

**NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES**

**PROPOSED
23 NYCRR __**

DEBT COLLECTION

§ __.1 Definitions.

For the purposes of this Part:

(a) *Clear and conspicuous* means that the statement, representation or term being disclosed is of such size, color, and contrast and/or audibility and is so presented as to be readily noticed and understood by the person to whom it is being disclosed. If such statement is necessary as a modification, explanation or clarification to other information with which it is presented, it must be presented in close proximity to the information it modifies, in a manner so as to be readily noticed and understood.

(b) *Collection efforts* means any action or attempted action by a debt collector in obtaining or attempting to obtain payment on a debt owed by a consumer.

(c) *Consumer* means any natural person who owes or who is alleged to owe a debt.

(d) *Debt* means any obligation or alleged obligation of a natural person for the payment of money or its equivalent which arises out of a transaction wherein credit has been offered or extended to a natural person, and the money, property or service which was the subject of the transaction was primarily for personal, family or household purposes. This term includes the obligation of a natural person who is a co-maker, guarantor, or endorser, as well as the obligation of the natural person to whom the credit was originally extended. Debt shall not include any obligation or alleged obligation of a consumer for the payment of money or its equivalent which arises out of credit extended directly to a consumer exclusively for the purpose of enabling that consumer to purchase consumer goods or services directly from the seller.

(e) *Debt collector* means any person engaged in a business with the principal purpose of collecting or attempting to collect debts, or any person who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Debt collector includes without limitation a buyer of delinquent debt who seeks to collect such debt either directly or indirectly.

(f) *Default* means that the payment on a debt obligation is delinquent under the terms of the original agreement that created the debt.

(g) *Original creditor* means any person who offers or extends credit creating a debt.

(h) *Person* has the same meaning as prescribed in Financial Services Law section 104(a)(3).

§ __.2 Required initial disclosures by debt collectors.

(a) Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication, provide the consumer clear and conspicuous written notification of the consumer's rights in connection with the debt, including:

(1) that debt collectors, in accordance with the federal Fair Debt Collection Practices Act, 15 U.S.C § 1692 et seq., are prohibited from engaging in abusive, deceptive, and misleading debt collection efforts, including but not limited to:

- (i) the use or threat of violence;
- (ii) the use of obscene or profane language; and
- (iii) repeated phone calls made with the intent to annoy, abuse, or harass.

(2) the following written notice:

“A creditor may sue you to collect on this debt. Even if the creditor wins and obtains a judgment against you, state and federal laws prevent certain ‘exempt’ moneys from being taken to satisfy that judgment. Income that you receive from the following sources may be ‘exempt’ from collection:

1. Supplemental security income, (SSI);
2. Social security;
3. Public assistance (welfare);
4. Spousal support, maintenance (alimony) or child support;
5. Unemployment benefits;
6. Disability benefits;
7. Workers' compensation benefits;
8. Public or private pensions;
9. Veterans' benefits; and
10. Federal student loans, federal student grants, and federal work study funds.”

(b) Within five days after the initial communication with a consumer in connection with the collection of any defaulted debt, a debt collector shall, unless the following information is contained in the initial communication, provide the consumer clear and conspicuous written notification regarding the nature of the consumer's defaulted debt, including:

- (1) The name of the original creditor;
- (2) An itemized accounting of the debt, including:

- (i) The total amount of the debt due as of default, including principal balance due and any charges and fees;
- (ii) each additional charge or fee accrued since the default;
- (iii) the name of the creditor or debt collector that levied each charge or fee since the default;
- (iv) the date of and the basis for the accrual of each additional charge or fee since the default; and
- (v) each payment made on the debt since the default, including settlements, and the date of each payment.

§ __.3 Disclosures for debts in which the statute of limitations may be expired.

(a) If a debt collector knows or has reason to know that the statute of limitations for a debt may be expired, before accepting payment on the defaulted debt, the debt collector must provide the consumer with clear and conspicuous notice of the following in the same medium (*e.g.*, via telephone, electronic communication) that the debt collector will accept payment that:

- (1) the debt collector believes that the statute of limitations applicable to the debt may be expired;
- (2) if the consumer is sued on a debt that has expired, the consumer can stop the lawsuit by responding to the court that the statute of limitations has expired;
- (3) the consumer is not required to provide the debt collector with an admission, affirmation, or acknowledgment of the debt, a promise to pay the debt, or a waiver of the statute of limitations;
- (4) if the consumer makes any payment on an expired debt or admits, affirms, acknowledges, or promises to pay the expired debt, the statute of limitations may restart; and
- (5) failure to pay a debt that the consumer owes, even if the statute of limitations has expired, may damage the consumer's credit history and credit score and may negatively affect the consumer's ability to obtain credit.

(b) The following language satisfies the notice requirement contained in section __.3(a) of this Part:

“We are required by regulation of the New York State Department of Financial Services to notify you of the following information. This information is NOT legal advice:

Your creditor or debt collector believes that the legal time limit (statute of limitations) for suing you to collect this debt may have expired. If the creditor sues you to collect on 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 against you.

Even if the statute of limitations has expired, you may choose to make payments on the debt. However, be aware: if you make a payment on the debt, admit to owing the debt, promise to pay the debt, or waive the statute of limitations on the debt, the time period in which the debt is enforceable in court may start again.

Further, please note that an expired debt is not extinguished even though the statute of limitations has expired. Failure to pay the debt may negatively affect your credit history and credit score and your ability to obtain credit.

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

§ __.4 Verification of debts.

(a) If a consumer disputes the validity of a defaulted debt or requests verification of a defaulted debt orally or in writing, a debt collector must provide the consumer written verification of the defaulted debt within 30 days of the dispute or request. Verification of the defaulted debt shall include:

(1) documentation identifying the original creditor, including copies of:

(i) the signed contract or signed application that created the debt, or, in the case of a transaction that does not involve a signed contract or signed application, other documents evidencing the transaction resulting in the indebtedness of the consumer to the original creditor; and

(ii) the final account statement, or equivalent document, issued by the original creditor to the consumer;

(2) a statement describing the complete chain of title from the original creditor to the present debt owner, including the date of each assignment;

(3) where applicable, the consumer's account number with the original creditor at the time of default, the current account number, and any intervening account numbers; and

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

(b) If a consumer disputes a defaulted debt or requests verification of a defaulted debt pursuant to section __.4(a) of this Part, the debt collector must retain the following documentation until the debt is discharged, sold, or transferred:

(1) evidence of the consumer's dispute or request for verification; and

(2) all documents provided in response to the dispute or request.

§ __.5 Debt payment procedures.

(a) No debt collector shall accept any payment under a debt payment schedule or other agreement to settle a defaulted debt without first furnishing the consumer with a clear and conspicuous written document containing:

(1) written confirmation of the debt payment schedule or other agreement to settle the defaulted debt. This written confirmation shall not include any terms or conditions to which the consumer did not specifically agree; and

(2) the following notice:

“A creditor may sue you to collect on this debt. Even if the creditor wins and obtains a judgment against you, state and federal laws prevent certain ‘exempt’ moneys from being taken to satisfy that judgment. Income that you receive from the following sources may be ‘exempt’ from collection:

1. Supplemental security income, (SSI);
2. Social security;
3. Public assistance (welfare);
4. Spousal support, maintenance (alimony) or child support;
5. Unemployment benefits;
6. Disability benefits;
7. Workers’ compensation benefits;
8. Public or private pensions;
9. Veterans’ benefits; and
10. Federal student loans, federal student grants, and federal work study funds.”

(b) If a consumer agrees to a debt payment schedule or other agreement to settle a defaulted debt, the debt collector shall provide the consumer with an accounting of the debt on at least a quarterly basis.

(c) Within 15 business days of the receipt of a payment satisfying a consumer’s defaulted debt, the debt collector shall send to the consumer a written confirmation of the satisfaction of the debt that identifies the original creditor and the last original account number.

§ __.6 Communication through electronic mail.

(a) After mailing a consumer written disclosures as required under section __.2 of this Part, a debt collector may provide subsequent correspondence to the consumer through electronic mail only if the consumer has:

(1) voluntarily provided a secure electronic mail account to the debt collector which is not an electronic mail account furnished or owned by the consumer’s employer; and

(2) consented in writing to receive electronic mail correspondence from the debt collector in reference to a specific debt. A consumer's electronic signature constitutes written consent under this Section.

§ __.7 Effective date.

This Part shall become effective upon adoption, except that sections __.2(b) and __.4(a) of this Part shall become effective 180 days after adoption.