

New York City Department of Consumer and Worker Protection

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Department of Consumer and Worker Protection (“DCWP” or “Department”) is proposing to amend its rules relating to debt collectors.

When and where is the hearing? DCWP will hold a public hearing on the proposed rule. The public hearing will take place at 11AM on November 29, 2023. The public hearing will be accessible by phone and videoconference.

- To participate in the public hearing via phone, please dial +1 646-893-7101
 - Meeting ID: 255 089 803 499
 - Passcode: 8HGNSw
- To participate in the public hearing via videoconference, please follow the online link: <https://tinyurl.com/z3svub58>
 - Meeting ID: 255 089 803 499
 - Passcode: 8HGNSw

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to DCWP through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to Rulecomments@dcwp.nyc.gov.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by emailing Rulecomments@dcwp.nyc.gov. You can also sign up on the phone or videoconference before the hearing begins at 11AM on November 29, 2023. You can speak for up to three minutes.

Is there a deadline to submit comments? Yes. You must submit any comments to the proposed rule on or before November 29, 2023.

What if I need assistance to participate in the hearing? You must tell DCWP’s External Affairs division if you need a reasonable accommodation of a disability at the hearing, such as a sign language interpreter. You may tell us by email at Rulecomments@dcwp.nyc.gov. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by November 22, 2023.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, all comments received by DCWP on the proposed rule will be made available to the public online at <http://www1.nyc.gov/site/dca/about/public-hearings-comments.page>.

What authorizes DCWP to make this rule? Sections 1043 and 2203(f) of the New York City Charter and Sections 20-104(b), 20-493(a), and 20-702 of the New York City Administrative Code authorize the Department to make this proposed rule. This proposed rule was included in the Department's regulatory agenda for Fiscal Year 2024.

Where can I find DCWP's rules? The Department's rules are in Title 6 of the Rules of the City of New York.

What laws govern the rulemaking process? DCWP must meet the requirements of Section 1043 of the Charter when promulgating or changing rules. This notice is made according to the requirements of Section 1043 of the Charter.

Statement of Basis and Purpose of Proposed Rule

The Department of Consumer and Worker Protection (“DCWP” or “Department”) is proposing to amend its rules relating to debt collectors.

In June 2020, the Department added new rules requiring debt collectors to inform consumers about whether certain language access services are available and to retain records relating to language access services. After these rule changes took effect, the industry provided additional questions and feedback to the Department. In response, the Department is now proposing these amendments.

The Department is also proposing to update its debt collection rules in response to changes in federal regulations. In late 2020, the Consumer Financial Protection Bureau (“CFPB”) promulgated new debt collection rules updating the Fair Debt Collection Practices Act of 1977. The CFPB’s new debt collection rules address current industry collection practices, the changing forms of communication, unfair practices, and debt collection problems facing consumers today at a national level.

On November 4, 2022, the Department proposed amendments to adopt similar protections as those provided to consumers at the federal and state levels, and included provisions based on the Department’s insight from its regulation of the debt industry for decades as it pertains to NYC consumers. In response to its Notice of Proposed Rulemaking, the Department received comments from national and local industry associations, individual debt collection agencies, debt buying companies, debt collection law firms, national consumer advocacy groups, and local legal services organizations. After a public hearing on December 19, 2022, and a review of all the comments, the Department is re-noticing the proposed amendments to further address trade practices and consumer protection concerns as it pertains to debt collection from New York City residents.

Specifically, this proposed rule includes the following amendments:

- Section 2-191 requires debt collection agencies to give consumers certain disclosures when collecting on time-barred debt. The Department is proposing to repeal this section in its entirety. (Section 1)
- Section 2-193(c) requires a debt collection agency to maintain, in a language other than English, an annual report identifying, by language, certain actions taken by the agency. Because the report is organized by language, the contents of the report need not be limited to actions taken in a language other than English. The Department is proposing to amend the subdivision so that it applies to actions taken in any language. (Section 2)
- The amendments to Section 2-193 also require debt collection agencies to maintain other records. These proposed amendments would extend the requirements to cover all records showing compliance with relevant laws and rules as well as monthly logs documenting certain consumer interactions. (Section 2)
- The Department is proposing to add various definitions to Section 5-76 of its rules. These amendments would provide guidance and clarity to the industry on new requirements in Section 5-77 concerning communications with consumers in connection with debt collection. (Sections 3 and 4)
- The Department is also proposing more substantive edits to Section 5-77. These amendments would

- clarify what information debt collectors must provide consumers at the outset of debt collection communications;
- place limits on the frequency of debt collection communications;
- require debt collectors to disclose the existence of a debt to consumers before reporting information about the debt to a consumer reporting agency;
- clarify the disclosures that debt collectors must give consumers when collecting on time-barred debt;
- clarify the requirements that debt collectors are obligated to comply with when collecting on medical debt; and
- clarify how debt collectors may employ modern communication technologies in compliance with the law, including voicemails, email, text messages, and social media. (Section 5)

Sections 1043 and 2203(f) of the New York City Charter, and Sections 20-104(b), 20-493(a), and 20-702 of the New York City Administrative Code authorize the Department to make these proposed amendments.

New material is underlined.

[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of the Department, unless otherwise specified or unless the context clearly indicates otherwise.

Proposed Rule Amendments

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

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

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

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

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

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

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

(4) With regard to any debt that the debt collection agency has purchased, a record of the name and address of the entity from which the debt collection agency purchased the debt, the date of the purchase and the amount of the debt at the time of such purchase.

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

(6) A log, account notes or record of all communications and attempted communications by any medium between a debt collection agency and a New York City consumer in connection with the collection of a debt. For each communication and attempted communication, the log, account notes or record must identify in a manner that is searchable and easily identifiable, the following:

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

(ii) the medium of communication or attempted communication;

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

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

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

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

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

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

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

(2) Recordings of [complete conversations] all telephone communications, including limited content messages, with all New York City consumers or with a randomly selected sample of at

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) A copy of all policies addressing hospital financial assistance programs related to medical debt.

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

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

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

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

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

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

Clear and conspicuous. The term “clear and conspicuous” means readily understandable. In the case of written and electronic record disclosures, a clear and conspicuous statement, representation or element being disclosed is of such location, size, color and contrast to be readily noticeable and legible to consumers. In the case of oral disclosures, a clear and conspicuous disclosure is given at a volume and speed sufficient for a consumer to hear and comprehend it. In any clear and conspicuous disclosure, any required modifications, explanations or clarifications to other information are presented in close proximity to the information being modified, in a manner so as to be readily noticed and understood.

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

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

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

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

Itemization reference date. The term “itemization reference date” means any one of the following dates: (1) on revolving or open-end credit accounts, the date of the last written notification sent to the consumer which lists the total amount of the outstanding debt asserted to be owed by the consumer on or before the charge-off date of the debt; or (2) on closed-end accounts, either the date of the last payment, if such date is available, or the date of the last written notification sent to the consumer which lists the total amount of the outstanding debt asserted to be owed by the consumer on or before the charge-off date of the debt.

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

- (1) collection letters using a language other than English;
- (2) customer service representatives who collect or attempt to collect debt in a language other than English;
- (3) a translation service for the collector’s website or for written communications; and
- (4) a service that interprets phone conversations in real time.

Limited-content message. The term “limited-content message” means an attempt to communicate with a consumer by leaving a voicemail message that includes all of the following content, which may include other content allowed by federal law, and that includes no other content:

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

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

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

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

Original creditor and originating creditor. The terms “original creditor” or “originating creditor” means any person, firm, corporation, or organization who originated the debt, including by extending credit and creating the debt.

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

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

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

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

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

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

(4) any individual employed by a utility regulated under the provisions of the Public Service Law, to the extent that New York Public Service Law or any regulation promulgated thereunder is inconsistent with this part; or

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

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

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

§ 5-77. Unconscionable and Deceptive Trade Practices.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Communicate with any person other than [the consumer's attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, a debt collector to whom or to whose employer the debt has been assigned for collection, a creditor who assigned the debt for collection, or the attorney of that debt collector or the attorney for that debt

collector's employer] those persons enumerated in paragraph (2) of this subdivision in a manner which would violate any provision of [this part] paragraph (1) of this subdivision if such person were a consumer.

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

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

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

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

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

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

(5) [For the purpose of 6 RCNY § 5-77(b)(1)-(4), the term "consumer" includes the consumer's parent (if the consumer is a minor), guardian, executor, administrator, spouse (unless the debt collector knows or has reason to know that the consumer is legally separated from or no longer living with his or her spouse), or an individual authorized by the consumer to make purchases against the account which is the subject of the collection efforts. A request that the debt collector cease further communication, provided for under 6 RCNY § 5-77(b)(4), if made by the consumer's spouse or an individual authorized by the consumer to make purchases against the account, only affects the debt collector's ability to communicate further with the person making the request]Contact a New York City consumer by electronic communication unless the debt collector satisfies the following requirements:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) the representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to pursue such action;

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

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

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

- (ii) become subject to any practice prohibited by this part;
- (6) the false representation [of] or implication made in order to disgrace the consumer that the consumer committed any crime or other conduct;
- (7) the false representation or implication that accounts have been turned over to innocent purchasers for value;
- (8) the false representation or implication that documents are legal process;
- (9) the false representation or implication that documents are not legal process forms or do not require action by the consumer;
- (10) the false representation or implication that a debt collector operates or is employed by a consumer reporting agency as defined by 15 U.S.C. § 1681a(f);
- (11) the use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval;
- (12) the use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer;
- (13) the use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization, unless the general public knows the debt collector's business, company or organization by another name and to use the true name would be confusing;
- (14) [after institution of debt collection procedures,] the false representation of the character, amount or legal status of any debt, or any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt[, except that the employer of a debt collector may not be held liable in any action brought under this provision if the employer shows by a preponderance of the evidence that the violation was not intentional and occurred despite the maintenance of procedures reasonably adapted to avoid any such violation];
- (15) except [as otherwise provided under 6 RCNY § 5-77(a) and except for any communication which is required by law or chosen from among alternatives of which one is required by law] for limited-content messages and where otherwise expressly permitted by federal, state, or local law, the failure to disclose clearly and conspicuously in all communications made to collect a debt [or to obtain information about a consumer,] that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose;
- (16) the use of any [name that is not the debt collector's actual name; provided that a debt collector may use a name other than his actual name if he or she uses only that name in communications with respect to a debt and if the debt collector's employer has the name on file so that the true identity of the debt collector can be ascertained] assumed name; provided that an individual debt collector may use an assumed name when communicating or attempting to communicate with a consumer about a debt if that collector uses the assumed name consistently and is the only person using that assumed name, and the assumed name is on file so that the

true identity of the collector can be ascertained;

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

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

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

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

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

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

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

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

(3) causing charges to be made to any person for communications by misrepresentation of the true purpose of the communication. Such charges include collect telephone calls and [telegram] text message or mobile phone data fees;

(4) taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if:

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

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

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

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

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

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

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

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

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

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

(10) furnishing to a consumer reporting agency, as defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. § 1681a(f)), information about a debt unless the debt collector has sent the consumer a validation notice pursuant to section 5-77(f) that states, in a clear and conspicuous manner, that the debt will be reported to a consumer reporting agency and waited 14 consecutive days. During the waiting period, the debt collector must permit receipt of, and monitor for, notifications of undeliverability from communications providers. If the debt collector receives such notification during the waiting period, the debt collector must not furnish information about the debt to a consumer reporting agency until the debt collector satisfies this subdivision. If the debt collector previously furnished information to a consumer reporting agency, between January 1, 2021 and the effective date of the rule, and if the debt collector still has a right to collect on such debt, they must disclose in a validation notice to the consumer, by mail or delivery service within 5 days of the effective date of this rule, that the debt was furnished to a consumer reporting agency, unless such information was already disclosed, clearly and conspicuously, in a validation notice mailed by the debt collector to the consumer.

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

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

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

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

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

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

(f) *Validation of debts.*

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

(i) the amount of the debt;

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

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

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

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

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

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

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

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

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

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

(iv) a [statement that if the consumer notifies the debt collector in writing within the thirty-day period at the address designated by the debt collector in the notice that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector] telephone number that is answered by such natural person;

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

different from the current creditor];

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

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

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

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

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

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

(viii) An itemization of the current amount of the debt asserted to be owed that allows the consumer to recognize the total amount of the outstanding debt as of the itemization reference date, and includes a breakdown of all additional amounts that have been assessed or applied to the amount of the debt since the itemization reference date, listing fields for: 1) interest; 2) fees; 3) payments; and 4) credits, and the following information:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Verification of debt must include:

- (A) a copy of the debt document issued by the originating creditor or an original written confirmation evidencing the transaction resulting in the indebtedness to the originating creditor, including the signed contract or signed application that created the debt or, if no signed contract or application exists, a copy of a document provided to the alleged debtor while the account was active, demonstrating that the debt was incurred by the consumer. For a revolving credit account, the charge-off account statement, the most recent monthly statement recording a purchase transaction, payment, or balance transfer shall be deemed sufficient to satisfy this requirement. Documents created or generated after the time of charge-off of the debt or institution of debt collection procedures shall not qualify as such confirmation;
- (B) records reflecting the amount and date of any prior settlement agreement reached in connection with the debt;
- (C) the final account statement, or other such document that reflects the total outstanding balance, mailed to the consumer on or before the charge-off date and prior to the institution of debt collection procedures;

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

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

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

(8) Originating creditor. A debt collector must provide the consumer the address of the originating creditor of a debt within 45 days of receiving a request from the consumer for such address. The consumer may make such request orally or in writing, or electronically if the debt collector [permits]uses electronic communications to collect debt, at any time during the period in which the debt collector owns or has the right to collect the debt. After receiving such a request, the debt collector must cease collection of the debt until such address has been provided to the

consumer. A debt collector is not required to provide this information more than once during the period that the debt collector owns or has the right to collect the debt.

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

(10) *Dispute and verification of medical debt.* Medical debt includes debt arising from the receipt of health care services or medical products or devices.

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

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

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

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

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

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

(iv) In addition to the requirements in section 5-77(j), before resuming debt collection activities on disputed medical debt arising from services provided by a covered medical entity, the debt collector must also verify that the covered medical entity met its obligations under federal, state, or local law and the financial assistance policy.

(g) *Reserved.*

(h) **Public websites.** Any debt collector that utilizes, maintains, or refers New York City consumers to a website accessible to the public that relates to debts for which debt collection procedures have been instituted must clearly and conspicuously disclose, on the homepage of

such website or on a page directly accessible from a hyperlink on the homepage labeled “**NYC Rules on Language Services and Rights**”, the following disclosures:

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

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

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

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

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

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

IF YOU ARE SUED:

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

(3) *Waiting Period.* The debt collector must wait at least 14 consecutive days after they place the initial written notice in U.S. mail or delivery service to the consumer to receive notice of undeliverability. During the waiting period under this subdivision, the debt collector must permit receipt of, and monitor for, notifications of undeliverability from communications providers. If the debt collector receives such notification during the waiting period, the debt collector must not contact the consumer, by any other means of communication, to collect the debt until the debt collector otherwise satisfies section 5-77(i)(2).

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

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

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

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

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

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

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

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

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

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

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

(2) In connection with the collection of medical debt from a New York City consumer arising from charges from a covered medical entity, a debt collector must conduct reasonable corrective measures upon obtaining information that the financial assistance policy was not disclosed to the

patient as required by law or that there is a violation of federal, state, or local law. A consumer may provide such information to the debt collector, by any means of communication or in any language used by the debt collector to collect debt, without the debt collector requiring the consumer to submit any supporting documentation to the debt collector. Corrective measures must be taken as follows:

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

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

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

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

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

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

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

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

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

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

(i) all complaints filed by New York City consumers against the debt collector, including those filed with the agency directly or with any not-for-profit entity or governmental agency, identifying for each complaint the date, the consumer's name, and account

information, the source of the complaint, a summary of the consumer's complaint, the debt collector's response to the complaint, if any, and the current status of the complaint;

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

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

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

**NEW YORK CITY LAW DEPARTMENT
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100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Amendment of Rules Related to Debt Collectors

REFERENCE NUMBER: 2023 RG 047

RULEMAKING AGENCY: Department of Consumer and Worker Protection

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Senior Counsel

Date: September 20, 2023

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Amendment of Rules Related to Debt Collectors

REFERENCE NUMBER: DCWP-36

RULEMAKING AGENCY: Department of Consumer and Worker Protection

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco X. Navarro
Mayor's Office of Operations

September 20, 2023
Date