RECEIVABLES MGMT. ASSOC. INTL.
SETTING THE GLOBAL STANDARD

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December 19, 2022

By Electronic Submission to rulecomments@dcwp.nyc.gov

NYC Department of Consumer & Worker Protection
Commissioner 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) related to proposed rulemaking on debt collection as requested in DCWP's invitation for comments issued on November 4, 2022.

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)[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 10.0 (February 3, 2022), publicly available at https://rmaintl.org/GovernanceDocument (last accessed December 18, 2022).
[2] Receivables Management Association International, *Code of Ethics* (August 13, 2015), publicly available at https://rmaintl.org/about-rmai/code-of-ethics/ (last accessed December 18, 2022).
[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 (last accessed December 18, 2022).

- 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 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 (publicly available at http://files.consumerfinance.gov/f/documents/20160727_cfpb_Outline_of_proposals.pdf (last accessed June 7, 2021).

[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 on December 28, 2022 with final adoption presumably in the second or third quarter of 2023. It is imperative that DCWP's rulemaking not contradict the State of New York's rules.

Constitutional Issues DCWP 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 2010 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.[10]

Typically, restrictions on speech, even commercial speech, that are 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 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. 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).

Data publicly available from the CFPB, the primary federal regulator of debt collectors, identified that over a two-year period from December 19, 2020 to December 19, 2022, only 126

[10] *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).

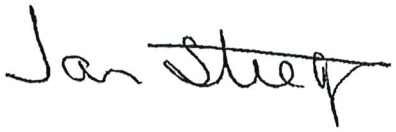
complaints were made by New York City residents concerning the frequency of debt collection calls. This accounted for a statistically insignificant number of the debt collection complaints for the City of New York and equated to approximately one complaint every six days or approximately one complaint for every 67,206 residents of New York City. And these are just complaints, *allegations* of frequent calls and not a finding that the calls 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 commercial 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 by DCWP may be unconstitutional.

Conclusion

RMAI would like to thank DCWP 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

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

Proposed Rule Amendments

Section 1. Section 2-191 of Subchapter S of Chapter 2 of Title 6 of the Rules of the City of New York is amended to read as follows:

§ 2-191. Disclosure of Consumer's Legal Rights Regarding Effect of Statute of Limitations on Debt Payment.

~~(a)~~ The information about the consumer's legal rights, which a debt collection agency is required to provide the consumer pursuant to § 20-493.2(b) of the Administrative Code, [~~shall~~] must be included clearly and conspicuously in every permitted communication for each debt that the debt collection agency is seeking to collect that is beyond the applicable statute of limitations~~, and [shall be]~~ ~~must state as follows:~~

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

~~1. The law limits how long a consumer can be sued for a debt. The time for suing you to collect this debt has EXPIRED. This means: THIS DEBT IS NOT ENFORCEABLE IN COURT.~~
~~2. It is a violation of federal law to sue or threaten to sue to collect time-barred debt (or debt that is beyond the Statute of Limitations).~~

Commented [DR1]: This regulation pre-dates the adoption of the state-wide disclosures in 2014 and the Consumer Credit Fairness Act in 2021. The industry respectfully requests one uniform state-wide disclosure and not a bifurcated system that requires the industry to produce multiple (and potentially conflicting) disclosures.

By requiring three sets of overlapping consumer notices (federal, state, and local) on the first page, it will require a page measuring 11x17. Most small businesses in our industry do not have printers that can produce an 11x17 printed document. The length of the consumer notices will be overwhelming and will greatly increase the likelihood that they will not be read.

~~3. If you would like to learn more about your legal rights and options, you can consult an attorney or a legal aid organization."~~

~~(b) When such information is delivered in writing, the required statement provided in subdivision (a) of this section [shall] 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 type on the permitted communication, and [shall] must be placed adjacent to the identifying information about the amount claimed to be due or owed on such debt.~~

~~(c) A debt collection agency must maintain reasonable procedures for determining whether the statute of limitations applicable to a debt or alleged debt it is collecting or attempting to collect has expired.~~

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

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

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

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

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

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

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

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

Commented [DR2]: The industry would request the deletion of the phrase "attempted communications or exchanges." 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.

As for the reference to "exchange," we do not see how it adds anything that is not already covered by the word "communication" and it is not defined in the regulations.

NOTE: INTENTIONALLY LEFT BLANK BELOW SO AS TO PREVENT THE COMMENTS IN THE MARGINS FROM BEING TRUNCATED.

(6) A log of all communications~~, attempted communications or exchanges~~ by any medium between a debt collection agency and a consumer in connection with the collection of a debt; for each communication, ~~attempted communication or exchange,~~ the log must identify the date~~,~~ and time ~~and duration~~, the method of communication, the names ~~and contact information~~ of the persons ~~involved~~ participated in the communication ~~and a contemporaneous summary of the communication~~. 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.

(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~~] Monthly logs of the following:

NOTE: INTENTIONALLY LEFT BLANK BELOW SO AS TO PREVENT THE COMMENTS IN THE MARGINS FROM BEING TRUNCATED.

Commented [DR3]: The industry would request the deletion of:

(1) The phrase "or exchanges" as it does not add anything that is not already covered by the word "communication" and it is not defined in the regulations;
(2) 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;
(3) The phrase "and contact information" as the name of the employee should be sufficient to identify the employee; and
(4) 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 should be sufficient.

Commented [DR4]: The industry respectfully requests a definition for the term "log" given that it is an important term that is used in several places and it is not a defined term. We would request the following definition: "Log means electronic databases and tools used to record all events that are commensurate with the collection of a debt."

This sentence is requested for clarity. Many debt collectors maintain the information that is being sought in a system of record (i.e. a data management term for an information storage system that is the authoritative data source). The industry is concerned that some might view a "log" to be a separate physical document that maintains the same information as a system of record (and notably in a less secure fashion).

Commented [DR5]: 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.

(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 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 the 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 with all NYC consumers or with a randomly selected sample of at least 5% of all calls made or received by the debt collection agency [~~and a copy of contemporaneous notes of all conversations with consumers~~]. The method used for randomly selecting the recorded calls [~~shall~~] must be [~~included in the file where the tape recordings are~~] maintained by the agency and a record in each consumer's account must identify the calls recorded. If an agency elects to record a randomly selected sample of at least 5% of all calls made or received by the agency, it must maintain a log of the total number of calls made or received on a monthly basis and the total number of such calls recorded.

Commented [DR6]: 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 [DR7]: 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 [DR8]: 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.

NOTE: INTENTIONALLY LEFT BLANK BELOW SO AS TO PREVENT THE COMMENTS IN THE MARGINS FROM BEING TRUNCATED.

(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. 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 [DR9]: 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) If known, Aa 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 [DR10]: 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 all information concerning a debt furnished to a consumer reporting agency, including the date the debt collection agency notified the consumer about the debt before furnishing it and the period of time it waited to receive a notice of undeliverability.

Commented [DR11]: "A record of all debt furnished" is not an accurate description for what is being sought in this paragraph. "Debt" is never "furnished."

(8) A record of any unverified debt notice issued or received by the debt collection agency, including any unverified debt 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 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.

Commented [DR12]: "Debt" is not furnished, "information" is.

(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 conversations with consumers, until three years after the agency's last collection activity on the debt.

(2) For recordings of conversations 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 from the date the record was created.

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

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

Clear and conspicuous. The term "clear and conspicuous" means readily understandable. In the case of written and electronic record disclosures, a clear and conspicuous statement, representation or element being disclosed is of such location, size, color and contrast to be readily noticeable and legible to consumers. In the case of oral disclosures, a clear and conspicuous disclosure is given at a volume and speed sufficient for a consumer to hear and comprehend it. In any clear and conspicuous disclosure, any required modifications, explanations or clarifications to other information are presented in close proximity to the information being modified, in a manner so as to be readily noticed and understood, provided that the disclosures may be on another page if it is not possible to provide it on the same page because of the length of the text. Hyperlinks in electronic communications related to modifications, explanations or clarifications are permitted.

Electronic communication. The term "electronic communication" means communication by electronic means, 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.

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;

Commented [DR13]: 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 [DR14]: 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 footnote will have to be addressed on another page in the document because to display it on the same page would prevent us from complying with the federal or state requirements. There is only so much space on the first page of communications.

(2) customer service representatives who collect or attempt to collect debt in a language other than English;

(3) a translation service for the collector's website or for written communications; and

(4) a service that interprets phone conversations in real time.

Limited-content message. The term "limited-content message" means an attempt to communicate with a consumer by leaving a voicemail message that includes all of the following content, that 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.

§ 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 the principal purpose of which is the collection of any debts or who regularly collects, or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due to another person. The term does not include:

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

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

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

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

(5) any person while performing the activity of serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt, or serving, filing or conveying formal legal pleadings, discovery requests, judgments or other documents pursuant to the applicable rules of

civil procedure, where such person is not a party, or providing legal representation to a party, to the action;

(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 [DR15]: 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 [DR16]: This is intended to mitigate the risk that employees of the original creditor could by 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.

§ 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 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.

Commented [DR17]: 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.

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

(1) [~~After institution of debt collection procedures, without~~] Without the prior written consent of the 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 o'clock ante meridian and before 9 o'clock post meridian time in the eastern time zone ~~at the consumer's location~~;

Commented [DR18]: 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.

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

(iii) knowingly communicate or attempt to communicate with the consumer at the consumer's place of employment [if] ~~unless~~ if the debt collector knows [~~or has reason to know~~] that the consumer's employer or supervisor [~~prohibits~~] ~~permits~~ 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.

NOTE: THE INDUSTRY WOULD STRONGLY RECOMMEND THAT THE FOLLOWING TEXT BE DELETED AND THAT THE DEFAULT BE THE NEWLY CREATED CALL CAPS CONTAINED IN REGULATION F. AS AN ALTERNATIVE, THE INDUSTRY REQUESTS THAT THE TEXT MIRROR THE NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES TEXT FOR CONSISTENCY BETWEEN NEW YORK STATE AND NEW YORK CITY REQUIREMENTS TO AVOID CONFUSION AND ACCIDENTAL ERRORS. MOST DEBT COLLECTORS OPERATE REGIONALLY OR NATIONALLY AND MUST MANAGE ACCOUNTS IN MULTIPLE STATES.

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

~~(B) The date of the first day of such a seven-consecutive-calendar-day period is the day of the first such communication, attempted communication or exchange. In making its calculations, the debt collector need not include any communication, attempted communication or exchange between a consumer and the debt collector which is initiated by or at the request of a consumer or in response to a communication from the consumer, or any communication which is required by law.~~

[~~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.

Commented [DR19]: 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 [DR20]: The industry respectfully requests that the proposed edit be changed back to how it was previously worded. It is important to keep in mind that a person's place of employment could be their home. In fact, working from home has become quite common due to the pandemic. If the word "permits" is used, the industry will not be able to communicate with the consumer at their home. However, a consumer can "prohibit" communication at any number under the FDCPA, including their home. As such "prohibits" is better than "permits" as it does not create needless obstacles to open communication.

Another common scenario that could place debt collectors in unknowing violation of this provision is when a consumer provides their work number to the debt collector as a good number to communicate with them.

Commented [DR21]: 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.

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

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

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

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

The debt collector may, however:

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

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

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

~~(C) where applicable~~] to the extent such notice was not previously provided, to notify the consumer that the debt collector or creditor intends to invoke a specific remedy if 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~~

Commented [DR22]: This "floating" and unnumbered sentence seems to be misplaced? Might we suggest that it be somehow incorporated into paragraph (1)?

Commented [DR23]: 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.

Commented [DR24]: Phone calls often include vague language such as "I really don't like getting these calls." Does that count? What if they say that to start, but then agree to set up a payment plan? It is much clearer the consumer's intent if it is received in writing.

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

(i) A debt collector must provide a written validation notice to the consumer pursuant to subdivision (f) prior to contacting a consumer by electronic communication. A debt collector may only use a specific email address, text message number, or specific electronic medium of communication if:

(A) the consumer provided consent to the creditor or debt collector ~~obtains consent from the consumer~~ to use such email address, text message number, or medium of communication to communicate about the debt, or

Commented [DR25]: 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 consumers name, address, and telephone number. Why would we ban the least intrusive forms of contact?

(B) the consumer used such email address, text message number or medium of communication to communicate with the debt collector about a debt within the past 60 days and has not since opted out of communications to that email address, text message number or medium of communication or opted out of all electronic communications generally.

(ii) 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.

(iii) The debt collector must include in every electronic mail communication to the consumer a clear and conspicuous statement describing a reasonable and simple method by which the consumer can opt-out of further electronic communications or attempts to communicate by the debt collector. 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 [DR26]: There is no way that a debt collector "should know" a telephone number is associated with a business unless the consumer tells the debt collector.

We respectfully request the deletion of this language.

(7) Communicate with a consumer on a social media platform, unless the debt collector obtains consent from the consumer to communicate on the social media platform and the communication is not viewable by 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 an unverified debt notice 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 an alert or other sound~~, 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;

Commented [DR27]: Cell phones that get emails can be set up to produce a sound even though that was not the intent of the debt collection agency. By incorporating "or produce an alert or other sound," this revision would codify a claim that typically fails under the FDCPA (i.e., a text message, email, push alert, or other phone notification should be treated like a phone call for purposes of harassment). 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.

(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 facsimile thereof;

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

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

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

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

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

(ii) become subject to any practice prohibited by this part;

(6) the false representation [~~of~~] or implication made in order to disgrace the consumer that the consumer committed any crime or other conduct;

(7) the false representation or implication that accounts have been turned over to innocent purchasers for value;

(8) the false representation or implication that documents are legal process;

(9) the false representation or implication that documents are not legal process forms or do not require action by the consumer;

(10) the false representation or implication that a debt collector operates or is employed by a consumer reporting agency as defined by 15 U.S.C. § 1681a(f);

(11) the use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval;

(12) the use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer;

(13) the use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization, unless the general public knows the debt collector's business, company or organization by another name and to use the true name would be confusing;

(14) [~~after institution of debt collection procedures,~~] the false representation of the character, amount or legal status of any debt, or any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt[~~, except that the employer of a debt collector may not be held liable in any action brought under this provision if the employer shows by a preponderance of the evidence that the violation was not intentional and occurred despite the maintenance of procedures reasonably adapted to avoid any such violation~~];

(15) except [~~as otherwise provided under 6 RCNY § 5-77(a) and except for any communication which is required by law or chosen from among alternatives of which one is required by law~~] for limited-content messages and where otherwise expressly permitted by federal, state, or local law, the failure to disclose clearly and conspicuously in all communications made to collect a debt [~~or to obtain information about a consumer,~~] that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose;

(16) the use of any [~~name that is not the debt collector's actual name; provided that a debt collector may use a name other than his actual name if he or she uses only that name in communications with respect to a debt and if the debt collector's employer has the name on file so that the true identity of the debt collector can be ascertained~~] assumed name; provided that an individual debt collector may use an assumed name when communicating or attempting to communicate with a consumer about a debt if that collector uses the assumed name consistently and is the only person using that assumed name, and the assumed name is on file so that the true identity of the collector can be ascertained;

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

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

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

(20) except where expressly ~~permitted~~ prohibited by federal, state, or local law, the failure to disclose clearly and conspicuously in all verbal ~~telephone communications~~ 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~~.

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

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

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

(3) causing charges to be made to any person for communications by misrepresentation of the true purpose of the communication. Such charges include collect telephone calls and [~~telegram~~] text message or mobile phone data fees that have not been disclosed or accepted by the consumer or if the consumer chooses to communicate through that medium;

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

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

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

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

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

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

Commented [DR28]: 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 [DR29]: 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.

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 [DR30]: A consumer may choose to communicate via text messages with the debt collection agency. The agency 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.

(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;

Commented [DR31]: 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.

(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 credit reporting agency, as defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. § 1681a(f)), information about a debt before the debt collector:

(i) notifies the consumer, by mail~~, telephone, or in person,~~ about the debt, including the current amount of the debt and the business name of the debt collector, and informs the consumer that:

Commented [DR32]: Including these disclosures on calls will lead to higher consumer hang up rates and will impact the ability to educate the consumer about the debt and allow them the opportunity to work with us to get it resolved.

(A) the debt may be reported to a credit reporting agency; and

(B) New York City consumers can obtain information about their rights on the New York City Department of Consumer and Worker Protection's website at www.dcwp.nyc.gov; or

(ii) sends the consumer a validation notice pursuant to subdivision (f) of this section that states the debt may be reported to a credit reporting agency.

If the debt collector elects to notify a consumer about a debt pursuant to subparagraph (i) of paragraph (10) of this subdivision by mail, they must wait no less than 14 consecutive days after they place the notice in the mail, to receive a notice of undeliverability. 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 a notification during the waiting period, the debt collector must not furnish information about the debt to a credit reporting agency until the debt collector otherwise satisfies subparagraph (i) of paragraph (10) of this subdivision.

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 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 sue a consumer 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 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 "unable to verify notice" sent to the consumer pursuant to subdivision (f) of this section.

(f) Validation of debts.

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

~~(i) the amount of the debt;~~

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

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

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

~~(B) send a written explanation or clarification to the consumer, after having conducted an investigation, setting forth to the extent applicable the reason why the creditor believes the account of the consumer~~

~~was correctly shown in the written notice required by 6 RCNY § 5-77(f)(1) and, upon the consumer's request, provide copies of documentary evidence of the consumer's indebtedness. In the case of a billing error where the consumer alleges that the creditor's billing statement reflects goods not delivered in accordance with the agreement made at the time of the transaction, a creditor may not construe such amount to be correctly shown unless it determines that such goods were actually delivered, mailed, or otherwise sent to the consumer and provides the consumer with a statement of such determination.~~

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

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

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

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

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

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

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

~~**Important Additional Consumer Rights under New York City Law:**~~

~~I. You may **contact** a debt collector at **any time, and by any means**, during the collection of a debt to dispute or request verification of the debt.~~

~~II. The debt collector **must:**~~

Commented [DR33]: 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.

Commented [DR34]: 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.

~~(1) Provide you verification of the debt in response to your first dispute or request for verification, within 30 days of receiving such dispute or request, and stop collecting until it provides this information in writing to you; or~~

~~(2) Provide you a notice in writing stating that it was unable to verify the debt within 30 days of receiving a dispute or a request, and stop collecting on the debt;~~

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

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

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

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

~~(ii)~~ (2) *Translated Notices*. 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 provide such a ~~translated~~ validation notice to the consumer ~~in the language requested~~ within 30 days of such request~~, and the notice must be completely and accurately translated into such language. A debt collector is not required to provide the translated validation notice required by this paragraph to the consumer more than once during the period that the debt collector owns or has the right to collect the debt~~. If the consumer disputes the debt or requests verification of the debt in the same language as the ~~translated~~ validation notice required by this paragraph, the verification letter or unable to verify notice sent by the debt collector must also be ~~translated~~ in the same language as the validation notice required by this paragraph~~requested by the consumer~~.

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

Commented [DR35]: The proposed amendment begins with a reference to "validation notices in a language other than English" that are "offered" by the debt collector to consumers. Thus, this non-English notice already exists. However, the remaining text refers to a "translated notice" which suggests that the existing, non-English validation notice is not the object of the proposed rule and English validation notices must be translated into non-English. Our redline makes clear that the debt collectors are required to provide non-English validation notices it offers to consumers. Second, the use of the phrase "completely and accurately translated" in this paragraph also suggests that debt collectors are "translating" validation notices, which is not always the case. To be sure, the validation notice provided here is very likely *not* a translation of the debt collector's English notice, but one made originally in the non-English language. Debt collectors can choose to provide non-English validation notices that are not translations of English validation notices, but notices originally made in non-English. The first sentence of the proposed rule recognizes as much ("If a debt collector offers consumers validation notices in a language other than English . . ."). And debt collectors can lawfully make verification letters and "unable to verify" notices that are not translations but are originally made in non-English, so we have removed the reference to the same being "translated." Finally, the proposed amendment's requirement that the non-English validation notice "must be completely and accurately translated" is redundant. Section 5-77(d)(18) already prohibits "the false, inaccurate, or partial translation of *any communication* when the debt collector provides translation services." (Emphasis added). We note that such a requirement was not proposed for the "translated" verification letter or "unable to verify" notice. Further, the original proposed text reinforces the incorrect interpretation that non-English validation notices, verification letters and unable to verify notices are required to be "translations" of English validation notices used by debt collectors.

(4) [~~The failure of a consumer to dispute the validity of a debt under 6 RCNY § 5-77(f) shall not be construed by any court as an admission of liability by the consumer~~] *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 to request the name and address of the original creditor.

(5) *Verification*. A debt collector must provide a consumer verification of a debt or provide an "unverified debt notice" within 30 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 permits electronic communications, 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 the verification information required in this section. The debt collector must cease collection of the debt until such written verification has 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 such verification to the consumer in writing by mail or delivery service unless the consumer has consented to receive electronic communications in compliance with § 5-77(b)(5).

Verification of a debt must include the information and documents required by paragraph (i) of Rule 3016 of the Civil Practice Laws & Rules.~~:~~

IF DCWP AGREES WITH THE EDIT ABOVE, ROMAN NUMERALS (i) THROUGH (iv) 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.

(i) 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. ~~Computer documents or electronic evidence created or generated after default on the indebtedness shall not qualify as such confirmation~~;

(ii) to the extent not already provided in the validation notice, the written documentation itemizing the principal balance of the debt that remains or is claimed or alleged to remain due and all other charges that are due or claimed or alleged to be due, including a copy of the final statement, if applicable, of account issued by the ~~originating~~ original creditor and a document itemizing: (1) the total amount remaining due on the total principal balance of the indebtedness to the ~~originating~~ original creditor, provided that the principal balance for revolving lines of credit shall be the charge-off balance and (2)

Commented [DR36]: 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.

Commented [DR37]: 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 [DR38]: 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 [DR39]: Not all asset classes maintain final statements.

Commented [DR40]: An exception needs to be made for revolving lines of credit (such as credit cards) where the charge-off principal balance includes compounded interest. Banks do not have the ability to separate out compounded interest on balances that the consumer elects to carry over month after month, while making monthly minimum payments. If banks can't provide this information to a consumer, it is impossible to expect debt collection agencies to provide it.

each additional charge or fee claimed or alleged to be due that separately (i) lists the total for each charge or fee and the date that each charge or fee was incurred, provided that the charge or fees for revolving lines of credit shall be post-charge-off charges or fees; and (ii) identifies and describes the basis of the consumer's obligation to pay it;

(iii) a statement describing the complete chain of title from the original creditor to the present creditor, including the date of each assignment, sale, and transfer; and

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

(6) *Unverified Debt Notice*. If a debt collector cannot provide a consumer with verification of a debt in response to a dispute or request for verification, the debt collector must respond in writing to the consumer within ~~30~~ 60 days of receiving the dispute or a request for verification 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~~.

Commented [DR41]: 60 days is consistent with the CFPB standard as DCWP indicates they are attempting to seek.

(7) ~~*Originating*~~ *Original Creditor*. A debt collector must provide the consumer the address of the ~~originating~~ original creditor of a debt within 30 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, at any time during the period in which the debt collector owns or has the right to collect the debt. After receiving such 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. The term original creditor has the same meaning as defined in Section 105 of the Civil Practice Laws & Rules.

Commented [DR42]: 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.

Commented [DR43]: 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."

(8) *Electronic Communications*. If a debt collector delivers a 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.

(g) [~~*Liability*. The employer of a debt collector is liable for the debt collector's violation of 6 RCNY § 5-77. A debt collector who is employed by another to collect or attempt to collect debts shall not be held liable for violation of 6 RCNY § 5-77~~] Reserved.

(h) *Public Websites*. Any debt collector that utilizes, maintains, or refers 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**", 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 available in multiple languages on the Department's website, [~~www.nyc.gov/dca~~] www.nyc.gov/dcwp.

EFFECTIVE DATE: All new provisions contained in this rulemaking shall apply to accounts charged off on or after January 1, 2024, or for accounts not charged off, the new provisions will apply to accounts that are delinquent on or after January 1, 2024.

Commented [DR44]: 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.