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February 13, 2015

Joy Feigenbaum
Executive Deputy Superintendent, Financial Frauds & Consumer Protection
New York State Department of Financial Services

Re: 24 NYCRR 1, Debt Collection By Third-Party Debt Collectors and Debt Buyers (the "regulation")

Dear Ms. Feigenbaum:

On behalf of the Consumer Relations Consortium, please find a request by the Consumer Relations Consortium to seek additional information in relation to 24 NYCRR 1, Debt Collection By Third-Party Debt Collectors and Debt Buyers (the "regulation")

This request for clarification is respectfully submitted to the New York Department of Financial Services ("NYDFS") on behalf of the Consumer Relations Consortium ("CRC") and its membership. The CRC is submitting this request to seek additional information in relation to 24 NYCRR 1, Debt Collection By Third-Party Debt Collectors and Debt Buyers (the "regulation").

The CRC believes that it is the goal of the collection industry to comply with all aspects of the newly enacted regulation. However, certain provisions of the regulation are being interpreted in varying and contradictory ways. In an effort to ensure that the industry 1) complies with the regulation as intended, and 2) has a consistent interpretation of the regulation so all consumers are treated in a fair and consistent manner, the CRC is turning to the NYFDS for critical guidance.

Accordingly, the CRC respectfully proposes that the implementation date for all provisions is delayed until the latter implementation date, August 30, 2015. Delaying the first implementation date will provide an opportunity for additional dialogue so that any misinterpretations to be corrected and compliance plans adjusted accordingly.

The CRC appreciates the opportunity to present the questions sets forth below, and looks forward to ongoing collaboration and communication with the NYDFS and other state and federal regulatory agencies. Please contact the undersigned if you have questions.

Respectfully,

Stephanie Eidelman
CEO, The iA Institute
Executive Steering Committee, Consumer Relations Consortium
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Who We Are

The CRC was formed in September 2013 by a group of "larger market participant" collection industry executives who believed that a reasonable and knowledgeable voice was needed to address both issues and solutions in the collection industry. We firmly believe that communication – "relations" – is the key to respectful resolution of a consumer's financial situation.

Our mission is to collaborate with regulatory agencies to affect change resulting in industry reform that not only provides the best level of service to consumers but also ensures the critical role collections plays in the economic cycle survives, and allows product and service providers to continue to make affordable credit available to the Consumer.

Proactive Outreach

The CRC brings a unique approach to the marketplace by proactively engaging with consumer advocacy groups to bridge the gap of understanding and expectations often present between consumers and collectors. We believe that there is a true common interest among all constituents in the debt collection space; our work is intended to yield solutions to issues that impact the ultimate stakeholder, the Consumer.

Forward-Looking Thought Leaders

The CRC is open to industry leading and forward-looking organizations that fall under the CFPB's definition of larger market participants (LMP). While industry associations have been actively engaged in this area, the LMPs collectively have the reach and resources to champion customer-centric solutions. Our client footprint, volume of accounts serviced, and ability to affect meaningful change were paramount in creating the CRC. The CRC seeks to collaborate with industry associations and work to create a catalyst for change.

Significant Impact

The CRC member organizations have a considerable impact in the debt collection space. Collectively, these members:

- serve the largest financial institutions and consumer lenders in the country
- service every major asset class in the industry including: credit cards, student loans, mortgages, auto loans, unsecured personal loans, healthcare, telecom, and utilities
- initiate millions of communications to consumers every month

Every stakeholder in the debt collection space has their own special interests. The CRC is a unique assembly of leaders that have a passion for fair, respectful, and progressive collaboration to address what is not working, and dispel misconceptions that persist in the debt collections space. We believe communication is the foundation for reform and ultimately success.

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Throughout the last eighteen months, the CRC initiated and hosted an extended dialogue with both consumer advocacy groups and regulators to discuss practical solutions to questions raised in the Advance Notice of Proposed Rulemaking published by the Consumer Financial Protection Bureau ("CFPB"). Many have noted with respect the open nature of the discussion and the willingness of CRC members to consider ideas that address all sides of the equation.

Members of the CRC include:

AllianceOne Receivables Management, Inc.

ARS National

Automated Collection Services, Inc.

CBE Group

Complete Payment Recovery Services

ConServe

EOS CCA

Firstsource Advantage LLC

FMA Alliance, Ltd.

Hunter Warfield

iQor

MRS BPO

National Enterprise Systems

NCB Management Services, Inc.

NCI, A Subsidiary of Altisource

Northland Group

Premiere Credit of North America LLC

The CCS Companies

Transworld Systems, Inc.

Vital Solutions, Inc.

West Asset Management, Inc.

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Consumer Relations Consortium's ("CRC") Questions to the New York Department of Financial Services ("NYDFS") Regarding 24 NYCRR 1, Debt Collection By Third-Party Debt Collectors and Debt Buyers

I. § 1.1 Definitions

1. The regulation defines Charge-Off as an accounting action taken to remove a debt from an original creditor's financial statements. Is a debt collector required to comply with the requirements set forth in §1.2 (b) and/or §1.4 if the creditor never charges-off the debt in question? For example, healthcare debts are rarely charged-off. Therefore, do these provisions apply to medical debt? If so, how does the debt collector determine what date to use as the "charge-off" date for purposes of calculating §1.2 (b)(2)(i-iv). It may be difficult to determine a uniform date of "charge-off" if the debt collector is not the first agency the debt is placed with.

2. How does a debt collector determine the date of charge-off? Can the debt collector rely on a blanket procedure or calculation from the creditor? For example, can the debt collector assume the creditor charges-off all debt 180 days after default?

3. Section 1.1 requires statements to be clear and conspicuous, but does not provide a specific font size. Is there a minimum font size which provides a safe harbor in relation to this provision?

4. A literal reading of §1.1 (d) appears to exclude any type of debt where credit has not been extended. Thus, medical, telecommunications, and utilities would not fall within the purview of the regulation. Is this accurate?

5. Several provisions require the debt collector to send written correspondence to the consumer. If the consumer is represented by an attorney or debt settlement agency, should the debt collector send all communications to the representative or the consumer?

II. §1.2 Required Initial disclosures by Debt Collector

6. §1.2 and §1.5 sets forth a protected income disclosure for inclusion on written correspondence. Can the debt collector provide this content in varying formats to ensure the disclosure is provided in a clear and conspicuous manner depending on the layout of their letters? For example:

> "If a creditor or debt collector receives a money judgment against you in court, state and federal laws may prevent the following types of income from being taken to pay the debt: 1. Supplemental security income, (SSI); 2. Social security; 3. Public assistance (welfare); 4. Spousal support, maintenance (alimony) or child support; 5. Unemployment benefits; 6. Disability benefits; 7. Workers' compensation benefits; 8. Public or private pensions; 9. Veterans' benefits; 10. Federal student loans, federal student grants, and federal work study funds; and 11. Ninety percent of your wages or salary earned in the last sixty days."

7. Certain government debts are not restricted by the prohibited income disclosure as set forth above. If the debt collector is collecting on a government debt to which this does not apply, should it be omitted?

8. Many collection agencies have no right to sue on a debt. Therefore, the prohibited income disclosure is potentially misleading because it implies legal action might be taken. Can the debt collector preclude confusion by including a statement that the debt collector will not sue on the account?

9. Does the NYSDFS believe it would be misleading for a collection agency to include this disclaimer and also include a statement that the collection agency does not sue and will not sue the consumer on the account?

10. Clarify whether the omission of "may" in §1.5 was intentional, when §1.2 includes it.

    §1.2 "If a creditor or debt collector receives a money judgment against you in court, state and federal laws **may** prevent the following types of income from being taken to pay the debt:…"

    §1.5 "If a creditor or debt collector receives a money judgment against you in court, state and federal laws prevent the following types of income from being taken to pay the debt:…"

11. Existing account inventory:

    How does an agency handle accounts that it received prior to March? Are we now obligated on every NYS account to provide all of these required notices regardless of when it was placed (i.e. prior to March, 2015) and no matter where in the life cycle of each account it might be (i.e. notices may have already been sent, calls made, payment plans established, etc.)?

    With respect to existing inventory, we might not know from our clients if the accounts are charged off – something that they may have trouble telling us even for new accounts, let alone older accounts—do we therefore assume they are charged off?

III. § 1.3 Disclosures for debts for which the statute of limitations may be expired

12. If a debt collector provides the statute of limitations disclosure via telephone during payment negotiations, and the consumer declines to pay at that time, but elects to make a payment during subsequent communications, does the collector need to continue to give the disclosure if all communications occur in the same medium?

13. If the debt collector provides the out of statute disclosure on all initial communications, regardless of the age of the debt, is that false and misleading?

14. If a consumer's debt is controlled by a choice of law provision in a credit agreement, and the statute of limitations is not reset when a consumer makes a payment, does the debt collector have to provide the disclosure if the statute runs after the consumer agrees to a payment arrangement? For example, a consumer agrees to a settlement arrangement in March 2015 for payments over six months. In May 2015, the statute expires. Does the debt collector have to provide the disclosure at that time while the consumer is simply mailing in payments? If so, what medium should the debt collector utilize?

15. §1.3 (c) requires a debt collector to provide the following disclosure for debts in which the statute of limitations may have run. On its face this disclosure appears to be in conflict with the disclosure required by the New York City regulations.

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

    b. "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. It is a violation of the Fair Debt Collection Practices Act, 15 U.S.C.§ 1692 et seq., to sue to collect on a debt for which the statute of limitations has expired. However, if the creditor sues you to collect on this debt, you may be able to prevent the creditor from obtaining a judgment against you. To do so, you must tell the court that the statute of limitations has expired. 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. 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."

    The NYC disclosure has the finite language "has", versus the NYDFS disclosure which states "believes" and "may." How are debt collectors to reconcile the conflicts set forth in the disclosures? Is there a hybrid disclosure which complies with both requirements?

IV. § 1.4 Substantiation of consumer debts.

16. Section 1.4 (a)(1)(ii) requires a debt collector to provide a consumer clear and conspicuous written instructions regarding substantiation. Because the statute requires the instructions to be unambiguous, can the NYDFS provide model language, a template, or additional clarification regarding how these instructions are best communicated to the consumer?

17. Does a debt collector comply with §1.4 (a)(1)(ii) if they include written instructions in relation to substantiation on the initial dunning letter, rather than a subsequent communication upon receipt of a written dispute? An initial dunning letter sets forth the FDCPA language for disputing and requesting validation of debt. Providing written instructions to consumers alongside the standard FDCPA disclosure is clear and conspicuous, and would make it easier for consumers to fully understand their rights at the outset of the collection process.

18. Section 1.4 (c)(4) requires a debt collector to provide any prior settlement agreement regarding a specific account. Consumers may set up a settlement arrangement on a debt that they break or do not complete, and the debt would roll to the next agency. In this scenario, it would be difficult for the second agency to provide a copy of the settlement agreement made with the first agency as it was not made through the creditor. How can a debt collector comply with this specific provision?

19. Creditors may send validation of debt directly to the consumer on behalf of the debt collector, as they have the most information regarding the validity of the underlying debt. Furthermore, as they possess the most up-to-date documentation, they can send account documents directly to the consumer in an expedited manner. Because there are advantages associated with creditors responding to consumer requests, is the debt collector's substantiation requirement fulfilled if they can confirm the creditor responded directly to the consumer on their behalf?

20. Upon receipt of a substantiation request, can a debt collector immediately close and return the account to the creditor pursuant to the FDCPA, or are they required to request substantiation from the creditor?

21. If the creditor does not substantiate the debt within the sixty (60) day time frame, what are the debt collector's next steps? Should the debt collector continue to cease collection activity and/or close and return the account?

    Additionally, if the creditor provides substation outside of the sixty (60) day window, can the debt collector resume collection activity?

V. **§ 1.5. Debt Payment Procedures**

22. Section 1.5 (b) requires a debt collector to provide a quarterly accounting notice to any consumer who enters into a debt payment or settlement arrangement. However, the section is silent as to what information is to be provided. Does a debt collector comply with this section if they include (1) the amount paid toward the settlement/balance, and (2) the remainder owed? Any additional information is already provided via the itemization requirement set forth in §1.2.

23. How does the NYDFS calculate the quarterly requirement set forth in §1.5 (b)? Can the debt collector send one notice per quarter pursuant to the financial year, or does the quarter year timeframe start running when the consumer sets up their payment schedule?

24. Can the debt collector satisfy the requirements in § 1.5 (b) in any written communication, so long as the letter is sent at least quarterly? Or does this provision require the debt collector to send a completely separate and distinct communication to the consumer where only the accounting is provided?

25. What constitutes a debt payment schedule? If a consumer only agrees to make one payment towards the balance, does that trigger the requirement to send a written confirmation? Additionally, if the debt payment schedule does not pay off the balance in full, does this trigger the requirements set forth in §1.5?

26. When sending the quarterly accounting notice and confirmation letters under § 1.5, should the debt collector include direct payments made to the creditor prior to the arrangement? Should the debt collector include those direct payments in the category of "other amounts," separate from the payment arrangement amounts?

27. Because the 2nd circuit district courts have generally accepted the 7th circuit safe harbor test for notifying consumers of varying balances due to accruing interest, should this text be placed in the quarterly accounting notice set forth § 1.5 (b)?

VI. **§1.6 Communication through electronic mail.**

28. Section 1.6 recognizes consumers may prefer to utilize e-mail when communicating with a debt collector. If a consumer insists a debt collector communicate via a specific e-mail address, should the debt collector comply with the consumer's stated preference regardless of address provided? For example, if a consumer requests to be contacted only at an e-mail address owned by the consumer's employer, and the consumer affirms it is not their employer's e-mail address, does the debt collector run afoul of §1.6 (a)(1) based on the consumer's misrepresentation? Stated another way, does the debt collector have an affirmative duty to investigate the e-mail address if the consumer affirms and consents to be contacted at that address? Furthermore, if such a duty exists, how can the debt collector confirm the consumer is not self-employed?

29. If a consumer consents to be contacted through electronic mail under §1.6, what format should subsequent communications be in? Are there any specific security or encryption requirements, or can the debt collector include the communication in the body of the e-mail?

30. Can a debt collector send an email to the consumer prior to receiving authorization, for the purpose of receiving written consent under §1.6 (b)?