Consumer and Worker Protection

Comments Received by the Department of Consumer and Worker Protection on

Proposed Rules related to Debt Collectors

IMPORTANT: The information in this document is made available solely to inform the public about comments submitted to the agency during a rulemaking proceeding and is not intended to be used for any other purpose

From: abe teper <abe@aitcredit.com>
Sent: Wednesday, November 30, 2022 11:26 AM
To: Rulecomments
Subject: [EXTERNAL] Comments on Proposed Amendments Relating to Debt Collectors

Importance: High

My name is Abe Teper the owner from A.I.T. Credit Services Inc. I am reaching out to you today regarding the Department of Consumer and Worker Protection's proposed amendments to its rules relating to debt collectors.

A.I.T. Credit Services Inc. is located in Inwood, New York. We have 3 employees. We handle consumer but mostly commercial debt which helps other companies and their cash flow assisting in the New York economy, trying to survive very difficult economic times. Balancing a business absorbing and implementing new rules which feels like its almost monthly changes. We are coming out of coved in addition to the massive inflation which has been from what I have experienced in 31 years in one of the more difficult economic times which may only get worse. Keeping a business productive, profitable and in check takes enormous time and resources which most small business do not have an abundance of. Consideration and understanding in new rule making is greatly appreciated.

While I support the Department's underlying goal of protecting consumers, I have significant concerns about the timing and overall impact these Proposed Amendments will have on consumers, my company and the clients we serve.

I respectfully request the Department delay any changes to the NYC debt collection rules for at least one year. The debt collection industry in New York City just implemented two major overhauls of collection rules and is expecting the New York Department of Financial Services (DFS) to issue proposed final debt collection rules later this month. The Consumer Financial Protection Bureau just enacted Regulation F, the most comprehensive set of changes to the country's debt collection laws in over 40. Unfortunately, many of the Department's proposed amendments conflict with these new federal regulations. The New York Consumer Credit Fairness Act (S. 153/A. 2382) just took effect on April 7, 2022 and May 7, 2022 making significant changes to the debt collection procedures in the state. I respectfully request the Department allow these new comprehensive changes at the federal and state level time to have an impact and then strive to avoid conflicts between these multiple levels of regulation. Taking a measured approach would allow the Department to best serve the consumers in New York City.

A.I.T Credit Services Inc. is a small business that helps recover outstanding payments for products and services provided by New York's businesses, hospitals, and community lenders. We are an extension of our community's businesses. We work with large and small businesses, as well as consumers, to obtain payment for the goods and services already received by consumers. Our services allow lenders to extend credit to consumers of all means, as they are assured that they will be able to collect on that debt.

In addition to my brief comments below, I encourage the Department to strongly consider the comments being submitted by my state trade association, the New York State Collectors Association, and my national trade association, ACA International.

Sometimes more is just not better and just leads to too much. I respectfully request the Department just not make a political statement and actually consider the following changes to the proposed amendments to enact better useful rules which help the public in a meaningful way :

Records to be Maintained by Debt Collection Agency

In this section, I respectfully request that language be added to clarify that if a communication 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 that it is not required to be maintained in the required log. Adding this language would be consistent with exceptions contained in Regulation F and would not remove any consumer protections being implemented by the proposal.

Under the definition of "limited-content message," the proposal would require the collector to provide the name of the natural person whom the consumer can contact to reply to the debt collector and a call-back telephone number that is answered by a natural person.

This requirement would be impractical as collection agents often work staggard schedules and flexible workdays. An unintended consequence of this requirement would be to limit a consumers' flexibility in reaching out during a time that best fits their schedule or from making payments or discussing timely account resolution solutions.

The term Clear and Conspicuous

I respectfully ask that under the definition of "Clear and Conspicuous" the Department clarify that if all of the federal, state and local disclosures do not fit on a single page that a second page may be used. In some cases, the required 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. I also request the Department clarify that hyperlinks are permitted in electronic communications.

Unconscionable and Deceptive Trade Practices

Consumer Location

I respectfully request the Department change a "consumers location" to "eastern time zone." A debt collector would not have the ability to know when or where a consumer has traveled out of New York City for any number of reasons.

Excessive Frequency

I respectfully request the Department clarify a few common sense exceptions to the excessive frequency section that will ensure a consumer receives important financial information in a timely manner.

The Department should consider adding language to ensure a collector can receive and return call requests from a consumer without going over any limitation threshold. The Department should also clarify that calls without a connection or ability to leave a message do not count against the limitation threshold. The Department should also clarify that any federal, state or local required communication would not cause a collector to exceed the communication limitations.

Electronic Communications

The proposed rules on electronic communications would prohibit validation notices from being sent electronically even where the consumer previously consented, in communications with the creditor, to receiving electronic communications. Imposing this requirement forces a collection agency to communicate with a consumer through a medium that goes directly against the consumers already confirmed preferred communication method. The Department should allow communications regarding electronic communications with the creditor be passed along to the collection agency which is working as their agent.

Verification of Debts

Small businesses such as A.I.T. has so much to contend with, as it is and as such I respectfully ask the Department to work closely with the New York State Department of Financial Services to develop a uniform notice. My industry is already required to provide a specific federal notice and a New York State notice. Requiring a third set of conflicting information in an additional New York City notice will only confuse the consumer. Does three different notices which may will duplicate or conflict make sense in the same geographic area? The regulation requires all information required by federal or state law to be provided to the consumer therefore a new disclosure is either not needed or should at least be uniform with the state disclosure.

Effective Date

The Department should delay moving forward with these changes until the New York Department of Financial Services has an opportunity to finalize their pending rules and to allow the new federal Regulation F and the New York Consumer Credit Fairness Act time to take have an actual impact. If the Department does proceed, I respectfully request that all new provisions contained in rulemaking only take effect on or after January 1, 2024, thus allowing businesses to acclimate to additional rules.

Thank you and the Department for the opportunity to provide comments and for meaningfully considering the concerns outlined above.

Respectfully submitted,

Abe Teper
516 371-6388x301

From:	Darren Heimburg <dheimburg@reliant-cap.com>
Sent:	Wednesday, November 30, 2022 10:07 AM
To:	Rulecomments
Subject:	[EXTERNAL] Comments on Proposed Amendments Relating to Debt Collectors

My name is Darren Heimburg, Director of Compliance with Reliant Capital Solutions, LLC (Reliant). I am reaching out to you today regarding the Department of Consumer and Worker Protection's proposed amendments to its rules relating to debt collectors.

Reliant is located in Gahanna, Ohio. We have 145 employees and service a wide array of clients representing banking, student loan, medical, as well as multiple States.

While I support the Department's underlying goal of protecting consumers, I have significant concerns about the timing and overall impact these Proposed Amendments will have on consumers, my company and the clients we serve.

I respectfully request the Department delay any changes to the NYC debt collection rules for at least one year. The debt collection industry in New York City just implemented two major overhauls of collection rules and is expecting the New York Department of Financial Services (DFS) to issue proposed final debt collection rules later this month. The Consumer Financial Protection Bureau just enacted Regulation F, the most comprehensive set of changes to the country's debt collection laws in over 40. Unfortunately, many of the Department's proposed amendments conflict with these new federal regulations. The New York Consumer Credit Fairness Act (S. 153/A. 2382) just took effect on April 7, 2022 and May 7, 2022 making significant changes to the debt collection procedures in the state. I respectfully request the Department allow these new comprehensive changes at the federal and state level time to have an impact and then strive to avoid conflicts between these multiple levels of regulation. Taking a measured approach would allow the Department to best serve the consumers in New York City.

Reliant is a small business that helps recover outstanding payments for products and services provided by New York's businesses, hospitals, and community lenders. We are an extension of our community's businesses. We work with large and small businesses, as well as consumers, to obtain payment for the goods and services already received by consumers. Our services allow lenders to extend credit to consumers of all means, as they are assured that they will be able to collect on that debt.

In addition to my brief comments below, I encourage the Department to strongly consider the comments being submitted by my state trade association, the New York State Collectors Association, and my national trade association, ACA International.

I respectfully request the Department consider the following changes to the proposed amendments:

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The term Clear and Conspicuous

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Unconscionable and Deceptive Trade Practices

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Effective Date

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Thank you and the Department for the opportunity to provide comments and for meaningfully considering the concerns outlined above.

Respectfully submitted,

Darren Heimburg
Director of
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Gahanna, Ohio 43230
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dheimburg@reliant-cap.com
www.reliantcapitalsolutions.com

the contents of this email is strictly prohibited. Please delete from your files if you are not the intended recipient. Thank you for your compliance.

From:	Avi | Fair Capital <avigdor@thefaircapital.com>
Sent:	Wednesday, November 30, 2022 1:12 PM
To:	Rulecomments
Subject:	[EXTERNAL] Comments on Proposed Amendments Relating to Debt Collectors

My name is Avigdor Grunwald, CEO of Fair Capital LLC. I am reaching out to you today regarding the Department of Consumer and Worker Protection's proposed amendments to its rules relating to debt collectors.

Fair Capital is located in Rockland County, New York. We have a handful of employees. We are a collection agency specializing in helping small and midsize businesses recover outstanding receivables In a respectful manner.

While I support the Department's underlying goal of protecting consumers, I am concerned about the timing and overall impact these Proposed Amendments will have on consumers, my company and the clients we serve.

I respectfully request the Department delay any changes to the NYC debt collection rules for at least one year. The debt collection industry in New York City just implemented two major overhauls of collection rules and is expecting the New York Department of Financial Services (DFS) to issue proposed final debt collection rules later this month. The Consumer Financial Protection Bureau just enacted Regulation F, the most comprehensive set of changes to the country's debt collection laws in over 40. Unfortunately, many of the Department's proposed amendments conflict with these new federal regulations. The New York Consumer Credit Fairness Act (S. 153/A. 2382) just took effect on April 7, 2022 and May 7, 2022 making significant changes to the debt collection procedures in the state. I respectfully request the Department allow these new comprehensive changes at the federal and state level time to have an impact and then strive to avoid conflicts between these multiple levels of regulation. Taking a measured approach would allow the Department to best serve the consumers in New York City.

Fair Capital is a small business that helps recover outstanding payments for products and services provided by New York's businesses and community lenders. We are an extension of our community's businesses. We work with large and small businesses, as well as consumers, to obtain payment for the goods and services already received by consumers. Our services allow lenders to extend credit to consumers of all means, as they are assured that they will be able to collect on that debt.

In addition to my brief comments below, I encourage the Department to strongly consider the comments being submitted by my state trade association, the New York State Collectors Association, and my national trade association, ACA International.

I respectfully request the Department consider the following changes to the proposed amendments:

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Under the definition of "limited-content message," the proposal would require the collector to provide the name of the natural person whom the consumer can contact to reply to the debt collector and a call-back telephone number that is answered by a natural person.

This requirement would be impractical as collection agents often work staggard schedules and flexible workdays. An unintended consequence of this requirement would be limiting consumers' flexibility in reaching out during a time that best fits their schedule or from making payments or discussing timely account resolution solutions.

The term Clear and Conspicuous
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Unconscionable and Deceptive Trade Practices

Consumer Location
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Verification of Debts
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Effective Date
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Thank you and the Department for the opportunity to provide comments and for meaningfully considering the concerns outlined above.

Respectfully submitted,

Avi | Director

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T: 1-855-505-5669 Ext 101
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W: www.thefaircapital.com

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From:	Anita <amanghisi@irrcollect.com>
Sent:	Wednesday, November 30, 2022 5:14 PM
To:	Rulecomments
Subject:	[EXTERNAL] re Comments on Proposed Amendments Relating to Debt Collectors

Dear Sir/Madam,

My name is Anita Manghisi, President of Independent Recovery Resources, Inc. I am reaching out to you today regarding the Department of Consumer and Worker Protection's proposed amendments to its rules relating to debt collectors.

IRR is located in Patchouge, New York. We are a NYC certified Economically Disadvantage M/WBE. We are a small business with less than 15 employees. We do however service some major hospitals and healthcare providers in the city.

While I support the Department's underlying goal of protecting consumers, I have significant concerns about the timing and overall impact these Proposed Amendments will have on consumers, my company and the clients we serve.

I respectfully request the Department delay any changes to the NYC debt collection rules for at least one year. The debt collection industry in New York City just implemented two major overhauls of collection rules and is expecting the New York Department of Financial Services (DFS) to issue proposed final debt collection rules later this month. The Consumer Financial Protection Bureau just enacted Regulation F, the most comprehensive set of changes to the country's debt collection laws in over 40. Unfortunately, many of the Department's proposed amendments conflict with these new federal regulations. The New York Consumer Credit Fairness Act (S. 153/A. 2382) just took effect on April 7, 2022 and May 7, 2022 making significant changes to the debt collection procedures in the state. I respectfully request the Department allow these new comprehensive changes at the federal and state level time to have an impact and then strive to avoid conflicts between these multiple levels of regulation. Taking a measured approach would allow the Department to best serve the consumers in New York City.

IRR is a small business that helps recover outstanding payments for products and services provided by New York's businesses, hospitals, and community lenders. We are an extension of our community's businesses. We work with large and small businesses, as well as consumers, to obtain payment for the

goods and services already received by consumers. Our services allow lenders to extend credit to consumers of all means, as they are assured that they will be able to collect on that debt.

In addition to my brief comments below, I encourage the Department to strongly consider the comments being submitted by my state trade association, the New York State Collectors Association, and my national trade association, ACA International.

I respectfully request the Department consider the following changes to the proposed amendments:

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This requirement would be impractical as collection agents often work staggard schedules and flexible workdays. An unintended consequence of this requirement would be to limit a consumers' flexibility in reaching out during a time that best fits their schedule or from making payments or discussing timely account resolution solutions.

The term Clear and Conspicuous

I respectfully ask that under the definition of "Clear and Conspicuous" the Department clarify that if all of the federal, state and local disclosures do not fit on a single page that a second page may be used. In some cases, the required 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. I also request the Department clarify that hyperlinks are permitted in electronic communications.

Unconscionable and Deceptive Trade Practices

Consumer Location

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Verification of Debts

I respectfully ask the Department to work closely with the New York State Department of Financial Services to develop a uniform notice. My industry is already required to provide a specific federal notice and a New York State notice. Requiring a third set of conflicting information in an additional New York City notice will only confuse the consumer. The regulation requires all information required by federal or state law to be provided to the consumer therefore a new disclosure is either not needed or should at least be uniform with the state disclosure.

Effective Date

The Department should delay moving forward with these changes until the New York Department of Financial

Services has an opportunity to finalize their pending rules and to allow the new federal Regulation F and the New York Consumer Credit Fairness Act time to take have an actual impact. If the Department does

proceed, I respectfully request that all new provisions contained in rulemaking only take effect on or after January 1, 2024.

Thank you and the Department for the opportunity to provide comments and for meaningfully considering the concerns outlined above.

Respectfully submitted,
Anita M. Manghisi, IFCCE
President
E: Amanghisi@irrcollect.com
P: 631-758-0900
F: 631-758-0044

From:	Neil Levinbook <neil@levinbooklaw.com>
Sent:	Thursday, December 1, 2022 10:37 AM
To:	Rulecomments
Subject:	[EXTERNAL] RE: Comments on Proposed Amendments Relating to Debt Collectors

To Whom It May Concern:

My name is Neil Levinbook, Managing Partner of The Levinbook Law Firm, P.C. ("LLF"). I am reaching out to you today regarding the Department of Consumer and Worker Protection's proposed amendments to its rules relating to debt collectors.

LLF is located on Long Island in Hauppauge, New York. We have 12 employees. We are a multi-practice area law firm with an emphasis on real estate, healthcare and debt collections. Our debt collection division currently provides debt collection services for several medical practices and surgery centers in New York State (including the City of New York) across various specialties (for example, primary care, urgent care, ENT, orthopedics, ophthalmology and anesthesia).

While I support the Department's underlying goal of protecting consumers, I have significant concerns about the timing and overall impact these Proposed Amendments will have on consumers, my company and the clients we serve.

I respectfully request the Department delay any changes to the NYC debt collection rules for at least one year. The debt collection industry in New York City just implemented two major overhauls of collection rules and is expecting the New York Department of Financial Services (DFS) to issue proposed final debt collection rules later this month. The Consumer Financial Protection Bureau just enacted Regulation F, the most comprehensive set of changes to the country's debt collection laws in over 40 years. Unfortunately, many of the Department's proposed amendments conflict with these new federal regulations. The New York Consumer Credit Fairness Act (S. 153/A. 2382) just took effect on April 7, 2022 and May 7, 2022 making significant changes to the debt collection procedures in the State. I respectfully request the Department allow these new comprehensive changes at the federal and state level time to have an impact and then strive to avoid conflicts between these multiple levels of regulation. Taking a measured approach would allow the Department to best serve the consumers in New York City.

LLF is a small business that helps recover outstanding payments for products and services provided by New York's businesses, hospitals, and community lenders. We are an extension of our community's businesses. We work with large and small businesses, as well as consumers, to obtain payment for the goods and services already received by consumers. Our services allow lenders to extend credit to consumers of all means, as they are assured that they will be able to collect on that debt.

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Department does proceed, I respectfully request that all new provisions contained in rulemaking only take effect on or after January 1, 2024.

Thank you and the Department for the opportunity to provide comments and for meaningfully considering the concerns outlined above.

Respectfully submitted,

Neil S. Levinbook, Esq.
The Levinbook Law Firm, P.C.
140 Adams Avenue, Suite B-11
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631.291.9570 (fax)
neil@levinbooklaw.com

Please note our new office address!

From:	Terry Connors <tconnors@alliedaccountservices.com>
Sent:	Thursday, December 1, 2022 4:48 PM
To:	Rulecomments
Subject:	[EXTERNAL] Comments on Proposed Amendments Relating to Debt Collectors

Hello,

My name is Terry Connors and I am the Director of Operations of Allied Account Services and have been with the company for 28+ years.. I am reaching out to you today regarding the Department of Consumer and Worker Protection's proposed amendments to its rules relating to debt collectors.

Allied Account Services is located in Bethpage, New York and we currently have 35 employees. Allied has been in good standing with NY State, as a debt collection company since 1976 and we are proud of our A+ rating with the Better Business Bureau. It is always our goal to conduct ourselves respectfully when working with consumers and offer an empathic ear while guiding consumers through various repayment options and ultimately leading many consumers to the financial freedom they are seeking.

While I support the Department's underlying goal of protecting consumers, I have significant concerns about the timing and overall impact these Proposed Amendments will have on consumers, my company and the clients we serve.

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In addition to my brief comments below, I encourage the Department to strongly consider the comments being submitted by my state trade association, the New York State Collectors Association, and my national trade association, ACA International.

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This requirement would be impractical as collection agents often work staggard schedules and flexible workdays. An unintended consequence of this requirement would be to limit a consumers' flexibility in reaching out during a time that best fits their schedule or from making payments or discussing timely account resolution solutions.

The term Clear and Conspicuous

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Department does proceed, I respectfully request that all new provisions contained in rulemaking only take effect on or after January 1, 2024.

Thank you and the Department for the opportunity to provide comments and for meaningfully considering the concerns outlined above.

Respectfully submitted,

Terry Connors
Director of Operations
Allied Account Services Inc.
1065 Stewart Ave
Suite 103
Bethpage NY 11714
Direct: 516 813-9102
Fax: 516 783-4059
tconnors@alliedaccountservices.com
** This communication is from a debt collector. This is an attempt to collect a debt and any information obtained will be used for that purpose. **

From:	Eric Najork <eric@cbhv.com>
Sent:	Friday, December 2, 2022 10:46 AM
To:	Rulecomments
Cc:	Kurt Najork; Donna M Erickson
Subject:	[EXTERNAL] CBHV - Comments on Proposed Amendments Relating to Debt Collectors

Good morning,

My name is Eric Najork, President of CBHV. I am reaching out to you today regarding the Department of Consumer and Worker Protection's proposed amendments to its rules relating to debt collectors.

Collection Bureau of the Hudson Valley, Inc. (CBHV) is located in Newburgh, NY, New York. We have 85 employees. We are a third part debt collector serving clients in the following industries: healthcare industry (physicians, local hospitals, and ambulance co.), community credit unions, utilities, and telecommunication to name a few. Approximately half of the clients we serve are either based in NYS and/or NYC. CBHV prides itself in maximizing the recovery for its clients while treating the consumers with professionalism and respect.

While I support the Department's underlying goal of protecting consumers, I have significant concerns about the timing and overall impact these Proposed Amendments will have on consumers, my company and the clients we serve.

I respectfully request the Department delay any changes to the NYC debt collection rules for at least one year. The debt collection industry in New York City just implemented two major overhauls of collection rules and is expecting the New York Department of Financial Services (DFS) to issue proposed final debt collection rules later this month. The Consumer Financial Protection Bureau just enacted Regulation F, the most comprehensive set of changes to the country's debt collection laws in over 40. Unfortunately, many of the Department's proposed amendments conflict with these new federal regulations. The New York Consumer Credit Fairness Act (S. 153/A. 2382) just took effect on April 7, 2022 and May 7, 2022 making significant changes to the debt collection procedures in the state. I respectfully request the Department allow these new comprehensive changes at the federal and state level time to have an impact and then strive to avoid conflicts between these multiple levels of regulation. Taking a measured approach would allow the Department to best serve the consumers in New York City.

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Thank you and the Department for the opportunity to provide comments and for meaningfully considering the concerns outlined above.

Sincerely,

Eric S. Najork
President
CBHV Collection Bureau of the Hudson Valley, Inc.
An ACA International BQMS Certified Agency
A SSAE 18 SOC 1 Type 2 & PCI Compliant Company
PO BOX 831 - 155 N Plank Road
Newburgh, NY 12550
845-913-7400 or 800-745-1395 Ext 344
Fax 845-913-7403

December 2, 2022
Re: DWCP Proposed Amendments to Rules Relating to Debt Collectors

To: Department of Consumer and Worker Protection
Via email: Rulecomments@dca.nyc.gov

Comment to Proposed Amendment to Rules relating to Debt Collection;
Section 5-77 of Part 6 of Subchapter A of Chapter 5 of
Title 6 of the Rules of the City of New York

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's focus is 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:

"Collect the Right Debt, from the Right Person, in the Right Way."

We appreciate the opportunity to respond to the Notice of Public Hearing and Opportunity to Comment on Proposed Rules dated October 13, 2022. As explained in the enclosed comment, the CRC is concerned that, though well-intentioned, the DWCP's proposed rule regarding text messages will have multiple unintended negative consequences that harm consumers, particularly those who are most vulnerable (e.g., the disabled). We believe the DWCP can update its proposal to avoid these unintended consequences.

consumer relations consortium
connect | collaborate | advance

Sincerely,
Missy Meggison

Missy Meggison
Executive Director, Consumer Relations Consortium

COMMENT TO NOTICE OF PROPOSED RULES

Direct consent ignores a consumer's previously expressed choice to receive communications about their account through text messages

The proposed amendments to § 5-77(b)(5)(i)(A) of Part 6 of Subchapter A of Chapter 5 of Title 6 of the Rules of the City of New York prohibits debt collectors from sending consumers text messages without specific consent from the consumer directly to the debt collector. This prohibition ignores the consumer's choice. The consumer told the creditor how they prefer to communicate. Policies that block these communications take that choice away from consumers, limiting their options. Direct consent rules burden consumers by forcing them to endure unwanted calls and letters unless they contact the debt collector to opt-in to text messages: a process that would repeat with each new collector. It's redundant, inconvenient, and frustrating. It's all burden to the consumer, with no benefit. Under Regulation F, a consumer who changes their mind about receiving text messages may opt out at any time and debt collectors are required to honor that choice.

Text messages are more convenient and private than phone calls and letters

Modern consumers (especially younger generations) expect self-service and "on-demand" communication options. They also expect a seamless customer service experience no matter who handles their account.

Phone calls are noisy and disruptive. The timing is unpredictable because it is based on the collector's convenience, not the consumer's. If answered, calls require the

consumer to shift their attention immediately. Letters are bad for the environment and easily lost or forgotten. Letters can also be embarrassing for anyone who lives with another person because people will notice letters piling up.

Conversely, text messages are quiet, private, and environmentally friendly. Text messages respect the consumer's time by allowing them to decide when, where, and how they want to communicate. They are also an easy-to-find record of back-and-forth communications, making it easier for consumers to review and keep track of information. (The CFPB made similar arguments in the Reg F section-by-section analysis).

Restrictions on text messages limit accessibility for the most vulnerable consumers, denying them equal treatment

Restricting the use of text messages leads to unequal treatment for at-risk groups who heavily rely on texts to communicate. These groups include the following:

- Deaf consumers. Research indicates the deaf community increasingly relies on electronic communication, including text messages, because they are more convenient than TTY/VOC technology and put the consumer on even ground with others (e.g., electronic communications do not reveal their limitations). Many deaf consumers have data-only plans that only allow text messages and other data access, not telephone calls.[1] Requiring these consumers to opt-in to receive text messages could lead to them being unable to access much-needed information until they can figure out how to opt-in, a process they may have already gone through with the original creditor.

- Blind consumers. Like most consumers, they're unlikely to answer calls from unknown numbers and letters would likely need to be read to them by a third party, denying them equal access to privacy. Text messages allow them to use an electronic reader at their convenience and where they believe it is appropriate to hear the message.

- Neurodiverse consumers (e.g., autism spectrum, ADHD, developmental disorders, people struggling with anxiety or mental illness). These consumers may be particularly sensitive to noise or social interactions, including telephone

[1] *See* https://www.cbsnews.com/news/for-deaf-texting-offers-new-portal-to-world/

calls. Many also suffer from cognitive impairments related to processing information, memory formation and recall, and executive functions needed to plan and prioritize tasks. In some instances, telephone calls and lengthy letters may also cause so much anxiety or overwhelm a consumer to the point that they choose not to respond. Research indicates that members of this community strongly prefer communicating via text message because it is a short-written communication that the consumer can respond to on their own timetable and they can easily find and refer back to it if they need a reminder.[2]

- Persistently impoverished consumers (those with unreliable access to a private phone or unstable living arrangements). These consumers may miss calls or letters but they can access text messages sent through certain platforms (such as WhatsApp) from a borrowed device or a public library.

Rules that require consumers to take a step they have already taken with the original creditor, such as opting into text messaging, are an inconvenience to consumers and make it harder for them to communicate. Putting additional hurdles in a consumer's path to communicating with a debt collector puts them at an increased risk of negative credit reporting and litigation. Most importantly, it disparately impacts the most vulnerable consumers (including those who are disabled) by limiting accessibility and denying them equal treatment.

The solution is simple: allowing debt collectors to respect the consumer's original choice conveyed to the original creditor regarding text messaging will create less annoyance to consumers and avoid unintentional harm. Regulation F requires debt collectors to include simple opt-out instructions in all electronic communications and to honor a consumer's request to opt-out. Therefore, if a consumer changes their mind about their preferred method of contact, all they have to do is tell the debt collector to stop. For consumers, opting out is easier than opting in.

The CRC respectfully requests DWCP consider the above as it reviews its proposed amendments to the debt collection rules.

[2] *See* https://journals.sagepub.com/doi/full/10.1177/13623613211014995

From:	Heath Adler <heath.adler@psnycollect.com>
Sent:	Saturday, December 3, 2022 2:30 PM
To:	Rulecomments
Cc:	Heath Adler
Subject:	[EXTERNAL] Comments on Proposed Amendments Relating to Debt Collectors

My name is Heath Adler. I am reaching out to you today regarding the Department of Consumer and Worker Protection's proposed amendments to its rules relating to debt collectors.

Professional Services of NY, Ltd. is located at 2701 Middle Country Road #8, Lake Grove, New York. We have 3 employees. We serve the financial industry and medical providers.

While I support the Department's underlying goal of protecting consumers, I have significant concerns about the timing and overall impact these Proposed Amendments will have on consumers, my company, and the clients we serve.

I respectfully request the Department delay any changes to the NYC debt collection rules for at least one year. The debt collection industry in New York City just implemented two major overhauls of collection rules and is expecting the New York Department of Financial Services (DFS) to issue proposed final debt collection rules later this month. The Consumer Financial Protection Bureau just enacted Regulation F, the most comprehensive set of changes to the country's debt collection laws in over 40. Unfortunately, many of the Department's proposed amendments conflict with these new federal regulations. The New York Consumer Credit Fairness Act (S. 153/A. 2382) just took effect on April 7, 2022 and May 7, 2022 making significant changes to the debt collection procedures in the state. I respectfully request the Department allow these new comprehensive changes at the federal and state level time to have an impact and then strive to avoid conflicts between these multiple levels of regulation. Taking a measured approach would allow the Department to best serve the consumers in New York City.

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I respectfully ask that under the definition of "Clear and Conspicuous" the Department clarify that if all of the federal, state and local disclosures do not fit on a single page that a second page may be used. In some cases, the required 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. I also request the Department clarify that hyperlinks are permitted in electronic communications.

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Thank you and the Department for the opportunity to provide comments and for meaningfully considering the concerns outlined above.

Respectfully submitted,

Heath B. Adler M.B.A.
President/CEO

Professional Services of NY, Ltd.
"The Professional Debt Collectors & Repossessors"

2701 Middle Country Road ● Suite #8
Lake Grove, New York 11755-2117
(631) 758-7988 phone
(631) 758-3592 fax
www.professionaldebtcollectors.com

This communication is an attempt to collect a debt by a debt collector any information obtained will be used for that purpose. If you no longer wish us to communicate with this email address. Type STOP in the subject line above.

For help with common asked questions go to: https://www.knowmydebt.com/
Members ACA International https://www.acainternational.org/

From:	Jacob Corlyon <Jake@ccmr3.com>
Sent:	Saturday, December 3, 2022 9:04 AM
To:	Rulecomments
Cc:	Jacob Corlyon
Subject:	[EXTERNAL] Comments on Proposed Amendments Relating to Debt Collectors

Good Morning, my name is Jacob Corlyon I am Co-Founder and CEO of CCMR3. I am reaching out to you today regarding the Department of Consumer and Worker Protection's proposed amendments to its rules relating to debt collectors.

CCMR3 is headquartered in Syracuse, New York. We have 85 employees across our different divisions. We have offices in Rochester, New York, West Des Moines, Iowa and Phoenix, Arizona. We primarily service the Fintech and Bank space but we also service the Healthcare and Small Business Space as well.

While I support the Department's underlying goal of protecting consumers, I have significant concerns about the timing and overall impact these Proposed Amendments will have on consumers, my company and the clients we serve.

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Respectfully submitted,

Jacob Corlyon
Co-Founder & CEO
CCMR3
Rethink-Reimagine-Recover
318 S. Clinton St., Suite 400, Syracuse, NY 13202
D: 315.256.9744 C: 315.729.3702
www.ccmr3.com

CCMR3's office hours are Monday through Friday 8:00 a.m. to 5:00 p.m. Eastern Standard Time

My name is Jennifer Connelly, Associate Attorney at Miller & Milone, PC. I am reaching out to you today regarding the Department of Consumer and Worker Protection's proposed amendments to its rules relating to debt collectors. Miller & Milone PC is located in Garden City, New York, and employs 7 individuals. Miller & Milone PC is a law firm that focuses its practice on Elder Law, Discharge Planning and Financial Recovery of Accounts Receivables for Individuals, major New York hospitals and nursing homes.

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In this section, I respectfully request that language be added to clarify that if a communication 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 that it is not required to be maintained in the required log. Adding this language would be consistent with exceptions contained in Regulation F and would not remove any consumer protections being implemented by the proposal.

Under the definition of "limited-content message," the proposal would require the collector to provide the name of the natural person whom the consumer can contact to reply to the debt collector and a call-back telephone number that is answered by a natural person.

This requirement would be impractical as collection agents often work staggard schedules and flexible workdays. An unintended consequence of this requirement would be to limit a consumers' flexibility in reaching out during a time that best fits their schedule or from making payments or discussing timely account resolution solutions.

The term Clear and Conspicuous

I respectfully ask that under the definition of "Clear and Conspicuous" the Department clarify that if all of the federal, state and local disclosures do not fit on a single page that a second page may be used. In some cases, the required 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. I also request the Department clarify that hyperlinks are permitted in electronic communications.

Unconscionable and Deceptive Trade Practices

Consumer Location

I respectfully request the Department change a "consumers location" to "eastern time zone." A debt collector would not have the ability to know when or where a consumer has traveled out of New York City for any number of reasons.

Excessive Frequency

I respectfully request the Department clarify a few commonsense exceptions to the excessive frequency section that will ensure a consumer receives important financial information in a timely manner.

The Department should consider adding language to ensure a collector can receive and return call requests from a consumer without going over any limitation threshold. The Department should also clarify that calls without a connection or ability to leave a message do not count against the limitation threshold. The Department should also clarify that any federal, state or local required communication would not cause a collector to exceed the communication limitations.

Electronic Communications

The proposed rules on electronic communications would prohibit validation notices from being sent electronically even where the consumer previously consented, in communications with the creditor, to receiving electronic communications. Imposing this requirement forces a collection agency to communicate with a consumer through a medium that goes directly against the consumers already

confirmed preferred communication method. The Department should allow communications regarding electronic communications with the creditor be passed along to the collection agency which is working as their agent.

Verification of Debts

I respectfully ask the Department to work closely with the New York State Department of Financial Services to develop a uniform notice. My industry is already required to provide a specific federal notice and a New York State notice. Requiring a third set of conflicting information in an additional New York City notice will only confuse the consumer. The regulation requires all information required by federal or state law to be provided to the consumer therefore a new disclosure is either not needed or should at least be uniform with the state disclosure.

Effective Date

The Department should delay moving forward with these changes until the New York Department of Financial Services has an opportunity to finalize their pending rules and to allow the new federal Regulation F and the New York Consumer Credit Fairness Act time to take have an actual impact. If the Department does proceed, I respectfully request that all new provisions contained in rulemaking only take effect on or after January 1, 2024.

Thank you and the Department for the opportunity to provide comments and for meaningfully considering the concerns outlined above.

December 18, 2022

Attn: New York City Department of Consumer and Worker Protection

Sent via email to **Rulecomments@dca.nyc.gov**

Re: Comments on Proposed Rule Amendments to Section 2-191 of Subchapter S of Chapter 2 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. Encore is a publicly-traded debt purchaser and collector, and we partner with consumers in New York City to help them resolve their debt obligations and get onto the path of financial recovery.

By way of background, at Encore we take a consumer-centric approach in working with our consumers, and this approach is at the core of our culture. In 2011, we created the industry's first Consumer Bill of Rights,[3] in which we have made numerous commitments to our consumers. For example, when we purchase a consumer's account, we aim to partner with the consumer to help them find flexible payment solutions to resolve their delinquent debt, and we do not add any pre-judgment interest or fees to the account. In addition, we do not collect from active duty servicemembers, and we have robust hardship policies when our consumers are victims of natural disasters and catastrophes or are going through other significant hardships. Fundamentally, we are dedicated to working with our consumers in a fair and positive manner that will help them resolve their debt obligations. As we highlight throughout this comment letter, open and helpful communication with our consumers is critical to helping them learn of payment options, receive account updates, ask us questions, and ultimately pay off their debt obligations. Ensuring adequate communications opportunities is critical to helping our consumers onto the path of financial recovery.

With regard to the draft rule amendments, we support the DCWP's positive intentions in seeking to protect New York city consumers. However, we have serious concerns about both the content and the timing of the proposal. Many requirements being proposed would hinder adequate communications, all

[3] *See* Encore's Consumer Bill of Rights, located at https://www.midlandcredit.com/are-you-a-customer/consumer-bill-ofrights/.

but ensuring that we will be unable to effectively communicate with many of our New York City consumers. Simply put, the proposed amendments would hamper communications in a way that is detrimental to consumers' ability to resolve their obligations, and will only serve to drive up the volume of debt collection litigation, which is a last resort for our industry when attempts at communication have failed.

In terms of the proposal's timing, it comes at the same time we expect a new state-wide debt collection rule from the Department of Financial Services (DFS). The DFS issued proposed rules in October 2021, and we anticipate another iteration or final version of the rules in the near future. With a new overhaul of state-wide rules for our industry, adding on new city-wide rules would lead to a myriad of unintended consequences, including substantial confusion for regulated companies, and confusing and potentially conflicting disclosures and rules for New York State consumers, depending on which part of the state they live in.

The sweeping changes we anticipate from the DFS are not our only concern. They would follow significant law changes for our industry that have come in the past two years, both on the state and federal levels. On the federal level, in 2021, new rules from the Consumer Financial Protection Bureau (CFPB) took effect. These were the most sweeping changes for the industry since the Fair Debt Collection Practices Act was enacted in 1977. The CFPB's 1,007-page rulemaking for the industry created strict new caps on call attempts, established strong consent requirements for electronic communications, and overhauled disclosures in all forms of communications. Now that our industry has implemented these regulations, including their call restrictions, we believe that consumers are adequately protected from harassing phone calls, but still have the ability to receive important communications about their accounts in collection.

Following on to the new federal regulatory overhaul of the collections industry laws, in April 2022, New York State's Legislature and Governor enacted a new comprehensive debt collection law. The Consumer Credit Fairness Act (CCFA),[4] as stated by Attorney General James, "strengthens consumer protections by requiring debt collectors to be more transparent and honest when communicating with consumers."[5] The new state-wide law created comprehensive changes for debt collectors, including shortening the statute of limitations from six to three years, increasing disclosures to consumers about their rights, and requiring that specific account documentation and data be provided to consumers in litigation. As Attorney General James outlined in her recent letter to the industry,[6] our industry has numerous duties under federal and state law that already limit our communications with consumers, including:

[4] New York Senate Bill 153.

[5] *See* Attorney General press release at https://ag.ny.gov/press-release/2022/attorney-general-james-warns-debt-collectors-newstate-regulationsbanning#:~:text=The%20Consumer%20Credit%20Fairness%20Act%20of%202021%20strengthens%20consumer%20protections,honest%20when%20communicating%20with%20consumers.

[6] *Id.*

- Debt collectors may not call consumers more than seven times in any seven-day period;
- After making contact with a consumer by phone, debt collectors must wait seven days before calling again;
- Debt collectors cannot call consumers between 9 pm and 8 am, local time;
- Debt collectors cannot contact consumers by any or all means of communication (email, text, phone, and so on), or at a consumer's workplace, if a consumer asks them not to;
- Debt collectors generally cannot contact consumers via work email address, public social media postings, or through third parties (though they may under some circumstances contact third parties to obtain information about a consumer's location).
- Debt collectors must provide consumers with key information about their debt within five days of their first communication. These "validation notices" must include the name of company or person the consumer originally owed the debt to; the date and amount of the original debt; and a *post*-charge-off itemization of fees, interest, payments.

From the new state-wide CCFA, to the CFPB rules that took effect in 2021 and the anticipated DFS rules, there have been a whirlwind of changes for our industry over the past two years. Our industry is already working hard to comply with new regulatory frameworks that bolster consumer transparency and effective communications. As proposed, the DCWP's rule amendments would create a fourth new regulatory regime applicable to New York consumers with a multitude of requirements that differ from federal and state laws, and would serve to create confusing standards for the consumers we work with. We urge the DCWP to consider the large-scale changes for the industry and our consumers that have been enacted both on the federal and New York-state level over the past several years, and recognize that additional changes should be consistent with the already extremely complex regulatory regimes in place. Conflicts and contradictions with New York State and federal standards, which frankly permeate the proposed rules at issue, will only serve to create significant confusion for the credit and collections industry and the millions of New York State and New York City consumers we serve.

Keeping in mind the conflicts and contradictions between the city and state standards being proposed, and the state and federal standards recently enacted, below we discuss many of our most pressing concerns with the substance of the proposed rule amendments. While our array of key concerns are reflected below and in our industry coalition's redline, ***our gravest concerns relate to communication caps, pre-charge-off itemization, and validating judgments with a document other than the courtordered judgment itself.***

To Align with the CFPB Rules, and Ensure that Productive Communications Between Consumers and Collectors Are Not Unduly Hampered, NY City Law Should Be Consistent with the CFPB's Regulation F

The DCWP explained that it is "proposing to update its debt collection rules due to changes in federal regulations" and that "these proposed amendments would adopt similar protections as those provided to consumers at the federal and state levels." The DCWP also stated that the "CFPB's new debt collection rules address current industry collection practices, the changing forms of communication, unfair and deceptive practices, and the problems facing consumers today at a national level." We think that the approach of aligning to the federal standard is the right one, but we have grave concerns that, as written, the DCWP's proposed communication cap creates a far more stringent standard than the CFPB rules, or for that matter any other jurisdiction in the nation. The proposed DCWP communication cap creates a new standard separate from the enacted federal CFPB rules, separate from the rules the DFS is contemplating, and far more stringent from communication caps that other jurisdictions such as Massachusetts and the District of Columbia have enacted for debt collectors.[5] Rather than restrict the number of contacts or attempted contacts per week to phone calls, as the other measures have consistently done, the DCWP's proposal would create an extremely restrictive regime restricting *any* type of communication to three per week. As written, this would include not just telephone calls, but letters, texts, emails, and private social media messaging. What is more, not only does the DCWP proposal apply to *any and all* types of communications – not just phone calls – but it also captures *attempts* to communicate under the three per week standard. This means that an unanswered call or an email that gets bounced back could both, for example, count under this standard. Furthermore, although this calculation is based on previous "exchanges" with the consumer, it is unclear what constitutes an exchange.

The end result will be that debt collectors and consumers are unable to effectively communicate. It may seem intuitive that clamping down on communications from debt collectors to consumers protects consumers, but in reality, such a policy has the opposite effect. Consumers' ability to receive payment plan offers, negotiate settlements, and pay off their debt will fall off. This means that consumers will continue to have unresolved delinquent debt, which might haunt their credit reports and ability to access new credit for a car loan, small business loan, or home mortgage. Further, the likelihood consumers will be sued or have a judgment entered against them will skyrocket – an outcome that is a last resort for our industry, but one that typically happens when debt collectors are unable to communicate effectively with consumers outside of the legal process.

To address these very real harms, we ask that the DCWP align its communication restrictions with the CFPB's national standard, Regulation F ("Reg F"). Reg F was enacted in 2020 after a seven-year rulemaking period during which time the CFPB reviewed over 14,000 comments, and obtained extensive input from consumer advocates, industry, and lawmakers. Under Reg F, debt collectors may not call consumers more than seven times in any seven-day period. After making contact with a consumer by phone, debt collectors must wait seven days before calling again.

Currently, the NY City standard on communication caps is ***less*** restrictive than the federal standard. To make two contacts in a week, it will almost always take more than seven attempts. If the DCWP decides to bring the city's standard up to the federal standard, that means that fewer than two

contacts per week would be made for the large majority of accounts. However, we would support this, as consistency with the federal standard and allowing for adequate communications is key. The language that has been proposed in the DCWP's draft, however – three communication attempts per week – muddles together calls with electronic communications, and is so extremely restrictive to hinder effective communications between collectors and consumers.

It is worth repeating that, while well-intended, the DCWP's proposed new standard would all but ensure that debt collectors and their New York City consumers are unable to effectively connect. The result will be that consumers don't get the opportunity to learn of flexible payment plan offers, consumers aren't able to resolve their debt obligations, and consumers fail to repair their credit scores. Debt collection litigation will skyrocket, as when collectors are unable to communicate with their consumers, the last resort is typically litigation. All of these unfavorable outcomes would be a direct result of a lack of opportunity to effectively connect consumers with collectors.

To resolve the issues articulated above – and to ensure consistency in expectations for consumers by avoiding direct conflict with the new CFPB call cap rules – a sensible route would be to align with the Reg F's newly enacted call caps standards.

The Regulation Appears to Require Pre-Charge-Off Itemization, Which is Not Generated in the Ordinary Course of Business

The draft regulation appears to require that collectors provide consumers with pre-charge-off itemization of a credit card balance when verifying an account. This creates an unreasonable and impossible standard that every state legislature that has considered this issue since 2010 has rejected. Both New York State's Legislature and New York City's Office of Court Administration have considered and rejected the pre-charge-off itemization that DCWP is proposing.

As an initial matter, banks do not have the ability to separate out compounded interest on balances that the consumer elects to carry over month after month, while making monthly minimum payments. If banks cannot provide this information to a consumer, it is impossible to expect debt collection agencies to provide it.

Under federal law (the Truth in Lending Act, or TILA, found at 12 C.F.R. § 1026.26), creditors must retain evidence of compliance with Regulation Z of TILA for two years after disclosures must be made or action must be taken. As such, because TILA requires banks to retain account records for two years, records of charges, fees and interest imposed by that creditor – or often a prior creditor – is generally not maintained. With frequent bank mergers, it is common for a large national bank to purchase a regional or local bank, along with that smaller bank's accounts. This means that any interest, costs or fees the smaller bank had charged years ago would likely not be maintained by the purchasing bank.

Part of the reason why such recordkeeping is unnecessary is because the balance at the time of charge-off is federally regulated and inherently reliable evidence of the amount the consumer owed as of the date of charge-off (*i.e*., the date on which the debt owner writes off the debt per federal accounting rules, or six months after the consumer's last payment). The charge-off balance is highly regulated at the federal level by the Office of the Comptroller of the Current (OCC), and is inherently reliable evidence of the amount the consumer owed as of the date of charge-off. Regulations issued by the Federal Financial Institutions Examination Council on behalf of the Federal Reserve, FDIC, OCC and Office of Thrift Supervision, as well as the OCC's handbook for inspecting financial institutions, clearly provide how and when a credit card debt must be charged-off as a loss. (*See e.g.*, Uniform Retail Credit

[5] 940 Mass. Reg. 7.04(1)(f); DC B 357.

Classification and Account Management Policy, 65 F.R. 36903 (June 12, 2000); OCC Bulletin 2000-20 (June 20, 2000).) These policies provide specific standards for calculating the charge-off balance. As such, any itemization should be ***starting from*** the charge-off balance.

The charge-off balance is contained in the charge-off statement, which sets forth the past-due balance on the card as of the charge-off date, and is therefore evidence of the consumer's use of the credit card and agreement with the terms and conditions for the credit card. Under the Fair Credit Billing Act, consumers have 60 days to challenge any credit card transactions, and transactions that go unchallenged are presumed under the law to be correct.[6] Further, the charge-off statement is mailed to consumers at the time of charge-off, giving them the opportunity to review. The strict federal regulations on calculating charge-off balance, along with the consumer's ability to review and contest both the original charges and the charge-off statement, makes the charge-off statement the best evidence of the debt owed to the original creditor.

In addition to the statement showing charge-off, other highly-reliable and widely-accepted proof includes statements showing use, last payment (if any), and balance transfer. That is the standard in multiple other states that have considered, and enacted, debt buyer legislation over the past years, including Maine, California, Oregon, Colorado and New York itself in the NY City Office of Court Administration Rules for Default Judgment Applications and the State's Consumer Credit Fairness Act. [7]

The Proposed Amendments Create New Burdensome Verification Requirements that Conflict with Current Federal and State Law

Several of the proposed verification requirements would be unduly burdensome, impossible to comply with, and at odds with current federal and state laws. As noted above, providing pre-charge-off itemization is impossible for our industry to comply with, it is not required under federal nor state

law, and the banks that originate the debt are not legally required to maintain the data and documents necessary to support pre-charge-off itemization. In addition, we have the following requests:

Verifying Judgments

We strongly urge the DCWP to maintain existing law's language that that a collector who obtained a judgment against a consumer would have to validate the account with documents other than the judgment itself. The DCWP could consider including a section in § 5-77(e)(f)(5) stating that for accounts where a judgment has been awarded by a court, a debt collector can include a copy of the judgment in lieu of the documents listed in (i)-(iv). Under current law, New York State already has very rigorous requirements for documents to include when filing a collection lawsuit. A judge only issues a judgment on an account when, in the judge's view and in accordance with the law, there is sufficient evidence to support the amount and ownership of the debt. These safeguards are sufficient verification of the debt and, once a judgment is entered, the judgment is the best evidence of the debt. To not accept a copy of a judgment order as validation undermines the courts' enforcement power. Whether intended or not, it would show a lack of faith in the decisions of the judiciary.

Unverified Debt Notice

We also strongly oppose the new proposal to provide consumers with a reason that a debt cannot be verified. This would create a separate new requirement that will create inconsistency in the way we communicate with New York City residents compared to residents from other parts of the state, and will add no value to the city residents' experience. If we are unable to verify the debt, we will stop collecting on the debt. However, a reason – whether due to lack of paperwork or not enough time to respond within the requisite window – is not needed and would create significant operational and lettering changes in how collectors communicate with city residents.

Response Time for Verification Requests

Finally, we ask for adherence to the CFPB's rules allowing collectors 60 days to respond to disputes and verification requests. The proposed 30-day window will create a new standard that will create increased operational burdens for collectors working with New York City consumers, while provide minimal benefit to consumers themselves.

The Proposed Disclosure Requirements Would Deviate from the State-wide Standard, Creating Redundant and Extremely Long Disclosures for New York City Consumers

The proposed amendments would make several changes to disclosures that would require debt collectors to create separate and potentially confusing disclosures to New York City and New York State residents. DCWP's proposal would shorten the disclosures on statute of limitations. While we generally support a shorter disclosure, as the DCWP is proposing with regard to the statute of limitations disclosure, these

changes would deviate from the New York State requirements. As a result, with different city versus state lettering requirements, we would have to send different and potentially confusing letters to city and state residents. New York City residents would receive BOTH the city and state disclosures – creating potential confusion, and extremely lengthy letters. To fit both disclosures on our letters, we would need to use 17-inch-long paper – a full six inches longer than standard paper, and three inches longer than our current validation notice. In addition to the absurdity of producing such large letters with duplicative and confusing disclosures, we estimate we would produce an extra ton of carbon emissions just to add the three inches of paper required to provide the disclosure on all mail pieces.[7] If you consider the full industry, it could be a substantial carbon footprint, which all state agencies should consider under New York's State Environmental Quality Review Act (SEQR).[8] With these very practical concerns in mind, we urge the DCWP to create consistency in standards for letters sent to city and state residents.

The Proposed Amendments Requiring that Collectors Capture Consumers' Communication Preferences Have the Unintended Consequence of Taking Away Consumers' Flexibility and Cause Delays in Making Payments

Proposed section 2-193(b)(6) would require that collectors capture consumers' communication preferences – whether they prefer to be contacted by text, e-mail, letter, phone, etc. While on its face this sounds like a good thing, in reality because of the written consent requirements to text and email, this means that there would be delays in reaching consumers and processing payments. For example, even if a consumer indicated that her communications preference is by text, a collector may first need to obtain prior written consent to communicate with that consumer. Without the prior written consent, we may not be able to communicate with that consumer in a timely manner, and the consumer's delinquent account would continue to go unpaid and unresolved. We are unaware of any other requirement like this, on the state, local or federal level, and ask that the DCWP strike the proposed language.

The Proposed Amendments to Provide Consumers With a Direct Dial Number of Account Managers Would Be Impractical, Remove Consumers' Flexibility, and Cause Delays in Consumers' Receiving Payment Offers and Making Payments

While well-intentioned, this proposal is extremely problematic. First off, Account Managers often work on staggered schedules and are often not reachable immediately. To address this, we use an Interactive Voice Response (IVR) system that routes incoming callers to the first-available collections

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7 15 U.S. Code § 1666.

8 *See* Maine Public Law 216 (enacted 2017), California's Fair Debt Buying Practices Act (CA Civ. Code Section 1788.50, et seq.), Oregon House Bill 2356 (enacted 2017), NY City Office of Court Administration Rules for Default Judgment Applications (enacted 2014), and Colorado Senate Bill 17-216 (enacted 2017).

[8] The average large debt collector who sends over 500,000 letters to NYC consumers with out of statute accounts in a year would require 27% more paper than today. This would result in 1,000-1,400 additional pounds of CO2 emissions per large mailer.

9 [9] *See* https://www.dec.ny.gov/permits/6208.html.

professional who can help consumers with an account. Our professionals are trained to provide all relevant disclosures, offer and document payment plan offers, and accept payments and other consumer requests (e.g., to call only at certain times, to call a specific phone number, etc.). To provide consumers with a specific Account Manager direct dial means that many consumers will not connect with their assigned Account Manager for several days, rather than immediately. This is an unacceptable turnaround time for consumers who are often eager to learn of payment plan options, resolve their obligations, and clear up their credit reports. It may also lead to consumers waiting on hold for a long time, which holds no benefit. We ask that the DCWP strike this proposal, to avoid needless delays for consumers to speak to a knowledgeable representative about their accounts, learn of payment plan offers, and make payments.

The Proposed Amendments Would Create a Violation if a Collector Calls a Consumer's Place of Employment

Under the proposed amendments, a collector may not call a consumer at their place of employment without prior written consent. Under current law, however, collectors may not call a consumer's workplace if the consumer asks not to be contacted at work. Under the newly-enacted CCFA, debt collectors cannot contact consumers at work, if a consumer asks them not to.[10] This is consistent with the CFPB's recent rulemaking.[11] The current standard makes sense, and acknowledges the fact that when collectors obtain phone numbers from an original creditor, through skip tracing, or even directly from the consumer, collectors often do not know if the number is for the consumer's workplace. Under the proposal, if a consumer wanted a collector to call at work, the consumer would have to provide written consent – which is burdensome on the consumer, who will likely not be aware that such consent is needed. If a call back to a consumer is requested after an inbound call, the consumer will have to provide written consent. Fundamentally, if a phone number was not previously identified as a work number, it is burdensome to identify without prior information from the consumer advising it is a work number. The proposal creates needless roadblocks to communication, and potential liability for a collector calling a consumer and not realizing that the number given was from work. We urge the DCWP to adhere to the current standard that requires that collectors may not call a consumer's workplace at the consumer's direction.

The Proposed Amendments' Various Record-Keeping Requirements Would Create New Burdensome Rules That Provide Minimal Added Value to Consumers

The proposed amendments would require collectors to maintain copies of not just all communications, but also all attempted communications or exchanges, with consumers. For each attempted communication, we'd need to maintain a log identifying the date, time, duration, method of communication, the names and contact information of the persons involved in the communication, and a summary of the communication. As stated above, account managers who work with consumers are

routed through an inbound IVR, and do not have individual extensions. As such, we ask the DCWP to strike the proposal to include account manager's extensions in the call logs, if direct extensions do not exist.

Any New Rules Should Apply to Accounts Charged-Off On or After the Effective Date

While the proposed rules do not mention an effective date, it is critical that any new rules apply to accounts prospectively. To avoid retroactively impacting accounts charged-off prior to the effective date, it is critical that new document, date and communication requirements only apply to accounts charged-off on or after the effective date of new rules.

* * *

With the above concerns in mind, we urge the DCWP to amend its proposed regulation. Should you have questions or request additional information, please don't hesitate to contact me at tamar.yudenfreund@encorecapital.com.

[10] New York State Senate Bill 153.
[11] 12 CFR Part 1006.

Sincerely,

Tamar Yudenfreund
Senior Director, Public Policy

December 16, 2022

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 and we appreciate the opportunity to engage in a constructive dialog regarding these important updates.

As the Department noted in its "Statement of Basis and Purpose of Proposed Rule," these past two years have been eventful for our industry. Our members have recently incorporated into our practices a number of changes to New York State Law under the Consumer Credit Fairness Act, signed by Governor Kathy Hochul and Sponsored by Assemblywoman Helene Weinstein and Senator Kevin Thomas. Additionally, our members have operationalized recent rules announced in June 2020 by the Department related to certain language access services as well as a wide-ranging modernization of debt collection rules under Regulation F issued by the CFPB.

While we applaud the Department's efforts to further protect consumers, NYSCBA's comments reflect an 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. This letter begins with a discussion regarding the need for an attorney carve out from the definition of "Debt Collector," highlights areas of the bill requiring technical clarification and finally ends with a brief discussion regarding the implementation requirements. Not only will clarification benefit consumers and debt collectors but will also provide clarity for the Department should enforcement be necessary.

I. The Definition of "Debt Collector" Under §4 Must Carve Out Attorneys While Performing Legal Activities.

The NYSCBA respectfully requests that the Department consider a limited carve out of legal activity conducted by attorney's practicing law from the definition of "Debt Collector." This carveout is necessary to allow our members to fulfill their responsibility to represent their clients through the legal process absent

[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.

conflict within the proposed amendments. As the Department is aware, the definition of "Debt Collection Agency" under Section 20-489(5) of the New York City Administrative Code already excludes "any attorney-at-law or law firm collecting a debt in such capacity on behalf of and in the name of a client solely through activities that may only be performed by a licensed attorney." The Second Circuit Court of Appeals has identified that "…New York State Judiciary's 'authority to regulate attorney conduct does not evince an intent to preempt the field of regulating *nonlega*l services rendered by attorneys.'[2] Accordingly, the NYSCBA respectfully requests that attorneys acting in a litigation capacity be exempted from regulators intended to cover conduct by Debt Collectors.

As the Department knows, 15 U.S.C. § 1692(a)(6) originally excluded attorneys from this definition but was amended in 1986 to repeal that carve-out. However, many courts have interpreted that the repeal of the carve-out was intended to protect consumers when attorneys are acting solely as a debt collector and not during the pendency of a legal action when an attorney is engaged in litigation on behalf of a client. "The purpose of removing the attorney exemption was not, however, to sweep within the scope of the term "debt collector" those attorneys acting in the role of legal counsel while representing clients."[3]

New York's ethical rules place certain responsibilities on attorneys engaged in representation of their clients. The preamble to the Model Rules of Professional Conduct (paragraph 2) specifically states, "as advocate, a lawyer zealously asserts the client's position under the rules of the adversary system." Since many of these proposed regulations will apply during litigation and in fact directly influence the litigation process, the lack of a carve-out to these rules for lawyers would significantly impact an attorney's ability to perform their function as an advocate for their client.

Some examples of where such conflicts in the proposed laws conflict with our member's duties as attorneys include:

1. § 5-77(a)(3) - Assume a consumer defendant wishes to settle a matter that requires the creditor's attorney to send a stipulation of settlement to the consumer. If that settlement stipulation arrives within 5 days of the last communication, it can be deemed a violation of these rules. Further, what if the parties are involved in discovery or other matters where multiple documents need to be served upon the parties? Under the current construct of the law, such service of papers could be considered a violation of the contact limits in the proposed rules.

2. § 5-77(b)(4) - Requires that a debt collector cease and desist communication once a consumer makes such a request. While the NYSCBA certainly does not object to rules that

[2] Eric M. Berman, P.C. v. City of New York, 796 F.3d 171, 175 (2d Cir. 2015), quoting 25 N.Y.3d at 692, 16 N.Y.S.3d at 31, 37 N.E.3d at 88, 2015 WL 3948182 (emphasis added).
[3] Fireman's Ins. Co vs. Keating, 753 F.Supp. 1137 (S.D.N.Y.1990).

prohibit debt collectors from communicating with a consumer that has requested the collector cease communicating, an attorney could be deemed to be violating the rules if they send legal notices or pleadings to the consumer. This would be a direct conflict with a lawyer's ability to represent their client during the pendency of a lawsuit.

3. § 5-77(f) - Once a lawsuit is commenced and the defendant appears, the consumer defendant has legal rights within the context of litigation, including discovery rights for which a judge will establish a time-table for those responses to be due. By requiring an attorney to provide validation at any time, this may directly conflict with the discovery timeline laid out by court order.

Due to these few examples and other conflicts that will inevitably arise, we ask that an additional exclusion be added to the definition of debt collector by adding a paragraph (6) that reads, "any communications, 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."

II. Areas Requiring Technical Clarification

a. The Disclosure Under § 5-77 (f)(1)(v) Conflicts with Federal Law and Should be Modified.

The disclosure contemplated under this amendment conflicts with the requirements of federal law and will cause confusion to consumers as well as debt collectors in their attempt to comply.

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.[4] 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."[5] 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…"[6]

The disclosure required by § 5-77 (f)(2)(v) is inconsistent with the language in Model Form B-1 in two important ways discussed below. The disclosure as contemplated reads:

Important Additional Consumer Rights under New York City Law:

I. You may **contact** a debt collector at **any time**, and by **any means**[7], during the collection of a debt to dispute or request verification of the debt.

II. The debt collector **must**:

(1) Provide you verification of the debt in response to your first dispute or request for verification, within 30 days of receiving such dispute or request, and stop collecting until it provides this information in writing to you; **or**

(2) Provide you a notice in writing stating that it was unable to verify the debt within 30 days of receiving a dispute or a request, and stop collecting on the debt;

First, the disclosure states that the consumer may request verification of debt "at any time…during the collection of a debt" rather than prior to the end of the validation period as envisioned by federal law.[89] Secondly, the disclosure states that the consumer may request verification of debt "by any means" 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.[9] Under these proposed rules, consumers would see one thing on the front of the MVN and another thing on the back of the MVN generating inevitable confusion.

This conflict will generate 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."[10] 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 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."[11]

As a result, the NYSCBA urges the DCPW to eliminate this disclosure requirement.

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4 12 CFR § 1006.34(d)(2); see also 12 CFR § 1006.34(c) and 34(d)(1).

5 12 CFR § 1006.34(b)(3)(i).

6 Model Form B-1, Appendix B to 12 CFR Part 1006(Regulation F).

7 "[A]ny means" can be interpreted as this may be through a medium including those that the debt collector does not use.

8 It is important to note that this prong of the disclosure appears to conflict § 5-77 (f)(2), which defines the validation period in a manner consistent with CFPB rules.

9 CFR 1006.38(b)(1).

10 Islam v. Am. Recovery Serv. Inc., No. 17-CV-4228 (BMC), 2017 WL 4990570, at *3 (E.D.N.Y. Oct. 31, 2017). 11 Kraus v. Prof'l Bureau of Collections of Maryland, Inc., 281 F. Supp. 3d 312, 322 (E.D.N.Y. 2017).

b. A Copy of the Judgment Must be Sufficient Verification of the Debt Under § 5-77 (f)(5)(i)

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 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 extrajudicial 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.[9]

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.[10] 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.[11]

c. References to "Originating Creditor" Should be Replaced with the Term "Original Creditor" as Defined Under the Consumer Credit Fairness Act

There are a number of references to the undefined term "Originating Creditor" throughout the proposed rules. The Consumer Credit Fairness Act defines the "Original Creditor" as "the entity that owned a

[9] O'Brien v. Lehigh Valley R. Co., 176 Misc. 404 (Sup. Ct. Erie County 1941).
[10] *See* 15 USC § 1692g(a)(4); 12 CFR § 1006.34(c)(3).
[11] *See* N.Y. C.P.L.R. §5015.

consumer credit account at the date of default giving rise to a cause of action."[12] This definition of "Original Creditor" alerts the consumer to the name of the creditor to which they are most familiar; i.e. the creditor to whom the consumer was obligated at the time of default.

In contrast, the term "Originating Creditor" is ambiguous. It is not clear if "Originating Creditor" refers to (1) the creditor at the time of default as in the Consumer Credit Fairness Act[1314], (2) the creditor at the time of charge off as defined under state court rules[17], (3) the "person or such person's successor in interest by way of merger, acquisition, or otherwise, who extends credit creating a debt,"[18] or (4) the creditor who created the obligation. This lack of clarity can only lead to consumer confusion and generate risk of non-compliance for debt collectors who act in good faith.

As a result, the NYSCBA urges the DCWP to replace the term "Originating Creditor" with the term "Original Creditor" as defined by NY CPLR 105(q-1).

d. The Itemization Required Under § 5-77 (f)(5)(ii) Should be Made Consistent with the Itemization Required Under the Consumer Credit Fairness Act

This itemization fails to provide the needed transparency to the consumer of any charges or fees that have been added to the consumer's balance by the debt collector. This is because the current draft itemization language is vague and ambiguous. Under this proposed rule, in order to complete a verification of debt request, the debt collector must provide:

> …a document itemizing: (1) the total amount remaining due on the total principal balance of the indebtedness to the originating creditor and (2) each additional charge or fee claimed or alleged to be due that separately (i) lists the total for each charge or fee and the date that each charge or fee was incurred; and (ii) identifies and describes the basis of the consumer's obligation to pay it;[15]

The rule does not define what the "total principal balance of the indebtedness to the originating creditor" is. Since there is no clarity as to what constitutes the "total principal balance…to the originating creditor," it is not clear as to when the "additional" charges or fees begin to accrue. For instance, assume the initial creditor who entered into the obligation with the consumer assigns the loan prior to default, as is common in a number of different financial products. Does the "total principal balance" begin to accrue at the time of the first assignment since it is the amount owed to the "originating creditor?" This ambiguity makes it impossible for a debt collector acting in good faith to ensure compliance with this rule and does not provide the intended transparency to the consumer.

[12] N.Y. C.P.L.R. 105(q-1).
[13] N.Y. C.P.L.R. 105(q-1).
[14] NYCRR 208.14, 202.27-a. [18] 23 NYCRR 1.1(f).
[15] Proposed Amendments at § 5-77 (f)(5)(ii)

In order to create this transparency, the NYSCBA recommends that the DCWP adopt the itemization requirements recently enacted as part of the Consumer Credit Fairness Act. Under NY CPLR 3016(j)(5), the debt collector must itemize the debt in one of two ways:

> (A) by (i) principal; (ii) finance charge or charges; (iii) fees imposed by the original creditor; (iv) collection costs; (v) attorney's fees; (vi) interest; and (vii) any other fees and charges.
>
> (B) If the account was a revolving credit account, an itemization of the amount sought, by: (i) the total amount of the debt due as of charge-off; (ii) the total amount of interest accrued since charge-off; (iii) the total amount of non-interest charges or fees accrued since chargeoff; and (iv) the total amount of payments and/or credits made on the debt since chargeoff;[16]

These itemization processes allow for transparency with the consumer who is able to understand the balance sought while providing a reasonable methodology for debt collectors to follow.

In addition, by utilizing this itemization method, the DCWP will provide consistency between NY statute and regulation, prevent confusion by consumers who receive one itemization in response to a validation of debt request and another in a lawsuit on the same debt and mitigate the risk of noncompliance by debt collectors who act in good faith to comply.

e. The Requirement that the Collector Receive an Email from the Consumer within the Past 60 Days is Not Consistent with New York Litigation Procedures.

In the course of litigation, it is common for an attorney to receive email communication from the consumer. Matters are frequently adjourned out for months in NYC courts. The prohibition on emailing consumers unless an email is received within 60 days is too restrictive.[17]

III. 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

[16] N.Y. C.P.L.R. 3016 (McKinney)
[17] Proposed Amendments at § 5-77(b)(5)(i)(B)

require the collector to collate information at the collector level that is already available within the individual records for each debt.

b. Effective Date

The NYSCBA respectfully requests that these rules are made effective no earlier than January 1, 2024 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 January 1, 2024.

Thank you again for the opportunity to comment and for your consideration of our suggestions. We hope this letter sparks further dialog about the language of the proposed amendment before its language is finalized.

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December 19, 2022

New York City Department of Consumer and Worker Protection
42 Broadway New York, NY 10004
rulecomments@dcwp.nyc.gov
VIA E-mail

RE: Proposed amendments to rules related to debt collectors

Dear Department of Consumer and Worker Protection:

My name is April Kuehnhoff, and I am a Staff Attorney at the National Consumer Law Center ("NCLC"), 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 debt collection regulations and to offer suggestions for additional improvements and clarifications.

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"), and federal debt collection regulations issued to implement the FDCPA ("Regulation F"). Regulation F has many gaps and weaknesses, 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. 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.

Regulation F contains similar language, and also clarifies that provisions in Regulation F - like the FDCPA - do not preempt stronger state consumer protections.

The FDCPA and Regulation F define the term "state" to include a "political subdivision" of a state. Thus, New York City has the same ability to enact consumer protection that exceed the baseline created by the FDCPA and Regulation F as a state.

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.

Delivery of Validation Notices

The proposed amendments make clear that the validation notice must be provided in writing. This protection is important because Regulation F authorizes oral-only delivery of validation information in the initial communication. 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. By clearly requiring that the validation information must be provided in writing, DCWP's proposed amendments provide an important consumer protection that exceeds the protections available to consumers under Regulation F.

The proposed amendments also address electronic delivery of validations notices. However, there appears to be some internal inconsistency in the proposed amendments related to this provision as well as a conflict with Regulation F as outlined in the bullets below.

- The proposed amendments state that debt collectors may deliver a validation notice electronically. However, this seems to be at odds with the proposed language in § 5.77(f)(1), which requires "a written notice by mail or a delivery service."

- The proposed amendment stating that debt collectors may deliver a validation notice electronically requires debt collectors to do so "in accordance with § 5.77(b)(5)." However, allowing electronic delivery of the validation notice seems to be at odds with the proposed language in § 5.77(b)(5)(i), which says that the debt collector "must provide a written validation notice to the consumer . . . prior to contacting a consumer by electronic communication." It is unclear whether sending a validation notice electronically satisfies this requirement.
- The proposed amendments specify that debt collectors "may only use a specific email address, text message number, or specific electronic medium of communication" if the debt collector obtains consumer consent or the consumer previously used that specific medium of communication to communicate with the debt collector and certain other conditions are met. This means that the debt collector would not be able to provide a validation notice in the initial communication. Regulation F specifies that where the debt collector seeks to provide a validation notice electronically within five days of the initial communication, the debt collector must comply with the federal E-SIGN Act. This requirement is currently not reflected in DCWP's proposed amendments.

We believe that postal mail is the best method of delivery for the validation notice unless the debt collector has direct consent from the consumer that complies with the federal E-SIGN Act to allow electronic delivery of the validation notice.

If DCWP does allow electronic delivery of the validation notice, it should consider which methods of delivery to allow. 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. In interviews, some advocates also reported that consumers tend to be more suspicious of electronic communications due to concerns about fraud and scams. 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 to send the notice "in a manner that is reasonably expected to provide actual notice." 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. Thus, if the DCWP does allow electronic delivery of the validation notice, it should prohibit delivery by hyperlink or attachments.

Limits on Communication Frequency

New York City's current regulations generally limit debt collectors to no more than two calls in a sevenday period. 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.

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." We believe that DCWP intends the three-communication limit to apply in total across all communication media - for example one voicemail, one email, and one letter in a seven-day period would reach the three communication limit. However, as currently phrased, this provision could be read as allowing three communications per medium - for example three voicemails, three emails, and three letters in a seven-day period. We recommend that DCWP clarify that the first interpretation is what it intended by revising this provision.

As so revised, this amended regulation will continue to 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. Such an amended provision would function in a way that is similar to the current law in Washington State, which has existed since 1971.

To provide further protections for consumers, we recommend that DCWP clarify that these limits apply *per consumer*, not *per account*. This 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 having "an exchange with the consumer in any medium." 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. DCWP's proposed language seeks to extend that consumer protection by applying it to exchanges in any medium. We support efforts to consider how this protection may apply to other communication media, but we recommend that the DCWP clarify what constitutes "an exchange," especially with respect to communications via text or live chat on the collector's website since such conversations may involve multiple responses as part of the same thread.

Other Issues Related to Electronic Communications

<u>Consent</u>

We support DCWP's proposal to add consumer consent requirements before debt collectors can contact consumers electronically or via social media. These provisions exceed the protections provided by Regulation F, which do not require consumer consent. However, to clarify that consumer consent does not

transfer from the creditor to the debt collector, we recommend using the same language that Regulation F does in other portions of the regulations - "prior consent of the consumer, given directly to the debt collector."

As currently drafted, the regulations provide two alternate methods of consent for electronic communications but only one method of consent for social media communications. DCWP should clarify when something is a "specific electronic medium of communication" for which there are two methods of consent and when the debt collector is communicating via a "social media platform" for which there is only one method of consent. This will ensure that platforms that approximate text messaging, such as WhatsApp, Groupme, and Signal, are appropriately categorized.

Opt-Out

We recommend that DCWP amend the proposed provision requiring debt collectors to provide an optout notice in every electronic communication to add a requirement that debt collectors 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. To make these provisions parallel to similar provisions in Regulation F, DCWP should amend them to add "attempt to communicate."

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. 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." Such information would provide more details to the consumer than a similar notice

requirement in Regulation F. However, to avoid violations of the FDCPA as the result of debt collectors threatening to take an action that they do not intend to take, DCWP should clarify that such notice should not be included in the validation notice where the debt collector does not actually plan to report the alleged debt co a credit reporting agency.

To align its proposed amendments with Regulation F, DCWP should also amend this provision to specify that the 14-day waiting period applies when the notice is provided in a validation notice, not just "by mail" as stated in paragraph (i).

Time-Barred Debt Collection

We are concerned about the ability of the least sophisticated consumer to understand time-barred debt disclosures. 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.

However, 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. Moreover, because we believe that two, different time-barred debt disclosures are more likely to confuse consumers than one well-crafted disclosure, we encourage DCWP to work with DFS to test and implement the most effective consumer disclosure.

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. This is because we believe that consumers will be more likely to notice the disclosure if it appears on the front of the notice.

We agree that a disclosure-based approach is more likely to be effective when, as here, the disclosure must be made in every communication. We recommend striking the word "permitted," since the disclosure should be made whether or not the communication is permitted. Furthermore, we recommend that DCWP 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 sue a consumer 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." Because these debts are so old that they cannot be collected without mistakes or deception, 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, disputes, and requests for original creditor information 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. 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.

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." 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.

The DCWP's proposed amendment means that consumers get the benefit of the collection pause regardless of when they submit the dispute or request for original creditor information. 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 notice 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.

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 or a request for original creditor information within 30 days of receipt. This would be a significant improvement for consumers since neither the FDCPA nor Regulation F requires debt collectors to reply within a specified time.

Next, the proposed amendments outline what information a debt collector must provide in response to a dispute or request for verification. This list is designed to provide the consumer with substantive information about the alleged debt that the consumer can use to assess whether this account is their debt, whether the amount is correct, and what the relationship is between this creditor and the original creditor. DCWP should also consider how this list may be different if the alleged debt has been reduced to a judgment.

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. 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.

The proposed amendments also specify that debt collectors that cannot provide verification of a debt in response to a dispute or request for verification must provide an "unverified debt notice" stating that the collector is unable to verify the debt and informing the consumer that it will stop collecting on the debt. This would 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 further amend this provision to clarify that the debt collector "cannot provide a consumer with verification of a debt" when the debt collector cannot provide the specific documentation discussed in the previous paragraph.

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 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 "unable to verify notice" sent to the consumer pursuant to subdivision (f) of this section.

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 completely prohibit selling, transferring, or placing debts that cannot be verified for collection.

Language Access

DCWP's current and proposed rules impose stronger language access requirements than Regulation F, which do not impose any meaningful protections to consumers with Limited English Proficiency (LEP). Importantly, 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.

While DCWP's current rules do not require that debt collectors offer language services, they lay the groundwork for debt collectors to offer greater language access in the future. For instance, debt collectors must request and record a consumer's language preference before attempting to collect a debt, and transfer the information on the consumer's language preference whenever a debt is sold, transferred, or referred to debt collection litigation. Asking consumers about their language preference is the very first step to offering effective language access, as it enables debt collectors to develop language services according to the greatest language needs in the communities from which they seek to collect the most. Moreover, these requirements allow debt collectors to direct consumers to the resources they need, streamlining the provision of language services. We applaud DCWP's leadership in requiring debt collectors to maintain these records, and hope that other jurisdictions will follow New York City's example.

The proposed amendments further clarify that these record-keeping requirements are not intended to be limited to the subset of debt collectors which offer language services, but they instead apply to all debt collectors. For instance, by deleting "in a language other than English" from section 2-193(c)(3), the proposed amendments clarify that *all* debt collectors must prepare annual reports indicating, by language, the number of consumer accounts on which an employee collected or attempted to collect a debt, and the number of employees that collected or attempted to collect on such accounts. We appreciate that the amendments to this section require all debt collectors to prepare and maintain such reports, even when they do not offer any language services, as it ensures that all debt collectors have a regular opportunity to monitor and evaluate the language services they offer, and consider expanding or changing their language services whenever appropriate.

To strengthen this mandate, we recommend changing 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. For example, 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. We also recommend that DCWP collect such information

electronically to facilitate DCWP's ability to monitor and report on the state of language access in New York City debt collection.

We also appreciate the clarifications offered in section 5-77(h), which specify that the disclosures concerning the availability of language services and the link to DCWP's glossary of commonly used terms in debt collection must be on the *homepage* of the debt collector's website, or a link accessible from the homepage. We support this clarification, as it prohibits debt collectors from burying these disclosures in a part of the website that is unlikely to receive much traffic.

We want to encourage DCWP to consider expanding on these rules to require debt collectors that do not offer any language services to begin somewhere. As DCWP noted in its 2019 report on this topic, language access provisions are of limited utility if they are left to the discretion of individual debt collectors. 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 Spanishlanguage disclosures.

Other jurisdictions are starting to lead the way in this area. For example, on January 1, 2023 the District of Columbia will begin to require 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.

DCWP should consider implementing a similar requirement for debt collectors in New York. We recommend that DCWP begin by requiring that all debt collectors provide a Spanish translation of the validation notice to all consumers as a matter of course, with an exception for when a consumer has otherwise indicated a preference for a different language. 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, which would enable debt collectors to satisfy the requirement without needing to expend resources in translating the notice. To the extent that DCWP's amended 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. 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. 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 debt collector is both aware of a consumer's language preference and there is a model translated validation notice in that consumer's preferred language. Thus, as the number of languages included in the pool of government-provided translations grows, and as debt collectors continue to track and transfer consumer language preference, language access in debt collection will also continue to expand.

Without such mandates, we worry that proposed section 5-77(f)(2) 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 consumer requests for verification or dispute letters in the same language as the translated validation notice with either a translated verification letter or a translated unable to verify notice. 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. Without a 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. At a minimum, to mitigate this risk, we suggest that DCWP provide model translations for an "unable to verify" notice, and offer sample translations for verification letters.

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. 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, and building out a repository of translated notices and disclosures would be a natural next step.

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. 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." 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."

DCWP should clarify whether the requirement to retain "[a] copy of all communications and attempted communications or exchanges with the consumer" applies to phone calls and, if so, how this provision relates to the requirement to either record "all telephone communications with all NYC consumers or with a randomly selected sample of at least 5% of all calls made or received." 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,

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Nicole Cabañez
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December 19, 2022

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") 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 do believe some further clarity is necessary to ensure the rules are clear for the sake of consumers and financial institutions alike, and we look forward to engaging with DCWP throughout the amendment process.

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 do not operate like debt buyers or third-party debt collectors, with most creditors originating their own accounts or acquiring accounts shortly after origination and well before default. In contrast to third-party debt collectors or debt buyers that usually collect only mature, static, full-account balances from consumers with whom they have no prior or ongoing relationship, creditors usually collect delinquent 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. Creditors continue to service an account when the consumer is past due, while debt buyers and third-party debt collectors solely engage in debt collection activities and are more likely to collect much older charged-off or time-barred 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 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</u> debts for <u>such creditor; or</u>
> (7) <u>any person collecting or attempting to collect any debt owed or due, or asserted to be</u> owed or <u>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</u> arrangement;
>
> <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>

(D) Concerns a debt that such person obtained as a secured party in a commercial credit transaction involving the creditor.

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 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 of point-of-sale for goods provided or services rendered.[2] 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. Otherwise, individual persons that merely ask for money in exchange for goods could be considered "debt collectors" demanding repayment of "debt" merely because they ask for payment.

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 in a seven-day period, or once within that same period after having had an "exchange" 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.

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

[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.

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 attempting to communicate with a consumer who has multiple delinquent accounts would still be limited to a total of three attempts in a seven-day period despite that consumer owing more than one debt. 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.

Verification of Debt Requirements

To provide "debt collectors" clear instructions on what information is required when validating a debt and responding to verification of debt ("VOD") requests, we suggest the DCWP further clarify what is required when responding to a VOD request. Specifically, the proposed addition of section 5-77(f)(5)(i)-(iii) could benefit from the use of defined terms and additional clarity around what is required when responding to a VOD request. The proposed language uses industry terms that should be defined (e.g. "original creditor"); uses similar but different terms; is unclear whether the terms are intended to describe the same person (e.g. 'originating' versus 'original'); and requires unclear or unspecified information when itemizing an account without using a reference point like charge-off. Failure to provide such a reference point can result in unhelpful and confusing disclosures, especially with respect to open and revolving credit accounts. Otherwise, open and revolving accounts could be used, paid off, used again, then charged off, and the disclosures provided could itemize charges that never contributed to the full and accelerated balance.

Accordingly, we think the proposed amendments would materially benefit from a few changes that would enable "debt collectors" to know what to provide. We propose the following changes:

(i) requiring information back to the "original creditor,"

(ii) defining the "original creditor" to be the creditor that owned the account at the time of charge off, and
(iii) permitting account itemization from the point of charge off, as the New York State legislature permitted in 2021.[3]

These changes should enable "debt collectors" to provide the information the DCWP wants them to provide (e.g., a final account statement) in a way that makes sense for the consumer in light of their account use.

VOD "Original" and "Originating" Creditor Language

In section 5-77(f)(5)(i)-(iii), the DCWP requires certain information from the "originating" creditor in some instances and the "original" creditor in others. In (i), the "originating" creditor is tasked with providing evidence of the debt which may include the charge-off account statement. Similarly in (ii), the "principal balance" required is a balance due "to the originating creditor [.]" It is not clear what is meant by "originating creditor" and whether that is different from the "original creditor," which is also used. It is also not clear if the focus is on the 'originator' of the account, or the balance at issue. Because accounts can be transferred and sold between banks, for example, for reasons unrelated to debt collection and before the accounts charge off and have their balances accelerated, we think it would benefit the DCWP if it further amended these proposed changes to:

- Replace all references to the "originating" creditor with the "original" creditor, and

- At least within the context of (f), include a definition of "original creditor" that is "the person that owned a consumer debt at the time the account is charged off."

These two revisions should align the requirements between each other and also allow entities to provide the information the DCWP is explicitly requiring herein. The charge off statement mentioned in (i) and the full principal balance mentioned in (ii) only become known once the account charges off, so these changes are necessary in order for the entities to provide the documentation the DCWP recognizes is helpful to consumers, at least with respect to revolving credit accounts (e.g., the charge-off statement).

Itemization Requirements

Separately, in section 5-77(f)(5)(ii), the DCWP requires "debt collectors" to provide certain account itemization information without defining the terms used or clearly outlining what should be provided. Unfortunately, these revisions also face issues similar to those outlined above. Terms like 'principal balance' are not defined; it is not clear if itemization can start from the point of charge-off; it is not clear what constitutes 'charges' and 'fees,' and whether these are different than the individual charges and

fees contributing to the 'principal balance' while the account was open and in use, as opposed to court costs, for example; and it is unclear how debt collectors should itemize 'interest' within the context of these changes. Rather than rearrange and redefine the existing language, we would suggest the DCWP borrows from the CCFA and replace section 5-77(f)(5)(ii) with the following:

> "(ii) to the extent not already provided in the validation notice:
>
> (a) the written documentation itemizing the amount sought, by (i) principal; (ii) finance charge or charges; (iii) fees imposed by the original creditor; (iv) collection costs; (v) attorney's fees; (vi) interest; and (vii) any other fees and charges, or
> (b) If the account was a revolving credit account, an itemization of the amount sought, by: (i) the total amount of the debt due as of charge-off; (ii) the total amount of interest accrued since charge-off; (iii) the total amount of non-interest charges or fees accrued since charge-off; and (iv) the total amount of payments and/or credits made on the debt since charge-off"[4]

These changes would mirror the language passed by the New York State Legislature in 2021. For consumers, this change gives the added benefit of consistent account itemizations throughout the collection process. By contrast, if the DCWP requires disclosures and itemizations that differ from those required by the CCFA, it could cause confusion and make it difficult for consumers to engage productively in the process. Accordingly, we think consumers and the City would be best served if these amendments are further revised for clarity as outlined above.

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

3 "Consumer Credit Fairness Act", NYSB153/NYAB2382 (2021)
4 C.P.L.R. §3016(j)

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December 19, 2022

Re: Proposed 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 on the Department of Consumer and Worker Protection's (DCWP) proposed amendments to its debt collection rules. We also support the thoughtful and detailed comments submitted by the National Consumer Law Center. The proposed amendments, along with the provisions of the state Consumer Credit Fairness Act, which went into effect this spring and address certain abuses in the collection of debt through lawsuits, will go a long way toward helping curb debt collection abuses by thirdparty debt collectors, and will address some of the gaps left by the Consumer Financial Protection Bureau's debt collection rule, Regulation F. We note that our comments are unavoidably preliminary, given that the New York State Department of Financial Services's (DFS) proposed amendments to its debt collection rules have not yet been adopted and may, when finalized, affect the substance of our comments. With this caveat, we support certain of DCWP's proposed amendments and also urge DCWP to make certain critical changes, as described below.

MFJ's mission is to achieve justice for all. MFJ prioritizes the needs of people who are lowincome, 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. In particular, we strongly support the following proposed amendments, which would:

- Simplify the required disclosure regarding time-barred debts (section 2-191);
- Limit debt collectors to three communications or attempted communications within a seven-day period (section 5-77(b)(1)(A);
- Require debt collectors, before furnishing a debt to a consumer reporting agency, to notify consumers that they will report the debt to a consumer reporting agency (section 577(e)(10);
- Require debt collectors to include notices to buyer/transferee/assignee regarding debts that could not be verified (section 5-77(e)(13);
- Require debt collectors to verify a debt within 30 days of receiving a dispute or request for verification from a consumer (Section 5-77(f)(5); and
- Update the language of the rules to be gender neutral.

In addition, 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. We include several recommendations aimed at making the language of the rules more precise and internally consistent, and avoiding conflict with Regulation F.

1. **Prohibit the collection of time-barred debt, or at least limit collection of such debt to written communications.**

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 timebarred. At the very least, DCWP should limit collection of time-barred debt to only written communications, as DFS is proposing to do.

2. **Clarify the statute of limitations disclosure (section 2-191).**

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 and simplifying the disclosure language, as DCWP has proposed. We recommend, however, that DCWP 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). We suggest the following distinct disclosures, 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. Provide that recordkeeping provisions apply to internet-based oral communications (section 2-193(b)).

DCWP's proposed amendment to section 2-193(b) would require debt collectors to maintain recordings of "all telephone communications" or "a randomly selected sample of...calls made or received" by debt collectors. We recommend that DCWP require debt collectors to maintain recordings of <u>all</u> oral communications, not just "telephone communications," to capture communications made over the internet. We also recommend clarifying that this recording and retention provision applies to voicemail messages, including pre-recorded messages.

4. Clarify the definition of "limited-content message" (section 5-76).

We recommend amending the proposed definition of "limited-content message" to specify that it must be "for a consumer," in accordance with Regulation F.

5. Provide that the proposed limit on frequency of communications applies per consumer, not per account (section 5-77(b)(1)(iv)).

We recommend that DCWP require that the prohibition on more than three communications or attempted communications by any medium within any seven-day period applies per consumer, not per

account, and cumulatively, in all mediums, in order to prohibit an excessive number of contacts with a consumer where a debt collector may be seeking to collect multiple alleged debts from that consumer.

6. **Clarify what constitutes a "social media platform" (section 5-77(b)(7)).**

We welcome the requirement that debt collectors obtain consent from consumers before communicating with them on a social media platform. We recommend, however, that DCWP clarify that communications on a "social media platform" include, for the purposes of this provision, messages sent through social media apps (for example, WhatsApp).

7. **Ensure that attempts to communicate also constitute unconscionable and deceptive trade practices in certain situations (sections 5-77(b)(6), (b)(7), and (b)(8)).**

We recommend that DCWP amend sections 5-77(b)(6), (b)(7), and (b)(8) to state "Communicate **or attempt to communicate**" (proposed additional language in bold).

8. **Clarify the pre-credit reporting requirement (section 5-77(e)(10)).**

DCWP's proposed amendments would require that the debt collector provide notice about the alleged debt before credit reporting and that the notice required inform the consumer that "the debt may be reported to a credit reporting agency." Such information would provide more details to the consumer than a similar notice requirement in Regulation F. However, because threatening to take an action a debt collector does not intend to take violates the federal Fair Debt Collection Practices Act, DCWP should clarify that such notice should not be included in the validation notice where the debt collector does not actually intend to report the alleged debt to a credit reporting agency. To align its proposed amendments with Regulation F, DCWP should also amend this provision to specify that the 14-day waiting period applies when the notice is provided in a validation notice, not just "by mail" as stated in paragraph (i).

9. **Clarify that debt collectors that cannot fulfill DCWP's verification requirements must provide an unverified debt notice and stop collecting on the debt (section 5-77(f)).**

We strongly support the proposed rule that debt collectors either provide the required verification to a consumer within 30 days of receiving a dispute or request for verification, or provide notice to the consumer that it was unable to do so ("unverified debt notice") and stop collecting on the debt. We have observed, however, that debt collectors often fail to respond to NYC consumers' disputes with all the documentation that DCWP requires as verification of a debt (6 RCNY section 2-190), yet those debt collectors continue to collect or attempt to collect on debts against NYC residents. We therefore recommend that DCWP clarify that a debt collector that is unable to fulfill the verification requirements

under section 5-77(f)(5) must provide the consumer with an unverified debt notice and stop collecting on the debt.

10. Require employer liability (section 5-77(g)).

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 appropriate measures to ensure their employees' compliance with all applicable debt collection rules. We do support the deletion of the second sentence of section 5-77(g), which states, "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." A debt collector should not be able to escape liability for violation of section 5-77, which prohibit "Unconscionable and Deceptive Trade Practices," simply because they are employed by another to collect or attempt to collect debts.

11. Require debt collectors to provide meaningful language access services.

In our many years of experience helping low-income New York City consumers, 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, and 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.

12. 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. 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 recommend that the DCWP publicize its complaint procedures so that consumers may report debt collectors that do not comply with these rules. We also urge the DCWP to reach out and involve consumer advocates in New York City in researching and drafting debt collection rules and guidance given our direct experience with consumers and their perspectives. If you have any questions, please feel free to contact me.

Sincerely,

Carolyn E. Coffey
Director of Litigation for Economic Justice
212-417-3701 ccoffey@mfjlegal.org

Hello, My Name, is Anita Manghisi. Thank you for the opportunity to speak with you this morning.

I have been in the debt collection industry for 30 years. I am a board member for ACA International, the association for over 2100 credit and collection professionals and I am the NYSCA Legislative chairwomen. I am also the owner/operator of **Independent Recovery Resources**, a NYC certified M/WBE ED (Minority women owned economically disadvantaged) business.

Our members including myself serve New York State and New York City authorities and agencies including NYC Health & Hospitals, the Department of Transportation, and the Bureau of Parking violations. I believe that DCWP and my industry share a common goal – that being to protect all consumers and service providers.

businesses and Governmental agencies need appropriate funding to fulfill their mission. Consumers who purchase goods & services or incur financial obligation are expected to pay. When payment does not occur, those consumers have an absolute right to be treated with dignity and compassion while attempts are made to recoup those funds.

However, portions of the proposed rules rules are extremely burdensome to our members, especially the small or disadvantaged members. I am going to focus on a single proposal: §2-193 (a) (6) RECORDS TO BE MAINTAINED BY DEBT COLLECTION AGNECY (pg. 2 I believe)

> ~~**"(6) A log of all communications, attempted communications or exchanges by any medium between a debt collection agency and a consumer in connection with the collection of a debt; for each communication, attempted communication or exchange, the log must identify the date, time and duration, the method of communication, the names and contact information of the persons involved in the communication and a contemporaneous summary of the communication.**~~

The proposed language states: "a log of all communications, attempted communication or exchanges". The term "Log" is not currently defined: I suggest that you require a system of record keeping instead. A Log implies a physical

document rather than a system of records, which would be much too difficult to produce one single document/log

I have included a recommendation for such a definition in my written testimony.

A log of “all communications” can be challenging as many smaller agencies may not have the means to extract that data securely.

“Attempted communication” must be defined with precision. If a communication is initiated but fails, what purpose does logging that information serve? Please note that the Consumer Financial Protection Bureau (CFPB) has no such requirement. Therefore, I suggest that the phrase “attempted communications” be deleted from the section

I am hoping my testimony will be both informative and helpful in considering modifications and clarifications.

In addition to my oral testimony, I submitted written comments for which I respectfully ask the department to review and give great consideration to.

In conclusion I would like to reiterate that our members provide a valuable service to the city It is my belief that if we work together on these rules, both consumer interests and business interests can be served in a competent manner.

Please accept my testimony as an invitation to discuss these amendments in greater detail. It is my hope that when the proposed regulations are finalized that DCWP will allow ample time for the industry to review, digest and successfully implement them.

Thank you

My name is David Peltan and I am the President of the New York State Collectors Association, the Empire State's association of debt collectors. I am a lawyer and the majority of my practice is compliance work – helping debt collectors comply with the statutes, rules and regulations that apply to collecting consumer debts.

Debt collectors must juggle statutes, rules and regulations at the federal, state and municipal levels, especially here in New York. Unfortunately these three levels are not in synch. This puts debt collectors AND consumers in an uncomfortable spot. Debt collectors must sometimes choose which required disclosures to use and which to disregard, because including on the required disclosures on a letter is confusing to consumers, especially where the disclosures conflict. Actually including all the disclosures means consumers would have to wade through three or four pages of legal content, rather than a single page of easy-to-read information.

The Consumer Financial Protection Bureau (CFPB) came out with a model letter to use and published it in Regulation F. This is a simple easy to use letter that is on a single page, with perhaps a couple of paragraphs of disclosure on the back for an older debt. The CFPB developed this letter after years of research and investigation. Why should anything else be required? Was there something that the CFPB missed? No, they were very thorough. Let's keep it simple for the consumers and just require the CFPB's Model Validation Notice, and adopt a similar approach for subsequent letters in the consumer debt collection process.

The confusion and difficulty from three levels of regulation also apply to the means of communication with consumers. We begin with the assumption that consumers want to address their debts, although they may not want to have an actual conversation with a debt collector. More and more consumers prefer to communicate by email and text. But, where there's a requirement to first get their consent by telephone or letter, consumers may never get the email or text they actually want.

Again, let's make it easy and comfortable for consumers. Under the CFPB's Regulation F, all electronic communications must provide the consumer with the ability to opt out, even if the consumers has previously provided consent and has been communicating electronically. Isn't that sufficient protection? And, it allows consumers to receive the information they need and want through the means they want. Making it difficult or burdensome for consumers to opt in is to their disadvantage.

Finally, I would like to talk about finding the right balance for consumers between extensive record keeping requirements and the protection of their private, non-public information. These proposed rules require keeping more information for a longer period of time – well beyond the applicable statute of limitations. The more information that is kept and the longer it is kept, increases the risk that consumers' confidential information will be inadvertently disclosed, hacked or stolen, which increases the risk of identity theft and fraud. Why do we need to exceed the requirements under Regulation F, when that extra effort increases the risks to consumers without any measurable benefit to them? Let's do what is best for the consumer. Thank you.

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December 19, 2022

New York City Department of Consumer and Worker Protection ("DCWP") 42
Broadway
New York, New York 10004

Re: Amended-DCWP-NOH-Debt-Collectors-Rule

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.

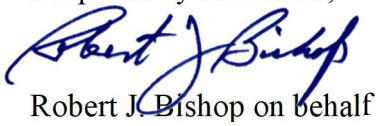
The hearing DCWP notice states:

> **"The Department is also proposing to update its debt collection rules due to changes in federal regulations. In late 2020, the U.S. Consumer Financial Protection Bureau ("CFPB") promulgated two 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 and deceptive practices, and the problems facing consumers today at a national level. These proposed amendments would adopt similar protections as those provided to consumers at the federal and state levels, and include provisions based on the Department's insight from its regulation of the debt industry for decades, as it pertains to NYC consumers" (emphasis added)**

The comments submitted on behalf of 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.

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

{00705316-1}

December 19, 2022

By email to Rulecomments@dca.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) proposed amendments to its debt collection rules. The proposed amendments—along with the provisions of the state Consumer Credit Fairness Act, which went into effect this past spring and address certain abuses in the collection of debt through lawsuits—will go a long way toward helping 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. We note that our comments are unavoidably preliminary, given that the New York State Department of Financial Services' (DFS) proposed amendments to its debt collection rules (https://www.dfs.ny.gov/system/files/documents/2021/12/rp23a1_text_20211215_0.pdf) have not yet been adopted and may, when finalized, affect the substance of our comments. With this caveat, we support certain of DCWP's proposed amendments and urge DCWP to make certain critical changes, as described below.

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 spoken with 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 people's exempt income.

The proposed amendments include vital protections for New Yorkers. In particular, we strongly support the following proposed amendments, which would:

- Simplify the required disclosure regarding time-barred debts (section 2-191);
- Limit debt collectors to three communications or attempted communications within a seven-day period (section 5-77(b)(1)(A);
- Require debt collectors, before furnishing a debt to a consumer reporting agency, to notify consumers that they will report the debt to a consumer reporting agency (section 577(e)(10);
- Require debt collectors to include notices to buyer/transferee/assignee regarding debts that could not be verified (section 5-77(e)(13);
- Require debt collectors to verify a debt within 30 days of receiving a dispute or request for verification from a consumer (Section 5-77(f)(5); and
- Update the language of the rules to be gender-neutral.

In addition, 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. We include several recommendations aimed at making the language of the rules more precise and internally consistent, and avoiding conflict with Regulation F.

1. **Prohibit the collection of time-barred debt, or at least limit collection of such debt to written communications.**

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 timebarred. At the very least, DCWP should limit collection of time-barred debt to only written communications, as DFS is proposing to do.

2. **Clarify the statute of limitations disclosure (section 2-191).**

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 and simplifying the disclosure language, as DCWP has proposed. We recommend, however, that DCWP 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). We suggest the following distinct disclosures, 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. Provide that recordkeeping provisions apply to internet-based oral communications (section 2-193(b)).

DCWP's proposed amendment to section 2-193(b) would require debt collectors to maintain recordings of "all telephone communications" or "a randomly selected sample of...calls made or received" by debt collectors. We recommend that DCWP require debt collectors to maintain recordings of <u>all</u> oral communications, not just "telephone communications," to capture communications made over the internet. We also recommend clarifying that this recording and retention provision applies to voicemail messages, including pre-recorded messages.

4. Clarify the definition of "limited-content message" (section 5-76).

We recommend amending the proposed definition of "limited-content message" to specify that it must be "for a consumer," in accordance with Regulation F.

5. Provide that the proposed limit on frequency of communications applies per consumer, not per account (section 5-77(b)(1)(iv)).

We recommend that DCWP require that the prohibition on more than three communications or attempted communications by any medium within any seven-day period applies per consumer, not per account, and cumulatively, in all mediums, in order to prohibit an excessive number of contacts with a consumer where a debt collector may be seeking to collect multiple alleged debts from that consumer.

6. **Clarify what constitutes a "social media platform" (section 5-77(b)(7)).**

We welcome the requirement that debt collectors obtain consent from consumers before communicating with them on a social media platform. We recommend, however, that DCWP clarify that communications on a "social media platform" include, for the purposes of this provision, messages sent through social media apps (for example, WhatsApp).

7. **Ensure that attempts to communicate also constitute unconscionable and deceptive trade practices in certain situations (sections 5-77(b)(6), (b)(7), and (b)(8)).**

We recommend that DCWP amend sections 5-77(b)(6), (b)(7), and (b)(8) to state "Communicate **or attempt to communicate**" (proposed additional language in bold).

8. **Clarify the pre-credit reporting requirement (section 5-77(e)(10)).**

DCWP's proposed amendments would require that the debt collector provide notice about the alleged debt before credit reporting and that the notice required inform the consumer that "the debt may be reported to a credit reporting agency." Such information would provide more details to the consumer than a similar notice requirement in Regulation F. However, because threatening to take an action a debt collector does not intend to take violates the federal Fair Debt Collection Practices Act, DCWP should clarify that such notice should not be included in the validation notice where the debt collector does not actually intend to report the alleged debt to a credit reporting agency. To align its proposed amendments with Regulation F, DCWP should also amend this provision to specify that the 14-day waiting period applies when the notice is provided in a validation notice, not just "by mail" as stated in paragraph (i).

9. **Clarify that debt collectors that cannot fulfill DCWP's verification requirements must provide an unverified debt notice and stop collecting on the debt (section 5-77(f)).**

We strongly support the proposed rule that debt collectors either provide the required verification to a consumer within 30 days of receiving a dispute or request for verification, or provide notice to the consumer that it was unable to do so ("unverified debt notice") and stop collecting on the debt. We have observed, however, that debt collectors often fail to respond to NYC consumers' disputes with all the

documentation that DCWP requires as verification of a debt (6 RCNY section 2-190), yet those debt collectors continue to collect or attempt to collect on debts against NYC residents. We therefore recommend that DCWP clarify that a debt collector that is unable to fulfill all the verification requirements under section 5-77(f)(5) must provide the consumer with an unverified debt notice and stop collecting on the debt.

10. Require employer liability (section 5-77(g)).

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 appropriate measures to ensure their employees' compliance with all applicable debt collection rules. We do support the deletion of the second sentence of section 5-77(g), which states, "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." A debt collector should not be able to escape liability for violation of section 5-77, which prohibit "Unconscionable and Deceptive Trade Practices," simply because they are employed by another to collect or attempt to collect debts.

11. 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, and 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.

12. 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

THE LEGAL AID SOCIETY
CIVIL

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Chief Attorney
Civil Practice

Julia McNally
Attorney–in–Charge
Queens Neighborhood Office

December 19, 2022

By email to
Rulecomments@dca.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:

The Legal Aid Society appreciates the opportunity to comment on the Department of Consumer and Worker Protection's (DCWP) proposed amendments to its debt collection rules. The proposed amendments, along with the provisions of the state Consumer Credit Fairness Act, which went into effect this spring and address certain abuses in the collection of debt through lawsuits, will go a long way toward helping 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. We note that our comments are unavoidably preliminary, given that the New York State Department of Financial Services' (DFS) proposed amendments to its debt collection rules (https://www.dfs.ny.gov/system/files/documents/2021/12/rp23a1_text_20211215_0.pdf) have not yet been adopted and may, when finalized, affect the substance of our comments. With this caveat, we support certain of DCWP's proposed amendments and also urge DCWP to make certain critical changes, as described below.

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- Update the language of the rules to be gender neutral.

Justice in Every Borough.

In addition, 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. We include several recommendations aimed at making the language of the rules more precise and internally consistent, and avoiding conflict with Regulation F.

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DCWP's rules are meant to protect New York City consumers and deter bad actors, and noncompliance may subject debt collectors to enforcement. 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.

Thank you for the opportunity to comment. Please feel free to contact me at cmooney@legal-aid.org with any questions.

Sincerely,

Claire Mooney, Esq.
The Legal Aid Society

December 19, 2022

via Electronic Delivery to Rulecomments@dca.nyc.gov

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

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

ACA International (ACA) would like to thank the Department of Consumer and Worker Protection (Department) for providing an opportunity for comments on the proposed amendments to its rules relating to debt collectors. Below we have outlined concerns our members have about the timing and overall 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 2,100 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.

Significant research has confirmed the basic economic reality that losses from uncollected debts result in higher prices and restricted access to credit.

> *"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."* – CFPB Taskforce on Federal Consumer Financial Law Report, January 2021

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. As the Department moves forward with any amendments, ACA urges the Department

to consider the impact duplicative and often conflicting federal, state and local requirements will have on consumers.

ACA urges the Department to consider delaying the implementation of any new amendments to its debt collection regulations until the New York State Department of Financial Services (NY DFS) has the opportunity to finalize its debt collection rulemaking which has been ongoing for over a year. Delaying rule changes until the DFS rule is finalized would allow the Department to properly complement these changes and avoid conflicts that will confuse consumers and create unnecessary industry compliance impossibilities.

ACA respectfully requests the Department delay any changes to the New York City debt collection rules for at least one year. The debt collection industry operating in New York City just implemented two major overhauls of collection rules and is expecting NYDFS to issue proposed final debt collection rules later this month. The Consumer Financial Protection Bureau (CFPB) also just enacted Regulation F, the most comprehensive set of changes to the country's debt collection laws in over 40 years. Many of the Department's proposed amendments conflict with these new federal regulations.

Additionally, the New York Consumer Credit Fairness Act (CCFA) took effect on April 7, 2022 and May 7, 2022 making significant changes to the debt collection procedures in the state. ACA respectfully requests the Department allow these new comprehensive changes at the federal and state level time to have an impact and then strive to avoid conflicts between these multiple levels of regulation. Taking a measured approach would allow the Department to best serve the consumers in New York City.

ACA respectfully requests the following changes to the proposed amendments. These changes would provide clarity to both the consumer and the industry and go a long way to help avoid conflicts with existing state and federal law:

A. § 2-191. Disclosure of Consumer's Legal Rights Regarding Effect of Statute of Limitations on Debt Payment

The Department has the opportunity to help consumers in New York City by creating a uniform disclosure for all consumers in the state. A bifurcated disclosure system that requires the industry to provide multiple disclosures on the same notice to New York City consumers overloads the consumer with lengthy letters and leads to confusion.

ACA respectfully requests the Department work with the New York Department of Financial Services to develop a uniform disclosure for all New York consumers that is consistent with the requirements included with the CFPB's Regulation F and the New York CCFA.

B. § 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.*

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 new debt collection law in Washington, D.C. that will take effect in 2023.

ACA also respectfully requests the Department add a definition for the term "log".

> *The term "log" means electronic databases and tools used to record all events that are commensurate with the collection of a debt."*

The addition of this definition 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.

C. 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.

As mentioned earlier in these comments, if the Department can strive for a single uniform approach by working with the NY DFS, many of these concerns would be resolved. As the Department works to modernize debt collection rules, ACA also requests the Department recognize evolving consumer preferences and clarify that hyperlinks are permitted in electronic communications.

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.

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

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

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 a consumer would lead to unnecessary liability.

Consumer's Location

In section(b)(1)(i), ACA respectfully requests the Department change "*at the consumer's 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 have the ability to receive important information in a timely manner.

ACA respectfully requests the Department to modify section (b)(1)(iv)(A) Excessive Frequency to mirror Regulation F. This relatively new federal regulation is the most comprehensive set of changes to the country's debt collection laws in over 40 years and sets a new national call cap standard. ACA requests that this provision be amended to mirror Regulation F 12 CFR Part § 1006.14 Harassing, oppressive, or abusive conduct (link provided below).

> 12 CFR Part § 1006.14 Harassing, oppressive, or abusive conduct.
> ***(https://www.consumerfinance.gov/rules-policy/regulations/1006/2021-11-30/14/)***

If the Department proceeds with the proposed amendments, ACA respectfully requests the Department clarify a few commonsense exceptions that will ensure a consumer better receives important financial information.

ACA requests the addition of language to ensure a collector can receive and return call requests from a consumer without going over any limitation threshold. The Department should also clarify that calls without a connection or ability to leave a message do not count against any limitation threshold. ACA also requests the Department clarify that any mandated federal, state or local communication would not cause a collector to exceed the communication limitations.

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 or if the consumer chooses to communicate through that 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)(1)(iv), ACA respectfully requests the Department provide clarity by deleting the word "such" from the provision.

(iv) a telephone number that is answered by ~~such~~ a natural person

The proposed amendment would require a collection agency to provide the name of the natural person that would answer the phone if the consumer called. This requirement would be impractical as collection agents often work staggard schedules and have flexible workdays. An unintended consequence of this requirement would be to limit a consumer's options in reaching out during a time that best fits the consumer's schedule or from making payments or discussing timely account resolution options.

Additional Consumer Rights

ACA respectfully requests the Department delete section (v) "Important Additional Consumer Rights under New York City Law."

Given the pending NYDFS rules, there is the potential for many conflicts that could create confusion for consumers and the industry. ACA requests the Department work with the NYDFS and wait until their rules are finalized before making changes to required consumer notices. The Department should work toward a uniform approach to best serve the consumers of New York City.

Verification

In section (5) (ii) on verification, ACA requests an exception be added to recognize the intricacies of revolving lines of credit or credit cards. ACA requests the following additions be added:

> (*1) the total amount remaining due on the total principal balance of the indebtedness to the originating original creditor, provided that the principal balance for revolving lines of credit shall be the charge-off balance and (2) each additional charge or fee claimed or alleged to be due that separately (i) lists the total for each charge or fee and the date that each charge or fee was incurred, provided that the charge or fees for revolving lines of credit shall be post-charge-off charges or fees;*

This addition is necessary because on revolving lines of credit, banks do not have the ability to separate out compounded interest on balances that the consumer elects to carry over month after month, while making partial payments. Debt collection agencies would not be able to provide the required information in this provision as it is currently written.

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 provision to the proposed amendments which would provide a date certain of when the new rules take effect. Any new provisions should only be applied prospectively.

> *EFFECTIVE DATE: All new provisions contained in this rulemaking shall apply to accounts charged off on or after January 1, 2024, or for accounts not charged off, the new provisions will apply to accounts that are delinquent on or after January 1, 2024.*

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:

Andrew Madden
Vice President Government and State Affairs 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 of Subchapter 5 of Chapter 2 of Title 6 of the Rules of the City of New York is amended to read as follows:

§ 2-191 Disclosure of Consumer's Legal Rights Regarding Effect of Statute of Limitations on Debt Payment.

~~(a)~~ The information about the consumer's legal rights, which a debt collection agency is required to provide the consumer pursuant to § 20-493.2(b) of the Administrative Code, [~~shall~~] must be included clearly and conspicuously in every permitted communication for each debt that the debt collection agency is seeking to collect that is beyond the applicable statute of limitations~~, and (shall be) must state as follows~~:

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

~~1. The law limits how long a consumer can be sued for a debt. The time for suing you to collect this debt has EXPIRED. This means: THIS DEBT IS NOT ENFORCEABLE IN COURT.~~
~~2. It is a violation of federal law to sue or threaten to sue to collect time-barred debt (or debt that is beyond the Statute of Limitations).~~

Commented [DR1]: This regulation pre-dates the adoption of the state-wide disclosures in 2014 and the Consumer Credit Fairness Act in 2021. The industry respectfully requests one uniform state-wide disclosure and not a bifurcated system that requires the industry to produce multiple (and potentially conflicting) disclosures.

By requiring three sets of overlapping consumer notices (federal, state, and local) on the first page, it will require a page measuring 11x17. Most small businesses in our industry do not have printers that can produce an 11x17 printed document. The length of the consumer notices will be overwhelming and will greatly increase the likelihood that they will not be read.

~~2. If you would like to learn more about your legal rights and options, you can consult an attorney or a legal aid organization."~~

~~(b) When such information is delivered in writing, the required statement provided in subdivision (a) of this section [shall] 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 type on the permitted communication, and [shall] must be placed adjacent to the identifying information about the amount claimed to be due or owed on such debt.~~

~~(c) A debt collection agency must maintain reasonable procedures for determining whether the statute of limitations applicable to a debt or alleged debt it is collecting or attempting to collect has expired.~~

§ 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 3 of title 6 of the Rules of the City of New York.

Commented [DR2]: The industry would request the deletion of the phrase "attempted communications or exchanges." 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.

As for the reference to "exchange," we do not see how it adds anything that is not already covered by the word "communication" and it is not defined in the regulations.

NOTE: INTENTIONALLY LEFT BLANK BELOW SO AS TO PREVENT THE COMMENTS IN THE MARGINS FROM BEING TRUNCATED.

(d) A log of all communications~~, attempted communications or exchanges~~ by any medium between a debt collection agency and a consumer in connection with the collection of a debt; for each communication, ~~attempted communication or exchange,~~ the log must identify the date~~,~~ and time~~ and duration~~, the method of communication, the names ~~and contact information~~ of the persons involved participated in the communication~~ and a contemporaneous summary of the communication~~. 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.

(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~~] Monthly logs of the following:

NOTE: INTENTIONALLY LEFT BLANK BELOW SO AS TO PREVENT THE COMMENTS IN THE MARGINS FROM BEING TRUNCATED.

Commented [DR3]: The industry would request the deletion of:

(1) The phrase "or exchanges" as it does not add anything that is not already covered by the word "communication" and it is not defined in the regulations;
(2) 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;
(3) The phrase "and contact information" as the name of the employee should be sufficient to identify the employee; and
(4) 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 should be sufficient.

Commented [DR4]: The industry respectfully requests a definition for the term "log" given that it is an important term that is used in several places and it is not a defined term. We would request the following definition: "Log means electronic databases and tools used to record all events that are commensurate with the collection of a debt."

This sentence is requested for clarity. Many debt collectors maintain the information that is being sought in a system of record (i.e. a data management term for an information storage system that is the authoritative data source). The industry is concerned that some might view a "log" to be a separate physical document that maintains the same information as a system of record (and notably in a less secure fashion).

Commented [DR5]: 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.

(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 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 the 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 with all NYC consumers or with a randomly selected sample of at least 5% of all calls made or received by the debt collection agency ~~[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 agency and a record in each consumer's account must identify the calls recorded. If an agency elects to record a randomly selected sample of at least 5% of all calls made or received by the agency, it must maintain a log of the total number of calls made or received on a monthly basis and the total number of such calls recorded.

Commented [DR6]: 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 [DR7]: 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 [DR8]: 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.

NOTE: INTENTIONALLY LEFT BLANK BELOW SO AS TO PREVENT THE COMMENTS IN THE MARGINS FROM BEING TRUNCATED.

(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. 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) If known, ~~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 all information concerning a debt furnished to a consumer reporting agency, including the date the debt collection agency notified the consumer about the debt before furnishing it and the period of time it waited to receive a notice of undeliverability.

(8) A record of any unverified debt notice issued or received by the debt collection agency, including any unverified debt 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 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.

Commented [DR9]: 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 [DR10]: 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.

Commented [DR11]: "A record of all debt furnished" is not an accurate description for what is being sought in this paragraph. "Debt" is never "furnished."

Commented [DR12]: "Debt" is not furnished, "information" is.

(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 conversations with consumers, until three years after the agency's last collection activity on the debt.

(2) For recordings of conversations 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 from the date the record was created.

§ 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, 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.

Electronic communication. The term "electronic communication" means communication by electronic means, 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.

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;

Commented [DR13]: 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 [DR14]: 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 footnote will have to be addressed on another page in the document because to display it on the same page would prevent us from complying with the federal or state requirements. There is only so much space on the first page of communications.

(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, that 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.

§ 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 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;

[(i)] 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

[(j)] 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.

§ 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 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

Commented [DR15]: 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 [DR16]: This is intended to mitigate the risk that employees of the original creditor could by exposed personally under the current definition.

(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 consent of the 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 o'clock ante meridian and before 9 o'clock post meridian time in the eastern time zone ~~at the consumer's location~~;

(ii) except for any communication which 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 [DR17]: 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 [DR18]: 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] ~~unless~~ if the debt collector knows [~~or has reason to know~~] that the consumer's employer or supervisor [~~prohibits~~] permits 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 so 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.

NOTE: THE INDUSTRY WOULD STRONGLY RECOMMEND THAT THE FOLLOWING TEXT BE DELETED AND THAT THE DEFAULT BE THE NEWLY CREATED CALL CAPS CONTAINED IN REGULATION F. AS AN ALTERNATIVE, THE INDUSTRY REQUESTS THAT THE TEXT MIRROR THE NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES TEXT FOR CONSISTENCY BETWEEN NEW YORK STATE AND NEW YORK CITY REQUIREMENTS TO AVOID CONFUSION AND ACCIDENTAL ERRORS. MOST DEBT COLLECTORS OPERATE REGIONALLY OR NATIONALLY AND MUST MANAGE ACCOUNTS IN MULTIPLE STATES.

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

~~(B) The date of the first day of such a seven-consecutive-calendar-day period is the day of the first such communication, attempted communication or exchange. In making its calculations, the debt collector need not include any communication, attempted communication or exchange between a consumer and the debt collector which is initiated by or at the request of a consumer or is in response to a communication from the consumer, or any communication which is required by law.~~

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

Commented [DR19]: 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 [DR20]: The industry respectfully requests that the proposed edit be changed back to how it was previously worded. It is important to keep in mind that a person's place of employment could be their home. In fact, working from home has become quite common due to the pandemic. If the word "permits" is used, the industry will not be able to communicate with the consumer at their home. However, a consumer can "prohibit" communication at any number under the FDCPA, including their home. As such "prohibits" is better than "permits" as it does not create needless obstacles to open communication.

Another common scenario that could place debt collectors in unknowing violation of this provision is when a consumer provides their work number to the debt collector as a good number to communicate with them.

Commented [DR21]: 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.

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~~]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 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~~

Commented [DR22]: This "floating" and unnumbered sentence seems to be misplaced? Might we suggest that it be somehow incorporated into paragraph (1)?

Commented [DR23]: 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.

Commented [DR24]: Phone calls often include vague language such as "I really don't like getting these calls." Does that count? What if they say that to start, but then agree to set up a payment plan? It is much clearer the consumer's intent if it is received in writing.

~~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 consumer by electronic communication unless the debt collector satisfies the following requirements:

(i) A debt collector must provide a written validation notice to the consumer pursuant to subdivision (f) prior to contacting a consumer by electronic communication. A debt collector may only use a specific email address, text message number, or specific electronic medium of communication if:

(A) the consumer provided consent to the creditor or debt collector ~~obtains consent from the consumer~~ to use such email address, text message number, or medium of communication to communicate about the debt, or

(B) the consumer used such email address, text message number or medium of communication to communicate with the debt collector about a debt within the past 60 days and has not since opted out of communications to that email address, text message number or medium of communication or opted out of all electronic communications generally.

(ii) 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.

(iii) The debt collector must include in every electronic mail communication to the consumer a clear and conspicuous statement describing a reasonable and simple method by which the consumer can opt-out of further electronic communications or attempts to communicate by the debt collector. 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 social media platform and the communication is not viewable by 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 an unverified debt notice pursuant to subdivision (f).

Commented [DR25]: 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 consumers name, address, and telephone number. Why would we ban the least intrusive forms of contact?

Commented [DR26]: There is no way that a debt collector "should know" a telephone number is associated with a business unless the consumer tells the debt collector.

We respectfully request the deletion of this language.

(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 an alert or other sound,~~ 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 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;

Commented [DR27]: Cell phones that get emails can be set up to produce a sound even though that was not the intent of the debt collection agency. By incorporating "or produce an alert or other sound," this revision would codify a claim that typically fails under the FDCPA (i.e., a text message, email, push alert, or other phone notification should be treated like a phone call for purposes of harassment). 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.

(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~~ prohibited by federal, state, or local law, the failure to disclose clearly and conspicuously in all verbal ~~telephone communications~~ 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~~.

(e) *Unfair 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 or if the consumer chooses to communicate through that medium;

(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(a)(5)~~] except where expressly permitted by federal, state, or local law, communicating with a consumer without disclosing the debt collector's name; [~~or~~]

Commented [DR28]: 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 [DR29]: 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.

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 [DR30]: A consumer may choose to communicate via text messages with the debt collection agency. The agency 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.

(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(c)(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 credit reporting agency, as defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. § 1681a(f)), information about a debt before the debt collector:

(i) notifies the consumer, by mail~~, telephone, or in person,~~ about the debt, including the current amount of the debt and the business name of the debt collector, and informs the consumer that:

(A) the debt may be reported to a credit reporting agency; and

(B) New York City consumers can obtain information about their rights on the New York City Department of Consumer and Worker Protection's website at www.dcwp.nyc.gov; or

(ii) sends the consumer a validation notice pursuant to subdivision (f) of this section that states the debt may be reported to a credit reporting agency.

If the debt collector elects to notify a consumer about a debt pursuant to subparagraph (i) of paragraph (10) of this subdivision by mail, they must wait no less than 14 consecutive days after they place the notice in the mail, to receive a notice of undeliverability. 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 a notification during the waiting period, the debt collector must not furnish information about the debt to a credit reporting agency until the debt collector otherwise satisfies subparagraph (i) of paragraph (10) of this subdivision.

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));

Commented [DR31]: 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 [DR32]: Including these disclosures on calls will lead to higher consumer hang up rates and will impact the ability to educate the consumer about the debt and allow them the opportunity to work with us to get it resolved.

(11) selling, transferring, or placing for collection or with an attorney or law firm to sue a 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 sue a consumer 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 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 "unable to verify notice" 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 consumer in connection with the collection of any debt, a debt collector [~~who is not a creditor and not employed by a creditor shall~~] must, unless the following information [~~is~~] was contained in an initial written communication, or the consumer [~~has~~] paid the debt, send the consumer a written notice by mail or a delivery service containing, in a clear and conspicuous manner:

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

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

~~**Important Additional Consumer Rights under New York City Law:**~~

~~i. You may contact a debt collector at any time, and by any means, during the collection of a debt to dispute or request verification of the debt.~~

~~ii. The debt collector must:~~

Commented [DR33]: 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.

Commented [DR34]: 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.

~~(1) Provide you verification of the debt in response to your first dispute or request for verification, within 30 days of receiving such dispute or request, and stop collecting until it provides this information in writing to you; or~~

~~(2) Provide you a notice in writing stating that it was unable to verify the debt within 30 days of receiving a dispute or request, and stop collecting on the debt;~~

(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]~~; and

~~[(viii)]~~ (vii) a statement that a translation and description of commonly-used debt collection terms is 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 if the debt collector includes them together under a heading entitled, "**Important Additional Rights under New York City Law**" and includes a clear and conspicuous statement on the front of the validation notice referring to the disclosures. If included on the reverse side of the validation notice, the information must be positioned in a manner so it is conspicuous, even after a consumer tears off any response portion of the notice.

~~[~~(3) *Translated Notices*. 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 provide such a ~~translated~~ validation notice to the consumer ~~in the language requested~~ within 30 days of such request~~, and the notice must be completely and accurately translated into such language. A debt collector is not required to provide the translated validation notice required by this paragraph to the consumer more than once during the period that the debt collector owns or has the right to collect the debt~~. If the consumer disputes the debt or requests verification of the debt in the same language as the ~~translated~~ validation notice required by this paragraph, the verification letter or unable to verify notice sent by the debt collector must also be ~~translated~~ in the same language as the validation notice required by this paragraph~~requested by the consumer~~.

(3) ~~[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.

Commented [DR35]: The proposed amendment begins with a reference to "validation notices in a language other than English" that are "offered" by the debt collector to consumers. Thus, this non-English notice already exists. However, the remaining text refers to a "translated notice" which suggests that the existing, non-English validation notice is not the object of the proposed rule and English validation notices must be translated into non-English. Our redline makes clear that the debt collectors are required to provide non-English validation notices it offers to consumers. Second, the use of the phrase "completely and accurately translated" in this paragraph also suggests that debt collectors are "translating" validation notices, which is not always the case. To be sure, the validation notice provided here is very likely not a translation of the debt collector's English notice, but one made originally in the non-English language. Debt collectors can choose to provide non-English validation notices that are not translations of English validation notices, but notices originally made in non-English. The first sentence of the proposed rule recognizes as much ("If a debt collector offers consumers validation notices in a language other than English . . ."). And debt collectors can lawfully make verification letters and "unable to verify" notices that are not translations but are originally made in non-English, so we have removed the reference to the same being "translated." Finally, the proposed amendment's requirement that the non-English validation notice "must be completely and accurately translated" is redundant. Section 5-77(d)(18) already prohibits "the false, inaccurate, or partial translation of any communication when the debt collector provides translation services." (Emphasis added). We note that such a requirement was not proposed for the "translated" verification letter or "unable to verify" notice. Further, the original proposed text reinforces the incorrect interpretation that non-English validation notices, verification letters and unable to verify notices are required to be "translations" of English validation notices used by debt collectors.

(4) ~~[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 to request the name and address of the original creditor.

(5) *Verification.* A debt collector must provide a consumer verification of a debt or provide an "unverified debt notice" within 30 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 permits electronic communications, 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 the verification information required in this section. The debt collector must cease collection of the debt until such written verification has 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 such verification to the consumer in writing by mail or delivery service unless the consumer has consented to receive electronic communications in compliance with § 5-77(b)(5).

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

IF DCWP AGREES WITH THE EDIT ABOVE, ROMAN NUMERALS (i) THROUGH (iv) 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.

(i) 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. ~~Computer documents or electronic evidence created or generated after default on the indebtedness shall not qualify as such confirmation.~~

(ii) to the extent not already provided in the validation notice, the written documentation itemizing the principal balance of the debt that remains or is claimed or alleged to remain due and all other charges that are due or claimed or alleged to be due, including a copy of the final statement, if applicable, of account issued by the ~~originating~~ original creditor and a document itemizing: (1) the total amount remaining due on the total principal balance of the indebtedness to the ~~originating~~ original creditor, provided that the principal balance for revolving lines of credit shall be the charge-off balance and (2)

Commented [DR36]: 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.

Commented [DR37]: 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 [DR38]: 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 [DR39]: Not all asset classes maintain final statements.

Commented [DR40]: An exception needs to be made for revolving lines of credit (such as credit cards) where the charge-off principal balance includes compounded interest. Banks do not have the ability to separate out compounded interest on balances that the consumer elects to carry over month after month, while making monthly minimum payments. If banks can't provide this information to a consumer, it is impossible to expect debt collection agencies to provide it.

each additional charge or fee claimed or alleged to be due that separately (i) lists the total for each charge or fee and the date that each charge or fee was incurred, provided that the charge or fees for revolving lines of credit shall be post-charge-off charges or fees; and (ii) identifies and describes the basis of the consumer's obligation to pay it;

(iii) a statement describing the complete chain of title from the original creditor to the present creditor, including the date of each assignment, sale, and transfer; and

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

(6) *Unverified Debt Notice*. If a debt collector cannot provide a consumer with verification of a debt in response to a dispute or request for verification, the debt collector must respond in writing to the consumer within 30-60 days of receiving the dispute or a request for verification 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~~.

(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. The consumer may make such request orally or in writing, or electronically if the debt collector permits, at any time during the period in which the debt collector owns or has the right to collect the debt. After receiving such 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. The term original creditor has the same meaning as defined in Section 105 of the Civil Practice Laws & Rules.

(8) *Electronic Communications*. If a debt collector delivers a 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.

(g) ~~[*Liability*. The employer of a debt collector is liable for the debt collector's violation of 6 RCNY § 5-77. 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]~~ Reserved.

(h) *Public Websites*. Any debt collector that utilizes, maintains, or refers 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**", 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

Commented [DR41]: 60 days is consistent with the CFPB standard as DCWP indicates they are attempting to seek.

Commented [DR42]: 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.

Commented [DR43]: 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."

(2) a statement that a translation and description of commonly-used debt collection terms is available in multiple languages on the Department's website, ~~[www.nyc.gov/dca]~~ www.nyc.gov/dcwp.

EFFECTIVE DATE: All new provisions contained in this rulemaking shall apply to accounts charged off on or after January 1, 2024, or for accounts not charged off, the new provisions will apply to accounts that are delinquent on or after January 1, 2024.

Commented [DR44]: 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.

December 19, 2022

RMAi
RECEIVABLES MGMT. ASSOC. INTL.
SETTING THE GLOBAL STANDARD

1050 Fulton Avenue #120
Sacramento, California 95825
916.482.2462

By Electronic Submission to rulecomments@dcwp.nyc.gov

NYC Department of Consumer & Worker Protection
Commissioner 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) related to proposed rulemaking on debt collection as requested in DCWP's invitation for comments issued on November 4, 2022.

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)[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 10.0 (February 3, 2022), publicly available at https://rmaintl.org/GovernanceDocument (last accessed December 18, 2022).
[2] Receivables Management Association International, *Code of Ethics* (August 13, 2015), publicly available at https://rmaintl.org/about-rmai/code-of-ethics/ (last accessed December 18, 2022).
[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 (last accessed December 18, 2022).

- 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 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 (publicly available at http://files.consumerfinance.gov/f/documents/20160727_cfpb_Outline_of_proposals.pdf (last accessed June 7, 2021).

[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 on December 28, 2022 with final adoption presumably in the second or third quarter of 2023. It is imperative that DCWP's rulemaking not contradict the State of New York's rules.

Constitutional Issues DCWP 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 2010 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.[10]

Typically, restrictions on speech, even commercial speech, that are 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 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. 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).

Data publicly available from the CFPB, the primary federal regulator of debt collectors, identified that over a two-year period from December 19, 2020 to December 19, 2022, only 126

[10] *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).

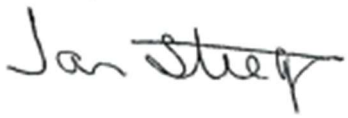
complaints were made by New York City residents concerning the frequency of debt collection calls. This accounted for a statistically insignificant number of the debt collection complaints for the City of New York and equated to approximately one complaint every six days or approximately one complaint for every 67,206 residents of New York City. And these are just complaints, *allegations* of frequent calls and not a finding that the calls 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 commercial 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 by DCWP may be unconstitutional.

Conclusion

RMAI would like to thank DCWP 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

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

Proposed Rule Amendments

Section 1. Section 2-191 of Subchapter S of Chapter 2 of Title 6 of the Rules of the City of New York is amended to read as follows:

§ 2-191 Disclosure of Consumer's Legal Rights Regarding Effect of Statute of Limitations on Debt Payment.

~~(a)~~ The information about the consumer's legal rights, which a debt collection agency is required to provide the consumer pursuant to § 20-493.2(b) of the Administrative Code, [~~shall~~] must be included clearly and conspicuously in every permitted communication for each debt that the debt collection agency is seeking to collect that is beyond the applicable statute of limitations~~,~~ ~~and [shall be]~~ must state as follows:

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

1. ~~The law limits how long a consumer can be sued for a debt. The time for suing you to collect this debt has EXPIRED. This means: THIS DEBT IS NOT ENFORCEABLE IN COURT.~~
2. ~~It is a violation of federal law to sue or threaten to sue to collect time-barred debt (or debt that is beyond the Statute of Limitations).~~

Commented [DR1]: This regulation pre-dates the adoption of the state-wide disclosures in 2014 and the Consumer Credit Fairness Act in 2021. The industry respectfully requests one uniform state-wide disclosure and not a bifurcated system that requires the industry to produce multiple (and potentially conflicting) disclosures.

By requiring three sets of overlapping consumer notices (federal, state, and local) on the first page, it will require a page measuring 11x17. Most small businesses in our industry do not have printers that can produce an 11x17 printed document. The length of the consumer notices will be overwhelming and will greatly increase the likelihood that they will not be read.

~~2. If you would like to learn more about your legal rights and options, you can consult an attorney or a legal aid organization."~~

~~(b) When such information is delivered in writing, the required statement provided in subdivision (a) of this section [shall] 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 type on the permitted communication, and [shall] must be placed adjacent to the identifying information about the amount claimed to be due or owed on such debt.~~

~~(c) A debt collection agency must maintain reasonable procedures for determining whether the statute of limitations applicable to a debt or alleged debt it is collecting or attempting to collect has expired.~~

§ 2. Section 2-193 of Subchapter 5 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.

Commented [DRZ]: The industry would request the deletion of the phrase "attempted communications or exchanges." 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.

As for the reference to "exchange," we do not see how it adds anything that is not already covered by the word "communication" and it is not defined in the regulations.

NOTE: INTENTIONALLY LEFT BLANK BELOW SO AS TO PREVENT THE COMMENTS IN THE MARGINS FROM BEING TRUNCATED.

(6) A log of all communications, ~~attempted communications or exchanges~~ by any medium between a debt collection agency and a consumer in connection with the collection of a debt; for each communication, ~~attempted communication or exchange~~, the log must identify the date~~,~~ and time ~~and duration~~, the method of communication, the names ~~and contact information~~ of the persons ~~involved~~ participated in the communication ~~and a contemporaneous summary of the communication~~. 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.

(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~~] Monthly logs of the following:

NOTE: INTENTIONALLY LEFT BLANK BELOW SO AS TO PREVENT THE COMMENTS IN THE MARGINS FROM BEING TRUNCATED.

Commented [DR3]: The industry would request the deletion of:

(1) The phrase "or exchanges" as it does not add anything that is not already covered by the word "communication" and it is not defined in the regulations;
(2) 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;
(3) The phrase "and contact information" as the name of the employee should be sufficient to identify the employee; and
(4) 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 should be sufficient.

Commented [DR4]: The industry respectfully requests a definition for the term "log" given that it is an important term that is used in several places and it is not a defined term. We would request the following definition: "Log means electronic databases and tools used to record all events that are commensurate with the collection of a debt."

This sentence is requested for clarity. Many debt collectors maintain the information that is being sought in a system of record (i.e. a data management term for an information storage system that is the authoritative data source). The industry is concerned that some might view a "log" to be a separate physical document that maintains the same information as a system of record (and notably in a less secure fashion).

Commented [DR5]: 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.

(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 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 the 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 with all NYC consumers or with a randomly selected sample of at least 5% of all calls made or received by the debt collection agency [~~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 agency and a record in each consumer's account must identify the calls recorded. If an agency elects to record a randomly selected sample of at least 5% of all calls made or received by the agency, it must maintain a log of the total number of calls made or received on a monthly basis and the total number of such calls recorded.

Commented [DR6]: 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 [DR7]: 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 [DR8]: 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.

NOTE: INTENTIONALLY LEFT BLANK BELOW SO AS TO PREVENT THE COMMENTS IN THE MARGINS FROM BEING TRUNCATED.

(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. 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 [DR9]: 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) ~~If known, 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 [DR10]: 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 all information concerning a debt furnished to a consumer reporting agency, including the date the debt collection agency notified the consumer about the debt before furnishing it and the period of time it waited to receive a notice of undeliverability.

Commented [DR11]: "A record of all debt furnished" is not an accurate description for what is being sought in this paragraph. "Debt" is never "furnished."

(8) A record of any unverified debt notice issued or received by the debt collection agency, including any unverified debt 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 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.

Commented [DR12]: "Debt" is not furnished, "information" is.

(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 conversations with consumers, until three years after the agency's last collection activity on the debt.

(2) For recordings of conversations 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 from the date the record was created.

§ 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, 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.

Electronic communication. The term "electronic communication" means communication by electronic means, 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.

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;

Commented [DR13]: 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 [DR14]: 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 footnote will have to be addressed on another page in the document because to display it on the same page would prevent us from complying with the federal or state requirements. There is only so much space on the first page of communications.

[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, that 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.

§ 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 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

(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, that 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.

§ 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 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;

(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.

Commented [DR15]: 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 [DR16]: This is intended to mitigate the risk that employees of the original creditor could by exposed personally under the current definition.

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.

§ 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 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.~~]

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 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 o'clock ante meridian and before 9 o'clock post meridian time in the eastern time zone ~~at the consumer's location~~;

(ii) except for any communication which 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 [DR17]: 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 [DR18]: 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] unless if the debt collector knows [or has reason to know] that the consumer's employer or supervisor [prohibits] permits 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.

NOTE: THE INDUSTRY WOULD STRONGLY RECOMMEND THAT THE FOLLOWING TEXT BE DELETED AND THAT THE DEFAULT BE THE NEWLY CREATED CALL CAPS CONTAINED IN REGULATION F. AS AN ALTERNATIVE, THE INDUSTRY REQUESTS THAT THE TEXT MIRROR THE NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES TEXT FOR CONSISTENCY BETWEEN NEW YORK STATE AND NEW YORK CITY REQUIREMENTS TO AVOID CONFUSION AND ACCIDENTAL ERRORS. MOST DEBT COLLECTORS OPERATE REGIONALLY OR NATIONALLY AND MUST MANAGE ACCOUNTS IN MULTIPLE STATES.

(A) Excessive frequency means communication or attempted communication, by any medium, more than three times during a seven consecutive calendar day period, or once within such period after having had an exchange with the consumer in any medium in connection with the collection of such debt.

(B) The date of the first day of such a seven consecutive calendar day period is the day of the first such communication, attempted communication or exchange. In making its calculations, the debt collector need not include any communication, attempted communication or exchange between a consumer and the debt collector which is initiated by or at the request of a consumer or in response to a communication from the consumer, or any communication which is required by law.

[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.

Commented [DR19]: 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 [DR20]: The industry respectfully requests that the proposed edit be changed back to how it was previously worded. It is important to keep in mind that a person's place of employment could be their home. In fact, working from home has become quite common due to the pandemic. If the word "permits" is used, the industry will not be able to communicate with the consumer at their home. However, a consumer can "prohibit" communication at any number under the FDCPA, including their home. As such "prohibits" is better than "permits" as it does not create needless obstacles to open communication.

Another common scenario that could place debt collectors in unknowing violation of this provision is when a consumer provides their work number to the debt collector as a good number to communicate with them.

Commented [DR21]: 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.

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~~]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 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~~

Commented [DR22]: This "floating" and unnumbered sentence seems to be misplaced? Might we suggest that it be somehow incorporated into paragraph (1)?

Commented [DR23]: 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.

Commented [DR24]: Phone calls often include vague language such as "I really don't like getting these calls." Does that count? What if they say that to start, but then agree to set up a payment plan? It is much clearer the consumer's intent if it is received in writing.

~~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 § RCW § 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 consumer by electronic communication unless the debt collector satisfies the following requirements:

(i) A debt collector must provide a written validation notice to the consumer pursuant to subdivision (f) prior to contacting a consumer by electronic communication. A debt collector may only use a specific email address, text message number, or specific electronic medium of communication if:

(A) the consumer provided consent to the creditor or debt collector ~~obtains consent from the consumer~~ to use such email address, text message number, or medium of communication to communicate about the debt, or

(B) the consumer used such email address, text message number or medium of communication to communicate with the debt collector about a debt within the past 60 days and has not since opted out of communications to that email address, text message number or medium of communication or opted out of all electronic communications generally.

(ii) 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.

(iii) The debt collector must include in every electronic mail communication to the consumer a clear and conspicuous statement describing a reasonable and simple method by which the consumer can opt-out of further electronic communications or attempts to communicate by the debt collector. 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 social media platform and the communication is not viewable by 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 an unverified debt notice pursuant to subdivision (f).

Commented [DR25]: 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 consumers name, address, and telephone number. Why would we ban the least intrusive forms of contact?

Commented [DR26]: There is no way that a debt collector "should know" a telephone number is associated with a business unless the consumer tells the debt collector.

We respectfully request the deletion of this language.

(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 an alert or other sound~~, 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 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;

Commented [DR27]: Cell phones that get emails can be set up to produce a sound even though that was not the intent of the debt collection agency. By incorporating "or produce an alert or other sound," this revision would codify a claim that typically fails under the FDCPA (i.e., a text message, email, push alert, or other phone notification should be treated like a phone call for purposes of harassment). 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.

(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~~ prohibited by federal, state, or local law, the failure to disclose clearly and conspicuously in all ~~verbal telephone communications~~ 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.~~

(e) *Unfair 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 or if the consumer chooses to communicate through that medium;

(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 consumer without disclosing the debt collector's name; [~~or~~]

Commented [DR28]: 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 [DR29]: 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.

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 [DR30]: A consumer may choose to communicate via text messages with the debt collection agency. The agency 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.

(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;

Commented [DR31]: 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.

(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 credit reporting agency, as defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. § 1681a(f)), information about a debt before the debt collector:

(i) notifies the consumer, by mail~~, telephone, or in person~~, about the debt, including the current amount of the debt and the business name of the debt collector, and informs the consumer that:

Commented [DR32]: Including these disclosures on calls will lead to higher consumer hang up rates and will impact the ability to educate the consumer about the debt and allow them the opportunity to work with us to get it resolved.

(A) the debt may be reported to a credit reporting agency; and

(B) New York City consumers can obtain information about their rights on the New York City Department of Consumer and Worker Protection's website at www.dcwp.nyc.gov; or

(ii) sends the consumer a validation notice pursuant to subdivision (f) of this section that states the debt may be reported to a credit reporting agency.

If the debt collector elects to notify a consumer about a debt pursuant to subparagraph (i) of paragraph (10) of this subdivision by mail, they must wait no less than 14 consecutive days after they place the notice in the mail, to receive a notice of undeliverability. 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 a notification during the waiting period, the debt collector must not furnish information about the debt to a credit reporting agency until the debt collector otherwise satisfies subparagraph (i) of paragraph (10) of this subdivision.

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 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 sue a consumer 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 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 "unable to verify notice" 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 consumer in connection with the collection of any debt, a debt collector [~~who is not a creditor and not employed by a creditor shall~~] must, unless the following information [~~is~~] was contained in an initial written communication, or the consumer [~~has~~] paid the debt, send the consumer a written notice by mail or a delivery service containing, in a clear and conspicuous manner:

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

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

~~**Important Additional Consumer Rights under New York City Law:**~~

~~I. You may **contact** a debt collector at any time, and by any means, during the collection of a debt to dispute or request verification of the debt.~~

~~II. The debt collector must:~~

Commented [DR33]: 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.

Commented [DR34]: 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.

(1) Provide you verification of the debt in response to your first dispute or request for verification, within 30 days of receiving such dispute or request, and stop collecting until it provides this information in writing to you; or

(2) Provide you a notice in writing stating that it was unable to verify the debt within 30 days of receiving a dispute or arequest, and stop collecting on the debt;

(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]; and

[(viii)] (vii) a statement that a translation and descr ption of commonly-used debt collection terms is 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 if the debt collector includes them together under a heading entitled, "Important Additional Rights under New York City Law" and includes a clear and conspicuous statement on the front of the validation notice referring to the disclosures. If included on the reverse side of the validation notice, the information must be positioned in a manner so it is conspicuous, even after a consumer tears off any response portion of the notice.

(2) *Translated Notices.* If a debt collector offers corsumers validation notices in a language other than English, and a consumer requests a notice in such language, the debt collector must provide such a translated validation notice to the consumer in the language requested within 30 days of such request, and the notice must be completely and accurately translated into such language. A debt collector is not required to provide the translated validation notice required by this paragraph to the consumer more than once during the period that the debt collector owns or has the right to collect the debt. If the consumer disputes the debt or requests verificatio1 of the debt in the same language as the translated validation notice required by this paragraph, the verification letter or unable to verify notice sent by the debt collector must also be translated in the same language as the validation notice required by this paragraphrequested by the consumer.

(3) [If, pursuant to 6 RCNY §§ 5-77(f)(1) or 5-77(f)(;) 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 Saturday:, Sundays and legal public holidays identified in 5 U.S.C. § 6103(a)) after the debt collector sent it.

Commented [DR35]: The proposed amendment begins with a reference to "validation notices in a language other than English" that are "offered" by the debt collector to consumers. Thus, this non-English notice already exists. However, the remaining text refers to a "translated notice" which suggests that the existing, non-English validation notice is not the object of the proposed rule and English validation notices must be translated into non-English. Our redline makes clear that the debt collectors are required to provide non-English validation notices it offers to consumers. Second, the use of the phrase "*completely* and accurately translated" in this paragraph also suggests that debt collectors are "translating" validation notices, which is not always the case. To be sure, the validation notice provided here is very likely *not* a translation of the debt collector's English notice, but one made originally in the non-English language. Debt collectors can choose to provide non-English validation notices that are not translations of English validation notices, but notices originally made in non-English. The first sentence of the proposed rule recognizes as much ["If a debt collector offers consumers validation notices in a language other than English . . ."). And debt collectors can *lawfully* make verification letters and "unable to verify" notices that are not translations but are originally made in non-English, so we have removed the reference to the same being "translated." Finally, the proposed amendment's requirement that the non-English validation notice "must be completely and accurately translated" is redundant. Section 5-77(d)(18) already prohibits "the false, inaccurate, or partial translation of *any communication* when the debt collector provides translation services." (Emphasis added). We note that such a requirement was not proposed for the "translated" verification letter or "unable to verify" notice. Further, the original proposed text reinforces the incorrect interpretation that non-English validation notices, verification letters and unable to verify notices are required to be "translations" of English validation notices used by debt collectors.

(4) ~~[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 to request the name and address of the original creditor.

(5) *Verification.* A debt collector must provide a consumer verification of a debt or provide an "unverified debt notice" within 30 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 permits electronic communications, 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 the verification information required in this section. The debt collector must cease collection of the debt until such written verification has 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 such verification to the consumer in writing by mail or delivery service unless the consumer has consented to receive electronic communications in compliance with § 5-77(b)(5).

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

IF DCWP AGREES WITH THE EDIT ABOVE, ROMAN NUMERALS (i) THROUGH (iv) 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.

(i) 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. ~~Computer documents or electronic evidence created or generated after default on the indebtedness shall not qualify as such confirmation;~~

(ii) to the extent not already provided in the validation notice, the written documentation itemizing the principal balance of the debt that remains or is claimed or alleged to remain due and all other charges that are due or claimed or alleged to be due, including a copy of the final statement, if applicable, of account issued by the ~~originating~~ original creditor and a document itemizing: (1) the total amount remaining due on the total principal balance of the indebtedness to the ~~originating~~ original creditor, provided that the principal balance for revolving lines of credit shall be the charge-off balance and (2)

Commented [DR36]: 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.

Commented [DR37]: 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 [DR38]: 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 [DR39]: Not all asset classes maintain final statements.

Commented [DR40]: An exception needs to be made for revolving lines of credit (such as credit cards) where the charge-off principal balance includes compounded interest. Banks do not have the ability to separate out compounded interest on balances that the consumer elects to carry over month after month, while making monthly minimum payments. If banks can't provide this information to a consumer, it is impossible to expect debt collection agencies to provide it.

each additional charge or fee claimed or alleged to be due that separately (i) lists the total for each charge or fee and the date that each charge or fee was incurred, provided that the charge or fees for revolving lines of credit shall be post-charge-off charges or fees; and (ii) identifies and describes the basis of the consumer's obligation to pay it;

(iii) a statement describing the complete chain of title from the original creditor to the present creditor, including the date of each assignment, sale, and transfer; and

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

(6) *Unverified Debt Notice.* If a debt collector cannot provide a consumer with verification of a debt in response to a dispute or request for verification, the debt collector must respond in writing to the consumer within ~~30~~ 60 days of receiving the dispute or a request for verification 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~~.

Commented [DR41]: 60 days is consistent with the CFPB standard as DCWP indicates they are attempting to seek.

(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,. The consumer may make such request orally or in writing, or electronically if the debt collector permits, at any time during the period in which the debt collector owns or has the right to collect the debt. After receiving such 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. The term original creditor has the same meaning as defined in Section 105 of the Civil Practice Laws & Rules]

Commented [DR42]: 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.

(8) *Electronic Communications.* If a debt collector delivers a 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.

Commented [DR43]: 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."

(g) [~~*Liability.* The employer of a debt collector is liable for the debt collector's violation of 6 RCNY § 5-77. 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~~] Reserved.

(h) *Public Websites.* Any debt collector that utilizes, maintains, or refers 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"**, 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 available in multiple languages on the Department's website, [~~www.nyc.gov/dca~~] www.nyc.gov/dcwp.

EFFECTIVE DATE: All new provisions contained in this rulemaking shall apply to accounts charged off on or after January 1, 2024, or for accounts not charged off, the new provisions will apply to accounts that are delinquent on or after January 1, 2024.

Commented [DR44]: 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.

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

Proposed Rule Amendments

Section 1. Section 2-191 of Subchapter 5 of Chapter 2 of Title 6 of the Rules of the City of New York is amended to read as follows:

§ 2-191 Disclosure of Consumer's Legal Rights Regarding Effect of Statute of Limitations on Debt Payment.

~~(a)~~ The information about the consumer's legal rights, which a debt collection agency is required to provide the consumer pursuant to § 20-493.2(b) of the Administrative Code, [~~shall~~] must be included clearly and conspicuously in every permitted communication for each debt that the debt collection agency is seeking to collect that is beyond the applicable statute of limitations~~, and (shall be) must state as follows~~:

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

~~1. The law limits how long a consumer can be sued for a debt. The time for suing you to collect this debt has EXPIRED. This means: THIS DEBT IS NOT ENFORCEABLE IN COURT.~~
~~2. It is a violation of federal law to sue or threaten to sue to collect time-barred debt (or debt that is beyond the Statute of Limitations).~~

Commented [DR1]: This regulation pre-dates the adoption of the state-wide disclosures in 2014 and the Consumer Credit Fairness Act in 2021. The industry respectfully requests one uniform state-wide disclosure and not a bifurcated system that requires the industry to produce multiple (and potentially conflicting) disclosures.

By requiring three sets of overlapping consumer notices (federal, state, and local) on the first page, it will require a page measuring 11x17. Most small businesses in our industry do not have printers that can produce an 11x17 printed document. The length of the consumer notices will be overwhelming and will greatly increase the likelihood that they will not be read.

~~2. If you would like to learn more about your legal rights and options, you can consult an attorney or a legal aid organization."~~

~~(b) When such information is delivered in writing, the required statement provided in subdivision (a) of this section [shall] 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 type on the permitted communication, and [shall] must be placed adjacent to the identifying information about the amount claimed to be due or owed on such debt.~~

~~(c) A debt collection agency must maintain reasonable procedures for determining whether the statute of limitations applicable to a debt or alleged debt it is collecting or attempting to collect has expired.~~

§ 2. Section 2-193 of Subchapter 5 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~~ 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.

NOTE: INTENTIONALLY LEFT BLANK BELOW SO AS TO PREVENT THE COMMENTS IN THE MARGINS FROM BEING TRUNCATED.

Commented [DR2]: The industry would request the deletion of the phrase "attempted communications or exchanges." 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.

As for the reference to "exchange," we do not see how it adds anything that is not already covered by the word "communication" and it is not defined in the regulations.

(a) A log of all communications~~, attempted communications or exchanges~~ by any medium between a debt collection agency and a consumer in connection with the collection of a debt; for each communication, ~~attempted communication or exchange,~~ the log must identify the date~~,~~ and time ~~and duration~~, the method of communication, the names ~~and contact information~~ of the persons ~~involved~~ participated in the communication ~~and a contemporaneous summary of the communication~~. 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.

(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~~] Monthly logs of the following:

NOTE: INTENTIONALLY LEFT BLANK BELOW SO AS TO PREVENT THE COMMENTS IN THE MARGINS FROM BEING TRUNCATED.

Commented [DR3]: The industry would request the deletion of:

(1) The phrase "or exchanges" as it does not add anything that is not already covered by the word "communication" and it is not defined in the regulations;
(2) 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;
(3) The phrase "and contact information" as the name of the employee should be sufficient to identify the employee; and
(4) 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 should be sufficient.

Commented [DR4]: The industry respectfully requests a definition for the term "log" given that it is an important term that is used in several places and it is not a defined term. We would request the following definition: "Log means electronic databases and tools used to record all events that are commensurate with the collection of a debt."

This sentence is requested for clarity. Many debt collectors maintain the information that is being sought in a system of record (i.e. a data management term for an information storage system that is the authoritative data source). The industry is concerned that some might view a "log" to be a separate physical document that maintains the same information as a system of record (and notably in a less secure fashion).

Commented [DR5]: 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.

(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 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 the 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 with all NYC consumers or with a randomly selected sample of at least 5% of all calls made or received by the debt collection agency ~~[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 agency and a record in each consumer's account must identify the calls recorded. If an agency elects to record a randomly selected sample of at least 5% of all calls made or received by the agency, it must maintain a log of the total number of calls made or received on a monthly basis and the total number of such calls recorded.

Commented [DR6]: 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 [DR7]: 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 [DR8]: 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.

NOTE: INTENTIONALLY LEFT BLANK BELOW SO AS TO PREVENT THE COMMENTS IN THE MARGINS FROM BEING TRUNCATED.

(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. 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)~~ If known, ~~the~~ 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 all information concerning a debt furnished to a consumer reporting agency, including the date the debt collection agency notified the consumer about the debt before furnishing it and the period of time it waited to receive a notice of undeliverability.

(8) A record of any unverified debt notice issued or received by the debt collection agency, including any unverified debt 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 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.

Commented [DR9]: 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 [DR10]: 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.

Commented [DR11]: "A record of all debt furnished" is not an accurate description for what is being sought in this paragraph. "Debt" is never "furnished."

Commented [DR12]: "Debt" is not furnished, "information" is.

(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 conversations with consumers, until three years after the agency's last collection activity on the debt.

(2) For recordings of conversations 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 from the date the record was created.

§ 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 is successful, except that 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, 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.

Electronic communication. The term "electronic communication" means communication by electronic means, 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.

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;

Commented [DR13]: 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 [DR14]: 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 footnote will have to be addressed on another page in the document because to display it on the same page would prevent us from complying with the federal or state requirements. There is only so much space on the first page of communications.

(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, that 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.

§ 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 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;

[(E)] 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

[(F)] 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.

§ 3. 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 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

Commented [DR15]: 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 [DR16]: This is intended to mitigate the risk that employees of the original creditor could by exposed personally under the current definition.

(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 consent of the 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 o'clock ante meridian and before 9 o'clock post meridian time in the eastern time zone ~~of the consumer's location~~;

(ii) except for any communication which 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 [DR17]: 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 [DR18]: 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] unless if the debt collector knows [or has reason to know] that the consumer's employer or supervisor [prohibits] permits 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.

NOTE: THE INDUSTRY WOULD STRONGLY RECOMMEND THAT THE FOLLOWING TEXT BE DELETED AND THAT THE DEFAULT BE THE NEWLY CREATED CALL CAPS CONTAINED IN REGULATION F. AS AN ALTERNATIVE, THE INDUSTRY REQUESTS THAT THE TEXT MIRROR THE NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES TEXT FOR CONSISTENCY BETWEEN NEW YORK STATE AND NEW YORK CITY REQUIREMENTS TO AVOID CONFUSION AND ACCIDENTAL ERRORS. MOST DEBT COLLECTORS OPERATE REGIONALLY OR NATIONALLY AND MUST MANAGE ACCOUNTS IN MULTIPLE STATES.

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

~~(B) The date of the first day of such a seven consecutive calendar day period is the day of the first such communication, attempted communication or exchange. In making its calculations, the debt collector need not include any communication, attempted communication or exchange between a consumer and the debt collector which is initiated by or at the request of a consumer or in response to a communication from the consumer or any communication which is required by law.~~

~~[The employer of a debt collector may not be held liable in any action brought under 6 RCNY § 5-77(b)(1)(iii)-(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)(iii)-(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.

Commented [DR19]: 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 [DR20]: The industry respectfully requests that the proposed edit be changed back to how it was previously worded. It is important to keep in mind that a person's place of employment could be their home. In fact, working from home has become quite common due to the pandemic. If the word "permits" is used, the industry will not be able to communicate with the consumer at their home. However, a consumer can "prohibit" communication at any number under the FDCPA, including their home. As such "prohibits" is better than "permits" as it does not create needless obstacles to open communication.

Another common scenario that could place debt collectors in unknowing violation of this provision is when a consumer provides their work number to the debt collector as a good number to communicate with them.

Commented [DR21]: 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.

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]~~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 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~~

Commented [DR22]: This "floating" and unnumbered sentence seems to be misplaced? Might we suggest that it be somehow incorporated into paragraph (1)?

Commented [DR23]: 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.

Commented [DR24]: Phone calls often include vague language such as "I really don't like getting these calls." Does that count? What if they say that to start, but then agree to set up a payment plan? It is much clearer the consumer's intent if it is received in writing.

~~has reason to know that the consumer is legally separated from or no longer living with his or her spouse), or an individual authorised 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 authorised 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 consumer by electronic communication unless the debt collector satisfies the following requirements:

(i) A debt collector must provide a written validation notice to the consumer pursuant to subdivision (f) prior to contacting a consumer by electronic communication. A debt collector may only use a specific email address, text message number, or specific electronic medium of communication if:

(A) the consumer provided consent to the creditor or debt collector ~~obtains consent from the consumer~~ to use such email address, text message number, or medium of communication to communicate about the debt, or

(B) the consumer used such email address, text message number or medium of communication to communicate with the debt collector about a debt within the past 60 days and has not since opted out of communications to that email address, text message number or medium of communication or opted out of all electronic communications generally.

(ii) 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.

(iii) The debt collector must include in every electronic mail communication to the consumer a clear and conspicuous statement describing a reasonable and simple method by which the consumer can opt-out of further electronic communications or attempts to communicate by the debt collector. 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 social media platform and the communication is not viewable by 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 an unverified debt notice pursuant to subdivision (f).

Commented [DR25]: 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 consumers name, address, and telephone number. Why would we ban the least intrusive forms of contact?

Commented [DR26]: There is no way that a debt collector "should know" a telephone number is associated with a business unless the consumer tells the debt collector.

We respectfully request the deletion of this language.

(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 an alert or other sound~~, 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 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;

Commented [DR27]: Cell phones that get emails can be set up to produce a sound even though that was not the intent of the debt collection agency. By incorporating "or produce an alert or other sound," this revision would codify a claim that typically fails under the FDCPA (i.e., a text message, email, push alert, or other phone notification should be treated like a phone call for purposes of harassment). 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.

(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~~ prohibited by federal, state, or local law, the failure to disclose clearly and conspicuously in all verbal ~~telephone communications~~ 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~~.

(e) *Unfair 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 or if the consumer chooses to communicate through that medium;

(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 consumer without disclosing the debt collector's name; [~~or~~]

Commented [DR28]: 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 [DR29]: 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.

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 [DR30]: A consumer may choose to communicate via text messages with the debt collection agency. The agency 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.

(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(c)(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(c)(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(c)(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 credit reporting agency, as defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. § 1681a(f)), information about a debt before the debt collector:

(i) notifies the consumer, by mail~~, telephone, or in person,~~ about the debt, including the current amount of the debt and the business name of the debt collector, and informs the consumer that:

(A) the debt may be reported to a credit reporting agency; and

(B) New York City consumers can obtain information about their rights on the New York City Department of Consumer and Worker Protection's website at www.dcwp.nyc.gov; or

(ii) sends the consumer a validation notice pursuant to subdivision (f) of this section that states the debt may be reported to a credit reporting agency.

If the debt collector elects to notify a consumer about a debt pursuant to subparagraph (i) of paragraph (10) of this subdivision by mail, they must wait no less than 14 consecutive days after they place the notice in the mail, to receive a notice of undeliverability. 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 a notification during the waiting period, the debt collector must not furnish information about the debt to a credit reporting agency until the debt collector otherwise satisfies subparagraph (i) of paragraph (10) of this subdivision.

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));

Commented [DR31]: 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 [DR32]: Including these disclosures on calls will lead to higher consumer hang up rates and will impact the ability to educate the consumer about the debt and allow them the opportunity to work with us to get it resolved.

(11) selling, transferring, or placing for collection or with an attorney or law firm to sue a 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 sue a consumer 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 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 "unable to verify notice" 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 consumer in connection with the collection of any debt, a debt collector [~~who is not a creditor and not employed by a creditor shall~~] must, unless the following information [~~is~~] was contained in an initial written communication, or the consumer [~~has~~] paid the debt, send the consumer a written notice by mail or a delivery service containing, in a clear and conspicuous manner:

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

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

~~Important Additional Consumer Rights under New York City Law:~~

~~I. You may contact a debt collector at any time and by any means during the collection of a debt to dispute or request verification of the debt.~~

~~II. The debt collector must:~~

Commented [DR33]: 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.

Commented [DR34]: 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.

~~(1) Provide you verification of the debt in response to your first dispute or request for verification, within 30 days of receiving such dispute or request, and stop collecting until it provides this information in writing to you; or~~

~~(2) Provide you a notice in writing stating that it was unable to verify the debt within 30 days of receiving a dispute or a request, and stop collecting on the debt.~~

(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;~~

~~(viii)~~] 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

~~[(viii)]~~ (vii) a statement that a translation and description of commonly-used debt collection terms is 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 if the debt collector includes them together under a heading entitled "**Important Additional Rights under New York City Law**" and includes a clear and conspicuous statement on the front of the validation notice referring to the disclosures. If included on the reverse side of the validation notice, the information must be positioned in a manner so it is conspicuous, even after a consumer tears off any response portion of the notice.

~~[~~(3) *Translated Notices.* 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 provide such a ~~translated~~ validation notice to the consumer ~~in the languages requested~~ within 30 days of such request~~, and the notice must be completely and accurately translated into such language. A debt collector is not required to provide the translated validation notice required by this paragraph to the consumer more than once during the period that the debt collector owns or has the right to collect the debt~~. If the consumer disputes the debt or requests verification of the debt in the same language as the ~~translated~~ validation notice required by this paragraph, the verification letter or unable to verify notice sent by the debt collector must also be ~~translated~~ in the same language as the validation notice required by this paragraph~~requested by the consumer~~.

(3) ~~[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.

Commented [DR35]: The proposed amendment begins with a reference to "validation notices in a language other than English" that are "offered" by the debt collector to consumers. Thus, this non-English notice already exists. However, the remaining text refers to a "translated notice" which suggests that the existing, non-English validation notice is not the object of the proposed rule and English validation notices must be translated into non-English. Our redline makes clear that the debt collectors are required to provide non-English validation notices it offers to consumers. Second, the use of the phrase "completely and accurately translated" in this paragraph also suggests that debt collectors are "translating" validation notices, which is not always the case. To be sure, the validation notice provided here is very likely *not* a translation of the debt collector's English notice, but one made originally in the non-English language. Debt collectors can choose to provide non-English validation notices that are not translations of English validation notices, but notices originally made in non-English. The first sentence of the proposed rule recognizes as much ("If a debt collector offers consumers validation notices in a language other than English . . ."). And debt collectors can lawfully make verification letters and "unable to verify" notices that are not translations but are originally made in non-English, so we have removed the reference to the same being "translated." Finally, the proposed amendment's requirement that the non-English validation notice "must be completely and accurately translated" is redundant. Section 5-77(d)(18) already prohibits "the false, inaccurate, or partial translation of any communication when the debt collector provides translation services." (Emphasis added). We note that such a requirement was not proposed for the "translated" verification letter or "unable to verify" notice. Further, the original proposed text reinforces the incorrect interpretation that non-English validation notices, verification letters and unable to verify notices are required to be "translations" of English validation notices used by debt collectors.

(4) [~~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 to request the name and address of the original creditor.

(5) *Verification.* A debt collector must provide a consumer verification of a debt or provide an "unverified debt notice" within 30 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 permits electronic communications, 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 the verification information required in this section. The debt collector must cease collection of the debt until such written verification has 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 such verification to the consumer in writing by mail or delivery service unless the consumer has consented to receive electronic communications in compliance with § 5-77(b)(5).

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

IF DCWP AGREES WITH THE EDIT ABOVE, ROMAN NUMERALS (i) THROUGH (iv) 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.

(i) a copy of the judgement 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. ~~Computer documents or electronic evidence created or generated after default on the indebtedness shall not qualify as such confirmation~~;

(ii) to the extent not already provided in the validation notice, the written documentation itemizing the principal balance of the debt that remains or is claimed or alleged to remain due and all other charges that are due or claimed or alleged to be due, including a copy of the final statement, if applicable, of account issued by the ~~originating~~ original creditor and a document itemizing: (1) the total amount remaining due on the total principal balance of the indebtedness to the ~~originating~~ original creditor, provided that the principal balance for revolving lines of credit shall be the charge-off balance and (2)

Commented [DR36]: 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.

Commented [DR37]: 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 [DR38]: 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 [DR39]: Not all asset classes maintain final statements.

Commented [DR40]: An exception needs to be made for revolving lines of credit (such as credit cards) where the charge-off principal balance includes compounded interest. Banks do not have the ability to separate out compounded interest on balances that the consumer elects to carry over month after month, while making monthly minimum payments. If banks can't provide this information to a consumer, it is impossible to expect debt collection agencies to provide it.

each additional charge or fee claimed or alleged to be due that separately (i) lists the total for each charge or fee and the date that each charge or fee was incurred, provided that the charge or fees for revolving lines of credit shall be post-charge-off charges or fees; and (ii) identifies and describes the basis of the consumer's obligation to pay it;

(iii) a statement describing the complete chain of title from the original creditor to the present creditor, including the date of each assignment, sale, and transfer; and

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

(6) *Unverified Debt Notice*. If a debt collector cannot provide a consumer with verification of a debt in response to a dispute or request for verification, the debt collector must respond in writing to the consumer within 30-60 days of receiving the dispute or a request for verification 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~~.

(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. The consumer may make such request orally or in writing, or electronically if the debt collector permits, at any time during the period in which the debt collector owns or has the right to collect the debt. After receiving such 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. The term original creditor has the same meaning as defined in Section 105 of the Civil Practice Laws & Rules.

(8) *Electronic Communications*. If a debt collector delivers a 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.

(g) ~~[*Liability*. The employer of a debt collector is liable for the debt collector's violation of 6 RCNY § 5-77. 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]~~ Reserved.

(h) *Public Websites*. Any debt collector that utilizes, maintains, or refers 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**", 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

Commented [DR41]: 60 days is consistent with the CFPB standard as DCWP indicates they are attempting to seek.

Commented [DR42]: 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.

Commented [DR43]: 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."

(2) a statement that a translation and description of commonly-used debt collection terms is available in multiple languages on the Department's website, [~~www.nyc.gov/dca~~] www.nyc.gov/dcwp.

EFFECTIVE DATE: All new provisions contained in this rulemaking shall apply to accounts charged off on or after January 1, 2024, or for accounts not charged off, the new provisions will apply to accounts that are delinquent on or after January 1, 2024.

Commented [DR44]: 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: 2

- **David Reid**
  I would like to speak in opposition during the public comment. I represent the Receivables Management Association International.

  Comment added December 19, 2022 2:14am

- **Matt Kownacki**
  Attached are comments from the American Financial Services Association on the NYC DCWP's proposed debt collection rules.

  Comment attachment
  AFSA-comment-letter-NYC-debt-collection-regs.pdf

  Comment added December 19, 2022 11:08am