

New York City Department of Consumer Affairs

Notice of Adoption

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN the Commissioner of Consumer Affairs by 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, and in accordance with the requirements of section 1043 of the New York City Charter, that the Department of Consumer Affairs (“DCA” or the “Department”) amends sections 2-193, 5-77, and 6-62 of title 6 of the Rules of the City of New York.

This rule was proposed and published on March 5, 2020. A public hearing was held on April 10, 2020. The Department did not receive any comments.

Statement of Basis and Purpose of Rule

The Department is adding new rules that require debt collectors to inform consumers about whether certain language access services are available and to retain records relating to language access services.

Approximately a quarter of the population of New York City does not understand English proficiently. Many debt collectors working to collect debts from New York City consumers, however, are not providing adequate language access services to consumers. For more background on this issue, see the Department’s publication, “Lost in Translation: Findings from Examination of Language Access by Debt Collectors.” This publication highlights the lack of language access services provided for limited-English proficiency (LEP) consumers by debt collection agencies.

These new rules enable consumers who require language access services to better understand their rights with respect to debt collection and to facilitate communication between collectors and LEP consumers. The recordkeeping requirements allow the Department to ensure that LEP consumers are receiving sufficient information when contacted by a debt collector. The prohibited practices ensure that debt collectors are not engaging in deceptive or unfair conduct with respect to language access.

Specifically, these new rules require debt collectors to:

- Inform consumers—in any initial collection notice and on any public-facing websites maintained by the collector—of the availability of any language access services provided by the collector and of a translation and description of commonly-used debt collection terms in a consumer’s preferred language on the Department’s website;
- Request, record, and retain, to the extent reasonably possible, a record of the language preference of each consumer from whom the collector attempts to collect a debt; and
- Maintain a report identifying, by language, the number of consumer accounts on which an employee of the collector attempted to collect a debt in a language other than English, and the number of employees that attempted to collect on such accounts.

These rules also prohibit debt collectors from:

- Providing false, inaccurate, or incomplete translations of any communication to a consumer in the course of attempting to collect a debt; and
- Misrepresenting or omitting a consumer’s language preference when returning, selling, or referring for litigation any consumer account, where the debt collector is aware of such preference.

New material is underlined.
[Deleted material is in brackets.]

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

Rule Amendment

Section 1. 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 maintain a separate file for each debt that the debt collection agency attempts to collect from each consumer, in a manner that is searchable or retrievable by the name, address and zip code of the consumer and the creditor who originated the debt the agency is seeking to collect. The debt collection agency shall maintain in each file the following records to document its collection activities with respect to each consumer:

- (1) A copy of all communications with the consumer.
- (2) A record of each payment received from the consumer that states the date of receipt, the method of payment and the debt to which the payment was applied.
- (3) A copy of the debt payment schedule and/or settlement agreement reached with the consumer to pay the debt.
- (4) With regard to any debt that the debt collection agency has purchased, a record of the name and address of the entity from which the debt collection agency purchased the debt, the date of the purchase and the amount of the debt at the time of such purchase.

(b) A debt collection agency shall maintain the following records to document its collection activities with respect to all 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.
- (2) Recordings of complete conversations with all consumers or with a randomly selected sample of at least 5% of all calls made or received by the debt collection agency and a copy of contemporaneous notes of all conversations with consumers. The method used for randomly selecting the recorded calls shall be included in the file where the tape recordings are maintained.
- (3) A record of all cases filed in court to collect a debt. Such record shall 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. Such record shall 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.

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

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

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

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

(d) The records required to be maintained pursuant to this section shall 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.

§ 2. Subdivisions (d), (e), and (f) of Section 5-77 of Part 6 of Subchapter A of Chapter 5 of Title 6 of the Rules of the City of New York are amended, and a new Subdivision (h) is added, to read as follows:

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

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

(2) the false representation or implication that any individual is an attorney or any communication is from an attorney;

(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 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 [of]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, the failure to disclose clearly 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; [or]
- (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) the false representation or omission of a consumer's language preference when returning, selling or referring for litigation any consumer account, where the debt collector is aware of such preference.

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

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

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

(3) causing charges to be made to any person for communications by misrepresentation of the true purpose of the communication. Such charges include collect telephone calls and telegram 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 or telegram, 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 business name or the name of a department within his or her 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); 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; [or]

(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.

(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) Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector who is not a creditor and not employed by a creditor shall, unless the following information is contained in an initial written communication, or the consumer has paid the debt, send the consumer a written notice containing:

(i) the amount of the debt;

(ii) the name of the creditor to whom the debt is owed;

(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;

(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;

(v) 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, if different from the current creditor; [and]

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

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

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

(3) If, pursuant to 6 RCNY §§ 5-77(f)(1) or 5-77(f)(2) of this Regulation the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall not attempt to collect the amount in dispute until the debt collector obtains and mails to the consumer verification of the debt or a copy of the judgment or the name and address of the original creditor. The debt collector shall maintain for one year from the date the notice was mailed, records containing documentation of the date such notice was mailed, the date the response, if any, was received and any action taken following such response.

(4) The failure of a consumer to dispute the validity of a debt under 6 RCNY § 5-77(f) shall not be construed by any court as an admission of liability by the consumer.

(h) Public Websites. Any debt collector that maintains a website accessible to the public must clearly and conspicuously disclose on such website:

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

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

§ 3. Section 6-62 of subchapter B of chapter 6 of title 6 of the Rules of the City of New York is amended to read as follows:

All citations are to Title 20 of the Administrative Code of the City of New York or Title 6 of the Rules of the City of New York.

Unless otherwise specified, the penalties set forth for each section of law or rule shall also apply to all subdivisions, paragraphs, subparagraphs, clauses, items, or any other provision contained therein. Each subdivision, paragraph, subparagraph, clause, item, or other provision charged in the Notice of Violation shall constitute a separate violation of the law or rule.

Unless otherwise specified by law, a second or third or subsequent violation means a violation by the same respondent, whether by pleading guilty, being found guilty in a decision, or entering into a settlement agreement for violating the same provision of law or rule, within two years of the prior violation(s).

In certain cases, the Department may ask for license suspension or revocation, as permitted by statute. If a respondent is found in violation of multiple provisions that require a suspension period, the suspension periods shall run concurrently.

Citation	Violation Description	First Violation	First Default	Second Violation	Second Default	Third and Subsequent Violation	Third and Subsequent Default
Admin Code § 20-490	Acting as a debt collection agency without a DCA license	\$750, plus \$100 per day & \$100 per instance of contact	\$1,000, plus \$100 per day, & \$100 per instance of contact	\$900, plus \$100 per day, & \$100 per instance of contact	\$1,000, plus \$100 per day, & \$100 per instance of contact	\$1,000, plus \$100 per day, & \$100 per instance of contact	\$1,000, plus \$100 per day, & \$100 per instance of contact
Admin Code § 20-493.1(a)(i)	Failure to provide a call back number answered by a natural person	\$750	\$1,000	\$900	\$1,000	\$1,000	\$1,000
Admin Code § 20-493.1(a)(ii)	Failure to provide the name of the debt collection agency	\$750	\$1,000	\$900	\$1,000	\$1,000	\$1,000
Admin Code § 20-493.1(a)(iii)	Failure to provide the originating creditor of the debt	\$750	\$1,000	\$900	\$1,000	\$1,000	\$1,000
Admin Code § 20-493.1(a)(iv)	Failure to provide the name of the person to call back	\$750	\$1,000	\$900	\$1,000	\$1,000	\$1,000
Admin Code § 20-493.1(a)(v)	Failure to provide the amount of the debt at the time of communication	\$750	\$1,000	\$900	\$1,000	\$1,000	\$1,000
Admin Code § 20-493.1(b)	Failure to provide written confirmation to the consumer within 5 business days of any debt payment schedule or settlement agreement	\$750	\$1,000	\$900	\$1,000	\$1,000	\$1,000
Admin Code § 20-	Attempting to collect or contact a consumer about a	\$750	\$1,000	\$900	\$1,000	\$1,000	\$1,000

493.2(a)	debt after failing to provide adequate verification of the debt upon request						
Admin Code § 20-493.2(b)	Contacting a consumer about a debt for which the statute of limitations has expired without first providing required notice	\$750	\$1,000	\$900	\$1,000	\$1,000	\$1,000
6 RCNY § 2-190	Failure to provide specified written documentation verifying the debt	\$750	\$1,000	\$900	\$1,000	\$1,000	\$1,000
6 RCNY § 2-191	Failure to provide specified statute of limitations disclosure regarding the debt	\$750	\$1,000	\$900	\$1,000	\$1,000	\$1,000
6 RCNY § 2-192	Failure to provide specified written confirmation of the debt payment schedule or settlement agreement	\$750	\$1,000	\$900	\$1,000	\$1,000	\$1,000
6 RCNY § 2-193	Failure to comply with debt collection agency record-maintenance requirements	\$375	\$500	\$450	\$500	\$500	\$500
6 RCNY § 2-194	Failure to comply with call-back number requirements	\$750	\$1,000	\$900	\$1,000	\$1,000	\$1,000
6 RCNY § 5-77(a)	Failure to comply with requirements pertaining to acquisition of location information	\$260	\$350	\$315	\$350	\$350	\$350
6 RCNY § 5-77(b)	Failure to comply with requirements pertaining to communicating in connection with the collection of a debt	\$260	\$350	\$315	\$350	\$350	\$350
6 RCNY § 5-77(c)	Engaging in harassment or abuse in connection with the collection of a debt	\$260	\$350	\$315	\$350	\$350	\$350
6 RCNY § 5-77(d)	Making a false, deceptive, or misleading representation in connection with the collection of a debt	\$260	\$350	\$315	\$350	\$350	\$350
6 RCNY § 5-77(e)	Using an unfair or unconscionable means to collect or attempt to collect a debt	\$260	\$350	\$315	\$350	\$350	\$350
6 RCNY § 5-77(f)	Failure to comply with the validation procedures for debt collectors who are creditors or who are employed by creditors	\$260	\$350	\$315	\$350	\$350	\$350
6 RCNY § 5-77(h)	<u>Failure to comply with requirements for public websites</u>	<u>\$260</u>	<u>\$350</u>	<u>\$315</u>	<u>\$350</u>	<u>\$350</u>	<u>\$350</u>
6 RCNY § 5-78	Designing, compiling, or furnishing a form to create false consumer belief that a third party is participating in the collection of a debt	\$260	\$350	\$315	\$350	\$350	\$350