RECEIVABLES MGMT. ASSOC. INTL.
SETTING THE GLOBAL STANDARD

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November 29, 2023

By Electronic Submission to rulecomments@dcwp.nyc.gov

NYC Department of Consumer & Worker Protection
Hon. Vilda Vera Mayuga
42 Broadway
New York, NY 10004

Re: Comments on Proposed Debt Collector Rulemaking

Dear Commissioner Mayuga:

The Receivables Management Association International (RMAI) is pleased to submit our comments to the New York City Department of Consumer & Worker Protection (DCWP or Department) related to proposed rulemaking on debt collection as requested in DCWP's invitation for comments issued on September 20, 2023.

As background, RMAI is the nonprofit trade association that represents more than 600 companies that purchase or support the purchase of performing and nonperforming receivables on the secondary market. RMAI member companies work in a variety of financial service fields, including banks, credit unions, nonbank lenders, debt buying companies, collection agencies, collection law firms, brokers, international members, and industry-related product and service providers. RMAI's Receivables Management Certification Program (also referred to as RMCP or Certification Program)[1] and its Code of Ethics[2] set the "gold standard" within the receivables management industry due to their rigorous uniform industry standards of best practice which focuses on protecting consumers.

Rolled out in 2013, RMAI's Certification Program sets high and robust industry standards that seek to go above and beyond the requirements of state and federal law for the protection of consumers.[3] While the program was first designed to certify debt buying companies, it has expanded to include certifications for law firms, collection agencies, and vendors (e.g., receivable brokers and process servers). Currently, 461 companies and individuals hold these

[1] Receivables Management Association International, *Receivables Management Certification Program*, version 11.0 (Feb. 14, 2023), publicly available at https://rmaintl.org/GovernanceDocument.
[2] Receivables Management Association International, *Code of Ethics* (August 13, 2015), publicly available at https://rmaintl.org/about-rmai/code-of-ethics/.
[3] RMCP's Mission Statement reads in part, the certification program "is an industry self-regulatory program administered by RMAI that is designed to provide enhanced consumer protections through rigorous and uniform industry standards of best practice" (page 1).

internationally respected certifications. Presently, all the largest debt buying companies in the United States are RMAI certified, and we estimate that approximately 80 to 90 percent of all charged-off receivables that have been sold on the secondary market are owned by an RMAI certified company.

A review of the federal Consumer Financial Protection Bureau's (CFPB's) Consumer Response Portal (the Portal) shows that 97.97 percent of RMAI's certified companies (the vast majority being small businesses) are either complaint-free or have maintained a statistical zero-percent complaint rate on the Portal since the Department started tracking debt collection complaints/inquiries in July 2013. Only 2.27 percent of certified companies have a complaint/inquiry volume of greater than one percent with the remaining 0.76 percent of certified companies being rounded up to a one percent complaint/inquiry rate.

A before-and-after analysis of lawsuits filed against RMAI certified businesses found that after certification, litigation on average decreased by 20.8 percent in the seven-year span from 2012-2018. During the same time-period, litigation against all businesses in the receivables industry increased by 3.1 percent, with Fair Debt Collection Practices Act[4] (FDCPA), Fair Credit Reporting Act[5] (FCRA), and Telephone Consumer Protection Act[6] (TCPA) lawsuits experiencing a 3.5 percent decrease, 13.5 percent increase, and a 26.7 percent increase, respectively. The correlation between RMAI certified businesses and a 20.8 percent decrease in lawsuits, compared to the industry as a whole, reinforces the beneficial effect of the program's high standards and its focus on compliance.[7]

Highlights of the RMAI certification program include a commitment to ongoing education, independent third-party audits, designation of a company Chief Compliance Officer (CCO), and compliance with robust standards including:

- Vendor Management: Ensuring that anyone with access to or contact with consumer accounts adheres to the same criteria as the certified company, including assurance of data security systems/policies.

- Data & Documentation Integrity: Mandating compliance with a comprehensive list of data and documentation requirements that exceeds all state and federal requirements. RMAI certification program maintains unique asset class criteria for auto, credit cards, bankruptcy, installment loans, judgments, medical, and student loan receivables.

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[4] 15 U.S.C. 1692 et seq.
[5] 15 U.S.C. 1681 et seq.
[6] 47 U.S.C. 227 et seq.
[7] Pamela Hong, *The Impact of the Receivables Management Certification Program on Litigation*, Receivables Management Association International White Paper (June 2019), publicly available at https://rmaintl.org//wp-content/uploads/2019/06/Litigation_White_Paper.pdf.

- Consumer Disputes: Creating a culture that promotes open lines of communication with consumers to address disputes regardless of the mode of communication the consumer chooses to use. When RMAI's certification standards are viewed in their entirety, they provide a level of consumer protection unseen elsewhere within the receivables industry. The standards include, but are not limited to, requirements that all certified businesses be registered on the CFPB consumer portal, maintain well-defined dispute policies, proactively address issues in credit reports, provide consumers direct access to the CCO, maintain consumer hardship policies, and prohibit the sale or resale of accounts that are currently in dispute or have been identified as fraudulent.

- Portfolio-Sale Standards: Ensuring the integrity of account information and transparency in the sale and resale process is paramount. Standards on chain-of-title, due diligence in the portfolio review, and representations and warranties in the purchase-and-sale agreement combine to ensure the integrity of the account information, thereby providing important consumer protections.

The positive impact on consumer credit from RMAI's certification program has been recognized during the CFPB's development of Regulation F over the course of nearly a decade and through three administrations. First in its 2016 Small Business Regulatory Enforcement Fairness Act (SBREFA) review[8] and again the 2019 notice of proposed rulemaking[9] as it helps to reinforce our ongoing efforts within the broader industry. Importantly, as original creditors see the value of the certification program, we are seeing an increase in the number of creditors requiring that their approved buyers be RMAI certified.

RMAI'S Comments on the Proposed Regulation

RMAI's comments for the proposed rule changes are provided in the margins of the attached Industry Redline so as to allow ease of understanding while explaining potential solutions. RMAI is happy to provide additional information should DCWP have questions or would like further elaboration. It is important for RMAI to note, that RMAI is a strong advocate of clear and comprehensive regulatory guidance. Our goal in providing the redlines is to provide this needed clarity so that the industry can both understand the requirements and be able to readily comply with the requirements.

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[8] Consumer Financial Protection Bureau, "Outline of Proposals Under Consideration And Alternatives Considered," (July 28, 2016), fn 85 and 92 available at https://files.consumerfinance.gov/f/documents/20160727_cfpb_Outline_of_proposals.pdf, archived at https://perma.cc/9JNH-ZDVP

[9] Debt Collection Practices (Regulation F), 84 FR 23274 (May 21, 2019), fn 378, 402, 647, and 743.

Representing a highly regulated industry at both the state and federal level does create challenges for the association as we strive for consistency in requirements, to the degree it is possible. As many RMAI members operate in all 50 states, it becomes difficult to ensure compliance in an environment where states and municipalities adopt widely varying requirements for the same activity, especially if it is in conflict with federal laws, such as the Fair Debt Collection Practices Act (FDCPA).

As such, RMAI would respectfully request that DCWP hold off on any rulemaking until the New York State Department of Financial Services (DFS) completes its revised collection rulemaking which they began in December 2021. We understand the next version of DFS's revised rule will be published soon. It is imperative that DCWP's rulemaking not contradict the State of New York's rules.

Inconsistency with State and Federal Law

Itemization Date

We strongly urge the Department to modify its definition of the itemization reference date to reflect the language used by the federal government (in Regulation F -- 12 CFR Part 1006.34(b)(3)) and New York (in 23 CCRR 1.2). For open-end credit, both use the balance at charge-off, but the Department proposes to allow the use of the balance "before the charge-off date of the debt."

Using the charge-off balance and charge-off date as the standard for itemization is consistent with what the federal Consumer Financial Protection Bureau (Regulation F) and the New York Department of Financial Services require a debt collector provide to a consumer in the initial validation notice. New York State courts, in its court rules and affidavits for default judgment applications in consumer credit matters require a plaintiff to identify the date and amount of the charge off balance.[10] In addition, under the New York Consumer Credit Fairness Act (Senate Bill 153) that took effect in 2022, itemization is required of the total amount of the debt due as of charge-off in lawsuits on consumer credit transactions.[11]

With respect to close-end loans, the Department should follow Regulation F -- 12 CFR Part 1006.34(b)(3).[12] The proposed rule does not provide that "date of the last payment" can be a payment made because of the repossession of collateral. Further, we understand a close-end motor vehicle loan can be charged-off prior to repossession.

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[10] located at https://ww2.nycourts.gov/rules/ccr/index.shtml, archived at https://perma.cc/Q4DB-LV8K .
[11] N.Y. C.P.L.R. § 3016(j)
[12] The CFPB's Official interpretation of Paragraph 34(b)(3)(iii) provides that "the last payment date is the date the last payment was applied to the debt. A third-party payment applied to the debt, such as a payment from an auto repossession agent or an insurance company, can be a last payment for purposes of § 1006.34(b)(3)(iii)."

Finally, the Department's proposed rule is silent on the itemization date for a judgment. The attached Industry Redline addresses all these issues.

The Proposed Verification Rule Harms Consumer Privacy.

Verification under the FDCPA is designed to prevent a debt collector from collecting a debt that has been paid or "dunning the wrong person."[13] Therefore, instead of responding to a verification request by sending sensitive, non-public information to someone who is not the debtor, the FDCPA requires a debt collector to only "confirm the amount of the debt and the identity of the creditor, and relay that information to the consumer."[14] Courts have declined to require a verification include the disclosure of non-public, personal information especially where the consumer can verify the debt through less sensitive information.[15]

The proposed rule does the opposite. It adopts this approach with no data to suggest that the proposed "document drop" of non-public personal information in response to a simple dispute helps consumers. In fact, our information leads us to believe it facilitates identity theft and the disclosure of sensitive personal information to bad actors.

If the recipient of a dunning letter disputes a debt (orally or in writing), the proposed rule requires the debt collector to provide a litany of highly personal, non-public information. For example, in response to a simple dispute like "this is not my debt," the proposed rule requires a debt collector to send a signed contract or a signed credit application if either exists. Since most credit cards are originated only with credit applications, a misdirected dunning letter for a credit card debt leads to the disclosure of a credit application containing a trove of personal information such as social security number, bank account information, residence, and employment history.

And, if a signed credit application does not exist for a credit card account, the debt collector is required to send "the most recent monthly statement recording a purchase transaction, payment, or balance transfer." We believe consumers want to keep their credit card purchase history out of the hands of persons who have no business reviewing them.

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[13] *Tardi-Osterhoudt v. McCabe, Weisberg & Conway LLC*, No. 1:18-cv-00840 (BKS/CFH), 2019 U.S. Dist. LEXIS 151988, at *32 (N.D.N.Y. Sep. 6, 2019) citing *Stonehart v. Rosenthal*, No. 01-cv-651, 2001 U.S. Dist. LEXIS 11566, at *23, 2001 WL 910771, at *6 (S.D.N.Y. Aug. 13, 2001) (quoting *Chaudhry v. Gallerizzo*, 174 F.3d 394, 406 (4th Cir. 1998)).

[14] *Ritter v. Cohen & Slamowitz, LLP*, 118 F. Supp. 3d 497, 503 (E.D.N.Y. 2015) quoting *Devine v. Terry*, No. 3:13-CV-01023-VLB, 2014 U.S. Dist. LEXIS 138938, at *26 (D. Conn. Sep. 30, 2014).

[15] "A contrary conclusion under these facts would require [the debt collector] to send . . . the true debtor's personal payment information. This information could possibly include such confidential information as the debtor's full social security number, credit score, or credit history. The FDCPA does not require such a result where the alleged debtor, as here, could sufficiently dispute the payment obligation by looking at the last four digits of the true debtor's social security number." *Dunham v. Portfolio Recovery Assocs., LLC*, 663 F.3d 997, 1003-04 (8th Cir. 2011).

Dunning letters can end up in the hands of bad actors, after all, there now is a "growing mail theft 'epidemic' plaguing New York City."[16] Besides, disputes with roommates, neighbors and others can lead to mail intercepts.

The proposed rule's reliance on the United States Postal Service to deliver sensitive verification only exacerbates the problem. "From March 1 through September 30, 2020, the Postal Service reported almost 73 million misrouted First-Class letters."[17] We believe delivery of verification to a consumer's known email address should be the first choice and not the hamstrung option proposed.

Communications restrictions.

We encourage the Department to align the proposed rule with the communications restrictions of Regulation F. There is no data to demonstrate consumers are harmed by the existing communications regulations of Regulation F. To be sure, a review of the CFPB complaint database revealed that since Regulation F became effective on November 30, 2021, through today, **only 261 complaints concerning excessive telephone calls were received from New York consumers over this three-year period**.[18] That is the entire state, not just New York City residents. Of that amount, approximately half the complaints were made against creditors and not debt collectors. The Department has not provided any data to demonstrate a need for restrictions that we believe make it costly and burdensome to make debt collection telephone calls or for rendering them largely ineffective.

The data is even more compelling for electronic communications. The CFPB complaint database revealed that since Regulation F became effective on November 30, 2021, through today, **only 10 complaints concerning electronic communications were received recorded from New York state consumers over this three-year period. Of that amount, only five complaints**

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[16] ABC7 New York, August 16, 2023 available at https://abc7ny.com/nyc-crime-mail-theft-usps-postal-service/13659357/, archived at https://perma.cc/XC3U-42GH ; *see also* 27 Defendants Charged With Crimes Targeting The United States Postal Service, U.S. Attorney's Office, Southern District of New York (Oct. 4, 2023) available at https://www.justice.gov/usao-sdny/pr/27-defendants-charged-federal-crimes-targeting-united-states-postal-service, archived at https://perma.cc/TG4X-AX3U .

[17] Office of Inspector General, United States Postal Service, Audit Report, Misrouted Mail Within the U.S. Postal Service Network, Report Number 20-252-R21 (Feb. 23, 2021) available at https://www.uspsoig.gov/sites/default/files/reports/2023-01/20-252-R21.pdf, archived at https://perma.cc/ME9S-WP8C .

[18] CFPB Complaint Database accessed Nov. 29, 2023 at https://www.consumerfinance.gov/data-research/consumer-complaints/search/?chartType=line&dateInterval=Month&date_received_max=2023-11-29&date_received_min=2021-12-01&issue=Communication%20tactics%E2%80%A2Frequent%20or%20repeated%20calls&lens=Product&product=Debt%20collection&searchField=all&state=NY&subLens=issue&tab=Trends, archived at https://perma.cc/2ZPH-SEZ2

concerned debt collectors.[19] The proposed restrictions on electronic communications are costly and burdensome and would effectively stifle electronic debt collection communications.

There is no data to show these onerous restrictions on speech are warranted especially when other persons can engage in the same speech without any restrictions.

Medical Debt

The proposed rule creates confusion concerning "medical debt." Most if not all debt owed to a hospital or health care provider is covered under existing law. The proposed rule would impose additional requirements on what it calls "medical debt." On the one hand, proposed § 5-76 adds a new definition, "financial assistance policy" which means "a program to reduce or eliminate charges for medical services . . . established by a nonprofit hospital or health care provider." It also defines "covered medical entity" as a certain health care provider.

However, proposed § 5-77(10) imposes additional verification requirements for "medical debt" which "includes debt arising from the receipt of health care services or medical products or devices." Unlike § 5-76, this language focus on the consumer's use of credit, rather than to whom the debt is owed. A consumer may use an existing home equity loan, credit card or other open-end credit plan to purchase medical goods and services. The debt is not owed to a health care provider or hospital, rather, it is owed to a bank or non-bank lender. To be sure, when only a portion of an open-end credit product is used for "health care services or medical products or devices," the proposed rule can be construed to require the debt collector undertake certain activities "in all related medical accounts," including but not limited to "furnish[ing] to the consumer verification on each related medical debt."

In the case of a general-purpose credit card or home equity loan debt, the debt collector will not have information available that would disclose the use of the credit facility for "health care services or medical products or devices." Let's use as an example a credit card originated in 2010. The consumer has made various purchases and never paid the balance in full. In 2015, the consumer used the credit card to pay $125.00 for a prescription drug at CVS. The card was otherwise used only to purchase electronics and travel. It became delinquent and was placed with a collection agency with an unpaid balance of $5,000.00. It is not likely the consumer or the creditor has account statements from 13 years earlier and even if they did it would show a purchase at "CVS" which could just as well be for beauty supplies.

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[19] *Id,* at https://www.consumerfinance.gov/data-research/consumer-complaints/search/?date_received_max=2023-11-29&date_received_min=2021-12-01&issue=Electronic%20communications&page=1&product=Debt%20collection&searchField=all&size=25&sort=created_date_desc&state=NY&tab=List, archived at https://perma.cc/UN7X-8H8W

We request that medical debt is defined as debt owed to a covered entity. The attached Industry Redline addresses this problem.

Effective Date

Our members need time to develop and test whatever rule is adopted. It cannot be ready on "day one" for several reasons. First, industry does not know the content of any new disclosures and must incorporate them into communications that already contain existing federal and New York state mandatory disclosures. The placement of any new disclosures will impact the printing of written communications.

Second, staff must be trained to ensure compliance with new requirements and testing conducted to verify readiness.

Third, existing recordkeeping technologies must be evaluated to determine whether they satisfy new recordkeeping requirements. In-house information technology staff and outside vendors will be required to evaluate existing technologies and program to meet the new requirements. In some cases, we believe entirely new technologies will be required to comply with recordkeeping. Testing will be needed to verify the accuracy and integrity of these technologies.

Because the proposed amendments substantially alter debt collection, we request a January 1, 2025, effective date.

Constitutional Issues the Department Might want to Consider

In addition to the redlines RMAI has provided, RMAI would also like to highlight a rapidly developing constitutional issue related to restrictions on communications that has developed subsequent to New York City's adoption of collection rulemaking, New York DFS's 2014 rule adoption, and the 2019 public comments to the CFPB's Regulation F.

Overly severe restrictions on the number of communications a debt collector may make to a consumer, similar to those contained in the proposed rule, may be unconstitutional.[20]

Typically, restrictions on speech, even commercial speech, that is content based, are subject to strict scrutiny. Under strict scrutiny a court presumes the restriction is unconstitutional and it is the state's burden to demonstrate a compelling state interest that supports the restriction. Here there is none. The commentary provided by the DCWP does not cite any data demonstrating that communications made by debt collectors somehow pose a greater risk of harm than

[20] *Barr v. Am. Ass'n of Political Consultants*, 140 S. Ct. 2335 (2020) and *ACA Int'l v. Healey*, 457 F. Supp. 3d 17, 30 (D. Mass. 2020).

communications made by creditors. Nor does the DCWP provide any data demonstrating that calls made to collect taxes, fines, or penalties owed to the City of New York do not present the same harms the restriction purportedly seeks to product consumers against.[21] However, in the case of debt collectors, existing consumer protections are already in place. *See, e.g.,* 15 U.S.C. §§ 1692c(a), 1692d, 1692d(5).

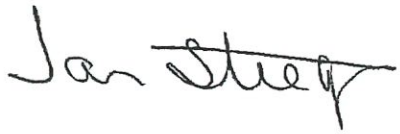
As noted above, data publicly available from the CFPB, the primary federal regulator of debt collectors, identified that over a three-year period a statistically insignificant number of the debt collection complaints were made concerning excessive telephone calls or electronic communications for the entire state of New York. Approximately half the communications were made by creditors, with the proposed rule exempts from coverage. And these are just complaints, *allegations* of frequent calls and not a finding that the communications themselves were made by a debt collector or made with the *alleged* frequency. DCWP does not provide any supporting evidence which would justify the restriction of speech in support of the proposed rule, presuming such restrictions are legal.

Consequently, there is no compelling state interest to prohibit communications by debt collectors when collecting "consumer" debt. Therefore, the restrictions and prohibitions as they are currently drafted in the proposed rule may be unconstitutional.

Conclusion

RMAI would like to thank the Department for the opportunity to comment on the proposed rule. With the modifications mentioned in the attached redlines, RMAI would be supportive of the Department's proposed regulations. If you have any questions or require additional clarification, please contact RMAI General Counsel David Reid at dreid@rmaintl.org or (916) 779-2492.

Sincerely,



Jan Stieger,
Executive Director

Attachment: DCW NOH Proposed Amendment of Rules re Debt Collectors -- Industry Redline 20231127

[21] Under 5-76, government officials and employees are excluded from the definition of debt collector if "collecting or attempting to collect any debt owed is in the performance of his or her official duties." After four decades of regulating creditor debt collection, the proposed rule exempts creditors collecting their own debt,.

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

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

Commented [DR1]: The industry would request the deletion of the phrase "attempted communications." The DCWP indicated that one of the reasons for proposing amendments to the existing rule is to come into alignment with Regulation F (Reg F) that was promulgated by the federal Consumer Financial Protection Bureau (CFPB) in 2021. There is no similar record keeping requirement in Reg F that requires the recording of attempted communications in a formal log. Systems of record would often have an entry of attempts but not in the complicated methodology being proposed. No other jurisdiction in the nation has a similar requirement. All references to this phraseology have been deleted in this proposed redline.

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. A communication that results in a busy signal, does not go through, or was made to a wrong number or address that is not affiliated with the consumer or the consumer's family is not required to be maintained in the log. 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~~; and

(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 which were received by a debt collection agency that were filed by New York City consumers against the debt collection agency, including those filed with the agency directly or with any not-for-profit entity or governmental agency, identifying 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 written 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 written cease-and-desist requests made by New York City consumers, identifying the consumer's name and account information, the date of the request, and the date and purpose of any further contacts by the debt collection agency after receipt of the request from the consumer.

(2) Recordings of [~~complete conversations~~] all telephone ~~communications~~ conversations, 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

Commented [DR2]: If the consumer has no ability to know an attempted communication was made because it did not go through or went to a wrong number or address, what would be the purpose of putting it in the log?

This language is consistent with exceptions contained in Regulation F and the newly adopted District of Columbia debt collection law.

Commented [DR3]: The word "duration" as this data element does not provide any benefit to the consumer and is a data element that cannot be maintained in the case of written communications.

Commented [DR4]: The deletion of the phrase "and a contemporaneous summary of the communication" as the requirement "to maintain a copy of all communications" in paragraph (1) above is sufficient.

Commented [DR5]: Debt collection agencies need to have received the complaint in order to be compliant with this paragraph. The way it reads right now, if a consumer filed a complaint with a non-profit or governmental entity but that complaint was never forwarded to the collection agency, the agency would be in violation for not maintaining it.

Commented [DR6]: The industry would respectfully request that disputes and cease and desist requests be in writing for this information to be included in the log. The intent of what is said in verbal communications can sometimes be subjective and result in different understandings between the two parties.

For example, if a consumer says in response to a request for a payment "yeah right" is that a complaint, dispute, request for verification, or a cease and desist request? Some might say yes and some might say no. Another example, could be when a consumer says "I thought that was paid" but then realizes it was not paid and pays the debt over the phone. Again, some might say "yes" and some might say "no" as to whether it would be applicable.

There tends to be no confusion when it is in writing.

Commented [DR7]: Given that written electronic communications can be received on telephones, it would be more appropriate to use the word "conversations" rather than "communications" in the context of making a recording.

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~~ original creditor, the amount claimed to be due, the [~~civil court~~] index number and the court and county where the case is filed, the date the case was filed, [~~the name of the process server who served process on the consumer, the date, location and method of service of process, the affidavit of service that was filed and~~] the disposition for each case filed, 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.

Commented [DR8]: This rule uses the term "original creditor" and the term "originating creditor" interchangeably. Given that the State of New York and the Department of Financial Services uses the term "original creditor" we would request consistency of use. We have changed all seven references of "originating" creditor to "original" creditor.

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

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

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

Commented [DR9]: This sentence is overly confusing. It starts by stating a record of permitted and not permitted mediums of communications should be recorded. That should be sufficient to accomplish what DCWP is seeking. But then it goes on to require "preferred medium of communication." Presumably if they have permitted the medium, it is a preferred medium? We recommend streamlining the sentence for clarity.

(7) A record of 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 information concerning consumer debt to credit reporting bureaus.

(7) If collecting medical debt on behalf of a covered medical entity, ~~A~~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.

Commented [DR10]: "Debt" is not furnished, "information" is.

Commented [DR11]: Many debt collectors do not collect medical debt. If a debt collector does not collect this asset class, they should not be required to maintain policies addressing hospital financial assistance programs.

Commented [DR12]: Given that communications related to legal proceedings are covered by the court system, if this provision remains, the industry would respectfully request that these communications be excluded from the definition of legal proceedings. A sentence could be added that reads: "Communications related to legal proceedings shall not be considered an attempted communication."

Commented [DR13]: The industry would respectfully request that some reasonable exceptions be permitted. The industry is concerned that certain required disclosures that are required by the federal and state level have already filled up available space on the first page of communications. As such, we can envision a scenario where a clear and conspicuous notice will have to be addressed on another page in the document because to display it on the first page would prevent us from complying with the federal and state requirements for what needs to be on the first page.

In any clear and conspicuous disclosure, any required modifications, explanations or clarifications to other information are presented in close proximity to the information being modified, in a manner so as to be readily noticed and understood, provided that the disclosures may be on another page. Hyperlinks in electronic communications related to modifications, explanations or clarifications are permitted.

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) The last statement date, which is the date of the last periodic statement or written account statement or invoice provided to the consumer by a creditor; (2) The charge-off date, which is the date the debt was charged off; (3) The last payment date, which is the date the last payment was applied to the debt; (4) The transaction date, which is the date of the transaction that gave rise to the debt; or (5) The judgment date, which is the date of a final court judgment that determines the amount of the debt owed by the consumer.~~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

Commented [DR14]: We strongly urge the DCPW to modify its definition of the itemization reference date to reflect the language used by the federal government in their definition contained in Regulation F -- 12 CFR Part 1006.34(b)(3).

Using the charge off balance and charge off date as the standard for itemization is consistent with what the CFPB (Regulation F) and other states, such as California (Cal. Civ. Code § 1788.52), Colorado (CO Rev Stat § 5-16-111), and Maine (Title 32, Chapter 109-A, Subchapter 2 of Maine Revised Statutes), have codified. In New York State itself, in its court rules and affidavits for default judgment applications in consumer credit matters (located at https://www.nycourts.gov/LegacyPDFS/rules/ccr/AO_185.14.pdf), the date and amount of the charge off balance is required. In addition, under the New York Consumer Credit Fairness Act (Senate Bill 153) that took effect in 2022, itemization is required of the total amount of the debt due as of the charge-off.

Creating a new and unnecessary standard will only confuse NYC consumers and the business community.

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.

Medical debt. The term "medical debt" means an obligation or alleged obligation of a consumer to pay any amount whatsoever related to the receipt of health care services, products or devices provided to a person by a hospital licensed under article twenty-eight of the New York Public Health Law, a health care professional authorized under title eight of the New York Education Law, or an ambulance service certified under article thirty of the New York Public Health Law. Medical debt does not include debt charged to a credit card.

Original creditor and originating creditor. The terms "original creditor" or "originating creditor" means the financial institution that owned the consumer credit account at the time the account was charged off, even if that financial institution did not originate the account. ~~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,

Commented [DR15]: This change is necessary to clarify that medical debt is not debt charged to a credit card. There is current legislation pending the Governor's signature that clarifies same. Delaware also recently passed legislation which clarified that credit card accounts are not in scope for medical debt.

Commented [DR16]: The industry would request that the definition of "original creditor" that both DFS and DCWP use is the definition adopted in state law in CPLR 105(q-1) in 2021 which reads:

"Original creditor means the financial institution that owned the consumer credit account at the time the account was charged off, even if that financial institution did not originate the account."

to the extent that New York Public Service Law or any regulation promulgated thereunder is inconsistent with this part; ~~or~~

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

(6) any communication, letters, pleadings, or other correspondence that are delivered by an attorney licensed within the State of New York while performing their duties as an officer of the court during the pendency of an active court matter that is overseen and supervised by the New York State Unified Court System; or

(7) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor.

Commented [DR17]: The industry requests a limited carve out for attorneys to permit licensed attorneys the ability to practice law without creating potential conflicts with the proposed regulations. Please see the New York State Creditors Bar Associations memo for additional explanation.

Commented [DR18]: This is intended to mitigate the risk that employees of the original creditor could be exposed personally under the current definition.

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

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.~~] 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 or orally recorded 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~~ in the eastern time zone;

(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~~];

Commented [DR19]: The industry requests the restoration of the bona fide error defense. It is consistent with the FDCPA which DCWP indicates it wishes to seek. An inadvertent clerical error should not lead to liability, especially if such error has not harmed the consumer or can be easily corrected with no harm to the consumer.

Commented [DR20]: An orally recorded conversation where the consumer grants consent should hold the same level of integrity and legitimacy as a written document.

The proposed rule seems to have contradictory provisions as consumer instructions provided over the phone are permitted in some circumstances while prohibited in other places?

Commented [DR21]: A clarification is needed in this paragraph as consumers could leave New York City and the eastern time zone for vacation or work unbeknownst to the debt collector.

(iii) knowingly communicate or attempt to communicate with the consumer at the consumer's place of employment if 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. Excessive frequency means any communication or attempted communication by the debt collector with a consumer in violation of 12 CFR Part 1006.14.

~~(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~~] 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).

Commented [DR22]: Given the majority of consumers have dropped land lines in favor of cell phones, it is not possible to definitively know where the consumer is at any given time. The way this is drafted if one call's a cell phone and the consumer is at work, the collection agency is in violation of this provision. An easy way to solve the problem is by adding the word "knowingly." If a consumer tells a debt collector that they are always at work between 3pm-9pm and they are not permitted to receive calls, then the debt collector has been put on notice not to call during those hours.

Additionally, if a consumer provides the debt collector with their work number as the "best" or "preferred" number to be contacted but fails to mention that it is a work number, how would a debt collector know that they contacted a consumer at work?

Commented [DR23]: The industry would strongly recommend that New York City use the same requirement for "excessive frequency" as the federal government who spent almost a decade in the development of their requirements which are contained in Regulation F -- 12 CFR Part 1006.14. The industry would like to avoid confusion and accidental errors., given that most debt collectors operate regionally or nationally and must manage accounts in multiple states.

Commented [DR24]: The industry requests the restoration of the bona fide error defense. It is consistent with the FDCPA which DCWP indicates it wishes to seek. An inadvertent clerical error should not lead to liability, especially if such error has not harmed the consumer or can be easily corrected with no harm to the consumer.

Commented [DR25]: There is no way that a debt collection agency "should know" a consumer is legally separated or no longer lives with their spouse unless someone tells them. We respectfully request the deletion of this language.

(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 or orally recorded consent of the consumer or their attorney given directly to the debt collector [~~after the institution of debt collection procedures, or without the prior written consent of the consumer's attorney~~], or without the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy.

(3) Communicate with any person other than [~~the consumer's attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, a debt collector to whom or to whose employer the debt has been assigned for collection, a creditor who assigned the debt for collection, or the attorney of that debt collector or the attorney for that debt collector's employer~~] those persons enumerated in paragraph (2) of this subdivision in a manner which would violate any provision of [~~this part~~] paragraph (1) of this subdivision if such person were a consumer.

(4) [~~After institution of debt collection procedures, communicate~~] Communicate with a consumer with respect to a debt if the consumer has notified the debt collector [~~in writing~~] in writing or the debt collector has an orally recorded conversation 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~~

Commented [DR26]: An orally recorded conversation where the consumer grants consent should hold the same level of integrity and legitimacy as a written document.

The proposed rule seems to have contradictory provisions as consumer instructions provided over the phone are permitted in some circumstances while prohibited in other places?

Commented [DR27]: While a written document would be clearer and remove any ambiguity that may come through an oral conversation, an orally recorded conversation would at least provide the opportunity to review the conversation to discern intent.

Phone calls could involve vague language such as "I really don't like getting these calls." Does that count? What if they say "stop calling me" to start the conversation but then agrees to set up a payment plan?

The proposed rule seems to have contradictory provisions as consumer instructions provided over the phone are permitted in some circumstances while prohibited in other places?

~~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 creditor or debt collector obtains revocable consent from the consumer in writing or orally recorded, given directly to the creditor or 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 or orally recorded 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.

(v) 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.

Commented [DR28]: Consent can be provided to the creditor as well, including within the original lending agreement. In fact, contact information provided to the creditor is always passed down to the debt collector. It is how the debt collector gets the consumer's name, address, telephone number, and email address. What would be the purpose of not allowing the least intrusive forms of contact (i.e. email or text), which is also often the consumers preferred medium of communication, while allowing the more intrusive forms of contact (i.e. phone calls and letters which can be intercepted by a third party living with the consumer)?

Commented [DR29]: An orally recorded conversation where the consumer grants consent should hold the same level of integrity and legitimacy as a written document.

The proposed rule seems to have contradictory provisions as consumer instructions provided over the phone are permitted in some circumstances while prohibited in other places?

Commented [DR30]: Often, there is no way that a debt collector would know a telephone number or email address is associated with a business unless the consumer tells the debt collector. For example, if a business uses a gmail account or the consumer provides a work cell phone for contact, how could you discern it was provided to the consumer by the 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~~ accessible 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

Commented [DR31]: Edit is predicated upon the fact that messages, even sent privately, may be "viewable" to the general public if, for example, a consumer accesses the message at a public location (library computer, shared phone, etc.).

Commented [DR32]: Cell phones that get emails can be set up to produce a sound even though that was not the intent of the debt collector. There is also an evidentiary problem in that it is easy to prove when a debt collector made a phone call or sent a message but almost impossible to prove whether that communication actually caused a phone to "produce an alert or other sound." This addition makes no sense because only the consumer can control whether or not the phone produces an alert or other sound.

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~~], 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

Commented [DR33]: The FDCPA bona fide error defense should remain in the rule.

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~~ recorded verbal conversations with a consumer in connection with the collection of a debt ~~where the communication is recorded by the debt collector~~ that the communication is being recorded ~~and the recording may be used in connection with the collection of the debt~~.

(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 that have not been disclosed or accepted by the consumer, provided this paragraph does not apply if the consumer initiates the communication through the use of the medium;

(4) taking or threatening to take any nonjudicial action to effect dispossession or disablement

Commented [DR34]: There is no way that a debt collector "should know" a consumer's language preference unless someone tells them. We respectfully request the deletion of this language.

Commented [DR35]: Given that written electronic communications such as emails and text messages can be received on telephones, it would be more appropriate to use the word "conversations" rather than "communications" in the context of making a recording.

The statement that the "recording may be used in connection with the collection of the debt" could be a false statement and could be in violation of the FDCPA. We cannot disclose the purpose of the call until we have confirmed that the person who is engaged in conversation is the debtor.

Commented [DR36]: A consumer may choose to communicate via text messages with the debt collector. The debt collector will have no idea if the consumer is on a phone plan that charges for text messages. Consequently, an exception needs to be added to this language.

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~~]. 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~~ may be reported to a consumer reporting agency and waited 14

Commented [DR37]: The industry requests the restoration of the bona fide error defense. It is consistent with the FDCPA which DCWP indicates it wishes to seek. An inadvertent clerical error should not lead to liability, especially if such error has not harmed the consumer or can be easily corrected with no harm to the consumer.

Commented [DR38]: "Will" is misleading to the consumer, and conflicts with other federal and state disclosures that state that debt "may" be credit reported.

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.~~

~~(i) 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;~~

~~(ii) 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, or by electronic means consistent with 12 CFR Part 1006.34:

(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~~

Commented [DR39]: Regulation F provides detailed requirements for communicating a validation notice via electronic means. These provisions should align with federal law.

Commented [DR40]: The industry would request a small clarification by deleting the word "such" as it suggests that a specific person (the one referenced in paragraph iii above) has to answer a telephone. This is highly problematic as we cannot guarantee who might answer a phone at a place of business.

~~thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector~~] telephone number that is answered by ~~such~~ a natural person;

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

~~**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;

Commented [DR41]: This paragraph is impossible to redline given that NYS DFS rulemaking is not complete. We would respectfully request that DCPW allow the state to finish and finalize their rules first. Otherwise, we risk conflicting consumer notices.

Debt collectors are already required to provide specific notices related to verification by both the federal government and the State of New York. The notice being suggested in this paragraph is different from both the federal and state notice requirements. This is thoroughly going to confuse the consumer. It should also be noted that this notice conflicts with the federal safe harbor provision.

Additionally, since roman numeral (i) above states "all information required by federal or state law" is required to be provided in the validation notice, this notice is not needed.

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~~B) 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

Commented [DR42]: These additional disclosures should be stricken as they require the inclusion of detailed extraneous data that will confuse consumers. Given the proposed narrowing of the itemization reference date, this section will require the inclusion of voluminous accounting information. In CFPB usability testing, it was determined that "…participants said they thought [the balance] would continue to increase based on the current interest and fee accumulations in the model validation notice." Consumers who receive an additional complex accounting in the initial communication will only be more confused about whether the balance is changing or how it was calculated. It is respectfully submitted that this information is more appropriate to be provided in response to a validation of debt request.

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 the information and documents required by paragraph (j) of Rule 3016 of the Civil Practice Laws & Rules:

Commented [DR43]: In 2021, the Consumer Credit Fairness Act (CCFA) was signed into law by Governor Hochul. The CCFA provides in great detail what information is needed to bring suit on a debt in New York State. What is required in CCFA is more nuanced and detailed than what is provided in the text below. The industry strongly recommends that the rule be consistent with New York State law.

IF DCWP AGREES WITH THE EDIT ABOVE, PARAGRAPHS (A) THROUGH (C) BELOW WOULD BE DELETED. HOWEVER, IS DCWP DECIDES TO PROCEED WITH THE DRAFT LANGUAGE, THE INDUSTRY WOULD REQUEST THE FOLLOWING EDITS SO THAT IT CAN COMPLY WITH DCWP'S INTENT.

(A) a copy of the judgment if a court has reduced the facts to judgment, or a copy of the debt document issued by the ~~originating~~ original creditor or an original written confirmation evidencing the transaction resulting in the indebtedness to the ~~originating~~ original creditor, including the signed contract or signed application that created the debt or, if no signed contract or application exists, a copy of a document provided to the alleged debtor while the account was active, demonstrating that the debt was incurred by the consumer. For a revolving credit account, the charge-off account statement, and the most recent monthly statement recording a purchase transaction, payment, or balance transfer shall be deemed sufficient to satisfy this requirement; ~~. 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 medical debt arising from the receipt of health care services, medical products, or devices, ~~the~~ a debt collector collecting on behalf of a covered medical entity 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 if a new

Commented [DR44]: If a court has determined that a debt is rightfully owed and it is reduced to a judgment, that judgment becomes the applicable document that must be provided the consumer.

Commented [DR45]: Most documents and evidence are stored electronically today, not as physical copies maintained in a filing cabinet. This sentence would essentially invalidate almost all debt.

Additionally, the final sentence does not recognize that a number of admissible documents are generated after default, including but not limited to the charge-off statement (which is referenced earlier in the paragraph).

Commented [DR46]: The federal government, New York state, and the other 49 states recognizes the validity of a judgment for the verification of a debt. How does NYC have the authority to invalidate judgments recognized by all of those jurisdictions?

New York state just adopted in 2021 the Consumer Credit Fairness Act which provides extensive and detailed requirements for obtaining a judgment, including a default judgment. Additionally, included in section 306-d of the Civil Practice Law and Rules is the following provision: "No default judgment based on the defendant's failure to answer shall be entered unless there has been compliance with this section, and at least twenty days have elapsed from the date of mailing by the clerk. No default judgment based on the defendant's failure to answer shall be entered if the additional notice is returned to the court as undeliverable."

Commented [DR47]: Often if a notice is returned a new address is not provided. Therefore this requirement may not be something that we can actually do within the provided time frame. Recommend revising this to reflect this reality.

forwarding address for the consumer is provided by U.S. Mail or delivery service.

(8) ~~*Originating*~~ *Original creditor*. A debt collector must provide the consumer the address of the ~~originating~~ original creditor of a debt within 45 days of receiving a request from the consumer for such address, provided that if the servicer is the name the consumer is most readily going to identify with the debt, that name and address may be provided. The consumer may make such request orally or in writing, or electronically if the debt collector [~~permits~~]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.

Commented [DR48]: Most consumers are going to have no idea who the original creditor is on a fintech product. Since this is in response to the NYC validation request specifically it would be more consumer friendly to provide the fintech servicer name.

(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 collected on behalf of a covered medical entity 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.~~] 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~~4) 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.

(i) ***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 collecting on behalf of a covered medical entity 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.

Commented [DR49]: Requiring a written disclosure to be sent out within 5 days of each oral communication or every 30 days will create unintended consequences in that: (1) consumers may likely feel harassed by the constant deluge of disclosures; (2) consumers are likely become desensitized to and unlikely to read the notices or future notices; (3) it will create significant environmental costs through excess and unneeded letters being mailed that are likely not to be read; and (4) it will reduce the availability of credit to consumers if the debt is deemed to be too complicated to collect.

How will this language benefit the consumer? Under New York state law: (1) the consumer will still owe the debt; (2) the creditor/debt collector is still allowed to attempt collection on the debt; (3) the debt collector is still prohibited from suing; and (4) the debt collector is still prohibited from reviving the statute of limitations through a payment or affirmation of the debt.

Specifically, section 214-I of the Civil Practice Law and Rules which was codified in 2021 by New York's Consumer Credit Fairness Act (CCFA) that states: "Notwithstanding any other provision of law, when the applicable limitations period expires, any subsequent payment toward, written or oral affirmation of or other activity on the debt does not revive or extend the limitations period."

Lastly, as the law is currently written in New York State and New York City, consumers are provided with notice of the legal status of their debt when debt collectors try to collect debt from them, which is when it makes sense to inform the consumer of the expiration of the Statute of limitations on their account so that they can make an informed decision about their next steps concerning that debt. Specifically, the New York State Department of Financial Services requirement in 23 NYCRR 1.3 reads that "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 debt," the debt collector must inform the consumer that the Statute of Limitations on the debt has expired. Also, the current Rules of the City of New York in § 2-191 requires debt collectors to inform consumers that the Statute of Limitations has expired on their debt "…in every permitted communication for each debt that the debt collection agency is seeking to collect that is beyond the applicable statute of limitations…"

(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 collecting on behalf of a covered medical entity 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 medical 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(j) 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.

EFFECTIVE DATE: All new provisions contained in this rulemaking shall apply to debts charged-off on or after January 1, 2025, or for debts not charged off, the new provisions will apply to debts that defaulted on or after January 1, 2025.

Commented [DR50]: The industry requests a date certain that the revised rules take effect. Given the significant changes to the rules, we respectfully request that they be applied prospectively. To not apply the rules prospectively, will automatically place the industry in non-compliance (example: the log). The industry cannot be expected to know what new requirements a future regulatory change will require.