to liability, especially if such error has not harmed the consumer or can be easily corrected with no harm to the consumer.

Commented [DR20]: An orally recorded conversation where the consumer grants consent should hold the same level of integrity and legitimacy as a written document.

The proposed rule seems to have contradictory provisions as consumer instructions provided over the phone are permitted in some circumstances while prohibited in other places?

Commented [DR21]: A clarification is needed in this paragraph as consumers could leave New York City and the eastern time zone for vacation or work unbeknownst to the debt collector.

(iii) knowingly communicate or attempt to communicate with the consumer at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer or supervisor prohibits the consumer [~~from receiving~~] to receive such a communication; or

(iv) [~~with excessive frequency. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that more than twice during a seven-calendar-day period is excessively frequent. In making its calculation, the debt collector need not include any communication between a consumer and the debt collector which is in response to an oral or written communication from the consumer, or returned unopened mail, or a message left with a party other than one who is responsible for the debt as long as the message is limited to a telephone number, the name of the debt collector and a request that one who is responsible for the debt telephone the debt collector; or any communication which is required by law or chosen from among alternatives of which one is required by law~~] communicate or attempt to communicate, including by leaving limited- content messages, with the consumer with excessive frequency. Excessive frequency means any communication or attempted communication by the debt collector with a consumer in violation of 12 CFR Part 1006.14.

~~(A) Excessive frequency means either 1) any communication or attempted communication by the debt collector with a consumer, by any medium of communication or in person, in connection with the collection of debt more than three times during a seven-consecutive-calendar-day period, or 2) after already having had an interaction with the consumer within such seven-consecutive-calendar-day period.~~

~~(B) The date of the first day of such a seven-consecutive-calendar-day period is the day of the first such communication or attempted communication. Communication or attempted communication between a consumer and the debt collector that is initiated by or at the request of a consumer; in response to a communication from the consumer in the same email thread or live chat; not connected to the dialed number, returned mail or a bounced email; or required by law shall not be included in the calculation of excessively frequent communications.~~

~~(C) Any communication or attempted communication made by a person pursuant to the rules of civil procedure, such as serving, filing, or conveying formal legal pleadings, discovery requests, depositions, court conferences, communications with the consumer's attorney on a pending legal matter, or ordered by the New York State Unified Court System, shall not be included in the calculation of excessively frequent communications. Traditional debt collection activities, such as sending a consumer a collection letter or placing a call, or using any other means, to contact the consumer to collect on debt, count toward the calculation of excessively frequent communications in section 5-77 (b)(1)(iv)(A).~~

[~~The employer of a debt collector may not be held liable in any action brought under 6 RCNY § 5-77(b)(1)(ii)-(iv) if the employer shows by a preponderance of the evidence that the violation was not intentional and resulted despite maintenance of procedures reasonably adapted to avoid any such violation~~] The employer of a debt collector may not be held liable in any action brought under 6 RCNY § 5- 77(b)(1)(ii)-(iv) if the employer shows by a preponderance of the evidence that the violation was not intentional and resulted despite maintenance of procedures reasonably adapted to avoid any such violation.

For the purpose of paragraph (1) of this subdivision, the term "consumer" includes the consumer's parent (if the consumer is a minor), guardian, executor, administrator, or spouse (unless the debt collector knows ~~or should know~~ that the consumer is legally separated from or no longer living with their spouse).

Commented [DR22]: Given the majority of consumers have dropped land lines in favor of cell phones, it is not possible to definitively know where the consumer is at any given time. The way this is drafted if one call's a cell phone and the consumer is at work, the collection agency is in violation of this provision. An easy way to solve the problem is by adding the word "knowingly." If a consumer tells a debt collector that they are always at work between 3pm-9pm and they are not permitted to receive calls, then the debt collector has been put on notice not to call during those hours.

Additionally, if a consumer provides the debt collector with their work number as the "best" or "preferred" number to be contacted but fails to mention that it is a work number, how would a debt collector know that they contacted a consumer at work?

Commented [DR23]: The industry would strongly recommend that New York City use the same requirement for "excessive frequency" as the federal government who spent almost a decade in the development of their requirements which are contained in Regulation F -- 12 CFR Part 1006.14. The industry would like to avoid confusion and accidental errors., given that most debt collectors operate regionally or nationally and must manage accounts in multiple states.

Commented [DR24]: The industry requests the restoration of the bona fide error defense. It is consistent with the FDCPA which DCWP indicates it wishes to seek. An inadvertent clerical error should not lead to liability, especially if such error has not harmed the consumer or can be easily corrected with no harm to the consumer.

Commented [DR25]: There is no way that a debt collection agency "should know" a consumer is legally separated or no longer lives with their spouse unless someone tells them. We respectfully request the deletion of this language.

(2) [~~In order to collect a debt, and except as provided by 6 RCNY § 5-77(a)~~] Except if otherwise permitted by law, communicate about a debt with any person other than the consumer who is obligated or allegedly obligated to pay the debt, [~~his or her~~] the consumer's attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, a debt collector to whom [~~or to whose employer~~] the debt has been assigned for collection[~~, a creditor who assigned the debt for collection,~~] or the attorney of that debt collector[~~, or the attorney for that debt collector's employer,~~] without the prior written or orally recorded consent of the consumer or their attorney given directly to the debt collector [~~after the institution of debt collection procedures, or without the prior written consent of the consumer's attorney~~], or without the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy.

(3) Communicate with any person other than [~~the consumer's attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, a debt collector to whom or to whose employer the debt has been assigned for collection, a creditor who assigned the debt for collection, or the attorney of that debt collector or the attorney for that debt collector's employer~~] those persons enumerated in paragraph (2) of this subdivision in a manner which would violate any provision of [~~this part~~] paragraph (1) of this subdivision if such person were a consumer.

(4) [~~After institution of debt collection procedures, communicate~~] Communicate with a consumer with respect to a debt if the consumer has notified the debt collector [~~in writing~~] in writing or the debt collector has an orally recorded conversation that the consumer wishes the debt collector to cease further communication with the consumer with respect to that debt, except [~~that~~] for any communication which is required by law [~~or chosen from among alternatives of which one is required by law is not hereby prohibited~~]. The debt collector shall have a reasonable period of time following receipt by the debt collector of the notification to comply with a consumer's request[~~, except that any debt collector who knows or has reason to know of the consumer's notification and who causes further communication shall have violated this provision~~]. The debt collector may, however:

(i) communicate with the consumer once in writing or by electronic means:

(A) to advise the consumer that the debt collector's further efforts are being terminated; or[~~:~~]

(B) [~~to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or;~~

(C) ~~where applicable~~] to the extent such notice was not previously provided, to notify the consumer that the debt collector or creditor intends to invoke a specific remedy, if it[~~that~~] is a remedy [~~he is~~]they are legally entitled to invoke and [~~if he~~] they actually [~~intends~~] intend to invoke it; and

(ii) respond to each subsequent [~~oral or written~~] communication from the consumer.

(5) [~~For the purpose of 6 RCNY § 5-77(b)(1)-(4), the term "consumer" includes the consumer's parent (if the consumer is a minor), guardian, executor, administrator, spouse (unless the debt collector knows or has reason to know that the consumer is legally separated from or no longer living with his or her spouse), or an individual authorized by the consumer to make purchases against the account which is the subject of the collection efforts. A request that the debt collector~~

Commented [DR26]: An orally recorded conversation where the consumer grants consent should hold the same level of integrity and legitimacy as a written document.

The proposed rule seems to have contradictory provisions as consumer instructions provided over the phone are permitted in some circumstances while prohibited in other places?

Commented [DR27]: While a written document would be clearer and remove any ambiguity that may come through an oral conversation, an orally recorded conversation would at least provide the opportunity to review the conversation to discern intent.

Phone calls could involve vague language such as "I really don't like getting these calls." Does that count? What if they say "stop calling me" to start the conversation but then agrees to set up a payment plan?

The proposed rule seems to have contradictory provisions as consumer instructions provided over the phone are permitted in some circumstances while prohibited in other places?

~~cease further communication, provided for under 6 RCNY § 5-77(b)(4), if made by the consumer's spouse or an individual authorized by the consumer to make purchases against the account, only affects the debt collector's ability to communicate further with the person making the request~~]Contact a New York City consumer by electronic communication unless the debt collector satisfies the following requirements:

(i) A debt collector may only use a specific email address, text message number, social media account, or specific electronic medium of communication if:

(A) such electronic communication is private and direct to the consumer; and

(B) the creditor or debt collector obtains revocable consent from the consumer in writing or orally recorded, given directly to the creditor or debt collector, to use such email address, text message number, social media account, or other electronic medium of communication to communicate about the debt, and the consumer has not since revoked the consent; or

(C) the consumer used such email address, text message number, social media account or other electronic medium of communication to communicate with the debt collector about a debt within the past 30 days and has not since opted out of communications to that email address, text message number, social media account or other electronic medium of communication or opted out of all electronic communications generally.

(ii) A person's electronic signature constitutes written consent under this section, provided it complies with all relevant state and federal laws and rules, including article three of the New York Technology Law (New York Electronic Signatures and Records Act) and chapter 96 of title 15 of the United States Code (Electronic Signatures in Global and National Commerce Act).

(iii) The written or orally recorded consent, revocable by the consumer, is retained by the debt collector until the debt is discharged, sold, or transferred.

(iv) A debt collector who sends any disclosures required by this subchapter electronically must do so in a manner that is reasonably expected to provide actual notice, and in a form that the consumer may keep and access later.

(v) The debt collector must include in every electronic mail communication to the consumer a clear and conspicuous written disclosure that the person may revoke consent to receive electronic communication at any time, and a reasonable and simple method by which the consumer can opt-out of further electronic communications or attempts to communicate by the debt collector, which may include replying "stop" or some other word(s) that reasonably indicates the consumer wishes to opt-out. The disclosure to the consumer must be in the same language as the rest of the communication and the debt collector must accept the consumer's response to opt-out in the same language as in the initial electronic mail that prompted the response from the consumer or in any language used by the debt collector to collect debt.

(vi) The debt collector may not require, directly or indirectly, that the consumer, in order to opt-out, pay any fee to the debt collector or provide any information other than the consumer's opt-out preferences and the email address or text message number subject to the opt-out request.

(6) Communicate with a consumer by sending an electronic message to an email address or a text message number that the debt collector knows ~~or should know~~ is provided to the consumer by the consumer's employer.

Commented [DR28]: Consent can be provided to the creditor as well, including within the original lending agreement. In fact, contact information provided to the creditor is always passed down to the debt collector. It is how the debt collector gets the consumer's name, address, telephone number, and email address. What would be the purpose of not allowing the least intrusive forms of contact (i.e. email or text), which is also often the consumers preferred medium of communication, while allowing the more intrusive forms of contact (i.e. phone calls and letters which can be intercepted by a third party living with the consumer)?

Commented [DR29]: An orally recorded conversation where the consumer grants consent should hold the same level of integrity and legitimacy as a written document.

The proposed rule seems to have contradictory provisions as consumer instructions provided over the phone are permitted in some circumstances while prohibited in other places?

Commented [DR30]: Often, there is no way that a debt collector would know a telephone number or email address is associated with a business unless the consumer tells the debt collector. For example, if a business uses a gmail account or the consumer provides a work cell phone for contact, how could you discern it was provided to the consumer by the employer?

(7) Communicate with a consumer on a social media platform, unless the debt collector obtains consent from the consumer to communicate on the specific social media platform, and the communication is not ~~viewable~~ accessible by anyone else other than the consumer, including but not limited to the general public or the consumer's social media contacts.

(8) Communicate with a consumer through a medium that the consumer has requested that the debt collector not use to communicate with the consumer.

(9) Communicate or attempt to communicate with a consumer to collect a debt for which the debt collector knows or should know that the consumer was issued a Notice of Unverified Debt pursuant to subdivision (f).

(c) ***Harassment or abuse***. A debt collector, in connection with the collection of a debt, shall not engage in conduct the natural consequence of which is to harass, oppress or abuse any person in connection with a debt. Such conduct includes:

(1) the use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person;

(2) the use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader;

(3) the advertisement for sale of any debt to coerce payment of the debt;

(4) causing a telephone to ring ~~or produce another sound or alert~~, or engaging any person [~~in~~] by any communication medium, including but not limited to telephone conversation, repeatedly or continuously with intent to annoy, abuse, or harass any person [~~at the called number~~] contacted by the debt collector;

(5) the publication of a list of consumers who allegedly refuse to pay debts, except to another employee of the debt collector's employer or to a consumer reporting agency or to persons meeting the requirements of 15 USC § 1681a(f) or 15 USC § 1681b(3); or

(6) except [~~as provided by 6 RCNY § 5-77(a), the placement of telephone calls without meaningful disclosure of the caller's identity~~] where expressly permitted by federal, state, or local law, communicating with a consumer without disclosing the debt collector's identity.

(d) ***False or misleading representations***. A debt collector, in connection with the collection of a debt, shall not make any false, deceptive, or misleading representation. Such representations include:

(1) the false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or identification[~~facsimile~~]thereof;

(2) the false representation or implication that any individual is an attorney or is employed by a law office or a legal department or unit, or any communication is from an attorney, a law office or a legal department or unit, or that an attorney conducted a meaningful review of the consumer's debt account;

(3) the representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or

Commented [DR31]: Edit is predicated upon the fact that messages, even sent privately, may be "viewable" to the general public if, for example, a consumer accesses the message at a public location (library computer, shared phone, etc.).

Commented [DR32]: Cell phones that get emails can be set up to produce a sound even though that was not the intent of the debt collector. There is also an evidentiary problem in that it is easy to prove when a debt collector made a phone call or sent a message but almost impossible to prove whether that communication actually caused a phone to "produce an alert or other sound." This addition makes no sense because only the consumer can control whether or not the phone produces an alert or other sound.

wages of any person unless such action is lawful and the debt collector or creditor intends to pursue such action;

(4) the threat to take any action that cannot legally be taken or that is not intended to be taken;

(5) the false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to:

(i) lose any claim or defense to payment of the debt; or

(ii) become subject to any practice prohibited by this part;

(6) the false representation [~~of~~] or implication made in order to disgrace the consumer that the consumer committed any crime or other conduct;

(7) the false representation or implication that accounts have been turned over to innocent purchasers for value;

(8) the false representation or implication that documents are legal process;

(9) the false representation or implication that documents are not legal process forms or do not require action by the consumer;

(10) the false representation or implication that a debt collector operates or is employed by a consumer reporting agency as defined by 15 U.S.C. § 1681a(f);

(11) the use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval;

(12) the use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer;

(13) the use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization, unless the general public knows the debt collector's business, company or organization by another name and to use the true name would be confusing;

(14) [~~after institution of debt collection procedures,~~] the false representation of the character, amount or legal status of any debt, or any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt[~~, except that the employer of a debt collector may not be held liable in any action brought under this provision if the employer shows by a preponderance of the evidence that the violation was not intentional and occurred despite the maintenance of procedures reasonably adapted to avoid any such violation~~], except that the employer of a debt collector may not be held liable in any action brought under this provision if the employer shows by a preponderance of the evidence that the violation was not intentional and occurred despite the maintenance of procedures reasonably adapted to avoid any such violation;

(15) except [~~as otherwise provided under 6 RCNY § 5-77(a) and except for any communication which is required by law or chosen from among alternatives of which one is required by law~~] for

Commented [DR33]: The FDCPA bona fide error defense should remain in the rule.

limited-content messages and where otherwise expressly permitted by federal, state, or local law, the failure to disclose clearly and conspicuously in all communications made to collect a debt [~~or to obtain information about a consumer,~~] that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose;

(16) the use of any [~~name that is not the debt collector's actual name; provided that a debt collector may use a name other than his actual name if he or she uses only that name in communications with respect to a debt and if the debt collector's employer has the name on file so that the true identity of the debt collector can be ascertained~~] assumed name; provided that an individual debt collector may use an assumed name when communicating or attempting to communicate with a consumer about a debt if that collector uses the assumed name consistently and is the only person using that assumed name, and the assumed name is on file so that the true identity of the collector can be ascertained;

(17) any conduct proscribed by New York General Business Law §§ 601(1), (3), (5), (7), (8), or (9);

(18) the false, inaccurate, or partial translation of any communication [~~when the debt collector provides translation services~~]; [~~or~~]

(19) after the institution of debt collection procedures, the false representation or omission of a consumer's language preference when returning, selling or referring for debt collection litigation any consumer account, where the debt collector [~~is aware~~] knows~~ or should know~~ of such preference; or

(20) except where expressly permitted by federal, state, or local law, the failure to disclose clearly and conspicuously in all~~ telephone communications~~ recorded verbal conversations with a consumer in connection with the collection of a debt ~~where the communication is recorded by the debt collector~~ that the communication is being recorded~~ and the recording may be used in connection with the collection of the debt~~.

(21) after the institution of debt collection procedures, the false representation that the consumer cannot dispute the debt or request verification of the debt from the debt collector by oral communication.

(e) ***Unfair and unconscionable practices***. A debt collector may not use any unfair or unconscionable means to collect or attempt to collect a debt. Such conduct includes:

(1) the collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law;

(2) the solicitation or use by a debt collector of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution;

(3) causing charges to be made to any person for communications by misrepresentation of the true purpose of the communication. Such charges include collect telephone calls and [~~telegram~~] text message or mobile phone data fees that have not been disclosed or accepted by the consumer, provided this paragraph does not apply if the consumer initiates the communication through the use of the medium;

(4) taking or threatening to take any nonjudicial action to effect dispossession or disablement

Commented [DR34]: There is no way that a debt collector "should know" a consumer's language preference unless someone tells them. We respectfully request the deletion of this language.

Commented [DR35]: Given that written electronic communications such as emails and text messages can be received on telephones, it would be more appropriate to use the word "conversations" rather than "communications" in the context of making a recording.

The statement that the "recording may be used in connection with the collection of the debt" could be a false statement and could be in violation of the FDCPA. We cannot disclose the purpose of the call until we have confirmed that the person who is engaged in conversation is the debtor.

Commented [DR36]: A consumer may choose to communicate via text messages with the debt collector. The debt collector will have no idea if the consumer is on a phone plan that charges for text messages. Consequently, an exception needs to be added to this language.

of property if:

(i) there is no present right to possession of the property claimed as collateral;

(ii) there is no present intention to take possession of the property; or

(iii) the property is exempt by law from such dispossession or disablement;

(5) after institution of debt collection procedures, when communicating with a consumer by [~~use of the mails~~] mail or [~~telegram~~] a delivery service, using any language or symbol other than the debt collector's address on any envelope, or using any language or symbol that indicates the debt collector is in the debt collection business or that the communication relates to the collection of a debt on a postcard, except that a debt collector may use [~~his or her~~] their business name or the name of a department within [~~his or her~~] their organization as long as any name used does not connote debt collection;

(6) after institution of debt collection procedures, [~~communicating with a consumer regarding a debt without identifying himself or herself and his or her employer or communicating in writing with a consumer regarding a debt without identifying himself or herself by name and address and in accordance with 6 RCNY § 5-77(e)(5)~~] except where expressly permitted by federal, state, or local law, communicating with a New York City consumer without disclosing the debt collector's name; [~~or~~]

(7) after institution of debt collection procedures, if a consumer owes multiple debts of which any one or portion of one is disputed, and the consumer makes a single payment with respect to such debts:

(i) applying a payment to a disputed portion of any debt; or

(ii) unless otherwise provided by law or contract, failing to apply such payments in accordance with the consumer's instructions accompanying payment[~~. If payment is made by mail, the consumer's instructions must be written. Any communication by a creditor made pursuant to 6 RCNY § 5-77(e)(7)(ii) shall not be deemed communication for the purpose of 6 RCNY § 5-77(b)(1)(iv). The employer of a debt collector may not be held liable in any action brought under 6 RCNY § 5-77(e)(7) if the employer shows by a preponderance of the evidence that the violation was not intentional and resulted despite maintenance of procedures reasonably adapted to avoid any such violation~~]. The employer of a debt collector may not be held liable in any action brought under 6 RCNY § 5-77(e)(7) if the employer shows by a preponderance of the evidence that the violation was not intentional and resulted despite maintenance of procedures reasonably adapted to avoid any such violation;

(8) engaging in any conduct prohibited by New York General Business Law §§ 601(2) or (4); [~~or~~]

(9) after institution of debt collection procedures, collecting or attempting to collect a debt without [~~first requesting and~~] recording the language preference of such consumer, except where the debt collector is not aware of such preference despite reasonable attempts to obtain it;

(10) furnishing to a consumer reporting agency, as defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. § 1681a(f)), information about a debt unless the debt collector has sent the consumer a validation notice pursuant to section 5-77(f) that states, in a clear and conspicuous manner, that the debt ~~will~~ may be reported to a consumer reporting agency and waited 14

Commented [DR37]: The industry requests the restoration of the bona fide error defense. It is consistent with the FDCPA which DCWP indicates it wishes to seek. An inadvertent clerical error should not lead to liability, especially if such error has not harmed the consumer or can be easily corrected with no harm to the consumer.

Commented [DR38]: "Will" is misleading to the consumer, and conflicts with other federal and state disclosures that state that debt "may" be credit reported.

consecutive days. During the waiting period, the debt collector must permit receipt of, and monitor for, notifications of undeliverability from communications providers. If the debt collector receives such notification during the waiting period, the debt collector must not furnish information about the debt to a consumer reporting agency until the debt collector satisfies this subdivision. If the debt collector previously furnished information to a consumer reporting agency, between January 1, 2021 and the effective date of the rule, and if the debt collector still has a right to collect on such debt, they must disclose in a validation notice to the consumer, by mail or delivery service within 5 days of the effective date of this rule, that the debt was furnished to a consumer reporting agency, unless such information was already disclosed, clearly and conspicuously, in a validation notice mailed by the debt collector to the consumer.

This subdivision does not apply to a debt collector's furnishing of information about a debt to a nationwide specialty credit reporting agency that compiles and maintains information on a consumer's check writing history, as described in section 603(x)(3) of the Fair Credit Reporting Act (15 U.S.C. § 1681a(x)(3));

(11) selling, transferring, or placing for collection or with an attorney or law firm to sue a New York City consumer to recover any debt where the debt collector knows or should know that the debt has been paid or settled or discharged in bankruptcy, except a debt collector may transfer a debt to the debt's owner or to a previous owner of the debt if:

(i) the transfer is authorized under the terms of the original contract between the debt collector and the debt's owner or previous owner, as a result of a merger, acquisition, purchase and assumption transaction, or as a transfer of substantially all of the debt collector's assets; and

(ii) the debt collector also transfers all information pertaining to whether the debt has been paid or settled or discharged in bankruptcy obtained during the time the debt was assigned to the debt collector for collection;

(12) selling, transferring, or placing for collection or with an attorney or law firm to recover any debt where the debt collector knows or should know that the time to sue on the debt has expired, without including a clear and conspicuous notice to the recipient of the debt that the statute of limitations on such debt has expired; or

(13) selling, transferring, or placing for collection or with an attorney or law firm to sue a New York City consumer to recover any debt for which the debt collector was unable to provide written verification of the debt, despite having received a dispute or request for verification of the debt from the consumer, without including a clear and conspicuous notice to the recipient of the debt that the debt was not verified and a copy of the "Notice of Unverified Debt" sent to the consumer pursuant to subdivision (f) of this section.

(f) ***Validation of debts.***

(1) [~~Upon acceleration of the unpaid balance of the debt or demand for the full balance due, the following validation procedures shall be followed by debt collectors who are creditors or who are employed by creditors as defined by 15 U.S.C. § 1602(f) (Truth in Lending Act) but who are not required to comply with 15 U.S.C. § 1637(a)(8) (Fair Credit Billing Act) and who do not provide consumers with an opportunity to dispute the debt which is substantially the same as that outlined in 15 U.S.C. § 1637(a)(8) and regulations promulgated thereunder: Within five days of any further attempt by the creditor itself to collect the debt, it shall send the customer a written notice containing:~~

~~(i) the amount of the debt;~~

~~(ii) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed valid by the debt collector;~~

~~(iii) a statement that, if the consumer notifies the debt collector in writing within the thirty- day period at the address designated by the debt collector in the notice, that the debt, or any portion thereof is disputed, the debt collector shall either:~~

~~(A) make appropriate corrections in the account and transmit to the consumer notification of such corrections and an explanation of any change and, if the consumer so requests, copies of documentary evidence of the consumer's indebtedness; or~~

~~(B) send a written explanation or clarification to the consumer, after having conducted an investigation, setting forth to the extent applicable the reason why the creditor believes the account of the consumer was correctly shown in the written notice required by 6 RCNY § 5-77(f)(1) and, upon the consumer's request, provide copies of documentary evidence of the consumer's indebtedness. In the case of a billing error where the consumer alleges that the creditor's billing statement reflects goods not delivered in accordance with the agreement made at the time of the transaction, a creditor may not construe such amount to be correctly shown unless it determines that such goods were actually delivered, mailed, or otherwise sent to the consumer and provides the consumer with a statement of such determination.~~

~~(i) if the debt collector is not the original creditor, a statement that, upon the consumer's written request within the thirty-day period, sent to the address designated by the debt collector in the notice, the debt collector will provide the consumer with the name and address of the original creditor;~~

~~(ii) an address to which the consumer should send any writing which disputes the validity of the debt or any portion thereof or any writing requesting the name and address of the original creditor.~~

~~(2)~~] *Validation notice.* Within five days after the initial communication with a New York City consumer in connection with the collection of any debt, a debt collector [~~who is not a creditor and not employed by a creditor shall, unless the following information is contained in an initial written communication, or the consumer paid the debt, send the consumer a written notice containing~~] must send the consumer a written notice containing the following information in a clear and conspicuous manner, unless the consumer paid the debt or such information was contained, clearly and conspicuously, in an initial written communication sent by U.S. mail, ~~or~~ delivery service, or by electronic means consistent with 12 CFR Part 1006.34:

(i) [~~the amount of the debt~~] all information required for validation notices by federal or state law;

(ii) [~~the name of the creditor to whom the debt is owed~~] the New York City Department of Consumer and Worker Protection license number assigned to the debt collection agency, if applicable;

(iii) [~~a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector~~] the name of a natural person for the consumer to contact;

(iv) a [~~statement that if the consumer notifies the debt collector in writing within the thirty- day period at the address designated by the debt collector in the notice that the debt, or any portion~~

Commented [DR39]: Regulation F provides detailed requirements for communicating a validation notice via electronic means. These provisions should align with federal law.

Commented [DR40]: The industry would request a small clarification by deleting the word "such" as it suggests that a specific person (the one referenced in paragraph iii above) has to answer a telephone. This is highly problematic as we cannot guarantee who might answer a phone at a place of business.

~~thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector~~] telephone number that is answered by ~~such~~ a natural person;

~~(v)~~ [a] ~~the following statement~~ [~~that, upon the consumer's written request within the thirty-day period sent to the address designated by the debt collector in the notice, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor~~]:

~~**PLEASE READ: Important Information About Your Rights as a New York City Consumer**~~

- ~~**There is no time limit to dispute the debt in collection.** You can let collectors know you dispute the debt using any of the ways they contact you, including by phone.~~
- ~~**You must get a response to the disputed debt in 45 days.** Once you dispute the debt, the collector must stop collection. In 45 days, the collector must give you either 1) verification of the debt, or 2) a "Notice of Unverified Debt" stating it can't verify the debt or continue collection.~~
- ~~**You can use a "Notice of Unverified Debt" to stop collection attempts by other debt collectors.** Be sure to keep a copy of all letters to exercise this right.~~
- ~~**You may qualify for financial assistance with medical debt.** If you have a low or limited income, ask the collector or the hospital if you qualify for help under the "Financial Assistance Policy."~~

(vi) [~~an address to which the consumer should send any writing which disputes the validity of the debt or any portion thereof or any writing requesting the name and address of the original creditor;~~

~~(vii)~~] a statement informing the consumer of any language access services available[, including whether the consumer may obtain from the debt collector a translation of any communication into a language other than English];

[~~(viii)~~] (vii) a statement that a [~~translation and description of commonly-used debt collection terms is~~]Glossary of Common Debt Collection Terms and other resources are available in [~~multiple~~]different languages at [~~available in multiple languages on the Department's website, www.nyc.gov/dca~~] www.nyc.gov/dcwp.

The information required under subdivisions (ii) through (vii) may be included on the reverse side of a written validation notice only if the debt collector includes them together under a heading entitled, "**Important Additional Consumer Rights Under New York City Law**" and includes a clear and conspicuous statement on the front of the validation notice referring to the disclosures on the reverse side. If included on the reverse side of the validation notice, the information must be positioned in a manner so it is readily noticeable and legible to consumers, even after a consumer tears off any response portion of the notice.

(viii) An itemization of the current amount of the debt asserted to be owed that allows the consumer to recognize the total amount of the outstanding debt as of the itemization reference date, and includes a breakdown of all additional amounts that have been assessed or applied to the amount of the debt since the itemization reference date, listing fields for: 1) interest; 2) fees;

Commented [DR41]: This paragraph is impossible to redline given that NYS DFS rulemaking is not complete. We would respectfully request that DCPW allow the state to finish and finalize their rules first. Otherwise, we risk conflicting consumer notices.

Debt collectors are already required to provide specific notices related to verification by both the federal government and the State of New York. The notice being suggested in this paragraph is different from both the federal and state notice requirements. This is thoroughly going to confuse the consumer. It should also be noted that this notice conflicts with the federal safe harbor provision.

Additionally, since roman numeral (i) above states "all information required by federal or state law" is required to be provided in the validation notice, this notice is not needed.

3) payments; and 4) credits, and the following information:

(A) The total amount of the outstanding debt asserted to be due on the itemization reference date.

~~(B) The date, amount, and description of each fee, payment, credit, or interest, applied to the debt since the itemization reference date. A debt collector must include all fields in the itemization, even if no additional amounts have accrued, or may state that no interest, fees, payments, or credits have been assessed or applied to the debt since the itemization reference date.~~

~~(C) The basis of the consumer's obligation to pay each separate charge, interest, or fee, including if allowed by a contract or by law.~~

(~~D~~B) The total amount asserted to be due on the date of the itemization.

A debt collector is permitted to add additional information in the itemization required in this subdivision or disclose the itemization on a separate page as allowed or required by federal or state law, provided the content required in this subdivision is clear and conspicuous to the consumer. Debt collection agencies that must comply with § 20-493.2 (a) of the Administrative Code and § 2-190 (b) shall be deemed to satisfy the requirement of furnishing an itemization under the licensing law by complying with this section and may list the "principal balance" as the total amount of the outstanding debt asserted to be owed by the consumer on the itemization reference date.

(2) *Delivery of validation notices.* A debt collector must deliver written disclosures under (f)(1) of this section in the following manner:

(i) A debt collector must deliver to consumers validation notices and the itemization of the debt by U.S. mail or delivery service. If a debt collector only delivers a validation notice or the itemization of the debt electronically or orally, it does not satisfy the requirement under subdivision § 5-77(f)(1).

(ii) A debt collector may deliver a duplicate copy of the validation notice and itemization of the debt by any other means, including electronic mail, provided it is in accordance with other sections or laws, such as section 101(c) of the Electronic Signatures in Global and National Commerce Act (E–SIGN Act)(15 U.S.C. 7001(c)) or their successor provisions.

(iii) If a debt collector delivers a duplicate validation notice to a consumer electronically, the debt collector must do so in accordance with § 5-77(b)(5) and the notice must include the debt collector's website, email address, and information on how the consumer can dispute the debt, seek verification of the debt, or request originating-creditor information electronically.

(3) Notices in languages other than English. If a debt collector offers consumers validation notices in a language other than English, and a consumer requests a notice in such language, the debt collector must mail a written notice to the consumer completely and accurately in the language requested within 30 days of receiving such a request. As required by section 1006.34(e)(2) of title 12 of the Code of Federal Regulations, a debt collector who receives a request from the consumer for a Spanish-language validation notice must provide the consumer with a validation notice completely and accurately translated into Spanish. A debt collector may not contact a consumer exclusively by telephone or orally in a language other than English to collect debt without providing the consumer, by U.S. mail or delivery service, a validation notice written accurately in the language used by the debt collector during the exchange with the

Commented [DR42]: These additional disclosures should be stricken as they require the inclusion of detailed extraneous data that will confuse consumers. Given the proposed narrowing of the itemization reference date, this section will require the inclusion of voluminous accounting information. In CFPB usability testing, it was determined that "…participants said they thought [the balance] would continue to increase based on the current interest and fee accumulations in the model validation notice." Consumers who receive an additional complex accounting in the initial communication will only be more confused about whether the balance is changing or how it was calculated. It is respectfully submitted that this information is more appropriate to be provided in response to a validation of debt request.

consumer, within 30 days of the first contact by the debt collector in the language other than English. A debt collector is not required to mail the validation notice, in a language other than English, to the consumer more than once during the period that the debt collector owns or has the right to collect the debt. If the debt collector sends a validation notice in a language other than English, it must also accept and respond to disputes, complaints, requests for verification of the debt and cease and desist requests by the consumer completely and accurately in the same language as the validation notice.

([~~3~~]4) [~~If, pursuant to 6 RCNY §§ 5-77(f)(1) or 5-77(f)(2) of this Regulation the consumer notifies the debt collector in writing within the thirty day period that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall not attempt to collect the amount in dispute until the debt collector obtains and mails to the consumer verification of the debt or a copy of the judgment or the name and address of the original creditor. The debt collector shall maintain for one year from the date the notice was mailed, records containing documentation of the date such notice was mailed, the date the response, if any, was received and any action taken following such response~~] *Validation Period.* The validation period extends for 30 consecutive days from the date a consumer receives or is assumed to receive a validation notice. For purposes of determining the validation period, the debt collector may assume that a consumer received the validation notice five days (excluding Saturdays, Sundays, and legal public holidays identified in 5 U.S.C. § 6103(a)) after the debt collector sent it.

([4]5) [~~The failure of a consumer to dispute the validity of a debt under 6 RCNY § 5-77(f) shall not be construed by any court as an admission of liability by the consumer~~] *Overshadowing of rights to dispute or request original-creditor information*. During the validation period, a debt collector must not engage in any collection activities or communications that overshadow or are inconsistent with the disclosure of the consumer's rights to dispute the debt and request the name and address of the original creditor.

(6) *Verification*. A debt collector must provide a New York City consumer verification of a debt or provide a notice of unverified debt in accordance with section 5-77(f)(7) within 45 days of receiving a dispute or a request for verification of the debt. The consumer may dispute the debt, or make such verification request orally or in writing, or electronically if the debt collector uses electronic communications to collect debt, at any time during the period in which the debt collector owns or has the right to collect the debt. The debt collector must treat a first dispute by the consumer as a request for verification of the debt, unless the debt collector has already provided the consumer with the verification information required in this subdivision. If a debt collector provides consumers the ability to submit written disputes electronically through a website, such a website must automatically generate a copy of each written dispute that a consumer can print, save, or have emailed to them. A consumer shall not be required to waive any rights to make use of such an online submission option. The debt collector must cease collection of the debt if an itemization of the debt was not previously provided to the consumer by the debt collector in compliance with section 5-77(f)(1)(vii) and if a timely written verification of the debt has not been provided to the consumer. A debt collector is not required to verify a debt pursuant to this section more than once during the period that the debt collector owns or has the right to collect the debt; provided, however, that the debt collector must send any such verification documents to the consumer one additional time upon request by the consumer. A debt collector must provide verification to the consumer in writing, by U.S. mail or delivery service, unless the consumer has consented to receive electronic communications in compliance with section 5-77(b)(5).

(i) Verification of debt must include the information and documents required by paragraph (j) of Rule 3016 of the Civil Practice Laws & Rules:

Commented [DR43]: In 2021, the Consumer Credit Fairness Act (CCFA) was signed into law by Governor Hochul. The CCFA provides in great detail what information is needed to bring suit on a debt in New York State. What is required in CCFA is more nuanced and detailed than what is provided in the text below. The industry strongly recommends that the rule be consistent with New York State law.

IF DCWP AGREES WITH THE EDIT ABOVE, PARAGRAPHS (A) THROUGH (C) BELOW WOULD BE DELETED. HOWEVER, IS DCWP DECIDES TO PROCEED WITH THE DRAFT LANGUAGE, THE INDUSTRY WOULD REQUEST THE FOLLOWING EDITS SO THAT IT CAN COMPLY WITH DCWP'S INTENT.

(A) a copy of the judgment if a court has reduced the facts to judgment, or a copy of the debt document issued by the ~~originating~~ original creditor or an original written confirmation evidencing the transaction resulting in the indebtedness to the ~~originating~~ original creditor, including the signed contract or signed application that created the debt or, if no signed contract or application exists, a copy of a document provided to the alleged debtor while the account was active, demonstrating that the debt was incurred by the consumer. For a revolving credit account, the charge-off account statement, and the most recent monthly statement recording a purchase transaction, payment, or balance transfer shall be deemed sufficient to satisfy this requirement; ~~. Documents created or generated after the time of charge-off of the debt or institution of debt collection procedures shall not qualify as such confirmation;~~

(B) records reflecting the amount and date of any prior settlement agreement reached in connection with the debt;

(C) the final account statement, or other such document that reflects the total outstanding balance, mailed to the consumer on or before the charge-off date and prior to the institution of debt collection procedures;

(ii) In matters involving a judgment obtained after adjudication on the merits of the case, there will be a rebuttable presumption that the debt collector complied with this section if it mails the consumer, by U.S. mail or delivery service, a copy of the judgment and any evidence of indebtedness that is part of the record of the lawsuit. ~~For this subdivision, a copy of a judgment obtained by default does not provide the consumer verification of the alleged debt~~; and

(iii) In matters involving medical debt arising from the receipt of health care services, medical products, or devices, ~~the~~ a debt collector collecting on behalf of a covered medical entity must provide, clearly and conspicuously, to the consumer any information in its possession or available to the debt collector required to be disclosed by federal, state or local law, including the relevant financial assistance policy.

(7) *Notice of unverified debt.* If a debt collector did not provide an itemization of the debt and cannot provide a consumer with a timely written verification of a debt in response to a dispute or request for verification, the debt collector must respond in writing to the consumer within 45 days of receiving the dispute or a request for verification, at any time during the collection process, that the debt collector is unable to verify the debt and will stop collecting on the debt, and provide the reason that the debt could not be verified. Debt collectors must deliver a notice of unverified debt to the consumer by U.S. mail or delivery service. The debt collector must permit receipt of, and monitor for, notifications of undeliverability from communications providers for at least 14 consecutive days after they place the notice of unverified debt in the mail or with the delivery service. If the debt collector receives such notification, the debt collector must re-send the notice of unverified debt to the consumer, by U.S. mail or delivery service, within 5 days if a new

Commented [DR44]: If a court has determined that a debt is rightfully owed and it is reduced to a judgment, that judgment becomes the applicable document that must be provided the consumer.

Commented [DR45]: Most documents and evidence are stored electronically today, not as physical copies maintained in a filing cabinet. This sentence would essentially invalidate almost all debt.

Additionally, the final sentence does not recognize that a number of admissible documents are generated after default, including but not limited to the charge-off statement (which is referenced earlier in the paragraph).

Commented [DR46]: The federal government, New York state, and the other 49 states recognizes the validity of a judgment for the verification of a debt. How does NYC have the authority to invalidate judgments recognized by all of those jurisdictions?

New York state just adopted in 2021 the Consumer Credit Fairness Act which provides extensive and detailed requirements for obtaining a judgment, including a default judgment. Additionally, included in section 306-d of the Civil Practice Law and Rules is the following provision: "No default judgment based on the defendant's failure to answer shall be entered unless there has been compliance with this section, and at least twenty days have elapsed from the date of mailing by the clerk. No default judgment based on the defendant's failure to answer shall be entered if the additional notice is returned to the court as undeliverable."

Commented [DR47]: Often if a notice is returned a new address is not provided. Therefore this requirement may not be something that we can actually do within the provided time frame. Recommend revising this to reflect this reality.

forwarding address for the consumer is provided by U.S. Mail or delivery service.

(8) ~~*Originating*~~ *Original creditor*. A debt collector must provide the consumer the address of the ~~originating~~ original creditor of a debt within 45 days of receiving a request from the consumer for such address, provided that if the servicer is the name the consumer is most readily going to identify with the debt, that name and address may be provided. The consumer may make such request orally or in writing, or electronically if the debt collector [~~permits~~]uses electronic communications to collect debt, at any time during the period in which the debt collector owns or has the right to collect the debt. After receiving such a request, the debt collector must cease collection of the debt until such address has been provided to the consumer. A debt collector is not required to provide this information more than once during the period that the debt collector owns or has the right to collect the debt.

(9) *Electronic communications.* If a debt collector delivers a duplicate copy of the validation notice to a consumer electronically, the debt collector must do so in accordance with § 5-77(b)(5) and the notice must include the debt collector's website, email address, and information on how the consumer can dispute the debt, seek verification of the debt, or request original~~-~~ creditor information electronically.

(10) *Dispute and verification of medical debt*. Medical debt includes debt collected on behalf of a covered medical entity arising from the receipt of health care services or medical products or devices.

(i) If, at any time during the debt collection process, the New York City consumer indicates that a public or private insurance plan, a third-party payer, or a financial assistance policy should have covered some or all of the charges on the medical debt, or that the debt is as a result of lack of price transparency at the time the services were rendered, or a violation of federal, state or local law, the debt collector must treat such communication by the consumer, received by any medium of communication and language used by the debt collector to collect the debt, as a dispute and a request for verification by the consumer on such medical debt.

(ii) A debt collector must respond to disputed medical debt by providing the consumer verification in accordance with section 5-77(f)(6) and by responding to the specific issue disputed by the consumer under paragraph (i) of this subdivision or deliver to the consumer a notice of unverified debt in accordance with section 5-77(f)(7).

(iii) If a New York City consumer disputes a medical debt, the debt collector must also do the following:

(A) treat all unverified accounts related to a discrete hospitalization or treatment of the consumer, provided such services were rendered within a six-month period, the same as the disputed medical debt by the consumer;

(B) note in all related medical accounts, unless written verification was already provided by the debt collector to the consumer or the consumer has acknowledged owing the amount claimed to be owed on such account, as disputed medical debt, in a manner that is easily identifiable and searchable in each of the consumer's related accounts; and

(C) furnish to the consumer verification on each related medical debt.

(iv) In addition to the requirements in section 5-77(j), before resuming debt collection activities on disputed medical debt arising from services provided by a covered medical entity, the debt

Commented [DR48]: Most consumers are going to have no idea who the original creditor is on a fintech product. Since this is in response to the NYC validation request specifically it would be more consumer friendly to provide the fintech servicer name.

collector must also verify that the covered medical entity met its obligations under federal, state, or local law and the financial assistance policy.

(g) Reserved.

(h) ***Public websites***. Any debt collector that utilizes, maintains, or refers New York City consumers to a website accessible to the public that relates to debts for which debt collection procedures have been instituted must clearly and conspicuously disclose, on the homepage of such website or on a page directly accessible from a hyperlink on the homepage labeled "**NYC Rules on Language Services and Rights**", the following disclosures:

(1) a statement informing the consumer of any language access services available[~~, including whether the consumer may obtain from the debt collector a translation of any communication into a language other than English~~]; and

(2) a statement that a [~~translation and description of commonly-used debt collection terms is~~]Glossary of Common Debt Collection Terms and other resources are available in [~~multiple~~]different languages at[~~on the Department's website, www.nyc.gov/dca www.~~] www.nyc.gov/dcwp.

(i) ***Time-barred debts***. In connection with the collection of a debt, the following requirements must be met:

(1) A debt collector must maintain reasonable procedures for determining the statute of limitations applicable to a debt it is collecting and whether such statute of limitations has expired.

(2) *Initial Written Notice*. if a debt collector, including a debt collection agency that must provide information to a New York City consumer pursuant to § 20-493.2(b) of the Administrative Code, seeks to collect on a debt for which the debt collector has determined, including pursuant to subdivision (a) of this section, or otherwise knows or has reason to know, that the statute of limitations for a debt has or may have expired, the debt collector must initially deliver the consumer a written notice, by U.S. mail or delivery service, that clearly and conspicuously discloses to the consumer substantially the same time-barred-debt disclosure below, before contacting a consumer about the expired debt by any other means:

- **The statute of limitations on this debt expired. This means you can't be sued to collect it. A court will not enforce collection**.

IF YOU ARE SUED:

- It is a violation of federal law (the Fair Debt Collection Practices Act).
- You may be able to prevent a judgment against you by telling the court that the statute of limitations on this debt expired.
- You are not required to admit that you owe this debt, promise to pay this debt, or waive the statute of limitations on this debt.
- Consult an attorney or a legal aid organization to learn more about your legal rights and options.

(3) *Waiting Period.* The debt collector must wait at least 14 consecutive days after they place the initial written notice in U.S. mail or delivery service to the consumer to receive notice of undeliverability. During the waiting period under this subdivision, the debt collector must permit

receipt of, and monitor for, notifications of undeliverability from communications providers. If the debt collector receives such notification during the waiting period, the debt collector must not contact the consumer, by any other means of communication, to collect the debt until the debt collector otherwise satisfies section 5-77(i)(2).

~~(4) *Subsequent Communications*. Unless otherwise permitted by law, the debt collector may not, without the prior written and revocable consent of the consumer given directly to the debt collector, contact such consumer in connection with the collection of an expired debt exclusively by telephone or by other means of oral or electronic communication. After mailing the Initial Written Notice required in section 5-77(i)(2), the debt collector must redeliver such notice to the consumer by U.S. mail or delivery service within 5 days after each oral communication with the consumer unless the debt collector has already mailed a hardcopy of such notice within a 30- day period. Any subsequent notice sent to the consumer electronically must be in accordance with other sections or laws, such as section 101(c) of the Electronic Signatures in Global and National Commerce Act (E- SIGN Act)(15 U.S.C. 7001(c)) or their successor provisions.~~

(~~5~~4) When such information is delivered in writing, the time-barred debt notice must be included for each debt that is beyond the applicable statute of limitations, in at least 12 point type that is set off in a sharply contrasting color from all other types on the communication, and placed on the first page adjacent to the identifying information about the amount claimed to be due or owed on such debt. A debt collector may include additional language to the time-barred-debt disclosure as may be required by the State of New York to send the consumer one disclosure notice.

(i) ***Medical debt from a covered medical entity.*** (1) In connection with the collection of medical debt arising from charges from a covered medical entity, a debt collector collecting on behalf of a covered medical entity is prohibited from collecting or attempting to collect on a medical debt from a New York City consumer asserted to be owed if the debt collector knows or should know that:

(i) To do so violates federal, state, or local law or the financial assistance policy of the covered medical entity.

(ii) The patient has an open application for financial assistance with the covered medical entity.

(iii) The financial assistance policy should have provided financial assistance to the patient to cover all, or a portion, of the medical debt.

(iv) A misrepresentation was made to the patient about the financial assistance policy or payment options regarding the medical debt, including, but not limited to:

(A) The patient was wrongly denied, or not given proper and timely notice of, available financial assistance.

(B) The patient was discouraged from applying for financial assistance.

(C) The patient was induced to agree to pay for all or part of the medical debt with misinformation about payment options or the financial assistance policy.

(D) The patient was only presented with options to pay or to agree to pay for all or part of the medical debt regardless of income level.

Commented [DR49]: Requiring a written disclosure to be sent out within 5 days of each oral communication or every 30 days will create unintended consequences in that: (1) consumers may likely feel harassed by the constant deluge of disclosures; (2) consumers are likely become desensitized to and unlikely to read the notices or future notices; (3) it will create significant environmental costs through excess and unneeded letters being mailed that are likely not to be read; and (4) it will reduce the availability of credit to consumers if the debt is deemed to be too complicated to collect.

How will this language benefit the consumer? Under New York state law: (1) the consumer will still owe the debt; (2) the creditor/debt collector is still allowed to attempt collection on the debt; (3) the debt collector is still prohibited from suing; and (4) the debt collector is still prohibited from reviving the statute of limitations through a payment or affirmation of the debt.

Specifically, section 214-I of the Civil Practice Law and Rules which was codified in 2021 by New York's Consumer Credit Fairness Act (CCFA) that states: "Notwithstanding any other provision of law, when the applicable limitations period expires, any subsequent payment toward, written or oral affirmation of or other activity on the debt does not revive or extend the limitations period."

Lastly, as the law is currently written in New York State and New York City, consumers are provided with notice of the legal status of their debt when debt collectors try to collect debt from them, which is when it makes sense to inform the consumer of the expiration of the Statute of limitations on their account so that they can make an informed decision about their next steps concerning that debt. Specifically, the New York State Department of Financial Services requirement in 23 NYCRR 1.3 reads that "if a debt collector knows or has reason to know that the statute of limitations for a debt may be expired, before accepting payment on the debt," the debt collector must inform the consumer that the Statute of Limitations on the debt has expired. Also, the current Rules of the City of New York in § 2-191 requires debt collectors to inform consumers that the Statute of Limitations has expired on their debt "…in every permitted communication for each debt that the debt collection agency is seeking to collect that is beyond the applicable statute of limitations…"

(2) In connection with the collection of medical debt from a New York City consumer arising from charges from a covered medical entity, a debt collector collecting on behalf of a covered medical entity must conduct reasonable corrective measures upon obtaining information that the financial assistance policy was not disclosed to the patient as required by law or that there is a violation of federal, state, or local law. A consumer may provide such information to the debt collector, by any means of communication or in any language used by the debt collector to collect debt, without the debt collector requiring the consumer to submit any supporting documentation to the debt collector. Corrective measures must be taken as follows:

(i) Inform the entity that placed the account with the debt collector within one business day that the debt may be subject to the covered medical entity's financial assistance policy or that there might be a violation of the law.

(ii) Provide and record in plain language the following statement: "**A FINANCIAL ASSISTANCE POLICY MAY APPLY TO THIS MEDICAL DEBT**", or a statement indicating the violation of law, in a manner readily noticeable and searchable, in the following records:

(A) all of the consumer's accounts arising from medical debt from the covered medical entity, from the same hospitalization or a discrete course of treatment or care;

(B) a written notification that must be sent by U.S. mail or delivery service to the consumer along with the verification of the debt in accordance with sections 5- 77(f)(6) and (f)(10); and

(C) a written notification that must be sent to any receiving party upon transferring any of the consumer's accounts with medical debt from the same covered medical entity.

(iii) Provide any disclosure to the consumer regarding the financial assistance policy, by U.S. mail or delivery service, clearly and conspicuously on the first page of any written communication from the debt collector to the consumer, and such disclosure must not be placed on the reverse side of the page or the second page. Any written notification to a consumer regarding the financial assistance policy may not be delivered exclusively by the debt collector through electronic means.

(iv) Maintain a monthly log or record of all consumer accounts in which the debt collector took corrective measures as required in section 5-77(j) and such measures must be easily identifiable and searchable in each consumer account.

(k) ***Record retention***. A debt collector must retain the following records to document its collection activities with New York City consumers:

(1) Records that are evidence of compliance or noncompliance with part 6 of subchapter A of chapter 5 of title 6 of the Rules of the City of New York starting on the date that the debt collector begins collection activity on the debt until three years after the debt collector's last collection activity on the debt.

(2) Monthly logs or a record of the following:

(i) all complaints filed by New York City consumers against the debt collector, including those filed with the agency directly or with any not-for-profit entity or governmental agency, identifying for each complaint the date, the consumer's name, and account information, the source of the complaint, a summary of the consumer's complaint, the debt collector's response to the complaint, if any, and the current status of the complaint;

(ii) all disputes or requests for verification made by New York City consumers, identifying each consumer's name and account information, the date of the dispute or request for verification, and the date and type of response, if any, sent by the debt collector; and

(iii) all cease-and-desist requests made by New York City consumers, identifying the consumer's name and account information, the date of the request, and the date and purpose of any further contacts by the debt collector after receipt of the request from the consumer.

To comply with this subdivision, debt collectors may combine all the monthly logs or records into one document or record or use a template: "Report for Consumer Activity" as made available on the Department's website at www.nyc.gov/dcwp.

EFFECTIVE DATE: All new provisions contained in this rulemaking shall apply to debts charged-off on or after January 1, 2025, or for debts not charged off, the new provisions will apply to debts that defaulted on or after January 1, 2025.

Commented [DR50]: The industry requests a date certain that the revised rules take effect. Given the significant changes to the rules, we respectfully request that they be applied prospectively. To not apply the rules prospectively, will automatically place the industry in non-compliance (example: the log). The industry cannot be expected to know what new requirements a future regulatory change will require.

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November 29, 2023

New York City Department of Consumer and Worker Protection
42 Broadway
New York, NY 10004
rulecomments@dcwp.nyc.gov
VIA E-mail

RE: 2023 proposed amendments to rules related to debt collectors

Dear Department of Consumer and Worker Protection:

My name is April Kuehnhoff, and I am a Senior Attorney at the National Consumer Law Center ("NCLC"),[1] where my work focuses on federal and state advocacy related to fair debt collection. My colleague, Nicole Cabañez is a Skadden Fellow at NCLC whose work focuses on consumer law issues impacting immigrant communities, including language access for consumers with limited English proficiency ("LEP").

We submit these comments to support the Department of Consumer and Worker Protection's ("DCWP") efforts to strengthen its proposed debt collection regulations and to offer suggestions for additional improvements and clarifications. The comments below respond to the 2023 proposed amendments to rules related to debt collection,[2] updating the comments that NCLC previously submitted in response to the DCWP's 2022 proposed amendments.[3]

[1] The National Consumer Law Center ("NCLC") is a national research and advocacy organization focusing on the legal needs of consumers, especially low income and elderly consumers. For over 50 years NCLC has been the consumer law resource center to which legal services and private lawyers, state and federal consumer protection officials, public policy makers, consumer and business reporters, and consumer and low-income community organizations across the nation have turned for legal answers, policy analysis, and technical and legal support. Fair debt collection has been a major focus of the work of NCLC, which publishes Fair Debt Collection (10th ed. 2022), a comprehensive treatise to assist attorneys and debt collectors to comply with the law, and Collection Actions (5th ed. 2020), detailing defenses to consumer debts.

[2] Available at: https://rules.cityofnewyork.us/wp-content/uploads/2023/09/DCWP-NOH-Proposed-Amendment-of-Rules-re-Debt-Collectors-2.pdf

[3] Available at: https://www.nclc.org/resources/nycs-proposed-amendments-to-rules-related-to-debt-collectors/

Proposed Amendments in the Context of Other Relevant Developments

NCLC's comments will focus on the relationship between DCWP's proposed amendments, the federal Fair Debt Collection Practices Act ("FDCPA"),[4] and federal debt collection regulations issued to implement the FDCPA ("Regulation F").[5] Regulation F has many gaps and weaknesses,[6] and we commend the DCWP's proposal for its efforts to fill some of these gaps.

We also note that the New York Department of Financial Services ("DFS") has proposed but not yet finalized its own debt collection regulations.[7] In light of the unfinished DFS rulemaking, we recommend that DCWP release a revised version of this proposal for further comments once the DFS rules are finalized and can be taken into consideration in revising any proposed amendments to DCWP regulations.

Stronger Consumer Protections are Not Preempted by the FDCPA or Regulation F

On many issues, DCWP proposes amendments to its debt collection rules that will provide greater protections for consumers than the FDCPA or Regulation F. We applaud DCWP's efforts to strengthen consumer protections and note that stronger consumer protections are *not* preempted by the FDCPA, which says:

> This subchapter does not annul, alter, or affect, or exempt any person subject to the provisions of this subchapter from complying with the laws of any State with respect to debt collection practices, except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency. For purposes of this section, a State law is not inconsistent with this subchapter if the protection such law affords any consumer is greater than the protection provided by this subchapter.[8]

Regulation F contains similar language, and also clarifies that provisions in Regulation F - like FDCPA provisions - do not preempt stronger state consumer protections.[9]

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[4] 15 U.S.C. §§ 1692-1692p.

[5] 12 C.F.R. Part 1006.

[6] *See, e.g.,* National Consumer Law Center, CFPB Changes Need to Prevent New Debt Collection Rules from Hurting Consumers (Jan. 2021), available at: https://www.nclc.org/resources/issue-brief-cfpb-changes-needed-to-prevent-new-debt-collection-rules-from-hurting-consumers/.

[7] New York State Department of Financial Services, 2021 Proposed Amendments to 23 NYCRR 1 and 2022 Proposed Amendments to 23 NYCRR 1. *See also* NCLC's comments on the proposed 2021 DFS amendments are available at: https://www.nclc.org/resources/comments-to-new-york-dept-of-financial-services-regarding-draft-of-proposed-amendment-to-23-nycrr-1/ and comments on the amended 2022 DFS proposal are available at: https://www.nclc.org/resources/comments-to-new-york-department-of-financial-services-regarding-draft-of-revised-proposed-amendment-to-23-nycrr-1/

[8] 15 U.S.C. § 1692n.

[9] 12 C.F.R. § 1006.104.

The FDCPA and Regulation F define the term "state" to include a "political subdivision" of a state.[10] Thus, under federal law, New York City has the same authority as a state to enact consumer protections that exceed the baseline created by the FDCPA and Regulation F.

In our discussion below, we cite some of the ways in which the DCWP's proposed amendments provide additional protections to consumers and why those additional protections are important.

Medical Debt

The 2023 proposed amendments add new provisions related to medical debt. Currently the term "medical debt" is defined in § 5-77(f)(10). We recommend moving that definition to the definition section and using the term consistently throughout. For example, § 5-77(f)(6)(iii) describes medical debt rather than using the defined term "medical debt."

We applaud DCWP for proposing a required disclosure about medical debt financial assistance in the validation notice.[11] This addition is important because Regulation F does not require such a disclosure and at least one court has held that debt collectors do not violate the federal Fair Debt Collection Practices Act when they fail to include notice about the hospital's financial assistance policy in billing statements.[12] This disclosure is also important because, although federal law requires non-profit hospitals to "widely publicize" their financial assistance policies,[13] many consumers are unaware of available financial assistance.[14]

The proposal also includes a requirement that the verification of a medical debt include "any information in its possession or available to the debt collector required to be disclosed by federal, state or local law, including the relevant financial assistance policy."[15] It is unclear what this requirement includes, and we recommend specifying what information must be provided in response to a consumer request instead. For example, we recommend that debt collectors be required to provide an itemized bill in response to a consumer's request for verification of a medical debt.

The proposal clarifies that debt collectors must treat consumer statements that a medical debt should have been covered by insurance, financial assistance, etc. as disputes.[16] This clarification is helpful because debt collectors do not always treat this information as a dispute, and therefore may not provide a verification of the debt.[17] Moreover, the proposal recognizes the fact that consumers often receive

[10] 15 U.S.C. § 1692a(8); 12 C.F.R. § 1006.2(*l*).

[11] Proposed 6 RCNY § 5.77(f)(1)(v).

[12] *Klein v. Affiliated Group, Inc.*, 994 F.3d 913 (8th Cir. 2020).

[13] 26 U.S.C. § 501(r)-4(b)(5).

[14] Zachary Levinson, et al, KFF Hospital Charity Care: How It Works and Why it Matters (Nov. 03, 2022), available at: https://www.kff.org/health-costs/issue-brief/hospital-charity-care-how-it-works-and-why-it-matters/.

[15] Proposed 6 RCNY § 5.77(f)(6)(iii).

[16] Proposed 6 RCNY § 5.77(f)(10)(i).

[17] *See, e.g., Leeb v. Nationwide Credit Corp.,* 806 F.3d 895, 896 (7th Cir. 2015).

multiple related bills from a single hospitalization and would require debt collectors to also treat related bills as disputed.[18]

The proposed rule would require debt collectors to provide verification of all of these related bills at the same time that the debt collector provides verification of the disputed medical bill.[19] We are concerned that the volume of information provided to the consumer might be overwhelming and potentially overshadow the information about the account that the consumer originally disputed. We recommend that the requirement be changed to state that the debt collector must produce a list of the account numbers and balances of the related medical bills that the debt collector will treat as disputed. Debt collectors should also be required to inform the consumer that they can request verification for any of these related medical bills.

We applaud DCWP for proposing a requirement that collection must cease if the debt collector knows or should know that "the patient has an open application for financial assistance."[20] We encourage you to extend this prohibition to include situations where the debt collector knows or should know that the consumer has an ongoing insurance appeal.

The proposed amendments would also prohibit debt collectors from collecting medical debt where the debt collector knows or should know that the financial assistance policy should have provided financial assistance to the consumer[21] or the debt collector knows or should know that a misrepresentation was made to the consumer about financial assistance.[22] We recommend clarifying in this section that the debt collector itself must not make misrepresentations about financial assistance and requiring debt collectors to refer all questions about eligibility for financial assistance to the medical provider.

Finally, the proposed amendments include a provision for specific corrective action to be taken when a debt collector obtains information that "the financial assistance policy was not disclosed to the patient as required by law or that there is a violation of federal, state, or local law."[23] We think that it may be difficult to establish when the debt collector "obtained information" to trigger this requirement. As a result, we think that debt collectors are unlikely to comply with this provision frequently. Thus, we recommend that in addition to this corrective action provision and the required disclosure in the validation notice,[24] DCWP add the following additional requirements:

- Require debt collectors to include notice about any financial assistance policy in all communications with consumers - not just the validation notice.

[18] Proposed 6 RCNY § 5.77(f)(10)(iii).

[19] Proposed 6 RCNY § 5.77(f)(10)(iii)(C).

[20] Proposed 6 RCNY § 5.77(j)(1)(ii).

[21] Proposed 6 RCNY § 5.77(j)(1)(iii).

[22] Proposed 6 RCNY § 5.77(j)(1)(iv).

[23] Proposed 6 RCNY § 5.77(j)(2).

[24] Proposed 6 RCNY § 5.77(f)(1)(v).

- Require debt collectors to provide notice about any financial assistance policies when consumers indicate that they are experiencing financial hardship - even if the consumer does not specifically ask about financial assistance.

Delivery of Validation Notices

We applaud DCWP for making clear that the validation notice must be provided in writing.[25] This protection is important because Regulation F authorizes oral-only delivery of validation information in the initial communication.[26] Consumer advocates surveyed six months after Regulation F's implementation date reported that debt collectors are communicating validation information orally and that this practice creates consumer comprehension problems.[27] By clearly requiring that the validation information must be provided in writing and not exclusively orally,[28] DCWP's proposed amendments provide an important consumer protection that exceeds the protections available to consumers under Regulation F.

The requirement that the validation notice must be in writing is also important because the CFPB interprets the FDCPA and Regulation F to authorize electronic-only delivery of the validation notice if that electronic communication is the initial communication[29] and only requires debt collectors to comply with the federal E-SIGN Act when the debt collector seeks to provide a validation notice electronically within five days of the initial communication.[30] The DCWP's proposed amendment will eliminate this method of avoiding compliance with the E-SIGN Act.

In a survey 6 months after Regulation F took effect, consumer advocates reported that debt collectors are sending validation information to consumers electronically as an attachment to or hyperlink in an email and as a hyperlink in a text message.[31] In interviews, some advocates also reported that consumers tend to be more suspicious of electronic communications due to concerns about fraud and scams.[32] These concerns are particularly well founded where the methods of delivery would require consumers to click on a hyperlink or download an attachment in order to view a validation notice. We have asked the CFPB to clarify that such methods of delivery do not satisfy Regulation F's requirement

[25] Proposed 6 RCNY §§ 5.77(f)(1).

[26] 12 C.F.R. § 34(a)(1)(ii).

[27] April Kuehnhoff and Yaniv Ron-El, National Consumer Law Center, Evaluating Regulation F: A Six-Month Check-Up on New Federal Debt Collection Regulations, at 26-28 (Nov. 2022), available at: https://www.nclc.org/wp-content/uploads/2022/10/report-evaluating-regulation-f.pdf [hereinafter "Evaluating Regulation F"].

[28] Proposed 6 RCNY § 5.77(f)(2)(i). *But see* Proposed 6 RCNY § 5.77(f)(1) (creating an exception where debt is paid after the initial communication).

[29] 85 Fed. Reg. 76,734, 76,854 (Nov. 30, 2020) ("[t]he Bureau has determined that the FDCPA does not require the validation notice information to be provided in writing when it is contained in the initial communication.").

[30] 12 C.F.R. § 1006.42(b).

[31] Evaluating Regulation F at 26.

[32] Evaluating Regulation F at 28-29.

to send the notice "in a manner that is reasonably expected to provide actual notice."[33] Consumers should not risk losing access to important debt collection disclosures because they appropriately avoid clicking on links and downloading items from unknown senders to protect themselves from malware. Nor should they be denied important information about alleged debts because messages went to old email addresses or were diverted to spam folders as might occur in electronic-only delivery of validation notices. DCWP's proposed amendments will address these concerns.

Limits on Communication Frequency

New York City's current regulations generally limit debt collectors to no more than two calls in a seven-day period.[34] This provides significantly more protection than Regulation F, which only creates a presumption that the debt collector intends to annoy, abuse, or harass the consumer if it calls more than seven times in a seven-day period.[35]

The proposed regulations would amend this provision to prohibit debt collectors from communicating or attempting to communicate more than three times in a seven day calendar period "by any medium of communication or in person."[36] This amended regulation will provide protection for consumers that exceeds the protection provided by Regulation F– both by providing a lower number of permissible telephone calls and by specifying a limit to the total number of communications or attempted communications that applies across all media.[37] Such an amended provision would function in a way that is similar to the current law in Washington State,[38] which has existed since 1971.[39]

We interpret these proposed limits as applying *per consumer*, not *per account*.[40] However, if DCWP issues any guidance with these new regulations, we recommend confirming this interpretation in that guidance. Applying the communication limits per consumer will provide greater protection than

[33] Evaluating Regulation F at 29.

[34] 6 RCNY § 5.77(b)(1)(iv).

[35] 12 C.F.R. 1006.14(b)(2)(i)(A).

[36] Proposed 6 RCNY § 5.77(b)(1)(iv)(A).

[37] Regulation F Official Interpretations clarify that a violation of FDCPA § 1692d's general prohibition against "conduct the natural consequence of which is to harass, oppress, or abuse" may be the result of the "cumulative effect of the debt collector's conduct through any communication medium the debt collector uses, including in-person interactions, telephone calls, audio recordings, paper documents, mail, email, text messages, social media, or other electronic media." Reg. F Official Interpretations § 14(a)-2. However, Regulation F does not specify when the volume of communications across all media reaches that threshold.

[38] Wash. Rev. Code § 19.16.250(13)(a), (b) ("A communication shall be presumed to have been made for the purposes of harassment" if the debtor is contacted more than once per week at work or the debtor or spouse are contacted more than three times per week in "any form, manner, or place").

[39] *See* 1971 1st Ex. Sess. c 253 § 16.

[40] Proposed 6 RCNY § 5.77(b)(1)(iv)(A) ("Excessive frequency means either 1) any communication or attempted communication by the debt collector *with a consumer*, by any medium of communication or in person, in connection with the collection of debt more than three times during a seven-consecutive-calendar-day period . . .") (emphasis added).

Regulation F, which applies phone call limits per account in collection.[41] Providing per consumer rather than per account limits will avoid the problem that arises where a debt collector is collecting multiple accounts for the same consumer - *e.g.,* a debt collector collecting five medical accounts for the same consumer that claims to be allowed to communicate or attempt to communicate 15 times in a seven day period.

The proposed regulations would also prohibit debt collectors from contacting the consumer again during a seven day period "after already having had an interaction with the consumer within such seven-consecutive-calendar-day period."[42] Regulation F creates a presumption that the debt collector intends to annoy, abuse, or harass the consumer if it places a telephone call to a consumer within seven days of a previous telephone conversation.[43] DCWP's proposed language seeks to extend that consumer protection by applying it to exchanges in any medium. We applaud DCWP's proposal to extend this protection to other types of communication media.

Other Issues Related to Electronic Communications

Consent

We support DCWP's proposal to add consumer consent requirements before debt collectors can contact consumers electronically[44] or via social media.[45] These provisions exceed the protections provided by Regulation F, which do not require consumer consent.[46] We note, however, that the rule as drafted would not permit collectors to send an initial electronic message in order to obtain permission to communicate electronically as outlined by DFS regulations.[47] We think that a narrowly crafted exception like the one in the DFS regulations is appropriate and encourage DCWP to coordinate with DFS regarding their proposed amendments to this portion of the DFS regulations.

Opt-Out Notice

As currently drafted, the proposed regulations only require an opt-out notice in every "electronic mail communication" rather than in every "electronic communication."[48] To ensure that opt-out notices are included in all types of electronic communications, including email, text, and direct messages, we recommend that DCWP amend the first and last sentence of this section to delete the word "mail" and instead use the broader defined term "electronic communication."

[41] 12 C.F.R. 1006.14(b)(2)(i).

[42] Proposed 6 RCNY § 5.77(b)(1)(iv)(A).

[43] 12 C.F.R. 1006.14(b)(2)(i)(B).

[44] Proposed 6 RCNY § 5.77(b)(5)(i).

[45] Proposed 6 RCNY § 5.77(b)(7).

[46] *Contrast* 12 C.F.R. §§ 1006.6(d), 22(f)(4).

[47] N.Y. Comp. Codes R. & Regs. Tit. 23 § 1.6(b).

[48] Proposed 6 RCNY § 5.77(b)(5)(v).

We also recommend that DCWP add a requirement that debt collectors must allow consumers to opt out by replying "stop." Specifying a universal method to opt out of electronic messages makes it easier to educate the public about how to opt out of messages. It also prevents debt collectors from requiring consumers to click on links from an unknown sender just to opt out, potentially putting the consumer at risk of malware. Forcing the debt collector to allow consumers to reply "stop" also prevents debt collectors from sending no-reply emails or one-way text messages that would otherwise force the consumer to use a different form of media in order to communicate with the debt collector (*e.g.*, going to the debt collector's portal and logging in to update communication preferences).

Add "Attempt to Communicate"

Some provisions in the proposed regulations only apply to communications.[49] To make these provisions parallel to similar provisions in Regulation F, DCWP should amend them to add "attempt to communicate."[50]

Work Email or Text

DCWP's proposed amendments eliminate exceptions in Regulation F that allowed for debt collectors to communicate with consumers in some circumstances via a work email address or work phone number via text messages.[51] We agree that most of these exceptions should be eliminated but recommend adding an exception for communications with the "prior consent of the consumer, given directly to the debt collector."

Notice Before Credit Reporting

DCWP's proposed amendments require that the debt collector provide notice about the alleged debt before credit reporting and that the notice inform the consumer that "the debt may be reported to a credit reporting agency."[52] Such information would provide more details to the consumer than a similar notice requirement in Regulation F, which requires debt collectors to take steps to notify consumers about the alleged debt but does not require debt collectors to inform consumers that the account will be reported to a consumer reporting agency.[53]

We also note that New York Assembly Bill A6275A / Senate Bill 4907 is currently awaiting Governor Hochul's signature.[54] This legislation would prohibit credit reporting of medical debts. If this legislation is signed into law, this portion of the proposed rule should be amended to note that reporting of medical debt is prohibited.

[49] Proposed 6 RCNY §§ 5.77(b)(6) - (8).

[50] 12 C.F.R. §§ 1006.22(f)(3) - (4), 14(h).

[51] *Compare* Proposed 6 RCNY § 5.77(b)(6) *with* 12 C.F.R. § 1006.22(f)(3).

[52] Proposed 6 RCNY § 5.77(e)(10).

[53] 12 C.F.R. § 1006.30(a).

[54] Available at: https://www.nysenate.gov/legislation/bills/2023/A6275/amendment/A.

Time-Barred Debt Collection

We are concerned about the ability of the least sophisticated consumer to understand time-barred debt disclosures.[55] As such, we recommend that DCWP prohibit all collection of time-barred debt to protect consumers against abusive practices related to the collection of time-barred debts.

To the extent that DCWP retains a disclosure-based approach rather than prohibiting all collection of time-barred debts, we applaud efforts to revise the disclosure to make it easier to read and understand. However, we are concerned that a disclosure that tells people both that they "can't be sued" and then tells them what to do if they are sued will be confusing to consumers.[56] We recommend further simplification of the proposed disclosure language.[57]

We applaud DCWP for taking steps to ensure that consumers will only see one time-barred debt disclosure by stating that, "[a] debt collector may include additional language to the time-barred-debt disclosure as may be required by the State of New York to send the consumer one disclosure notice."[58] However, we still believe that it would be better for DCWP to work with DFS to test and implement the most effective consumer disclosure rather than creating two disclosures that debt collectors might combine in ways that would be less comprehensible to consumers.

Additionally, we urge DCWP and DFS to jointly craft a single disclosure that will fit (using a readable font size) in the space reserved for time-barred debt disclosures in the CFPB's model validation notice.[59] This is because we believe that consumers will be more likely to notice the disclosure if it appears on the front of the notice.

The proposed rule requires a time-barred debt disclosure to be made to the consumer in the "initial written notice."[60] Our understanding is that DCWP intends to require debt collectors to contact consumers to collect time-barred debts with a written communication first and that this communication must be in writing. We think that this refers to the validation notice and recommend that DCWP revise the language here to avoid introducing another term. Instead the regulations can simply specify that for the collection of time-barred debts the initial communication must be a written validation notice with a time-barred debt disclosure.

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[55] See NCLC, Comments to the Consumer Financial Protection Bureau on its Supplemental Notice of Proposed Rulemaking p. 12 (Aug. 4, 2020) available at: https://www.nclc.org/images/pdf/debt_collection/NCLC-Comments-forSupplemental-Debt-Rule.pdf (discussing concerns that the CFPB has failed to propose time-barred debt disclosures that are comprehensible to the least sophisticated consumer); Evaluating Regulation F at 34-39 (discussing observations by consumer advocates that consumers are generally confused about the concept of time-barred debt even when the fact that the debt is beyond the statute of limitations is disclosed).

[56] Proposed 6 RCNY § 5.77(i).

[57] *See* Consumer Fin. Protection Bur., Disclosure of Time-Barred Debt and Revival: Findings from the CFPB's Quantitative Disclosure Testing (Feb. 2020), available at: https://files.consumerfinance.gov/f/documents/cfpb_debt-collection-quantitative-disclosuretesting_report.pdf (discussing CFPB testing of different validation notices).

[58] Proposed 6 RCNY § 5.77(i)(5).

[59] *See* 12 C.F.R. § 1006.34(d)(3)(iv)(B).

[60] Proposed 6 RCNY § 5.77(i)(2).

For subsequent communications, DCWP proposes that debt collectors would have to provide written notice "within 5 days after each oral communication."[61] Such follow-up communications may well come after the consumer has already agreed to make a payment on the time-barred debt. We recommend that DCWP instead require all debt collection communications on time-barred debt to be made in writing-only. When dealing with a complicated topic like time-barred debt, it is far more likely that the consumer will be able to understand that disclosure or find someone to help explain it when the disclosure is in writing than when it is made orally over the phone.

Finally, we note that DCWP's proposed rules list as unfair "selling, transferring, or placing for collection or with an attorney or law firm to recover any debt where the debt collector knows or should know that the time to sue on the debt has expired, without including a clear and conspicuous notice to the recipient of the debt that the statute of limitations on such debt has expired."[62] Because of the unfairness, deception, and abusiveness associated with the collection of time-barred debts,[63] we urge DCWP to completely prohibit selling, transferring, or placing time-barred debt for collection.

Simplifying Rules for Cease Communications Requests, Disputes, and Requests for Original Creditor Information

We applaud DCWP for removing unnecessary obstacles to exercising consumer rights. Specifically, the proposed amendments remove the requirement that consumers provide cease-communication requests,[64] disputes,[65] and requests for original creditor information[66] to debt collectors in writing.

Requiring a written request creates a barrier to exercising consumer rights, and consumers may not always realize that they need to provide notice in writing to access the legal protection. For example, in a CFPB survey of consumer experiences with debt collection, 87% of respondents who had asked the debt collector to stop contacting them did so by phone or in person only.[67] Removing the requirement that such requests be in writing, as DCWP proposes here, also lowers barriers for those with limited English proficiency or limited formal education who may struggle to put a request in writing. Additionally, it allows consumers to access the full protection of these provisions without needing to rely on the willingness of the debt collector to voluntarily honor oral requests when consumers omit formal written notice.

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[61] Proposed 6 RCNY § 5.77(i)(4).

[62] Proposed 6 RCNY § 5.77(e)(12).

[63] See National Consumer Law Center et al., Comments to the Consumer Fin. Prot. Bureau on its Proposed Debt Collection Rule 130, Docket No. CFPB-2019-0022 (Sept. 18, 2019), available at https://www.nclc.org/resources/group-long-comments-to-cfpb-on-its-proposed-debt-collection-rule/ (discussing why the collection of time-barred debts is unfair, deceptive, and abusive).

[64] Proposed 6 RCNY § 5.77(b)(4).

[65] Proposed 6 RCNY § 5.77(f)(6).

[66] Proposed 6 RCNY § 5.77(f)(8).

[67] Consumer Financial Protection Bureau, Consumer Experiences with Debt Collection: Findings from the CFPB's Survey of Consumer Views on Debt at 34-35 (Jan. 2017) available at: https://files.consumerfinance.gov/f/documents/201701_cfpb_Debt-Collection-Survey-Report.pdf.

Additionally, DCWP's proposed amendments will simplify access to consumer protections by allowing consumers to submit disputes and requests for original creditor information "at any time during the period in which the debt collector owns or has the right to collect the debt."[68] In contrast, the FDCPA specifies that the consumer has "thirty days after receipt of the notice" to submit a dispute or request for original creditor information in order to trigger the requirement that:

> [T]he debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector.[69]

The DCWP's proposed amendment means that consumers would get the benefit of the collection pause regardless of when they submit a request for original creditor information.[70] However, the proposed rule does not provide for the same collection pause once a dispute has been submitted. Instead, the proposed rule only requires a post-dispute collection pause "if an itemization of the debt was not previously provided to the consumer by the debt collector in compliance with section 5-77(f)(1)(vii)" *and* "if a timely written verification of the debt has not been provided to the consumer." Thus, the consumer would not be entitled to a collection pause if the debt collector provides the required itemization or the debt collector provides a timely written verification.

We recommend that DCWP amend the proposed regulation to require a collection pause after a dispute until the debt collector provides a verification, regardless of when the dispute is submitted. This is important because there are many reasons that consumers may not submit a dispute or request for original creditor information within 30 days of receiving the validation notice. For example, consumers may not realize that they have a right to dispute or request original creditor information when they first receive a validation notice. They may need to consult an attorney, a friend, or others to understand the validation notice and their rights or to get help disputing the debt or requesting original creditor information. All of this can take time, especially where overwhelmed consumers struggle to cope with stress related to ongoing debt collection.[71]

Debt Verification and Unverified Debt Notice

DCWP proposes important amendments to the debt collection rule related to the verification of debts. First, it proposes to amend the regulations to require debt collectors to respond to a dispute or request for verification[72] or a request for original creditor information[73] within 45 days of receipt. This would be

[68] Proposed 6 RCNY §§ 5.77(f)(6), (8).

[69] 15 U.S.C. § 1692g(b).

[70] Proposed 6 RCNY § 5.77(f)(8).

[71] *See* National Consumer Law Center, Fair Debt Collection § 1.3.1.3 (10th ed. 2022), updated at www.nclc.org/library (discussing mental health and consumer debt).

[72] Proposed 6 RCNY § 5.77(f)(6).

[73] Proposed 6 RCNY § 5.77(f)(8).

a significant improvement for consumers since neither the FDCPA nor Regulation F requires debt collectors to reply within a specified time.[74]

Next, the proposed amendments outline what information a debt collector must provide in response to a dispute or request for verification.[75] The required list of items for verification includes the signed contract or documentation of the transaction resulting in indebtedness, records about any prior settlement agreement, and the final account statement or other documentation reflecting the total amount outstanding. These documents will provide the consumer with substantive information about the alleged debt that the consumer can use to assess whether this account is their debt and whether the amount is correct.

Requiring debt collectors to produce certain information in response to a dispute or request for verification is an important consumer protection because the FDCPA and Regulation F simply require "verification of the debt or a copy of a judgment" without explaining what constitutes proper verification of the debt.[76] As a result, debt collectors frequently respond to consumer disputes by simply reiterating that the amount of the alleged debt is correct without providing any kind of documentation of the alleged debt. The proposed amendments would put an end to this practice by specifying what information must be provided.

The proposed amendments would also require debt collectors that "did not provide an itemization of the debt" *and* "cannot provide a consumer with a timely written verification of a debt in response to a dispute or request for verification" to provide a "notice of unverified debt" stating that the collector is unable to verify the debt and informing the consumer that it will stop collecting on the debt.[77] We anticipate that most debt collectors will provide an itemization of the debt and thus be able to avoid the requirement to provide the notice of unverified debt. As a result, this provision will do little to eliminate the current practice, employed by some debt collectors, of simply never responding to a consumer's dispute or request for verification. We recommend that DCWP amend this provision to eliminate the itemization loophole and instead require delivery of a "notice of unverified debt" when debt collectors are unable to verify the debt.

Finally, we note that DCWP's proposed amendments list as unfair:

> [S]elling, transferring, or placing for collection or with an attorney or law firm to sue a New York City consumer to recover any debt for which the debt collector was unable to provide written verification of the debt, despite having received a dispute or request for verification of the debt from the consumer, without including a clear and conspicuous notice to the recipient of the debt that the debt was not verified and a copy of the "Notice of Unverified Debt" sent to the consumer pursuant to subdivision (f) of this section.[78]

[74] *Contrast* 15 U.S.C. § 1692g(b); 12 C.F.R. § 1006.38.

[75] Proposed 6 RCNY § 5.77(f)(6).

[76] *See* 15 U.S.C. § 1692g(b); 12 C.F.R. § 1006.38.

[77] Proposed 6 RCNY § 5.77(f)(7).

[78] Proposed 6 RCNY § 5.77(e)(13).

Currently, debt collectors that cannot verify a debt typically return the account to the creditor, who may then sell the account or place it with another third-party debt collector. That new debt collector may then attempt collection from the consumer, requiring the consumer to dispute or request verification of the debt again in order to enforce their rights. While the DCWP's proposed amendment may discourage some creditors from placing the unverified debt for collection again, we urge DCWP to clarify that these prohibitions also apply to accounts returned to the creditor.

Language Access

All of the Regulation F provisions concerning translated disclosures are permissive and voluntary–a debt collector would be entirely compliant with Regulation F if it offered no language access services, took no efforts to ascertain a consumer's language preference, or obscured the availability of the language services it offers.[79]

DCWP's current rules do not require that debt collectors offer language services,[80] but they do provide some uniform, market-wide data collection and disclosure requirements that have the potential to lay the groundwork for debt collectors to offer greater language access in the future. For instance, the current rules require that debt collectors obtain, retain, and transfer a record of the language preference for every consumer from whom the debt collector attempts to collect.[81] The current rules also require that debt collectors create and maintain annual reports describing the number of accounts, and the languages used to collect on those accounts. Finally, debt collectors are required to include a notice describing which language services the debt collector offers, and a link to a glossary of commonly used debt collection terms on any website the debt collectors use or refer to consumers as a means to collect.[82] These requirements are a welcome improvement on Regulation F's minimal attention to the pervasive problems language barriers create in debt collection.

The proposed rules largely clarify these existing obligations, by specifying that required disclosures must be posted on the homepage of the debt collector's website, and that all debt collectors must create the required annual reports, regardless of whether they communicate with consumers in non-English languages. Our comments will address our recommendations to strengthen the current regulatory framework as proposed, and will offer suggestions for how DCWP could impose market-wide language services requirements that can make a meaningful difference to LEP consumers facing debt collection.

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[79] While 12 C.F.R. § 1006.18(e)(4) requires debt collectors to translate certain disclosures into the "language or languages used for the rest of the communication in which the debt collector conveyed the disclosure," debt collectors can avoid triggering this requirement by only communicating in English. Similarly, in 12 C.F.R. § 1006.34(e)(2), debt collectors can avoid the requirement to provide a Spanish language validation notice in response to consumer requests by excluding the optional Spanish-language disclosures stating that a translated notice is available.

[80] N.Y. Dep't. of Consumer Affs., Frequently Asked Questions: New Rules for Debt Collectors Regarding Language Access, 3 (Aug. 2020), https://www1.nyc.gov/assets/dca/downloads/pdf/businesses/FAQs-Debt-Collectors-Language-Access.pdf.

[81] 6 R.C.N.Y. §§2-193(b)(5), 5-77(d)(19).

[82] 6 R.C.N.Y. §5-77(h). Debt collectors must also include these disclosures on validation notices. See 6 R.C.N.Y. §§ 5-77(f)(2)(vi)-(vii)

Annual Reports

The proposed amendments clarify that all debt collectors must prepare annual reports indicating, by language, the number of accounts collected and the number of employees used to collect on those accounts.[83] By deleting "in a language other than English'' from section 2-193(c)(3), the proposed amendments clarify that all debt collectors must prepare these reports, not only those debt collectors that offer services in languages other than English. Framing these requirements in a uniform manner across the marketplace ensures that all debt collectors face similar obligations, whether they communicate with consumers in other languages or not. These reports also ensure that all debt collectors have a regular opportunity to monitor and evaluate the language services they offer and have the data necessary to consider expanding or changing their language services whenever appropriate.

These reports have the potential to be powerful tools to allow DCWP to regularly assess the availability, quality, and benefit behind providing language assistance to LEP consumers facing debt collection in New York City. However, this recordkeeping requirement's full potential will not be realized unless DCWP collects and analyzes this information across the industry at regular intervals. While debt collectors are required to report on the language services they offer as part of the licensing and renewal processes,[84] DCWP does not gather information on the scope of these services, or how frequently they are used. The annual reports required under section 2-193(c)(3) could assist DCWP in gathering this information, and thus further documenting the need for improved language access in this area, if there were a corresponding requirement to provide this information on an regular basis to DCWP. To enable this more robust data collection, we suggest that DCWP require that debt collectors submit these annual reports as a supplement to the regular licensing renewal forms they already submit.

To this end, we also recommend that DCWP change the language in section 2-193(c)(3) to include a greater scope of possible language services in the annual report that debt collectors must produce and maintain. We suggest requiring that debt collectors state the number of consumer accounts on which the debt collection agency collected or attempted to collect a debt, not simply limiting the report to those actions taken by the agency's employees. In addition, these reports should capture a range of other language services beyond the use of multilingual employees, including form letters, emails, text messages, and oral interpretation services. These actions may not always constitute actions taken by the debt collector's employees, as they could be either automated or conducted through its agents, yet they should nonetheless be captured in these annual reports.

Requiring Language Assistance

We also encourage DCWP to consider expanding on these rules to require all debt collectors to provide a minimum level of language assistance to LEP consumers, beginning with making use of translated validation notices and other vital documents. As DCWP noted in its 2019 report on this topic, language

[83] Proposed 6 R.C.N.Y. §2-193(c)(3)

[84] N.Y. City Dep't. of Consumer and Worker Protection, 2023 Debt Collection Agency New & Renewal License Application Supplement, available at https://www.nyc.gov/assets/dca/downloads/pdf/businesses/Debt-Collection-Agency-Licensing-Renewal-Supplement.pdf

access provisions are of limited utility if they are left to the discretion of individual debt collectors.[85] Indeed, in a survey six months after Regulation F took effect, 59.4% of consumer advocate respondents reported that debt collectors were generally not providing the CFPB's optional Spanish Language disclosures.[86]

Consumers are unable to exercise their rights under federal, state, and local fair debt collection laws if they do not understand what those rights are. Validation notices serve a critical role in alerting consumers of their rights under these laws within a short period of time after a debt collector attempts to collect. LEP consumers should be entitled to receive the same access to these important consumer rights as English-speaking consumers, and the only way to ensure that LEP consumers will receive this information is to require that all debt collectors provide it.

Other jurisdictions are starting to lead the way in this area. For example, on January 1, 2023 the District of Columbia began requiring that debt collectors provide validation notices to consumers in both English and Spanish, unless another language was "principally used in the original contract with the consumer or by the debt collector in the initial oral communication with the consumer," in which case the debt collector must provide the validation notice to the consumer in both English and that other language.[87] DCWP should consider implementing a similar requirement for debt collectors in New York, beginning by requiring that all debt collectors provide a Spanish translation of the validation notice to all consumers as a matter of course.

We recommend requiring debt collectors to send the Spanish translation by default for two reasons. First, the CFPB provided a model validation notice translated into Spanish when it promulgated Regulation F,[88] which would enable debt collectors to satisfy the requirement without needing to expend resources in translating the notice. In addition, Spanish is the most commonly spoken language among the foreign-born population in New York City, with Spanish speakers representing nearly 40% of the city's foreign-born population.[89] Such a mandate would improve language access for a large proportion of New York's LEP population.

Moreover, debt collectors should be required to send translated validation notices whenever the consumer requests a validation notice in a language with an available model translated validation notice provided by a federal, state, or local government entity. Thus, as the number of languages included in the pool of government-provided translations grows, language access in debt collection will also continue to expand across languages of lesser dispersion. Finally, to the extent that DCWP's amended

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[85] N.Y. Dep't. of Consumer Affs., Lost in Translation: Findings from Examination of Language Access by Debt Collectors, 12 (Sept. 2019), https://www1.nyc.gov/assets/dca/downloads/pdf/partners/LEPDebtCollection_Report.pdf

[86] Evaluating Regulation F at 33-34.

[87] Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2022, D.C. Law 24-154(m)(2)(C), to be codified at § 28–3814(m)(2)(C).

[88] Consumer Fin. Protection Bur., Debt Collection Model Forms Model Validation Notice - Spanish translation (Oct. 2021), https://files.consumerfinance.gov/f/documents/cfpb_debt-collection_model-validation-notice_spanish.pdf

[89] N.Y.C. Mayor's Off. of Immigrant Aff's, 2021 Report, 15 (2021), https://www.nyc.gov/assets/immigrants/downloads/pdf/MOIA-2021-Report.pdf.

regulations change or add to the language presented in the model validation notice, DCWP can publish a translation of the relevant changed or additional language.

Without such uniform mandates, we worry that proposed section 5-77(f)(3) will disincentivize debt collectors from using the CFPB's Spanish translation of the model validation notice, and any future translations provided by government sources. The proposed section requires debt collectors that offer consumers translated validation notices to respond to "disputes, complaints, requests for verification of the debt and cease and desist requests by the consumer completely and accurately in the same language as the validation notice."[90] We worry that requiring more of debt collectors that voluntarily offer translations will discourage debt collectors from using translations that are already available to them, especially a notice that is intended to alert consumers of their rights under law. Without a uniform mandate to use translated notices, nothing in the proposed rules would prevent debt collectors that currently use translated validation notices from discontinuing their use of translated notices in the face of these additional requirements.

In addition, we recommend deleting the word "exclusively" from the third sentence in section 5-77(f)(3). The sentence as it is currently proposed reads "[a] debt collector may not contact a consumer *exclusively* . . . in a language other than English to collect debt without providing the consumer . . . a validation notice written accurately in the language used by the debt collector. . . ."[91] We appreciate that DCWP intends to forbid the practice of selectively communicating with LEP consumers in their preferred language only when it benefits the debt collector, while obscuring the consumer's rights contained in the validation notice by sending the consumer English-only notices. However, the word "exclusively" in this sentence renders the provision a nullity, as the debt collector could easily avoid violating this provision by saying a single word to the consumer in English.

Finally, we suggest that DCWP work in conjunction with the CFPB and relevant New York state government agencies to translate the model validation notice, and other standard notices and disclosures, into additional languages beyond Spanish. New York City is one of the most diverse cities in the world. Its residents speak over 200 languages, and nearly 25% of the population has Limited English Proficiency.[92] Thus, New York is uniquely positioned to lead the charge in the effort to provide language services to a broader array of consumers facing debt collection. DCWP has already taken steps towards serving this population by providing a glossary of commonly used terms in debt collection in eleven languages,[93] and building out a repository of translated notices and disclosures would be a natural next step.

Definitions

To the extent that the DCWP proposes to adopt definitions that mirror those in Regulation F, we recommend simply cross-referencing those definitions in Regulation F. Currently, it is unclear if the

[90] Proposed 6 R.C.N.Y. §5-77(f)(3)

[91] *Id*.

[92] N.Y.C. Mayor's Off. of Immigrant Aff's, 2021 Report, 8 (2021), https://www.nyc.gov/assets/immigrants/downloads/pdf/MOIA-2021-Report.pdf.

[93] N.Y. Dep't Consumer & Worker Protection, Glossary of Common Debt Collection Terms, available at https://www.nyc.gov/site/dca/consumers/Glossary-of-Common-Debt-Collection-Terms.page

differences between Regulation F and the proposed definitions are always intentional. For example, the proposed definition of "limited-content message" includes all of the required content[94] but none of the optional content.[95] It is unclear whether this difference is significant.

Record Retention

DCWP proposes to amend its regulations regarding record retention to add additional items that debt collectors must retain as part of the record retention policy.[96] This section is important because Regulation F does not provide any details about what records must be retained, stating only that, "a debt collector must retain records that are evidence of compliance or noncompliance with the FDCPA."[97] DCWP's more detailed regulations provide more information to debt collectors about what information must be retained. Moreover, they provide details to debt collectors regarding what information must be recorded, unlike Regulation F, which states that there is "[n]o requirement to create additional records."[98]

DCWP should clarify whether the requirement to retain "[a] copy of all communications and attempted communications with the consumer"[99] applies to phone calls and, if so, how this provision relates to the requirement to either record "all telephone communications, including limited content messages, with all New York City consumers or with a randomly selected sample of at least 5% of all calls made or received."[100] We recommend that DCWP require recording and retention of all oral communications.

Private Right of Action

To facilitate enforcement of the DCWP's expanded debt collection regulations, we recommend adding a private right of action to allow consumers to sue debt collectors for violations of these regulations.

Thank you for your time and attention to these comments. Please feel free to contact us at the email addresses below if you have any questions.

Sincerely,

April Kuehnhoff
Senior Attorney
akuehnhoff@nclc.org

[94] 12 C.F.R. § 1006.2(j)(1).

[95] 12 C.F.R. § 1006.2(j)(2).

[96] Proposed 6 RCNY § 2.193.

[97] 12 C.F.R. § 1006.100(a).

[98] Reg. F Official Interpretations § 100(a)-2.

[99] Proposed 6 RCNY § 2.193(a)(1).

[100] Proposed 6 RCNY § 2.193(b)(2).

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November 29, 2023

New York City Department of Consumer and Worker Protection ("DCWP")
42 Broadway
New York, New York 10004

Submitted by email to Rulecomments@dcwp.nyc.gov.

Re: Proposal to amended rules relating to debt collectors

Dear Commissioner Mayuga and DCWP staff members:

On behalf of the New York State Collectors Association ("NYSCA"), we are appreciative of the opportunity to submit the attached comments on the DCWP proposal to amend its rules relating to debt collectors. I am sure that you are fully aware that the members of NYSCA recognize the responsibility of DCWP to protect all of New York City's consumers.

The hearing DCWP notice states:

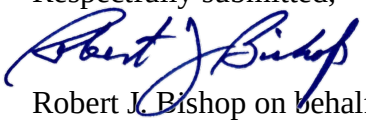
> **On November 4, 2022, the Department proposed amendments to adopt similar protections as those provided to consumers at the federal and state levels, and included provisions based on the Department's insight from its regulation of the debt industry for decades as it pertains to NYC consumers. In response to its Notice of Proposed Rulemaking, the Department received comments from national and local industry associations, individual debt collection agencies, debt buying companies, debt collection law firms, national consumer advocacy groups, and local legal services organizations. After a public hearing on December 19, 2022, and a review of all the comments, the Department is re-noticing the proposed amendments to further address trade practices and consumer protection concerns as it pertains to debt collection from New York City residents.**
> **Specifically, this proposed rule includes the following amendments:**
> **• Section 2-191 requires debt collection agencies to give consumers certain disclosures when collecting on time-barred debt. The Department is proposing to repeal this section in its entirety. (Section 1)**
> **• Section 2-193(c) requires a debt collection agency to maintain, in a language other than English, an annual report identifying, by language, certain actions taken by the agency. Because the report is organized by language, the contents of the report need not be limited to actions taken in a language other than English. The Department is proposing to amend the subdivision so that it applies to actions taken in any language. (Section 2)**
> **• The amendments to Section 2-193 also require debt collection agencies to maintain other records. These proposed amendments would extend the requirements to cover all records showing compliance with relevant laws and rules as well as monthly logs documenting**

certain consumer interactions. (Section 2)
• The Department is proposing to add various definitions to Section 5-76 of its rules. These amendments would provide guidance and clarity to the industry on new requirements in Section 5-77 concerning communications with consumers in connection with debt collection. (Sections 3 and 4)
• The Department is also proposing more substantive edits to Section 5-77. These amendments would clarify what information debt collectors must provide consumers at the outset of debt collection communications;
• place limits on the frequency of debt collection communications;
• require debt collectors to disclose the existence of a debt to consumers before reporting information about the debt to a consumer reporting agency;
• clarify the disclosures that debt collectors must give consumers when collecting on time-barred debt;
• clarify the requirements that debt collectors are obligated to comply with when collecting on medical debt; and
• clarify how debt collectors may employ modern communication technologies in compliance with the law, including voicemails, email, text messages, and social media. (Section 5)

The comments submitted on behalf of the coalition of debt collectors, which includes NYSCA, and individually by its members reflect a core theme – that the various governmental regulations be both consistent and not unduly burdensome. Failure to accomplish consistent regulation creates confusion amongst both consumers and industry. Undue burden on the industry will lead to unintended inability to comply to the detriment of all interested stakeholders. Furthermore, we urge the Department to include a definitive effective date after which the regulatory changes will be implemented.

In the coming days following the hearing, we look forward to working with you to fine tune the proposed amendments in order that all stakeholders can be best served.

Respectfully submitted,



Robert J. Bishop on behalf of
the New York State Collectors Association

From:	Tina Suppa
To:	rulecomments (DCWP)
Subject:	[EXTERNAL] COMMENTS: NYC Department of Consumer and Worker Protection (DCWP) prosed amendments to NYC Debt Collection Rule.
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Good afternoon:
First Credit Services Inc., is a small volume collection agency with operations in New York. In review of the proposed changes we strongly suggest that the cost of doing business be considered in any rule making efforts and we respectfully point out the importance that any rules must be consistent with no only CFPB existing regulations, but also align with NYS law and NYS Dept of Financial Services regulations. Short of that any such rule will make it difficult, if not impossible for businesses likes our own continue to operate in the NYC. The rules as they are currently proposed will cause us to consider ceasing operations in NYC due to the unreasonable cost we will endure in order to come into compliance. It is believed that these proposed rules will serve to harm, rather than help the consumers who you seek to protect. Given the restraints and extensive unreasonable requirements creditors will be better served to move straight to litigation, thereby foregoing collection efforts, which will just pass the additional costs onto the consumer.

Thank you,

Tina M. Suppa
Vice President, Compliance
First Credit Services, Inc.
Direct #: 732.523.4556
Toll Free: 800.606.7066 Ext.4019
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From: Kat O"Brien
To: rulecomments (DCWP)
Subject: [EXTERNAL] Debt Collectors and Collection Agencies
Date: Monday, November 27, 2023 12:06:12 PM
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Good morning,

In response to the proposed rules, it is imperative that an effective date of no earlier than January 1, 2025 is applied to these proposed rules in order to properly operationalize the rules.

Additionaly, the proposed rules add significant burdens on collectors that do not actually provide any consumer protection. If anything making collections harder & more burdensome in NYC, will ultimately move the efforts from Collection to legal judgments, which will have a long-term (and public) impact on Consumers.

Thank you for your consideration.
Sincerely,
Kat O'Brien

UNITED HOLDING GROUP

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Chief Compliance Officer & General Counsel
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ACA INTERNATIONAL The Association of Credit and Collection Professionals

TrueAccord

November 29, 2023

Department of Consumer and Worker Protection
42 Broadway
New York, NY 10004

Submitted via email to: rulecomments@dcwp.nyc.gov

RE: Proposed Amendment to Debt Collection Rules

Dear Department of Consumer and Worker Protection:

My name is Kelly Knepper-Stephens and I am General Counsel and Chief Compliance Office for TrueAccord Corp. (TrueAccord). On behalf of TrueAccord, I appreciate the opportunity to submit comments to the Department of Consumer and Worker Protection (DCWP) regarding the proposed amendment to New York City's debt collection rules in Title 6 (Amendment). The Amendment seeks to ensure consumers pay only debts they owe and prevent improper debt collection practices; however, as currently proposed, the Amendment makes it more difficult for consumers to enact their state and federal debt collection rights. However, the proposed changes to Section 5-77(b)(5) have the unintended consequence of raising barriers for consumers to correspond in their channel of preference with collection agencies—barriers that do not exist outside of New York.

The DCWP Amendment requires consumers to opt-in to digital debt collection communications before any digital communications can be sent notifying consumers about their accounts; this opt-in requirement means debt collectors will have to make phone calls to NYC residents to obtain a new opt-in, even when consumers already opted-in to digital communications about the account with the creditor. This prevents consumers from learning about their account by email or text message, exploring options electronically on their own time without having to speak to a debt collector on the telephone, and receiving additional benefits that come with early communication about their debts—such as setting up a payment plan, having a credit reporting tradeline updated or deleted, providing evidence of fraud or identity theft, and disputing all or portions of the balance. New York consumers who do not answer their phones are less likely to receive these benefits that come with knowing there is a debt in collection and the rights and options that they have.

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www.TrueAccord.com

As a company that predominantly leverages electronic communication for virtually all aspects of our customer interaction, TrueAccord wanted to share our experience and the experience of the over 20 million consumers with whom we have worked to assist in your consideration of the Amendment's draft language with three principles in mind:

1. **Digital communication is a step forward in consumer protection**. Digital communication is easily controlled by consumers and is tightly managed by service providers with built in mechanisms to prevent harassment.

2. **Consumers typically prefer digital communication**. Consumers predominantly communicate with their banks, creditors, and lenders digitally, so digital collection is a smooth transition, easily accessed at the time chosen by the consumer with a written account of communications.

3. **Requiring consumers to opt-in to digital communications further burdens consumers and stifles the flow of information that helps consumers make informed decisions about their finances.** Requiring consumers who have opted-into digital communications with their original creditor to opt-in to digital communications again in order to discuss the same account with a collection agency adds burden to consumers and delays important information about debts. Moreover, limiting digital communications causes serious unintended consequences, like debt collection lawsuits, since collectors and consumers cannot effectively communicate using modern tools.

TrueAccord appreciates the DCWP taking this opportunity to amend the debt collection law. To further promote consumer protection and choice, we have proposed alternative language for your review. We would welcome the opportunity to discuss the proposal with you.

I. Digital Debt Collection

TrueAccord is a digital-first debt collection company, founded ten years ago to improve the experience of consumers in debt collection. We aim to change the debt collection process using technology, so consumers can take care of their debt at their convenience and at a pace that works for them, while giving them the time they need to get back on their feet. We enter into contracts with eCommerce companies, lenders, debt buyers, and service providers to provide collection services on their past due accounts.

TrueAccord's Digital Debt Collection Communications

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Almost all TrueAccord communications with consumers (96%) happen electronically with no agent interaction—as consumers prefer and demand—providing immediate access to information, answers, and documentation. The remaining 4% of consumers interact by inbound email or phone call with any of our over 60 customer care agents located in our Lenexa, Kansas headquarters.

We have reached out to more than 20 million consumers since our founding and many of these consumers take the time to provide positive feedback about their TrueAccord debt collection experience. TrueAccord earned an A with the Better Business Bureau and has a 4.7 out of 5 stars on Google Reviews. For example, this consumer told us on February 6, 2023 :

> Thank you for creating a manageable approach and payment option to settle this account. Having been homeless until recently has made this time extremely difficult but I am thankful at how easy this was to accomplish thanks to your website and ease of access.

Consumers, such as the one from the example above, are able to easily navigate to our website through a link we provide on our outbound digital communications. In fact, this consumer told us this August 2023:

> Really appreciate your service [sic] had no idea that my bill had not gone through because I had change [sic] the credit card that it was being billed on so I really appreciate the email so that I could take care of it quickly. It was very simple. I really enjoyed the program. It was easy to use and I recommend it.

TrueAccord's Efforts to Promote Consumer Protection

As one of the only companies leveraging electronic communication and machine learning in virtually all aspects of our customer interaction, TrueAccord is happy to provide data and information to assist lawmakers and regulators. Our Founder, Ohad Samet, served on the Consumer Advisory Committee to the Consumer Financial Protection Bureau (CFPB) and currently sits on the Consumer Advisory Committee to California's Department of Financial Protection and Innovation. In these roles, he has worked with these regulators and stakeholders to think through the best methods to promote consumer protection.

TrueAccord provided significant feedback to the CFPB concerning Regulation F, the modernization of the federal FDCPA that took effect November 30, 2021 The final rule mirrored the majority of our practices, which notably does not require a consumer to opt-in to electronic communications. Instead, Regulation F requires all debt collectors include "clear and conspicuous" opt-out links on all digital

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communications (see 12 CFR § 1006.6(e)). Additionally, to send required disclosures electronically debt collectors "must do so in a manner that is reasonably expected to provide actual notice in a form the consumer may keep and access later" (see 12 CFR § 1006.42). This includes monitoring deliverability, identifying the debt collector as the sender of the email, and having two pieces of account information in the subject line.

TrueAccord also provided significant feedback to the Council for the District of Columbia regarding their Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2022 that took effect January 1, 2023 (DC Collection Law). The final amendment restricted outbound digital communications to one in a seven day period, unless the consumer opted into additional digital communication (email, text messages, private instant message on social media). The DC Collection Law requires all digital communications contain clear and conspicuous opt-out methods (unsubscribe flows in emails and "reply STOP to opt-out" in text messages) with strict penalties for debt collectors who do not honor a consumer's request to opt-out of digital communication channels.

Our recommendations to the Department (discussed herein) are based on data, our experiences, our consumers' experiences, and our work with federal and state lawmakers and regulators.

II. Unintended Harms to Consumers if Digital Communications are Restricted

Email is a Step Forward in Consumer Protection

Digital communications already provide superior consumer protections than phone calls and letters for several reasons:

First, all digital communications are written, documented, and can be searched. Email providers offer search and archiving options, automatically creating a paper trail of communication between the consumer and the collector.

Second, electronic communication offers significantly better protection from unwanted or harassing communication compared to phone calls and letters. Consumers hold the power and can easily opt out of electronic communication by clicking "unsubscribe," marking emails as spam, replying STOP to a SMS, or blocking a number entirely from their device. When a consumer marks an email as spam, the consumer's email service provider (gmail, yahoo, hotmail, etc.) will downgrade the sender and if more than one consumer marks the same sender as spam the email service provider will ban the sender from delivering emails. The same is true for text messaging. Consumers hold the power and can easily reply STOP to

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unsubscribe. The telephone carriers heavily police senders and in some cases block text message communications altogether.

Third, embedded email protections prevent bad actors who use emails to harass as senders tagged as spammers have a less than 5% success rate of reaching consumer inboxes. Legitimate businesses must have a well-designed deliverability strategy that includes internal frequency limits to ensure the ability to reach the inbox. The same is true for text messaging. When a consumer replies stop, many SMS providers will not permit future texts from the sender to any number who previously opted out from that sender. There are not similar protections for mail and call blocking services are not as effective.

Consumers Prefer Digital Debt Collection

By and large, consumers prefer to communicate with their collection agencies digitally. Using digital channels allows consumers to engage at times when they are available, without having to feel pressured by collectors on the phone, and using an experience consumers are used to in other areas of their lives.

For example, almost all TrueAccord communications with consumers (93%) happen electronically with no agent interaction because the electronic communications contain links to online pages where consumers can take action on their accounts, everything from disputing the account, reporting identity theft, negotiating payment arrangements, setting up a payment plan, changing scheduled payments, reporting a hardship, unsubscribing, etc. In fact, more than 21% of consumers resolve their accounts outside of typical business hours—before 8AM and after 9PM—when it is presumed inconvenient to contact consumers under the federal Fair Debt Collection Practices Act (FDCPA).

Using our online tools, consumers have immediate access to information, answers, and documentation. Consumers can dispute, unsubscribe, report identity theft, make a payment, set up a repayment plan, make changes to their payment plan, request a hardship, report a bankruptcy, etc. The remaining 7% of consumers who do interact with an agent, send an inbound email or make a phone call to our inbound call center where any of our customer care agents are prepared to assist with their request.

Limiting Email Use Hurts Consumers

Requiring special consent for email, text messaging, or other digital channels, when no such consent is required for calls and letters, hurts consumers by increasing

unwanted calls and litigation risk. It also stifles the flow of information that helps consumers make informed decisions about their finances.

First, consumers already opt-in and communicate through primarily digital channels with their creditors. Consumers use the internet, mobile devices and their emails for communication, shopping and financial transactions. In fact, 87% of TrueAccord consumers visit our web portal from their mobile devices and tablets, not their desktop computer. When a customer defaults on their account, it is a disruption to their lives to suddenly receive phone calls and letters regarding an account for which they previously only communicated via digital channels. Many of TrueAccord's creditor-clients, concerned about their consumer experience and their brand image, prefer a seamless transition to debt collection and prohibit TrueAccord from making any outbound calls or sending letters on their accounts because their customers have only ever interacted digitally.

If a consumer decided that they did not want to communicate digitally on an account in collection, consumers can unsubscribe at any time whether through email or SMS. TrueAccord provides consumers with the option to unsubscribe on every email and to reply STOP to opt-out on every text message. In addition to the consumer's ability to opt-out of digital communications directly with TrueAccord, the consumer has the ability to identify the sender as spam directly with their email service provider or block a number from their device, essentially barring the sender from using email or SMS.

Second, a person's email address is typically the best, most accurate contact method—where phone numbers and addresses change, a person's email changes less frequently. Unlike phone numbers which are reassigned, email service providers do not reassign email addresses. At TrueAccord, 96% of accounts placed for collection have at least one email address provided by the consumer at the time of originating an account online.

Unfortunately, if a debt collector is not able to reach a consumer, the creditor is forced to take more aggressive measures to collect, including filing a debt collection lawsuit to recover. Depriving consumers of the option to have easily available digital communications often results in disengagement, failure to communicate about account resolution, and ultimately, a lawsuit to collect. For example, New York State filings increased 61% from 2016 to 2017, and another 32% from 2017 to 2018, following the enactment of 23 NYCRR 1.[1]

[1] Yuka Hayashi, *Debt Collectors Wage Comeback*, Wall Street Journal, July 5, 2019.

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In addition to lawsuits, there is a larger impact on the credit ecosystem. If debt collectors are unable to communicate and collect from consumers, credit becomes more difficult for consumers to obtain. The CFPB recognizes this, and stated "Fair and reliable collection of consumer debts is essential for a well-functioning consumer economy. If creditors are unable to collect debts at reasonable cost and with reasonable certainty, then they will be less likely to lend in the first place, especially to riskier borrowers."[2]

Lastly, if consumers are required to opt-in to digital communications, it may have an adverse effect on vulnerable populations of consumers. According to the Pew Research Center, "reliance on smartphones for online access is especially common among younger adults, lower-income Americans and those with a high school education or less."[3] As described above, TrueAccord primarily sends digital communications to consumers and such communications help consumers navigate to our website and perform actions at their convenience online. As this consumer told us on January 18, 2023:

> I like how you explain everything in detail by email and easy payment plans for people to regain their credit scores and to get back on their feet.

We believe requiring consumers to opt-in to digital communications will disadvantage vulnerable populations of consumers who primarily conduct most of their affairs digitally.

III. Proposed Amendment to 6 RCNY § 5-77(b)(5)

To help promote consumer protection and minimize the unintended consequences of the new language restricting digital communication, we urge that proposed amendments to Section 5-77(b)(5) covering electronic communications be revised (see Exhibit A, Proposed Revisions). Our suggested edits to Section 5-77 (b)(5) are modeled in part on D.C. Law 24-154 Projecting Consumers from Unjust Debt Collection Practices Amendment Act of 2022 which achieves the same consumer protections in electronic communications sought by the DCWP without placing further burdens on consumers to have to opt-in again to electronic communications about the account.

[2] CFPB Task Force on Federal Consumer Financial Law Report, January 2021.

[3] Pew Research Center, Mobile Fact Sheet, April 7, 2021.

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Consumers Should Not Have to Opt-In to Electronic Communications Twice
The edits TrueAccord proposes to Section 5-77(b)(5)(i)(B), would permit a debt collector to communicate electronically with a consumer using the contact information the consumer provided previously to the creditor. Not only is this change consistent with the federal laws,[4] it is consistent with consumer preference and expectations.

When a consumer provides their electronic contact information (email address or cell phone number) to the creditor, there should be little doubt that the consumer desires to communicate electronically. If the consumer does not, they can unsubscribe. The Amendment suggests that consumers who already provided their creditor with their electronic communication contact information would not want to communicate electronically after default with a debt collection company. TrueAccord knows this to be untrue for the majority of consumers, as evidenced by countless consumers, who have provided feedback (either directly or online) throughout our years in business, like this consumer who wrote on February 10, 2023:

> I appreciate that I was not constantly heckled and called by True Accord. I got sent a few emails but they were gentle reminders like "hey don't forget about us we're trying to help" and I didn't mind it all all [sic]. I set up my payment plan within 10 minutes (and that was mostly me being indecisive about how quickly I wanted to pay the debt off as I'm tackling a few others at the same time.). The process is fast and easy and I feel in control of what I can afford and the debt will be paid off within 3 months!

Or this consumer in September 8, 2019:

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[4] Under the Telephone Consumer Protection Act consent given to the creditor transfers to a debt collector. See for example, *Fober v. Management and Technology Consultants, LLC,* 886 F.3d 78, 794 (9th Cir. 2018) (holding that a consumer can provide prior express consent through an intermediary based upon the scope of the consumer's consent); *Kuch v. PHH Mortgage Corporation, 2021 WL 6424638, at *8 (W.D.N.Y. 2021) ("[T]he FCC specified that 'a consumer who provides his or her wireless telephone number on a credit application, absent instructions to the contrary, has given prior express consent to receive autodialed or prerecorded message calls 'regarding the debt' at that number,* ***including autodialed and prerecorded debt collection calls from a debt collector acting on behalf of the creditor****.)(emphasis added)(citing Matter of GroupMe, Inc., 29 F.C.C. Rcd. 3442, 3445-46 (F.C.C. 2014))*; the FCC Orders on the ability of a debt collector to rely on consent provided to the creditor such as *In the Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991,* 23 FCC Rcd. 559, 559 (2008)(prior express consent exists when one has made their number available to the creditor). Neither does the FDCPA prohibit the debt collector from communicating electronically with the electronic addresses provided by the consumer to the creditor. *See* 85 FR 76734, 76780 (noting that "nothing in 1006.6(d)(4)(i) prohibits a debt collector from sending an email to an email address provided by the consumer to the creditor.") The Proposed Revision does not alter the protections against third party communications that already exist in 15 U.S.C. 1692(c)(b).

> I hate the idea of being on a collection list but TrueAccord made the process as simple as possible. Handled everything through e-mail, no nagging phone calls. I was given a set of options for payments and I was able to pick the one that worked best for me.

Not all customers in debt provide positive feedback. Some TrueAccord customers file complaints.[5] Nevertheless, the Better Business Bureau, who receives some of these complaints, grades TrueAccord at an A. TrueAccord's Google review rating is a 4.7 out of 5 stars.[6] If a consumer who communicated electronically with the creditor does not wish to communicate electronically with TrueAccord, the consumer can unsubscribe. TrueAccord provides multiple options for consumers to unsubscribe: consumers can unsubscribe using the email hyperlink, replying STOP or something similar to opt-out, call into our call center to tell an agent, reply to any email communication expressing the desire to opt-out, fill out a form on our webpages (generating an inbound email to our call center), or mail a letter.

If the consumer did not provide their electronic contact information to the creditor, TrueAccord's Proposed Revisions require the debt collector to obtain revocable consent from the consumer to receive electronic communications regarding the account using the language created in the Amendment. See Proposed Revisions section 1.6(e). Additionally, the Proposed Revision contains the requirement to retain evidence of such consent for six years.

Unsubscribe Hyperlink to Satisfy Clear and Conspicuous Disclosure

TrueAccord also suggests an additional phrase be inserted into Section 5-77(b)(5)(v) to clarify that the revocation of consent disclosure may be satisfied through a standard unsubscribe hyperlink (see Exhibit A-Proposed Revisions). This clarification will prevent debt collectors offering consumers the ability to unsubscribe through a hyperlink, as most consumers expect, in their electronic communications from class action lawsuit over whether the "unsubscribe hyperlink" falls into the current proposed language: "some other word(s) that reasonably indicates the consumer wishes to opt-out. "

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[5] For every 1 million emails sent, TrueAccord received 0.78 regulatory complaints in 2022 (defined as consumer complaints sent to TrueAccord by the CFPB, state Attorney General, the BBB, or other state regulatory agencies).

[6] A Google review is an opportunity for a customer to provide public feedback regarding their experiences with a business. Our customers, often using their full name, took time out of their day to post a public review for anyone to read regarding their experience in debt collection with TrueAccord. *See* TrueAccord's Google Reviews (last visited February 12, 2023).

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The proposed clarification will also ensure that consumers can opt-out as they do from all other unwanted communications in other industries, as this method of opt-out is a common practice expected and used by consumers and required by carriers. Of the millions of email communications we send, .04% of consumers unsubscribe, most using the link.[7] There is a short processing time for our systems to update the consumers communication preference for any unsubscribe request submitted through our unsubscribe hyperlink flow (under ten minutes).

All text messages contain the phrase "Reply STOP to opt-out" and of the millions of text messages we send on average 1.13% of consumers reply stop. TrueAccord monitors all messaging replies to ensure that a consumer is unsubscribed if they use language other than the word "stop" as expected by the telephone carriers.[8] When a consumer unsubscribes from a channel, we stop all communication to that particular channel as required under federal law[9] and as will be required under section 1.6(c) of the Amendment.

Include an Effective Date Providing At Least One Year to Comply

Section 2-193 of the Amendment requires debt collectors to log and create reports of additional information not required to be logged today in the manner specified by the proposed law. It will take at least one year for our company to be able to revise our collection software system to add these new fields and reporting capabilities. In

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[7] Of this small percentage of consumers who unsubscribe from email, the breakdown in 2019 of how these consumers unsubscribed was as follows: 88% unsubscribe using the link, 1% percent unsubscribe by calling TrueAccord, 10% unsubscribe by sending in an email and the remaining 1% use a form found on our web pages.

[8] The Cellular Telecommunications Industry Association (CTIA) explained their expectations for opt-out practices as follows:

> Standardized "STOP" wording should be used for opt-out instructions, however opt-out requests with normal language (i.e., stop, end, unsubscribe, cancel, quit, "please opt me out") should also be read and acted upon by a Message Sender except where a specific word can result in unintentional opt-out. The validity of a Consumer opt-out should not be impacted by any de minimis variances in the Consumer opt-out response, such as capitalization, punctuation, or any letter-case sensitivities.

MESSAGING PRINCIPLES AND BEST PRACTICES, CTIA, July 2019, page 15, found at: https://api.ctia.org/wp-content/uploads/2019/07/190719-CTIA-Messaging-Principles-and-Best-Practices-FINAL.pdf (last visited February 13, 2023).

[9] Both the Telephone Consumer Protection Act and the Fair Debt Collection Practices Act implementing Regulations, Regulation F, require the debt collector to stop all communications in a channel once a consumer unsubscribes. *See* 47 USC § 227 *et seq.*; 15 USC § 1692d; and 12 CFR § 1006.14(h)(1).

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some cases, we will need to work with our software vendors to support the necessary changes. TrueAccord supports the outline of proposed changes provided in the comments submitted by our industry associations, the Receivables Management Association and American Collectors Association, in regards to these sections.

IV. Conclusion

TrueAccord appreciates the DCWP taking this opportunity to amend the debt collection law. We would very much appreciate the opportunity to answer any questions that you may have, including provisioning any additional data the DCWP may need in considering the proposed changes.

On behalf of TrueAccord,

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Chief Compliance Officer and General Counsel
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415-850-9585

cc: legal@trueaccord.com

EXHIBIT A - PROPOSED REVISIONS

Section 5. Section 5-77 of Part 6 of Subchapter A of Chapter 5 of Title 6 of the Rules of the City of New York is amended to read as follows:

§ 5-77. Unconscionable and Deceptive Trade Practices.

* * * *

(5) Contact a New York City consumer by electronic communication unless the debt collector satisfies the following requirements:

(i) A debt collector may only use a specific email address, text message number, social media account, or specific electronic medium of communication if:

(A) such electronic communication is private and direct to the consumer; and

(B) the debt collector only sends one electronic communication in a seven day period unless the debt collector obtains revocable consent from the consumer in writing, given directly to the debt collector, to use such email address, text message number, social media account, or other electronic medium of communication to communicate about the debt more frequently, and the consumer has not since revoked the consent; or ~~(C)~~ the consumer used such email address, text message number, social media account or other electronic medium of communication to communicate with the debt collector about a debt within the past 30 days and has not since opted out of communications to that email address, text message number, social media account or other electronic medium of communication or opted out of all electronic communications generally.

(ii) A person's electronic signature constitutes written consent under this section, provided it complies with all relevant state and federal laws and rules, including article three of the New York Technology Law (New York Electronic Signatures and Records Act) and chapter 96 of title 15 of the United States Code (Electronic Signatures in Global and National Commerce Act).

(iii) The written consent, revocable by the consumer, is retained by the debt collector until the debt is discharged, sold, or transferred.

(iv) A debt collector who sends any disclosures required by this subchapter electronically must do so in a manner that is reasonably expected to provide actual notice, and in a form that the consumer may keep and access later.

([v) The debt collector must include in every electronic mail communication to the consumer a clear and conspicuous written disclosure that the person may revoke consent to receive electronic communication at any time, and a reasonable and simple method by which the consumer can opt-out of further electronic communications or attempts to communicate by the debt collector, which may include replying "stop," an "unsubscribe" hyperlink, or some other word(s) that reasonably indicates the consumer wishes to opt-out. The disclosure to the consumer must be in the same language as the rest of the communication and the debt collector must accept the consumer's response to opt-out in the same language as in the initial electronic mail that prompted the response from the consumer or in any language used by the debt collector to collect debt.

(vi) The debt collector may not require, directly or indirectly, that the consumer, in order to opt-out, pay any fee to the debt collector or provide any information other than the consumer's opt-out preferences and the email address or text message number subject to the opt-out request.

November 29, 2023

By email to Rulecomments@dcwp.nyc.gov

Re: Proposed Amendments to New York City Department of Consumer and Worker Protection Rules Relating to Debt Collectors

To whom it may concern:

New Economy Project appreciates the opportunity to comment on the Department of Consumer and Worker Protection's (DCWP) 2023 revised proposed amendments to its debt collection rules. The proposed amendments—along with the state Consumer Credit Fairness Act, which went into effect in April 2022 and addresses certain abuses in the collection of debt through lawsuits—will help curb debt collection abuses by third-party debt collectors and address certain gaps left by the Consumer Financial Protection Bureau's debt collection rule, Regulation F.

New Economy Project's mission is to build an economy that works for all, based on cooperation, equity, social and racial justice, and ecological sustainability. For more than 25 years, we have worked closely with community groups across New York City and State to challenge discriminatory economic practices that harm communities of color and perpetuate segregation, poverty, and inequality. For years, our organization has operated a free legal assistance hotline serving low-income New Yorkers and assisted thousands of people aggrieved by abusive debt collection practices, including debt collectors' refusal to provide basic information about alleged debts, excessive and harassing phone calls, and attempts to seize exempt income.

We note that our comments are unavoidably preliminary as the state Department of Financial Services (DFS) has not yet reissued its own proposed amendments to its debt collection rules; we are therefore concerned about potential conflicts between DFS's and DCWP's rules, particularly with respect to statute of limitations disclosure requirements. With this caveat, we support certain of DCWP's proposed amendments, but also urge DCWP to make critical changes and work with DFS to harmonize DCWP's and DFS's rules.

The proposed amendments include vital protections for New Yorkers. In particular, we strongly support the following proposed amendments, which would:

- Add important provisions regarding the collection of medical debt;
- Apply protections to debt collectors' attempted communications, not just communications (*e.g.*, proposed NYC Admin. Code section 2-193);
- Limit debt collectors to three communications or attempted communications within a seven-day period **per consumer**, not per account (proposed 6 RCNY section 5-77(b)(1)(iv)(A));
- Require debt collectors, before furnishing a debt to a consumer reporting agency, to notify consumers that they may report the debt to a consumer reporting agency (proposed 6 RCNY section 5-77(e)(10));
- Require debt collectors to include notices to buyer/transferee/assignee regarding debts that were paid or discharged in bankruptcy or could not be verified (proposed 6 RCNY sections 5-77(e)(11) and (13));
- Require debt collectors to provide the validation notice in writing (proposed 6 RCNY section 5-77(f)(1)) and prohibit debt collectors from providing the validation notice exclusively by electronic means (proposed 6 RCNY section 5-77(f)(2)(i));
- Confirm that consumers may dispute debts and request original creditor information "at any time during the period in which the debt collector owns or has the right to collect the debt" (proposed 6 RCNY sections 5-77(f)(6) and (8));
- Require debt collectors to verify a debt within 45 days of receiving a dispute or request for verification from a consumer (proposed 6 RCNY section 5-77(f)(6));
- Require debt collectors to include in their records whether a judgment in a case was on default or on the merits (proposed 6 RCNY section 2-193(b)(3)); and
- Prohibit debt collectors from falsely representing that consumers may not dispute a debt or request verification by oral communication (proposed 6 RCNY section 5-77(d)(21)).

In addition, we urge DCWP to make the following critical changes to help ensure that the protections intended by the proposed amendments are meaningful for everyday New Yorkers:

1. **Prohibit the collection of time-barred debt, or at least limit collection of such debt to written communications; and prohibit the sale of time-barred debt.**

We urge DCWP to improve upon Regulation F and current New York State requirements by prohibiting the collection of time-barred debt, rather than merely requiring disclosures that a debt is time-barred. At the very least, DCWP should limit collection of time-barred debt to only written communications, as DFS proposed to do in its initial proposed amendments.

Because of the huge potential for errors and deception in the collection of time-barred debt, we also urge DCWP to prohibit selling, transferring, or placing time-barred debt for collection,

rather than merely requiring debt collectors to include notices to debt buyers or subsequent debt collectors regarding debts that are expired (proposed 6 RCNY section 5-77(e)(12)).

2. **Clarify that debt collectors must pause collection activity after a consumer's dispute until they provide verification, regardless of when the consumer submitted their dispute (proposed 6 RCNY section 5-77(f)(6) and (7)); and eliminate the loophole that would allow debt collectors to evade the requirement to provide a notice of unverified debt (proposed 6 RCNY section 5-77(f)(7)).**

Section 20-493.2(a) of the New York City Administrative Code requires debt collectors to pause collection activity following a consumer's request for verification of an alleged debt until they provide verification; and, significantly, does not impose any time limit on the consumer's ability to request verification. We commend DCWP for proposing to amend 6 RCNY section 5.77(f)(6) accordingly, to explicitly allow consumers the right to dispute an alleged debt "at any time during the period in which the debt collector owns or has the right to collect the debt." In keeping with section 20-493.2(a) of the Administrative Code, however, we urge DCWP to clarify that debt collectors must pause collection activity after a consumer's dispute regardless of when the consumer submitted their dispute. Currently, the proposed rule would deny consumers a pause (or cessation) in collection activity unless the debt collector failed to provide the consumer **both** the itemization required by proposed6 RCNY section 5-77(f)(1)(vii) **and** a timely written verification of the debt (see proposed 6 RCNY section 5-77(f)(6)).

Similarly, we welcome the requirement that debt collectors would have to provide a "notice of unverified debt" and stop collecting on a debt if they are unable to verify the debt. However, the proposed amendments would allow debt collectors to evade this requirement by merely providing an itemization of the debt. This would constitute a significant weakening of DCWP's current verification requirements, and we strongly urge DCWP to eliminate this loophole as well.

3. **Clarify the statute of limitations disclosure (proposed 6 RCNY section 5-77(i)).**

To the extent that DCWP continues to allow the collection of time-barred debt, we support requiring disclosure of the fact that a debt is time-barred, as DCWP has proposed. We recommend, however, that DCWP significantly clarify and simplify its proposed safe-harbor language, which may confuse and mislead many people.

For example, the proposed disclosure would unhelpfully have debt collectors **both** tell people that they cannot be sued on a time-barred debt **and** instruct people as to what to do if they are sued. The statement "A court will not enforce collection" may also mislead people since a court will **certainly** enforce collection of any judgment a debt collector succeeds in obtaining on a time-barred debt, on default or because the defendant was otherwise unable to raise a statute of limitations defense.

DCWP should also require different disclosure language depending on whether the applicable statute of limitations (SOL) may or may not be revived by payment or acknowledgment. As of May 2022, the statute of limitations for debts arising from consumer credit transactions, as defined by section 105(f) of the Civil Practice Law and Rules (CPLR), cannot be revived by payment or by written acknowledgement (CPLR 214-i, as added by the Consumer Credit Fairness Act).

To address the above concerns, we recommend the following distinct disclosures, which we have also proposed in nearly identical form to DFS:

- For time-barred debts on which the statute of limitations cannot be revived by payment or acknowledgment under CPLR 214-i: "NYC regulations require us to disclose the following: It is illegal for a creditor or debt collector to sue you to collect on this debt because this debt is too old. To learn more about your legal rights and options, consult an attorney or a legal assistance or legal aid organization."

- For time-barred debts on which the statute of limitations may be revived by payment or by written acknowledgment pursuant to General Obligations Law section 17-101: "NYC regulations require us to disclose the following: It is illegal for a creditor or debt collector to sue you to collect on this debt because this debt is too old. However, be aware that if you make a payment on this debt or admit in writing that you owe this debt, then you will give the creditor or debt collector more time under the law to sue you to collect on this debt. To learn more about your legal rights and options, consult an attorney or a legal assistance or legal aid organization."

4. **Strengthen provisions regarding collection of medical debt.**

We applaud DCWP for proposing to add critically important provisions to protect New York City residents against abuses in the collection of medical debt. We endorse the recommendations that the National Consumer Law Center and Community Service Society make in its comments to strengthen the provisions in the proposed amendments pertaining to medical debt.

5. **Do not weaken recordkeeping requirements regarding service of process (proposed NYC Admin. Code section 2-193(b)(3)).**

We are concerned by DCWP's proposal to relieve debt collectors from the requirement that they maintain the following information in their record of all cases filed in court to collect a debt: 1) the name of the process server who served process on the consumer, 2) the date, location, and method of service of process, and 3) the affidavit of service that was filed.

Rampant sewer service problems continue to plague defendants in debt collection lawsuits, and debt collectors—particularly certain debt collection law firms—often fail to produce affidavits of service when defendants raise a service defense or challenge a default judgment in court. Though debt-collector plaintiffs legally bear the burden of establishing a prima case that service was proper, courts sometimes improperly shift the burden to defendants to establish that service was **not** proper and unfairly fault defendants for not being specific enough in describing why service was improper, even when they cannot benefit from seeing the affidavit of service.

As a matter of public policy, DCWP should maintain, and not weaken, the existing requirement that debt collectors keep this basic information and documentation concerning their alleged service of process in debt collection lawsuits—especially given DCWP's critical role in regulating process servers and curbing these rampant due process abuses.

6. Clarify the itemization requirement (proposed 6 RCNY section 5-77(f)(1)(viii)).

We commend DCWP for continuing to require that debt collectors provide specific information in response to a dispute or request for verification, in contrast to the vagueness of the verification requirement in the Fair Debt Collection Practices Act and Regulation F. We recommend, however, that DCWP clarify the relevant language in its proposal. For example, subparagraph (D) of proposed section 5-77(f)(1)(viii) ("[t]he total amount asserted to be due on the date of the itemization") appears to be duplicative of subparagraph (A) ("[t]he total amount of the outstanding debt asserted to be due on the itemization reference date"); subparagraph (D) also uses the undefined term "date of the itemization." Also, it is not entirely clear what DCWP intends by proposing that debt collectors "may list the 'principal balance' as the total amount of the outstanding debt asserted to be owed by the consumer on the itemization reference date" (see language in proposed section 5-77(f)(1)(viii) following subparagraph (D)). It appears that DCWP may be proposing to allow the "total amount" allegedly owed on the itemization reference date to serve as a substitute for the "principal balance" disclosure required by NYC Admin. Code section 2-190(b) (stating that debt collectors must provide written documentation "itemizing the principal balance of the debt that remains or is claimed or alleged to remain due, among other information"). We request that DCWP clarify this language, especially as it appears to be proposing a new interpretation of the statutory language in section 2-190(b).

7. Require employer liability (proposed 6 RCNY section 5-77(g)).

We are deeply concerned that DCWP appears to propose granting employers of debt collectors a wholesale carveout from liability for violations of section 5-77, prohibiting "Unconscionable and Deceptive Trade Practices." DCWP's public notice containing the latest proposed amendments presents section 5-77(g) as if it currently reads "Reserved," when in fact the first sentence of 6 RCNY section 5-77(g) currently reads as follows: "*Liability.* The employer of a debt collector is liable for the debt collector's violation of 6 RCNY § 5-77." (DCWP also proposes deleting other provisions mentioning employer liability, *e.g.*, sections 5-77(a), (b), (d), and (e)(7).)

As a matter of public policy, we strongly oppose deleting from section 5-77(g) the rule that "[t]he employer of a debt collector is liable for the debt collector's violation of 6 RCNY § 5-77." Employers of debt collectors must be held accountable for their employees' acts and take measures to ensure their employees' compliance with all applicable debt collection rules, including section 5-77, which prohibits "Unconscionable and Deceptive Trade Practices."

We do support deleting the second sentence of section 5-77(g), which currently reads, "A debt collector who is employed by another to collect or attempt to collect debts shall not be held liable for violation of 6 RCNY § 5-77." Debt collectors should not be able to escape liability for violation of section 5-77, prohibiting "Unconscionable and Deceptive Trade Practices," simply because they are employed by another to collect or attempt to collect debts.

8. Require debt collectors to provide meaningful language access services.

In our many years of experience helping low-income New York City residents, including many with limited English proficiency, we have yet to hear of any debt collectors who have provided required written notices and other correspondence in the consumer's primary language. DCWP's current rules do not, and its proposed amendments would not, affirmatively require debt collectors to have and offer language access services.

Though we strongly support DCWP's proposed requirement that a validation notice and verification letter or "unable to verify notice" be translated into the language requested by the consumer, this proposed requirement would apply only to those debt collectors that in fact offer language access services; it is meaningless if debt collectors may simply choose not to offer language access services as a way to avoid DCWP's language access requirements.

Especially in a place as diverse as New York City, debt collectors should be required to provide language access services in at least the most common languages spoken in New York City. At a minimum, DCWP should require that where the original contract giving rise to the alleged debt is in a language other than English or where a debt collector uses a language other than English in the initial oral communication with a consumer, the debt collector must provide required notices in that language.

In addition, we endorse the National Consumer Law Center's recommendations in its comment pertaining to language access.

9. Provide a private right of action.

DCWP's rules are meant to protect New York City residents, and noncompliance may subject debt collectors to enforcement. Because DCWP has limited enforcement capacity, the rules should include a private right of action, to extend the rules' reach, alleviate DCWP's burden, and ensure that New Yorkers harmed by debt collectors are fully able to vindicate their rights.

Thank you for the opportunity to comment. Please feel free to contact me at susan@neweconomynyc.org with any questions.

Sincerely,
/s/ Susan Shin, Legal Director

RECEIVABLES MGMT. ASSOC. INTL.
SETTING THE GLOBAL STANDARD

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November 29, 2023

By Electronic Submission to rulecomments@dcwp.nyc.gov

NYC Department of Consumer & Worker Protection
Hon. Vilda Vera Mayuga
42 Broadway
New York, NY 10004

Re: Comments on Proposed Debt Collector Rulemaking

Dear Commissioner Mayuga:

The Receivables Management Association International (RMAI) is pleased to submit our comments to the New York City Department of Consumer & Worker Protection (DCWP or Department) related to proposed rulemaking on debt collection as requested in DCWP's invitation for comments issued on September 20, 2023.

As background, RMAI is the nonprofit trade association that represents more than 600 companies that purchase or support the purchase of performing and nonperforming receivables on the secondary market. RMAI member companies work in a variety of financial service fields, including banks, credit unions, nonbank lenders, debt buying companies, collection agencies, collection law firms, brokers, international members, and industry-related product and service providers. RMAI's Receivables Management Certification Program (also referred to as RMCP or Certification Program)[1] and its Code of Ethics[2] set the "gold standard" within the receivables management industry due to their rigorous uniform industry standards of best practice which focuses on protecting consumers.

Rolled out in 2013, RMAI's Certification Program sets high and robust industry standards that seek to go above and beyond the requirements of state and federal law for the protection of consumers.[3] While the program was first designed to certify debt buying companies, it has expanded to include certifications for law firms, collection agencies, and vendors (e.g., receivable brokers and process servers). Currently, 461 companies and individuals hold these

[1] Receivables Management Association International, *Receivables Management Certification Program*, version 11.0 (Feb. 14, 2023), publicly available at https://rmaintl.org/GovernanceDocument.
[2] Receivables Management Association International, *Code of Ethics* (August 13, 2015), publicly available at https://rmaintl.org/about-rmai/code-of-ethics/.
[3] RMCP's Mission Statement reads in part, the certification program "is an industry self-regulatory program administered by RMAI that is designed to provide enhanced consumer protections through rigorous and uniform industry standards of best practice" (page 1).

internationally respected certifications. Presently, all the largest debt buying companies in the United States are RMAI certified, and we estimate that approximately 80 to 90 percent of all charged-off receivables that have been sold on the secondary market are owned by an RMAI certified company.

A review of the federal Consumer Financial Protection Bureau's (CFPB's) Consumer Response Portal (the Portal) shows that 97.97 percent of RMAI's certified companies (the vast majority being small businesses) are either complaint-free or have maintained a statistical zero-percent complaint rate on the Portal since the Department started tracking debt collection complaints/inquiries in July 2013. Only 2.27 percent of certified companies have a complaint/inquiry volume of greater than one percent with the remaining 0.76 percent of certified companies being rounded up to a one percent complaint/inquiry rate.

A before-and-after analysis of lawsuits filed against RMAI certified businesses found that after certification, litigation on average decreased by 20.8 percent in the seven-year span from 2012-2018. During the same time-period, litigation against all businesses in the receivables industry increased by 3.1 percent, with Fair Debt Collection Practices Act[4] (FDCPA), Fair Credit Reporting Act[5] (FCRA), and Telephone Consumer Protection Act[6] (TCPA) lawsuits experiencing a 3.5 percent decrease, 13.5 percent increase, and a 26.7 percent increase, respectively. The correlation between RMAI certified businesses and a 20.8 percent decrease in lawsuits, compared to the industry as a whole, reinforces the beneficial effect of the program's high standards and its focus on compliance.[7]

Highlights of the RMAI certification program include a commitment to ongoing education, independent third-party audits, designation of a company Chief Compliance Officer (CCO), and compliance with robust standards including:

- Vendor Management: Ensuring that anyone with access to or contact with consumer accounts adheres to the same criteria as the certified company, including assurance of data security systems/policies.

- Data & Documentation Integrity: Mandating compliance with a comprehensive list of data and documentation requirements that exceeds all state and federal requirements. RMAI certification program maintains unique asset class criteria for auto, credit cards, bankruptcy, installment loans, judgments, medical, and student loan receivables.

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[4] 15 U.S.C. 1692 et seq.
[5] 15 U.S.C. 1681 et seq.
[6] 47 U.S.C. 227 et seq.
[7] Pamela Hong, *The Impact of the Receivables Management Certification Program on Litigation*, Receivables Management Association International White Paper (June 2019), publicly available at https://rmaintl.org//wp-content/uploads/2019/06/Litigation_White_Paper.pdf.

- Consumer Disputes: Creating a culture that promotes open lines of communication with consumers to address disputes regardless of the mode of communication the consumer chooses to use. When RMAI's certification standards are viewed in their entirety, they provide a level of consumer protection unseen elsewhere within the receivables industry. The standards include, but are not limited to, requirements that all certified businesses be registered on the CFPB consumer portal, maintain well-defined dispute policies, proactively address issues in credit reports, provide consumers direct access to the CCO, maintain consumer hardship policies, and prohibit the sale or resale of accounts that are currently in dispute or have been identified as fraudulent.

- Portfolio-Sale Standards: Ensuring the integrity of account information and transparency in the sale and resale process is paramount. Standards on chain-of-title, due diligence in the portfolio review, and representations and warranties in the purchase-and-sale agreement combine to ensure the integrity of the account information, thereby providing important consumer protections.

The positive impact on consumer credit from RMAI's certification program has been recognized during the CFPB's development of Regulation F over the course of nearly a decade and through three administrations. First in its 2016 Small Business Regulatory Enforcement Fairness Act (SBREFA) review[8] and again the 2019 notice of proposed rulemaking[9] as it helps to reinforce our ongoing efforts within the broader industry. Importantly, as original creditors see the value of the certification program, we are seeing an increase in the number of creditors requiring that their approved buyers be RMAI certified.

RMAI'S Comments on the Proposed Regulation

RMAI's comments for the proposed rule changes are provided in the margins of the attached Industry Redline so as to allow ease of understanding while explaining potential solutions. RMAI is happy to provide additional information should DCWP have questions or would like further elaboration. It is important for RMAI to note, that RMAI is a strong advocate of clear and comprehensive regulatory guidance. Our goal in providing the redlines is to provide this needed clarity so that the industry can both understand the requirements and be able to readily comply with the requirements.

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[8] Consumer Financial Protection Bureau, "Outline of Proposals Under Consideration And Alternatives Considered," (July 28, 2016), fn 85 and 92 available at https://files.consumerfinance.gov/f/documents/20160727_cfpb_Outline_of_proposals.pdf, archived at https://perma.cc/9JNH-ZDVP

[9] Debt Collection Practices (Regulation F), 84 FR 23274 (May 21, 2019), fn 378, 402, 647, and 743.

Representing a highly regulated industry at both the state and federal level does create challenges for the association as we strive for consistency in requirements, to the degree it is possible. As many RMAI members operate in all 50 states, it becomes difficult to ensure compliance in an environment where states and municipalities adopt widely varying requirements for the same activity, especially if it is in conflict with federal laws, such as the Fair Debt Collection Practices Act (FDCPA).

As such, RMAI would respectfully request that DCWP hold off on any rulemaking until the New York State Department of Financial Services (DFS) completes its revised collection rulemaking which they began in December 2021. We understand the next version of DFS's revised rule will be published soon. It is imperative that DCWP's rulemaking not contradict the State of New York's rules.

Inconsistency with State and Federal Law

Itemization Date

We strongly urge the Department to modify its definition of the itemization reference date to reflect the language used by the federal government (in Regulation F -- 12 CFR Part 1006.34(b)(3)) and New York (in 23 CCRR 1.2). For open-end credit, both use the balance at charge-off, but the Department proposes to allow the use of the balance "before the charge-off date of the debt."

Using the charge-off balance and charge-off date as the standard for itemization is consistent with what the federal Consumer Financial Protection Bureau (Regulation F) and the New York Department of Financial Services require a debt collector provide to a consumer in the initial validation notice. New York State courts, in its court rules and affidavits for default judgment applications in consumer credit matters require a plaintiff to identify the date and amount of the charge off balance.[10] In addition, under the New York Consumer Credit Fairness Act (Senate Bill 153) that took effect in 2022, itemization is required of the total amount of the debt due as of charge-off in lawsuits on consumer credit transactions.[11]

With respect to close-end loans, the Department should follow Regulation F -- 12 CFR Part 1006.34(b)(3).[12] The proposed rule does not provide that "date of the last payment" can be a payment made because of the repossession of collateral. Further, we understand a close-end motor vehicle loan can be charged-off prior to repossession.

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[10] located at https://ww2.nycourts.gov/rules/ccr/index.shtml, archived at https://perma.cc/Q4DB-LV8K .
[11] N.Y. C.P.L.R. § 3016(j)
[12] The CFPB's Official interpretation of Paragraph 34(b)(3)(iii) provides that "the last payment date is the date the last payment was applied to the debt. A third-party payment applied to the debt, such as a payment from an auto repossession agent or an insurance company, can be a last payment for purposes of § 1006.34(b)(3)(iii)."

Finally, the Department's proposed rule is silent on the itemization date for a judgment. The attached Industry Redline addresses all these issues.

The Proposed Verification Rule Harms Consumer Privacy.

Verification under the FDCPA is designed to prevent a debt collector from collecting a debt that has been paid or "dunning the wrong person."[13] Therefore, instead of responding to a verification request by sending sensitive, non-public information to someone who is not the debtor, the FDCPA requires a debt collector to only "confirm the amount of the debt and the identity of the creditor, and relay that information to the consumer."[14] Courts have declined to require a verification include the disclosure of non-public, personal information especially where the consumer can verify the debt through less sensitive information.[15]

The proposed rule does the opposite. It adopts this approach with no data to suggest that the proposed "document drop" of non-public personal information in response to a simple dispute helps consumers. In fact, our information leads us to believe it facilitates identity theft and the disclosure of sensitive personal information to bad actors.

If the recipient of a dunning letter disputes a debt (orally or in writing), the proposed rule requires the debt collector to provide a litany of highly personal, non-public information. For example, in response to a simple dispute like "this is not my debt," the proposed rule requires a debt collector to send a signed contract or a signed credit application if either exists. Since most credit cards are originated only with credit applications, a misdirected dunning letter for a credit card debt leads to the disclosure of a credit application containing a trove of personal information such as social security number, bank account information, residence, and employment history.

And, if a signed credit application does not exist for a credit card account, the debt collector is required to send "the most recent monthly statement recording a purchase transaction, payment, or balance transfer." We believe consumers want to keep their credit card purchase history out of the hands of persons who have no business reviewing them.

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[13] *Tardi-Osterhoudt v. McCabe, Weisberg & Conway LLC*, No. 1:18-cv-00840 (BKS/CFH), 2019 U.S. Dist. LEXIS 151988, at *32 (N.D.N.Y. Sep. 6, 2019) citing *Stonehart v. Rosenthal*, No. 01-cv-651, 2001 U.S. Dist. LEXIS 11566, at *23, 2001 WL 910771, at *6 (S.D.N.Y. Aug. 13, 2001) (quoting *Chaudhry v. Gallerizzo*, 174 F.3d 394, 406 (4th Cir. 1998)).

[14] *Ritter v. Cohen & Slamowitz, LLP*, 118 F. Supp. 3d 497, 503 (E.D.N.Y. 2015) quoting *Devine v. Terry*, No. 3:13-CV-01023-VLB, 2014 U.S. Dist. LEXIS 138938, at *26 (D. Conn. Sep. 30, 2014).

[15] "A contrary conclusion under these facts would require [the debt collector] to send . . . the true debtor's personal payment information. This information could possibly include such confidential information as the debtor's full social security number, credit score, or credit history. The FDCPA does not require such a result where the alleged debtor, as here, could sufficiently dispute the payment obligation by looking at the last four digits of the true debtor's social security number." *Dunham v. Portfolio Recovery Assocs., LLC*, 663 F.3d 997, 1003-04 (8th Cir. 2011).

Dunning letters can end up in the hands of bad actors, after all, there now is a "growing mail theft 'epidemic' plaguing New York City."[16] Besides, disputes with roommates, neighbors and others can lead to mail intercepts.

The proposed rule's reliance on the United States Postal Service to deliver sensitive verification only exacerbates the problem. "From March 1 through September 30, 2020, the Postal Service reported almost 73 million misrouted First-Class letters."[17] We believe delivery of verification to a consumer's known email address should be the first choice and not the hamstrung option proposed.

Communications restrictions.

We encourage the Department to align the proposed rule with the communications restrictions of Regulation F. There is no data to demonstrate consumers are harmed by the existing communications regulations of Regulation F. To be sure, a review of the CFPB complaint database revealed that since Regulation F became effective on November 30, 2021, through today, **only 261 complaints concerning excessive telephone calls were received from New York consumers over this three-year period**.[18] That is the entire state, not just New York City residents. Of that amount, approximately half the complaints were made against creditors and not debt collectors. The Department has not provided any data to demonstrate a need for restrictions that we believe make it costly and burdensome to make debt collection telephone calls or for rendering them largely ineffective.

The data is even more compelling for electronic communications. The CFPB complaint database revealed that since Regulation F became effective on November 30, 2021, through today, **only 10 complaints concerning electronic communications were received recorded from New York state consumers over this three-year period. Of that amount, only five complaints**

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[16] ABC7 New York, August 16, 2023 available at https://abc7ny.com/nyc-crime-mail-theft-usps-postal-service/13659357/, archived at https://perma.cc/XC3U-42GH ; *see also* 27 Defendants Charged With Crimes Targeting The United States Postal Service, U.S. Attorney's Office, Southern District of New York (Oct. 4, 2023) available at https://www.justice.gov/usao-sdny/pr/27-defendants-charged-federal-crimes-targeting-united-states-postal-service, archived at https://perma.cc/TG4X-AX3U .

[17] Office of Inspector General, United States Postal Service, Audit Report, Misrouted Mail Within the U.S. Postal Service Network, Report Number 20-252-R21 (Feb. 23, 2021) available at https://www.uspsoig.gov/sites/default/files/reports/2023-01/20-252-R21.pdf, archived at https://perma.cc/ME9S-WP8C .

[18] CFPB Complaint Database accessed Nov. 29, 2023 at https://www.consumerfinance.gov/data-research/consumer-complaints/search/?chartType=line&dateInterval=Month&date_received_max=2023-11-29&date_received_min=2021-12-01&issue=Communication%20tactics%E2%80%A2Frequent%20or%20repeated%20calls&lens=Product&product=Debt%20collection&searchField=all&state=NY&subLens=issue&tab=Trends, archived at https://perma.cc/2ZPH-SEZ2

concerned debt collectors.[19] The proposed restrictions on electronic communications are costly and burdensome and would effectively stifle electronic debt collection communications.

There is no data to show these onerous restrictions on speech are warranted especially when other persons can engage in the same speech without any restrictions.

Medical Debt

The proposed rule creates confusion concerning "medical debt." Most if not all debt owed to a hospital or health care provider is covered under existing law. The proposed rule would impose additional requirements on what it calls "medical debt." On the one hand, proposed § 5-76 adds a new definition, "financial assistance policy" which means "a program to reduce or eliminate charges for medical services . . . established by a nonprofit hospital or health care provider." It also defines "covered medical entity" as a certain health care provider.

However, proposed § 5-77(10) imposes additional verification requirements for "medical debt" which "includes debt arising from the receipt of health care services or medical products or devices." Unlike § 5-76, this language focus on the consumer's use of credit, rather than to whom the debt is owed. A consumer may use an existing home equity loan, credit card or other open-end credit plan to purchase medical goods and services. The debt is not owed to a health care provider or hospital, rather, it is owed to a bank or non-bank lender. To be sure, when only a portion of an open-end credit product is used for "health care services or medical products or devices," the proposed rule can be construed to require the debt collector undertake certain activities "in all related medical accounts," including but not limited to "furnish[ing] to the consumer verification on each related medical debt."

In the case of a general-purpose credit card or home equity loan debt, the debt collector will not have information available that would disclose the use of the credit facility for "health care services or medical products or devices." Let's use as an example a credit card originated in 2010. The consumer has made various purchases and never paid the balance in full. In 2015, the consumer used the credit card to pay $125.00 for a prescription drug at CVS. The card was otherwise used only to purchase electronics and travel. It became delinquent and was placed with a collection agency with an unpaid balance of $5,000.00. It is not likely the consumer or the creditor has account statements from 13 years earlier and even if they did it would show a purchase at "CVS" which could just as well be for beauty supplies.

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[19] *Id,* at https://www.consumerfinance.gov/data-research/consumer-complaints/search/?date_received_max=2023-11-29&date_received_min=2021-12-01&issue=Electronic%20communications&page=1&product=Debt%20collection&searchField=all&size=25&sort=created_date_desc&state=NY&tab=List, archived at https://perma.cc/UN7X-8H8W

We request that medical debt is defined as debt owed to a covered entity. The attached Industry Redline addresses this problem.

Effective Date

Our members need time to develop and test whatever rule is adopted. It cannot be ready on "day one" for several reasons. First, industry does not know the content of any new disclosures and must incorporate them into communications that already contain existing federal and New York state mandatory disclosures. The placement of any new disclosures will impact the printing of written communications.

Second, staff must be trained to ensure compliance with new requirements and testing conducted to verify readiness.

Third, existing recordkeeping technologies must be evaluated to determine whether they satisfy new recordkeeping requirements. In-house information technology staff and outside vendors will be required to evaluate existing technologies and program to meet the new requirements. In some cases, we believe entirely new technologies will be required to comply with recordkeeping. Testing will be needed to verify the accuracy and integrity of these technologies.

Because the proposed amendments substantially alter debt collection, we request a January 1, 2025, effective date.

Constitutional Issues the Department Might want to Consider

In addition to the redlines RMAI has provided, RMAI would also like to highlight a rapidly developing constitutional issue related to restrictions on communications that has developed subsequent to New York City's adoption of collection rulemaking, New York DFS's 2014 rule adoption, and the 2019 public comments to the CFPB's Regulation F.

Overly severe restrictions on the number of communications a debt collector may make to a consumer, similar to those contained in the proposed rule, may be unconstitutional.[20]

Typically, restrictions on speech, even commercial speech, that is content based, are subject to strict scrutiny. Under strict scrutiny a court presumes the restriction is unconstitutional and it is the state's burden to demonstrate a compelling state interest that supports the restriction. Here there is none. The commentary provided by the DCWP does not cite any data demonstrating that communications made by debt collectors somehow pose a greater risk of harm than

[20] *Barr v. Am. Ass'n of Political Consultants*, 140 S. Ct. 2335 (2020) and *ACA Int'l v. Healey*, 457 F. Supp. 3d 17, 30 (D. Mass. 2020).

communications made by creditors. Nor does the DCWP provide any data demonstrating that calls made to collect taxes, fines, or penalties owed to the City of New York do not present the same harms the restriction purportedly seeks to product consumers against.[21] However, in the case of debt collectors, existing consumer protections are already in place. *See, e.g.,* 15 U.S.C. §§ 1692c(a), 1692d, 1692d(5).

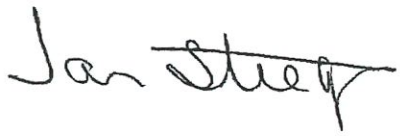
As noted above, data publicly available from the CFPB, the primary federal regulator of debt collectors, identified that over a three-year period a statistically insignificant number of the debt collection complaints were made concerning excessive telephone calls or electronic communications for the entire state of New York. Approximately half the communications were made by creditors, with the proposed rule exempts from coverage. And these are just complaints, *allegations* of frequent calls and not a finding that the communications themselves were made by a debt collector or made with the *alleged* frequency. DCWP does not provide any supporting evidence which would justify the restriction of speech in support of the proposed rule, presuming such restrictions are legal.

Consequently, there is no compelling state interest to prohibit communications by debt collectors when collecting "consumer" debt. Therefore, the restrictions and prohibitions as they are currently drafted in the proposed rule may be unconstitutional.

Conclusion

RMAI would like to thank the Department for the opportunity to comment on the proposed rule. With the modifications mentioned in the attached redlines, RMAI would be supportive of the Department's proposed regulations. If you have any questions or require additional clarification, please contact RMAI General Counsel David Reid at dreid@rmaintl.org or (916) 779-2492.

Sincerely,



Jan Stieger,
Executive Director

Attachment: DCW NOH Proposed Amendment of Rules re Debt Collectors -- Industry Redline 20231127

[21] Under 5-76, government officials and employees are excluded from the definition of debt collector if "collecting or attempting to collect any debt owed is in the performance of his or her official duties." After four decades of regulating creditor debt collection, the proposed rule exempts creditors collecting their own debt,.

NEW YORK CITY
DEPARTMENT OF CONSUMER & WORKER PROTECTION
PROPOSED AMENDMENTS TO ITS DEBT COLLECTION RULES

Proposed Rule Amendments

Section 1. Section 2-191 Disclosure of Consumer's Legal Rights Regarding the Effect of the Statute of Limitations on Debt Payment, Subchapter S of Chapter 2 of Title 6 of the Rules of the City of New York, is repealed in its entirety.

Section 2. Section 2-193 of Subchapter S of Chapter 2 of Title 6 of the Rules of the City of New York is amended to read as follows:

§ 2-193. Records to be Maintained by Debt Collection Agency

(a) Unless otherwise prohibited by federal, state or local law, a debt collection agency [shall] must maintain a separate file for each debt that the debt collection agency attempts to collect from each New York City consumer, in a manner that is searchable or retrievable by the name, address and zip code of the consumer, and by the creditor who originated the debt the agency is seeking to collect. The debt collection agency [~~shall~~] must maintain in each debt file the following records to document its collection activities with respect to each consumer:

(1) A copy of all communications ~~and attempted communications~~ [~~or exchanges~~] with the consumer.

(2) A record of each payment received from the consumer that states the date of receipt, the method of payment and the debt to which the payment was applied.

(3) A copy of the debt payment schedule and/or settlement agreement reached with the consumer to pay the debt.

(4) With regard to any debt that the debt collection agency has purchased, a record of the name

Commented [DR1]: The industry would request the deletion of the phrase "attempted communications." The DCWP indicated that one of the reasons for proposing amendments to the existing rule is to come into alignment with Regulation F (Reg F) that was promulgated by the federal Consumer Financial Protection Bureau (CFPB) in 2021. There is no similar record keeping requirement in Reg F that requires the recording of attempted communications in a formal log. Systems of record would often have an entry of attempts but not in the complicated methodology being proposed. No other jurisdiction in the nation has a similar requirement. All references to this phraseology have been deleted in this proposed redline.

and address of the entity from which the debt collection agency purchased the debt, the date of the purchase and the amount of the debt at the time of such purchase.

(5) Any other records that are evidence of compliance or noncompliance with subchapter 30 of chapter 2 of title 20 of the Administrative Code and any rule promulgated thereunder, and of part 6 of subchapter A of chapter 5 of title 6 of the Rules of the City of New York.

(6) A log, account notes or record of all communications ~~and attempted communications~~ by any medium between a debt collection agency and a New York City consumer in connection with the collection of a debt. A communication that results in a busy signal, does not go through, or was made to a wrong number or address that is not affiliated with the consumer or the consumer's family is not required to be maintained in the log. For each communication ~~and attempted communication~~, the log, account notes or record must identify in a manner that is searchable and easily identifiable, the following:

(i) the date~~,~~ and the time ~~and duration~~ of the communication ~~or attempted communication, if applicable~~;

(ii) the medium of communication ~~or attempted communication~~; and

(iii) the names ~~and contact information~~ of the persons involved in the communication~~.; and~~

~~(iv) a contemporaneous summary in plain language of the communication or attempted communication.~~

(b) A debt collection agency [~~shall~~] must maintain the following records to document its collection activities with respect to all New York City consumers from whom it seeks to collect a debt:[~~(1) A monthly log of all calls made to consumers, listing the date, time and duration of each call, the number called and the name of the person reached during the call~~]

(1) Monthly logs or a record, in a form and format designated by the Commissioner, of the following:

(i) all complaints which were received by a debt collection agency that were filed by New York City consumers against the debt collection agency, including those filed with the agency directly or with any not-for-profit entity or governmental agency, identifying for each complaint the date, the consumer's name and account information, the source of the complaint, a summary of the consumer's complaint, the debt collection agency's response to the complaint, if any, and the current status of the complaint;

(ii) all written disputes or requests for verification made by New York City consumers, identifying each consumer's name and account information, the date of the dispute or request for verification, and the date and type of response, if any, sent by the debt collection agency; and

(iii) all written cease-and-desist requests made by New York City consumers, identifying the consumer's name and account information, the date of the request, and the date and purpose of any further contacts by the debt collection agency after receipt of the request from the consumer.

(2) Recordings of [~~complete conversations~~] all telephone ~~communications~~ conversations, including limited content messages, with all New York City consumers or with a randomly selected sample of at least 5% of all calls made or received by the debt collection agency or a third party on its behalf [~~and a copy of contemporaneous notes of all conversations with consumers~~]. The

Commented [DR2]: If the consumer has no ability to know an attempted communication was made because it did not go through or went to a wrong number or address, what would be the purpose of putting it in the log?

This language is consistent with exceptions contained in Regulation F and the newly adopted District of Columbia debt collection law.

Commented [DR3]: The word "duration" as this data element does not provide any benefit to the consumer and is a data element that cannot be maintained in the case of written communications.

Commented [DR4]: The deletion of the phrase "and a contemporaneous summary of the communication" as the requirement "to maintain a copy of all communications" in paragraph (1) above is sufficient.

Commented [DR5]: Debt collection agencies need to have received the complaint in order to be compliant with this paragraph. The way it reads right now, if a consumer filed a complaint with a non-profit or governmental entity but that complaint was never forwarded to the collection agency, the agency would be in violation for not maintaining it.

Commented [DR6]: The industry would respectfully request that disputes and cease and desist requests be in writing for this information to be included in the log. The intent of what is said in verbal communications can sometimes be subjective and result in different understandings between the two parties.

For example, if a consumer says in response to a request for a payment "yeah right" is that a complaint, dispute, request for verification, or a cease and desist request? Some might say yes and some might say no. Another example, could be when a consumer says "I thought that was paid" but then realizes it was not paid and pays the debt over the phone. Again, some might say "yes" and some might say "no" as to whether it would be applicable.

There tends to be no confusion when it is in writing.

Commented [DR7]: Given that written electronic communications can be received on telephones, it would be more appropriate to use the word "conversations" rather than "communications" in the context of making a recording.

method used for randomly selecting the recorded calls [~~shall~~] must be [~~included in the file where the tape recordings are~~] maintained by the debt collection agency and a record in each consumer's account must identify the calls by date and time recorded, and any third party assigned to handle such calls. If a debt collection agency elects to record a randomly-selected sample of at least 5% of all calls made or received by the debt collection agency, it must maintain a record of the total number of calls made or received on a monthly basis and the total number of such recorded calls. If the debt collection agency owns or has the right to collect on a debt before it refers such a debt to a third party to handle collections calls with consumers, the debt collection agency must ensure that:

(i) The third party complies with this section and the licensing rules and laws pertaining to debt collection in the City of New York; and

(ii) The third-party audio recordings are available upon request by the Department to the debt collection agency.

(3) A record of all cases filed in court to collect a debt. Such record [~~shall~~] must include, for each case filed, the name of the consumer, the identity of the ~~originating~~ original creditor, the amount claimed to be due, the [~~civil court~~] index number and the court and county where the case is filed, the date the case was filed, [~~the name of the process server who served process on the consumer, the date, location and method of service of process, the affidavit of service that was filed and~~] the disposition for each case filed, including whether a judgment was rendered on default or on the merits of the action. Such record [~~shall~~] must be filed in a manner that is searchable or retrievable by the name, address and zip code of the consumer and the creditors who originated the debts that the debt collection agency is seeking to collect.

(4) The original copy of each contract with a process server for the service of process, and copies of all documents involving traverse hearings relating to cases filed by or on behalf of the debt collection agency. Such records should be filed in a manner that is searchable by the name of the process server.

(5) A record indicating the language preference of the consumer, except where the debt collector is not aware of such preference despite reasonable attempts to obtain it.

(6) When provided, ~~A~~a record indicating which medium(s) of electronic communication are permitted or not permitted by each consumer ~~and, if known, the consumer's preferred medium of communication~~ in connection with the collection of a debt.

(7) A record of information on debt furnished to a consumer reporting agency, including the date the debt collection agency notified the consumer about the debt before furnishing information to the credit bureau on that debt and the period of time it waited to receive a notice of undeliverability.

(8) A record of any notice of unverified debt issued in accordance with section 5-77(f)(7) or received by the debt collection agency, including any such notice received from the consumer.

(c) A debt collection agency [~~shall~~] must maintain the following records relating to its operations and practices:

(1) A copy of all actions, proceedings or investigations by government agencies that resulted in the revocation or suspension of a license, the imposition of fines or restitution, a voluntary settlement, a court order, a criminal guilty plea or a conviction.

Commented [DR8]: This rule uses the term "original creditor" and the term "originating creditor" interchangeably. Given that the State of New York and the Department of Financial Services uses the term "original creditor" we would request consistency of use. We have changed all seven references of "originating" creditor to "original" creditor.

Commented [DR9]: This sentence is overly confusing. It starts by stating a record of permitted and not permitted mediums of communications should be recorded. That should be sufficient to accomplish what DCWP is seeking. But then it goes on to require "preferred medium of communication." Presumably if they have permitted the medium, it is a preferred medium? We recommend streamlining the sentence for clarity.

(2) A copy of all [~~policies,~~] training materials, manuals, and guides for employees or agents that direct, describe, suggest or promote how a collector is to interact with consumers in the course of seeking to collect a debt.

(3) An annual report, in a form made publicly available on the Department's website, identifying, by language, (i) the number of consumer accounts on which an employee collected or attempted to collect a debt owed or due or asserted to be owed or due [~~in a language other than English~~]; and (ii) the number of employees that collected or attempted to collect on such accounts [~~in a language other than English~~].

(4) A copy of all policies addressing the collection of time-barred debts.

(5) A copy of all policies addressing the verification of debts.

(6) A copy of all policies addressing the furnishing of information concerning consumer debt to credit reporting bureaus.

(7) If collecting medical debt on behalf of a covered medical entity, ~~A~~a copy of all policies addressing hospital financial assistance programs related to medical debt.

(d) The records required to be maintained pursuant to this section [~~shall~~] must be retained for [~~six years from the date the record was created by the debt collection agency, a document was obtained or received by the debt collection agency, a document was filed in a court action by the debt collection agency, or a training manual or employee guide was superseded, except that recordings of conversations with consumers shall be retained for one year after the date of the last conversation recorded on each completed recording tape~~] the following periods of time:

(1) For records required to be maintained pursuant to subdivisions (a) and (b) of this section, excluding recordings of calls with consumers, until three years after the date of the debt collection agency's last collection activity on the debt.

(2) For recordings of calls with consumers, until three years after the date of the call.

(3) For records required to be maintained pursuant to subdivision (c) of this section, until six years after the date the record was created.

Section 3. Section 5-76 of Part 6 of Subchapter A of Chapter 5 of Title 6 of the Rules of the City of New York is amended by adding the following definitions in alphabetical order:

~~**Attempted communication.** The term "attempted communication" means any act to initiate a communication or other contact about a debt with any person through any medium, including by soliciting a response from such person. An act to initiate a communication or other contact about a debt is an attempted communication regardless of whether the attempt, if successful, would be a communication that conveys information regarding a debt directly or indirectly to any person. A limited-content message is an attempted communication.~~

Clear and conspicuous. The term "clear and conspicuous" means readily understandable. In the case of written and electronic record disclosures, a clear and conspicuous statement, representation or element being disclosed is of such location, size, color and contrast to be readily noticeable and legible to consumers. In the case of oral disclosures, a clear and conspicuous disclosure is given at a volume and speed sufficient for a consumer to hear and comprehend it.

Commented [DR10]: "Debt" is not furnished, "information" is.

Commented [DR11]: Many debt collectors do not collect medical debt. If a debt collector does not collect this asset class, they should not be required to maintain policies addressing hospital financial assistance programs.

Commented [DR12]: Given that communications related to legal proceedings are covered by the court system, if this provision remains, the industry would respectfully request that these communications be excluded from the definition of legal proceedings. A sentence could be added that reads: "Communications related to legal proceedings shall not be considered an attempted communication."

Commented [DR13]: The industry would respectfully request that some reasonable exceptions be permitted. The industry is concerned that certain required disclosures that are required by the federal and state level have already filled up available space on the first page of communications. As such, we can envision a scenario where a clear and conspicuous notice will have to be addressed on another page in the document because to display it on the first page would prevent us from complying with the federal and state requirements for what needs to be on the first page.

In any clear and conspicuous disclosure, any required modifications, explanations or clarifications to other information are presented in close proximity to the information being modified, in a manner so as to be readily noticed and understood, provided that the disclosures may be on another page. Hyperlinks in electronic communications related to modifications, explanations or clarifications are permitted.

Covered medical entity. The term "covered medical entity" means a health care entity that is tax-exempt under federal or New York State law or qualifies for distributions from the Indigent Care Pool from the State of New York or any other such fund or distribution allocated to reduce the charges of medical services by granting financial assistance, through a financial assistance policy, to patients based on need or an inability to pay.

Electronic communication. The term "electronic communication" means communication by electronic means including, but not limited to, electronic mail, a text message, or instant message, rather than oral communication in person or by telephone, or hard copy communication by mail.

Electronic record. The term "electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

Financial assistance policy. The term "financial assistance policy" means a program to reduce or eliminate charges for medical services provided which was established by a nonprofit hospital or health care provider.

Itemization reference date. The term "itemization reference date" means any one of the following dates: (1) The last statement date, which is the date of the last periodic statement or written account statement or invoice provided to the consumer by a creditor; (2) The charge-off date, which is the date the debt was charged off; (3) The last payment date, which is the date the last payment was applied to the debt; (4) The transaction date, which is the date of the transaction that gave rise to the debt; or (5) The judgment date, which is the date of a final court judgment that determines the amount of the debt owed by the consumer.~~on revolving or open-end credit accounts, the date of the last written notification sent to the consumer which lists the total amount of the outstanding debt asserted to be owed by the consumer on or before the charge-off date of the debt; or (2) on closed-end accounts, either the date of the last payment, if such date is available, or the date of the last written notification sent to the consumer which lists the total amount of the outstanding debt asserted to be owed by the consumer on or before the charge-off date of the debt.~~

Language access services. The term "language access services" means any service made available by a debt collector to consumers in a language other than English. Language access services include, but are not limited to, the use of:

(1) collection letters using a language other than English;

(2) customer service representatives who collect or attempt to collect debt in a language other than English;

(3) a translation service for the collector's website or for written communications; and

(4) a service that interprets phone conversations in real time.

Limited-content message. The term "limited-content message" means an attempt to communicate with a consumer by leaving a voicemail message that includes all of the following

Commented [DR14]: We strongly urge the DCPW to modify its definition of the itemization reference date to reflect the language used by the federal government in their definition contained in Regulation F -- 12 CFR Part 1006.34(b)(3).

Using the charge off balance and charge off date as the standard for itemization is consistent with what the CFPB (Regulation F) and other states, such as California (Cal. Civ. Code § 1788.52), Colorado (CO Rev Stat § 5-16-111), and Maine (Title 32, Chapter 109-A, Subchapter 2 of Maine Revised Statutes), have codified. In New York State itself, in its court rules and affidavits for default judgment applications in consumer credit matters (located at https://www.nycourts.gov/LegacyPDFS/rules/ccr/AO_185.14.pdf), the date and amount of the charge off balance is required. In addition, under the New York Consumer Credit Fairness Act (Senate Bill 153) that took effect in 2022, itemization is required of the total amount of the debt due as of the charge-off.

Creating a new and unnecessary standard will only confuse NYC consumers and the business community.

content, which may include other content allowed by federal law, and that includes no other content:

(1) A business name for the debt collector that does not indicate that the debt collector is in the debt collection business;

(2) A request that the consumer reply to the message;

(3) The name of the natural person whom the consumer can contact to reply to the debt collector; and

(4) A call-back telephone number that is answered by a natural person.

Medical debt. The term "medical debt" means an obligation or alleged obligation of a consumer to pay any amount whatsoever related to the receipt of health care services, products or devices provided to a person by a hospital licensed under article twenty-eight of the New York Public Health Law, a health care professional authorized under title eight of the New York Education Law, or an ambulance service certified under article thirty of the New York Public Health Law. Medical debt does not include debt charged to a credit card.

Original creditor and originating creditor. The terms "original creditor" or "originating creditor" means the financial institution that owned the consumer credit account at the time the account was charged off, even if that financial institution did not originate the account. ~~any person, firm, corporation, or organization who originated the debt, including by extending credit and creating the debt.~~

Section 4. The definitions for "Communication" and "Debt collector" in Section 5-76 of Part 6 of Subchapter A of Chapter 5 of Title 6 of the Rules of the City of New York are amended to read as follows:

Communication. The term "communication" means the conveying of information regarding a debt directly or indirectly to any person through any medium, including by electronic means. The term communication excludes a limited-content message.

Debt collector. The term "debt collector" means [~~an individual who, as part of his or her job, regularly collects or seeks to collect a debt owed or due or alleged to be owed or due~~] any person engaged in any business with the principal purpose of which is the collection of any debts or who regularly collects, or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due to another person. The term does not include:

(1) any officer or employee of the United States, any State or any political subdivision of any State to the extent that collecting or attempting to collect any debt owed is in the performance of [~~his or her~~] their official duties;

(2) any person while engaged in performing an action required by law or regulation, or required by law or regulation in order to institute or pursue a legal remedy;

(3) any individual employed by a nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors; [~~or~~]

(4) any individual employed by a utility regulated under the provisions of the Public Service Law,

Commented [DR15]: This change is necessary to clarify that medical debt is not debt charged to a credit card. There is current legislation pending the Governor's signature that clarifies same. Delaware also recently passed legislation which clarified that credit card accounts are not in scope for medical debt.

Commented [DR16]: The industry would request that the definition of "original creditor" that both DFS and DCWP use is the definition adopted in state law in CPLR 105(q-1) in 2021 which reads:

"Original creditor means the financial institution that owned the consumer credit account at the time the account was charged off, even if that financial institution did not originate the account."

to the extent that New York Public Service Law or any regulation promulgated thereunder is inconsistent with this part; ~~or~~

(5) any person while performing the activity of serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt, or serving, filing or conveying formal legal pleadings, discovery requests, judgments, or other documents pursuant to the applicable rules of civil procedure, where such person is not a party, or providing legal representation to a party, to the action; ~~.~~

(6) any communication, letters, pleadings, or other correspondence that are delivered by an attorney licensed within the State of New York while performing their duties as an officer of the court during the pendency of an active court matter that is overseen and supervised by the New York State Unified Court System; or

(7) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor.

Where a provision of this part limits the number of times an action may be taken by the debt collector, or establishes as a prerequisite to taking an action that the debt collector has received or done something, or prohibits an action if the debt collector has knowledge of or reason to know something, the term "debt collector" includes any debt collector employed by the same employer.

Section 5. Section 5-77 of Part 6 of Subchapter A of Chapter 5 of Title 6 of the Rules of the City of New York is amended to read as follows:

§ 5-77. Unconscionable and Deceptive Trade Practices.

It is an unconscionable and deceptive trade practice for a debt collector to attempt to collect a debt owed, due, or asserted to be owed or due except in accordance with the following rules:

(a) ***Acquisition of location information***. Any debt collector communicating with any person other than the New York City consumer for the purpose of acquiring location information about the consumer in order to collect a debt[~~, after the institution of debt collection procedures shall~~] must:

(1) identify [~~himself or herself~~] themselves, state that [~~he or she is~~] they are confirming or correcting location information about the consumer and identify [~~his or her employer~~] the debt collector on whose behalf they are communicating when that identification connotes debt collection only if expressly requested;

(2) not state or imply that such consumer owes any debt;

(3) not communicate more than once, unless requested to do so by such person or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information, in which case the debt collector may communicate one additional time; for the purposes of this paragraph (3), the debt collector need not count as a communication returned unopened mail, an undelivered email message, or a message left with a party other than the person the debt collector is attempting to reach in order to acquire location information about the consumer, as long as the message is limited to a telephone number, the name of the debt collector and a request that the person sought telephone the debt collector;

Commented [DR17]: The industry requests a limited carve out for attorneys to permit licensed attorneys the ability to practice law without creating potential conflicts with the proposed regulations. Please see the New York State Creditors Bar Associations memo for additional explanation.

Commented [DR18]: This is intended to mitigate the risk that employees of the original creditor could be exposed personally under the current definition.

(4) not use any language or symbol on any envelope or in the contents of any communication effected by the mail or a delivery service that indicates that the debt collector is in the debt collection business or that the communication relates to the collection of a debt; provided that a debt collector may use [~~his or her~~] their business name or the name of a department within [~~his or her~~] their organization as long as any name used does not connote debt collection; and

(5) if the debt collector knows the consumer is represented by an attorney with regard to the subject debt and if the debt collector has knowledge of the attorney's name and address or can readily ascertain such attorney's name and address, not communicate with any person other than that attorney for the purpose of acquiring location information about the consumer unless the attorney fails to provide the consumer's location within a reasonable period of time after a request for the consumer's location from the debt collector and:

(i) informs the debt collector that [~~he or she~~] the attorney is not authorized to accept process for the consumer; or

(ii) fails to respond to the debt collector's inquiry about the attorney's authority to accept process within a reasonable period of time after the inquiry.

[~~The employer of a debt collector may not be held liable in any action brought under § 5-77(a)(3) or (5) if the employer shows by a preponderance of the evidence that the violation was not intentional and resulted despite the maintenance or procedures reasonably adapted to avoid any such violation.~~] The employer of a debt collector may not be held liable in any action brought under § 5-77(a)(3) or (5) if the employer shows by a preponderance of the evidence that the violation was not intentional and resulted despite the maintenance or procedures reasonably adapted to avoid any such violation.

(b) ***Communication in connection with debt collection***. A debt collector, in connection with the collection of a debt, [~~shall~~] must not:

(1) [~~After institution of debt collection procedures, without~~] Without the prior written or orally recorded consent of the New York City consumer given directly to the debt collector [~~after the institution of debt collection procedures~~], or without permission of a court of competent jurisdiction, [~~communicate with the consumer in connection with the collection of any debt;~~] engage in any of the following conduct:

(i) communicate or attempt to communicate with the consumer at any unusual time or place known, or which should be known, to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating or attempting to communicate with a consumer is after 8 a.m.[~~o'clock ante meridian~~] and before 9 p.m.[~~o'clock post meridian time~~] ~~at the consumer's location~~ in the eastern time zone;

(ii) except for any communication that is required by law, communicate or attempt to communicate directly with the consumer if the debt collector knows the consumer is represented by an attorney with respect to such debt and if the debt collector has knowledge of the attorney's name and address or can readily ascertain such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer[~~, except any communication which is required by law or chosen from among alternatives of which one is required by law is not hereby prohibited~~];

Commented [DR19]: The industry requests the restoration of the bona fide error defense. It is consistent with the FDCPA which DCWP indicates it wishes to seek. An inadvertent clerical error should not lead to liability, especially if such error has not harmed the consumer or can be easily corrected with no harm to the consumer.

Commented [DR20]: An orally recorded conversation where the consumer grants consent should hold the same level of integrity and legitimacy as a written document.

The proposed rule seems to have contradictory provisions as consumer instructions provided over the phone are permitted in some circumstances while prohibited in other places?

Commented [DR21]: A clarification is needed in this paragraph as consumers could leave New York City and the eastern time zone for vacation or work unbeknownst to the debt collector.

(iii) knowingly communicate or attempt to communicate with the consumer at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer or supervisor prohibits the consumer [~~from receiving~~] to receive such a communication; or

(iv) [~~with excessive frequency. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that more than twice during a seven-calendar-day period is excessively frequent. In making its calculation, the debt collector need not include any communication between a consumer and the debt collector which is in response to an oral or written communication from the consumer, or returned unopened mail, or a message left with a party other than one who is responsible for the debt as long as the message is limited to a telephone number, the name of the debt collector and a request that one who is responsible for the debt telephone the debt collector; or any communication which is required by law or chosen from among alternatives of which one is required by law~~] communicate or attempt to communicate, including by leaving limited- content messages, with the consumer with excessive frequency. Excessive frequency means any communication or attempted communication by the debt collector with a consumer in violation of 12 CFR Part 1006.14.

~~(A) Excessive frequency means either 1) any communication or attempted communication by the debt collector with a consumer, by any medium of communication or in person, in connection with the collection of debt more than three times during a seven-consecutive-calendar-day period, or 2) after already having had an interaction with the consumer within such seven-consecutive-calendar-day period.~~

~~(B) The date of the first day of such a seven-consecutive-calendar-day period is the day of the first such communication or attempted communication. Communication or attempted communication between a consumer and the debt collector that is initiated by or at the request of a consumer; in response to a communication from the consumer in the same email thread or live chat; not connected to the dialed number, returned mail or a bounced email; or required by law shall not be included in the calculation of excessively frequent communications.~~

~~(C) Any communication or attempted communication made by a person pursuant to the rules of civil procedure, such as serving, filing, or conveying formal legal pleadings, discovery requests, depositions, court conferences, communications with the consumer's attorney on a pending legal matter, or ordered by the New York State Unified Court System, shall not be included in the calculation of excessively frequent communications. Traditional debt-collection activities, such as sending a consumer a collection letter or placing a call, or using any other means, to contact the consumer to collect on debt, count toward the calculation of excessively frequent communications in section 5-77 (b)(1)(iv)(A).~~

[~~The employer of a debt collector may not be held liable in any action brought under 6 RCNY § 5-77(b)(1)(ii)-(iv) if the employer shows by a preponderance of the evidence that the violation was not intentional and resulted despite maintenance of procedures reasonably adapted to avoid any such violation~~] The employer of a debt collector may not be held liable in any action brought under 6 RCNY § 5- 77(b)(1)(ii)-(iv) if the employer shows by a preponderance of the evidence that the violation was not intentional and resulted despite maintenance of procedures reasonably adapted to avoid any such violation.

For the purpose of paragraph (1) of this subdivision, the term "consumer" includes the consumer's parent (if the consumer is a minor), guardian, executor, administrator, or spouse (unless the debt collector knows ~~or should know~~ that the consumer is legally separated from or no longer living with their spouse).

Commented [DR22]: Given the majority of consumers have dropped land lines in favor of cell phones, it is not possible to definitively know where the consumer is at any given time. The way this is drafted if one call's a cell phone and the consumer is at work, the collection agency is in violation of this provision. An easy way to solve the problem is by adding the word "knowingly." If a consumer tells a debt collector that they are always at work between 3pm-9pm and they are not permitted to receive calls, then the debt collector has been put on notice not to call during those hours.

Additionally, if a consumer provides the debt collector with their work number as the "best" or "preferred" number to be contacted but fails to mention that it is a work number, how would a debt collector know that they contacted a consumer at work?

Commented [DR23]: The industry would strongly recommend that New York City use the same requirement for "excessive frequency" as the federal government who spent almost a decade in the development of their requirements which are contained in Regulation F -- 12 CFR Part 1006.14. The industry would like to avoid confusion and accidental errors., given that most debt collectors operate regionally or nationally and must manage accounts in multiple states.

Commented [DR24]: The industry requests the restoration of the bona fide error defense. It is consistent with the FDCPA which DCWP indicates it wishes to seek. An inadvertent clerical error should not lead to liability, especially if such error has not harmed the consumer or can be easily corrected with no harm to the consumer.

Commented [DR25]: There is no way that a debt collection agency "should know" a consumer is legally separated or no longer lives with their spouse unless someone tells them. We respectfully request the deletion of this language.

(2) [~~In order to collect a debt, and except as provided by 6 RCNY § 5-77(a)~~] Except if otherwise permitted by law, communicate about a debt with any person other than the consumer who is obligated or allegedly obligated to pay the debt, [~~his or her~~] the consumer's attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, a debt collector to whom [~~or to whose employer~~] the debt has been assigned for collection[~~, a creditor who assigned the debt for collection,~~] or the attorney of that debt collector[~~, or the attorney for that debt collector's employer,~~] without the prior written or orally recorded consent of the consumer or their attorney given directly to the debt collector [~~after the institution of debt collection procedures, or without the prior written consent of the consumer's attorney~~], or without the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy.

(3) Communicate with any person other than [~~the consumer's attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, a debt collector to whom or to whose employer the debt has been assigned for collection, a creditor who assigned the debt for collection, or the attorney of that debt collector or the attorney for that debt collector's employer~~] those persons enumerated in paragraph (2) of this subdivision in a manner which would violate any provision of [~~this part~~] paragraph (1) of this subdivision if such person were a consumer.

(4) [~~After institution of debt collection procedures, communicate~~] Communicate with a consumer with respect to a debt if the consumer has notified the debt collector [~~in writing~~] in writing or the debt collector has an orally recorded conversation that the consumer wishes the debt collector to cease further communication with the consumer with respect to that debt, except [~~that~~] for any communication which is required by law [~~or chosen from among alternatives of which one is required by law is not hereby prohibited~~]. The debt collector shall have a reasonable period of time following receipt by the debt collector of the notification to comply with a consumer's request[~~, except that any debt collector who knows or has reason to know of the consumer's notification and who causes further communication shall have violated this provision~~]. The debt collector may, however:

(i) communicate with the consumer once in writing or by electronic means:

(A) to advise the consumer that the debt collector's further efforts are being terminated; or[~~:~~]

(B) [~~to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or;~~

(C) ~~where applicable~~] to the extent such notice was not previously provided, to notify the consumer that the debt collector or creditor intends to invoke a specific remedy, if it[~~that~~] is a remedy [~~he is~~]they are legally entitled to invoke and [~~if he~~] they actually [~~intends~~] intend to invoke it; and

(ii) respond to each subsequent [~~oral or written~~] communication from the consumer.

(5) [~~For the purpose of 6 RCNY § 5-77(b)(1)-(4), the term "consumer" includes the consumer's parent (if the consumer is a minor), guardian, executor, administrator, spouse (unless the debt collector knows or has reason to know that the consumer is legally separated from or no longer living with his or her spouse), or an individual authorized by the consumer to make purchases against the account which is the subject of the collection efforts. A request that the debt collector~~

Commented [DR26]: An orally recorded conversation where the consumer grants consent should hold the same level of integrity and legitimacy as a written document.

The proposed rule seems to have contradictory provisions as consumer instructions provided over the phone are permitted in some circumstances while prohibited in other places?

Commented [DR27]: While a written document would be clearer and remove any ambiguity that may come through an oral conversation, an orally recorded conversation would at least provide the opportunity to review the conversation to discern intent.

Phone calls could involve vague language such as "I really don't like getting these calls." Does that count? What if they say "stop calling me" to start the conversation but then agrees to set up a payment plan?

The proposed rule seems to have contradictory provisions as consumer instructions provided over the phone are permitted in some circumstances while prohibited in other places?

~~cease further communication, provided for under 6 RCNY § 5-77(b)(4), if made by the consumer's spouse or an individual authorized by the consumer to make purchases against the account, only affects the debt collector's ability to communicate further with the person making the request~~]Contact a New York City consumer by electronic communication unless the debt collector satisfies the following requirements:

(i) A debt collector may only use a specific email address, text message number, social media account, or specific electronic medium of communication if:

(A) such electronic communication is private and direct to the consumer; and

(B) the creditor or debt collector obtains revocable consent from the consumer in writing or orally recorded, given directly to the creditor or debt collector, to use such email address, text message number, social media account, or other electronic medium of communication to communicate about the debt, and the consumer has not since revoked the consent; or

(C) the consumer used such email address, text message number, social media account or other electronic medium of communication to communicate with the debt collector about a debt within the past 30 days and has not since opted out of communications to that email address, text message number, social media account or other electronic medium of communication or opted out of all electronic communications generally.

(ii) A person's electronic signature constitutes written consent under this section, provided it complies with all relevant state and federal laws and rules, including article three of the New York Technology Law (New York Electronic Signatures and Records Act) and chapter 96 of title 15 of the United States Code (Electronic Signatures in Global and National Commerce Act).

(iii) The written or orally recorded consent, revocable by the consumer, is retained by the debt collector until the debt is discharged, sold, or transferred.

(iv) A debt collector who sends any disclosures required by this subchapter electronically must do so in a manner that is reasonably expected to provide actual notice, and in a form that the consumer may keep and access later.

(v) The debt collector must include in every electronic mail communication to the consumer a clear and conspicuous written disclosure that the person may revoke consent to receive electronic communication at any time, and a reasonable and simple method by which the consumer can opt-out of further electronic communications or attempts to communicate by the debt collector, which may include replying "stop" or some other word(s) that reasonably indicates the consumer wishes to opt-out. The disclosure to the consumer must be in the same language as the rest of the communication and the debt collector must accept the consumer's response to opt-out in the same language as in the initial electronic mail that prompted the response from the consumer or in any language used by the debt collector to collect debt.

(vi) The debt collector may not require, directly or indirectly, that the consumer, in order to opt-out, pay any fee to the debt collector or provide any information other than the consumer's opt-out preferences and the email address or text message number subject to the opt-out request.

(6) Communicate with a consumer by sending an electronic message to an email address or a text message number that the debt collector knows ~~or should know~~ is provided to the consumer by the consumer's employer.

Commented [DR28]: Consent can be provided to the creditor as well, including within the original lending agreement. In fact, contact information provided to the creditor is always passed down to the debt collector. It is how the debt collector gets the consumer's name, address, telephone number, and email address. What would be the purpose of not allowing the least intrusive forms of contact (i.e. email or text), which is also often the consumers preferred medium of communication, while allowing the more intrusive forms of contact (i.e. phone calls and letters which can be intercepted by a third party living with the consumer)?

Commented [DR29]: An orally recorded conversation where the consumer grants consent should hold the same level of integrity and legitimacy as a written document.

The proposed rule seems to have contradictory provisions as consumer instructions provided over the phone are permitted in some circumstances while prohibited in other places?

Commented [DR30]: Often, there is no way that a debt collector would know a telephone number or email address is associated with a business unless the consumer tells the debt collector. For example, if a business uses a gmail account or the consumer provides a work cell phone for contact, how could you discern it was provided to the consumer by the employer?

(7) Communicate with a consumer on a social media platform, unless the debt collector obtains consent from the consumer to communicate on the specific social media platform, and the communication is not ~~viewable~~ accessible by anyone else other than the consumer, including but not limited to the general public or the consumer's social media contacts.

(8) Communicate with a consumer through a medium that the consumer has requested that the debt collector not use to communicate with the consumer.

(9) Communicate or attempt to communicate with a consumer to collect a debt for which the debt collector knows or should know that the consumer was issued a Notice of Unverified Debt pursuant to subdivision (f).

(c) ***Harassment or abuse***. A debt collector, in connection with the collection of a debt, shall not engage in conduct the natural consequence of which is to harass, oppress or abuse any person in connection with a debt. Such conduct includes:

(1) the use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person;

(2) the use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader;

(3) the advertisement for sale of any debt to coerce payment of the debt;

(4) causing a telephone to ring ~~or produce another sound or alert~~, or engaging any person [~~in~~] by any communication medium, including but not limited to telephone conversation, repeatedly or continuously with intent to annoy, abuse, or harass any person [~~at the called number~~] contacted by the debt collector;

(5) the publication of a list of consumers who allegedly refuse to pay debts, except to another employee of the debt collector's employer or to a consumer reporting agency or to persons meeting the requirements of 15 USC § 1681a(f) or 15 USC § 1681b(3); or

(6) except [~~as provided by 6 RCNY § 5-77(a), the placement of telephone calls without meaningful disclosure of the caller's identity~~] where expressly permitted by federal, state, or local law, communicating with a consumer without disclosing the debt collector's identity.

(d) ***False or misleading representations***. A debt collector, in connection with the collection of a debt, shall not make any false, deceptive, or misleading representation. Such representations include:

(1) the false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or identification[~~facsimile~~]thereof;

(2) the false representation or implication that any individual is an attorney or is employed by a law office or a legal department or unit, or any communication is from an attorney, a law office or a legal department or unit, or that an attorney conducted a meaningful review of the consumer's debt account;

(3) the representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or

Commented [DR31]: Edit is predicated upon the fact that messages, even sent privately, may be "viewable" to the general public if, for example, a consumer accesses the message at a public location (library computer, shared phone, etc.).

Commented [DR32]: Cell phones that get emails can be set up to produce a sound even though that was not the intent of the debt collector. There is also an evidentiary problem in that it is easy to prove when a debt collector made a phone call or sent a message but almost impossible to prove whether that communication actually caused a phone to "produce an alert or other sound." This addition makes no sense because only the consumer can control whether or not the phone produces an alert or other sound.

wages of any person unless such action is lawful and the debt collector or creditor intends to pursue such action;

(4) the threat to take any action that cannot legally be taken or that is not intended to be taken;

(5) the false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to:

(i) lose any claim or defense to payment of the debt; or

(ii) become subject to any practice prohibited by this part;

(6) the false representation [~~of~~] or implication made in order to disgrace the consumer that the consumer committed any crime or other conduct;

(7) the false representation or implication that accounts have been turned over to innocent purchasers for value;

(8) the false representation or implication that documents are legal process;

(9) the false representation or implication that documents are not legal process forms or do not require action by the consumer;

(10) the false representation or implication that a debt collector operates or is employed by a consumer reporting agency as defined by 15 U.S.C. § 1681a(f);

(11) the use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval;

(12) the use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer;

(13) the use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization, unless the general public knows the debt collector's business, company or organization by another name and to use the true name would be confusing;

(14) [~~after institution of debt collection procedures,~~] the false representation of the character, amount or legal status of any debt, or any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt[~~, except that the employer of a debt collector may not be held liable in any action brought under this provision if the employer shows by a preponderance of the evidence that the violation was not intentional and occurred despite the maintenance of procedures reasonably adapted to avoid any such violation~~], except that the employer of a debt collector may not be held liable in any action brought under this provision if the employer shows by a preponderance of the evidence that the violation was not intentional and occurred despite the maintenance of procedures reasonably adapted to avoid any such violation;

(15) except [~~as otherwise provided under 6 RCNY § 5-77(a) and except for any communication which is required by law or chosen from among alternatives of which one is required by law~~] for

Commented [DR33]: The FDCPA bona fide error defense should remain in the rule.

limited-content messages and where otherwise expressly permitted by federal, state, or local law, the failure to disclose clearly and conspicuously in all communications made to collect a debt [~~or to obtain information about a consumer,~~] that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose;

(16) the use of any [~~name that is not the debt collector's actual name; provided that a debt collector may use a name other than his actual name if he or she uses only that name in communications with respect to a debt and if the debt collector's employer has the name on file so that the true identity of the debt collector can be ascertained~~] assumed name; provided that an individual debt collector may use an assumed name when communicating or attempting to communicate with a consumer about a debt if that collector uses the assumed name consistently and is the only person using that assumed name, and the assumed name is on file so that the true identity of the collector can be ascertained;

(17) any conduct proscribed by New York General Business Law §§ 601(1), (3), (5), (7), (8), or (9);

(18) the false, inaccurate, or partial translation of any communication [~~when the debt collector provides translation services~~]; [~~or~~]

(19) after the institution of debt collection procedures, the false representation or omission of a consumer's language preference when returning, selling or referring for debt collection litigation any consumer account, where the debt collector [~~is aware~~] knows ~~or should know~~ of such preference; or

(20) except where expressly permitted by federal, state, or local law, the failure to disclose clearly and conspicuously in all ~~telephone communications~~ recorded verbal conversations with a consumer in connection with the collection of a debt ~~where the communication is recorded by the debt collector~~ that the communication is being recorded ~~and the recording may be used in connection with the collection of the debt~~.

(21) after the institution of debt collection procedures, the false representation that the consumer cannot dispute the debt or request verification of the debt from the debt collector by oral communication.

(e) ***Unfair and unconscionable practices***. A debt collector may not use any unfair or unconscionable means to collect or attempt to collect a debt. Such conduct includes:

(1) the collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law;

(2) the solicitation or use by a debt collector of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution;

(3) causing charges to be made to any person for communications by misrepresentation of the true purpose of the communication. Such charges include collect telephone calls and [~~telegram~~] text message or mobile phone data fees that have not been disclosed or accepted by the consumer, provided this paragraph does not apply if the consumer initiates the communication through the use of the medium;

(4) taking or threatening to take any nonjudicial action to effect dispossession or disablement

Commented [DR34]: There is no way that a debt collector "should know" a consumer's language preference unless someone tells them. We respectfully request the deletion of this language.

Commented [DR35]: Given that written electronic communications such as emails and text messages can be received on telephones, it would be more appropriate to use the word "conversations" rather than "communications" in the context of making a recording.

The statement that the "recording may be used in connection with the collection of the debt" could be a false statement and could be in violation of the FDCPA. We cannot disclose the purpose of the call until we have confirmed that the person who is engaged in conversation is the debtor.

Commented [DR36]: A consumer may choose to communicate via text messages with the debt collector. The debt collector will have no idea if the consumer is on a phone plan that charges for text messages. Consequently, an exception needs to be added to this language.

of property if:

(i) there is no present right to possession of the property claimed as collateral;

(ii) there is no present intention to take possession of the property; or

(iii) the property is exempt by law from such dispossession or disablement;

(5) after institution of debt collection procedures, when communicating with a consumer by [~~use of the mails~~] mail or [~~telegram~~] a delivery service, using any language or symbol other than the debt collector's address on any envelope, or using any language or symbol that indicates the debt collector is in the debt collection business or that the communication relates to the collection of a debt on a postcard, except that a debt collector may use [~~his or her~~] their business name or the name of a department within [~~his or her~~] their organization as long as any name used does not connote debt collection;

(6) after institution of debt collection procedures, [~~communicating with a consumer regarding a debt without identifying himself or herself and his or her employer or communicating in writing with a consumer regarding a debt without identifying himself or herself by name and address and in accordance with 6 RCNY § 5-77(e)(5)~~] except where expressly permitted by federal, state, or local law, communicating with a New York City consumer without disclosing the debt collector's name; [~~or~~]

(7) after institution of debt collection procedures, if a consumer owes multiple debts of which any one or portion of one is disputed, and the consumer makes a single payment with respect to such debts:

(i) applying a payment to a disputed portion of any debt; or

(ii) unless otherwise provided by law or contract, failing to apply such payments in accordance with the consumer's instructions accompanying payment[~~. If payment is made by mail, the consumer's instructions must be written. Any communication by a creditor made pursuant to 6 RCNY § 5-77(e)(7)(ii) shall not be deemed communication for the purpose of 6 RCNY § 5-77(b)(1)(iv). The employer of a debt collector may not be held liable in any action brought under 6 RCNY § 5-77(e)(7) if the employer shows by a preponderance of the evidence that the violation was not intentional and resulted despite maintenance of procedures reasonably adapted to avoid any such violation~~]. The employer of a debt collector may not be held liable in any action brought under 6 RCNY § 5-77(e)(7) if the employer shows by a preponderance of the evidence that the violation was not intentional and resulted despite maintenance of procedures reasonably adapted to avoid any such violation;

(8) engaging in any conduct prohibited by New York General Business Law §§ 601(2) or (4); [~~or~~]

(9) after institution of debt collection procedures, collecting or attempting to collect a debt without [~~first requesting and~~] recording the language preference of such consumer, except where the debt collector is not aware of such preference despite reasonable attempts to obtain it;

(10) furnishing to a consumer reporting agency, as defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. § 1681a(f)), information about a debt unless the debt collector has sent the consumer a validation notice pursuant to section 5-77(f) that states, in a clear and conspicuous manner, that the debt ~~will~~ may be reported to a consumer reporting agency and waited 14

Commented [DR37]: The industry requests the restoration of the bona fide error defense. It is consistent with the FDCPA which DCWP indicates it wishes to seek. An inadvertent clerical error should not lead to liability, especially if such error has not harmed the consumer or can be easily corrected with no harm to the consumer.

Commented [DR38]: "Will" is misleading to the consumer, and conflicts with other federal and state disclosures that state that debt "may" be credit reported.

consecutive days. During the waiting period, the debt collector must permit receipt of, and monitor for, notifications of undeliverability from communications providers. If the debt collector receives such notification during the waiting period, the debt collector must not furnish information about the debt to a consumer reporting agency until the debt collector satisfies this subdivision. If the debt collector previously furnished information to a consumer reporting agency, between January 1, 2021 and the effective date of the rule, and if the debt collector still has a right to collect on such debt, they must disclose in a validation notice to the consumer, by mail or delivery service within 5 days of the effective date of this rule, that the debt was furnished to a consumer reporting agency, unless such information was already disclosed, clearly and conspicuously, in a validation notice mailed by the debt collector to the consumer.

This subdivision does not apply to a debt collector's furnishing of information about a debt to a nationwide specialty credit reporting agency that compiles and maintains information on a consumer's check writing history, as described in section 603(x)(3) of the Fair Credit Reporting Act (15 U.S.C. § 1681a(x)(3));

(11) selling, transferring, or placing for collection or with an attorney or law firm to sue a New York City consumer to recover any debt where the debt collector knows or should know that the debt has been paid or settled or discharged in bankruptcy, except a debt collector may transfer a debt to the debt's owner or to a previous owner of the debt if:

(i) the transfer is authorized under the terms of the original contract between the debt collector and the debt's owner or previous owner, as a result of a merger, acquisition, purchase and assumption transaction, or as a transfer of substantially all of the debt collector's assets; and

(ii) the debt collector also transfers all information pertaining to whether the debt has been paid or settled or discharged in bankruptcy obtained during the time the debt was assigned to the debt collector for collection;

(12) selling, transferring, or placing for collection or with an attorney or law firm to recover any debt where the debt collector knows or should know that the time to sue on the debt has expired, without including a clear and conspicuous notice to the recipient of the debt that the statute of limitations on such debt has expired; or

(13) selling, transferring, or placing for collection or with an attorney or law firm to sue a New York City consumer to recover any debt for which the debt collector was unable to provide written verification of the debt, despite having received a dispute or request for verification of the debt from the consumer, without including a clear and conspicuous notice to the recipient of the debt that the debt was not verified and a copy of the "Notice of Unverified Debt" sent to the consumer pursuant to subdivision (f) of this section.

(f) ***Validation of debts.***

(1) [~~Upon acceleration of the unpaid balance of the debt or demand for the full balance due, the following validation procedures shall be followed by debt collectors who are creditors or who are employed by creditors as defined by 15 U.S.C. § 1602(f) (Truth in Lending Act) but who are not required to comply with 15 U.S.C. § 1637(a)(8) (Fair Credit Billing Act) and who do not provide consumers with an opportunity to dispute the debt which is substantially the same as that outlined in 15 U.S.C. § 1637(a)(8) and regulations promulgated thereunder: Within five days of any further attempt by the creditor itself to collect the debt, it shall send the customer a written notice containing:~~

~~(i) the amount of the debt;~~

~~(ii) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed valid by the debt collector;~~

~~(iii) a statement that, if the consumer notifies the debt collector in writing within the thirty- day period at the address designated by the debt collector in the notice, that the debt, or any portion thereof is disputed, the debt collector shall either:~~

~~(A) make appropriate corrections in the account and transmit to the consumer notification of such corrections and an explanation of any change and, if the consumer so requests, copies of documentary evidence of the consumer's indebtedness; or~~

~~(B) send a written explanation or clarification to the consumer, after having conducted an investigation, setting forth to the extent applicable the reason why the creditor believes the account of the consumer was correctly shown in the written notice required by 6 RCNY § 5-77(f)(1) and, upon the consumer's request, provide copies of documentary evidence of the consumer's indebtedness. In the case of a billing error where the consumer alleges that the creditor's billing statement reflects goods not delivered in accordance with the agreement made at the time of the transaction, a creditor may not construe such amount to be correctly shown unless it determines that such goods were actually delivered, mailed, or otherwise sent to the consumer and provides the consumer with a statement of such determination.~~

~~(i) if the debt collector is not the original creditor, a statement that, upon the consumer's written request within the thirty-day period, sent to the address designated by the debt collector in the notice, the debt collector will provide the consumer with the name and address of the original creditor;~~

~~(ii) an address to which the consumer should send any writing which disputes the validity of the debt or any portion thereof or any writing requesting the name and address of the original creditor.~~

~~(2)~~] *Validation notice.* Within five days after the initial communication with a New York City consumer in connection with the collection of any debt, a debt collector [~~who is not a creditor and not employed by a creditor shall, unless the following information is contained in an initial written communication, or the consumer paid the debt, send the consumer a written notice containing~~] must send the consumer a written notice containing the following information in a clear and conspicuous manner, unless the consumer paid the debt or such information was contained, clearly and conspicuously, in an initial written communication sent by U.S. mail, ~~or~~ delivery service, or by electronic means consistent with 12 CFR Part 1006.34:

(i) [~~the amount of the debt~~] all information required for validation notices by federal or state law;

(ii) [~~the name of the creditor to whom the debt is owed~~] the New York City Department of Consumer and Worker Protection license number assigned to the debt collection agency, if applicable;

(iii) [~~a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector~~] the name of a natural person for the consumer to contact;

(iv) a [~~statement that if the consumer notifies the debt collector in writing within the thirty- day period at the address designated by the debt collector in the notice that the debt, or any portion~~

Commented [DR39]: Regulation F provides detailed requirements for communicating a validation notice via electronic means. These provisions should align with federal law.

Commented [DR40]: The industry would request a small clarification by deleting the word "such" as it suggests that a specific person (the one referenced in paragraph iii above) has to answer a telephone. This is highly problematic as we cannot guarantee who might answer a phone at a place of business.

~~thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector~~] telephone number that is answered by ~~such~~ a natural person;

~~(v)~~ [a] ~~the following statement~~ [~~that, upon the consumer's written request within the thirty-day period sent to the address designated by the debt collector in the notice, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor~~]:

~~**PLEASE READ: Important Information About Your Rights as a New York City Consumer**~~

- ~~**There is no time limit to dispute the debt in collection.** You can let collectors know you dispute the debt using any of the ways they contact you, including by phone.~~
- ~~**You must get a response to the disputed debt in 45 days.** Once you dispute the debt, the collector must stop collection. In 45 days, the collector must give you either 1) verification of the debt, or 2) a "Notice of Unverified Debt" stating it can't verify the debt or continue collection.~~
- ~~**You can use a "Notice of Unverified Debt" to stop collection attempts by other debt collectors.** Be sure to keep a copy of all letters to exercise this right.~~
- ~~**You may qualify for financial assistance with medical debt.** If you have a low or limited income, ask the collector or the hospital if you qualify for help under the "Financial Assistance Policy."~~

(vi) [~~an address to which the consumer should send any writing which disputes the validity of the debt or any portion thereof or any writing requesting the name and address of the original creditor;~~

~~(vii)~~] a statement informing the consumer of any language access services available[, including whether the consumer may obtain from the debt collector a translation of any communication into a language other than English];

[~~(viii)~~] (vii) a statement that a [~~translation and description of commonly-used debt collection terms is~~]Glossary of Common Debt Collection Terms and other resources are available in [~~multiple~~]different languages at [~~available in multiple languages on the Department's website, www.nyc.gov/dca~~] www.nyc.gov/dcwp.

The information required under subdivisions (ii) through (vii) may be included on the reverse side of a written validation notice only if the debt collector includes them together under a heading entitled, "**Important Additional Consumer Rights Under New York City Law**" and includes a clear and conspicuous statement on the front of the validation notice referring to the disclosures on the reverse side. If included on the reverse side of the validation notice, the information must be positioned in a manner so it is readily noticeable and legible to consumers, even after a consumer tears off any response portion of the notice.

(viii) An itemization of the current amount of the debt asserted to be owed that allows the consumer to recognize the total amount of the outstanding debt as of the itemization reference date, and includes a breakdown of all additional amounts that have been assessed or applied to the amount of the debt since the itemization reference date, listing fields for: 1) interest; 2) fees;

Commented [DR41]: This paragraph is impossible to redline given that NYS DFS rulemaking is not complete. We would respectfully request that DCPW allow the state to finish and finalize their rules first. Otherwise, we risk conflicting consumer notices.

Debt collectors are already required to provide specific notices related to verification by both the federal government and the State of New York. The notice being suggested in this paragraph is different from both the federal and state notice requirements. This is thoroughly going to confuse the consumer. It should also be noted that this notice conflicts with the federal safe harbor provision.

Additionally, since roman numeral (i) above states "all information required by federal or state law" is required to be provided in the validation notice, this notice is not needed.

3) payments; and 4) credits, and the following information:

(A) The total amount of the outstanding debt asserted to be due on the itemization reference date.

~~(B) The date, amount, and description of each fee, payment, credit, or interest, applied to the debt since the itemization reference date. A debt collector must include all fields in the itemization, even if no additional amounts have accrued, or may state that no interest, fees, payments, or credits have been assessed or applied to the debt since the itemization reference date.~~

~~(C) The basis of the consumer's obligation to pay each separate charge, interest, or fee, including if allowed by a contract or by law.~~

(~~D~~B) The total amount asserted to be due on the date of the itemization.

A debt collector is permitted to add additional information in the itemization required in this subdivision or disclose the itemization on a separate page as allowed or required by federal or state law, provided the content required in this subdivision is clear and conspicuous to the consumer. Debt collection agencies that must comply with § 20-493.2 (a) of the Administrative Code and § 2-190 (b) shall be deemed to satisfy the requirement of furnishing an itemization under the licensing law by complying with this section and may list the "principal balance" as the total amount of the outstanding debt asserted to be owed by the consumer on the itemization reference date.

(2) *Delivery of validation notices.* A debt collector must deliver written disclosures under (f)(1) of this section in the following manner:

(i) A debt collector must deliver to consumers validation notices and the itemization of the debt by U.S. mail or delivery service. If a debt collector only delivers a validation notice or the itemization of the debt electronically or orally, it does not satisfy the requirement under subdivision § 5-77(f)(1).

(ii) A debt collector may deliver a duplicate copy of the validation notice and itemization of the debt by any other means, including electronic mail, provided it is in accordance with other sections or laws, such as section 101(c) of the Electronic Signatures in Global and National Commerce Act (E–SIGN Act)(15 U.S.C. 7001(c)) or their successor provisions.

(iii) If a debt collector delivers a duplicate validation notice to a consumer electronically, the debt collector must do so in accordance with § 5-77(b)(5) and the notice must include the debt collector's website, email address, and information on how the consumer can dispute the debt, seek verification of the debt, or request originating-creditor information electronically.

(3) Notices in languages other than English. If a debt collector offers consumers validation notices in a language other than English, and a consumer requests a notice in such language, the debt collector must mail a written notice to the consumer completely and accurately in the language requested within 30 days of receiving such a request. As required by section 1006.34(e)(2) of title 12 of the Code of Federal Regulations, a debt collector who receives a request from the consumer for a Spanish-language validation notice must provide the consumer with a validation notice completely and accurately translated into Spanish. A debt collector may not contact a consumer exclusively by telephone or orally in a language other than English to collect debt without providing the consumer, by U.S. mail or delivery service, a validation notice written accurately in the language used by the debt collector during the exchange with the

Commented [DR42]: These additional disclosures should be stricken as they require the inclusion of detailed extraneous data that will confuse consumers. Given the proposed narrowing of the itemization reference date, this section will require the inclusion of voluminous accounting information. In CFPB usability testing, it was determined that "…participants said they thought [the balance] would continue to increase based on the current interest and fee accumulations in the model validation notice." Consumers who receive an additional complex accounting in the initial communication will only be more confused about whether the balance is changing or how it was calculated. It is respectfully submitted that this information is more appropriate to be provided in response to a validation of debt request.

consumer, within 30 days of the first contact by the debt collector in the language other than English. A debt collector is not required to mail the validation notice, in a language other than English, to the consumer more than once during the period that the debt collector owns or has the right to collect the debt. If the debt collector sends a validation notice in a language other than English, it must also accept and respond to disputes, complaints, requests for verification of the debt and cease and desist requests by the consumer completely and accurately in the same language as the validation notice.

([~~3~~]4) [~~If, pursuant to 6 RCNY §§ 5-77(f)(1) or 5-77(f)(2) of this Regulation the consumer notifies the debt collector in writing within the thirty day period that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall not attempt to collect the amount in dispute until the debt collector obtains and mails to the consumer verification of the debt or a copy of the judgment or the name and address of the original creditor. The debt collector shall maintain for one year from the date the notice was mailed, records containing documentation of the date such notice was mailed, the date the response, if any, was received and any action taken following such response~~] *Validation Period.* The validation period extends for 30 consecutive days from the date a consumer receives or is assumed to receive a validation notice. For purposes of determining the validation period, the debt collector may assume that a consumer received the validation notice five days (excluding Saturdays, Sundays, and legal public holidays identified in 5 U.S.C. § 6103(a)) after the debt collector sent it.

([4]5) [~~The failure of a consumer to dispute the validity of a debt under 6 RCNY § 5-77(f) shall not be construed by any court as an admission of liability by the consumer~~] *Overshadowing of rights to dispute or request original-creditor information*. During the validation period, a debt collector must not engage in any collection activities or communications that overshadow or are inconsistent with the disclosure of the consumer's rights to dispute the debt and request the name and address of the original creditor.

(6) *Verification*. A debt collector must provide a New York City consumer verification of a debt or provide a notice of unverified debt in accordance with section 5-77(f)(7) within 45 days of receiving a dispute or a request for verification of the debt. The consumer may dispute the debt, or make such verification request orally or in writing, or electronically if the debt collector uses electronic communications to collect debt, at any time during the period in which the debt collector owns or has the right to collect the debt. The debt collector must treat a first dispute by the consumer as a request for verification of the debt, unless the debt collector has already provided the consumer with the verification information required in this subdivision. If a debt collector provides consumers the ability to submit written disputes electronically through a website, such a website must automatically generate a copy of each written dispute that a consumer can print, save, or have emailed to them. A consumer shall not be required to waive any rights to make use of such an online submission option. The debt collector must cease collection of the debt if an itemization of the debt was not previously provided to the consumer by the debt collector in compliance with section 5-77(f)(1)(vii) and if a timely written verification of the debt has not been provided to the consumer. A debt collector is not required to verify a debt pursuant to this section more than once during the period that the debt collector owns or has the right to collect the debt; provided, however, that the debt collector must send any such verification documents to the consumer one additional time upon request by the consumer. A debt collector must provide verification to the consumer in writing, by U.S. mail or delivery service, unless the consumer has consented to receive electronic communications in compliance with section 5-77(b)(5).

(i) Verification of debt must include the information and documents required by paragraph (j) of Rule 3016 of the Civil Practice Laws & Rules:

Commented [DR43]: In 2021, the Consumer Credit Fairness Act (CCFA) was signed into law by Governor Hochul. The CCFA provides in great detail what information is needed to bring suit on a debt in New York State. What is required in CCFA is more nuanced and detailed than what is provided in the text below. The industry strongly recommends that the rule be consistent with New York State law.

IF DCWP AGREES WITH THE EDIT ABOVE, PARAGRAPHS (A) THROUGH (C) BELOW WOULD BE DELETED. HOWEVER, IS DCWP DECIDES TO PROCEED WITH THE DRAFT LANGUAGE, THE INDUSTRY WOULD REQUEST THE FOLLOWING EDITS SO THAT IT CAN COMPLY WITH DCWP'S INTENT.

(A) a copy of the judgment if a court has reduced the facts to judgment, or a copy of the debt document issued by the ~~originating~~ original creditor or an original written confirmation evidencing the transaction resulting in the indebtedness to the ~~originating~~ original creditor, including the signed contract or signed application that created the debt or, if no signed contract or application exists, a copy of a document provided to the alleged debtor while the account was active, demonstrating that the debt was incurred by the consumer. For a revolving credit account, the charge-off account statement, and the most recent monthly statement recording a purchase transaction, payment, or balance transfer shall be deemed sufficient to satisfy this requirement; ~~. Documents created or generated after the time of charge-off of the debt or institution of debt collection procedures shall not qualify as such confirmation;~~

(B) records reflecting the amount and date of any prior settlement agreement reached in connection with the debt;

(C) the final account statement, or other such document that reflects the total outstanding balance, mailed to the consumer on or before the charge-off date and prior to the institution of debt collection procedures;

(ii) In matters involving a judgment obtained after adjudication on the merits of the case, there will be a rebuttable presumption that the debt collector complied with this section if it mails the consumer, by U.S. mail or delivery service, a copy of the judgment and any evidence of indebtedness that is part of the record of the lawsuit. ~~For this subdivision, a copy of a judgment obtained by default does not provide the consumer verification of the alleged debt~~; and

(iii) In matters involving medical debt arising from the receipt of health care services, medical products, or devices, ~~the~~ a debt collector collecting on behalf of a covered medical entity must provide, clearly and conspicuously, to the consumer any information in its possession or available to the debt collector required to be disclosed by federal, state or local law, including the relevant financial assistance policy.

(7) *Notice of unverified debt.* If a debt collector did not provide an itemization of the debt and cannot provide a consumer with a timely written verification of a debt in response to a dispute or request for verification, the debt collector must respond in writing to the consumer within 45 days of receiving the dispute or a request for verification, at any time during the collection process, that the debt collector is unable to verify the debt and will stop collecting on the debt, and provide the reason that the debt could not be verified. Debt collectors must deliver a notice of unverified debt to the consumer by U.S. mail or delivery service. The debt collector must permit receipt of, and monitor for, notifications of undeliverability from communications providers for at least 14 consecutive days after they place the notice of unverified debt in the mail or with the delivery service. If the debt collector receives such notification, the debt collector must re-send the notice of unverified debt to the consumer, by U.S. mail or delivery service, within 5 days if a new

Commented [DR44]: If a court has determined that a debt is rightfully owed and it is reduced to a judgment, that judgment becomes the applicable document that must be provided the consumer.

Commented [DR45]: Most documents and evidence are stored electronically today, not as physical copies maintained in a filing cabinet. This sentence would essentially invalidate almost all debt.

Additionally, the final sentence does not recognize that a number of admissible documents are generated after default, including but not limited to the charge-off statement (which is referenced earlier in the paragraph).

Commented [DR46]: The federal government, New York state, and the other 49 states recognizes the validity of a judgment for the verification of a debt. How does NYC have the authority to invalidate judgments recognized by all of those jurisdictions?

New York state just adopted in 2021 the Consumer Credit Fairness Act which provides extensive and detailed requirements for obtaining a judgment, including a default judgment. Additionally, included in section 306-d of the Civil Practice Law and Rules is the following provision: "No default judgment based on the defendant's failure to answer shall be entered unless there has been compliance with this section, and at least twenty days have elapsed from the date of mailing by the clerk. No default judgment based on the defendant's failure to answer shall be entered if the additional notice is returned to the court as undeliverable."

Commented [DR47]: Often if a notice is returned a new address is not provided. Therefore this requirement may not be something that we can actually do within the provided time frame. Recommend revising this to reflect this reality.

forwarding address for the consumer is provided by U.S. Mail or delivery service.

(8) ~~*Originating*~~ *Original creditor*. A debt collector must provide the consumer the address of the ~~originating~~ original creditor of a debt within 45 days of receiving a request from the consumer for such address, provided that if the servicer is the name the consumer is most readily going to identify with the debt, that name and address may be provided. The consumer may make such request orally or in writing, or electronically if the debt collector [~~permits~~]uses electronic communications to collect debt, at any time during the period in which the debt collector owns or has the right to collect the debt. After receiving such a request, the debt collector must cease collection of the debt until such address has been provided to the consumer. A debt collector is not required to provide this information more than once during the period that the debt collector owns or has the right to collect the debt.

(9) *Electronic communications.* If a debt collector delivers a duplicate copy of the validation notice to a consumer electronically, the debt collector must do so in accordance with § 5-77(b)(5) and the notice must include the debt collector's website, email address, and information on how the consumer can dispute the debt, seek verification of the debt, or request original~~-~~ creditor information electronically.

(10) *Dispute and verification of medical debt*. Medical debt includes debt collected on behalf of a covered medical entity arising from the receipt of health care services or medical products or devices.

(i) If, at any time during the debt collection process, the New York City consumer indicates that a public or private insurance plan, a third-party payer, or a financial assistance policy should have covered some or all of the charges on the medical debt, or that the debt is as a result of lack of price transparency at the time the services were rendered, or a violation of federal, state or local law, the debt collector must treat such communication by the consumer, received by any medium of communication and language used by the debt collector to collect the debt, as a dispute and a request for verification by the consumer on such medical debt.

(ii) A debt collector must respond to disputed medical debt by providing the consumer verification in accordance with section 5-77(f)(6) and by responding to the specific issue disputed by the consumer under paragraph (i) of this subdivision or deliver to the consumer a notice of unverified debt in accordance with section 5-77(f)(7).

(iii) If a New York City consumer disputes a medical debt, the debt collector must also do the following:

(A) treat all unverified accounts related to a discrete hospitalization or treatment of the consumer, provided such services were rendered within a six-month period, the same as the disputed medical debt by the consumer;

(B) note in all related medical accounts, unless written verification was already provided by the debt collector to the consumer or the consumer has acknowledged owing the amount claimed to be owed on such account, as disputed medical debt, in a manner that is easily identifiable and searchable in each of the consumer's related accounts; and

(C) furnish to the consumer verification on each related medical debt.

(iv) In addition to the requirements in section 5-77(j), before resuming debt collection activities on disputed medical debt arising from services provided by a covered medical entity, the debt

Commented [DR48]: Most consumers are going to have no idea who the original creditor is on a fintech product. Since this is in response to the NYC validation request specifically it would be more consumer friendly to provide the fintech servicer name.

collector must also verify that the covered medical entity met its obligations under federal, state, or local law and the financial assistance policy.

(g) Reserved.

(h) ***Public websites***. Any debt collector that utilizes, maintains, or refers New York City consumers to a website accessible to the public that relates to debts for which debt collection procedures have been instituted must clearly and conspicuously disclose, on the homepage of such website or on a page directly accessible from a hyperlink on the homepage labeled "**NYC Rules on Language Services and Rights**", the following disclosures:

(1) a statement informing the consumer of any language access services available[~~, including whether the consumer may obtain from the debt collector a translation of any communication into a language other than English~~]; and

(2) a statement that a [~~translation and description of commonly-used debt collection terms is~~]Glossary of Common Debt Collection Terms and other resources are available in [~~multiple~~]different languages at[~~on the Department's website, www.nyc.gov/dca www.~~] www.nyc.gov/dcwp.

(i) ***Time-barred debts***. In connection with the collection of a debt, the following requirements must be met:

(1) A debt collector must maintain reasonable procedures for determining the statute of limitations applicable to a debt it is collecting and whether such statute of limitations has expired.

(2) *Initial Written Notice*. if a debt collector, including a debt collection agency that must provide information to a New York City consumer pursuant to § 20-493.2(b) of the Administrative Code, seeks to collect on a debt for which the debt collector has determined, including pursuant to subdivision (a) of this section, or otherwise knows or has reason to know, that the statute of limitations for a debt has or may have expired, the debt collector must initially deliver the consumer a written notice, by U.S. mail or delivery service, that clearly and conspicuously discloses to the consumer substantially the same time-barred-debt disclosure below, before contacting a consumer about the expired debt by any other means:

- **The statute of limitations on this debt expired. This means you can't be sued to collect it. A court will not enforce collection**.

IF YOU ARE SUED:

- It is a violation of federal law (the Fair Debt Collection Practices Act).
- You may be able to prevent a judgment against you by telling the court that the statute of limitations on this debt expired.
- You are not required to admit that you owe this debt, promise to pay this debt, or waive the statute of limitations on this debt.
- Consult an attorney or a legal aid organization to learn more about your legal rights and options.

(3) *Waiting Period.* The debt collector must wait at least 14 consecutive days after they place the initial written notice in U.S. mail or delivery service to the consumer to receive notice of undeliverability. During the waiting period under this subdivision, the debt collector must permit

receipt of, and monitor for, notifications of undeliverability from communications providers. If the debt collector receives such notification during the waiting period, the debt collector must not contact the consumer, by any other means of communication, to collect the debt until the debt collector otherwise satisfies section 5-77(i)(2).

~~(4) *Subsequent Communications*. Unless otherwise permitted by law, the debt collector may not, without the prior written and revocable consent of the consumer given directly to the debt collector, contact such consumer in connection with the collection of an expired debt exclusively by telephone or by other means of oral or electronic communication. After mailing the Initial Written Notice required in section 5-77(i)(2), the debt collector must redeliver such notice to the consumer by U.S. mail or delivery service within 5 days after each oral communication with the consumer unless the debt collector has already mailed a hardcopy of such notice within a 30- day period. Any subsequent notice sent to the consumer electronically must be in accordance with other sections or laws, such as section 101(c) of the Electronic Signatures in Global and National Commerce Act (E- SIGN Act)(15 U.S.C. 7001(c)) or their successor provisions.~~

(~~5~~4) When such information is delivered in writing, the time-barred debt notice must be included for each debt that is beyond the applicable statute of limitations, in at least 12 point type that is set off in a sharply contrasting color from all other types on the communication, and placed on the first page adjacent to the identifying information about the amount claimed to be due or owed on such debt. A debt collector may include additional language to the time-barred-debt disclosure as may be required by the State of New York to send the consumer one disclosure notice.

(i) ***Medical debt from a covered medical entity.*** (1) In connection with the collection of medical debt arising from charges from a covered medical entity, a debt collector collecting on behalf of a covered medical entity is prohibited from collecting or attempting to collect on a medical debt from a New York City consumer asserted to be owed if the debt collector knows or should know that:

(i) To do so violates federal, state, or local law or the financial assistance policy of the covered medical entity.

(ii) The patient has an open application for financial assistance with the covered medical entity.

(iii) The financial assistance policy should have provided financial assistance to the patient to cover all, or a portion, of the medical debt.

(iv) A misrepresentation was made to the patient about the financial assistance policy or payment options regarding the medical debt, including, but not limited to:

(A) The patient was wrongly denied, or not given proper and timely notice of, available financial assistance.

(B) The patient was discouraged from applying for financial assistance.

(C) The patient was induced to agree to pay for all or part of the medical debt with misinformation about payment options or the financial assistance policy.

(D) The patient was only presented with options to pay or to agree to pay for all or part of the medical debt regardless of income level.

Commented [DR49]: Requiring a written disclosure to be sent out within 5 days of each oral communication or every 30 days will create unintended consequences in that: (1) consumers may likely feel harassed by the constant deluge of disclosures; (2) consumers are likely become desensitized to and unlikely to read the notices or future notices; (3) it will create significant environmental costs through excess and unneeded letters being mailed that are likely not to be read; and (4) it will reduce the availability of credit to consumers if the debt is deemed to be too complicated to collect.

How will this language benefit the consumer? Under New York state law: (1) the consumer will still owe the debt; (2) the creditor/debt collector is still allowed to attempt collection on the debt; (3) the debt collector is still prohibited from suing; and (4) the debt collector is still prohibited from reviving the statute of limitations through a payment or affirmation of the debt.

Specifically, section 214-I of the Civil Practice Law and Rules which was codified in 2021 by New York's Consumer Credit Fairness Act (CCFA) that states: "Notwithstanding any other provision of law, when the applicable limitations period expires, any subsequent payment toward, written or oral affirmation of or other activity on the debt does not revive or extend the limitations period."

Lastly, as the law is currently written in New York State and New York City, consumers are provided with notice of the legal status of their debt when debt collectors try to collect debt from them, which is when it makes sense to inform the consumer of the expiration of the Statute of limitations on their account so that they can make an informed decision about their next steps concerning that debt. Specifically, the New York State Department of Financial Services requirement in 23 NYCRR 1.3 reads that "if a debt collector knows or has reason to know that the statute of limitations for a debt may be expired, before accepting payment on the debt," the debt collector must inform the consumer that the Statute of Limitations on the debt has expired. Also, the current Rules of the City of New York in § 2-191 requires debt collectors to inform consumers that the Statute of Limitations has expired on their debt "…in every permitted communication for each debt that the debt collection agency is seeking to collect that is beyond the applicable statute of limitations…"

(2) In connection with the collection of medical debt from a New York City consumer arising from charges from a covered medical entity, a debt collector collecting on behalf of a covered medical entity must conduct reasonable corrective measures upon obtaining information that the financial assistance policy was not disclosed to the patient as required by law or that there is a violation of federal, state, or local law. A consumer may provide such information to the debt collector, by any means of communication or in any language used by the debt collector to collect debt, without the debt collector requiring the consumer to submit any supporting documentation to the debt collector. Corrective measures must be taken as follows:

(i) Inform the entity that placed the account with the debt collector within one business day that the debt may be subject to the covered medical entity's financial assistance policy or that there might be a violation of the law.

(ii) Provide and record in plain language the following statement: "**A FINANCIAL ASSISTANCE POLICY MAY APPLY TO THIS MEDICAL DEBT**", or a statement indicating the violation of law, in a manner readily noticeable and searchable, in the following records:

(A) all of the consumer's accounts arising from medical debt from the covered medical entity, from the same hospitalization or a discrete course of treatment or care;

(B) a written notification that must be sent by U.S. mail or delivery service to the consumer along with the verification of the debt in accordance with sections 5- 77(f)(6) and (f)(10); and

(C) a written notification that must be sent to any receiving party upon transferring any of the consumer's accounts with medical debt from the same covered medical entity.

(iii) Provide any disclosure to the consumer regarding the financial assistance policy, by U.S. mail or delivery service, clearly and conspicuously on the first page of any written communication from the debt collector to the consumer, and such disclosure must not be placed on the reverse side of the page or the second page. Any written notification to a consumer regarding the financial assistance policy may not be delivered exclusively by the debt collector through electronic means.

(iv) Maintain a monthly log or record of all consumer accounts in which the debt collector took corrective measures as required in section 5-77(j) and such measures must be easily identifiable and searchable in each consumer account.

(k) ***Record retention***. A debt collector must retain the following records to document its collection activities with New York City consumers:

(1) Records that are evidence of compliance or noncompliance with part 6 of subchapter A of chapter 5 of title 6 of the Rules of the City of New York starting on the date that the debt collector begins collection activity on the debt until three years after the debt collector's last collection activity on the debt.

(2) Monthly logs or a record of the following:

(i) all complaints filed by New York City consumers against the debt collector, including those filed with the agency directly or with any not-for-profit entity or governmental agency, identifying for each complaint the date, the consumer's name, and account information, the source of the complaint, a summary of the consumer's complaint, the debt collector's response to the complaint, if any, and the current status of the complaint;

(ii) all disputes or requests for verification made by New York City consumers, identifying each consumer's name and account information, the date of the dispute or request for verification, and the date and type of response, if any, sent by the debt collector; and

(iii) all cease-and-desist requests made by New York City consumers, identifying the consumer's name and account information, the date of the request, and the date and purpose of any further contacts by the debt collector after receipt of the request from the consumer.

To comply with this subdivision, debt collectors may combine all the monthly logs or records into one document or record or use a template: "Report for Consumer Activity" as made available on the Department's website at www.nyc.gov/dcwp.

EFFECTIVE DATE: All new provisions contained in this rulemaking shall apply to debts charged-off on or after January 1, 2025, or for debts not charged off, the new provisions will apply to debts that defaulted on or after January 1, 2025.

Commented [DR50]: The industry requests a date certain that the revised rules take effect. Given the significant changes to the rules, we respectfully request that they be applied prospectively. To not apply the rules prospectively, will automatically place the industry in non-compliance (example: the log). The industry cannot be expected to know what new requirements a future regulatory change will require.

Online comments: 8

- **Davindranauth Shiwratan**
  New York City Consumers, including small homeowners and tenants, have been under direct assault by Debt Collectors and Collection Agencies. The escalating high cost of living in New York City resorted consumers to debt to pay-off financial obligations with loans, credit cards, and refinancing their homes.

  Comment added October 13, 2023 11:58am

- **Abe**
  Much too few regulations, why don't you write another 100 pages of rules, regulations and technicalities so no one can collect what is due to the hard-working creditors. The Federal FDCPA is not enough, we need duplicating and overlapping State and City regulations!! People who sell, provide services, merchandise should not be allowed to get paid. Every agency should be sued daily for minor technicalities to stop them asking what is owed. People should not be responsible for their debts, and everything should be free. Bigger government and more taxes on the few that still earn a living!! Keep up the very productive work!

  Comment added October 27, 2023 1:26pm

- **John Ross**
  One of the largest debts to owners of establishments that were ordered to close during the pandemic came from Con Edison. Though places were closed with all equipment (ice machines, refrigerators, AC, etc.) turned off, Con Edison still charged the full amount per month for electricity. They explained to me that they were using "estimated bills" based on previous usage.
  Con Ed functions as a monopoly and there is no respite from their charges. Can you help?

  Comment added November 3, 2023 11:26am

- **Bob**

  The NYC proposed rules for debt collection are excessive and will harm and very possibly cause small businesses to withdraw their licenses and/or prevent small businesses from operating in NY. NY continues to add additional burden on companies that conduct business in the right way, all in the name of overprotecting consumers while harming creditors that have the right to collect the debt they are owed. This over regulation ultimately harms more consumers by causing creditors to raise prices and/or restrict services in order to stay in business. Punish the bad actors and let the legitimate businesses operate as they should in a capitalist and free market. Stop encouraging consumers from shirking their financial obligations. Where is the common sense?

  Comment added November 13, 2023 1:11pm

- **Gerry Vincent**

  The searchable record keeping will incur substantial costs and highly burdensome. There is no space in collection software to reflect who we spoke to. Why is this needed? Also, why is a summary needed if call recording is already a requirement? And the record keeping requirements are vague, at best.

  How can the name and number of a “natural person” be included in a letter when thousands of communications are sent? What if that person isn’t in? Do consumers sit on hold for hours until the “natural person” is available?

  What is the purpose or reasoning behind “unverified debt” rule if we are already providing an itemization in our initial dunning notice?

  Aside from the fact that the rules you are proposing are almost impossible to implement, the minimum time needed to attempt to put these rules into place is at least 18-24 months. In comparison, the requirements you are proposing are more involved than Regulation F,

and the collection agencies will require more time than the CFPB provided to implement the Regulation F rules.

These rules make it virtually impossible to perform the work that our clients need to recover debts owed to them. It is cost prohibitive for many agencies, and you will find that it will ultimately harm consumers as many debt collectors will move to a straight litigation model.

Comment added November 21, 2023 4:25pm

- **Dixie Newsome**
  As someone who works in the Collection Industry, I believe that making the proposed rules effective immediately and as is will only have a short-term gain for Consumers in NYC, and ultimately move the efforts from Collection to Judgements, which will have a long-term impact on Consumers. I believe we need to give a reasonable effective date of January 1, 2025, for any new rules as it does take time for businesses and consumers alike time to adjust.

  Comment added November 22, 2023 7:17am

- **Timothy Wan, Esq.**
  The definition of “medical debt” or any “medical providers” should be restricted to those identified as either “a health care entity that is tax-exempt under federal or New York State law or qualifies for distributions from the Indigent Care Pool from the State of New York or any other such fund or distribution allocated to reduce the charges of medical services by granting financial assistance, through a financial assistance policy, to patients based on need or an inability to pay.” To expand this to ANY medical provider would be unfair to the SMALL BUSINESS OWNERS such as chiropractors, dentists who work out of their garage, mobile massage therapists, etc., would force these small businesses to suffer.

  Comment added November 28, 2023 6:02pm

- **Brian**

  I am the owner of a small business that is in the business of purchasing and collecting on defaulted debt, including debts from New York City residents. If the amendments to the Debt Collection Rule currently proposed by The New York Department of Consumer and Worker Protection (DCWP) are adopted as drafted, there will be significant negative impacts to many New York City (NYC) consumers who are in active (or future) collections. This rule as drafted is inconsistent with the CFPB's Regulation F, New York State and New York State Department of Financial Services requirements as they pertain to debt collections. The inconsistencies with other existing collection laws/regulations coupled with the onerous requirements proposed for collection businesses to comply will at best cause tremendous confusion to NYC consumers, at worst, cause collection businesses to forego the traditional collections process whereby NYC consumers will have little opportunity to resolve those debts before going directly into litigation.

  We would ask that there be serious consideration given to the suggested changes proposed by members of the industry to the DCWP proposed rules. It is our strong belief that the suggested changes will reduce consumer confusion and avoid potentially unnecessary litigation where a mutually agreeable resolution (between the consumer and the Creditor/Collection Business) may have otherwise been found during the traditional collections process. Finally, whatever the modifications end up being, it would appear that the new rules would be effective immediately. As I am sure the DCWP can appreciate, it takes time and expense (of which small businesses rarely have an abundance) to adjust systems to new regulatory requirements. As such, we would request that an effective date be inserted into the rules, such as January 1, 2025. This would give businesses sufficient time to ensure system and process changes are well thought out and tailored to ensure compliance and consumer protection with regard to any new processes.

Comment added November 29, 2023 5:58pm