Comments Received by the Department of Consumer and Worker Protection on

Proposed Amendment of Rules related to Debt Collectors

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December 10, 2024

Department of Consumer and Worker Protection
42 Broadway
New York, NY 10004
Via email: rulecomments@dcwp.nyc.gov

Re: Proposed Amendment of Rules Relating to Debt Collectors

1. INITIAL STATEMENT

On behalf of the American Financial Services Association ("AFSA"),[1] thank you for the opportunity to provide additional comments on the Department of Consumer and Worker Protection's ("DCWP" or "the Department") updated proposed amendments to its rules relating to debt collectors. We share DCWP's goal of promoting fair debt collection practices, and we appreciate DCWP's consideration of our previous comments. Likewise, we welcome DCWP's efforts to clarify the proposed rules and to bring them into line with state and federal requirements, but we believe further amendment is necessary to avoid significant unintended consequences for consumers and financial institutions alike. In addition, we note the unreasonably truncated final comment period for the amended rules, given recent clarifications that have far-reaching consequences for AFSA members. Finally, we believe that unless DWCP either discards the current proposed amendment as it relates to creditors or implements additional amendments, the viability of the rules will be impaired because of federal and state preemption.

Comment Period and Due Process

As is evidenced by the length and depth of this AFSA submission, our members have significant concerns about the proposed amendments, yet have been forced, by the extremely short final comment period for the amended rules, and the far-reaching and unexpected implications for their businesses of recent clarifications, to hastily review, assemble and submit comments to amendments that, for over 24 months, have not, as proposed, included creditors collecting their own debts.

For that reason we believe that the entire rulemaking process should be reopened to allow careful, considered assessments to be made, over a realistic period. This is the only way we believe that the Department can access the feedback required to avoid the unintended consequences outlined in this letter.

[1] Founded in 1916, the American Financial Services Association (AFSA), based in Washington, D.C., is the primary trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including direct and indirect vehicle financing, traditional installment loans, mortgages, payment cards, and retail sales finance. AFSA members do not provide payday or vehicle title loans.

2. CONSUMER HARM

All of AFSA's concerns boil down to the cumulative effect of the proposed rules on its members' customers in residing in New York City ("NYC"). For example, early communication with struggling customers is critical to decreasing the likelihood of advanced delinquency and helping customers get back on track before they are so far behind that they are facing bankruptcy, vehicle repossession, or foreclosure. In the most basic cases, immediate contact after a missed payment due date often triggers payment by customers who have simply forgotten to pay. Limiting these communication options is counterproductive and means more NYC consumers will face the consequences of advanced delinquency, negatively affecting credit score/credit history, limiting future access to credit and other financial services, and lessening their chances of increased financial capability and mobility. This risk is greater for consumers with limited financial literacy who may not know how to request information on their options. Further, significant new and unexpected responsibilities for creditors mean an increased compliance burden, which raises costs, which, in turn, increases the cost of credit, and reduces its availability for those who rely on it.

3. CREDITORS COLLECTING THEIR OWN DEBTS DIFFER RADICALLY FROM THIRD-PARTY DEBT COLLECTORS

The definition of "Debt Collector" should exclude, at a minimum, creditors collecting their own debt, under their own name.

AFSA members are primarily concerned about the recent clarification issued during the November 7th DCWP 101 Webinar, that the definition of "Debt Collector" applies to original creditors. Prior to this, based on the plain language of the proposed change to this definition, it was clear that the first drafts of the proposed rule did *not* apply to creditors. Indeed, it is apparent that the original proposed rules were drafted with *only* third-party debt collectors in mind. Given this abrupt and fundamental change, AFSA members suddenly and unexpectedly must work out how they will comply with significantly increased and duplicative oversight, and onerous, burdensome new requirements. Most importantly, these ill-advised changes will lead to consumer harm.

Creditors chosen by consumers are fundamentally different from traditional debt collectors or debt buyers.

As we noted previously, creditors collecting their own debts are different from third-party debt collectors and operate under different incentives and standards. DCWP recognizes the distinction between creditors and true debt collectors through the declaration in the code with respect to "the practices of debt collection agencies whose sole concern is the collection of debts."[2] Congress has also recognized this in the Fair Debt Collection Practices Act ("FDCPA"), establishing that

[2] New York City, N.Y., Code § 20-488, New York City, N.Y., Code § 20-488

creditors "generally are restrained by the desire to protect their goodwill when collecting past due accounts," which distinguishes them from debt collectors who are "likely to have no future contact with the consumer and often are unconcerned with the consumer's opinion of them." The FDCPA definition of "debt collector" excludes various entities from its scope and recognizes that a creditor seeking to collect debts on its own behalf and under its own name ordinarily does not qualify as a "debt collector."[3] The FDCPA also preempts state and local laws that are inconsistent with the FDCPA, as the proposed rule is as currently drafted.[4] Creditors inherently operate differently from debt buyers or third-party debt collectors, because their customer relationship with the consumer and their communications with that consumer, ***are not limited to the business of collecting on a debt***. Specifically:

- Creditors originate their own accounts or acquire accounts shortly after origination and well before default. AFSA members and other creditors usually collect more recent installments from consumers with whom they have a long-term, ongoing relationship and who may have multiple accounts with the creditor.
- AFSA members interact with consumers with the goals of preserving existing customer relationships and building future customer relationships.
- Third-party debt collectors and debt buyers most often collect mature, static, full-account charged-off balances from consumers with whom they have no prior or ongoing relationship.
- Debt buyers and third-party debt collectors may operate with very limited information regarding the consumer, or the account involved, and must rely on the data and documentation provided by the original creditor.
- Creditors may continue to service an account, working towards mutually beneficial solutions when a customer's account is delinquent, with the goal of preserving or rehabilitating a customer to a performing/current status relationship.
- Debt buyers and third-party debt collectors solely engage in debt management or debt collection activities, with less regard for maintaining a relationship with the customer.

Aside from conflicting with the FDCPA, these NYC efforts also conflict with New York state law and policy that recognize the critical distinction between original creditors and debt collectors.[5] This distinction is reflected in Article 29-H of the New York General Business Law that distinctly defines "principal creditor" and "debt collector."[6] This distinction is also evident in how the New York State Department of Financial Services (DFS) regulates debt collection practices through its Debt Collection Regulation, which is Part 1 of Title 23 of the New York Codes, Rules, and Regulations. Specifically, those DFS regulations separately define "original creditor" and "debt collector," the latter definition expressly excluding "any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor."[7] This

[3] 15 U.S.C. § 1592a(6).
[4] 15 U.S.C. § 1592n
[5] *See Eric M. Berman, P.C. v. City of New York*, 25 N.Y.3d 684, 690 (2015) (recognizing state preemption occurs when a local government adopts a law inconsistent with New York State law).
[6] N.Y. Gen. Bus. Law § 600 (3, 7).
[7] N.Y. Comp. Codes R. & Regs. tit. 23, § 1.1 (e, f).

distinction is also found across other New York laws, including the Civil Practice Laws and Rules governing enforcement of default judgments, as highlighted in the lawsuit recently brought by ACA International, Inc. that seeks to enjoin these NYC proposed rules. Not only do these New York state laws and regulations distinguish creditors from debt collectors in their defined terms, but they also differentiate based on the types of obligations to which the parties are subject. For example, DFS regulations, including requirements to provide statements of consumer rights, debt validation notices, an itemized accounting of the debt, and restrictions on electronic communication apply to third part debt collectors and specifically exclude creditors. The proposed NYC amendments clearly conflict with the state's approach to regulating the activities of debt collectors differently from those of creditors, by imposing the types of obligations that the state of New York intentionally chose not to require of creditors.

The amended proposed rules will harm consumers if applied to creditors

Most importantly, we encourage DCWP to discard this proposed amendment to avoid significant unintended consequences for consumers. The same requirements that may benefit consumers when applied to third-party debt collectors are likely to harm consumers if applied to creditors. While we provide more detail in the following sections, it is worth highlighting a few of the most critical issues.

First, the contact restrictions will lead to more consumers losing access to credit. Existing financial institution customers are accustomed to ongoing communications about their debts, ranging from monthly statements and payment reminders, to outreach about delinquency management programs and opportunities. The proposed rules will restrict these standard, day-to-day communications between financial institutions and their customers, including electronic communications through online apps that consumers today rely upon. This is due to:

1. The overbroad definitions of "debt" in the existing rules, ostensibly covering accounts in good standing, let-alone ones that have just entered delinquency;
2. The overbroad definition of "debt collector" in the proposed rules;
3. An unworkable customer and omni-channel communications cap in the proposed rule;
4. An impossible requirement to name a single person and telephone number answered by a natural person for each customer to contact for an undefined period of time; and,
5. A requirement that creditors have expressed written consent to send digital communications, to collect a debt even from those customers who have already requested that the creditors communicate with them digitally and are regularly receiving these digital communications from the creditor.

All of this will be to the detriment of consumers, who will have less information about their accounts and the options available to them when facing hardship.

Second, while the rules' credit reporting restrictions and validation notice requirements may be well-intended, as applied to creditors they are vague and impossible to comply with until, at a minimum, an account is charged off. The reporting restrictions are triggered by the sending of the validation notice, but it is unclear when that letter is triggered. On the one hand, the

ambiguous definitions of "debt" and "debt collector" suggests it should be sent pre-charge off, and maybe pre-delinquency. On the other, the requirement that certain information be included as of the "Itemization Reference Date" suggests it can only be sent post-charge-off.

Is DCWP requiring creditors to charge-off accounts immediately after a customer receives a statement, even if it is in good standing, so that the required information can be included in a dunning letter? Is it also requiring creditors, who have been furnishing information to credit bureaus since account opening, to stop furnishing after the account is 14 days past due? If so, how is this done while complying with the Fair Credit Reporting Act completeness and accuracy requirements? Most importantly, this may confuse consumers, hurt their credit scores and decrease their access to information about their accounts at a critical time.

The proposal fails to consider the differences between consumers' ongoing relationships with the creditors of their choice and consumers' intermittent interactions with third-party debt collectors. Consumers select their creditors for financial products and services that they can use for months or years, and those who are dissatisfied can take their business elsewhere. Financial institutions are incentivized to communicate fairly and effectively with their customers, and to seek mutually beneficial solutions when customers have difficulty paying their debts. Financial Institutions are also subject to extensive state and federal regulatory oversight of their activities, including those related to collections. In contrast, consumers have no choice in third-party debt collectors, who are typically less regulated entities with no incentive to earn the repeat business of the customers they contact. These distinct circumstances carry different types and levels of risk for consumers, which the proposed rules disregard.

For these reasons, AFSA believes that the proposed restrictions should not be applied to creditors collecting their own debt, in their own name, on the grounds that the amendments will likely significantly harm NYC customers, and, therefore, that the applicability of the proposed rule to creditors should be removed. It is important to remember that creditors are already subject to federal requirements regarding how to clearly bill customers and handle any billing disputes that may be raised by the customers in a timely manner. Additionally, customers generally have an opportunity to choose their creditor based on reputation, product offerings, and communication methods.

Finally, the proposed restrictions impact the relationship that consumers have chosen to establish with their creditors and negatively affects the ability of creditors to meet customer needs and service their accounts in a way that is best for the consumers. Simply put, creditors are often in the best position to help their customers and must be able to communicate with them to assess their needs and help those in financial difficulty.

<u>Specific Clarification:</u>

- Clarify that the proposed rules do not apply to creditors collecting their own debt by returning to the proposed definition of debt collector, which was:

- "The term 'debt collector' means any person engaged in any business with the principal purpose of which is the collection of any debts or who regularly collects, or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due to another person."

4. CONSUMERS ARE HARMED WHEN CREDITORS FACE SIGNIFICANT OPERATIONAL DISRUPTION

In addition to the overall unworkability of the proposed rules as applied to creditors, the individual revisions themselves are vague and likely impossible to comply with.

Definition of "Debt"

Without withdrawing its preemption-based objections and absent the removal of the rules' applicability to creditors, AFSA recommends that DCWP amend its definition of debt, so it is only applicable to collections of charged-off debt. There are provisions contained within the rule that explicitly assume that the debt is charged-off that cannot be reconciled with collections on pre-charge-off debt, such as the provisions related to the Itemization Reference Date and the validation documentation required to provide a charge-off statement. Clearly, a creditor cannot provide a charge-off statement on an account that has not been charged-off. If it is DCWP's intention to force creditors to charge off accounts that are merely delinquent, such an outcome would harm consumers who wish to keep their accounts, and in the case of banks would interfere with bank operations to a degree that would give rise to preemption under the National Bank Act. For more detailed discussion of preemption, see below.

Fundamentally, there is a significant difference between a debt that is delinquent but not charged-off and one that has been charged off and pertains to a closed account. In the former situation, and notwithstanding the implications of TILA, Reg. Z, and the Fair Credit Billing Act that take precedence over state and local laws, a creditor should not be forced into an adversarial relationship with a customer whose account might still be rehabilitated. For instance, it would not be fitting to apply the provisions related to the Itemization Reference Date and the validation documentation required to provide a charge-off statement in a pre-charge-off context, as they are only relevant at the point of charge-off.

Furthermore, with respect to credit card accounts, charge-off is dictated by regulation of the Federal Financial Institutions Examination Council.[8]

Communications Restrictions

AFSA members operate relationship-based businesses which rely on close communication between the creditor and its customers. In fact, the CFPB issued an advisory opinion just over a year ago emphasizing the duty of large banks under the Consumer Financial Protection Act to

[8] *See* 65 FR 36903

maintain and facilitate the flow of information to consumers. [9] The amended rules limit creditor communications attempts to three times in seven days, regardless of the number of accounts held by a customer. While intended to reduce harassment, this approach fails to account for the practical realities of creditors managing multiple accounts for the same customer. It also fails to account for the fact that a single consumer can have multiple accounts that are issued by a single creditor, but which are managed by different business units of that creditor.

We are concerned that the combining of communications about multiple accounts into a single message could confuse NYC customers and thus potentially run afoul of the FDCPA or UDA(A)P principles. Furthermore, some creditors do not have the systematic capabilities for lines of business to communicate with each other. As a result, it will be impossible to provide a singular message to a consumer who is delinquent on various products. We are also concerned that limiting contact frequency will prevent creditors from reaching their customers early in the delinquency cycle, when interventions like hardship programs are most effective (see Consumer Harm, above). The restrictions, as applied to pre-charge-off accounts, could also interfere with the duties of creditors under the Fair Credit Billing Act, the Fair Credit Reporting Act, and the Real Estate Settlement Procedures Act. To that extent, DCWP risks a finding of preemption, and we assess the rules can run contrary to consumer interests by interfering with procedures that are already in place to protect consumers. For instance, we believe an unintended consequence of the communication restrictions will simply be for creditors to pursue litigation as a strategy to recover from NYC customers because attempting to communicate with them will be fraught with so many potential problems because of the amended rule.

This is particularly true for creditors who offer a variety of different credit and loan products, who will face challenges complying with the contact attempt restrictions at the consumer level. In these scenarios, it will be more feasible to avoid collection communications and instead deploy a strategy of placement with third-party debt collection agencies and law firms, resulting in NYC consumers being unable to avail themselves of the benefits of the various hardship programs creditors can offer (examples of which range from simple due date changes through to long-term workout programs).

To that end, we recommend, at a minimum, amending the proposed rules so contact frequency limitations for creditors collecting their own debt are applied at the account level rather than the customer level and only post charge-off. This approach balances DCWP's desire to prevent perceived excessive communication with the necessity of addressing each account to appropriately assist consumers when they need it most.

Specific Clarifications:

- If the DCWP still intends to apply communications restrictions to creditors in some form:
    - Revise the communications restrictions in (b)(1)(iii) to apply:
        - after the institution of debt collection procedures; and

[9] https://files.consumerfinance.gov/f/documents/cfpb-1034c-advisory-opinion-2023_10.pdf

    - at the account-level, rather than customer level
- Clarify what constitutes a customer "responding" to a communication when calculating the seven-day contact frequency window? For example, if a creditor sends a letter and the customer telephones five days later, would the rules consider that to be a response, or a contact initiated by the customer?

Debt Validation Notices

AFSA requests that the rules be amended so the debt validation notice is not required for creditors, since their customers already have federal dispute rights under TILA, Card Act, Reg E, and FCRA. The utility of the debt validation notice appears to be to help the customer recognize the debt and determine if it is a valid debt that the third-party debt collector should be collecting on behalf of the creditor. Since a creditor has a direct relationship with the consumer and has had ongoing communication with their customer from the inception of the credit relationship, including for example, providing monthly statements and other account alerts (e.g. for fraud), the existence of the debt should not be a surprise or require a separate notification. Furthermore, consumers' dispute rights are already encompassed in the Fair Credit Billing Act.
Furthermore, as written, the debt validation notice is (1) impossible to comply with unless an account is charged off and (2) unclear as to the information required to be included. As noted above, the combination of various definitions requires information that can only exist post-charge-off, yet also requires that the letter must be sent prior to any communication about a "debt." Given the content of the notice, it would be incredibly confusing for a consumer to receive this notice while in good standing or, when received from their creditor who is required to provide monthly billing statements and is governed by TILA, even in delinquency. The rule also suggests that the notice must include items required by federal or New York state law but does not name those laws. While AFSA believes DCWP is referring to the FDCPA and New York State debt collection rules, neither of those are applicable (and thus required to be included) for non-debt-buyer creditors. It is unclear whether the Department is saying that now everyone must include it, or whether only those required to comply with the laws in question need to include it.

Absent the removal of the debt validation notice requirements for creditors, DCWP must take steps to clarify that the debt validation notice should only be sent after institution of debt collection proceedings. This change will mirror the current requirements which only require debt validation notices to be sent after institution of debt collection procedures. Since debt collection procedures refer to late stage collection efforts that generally coincide with charge-off, such as collecting after the creditor ceases periodic statements, taking or threatening to take legal action, or accelerating the unpaid balance, this change will alleviate some of the concerns on how to comply with the debt validation notices for pre-charge-off debt, such as the provisions related to the itemization reference date and the validation documentation required to provide a charge-off statement.

Specific Clarifications:

- Clarify in f(1)(viii) in general and f(1)(viii)(A) specifically, that only those entities that are required to comply with the FDCPA and New York State debt collection law are required to provide that information;
- Clarify that the validation letter in f(1) is only required after the institution of debt collection procedures;
  - if not, clarify how a covered entity can comply with f(1) prior to charge-off, including but not limited to:
    - for pre-charge-off revolving accounts, what itemization does DCWP envision beyond the latest periodic billing statement?
    - for pre-charge-off closed-end accounts where a payment has not been made or the date of last payment is not available, how can a debt be itemized if there is no charge-off date?

Unverified Debt Notices

Perhaps one of the most concerning challenges posed by the proposed regulations institutions is contained in Section 5-(77)(f)(8), creating a notice of "unverified debt." The unverified debt notice requirement appears to mandate that banks permanently stop collecting and notify consumers that debts cannot be verified – i.e., collected. This is based on an arbitrary, 45-day deadline to respond to consumer validation requests which could have been missed due to oversight/inadvertence, as opposed to some lack of underlying documentation to prove the debt. Notably, no other law requires those subject to verification of debt requirements to respond within a certain period of time or seemingly permanently lose their ability to collect the debt.

Permanently barring financial institutions from collecting debts that are otherwise owed significantly interferes with their rights and creates safety and soundness issues in the credit industry as a whole. Furthermore, this could arguably constitute an unconstitutional taking. By requiring creditors to send an unverified debt notice and permanently cease collections, the DCWP risks impacting the ability of creditors lacking the required documentation for purposes of verification from pursuing an account stated theory in court–which is permitted in NY. See NY CPLR Rule 3016(j)(4)–for which they may have the required documentation to prove their cause of action.

Electronic Communication Consent

The amended rules require written E-Sign Act-compliant consent for electronic communications related to debt collection, even when consent has already been provided. This requirement is unnecessary and disrupts well-established communication channels that exist between creditors and their customers. This presents a real risk of consumer harm, as it has the potential to impair electronic fraud alerts and the multi-factor authentication that is a critical part of creditors' anti-fraud practices. Those types of communications occur even on delinquent accounts.

Fundamentally, it would require creditors to put NYC consumers at a material disadvantage by not providing them with the types of electronic communications that are provided to all their other customers. More specifically, opt-out requirements already provide consumers the option to stop communications in a channel they do not want. Customers who have received prior electronic communications from a creditor, and have not opted-out of such messaging, should be entitled to receive those messages once they become past due. To require a change in communication channel is unfair to the customer who is accustomed to being alerted through electronic channels and will not expect to suddenly receive important and potentially time-sensitive notices in a format that could cause delay such as letters through U.S. Mail. This will result in consumer harm (e.g., incurrence of fees and interest, past-due credit reporting, loss of benefits on an account such as charging privileges or reward points) and an increase in consumer frustration and complaints.

AFSA requests that the requirements for written consent on electronic communications be removed if consent of any kind has already been obtained by the creditor. Many customers favor receiving electronic communications from their creditor and have opted for this method of communication prior to the debt becoming delinquent.

Specific Clarifications:

- Revise b(5)(i)(A) to remove the "in writing" requirement;
- Clarify that new consent is not required from a customer who has already requested electronic notifications prior to the account becoming delinquent once the account becomes delinquent.

Credit Bureau Reporting Restrictions

Notification of credit bureau furnishing is provided upon account opening and AFSA members report throughout the life cycle of the account. The requirement to provide a separate notification of furnishing and stop the reporting for 14 days once the account becomes delinquent, would be confusing to the customer and is unnecessary since the customer already can dispute reporting under the FCRA. It also raises a myriad of technical issues from a creditor furnishing perspective, as discussed above.

Furthermore, a law that imposes requirements or prohibitions with respect to a subject matter already regulated under sections of the FCRA will be considered preempted. Specifically, AFSA highlights that *any* attempt by DCWP to regulate the duties of data furnishers is expressly preempted.[10]

Additionally, this prohibition not only prohibits furnishing negative account information, but also would prohibit furnishing positive information (paying as agreed) prior to sending the

[10] 5 U.S.C. § 1681t(b)(1)(F).

validation notice, preventing the consumer from gaining the associated positive effects on their credit score.

AFSA requests that credit bureau furnishing restrictions be removed, at a minimum, for creditors that are furnishing information to credit reporting agencies on their own accounts.

<u>Specific Clarifications:</u>

- Clarify that paragraph (e)(10), which prohibits credit reporting until after sending the validation notice and waiting 14 days, does not apply to creditors.

Natural Person-Related Requirements

Natural person-related requirements also are not workable for large creditors with multiple lines of business and application to creditors will likely lead to earlier outside collection placements.

Section 5-77(f)(1) (ii-iii) requires that the validation notice must include the name of a natural person for the consumer to contact and a telephone number answered by a natural person. These requirements are unduly burdensome and without any obvious benefit to the customer. Companies managing thousands of accounts daily cannot feasibly assign a specific individual to each account for direct consumer contact. In addition, many of our customers have multiple accounts across multiple lines of business with banks and other creditors offering multiple credit products. There frequently is no one person who can assist customers with all their needs, especially across multiple product lines. While creditors are committed to providing exceptional service, it is impractical for any business to include a specific person's name on every communication for direct consumer contact. Even if creditors invested a substantial amount of time and money to be able to offer a natural person's name to the customer, it would be unsustainable and lead to poor customer experience. If multiple customers are calling the same person, this will result in long customer wait times and frustration without any benefit for the customer, when any available agent could provide the help that the customer needs.

Moreover, most companies utilize automated voice systems to initially route calls to the appropriate department and gather essential information from the consumer. This process ensures that when the call reaches an agent, they have the necessary details to assist the consumer more efficiently. Requiring direct contact with a natural person from the outset would disrupt this streamlined process, potentially reducing the overall effectiveness of customer service operations.

These requirements also would be impractical for a large entity with multiple lines of businesses and thousands of employees across multiple states to manage effectively. Inevitably, due to internal turnover, promotions, and cross-department moves, whomever is listed as the “point of contact” in a communication, may not be in such a role in the future. Customers may become confused by seeing different names on different communications sent to them because of this turnover and natural movement within our work force. There are, of course, also privacy

concerns related to the provision of the names of individual staff members to thousands of customers.

5. PREEMPTION CHALLENGES BY NATIONAL BANKS

"Banks with federal charters – called national banks – are subject primarily to federal oversight and regulation," and the Office of the Comptroller of the Currency (OCC) serves as that primary regulator.[11] The Supreme Court has "repeatedly made clear that federal control shields national banking from unduly burdensome and duplicative state regulation."[12] "[W]hen state prescriptions significantly impair the exercise of authority, enumerated or incidental under the [National Bank Act], the State's regulations must give way."[13]

A practical assessment reveals that the Department's proposed rules would significantly interfere with routine customer communications, even before an account is charged off and potentially reaching multiple unrelated accounts, and deprive national banks of this critical credit risk management tool and the flexibility national banks need to "manage credit risk exposures,"[14] thus significantly interfering with national banks' ability "to carry on the business of banking."[15] The OCC has warned of the risks of such regulation by states, saying:

> *"….state laws that would affect the ability of national banks to underwrite and mitigate credit risk, manage credit risk exposures, and manage loan-related assets, such as laws concerning the protection of collateral value, credit enhancements, risk mitigation, loan-to-value standards, loan amortization and repayment requirements, circumstances when a loan may be called due and payable, escrow standards, use of credit reports to assess creditworthiness of borrowers, and origination, managing, and purchasing and selling extensions of credit or interests therein, would meaningfully interfere with fundamental and substantial elements of the business of national banks and with their responsibilities to manage that business and those risks."*[16]

The proposed rules are ill-equipped to address the intricacies of ongoing banking customer relationships and would significantly interfere with the uniform regulation of national banks that is the role of the OCC. These institutions operate under a comprehensive framework of federal regulations that govern their debt collection practices and while state collection laws are generally not preempted under the National Bank Act, these proposals interfere with a national bank's ability to operate in, at a minimum, the following critical and unreasonable ways:

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[11] *Cantero v. Bank of America, N. A.*, 602 U.S. 205, 205 (2024).
[12] *Watters v. Wachovia Bank, N.A.*, 550 U.S. 1, 11 (2007).
[13] *Id*. at 12 (citing *Barnett Bank of Marion County., N.A. v. Nelson*, 517 U.S. 25, 32–34 (1996)).
[14] OCC, *Office of Thrift Supervision Integration; Dodd-Frank Act Implementation*, 76 Fed. Reg. 43,549, 43,557 (July 21, 2011
[15] *Watters*, 550 U.S. at 6 (quoting 12 U.S.C. § 24).
[16] Office of Thrift Supervision Integration; Dodd-Frank Act Implementation, 76 Fed. Reg. at 43557.

Definition of "Debt Collector" and "Debt": By expanding the definition of "Debt Collector" to include original creditors, the proposed rules impose additional regulatory burdens on national banks that are already subject to federal oversight. This expansion could lead to duplicative and even conflicting compliance requirements, undermining the operational efficiency of these banks. Furthermore, the broad definition of "Debt" that encompasses pre-charge-off accounts interferes with federal regulations, such as those set by the Federal Financial Institutions Examination Council, which dictate when accounts should be charged off. This interference could trigger preemption challenges under the National Bank Act, as it disrupts the federally regulated processes that banks must follow.

Communications Restrictions: The proposed restrictions on communication frequency fail to account for the operational realities of national banks, which manage multiple accounts for individual consumers. As one example, the proposed rules seem to require that once a credit card customer becomes past due on a payment, then all communications must cease or be severely constrained on that customer's other accounts, such as an auto loan, home mortgage and deposit account. These restrictions could significantly interfere with banks' ability to fulfill their duties under federal laws, such as the Fair Credit Billing Act and the Real Estate Settlement Procedures Act, which require timely and effective communication with consumers. By imposing state-level restrictions that conflict with these federal obligations, the rules risk preemption and could lead to legal challenges from national banks seeking to protect their federally mandated communication practices.

Credit Bureau Reporting Restrictions: The requirement for separate notification of credit bureau furnishing and a 14-day reporting delay conflicts with the Fair Credit Reporting Act (FCRA), which preempts state laws that impose additional requirements on data furnishers. National banks, which report credit information as part of their federally regulated operations, could challenge these state-level restrictions as they interfere with their ability to comply with FCRA standards. This preemption issue is likely to result in legal disputes, as national banks seek to maintain their established reporting practices without additional state-imposed burdens.

Electronic Communication Consent: The proposed requirement for written E-Sign Act-compliant consent for electronic communications, even when consent has already been provided, disrupts the established communication channels that national banks use to interact with their customers. This requirement could lead to delays in critical communications, such as fraud alerts, and interfere with banks' anti-fraud practices. By imposing additional consent requirements that conflict with federal electronic communication standards, the rules risk preemption challenges from national banks that rely on efficient and secure communication methods to protect their customers.

Unverified Debt Notice Requirement: As noted above, a requirement that creditors provide certain information to a consumer within an arbitrary period of time or permanently lose their ability to request repayment of the debt significantly interferes

with the rights of national banks to manage their loan credit risk. National banks are already required to comply with a myriad of federal laws and regulations relating to issuance of credit and documentation required to be obtained from and provided to consumers related to account management. To not only require more, but bar collection afterwards, crosses the line as to what a municipality is permitted to do in this space.

6. EFFECTIVE DATE

Since the amended language was clear on its inapplicability to creditors until the recent clarification by the Department, AFSA has significant concerns about the ability of its members to bring themselves to compliance in time for the Effective Date. The rules' omnichannel, consumer-level communications cap alone, will require significant reworking of existing systems that are likely to take significant time. AFSA requests an extension should be provided to delay the rule by a minimum of two years, to allow creditors the appropriate time needed to undertake the modification of a host of operational processes in order to implement the new rules.

7. CONCLUSION

In conclusion, the latest version of the rules will cause undue burden to creditors at a significant cost and will provide little to no benefit to consumers. In fact, the proposed amendments, as they currently stand, risk causing substantial harm to NYC consumers. This is particularly concerning for those with limited financial literacy, who may not be aware of available assistance options and could suffer unnecessarily as a result.

Moreover, the proposed rules present significant preemption impediments, particularly concerning national banks. These institutions operate under a comprehensive framework of federal regulations that govern their debt collection practices. The imposition of additional municipal-level requirements could lead to duplicative and even conflicting compliance obligations, undermining the operational efficiency of these banks and triggering preemption challenges under the National Bank Act.

We respectfully request that the Department carefully consider these likely consequences and take action to protect both NYC consumers and financial institutions from the unintended negative impacts of the proposed rules. We urge the Department to exclude creditors collecting their own debts from the amended rules or, at a minimum, limit their applicability to charged-off debts. Additionally, we recommend revising specific provisions to align with the operational realities of creditors and extending the implementation timeline by at least 2 years to ensure smooth and full compliance.

Thank you in advance for your consideration of our comments. If you have any questions or would like to discuss this further, please do not hesitate to contact me at dfagre@afsaonline.org or Elora Rayhan erayhan@afsamail.org at your convenience.

Sincerely,

Danielle Fagre Arlowe
Senior Vice President
American Financial Services Association

Attached:

ANNEX A: SUMMARY OF THE CONSEQUENCES OF THE PROPOSED AMENDMENTS

ANNEX A

SUMMARY OF THE CONSEQUENCES OF THE PROPOSED AMENDMENTS

Definition of "Debt Collector"

If the definition of "Debt Collector" continues to include original creditors, these entities will face significant compliance burdens that were not anticipated. This will lead to increased operational costs and likely reduce the availability of credit to consumers and raise its cost, as creditors divert resources to meet these new regulatory requirements.

Creditors Chosen by Consumers are Fundamentally Different than Traditional Debt Collectors and Debt Buyers

Applying the same restrictions to creditors as apply to third-party debt collectors will disrupt the beneficial relationships between creditors and consumers. This will result in reduced customer service quality and limit creditors' ability to offer tailored financial solutions, ultimately harming consumers who rely on these relationships for financial capability and support.

Definition of "Debt"

If the definition of "Debt" is not limited to charged-off debts, creditors will be forced to consider accelerating charge-off for accounts that are merely delinquent. This could harm consumers who are actively working to rehabilitate their accounts and interfere with federal regulations, potentially leading to legal challenges while increasing financial instability for affected consumers.

Comment Period and Due Process

Given the implications of recent clarifications, the timeline for public comment is inadequate. For that reason the rulemaking process should be reopened to allow creditors a realistic period to review, assemble, and submit critical feedback to the Department.

Communications Restrictions

The proposed communication restrictions will almost certainly prevent creditors from effectively reaching consumers early in the delinquency cycle. This will lead to an increase in litigation as creditors resort to legal action sooner to recover debts, depriving consumers of the opportunity to engage in hardship and loss mitigation programs and other beneficial intervention such as payment extensions and deferrals.

1750 H Street NW, Suite 650, Washington, DC, 20006 ▲ 202.296.5544 ▲ www.afsaonline.org ▲ @AFSA_DC

Debt Validation Notices

Requiring debt validation notices for creditors will create confusion among consumers who already have established relationships with their creditors. This redundancy may lead to misunderstandings about the status of their accounts and increase the likelihood of disputes, ultimately harming the consumer-creditor relationship. It will also cause consumers to question the reliability of their monthly-billing statements.

Electronic Communication Consent

The requirement to obtain written consent for electronic communications will disrupt established communication channels, leading to delays in important notifications (including, for example, fraud alerts). This will also result in consumers incurring additional fees, interest, or negative credit reporting due to missed communications, ultimately causing financial harm and frustration.

Credit Bureau Reporting Restrictions

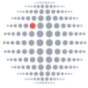
Imposing additional credit bureau reporting restrictions on creditors will confuse consumers and disrupt the reporting process. This will lead to inaccuracies in credit reporting and potential legal challenges due to preemption by federal law, ultimately harming consumers' credit scores and access to financial services. If adopted, there will certainly be a preemption challenge to this proposed amendment.

Requests for Further Clarification

Without further clarification on key aspects of the proposed rules, members of AFSA have confirmed they will face operational challenges and increased compliance burdens. This uncertainty will very likely lead to inconsistent application of the rules, resulting in consumer confusion and potential legal disputes.

Customer Harm

The cumulative effect of the proposed rules is highly likely to increase costs for consumers and limit access to credit. Restricting early communication with consumers could lead to more severe financial consequences, such as bankruptcy or foreclosure, particularly for those with limited financial capability and literacy who may not be aware of available assistance options.


PARTNERSHIP
for New York City

Testimony of the Partnership for New York City
Department of Consumer and Worker Protection
Proposed Rules on Debt Collectors
December 12, 2024

Thank you for the opportunity to submit comments on proposed rules on debt collectors. The Partnership for New York City represents the city's business leaders and largest employers. Our members employ about a half million people in the city and deliver approximately $236 billion in annual economic output. We work with government, labor, and the nonprofit sector to promote economic growth and maintain the city's prominence as a global center of economic opportunity, upward mobility, and innovation.

Consumer banking is an important industry in New York City, accounting for 73,300 jobs and 5% of the city's economic output. These lenders provide a valuable service to New York consumers and are fundamentally different from third-party debt collectors ("collectors"). The Department of Consumer and Worker Protection's (DCWP) recently adopted rules were intended to apply to collectors, just like the city law licensing debt collection agencies (NYC Administrative Code §§20-488-494.1). Institutions collecting their own debts ("creditors") were clearly not intended to be included.

Creditor institutions often hold multiple types of accounts for an individual customer including bank accounts, credit cards, mortgages, and auto loans. In stark contrast to a collector who has a limited, transactional relationship with a consumer about a specific debt, the customer chose to enter an ongoing financial relationship with the creditor. This involves regular communication about a variety of matters, of which messages about debts may be only a small part. The adopted rules hardly make sense in this light. For example, the adopted rules would require a creditor to obtain specific permission to communicate electronically with their customers about a debt even where the creditor has already received general permission to communicate with their customer electronically and does so regularly.

Inhibiting a creditor's ability to communicate with their customer does not serve the customer. Unlike collectors, creditors are focused on maintaining relationships with their customers and are incentivized to help their customers avoid additional interest, late fees, and negative impacts to credit. They are likely to initiate contact immediately after a missed payment which can resolve the problem for a customer who has simply forgotten to pay. They also will help the customer to access any assistance for which they may be eligible such as forbearance or hardship programs. This is particularly important for consumers with limited financial literacy who may not be aware of these options. Requiring creditors to comply with the adopted rules would limit the contacts creditors can have with their New York City customers and inhibit their ability to offer these services.

Given the negative impacts the adopted rules would have on consumers, imposing a costly mandate on creditors cannot be justified. Creditor institutions would need to make major changes

to their systems and operations to comply with the adopted rules. For example, many institutions maintain systems by product, not customer, to ensure compliance with specific rules for each product. The adopted rules impose requirements by customers instead of by account, adding a layer of operational complexity that will be expensive and difficult to address.

The Partnership strongly objects to DCWP's proposed rule, which is clearly not in the interests of consumers or the banking industry. Creditors should not be subject to DCWP's adopted rules on debt collectors.

December 12, 2024

1050 Fulton Avenue, Suite 120
Sacramento, CA 95825

By Electronic Submission to
Rulecomments@dcwp.nyc.gov

New York City Department of Consumer and Worker Protection
42 Broadway #5
New York, NY 10004

Re: Proposal to Amend Section 5-76 of Part 6 of Subchapter A of Chapter 5 of Title 6 of the Rules of the City of New York

To Whom It May Concern:

The Receivables Management Association International (RMAI) submits the following comments concerning the Department of Consumer and Worker Protection's (the "Department") proposed amendments to Section 5-76 of Part 6 of Subchapter A of Chapter 5 of Title 6 of the Rules of the City of New York. Our comments address the proposed amendments noticed by the Department on November 1, 2024. We believe the proposed amendments do not cure the unconstitutional restrictions on debt collection speech and violates the City Administrative Procedure Act.

I. INTRODUCTION

RMAI is a nonprofit trade association that represents over 600 companies that purchase or support the purchase of performing and nonperforming receivables on the secondary market. RMAI member companies include banks, credit unions, non-bank lenders, debt buying companies, collection agencies, law firms, brokers, and industry-related product and service providers. RMAI's Receivables Management Certification Program (also referred to as RMCP or Certification Program)[1] and its Code of Ethics[2] set the "gold standard" within the receivables management industry due to RMAI's rigorous uniform industry standards of best practice which focus on protecting consumers. Several of our standards have been adopted at the state level and were recently used as framework by the Uniform Law Commission in their Uniform Consumer Debt Default Judgment Act.[3]

[1] Receivables Management Association International, *Receivables Management Certification Program, Ver. 10* (Mar. 1, 2023), publicly available at https://perma.cc/7D8Q-KGVC.
[2] Receivables Management Association International, *Code of Ethics* (August 13, 2015), publicly available at https://perma.cc/BM6J-USG.
[3] Uniform Consumer Debt Default Judgment Act, Prefatory Note ("this act seeks to incorporate provisions from . . . . standards set by Receivables Management Association International, a debt collections trade organization.") archived at https://perma.cc/T5TZ-CRC5.

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.[4] 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., brokers and process servers). Currently, over 500 businesses and individuals hold these internationally respected certifications. Additionally, 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.

RMCP-certified businesses are subject to vigorous and recurring independent, third-party audits to demonstrate their compliance with the Certification Program. This audit includes an onsite inspection of the certified companies to validate full integration of RMCP standards into their business operations. Following a company's initial pre-certification audit and first full-compliance audit, independent program review audits continue to be conducted every three years. The audits are reviewed by an Audit Committee which has consumer representation. Since March 1, 2024, BBB National Programs has administered RMAI's Remediation Committee which is the committee that handles unresolved audit deficiencies.

RMCP certification also requires RMAI-certified businesses to engage a chief compliance officer, with a direct or indirect reporting line to the president, chief executive officer, board of directors, or general counsel of the business. The chief compliance officer must maintain individual certification through the RMCP by completing 24 credit hours of continuing education every two years.

Most of our members are covered "debt collectors" under your rules. As mentioned, our certification standards go beyond the requirements of state and federal law for the protection of consumers. This includes measures for the frequency, method, and content of communications with consumers. Therefore, our members are well suited to provide the Department with comment concerning its proposed rule.

II. COMMENTS

A. The Proposed Amendments to section 5-76 of part 6 of subchapter A of chapter 5 of Title 6 of the Rules of the City of New York Unlawfully Restricts Speech.

As we noted in our comments to you dated December 19, 2022, the recently adopted restrictions on communications, particularly those contained in new section 5-77(b)(1)(iv) and (b)(5) are unconstitutional, content-based restrictions on our members' rights to freedom of speech guaranteed to them under the United States Constitution. *U.S. Const. amend. I.* The proposed amendments to section 5-76 do not cure the unlawful speech restrictions.

Proposed 5-76 continues to exempt certain persons from these restrictions, namely subsections (1) and (4) which exempt:

[4] 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."

(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 their official duties;

(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.

Debts covered by the proposed rule are not subject to speech restrictions if they are being collected by exempted persons. However, if these exempted persons retained a covered debt collector to collect the same debts, the covered debt collector would be subject to the speech restrictions. Content-based restrictions on speech are those that favor some speakers over others or "singles out specific subject matter for differential treatment." *Barr v. Am. Ass'n of Political Consultants*, 591 U.S. 610, 619, 140 S. Ct. 2335 (2020). Such restrictions are presumptively unconstitutional. *Reed v. Town of Gilbert*, 576 U.S. 155, 163, 135 S. Ct. 2218, 2226 (2015). Courts will evaluate such content-based speech restrictions under the "strict scrutiny" test. Under strict scrutiny a court presumes the restriction is unconstitutional and it is the Department's burden to demonstrate a compelling state interest that supports the restriction. As we pointed out in our December 19, 2022, comment letter, the Department has not provided any data to demonstrate a compelling state interest to restrict a covered debt collector's debt collection speech.

The Department's commentary in support of the amendment fails to cite any data demonstrating that communications made by debt collectors and creditors somehow poses a greater risk of harm than communications made by "any officer or employee of the United States, any State or any political subdivision of any State," or "any individual employed by a utility regulated under the provisions of the Public Service Law." The Department provides no data demonstrating that calls made by a government entity to collect taxes or fees, or by a public utility to collect gas, electric or water bills do not present the same harms of "excessive frequency" allegedly posed by debt collectors and creditors.

As we noted in our comment letter of December 19, 2022, data publicly available from the Consumer Financial Protection Bureau (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 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 allegations of frequent calls and not a finding that the calls themselves were made by a debt collector or made with the alleged frequency.

Likewise, we analyzed data from the CFPB for the period January 1, 2023, to December 31, 2023, and found that that only 50 complaints of excessive calls by debt collectors were made by New York City residents. In a city of over 8 million people, this number is statistically insignificant. If anything, the lack of complaints demonstrates there is no risk of consumer harm from debt collector communications.

After a decade-long inquiry into debt collection practices, including the frequency of communications, the CFPB found that "[c]ommunicating with a debt collector may benefit a consumer by helping the consumer to either resolve a debt the consumer owes, or identify and

inform the debt collector if the debt is one that the consumer does not owe." 12 C.F.R. Part 1006, Debt Collection Practices (Reg. F), Proposed rule with request for public comment (May 6, 2019), at p.6.[5] The Department's restrictions contained in 5-77(b)(1)(iv) make it *unlawful* to contact a consumer more than three times in a seven day period, even though such communications "may benefit a consumer."

To be sure, even under the lesser standard of intermediate scrutiny, the speech restrictions fail because they are not "narrowly tailored to serve a significant governmental interest." *Ward v. Rock Against Racism*, 491 U. S. 781, 791, 109 S. Ct. 2746, 105 L. Ed. 2d 661 (1989) (internal quotation marks omitted). As Justice Sotomayor explained in her concurring opinion in *Barr* "the Government has not explained how a debt-collection robocall about a government-backed debt is any less intrusive or could be any less harassing than a debt-collection robocall about a privately backed debt." *Barr*, 591 U.S. at 636-37.

Consequently, there is no compelling state interest to restrict communications by debt collectors when collecting consumer debt. Because the proposed amendment to section 5-76 continues to exclude certain persons from the speech restrictions, the speech restrictions are unconstitutional.

B. The Proposed Amendments to section 5-76 of part 6 of subchapter A of chapter 5 of Title 6 of the Rules of the City of New York Violate the City Administrative Procedure Act.

The Department's commentary states that since "August 2024" it became "aware of stakeholder confusion regarding whether the revised definition of 'debt collector' continues to apply to those collecting on their own debts." This statement is inconsistent with comments made by stakeholders in December 2022, where industry clearly stated the amended rules would not apply to creditors. For example, in written comments from the American Financial Services Association (AFSA) dated December 19, 2022, AFSA states:

> We applaud the proposed amendments that would bring the definition of debt collector more in line with the FDCPA and the New York State Department of Financial Services' ("DFS") regulations and believe several additional revisions could make this renewed scope even clearer. Specific clarification related to creditors' employees and to persons collecting debt that was not in default at the time it was obtained, both of which are present in the federal and state requirements, are missing from DCWP's proposed amended rules. **Such clarification is necessary for the rules to clearly exclude creditors' employees from scope—as it would not make sense for creditors to be excluded from scope but not their employees—and to ensure that the rules reflect DCWP's intent.**
> (emphasis added).

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[5] Available at https://files.consumerfinance.gov/f/documents/cfpb_debt-collection-NPRM.pdf.

A copy of AFSA's comments is available from the Department's website.[6] AFSA also repeated its appreciation for the Department's exclusion of creditors during testimony to the Department at the December 19, 2022, public hearing on the amended rules. AFSA "is the primary trade association for the consumer credit industry, protecting access to credit and consumer choice."[7]

RMAI's December 19, 2022, comments also pointed this out.[8] The definition of "debt collector" adopted by the Department in its August 2024 amendment is nearly identical to that of the federal Fair Debt Collection Practices Act (15 U.S.C. 1692a(6)) which, for over half a century has been consistently interpreted as excluding creditors when collecting their own debt. "And by its plain terms this language seems to focus our attention on third party collection agents working for a debt owner—not on a debt owner seeking to collect debts for itself." *Henson v. Santander Consumer USA Inc.*, 582 U.S. 79, 83, 137 S. Ct. 1718, 1721 (2017).

Further, pursuant to section 1043 of the City Administrative Procedure Act, the Department identified only "debt collection agencies" as the "[t]ypes of individuals and entities likely to be affected" by the amended Rules in its Regulatory Agendas for FY 2023 and FY 2024.[9]

Therefore, the exclusion of creditors from the amended Rule was known to the consumer credit industry and should have been known by the Department (had it considered any of the commentary or its Regulatory Agenda), nearly two years before the amended rule was published on August 12, 2024. That the Department was aware of its exclusion of creditors is clearly stated in its August 12, 2024, Notice of Adoption: "On November 4, 2022, the Department proposed amendments to adopt similar protections as those provided to consumers at the federal and state levels . . ." Both New York State[10] and federal debt collection laws are applicable only to third-party debt collectors, with limited exceptions.

All consumer creditors are proposed to be covered by the City's debt collection rules. This would include small businesses that provide goods and services by invoicing a consumer and later seek payment, such as plumbers, electricians, carpenters, cleaning and home-care services, to name a few. "Small businesses—those with fewer than 50 employees—are the backbone of New York City's economy."[11] The amendments to section 5-76 would capture small business that collect their

[6] https://rules.cityofnewyork.us/wp-content/uploads/2022/11/AFSA-comment-letter-NYC-debt-collection-regs.pdf, archived at https://perma.cc/A6CF-KKZX

[7] https://afsaonline.org/about-afsa/, archived at https://perma.cc/6NQS-8R9R

[8] "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)."

[9] https://rules.cityofnewyork.us/wp-content/uploads/2022/05/DCWP-FY-2023-Regulatory-Agenda-Final-2.pdf, archived at https://perma.cc/C66V-7MZ4.

[10] See, 23 NYCRR 1.1(e), "Debt collector means any person engaged in a business the principal purpose of which is the collection of any debts, or any person who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another."

[11] Matt Hutton, Assistant Vice President, New York City Economic Development Corporation, *NYC's Small Business Recovery: Patterns of Growth in a Changing Economy*, p. 1 (May 2024), available at https://edc.nyc/sites/default/files/2024-05/NYC-Small-Business-Recovery-May-2024.pdf, archived at https://perma.cc/W9GY-8XAB.

own debt. The majority of these businesses employ five or less persons.[12] "Compliance with CAPA gives the public an opportunity to comment on a proposal before it becomes effective, which is consistent with the legislative desire to give the citizenry a voice in the operation of government." *Ousmane v. City of N.Y.*, 2005 NY Slip Op 50634(U), ¶ 4, 7 Misc. 3d 1016(A), 1016A, 801 N.Y.S.2d 238 (Sup. Ct.). Creditors have been denied this opportunity. We believe the Department has failed to comply with CAPA by intentionally excluding creditors from the amendments adopted in August 2024 only to propose their inclusion now, with no notice or opportunity to be heard on the substance of the amended rules.

III. CONCLUSION

Based on the foregoing analysis, RMAI believes that the Department needs to retract its adopted rule, address the issues of constitutionality, clean up the rule's conflicts with state and federal laws and regulations, properly notice creditors of their intended inclusion within the rule, and republish for public comment before readopting the rule. RMAI appreciates the opportunity to submit its comments concerning the proposed rule. RMAI looks forward to assisting the Department in any capacity we can. Please do not hesitate to contact RMAI's General Counsel, David Reid, at dreid@rmaintl.org or (916) 482-2462 if you need further clarification on RMAI's comments or if we can be of further assistance.

Sincerely,

Michael Becker
Executive Director
Receivables Management Association International

cc: RMAI Board of Directors

[12] *Id.*, p. 3.

December 11, 2024

New York City Department of Consumer & Worker Protection
42 Broadway
New York, NY 10004
Via email at: Rulecomments@dcwp.nyc.gov.

Re: Amendment of Rules Related to Debt Collectors (Reference # 2023 RG 047)

The Card Coalition respectfully submits these comments in response to the proposed amendments to rules relating to debt collection—in particular to express our opposition to the provision defining the term "debt collector" to include those collecting debts they originate.[1]

Creditors differ from third-party collectors

Third-party debt collectors and debt buyers differ significantly from creditors collecting their own debts. The two have entirely different business models with very different incentives.

Debt collectors generally are paid only by collecting and frequently collect less than a hundred percent of the debt. Debt buyers typically purchase bad debt for a fraction of the debt owed and generally collect only a fraction of that amount. Neither attempts to salvage the consumers' credit score nor has any prospect of a future or ongoing relationship with the consumer.

On the other hand, creditors benefit by ensuring the customer does not default, collecting the debt without resorting to advanced collections (such as turning the account over to debt collectors or lawsuits), and increasing the likelihood of future mutually beneficial relationships with the customer. Creditors have an incentive to maintain a relationship with their customers, and they risk losing the relationship in addition to the entire balance when they cannot effectively communicate with their customers to collect amounts that have fallen delinquent.

[1] The Card Coalition consists of major national card issuers and related companies with an interest in state legislative, executive, and regulatory activities affecting the payment card industry and consumers. We are the only national organization devoted solely to the credit card industry and related legislative and regulatory activities in all 50 states. To learn more about the Card Coalition and our members, please visit www.cardcoalition.org.

Communication between creditors and their customers is critical to helping customers stay current or to work with them if they face hardship.

Creditors call their customers for many reasons, only one of which is the collection of an account. Creditors make many different types of calls related to the status of the account, such as calls the customer requested, alerting the customer regarding possible fraud, offering or follow-up regarding extensions and modifications, responding to complaints, informing about failed payment (*i.e.*, returned due to insufficient funds), about lost payments, and regarding potential bankruptcy filings.

Congress understood the difference when enacting the FDCPA

The policy distinction between creditors collecting their own debts and third-party collection agencies is no accident. Congress recognized that the FDCPA should not apply to creditors. When the FDCPA was passed in 1977, Congress recognized that creditors are different than and do not operate like debt collectors. While much has changed since 1977, this essential fact remains the same.

While consumers cannot choose their debt collectors, they usually make conscious decisions when selecting a creditor.

The Senate Report on the FDCPA states, "Unlike creditors, who generally are restrained by the desire to protect their goodwill when collecting past due accounts, independent collectors are likely to have no future contact with the consumer and often are unconcerned with the consumer's opinion of them."[2]

Congressional intent aside—the FDCPA's Congressional findings and declaration of purpose found: "There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many ***debt collectors***. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy."[3]

Congress further found: "It is the purpose of this subchapter to eliminate abusive debt collection practices by ***debt collectors***, to insure that those ***debt collectors*** who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses."[4] (emphasis added)

The Government Accountability Office also reaffirmed Congress' important distinction between debt collectors and creditors when it stated, "Because first-party collectors use

[2] S. REP. 95-382, S. Rep. No. 382, 95TH Cong., 1ST Sess. 1977, 1977 U.S.C.C.A.N. 1695, 1977 WL 16047 (Leg.Hist.)

[3] 15 U.S. Code § 1692 (a)

[4] 15 U.S. Code § 1692 (b)

the issuers' name and are collecting from current customers, there is an emphasis on preserving the relationship with the consumer and mitigating the negative perception that consumers can have about their accounts being forwarded to collection."[5]

Creditors are incented to assist consumers

Customers are hard to come by. Once obtained, creditors are motivated to maintain that relationship rather than lose it to a competitor. Extending credit, however, comes with its inherent risks. Accounts that go into default or do not pay timely ultimately affect a company's costs and risks. Therefore, creditors are additionally incentivized to maintain a customer in a "paying" relationship.

As a report from the Tower Group states, "The cost to replace one bank card customer ranges from $160 to over $200, and issuers that work with their customers through this difficult period will retain customers for life."[6] In other words, creditors use debt collection as a customer retention strategy and are incentivized by avoiding the costs of acquiring new customers.

Debt collectors usually collect only mature, static balances from consumers with whom they have no prior or ongoing relationship. On the other hand, creditors collect from their own customers with whom they have a long-term and continuous relationship. These customers also carry other balances on accounts with the creditor that are not delinquent.

Unlike debt collectors, whose business is collecting defaulted loans or accounts, creditors' primary business is selling goods on credit or making new loans. Creditors, such as captive finance companies, want to sell more cars for their parent companies. Other lenders want to expand their customer relationships to selling them additional products, opening deposit accounts, or simply looking for repeat business.

Creditors can often provide workable alternative solutions to defaulting consumers and are motivated to use those solutions to preserve the relationship with the consumer. These solutions may not be present for debt collectors, particularly in the later stages of collections, due to the nature of the relationship and the timing of the collection activity. These solutions include, but are not limited to, extensions (modifying the payment schedule to allow the customer to defer a payment) and rewrites (modifying the contract to reduce the customer's payment amount).

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[5] U.S. Gov't Accountability Office, GAO-09-748, *Fair Debt Collection Practices Act Could Better Reflect the Evolving Debt Collection Marketplace and Use of Technology* (2009), available at http://www.gao.gov/assets/300/295588.pdf

[6] Moroney, Dennis, "*Revitalize the Credit Card Pre-Charge-off Collection Process and Improve the Bottom Line*." TowerGroup. April 2009. Quoted in "*Leveraging Collections as a Customer Retention Tool,*" by Julie Austin and Vytas Kisielius of Collections & Recovery, TSYS, Jan. 2010. Available at: http://www.ftc.gov/sites/default/files/documents/public_comments/ftc-workshop-debt-collection-2.0-protecting-consumers-technology-changes-project-no.p114802-00007%C2%A0/00007-58348.pdf

Use of these solutions will typically allow a customer who is already delinquent and therefore in default to bring their account current and avoid more late charges, negative credit reporting, and even repossession.

This means that creditors have substantial “skin in the game.” They invest not only their money but also their valuable customer relationships – relationships they very much want to keep. Debt collectors, however, are at the opposite end of the spectrum. They have little to lose. That accounts for some of the practices the FDCPA was designed to prevent. Because Congress recognized that creditors have so much “skin in the game,” Congress already decided that creditors should not be subject to the same debt collection restrictions as debt collectors.

We urge caution before changing any debt collection law

While it is tempting to imagine that making debt collection more difficult benefits consumers, in reality, the effective, efficient, and fair collection of consumer debts benefits consumers. Without the ability to enforce contracts, credit would be scarcer and more costly for most of our customers who pay on time.

A leading economist put it this way in 2015: [7]

> “The regulation of debt collection activities presents a challenge from an economic perspective. In theory, well-designed debt collection rules can aid both borrowers and lenders by increasing access to and reducing prices for consumer credit. But poorly designed rules can reduce the effectiveness of debt collection, which will increase losses and lead to higher prices and less access to credit for consumers, especially low-income and high-risk consumers. Rules intended to protect consumers from some credit collection practices could lead creditors to use alternatives that consumers prefer even less.”

Specific Amendment to ameliorate the impact on creditors

As outlined above, we urge the exemption of creditors; if the Department insists on their inclusion, we recommend that the rules be amended to apply only to creditors collecting charged-off debt. This change provides parity by treating creditors in the same manner as debt collectors who, by the very nature of their business, only collect charged-off

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[7] Zywicki, Todd J.,THE LAW AND ECONOMICS OF CONSUMER DEBT COLLECTION AND ITS REGULATION, George Mason University Legal Studies Research Paper Series LS 15-17 at https://www.mercatus.org/system/files/Zywicki-Debt-Collection.pdf

debt. The N.Y.Ct.Rules, § 202.27-a, defines the terms "original creditor" and "charged off debt." [8]

To accomplish this, we recommend the following amendments:

1. §5-77 (b)(1)(iii)(D) is amended by adding:
"With respect to creditors, paragraph (b)(1)(iii)(A) – (D) of this section shall only apply after the creditor institutes debt collection procedures."

2. §5-77 (b)(4) is amended as follows:
(4) Communicate or attempt to communicate with a consumer with respect to a debt if the consumer has notified the debt collector in writing that the consumer wishes the debt collector to cease further communication with the consumer with respect to that debt, except for any communication which is required by law. 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.

3. §5-77 (b)(5) is amended as follows:
(5) For debt collectors, other than creditors, ~~C~~contact a New York City consumer by electronic communication to collect or attempt to collect debt unless the debt collector satisfies the following requirements:

4. §5-77 (b)(9) is amended as follows:
(9) For debt collectors, other than creditors, ~~C~~communicate or attempt to communicate with a consumer to collect a debt for which the debt collector knows or should know that the consumer was issued a Notice of Unverified Debt pursuant to paragraph (f)(8) of this section, unless a subsequent debt collector verifies the debt prior to such communication in accordance with paragraph (f)(7) of this section, but no sooner than 30 days from the date the consumer receives verification of the debt.

5. §5-77 (e)(10) is amended as follows:
(10) for debt collectors, other than creditors, furnishing to a consumer reporting agency, as defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. §1681a(f)), information about a debt unless the debt collector has sent the consumer a validation notice pursuant to section 5-77(f) that states, clearly and conspicuously, that the information about the debt will be reported to a consumer reporting agency and has waited 14 consecutive days.

6. §5-77 (f) is amended as follows:
Validation of debts. Paragraph (f) of this section shall apply to debt collectors, other than creditors.

---

[8] The Rule defines the terms as follows: *"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. Charged-off consumer debt means a consumer debt that has been removed from an original creditor's books as an asset and treated as a loss or expense."*

7. §5-77 (i)(1) is amended as follows:

(1) After the institution of debt collection procedures, a debt collector must maintain reasonable procedures for determining the statute of limitations applicable to a debt it is collecting and whether such statute of limitations has expired.

8. §5-77 (i)(2) is amended as follows:

(2) Initial written validation notice. if a debt collector subject to paragraph (f) of this section including a debt collection agency that must provide information to a New York City consumer pursuant to section 20-493.2(b) of the Administrative Code, seeks to collect on a debt for which the debt collector has determined, including pursuant to paragraph (i)(1) of this section, or otherwise knows or has reason to know, that the statute of limitations for a debt has or may have expired, the debt collector must initially deliver to the consumer a written validation notice pursuant to section 5-77(f)(1), by U.S. mail or delivery service, that clearly and conspicuously discloses to the consumer substantially the same time-barred-debt disclosure below, before contacting a consumer about the expired debt by any other means:

9. §5-77 (i)(3) is amended as follows:

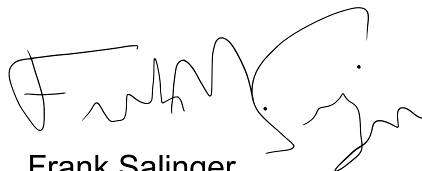
(3) Waiting Period. A debt collector subject to paragraph (f) of this section must wait at least 14 consecutive days after mailing to the consumer the validation notice with the time-barred debt disclosure pursuant to this subdivision to receive a notice of undeliverability. During such waiting period, the debt collector must permit receipt of, and monitor for, notifications of undeliverability from communications providers. If the debt collector receives such notification during such waiting period, the debt collector must not contact the consumer, by any other means of communication, to collect the expired debt until the debt collector otherwise satisfies section 5-77(i)(2).

10. Delayed effective date

Treating original creditors in the same way as third-party collectors assumes that creditors can establish a separate collection management system specifically for New York City. Meanwhile, current practices in other states and jurisdictions will remain in effect. For this reason, we join in support of other commenting organizations who are requesting a two-year delay of the effective date.

***

For the reasons stated above, we urge you to revise the proposed rule to eliminate the coverage of creditors and, if that is not feasible, to make the recommended changes outlined above. Thank you for your consideration.



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November 7, 2024

Via regular mail and email to CommunityAffairs@DCWP.NYC.gov

Alexandra F. Pinilla, Esq.
NYC Consumer and Worker Protection
42 Broadway, Floor 9
New York, NY 10004-1731

Re: New Collection Rules effective April 1, 2025

Dear Ms. Pinilla,

Thank you for providing a pleasant presentation on the new rules. Kindly forward me the power point as it will provide a valuable resource for our review.

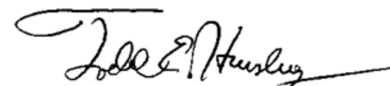
Certain items remain unclear to me, and my legal colleagues, and I would appreciate your clarification.

The rules do not apply to attorneys taking legal action. Would this include judgment enforcement and execution, such as a wage garnishment, issuance of information and other subpoenas, restraining notices and the like?

For judgments that have been entered prior to the effective date of these regulations would verification of the debt by a copy of the judgment entered on default be sufficient to provide to the judgment debtor? If the judgments have been entered more than 7 years ago by default, which is after the 7 year retention period, how would the original creditor or debt buyer ever be able to obtain a copy of the charge off statement?

Thank you for your attention to this matter and for your assistance.

Houslanger & Associates, PLLC



Todd E. Houslanger, Esq.

From:	James K. Schultz
To:	rulecomments (DCWP)
Subject:	[EXTERNAL] Debt collection rule questions
Date:	Monday, December 2, 2024 11:56:45 AM
Attachments:	SIS.logo.signature10.2.20_8a61cfb7-fb2a-47bf-ae45-cfa05dfe5655.png

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CAUTION! EXTERNAL SENDER. Never click on links or open attachments if sender is unknown, and never provide user ID or password. If **suspicious**, report this email by hitting the **Phish Alert Button**. If the button is unavailable or you are on a mobile device, forward as an attachment to phish@oti.nyc.gov.

My office represents several collection agencies that are working to ensure compliance with New York City's new debt collection rules effective April 1, 2025. In doing so, a few questions were raised that I am hoping can be clarified. Specifically we have 2 questions:

Question 1: Would it be permissible to include an abbreviated disclosure on the front page of the Regulation F initial letter advising the consumer the debt is beyond the statute of limitation period and direct the consumer to the full disclosure on the reverse side or additional page? Due to the length of the disclosure, we believe it is best to insert the abbreviated disclosure and move the full disclosure to a less congested space in the Reg F Model Notice. This suggestion provides the consumer with 2 warnings that the debt is out of statute. Below is a suggested initial disclosure on the front page of the Initial Notice. We would include the full language on the additional page in 12-point font in contrasting color.

Our Information shows:	
You had an ABC Creditor account with account number ending in XXXXX. Original Creditor: ABC Creditor	
Total Due of as charge-off on January 2, 2021:	$ 2,234,56
Between January 2, 2021 and today:	
Total interest accrued since charge-off:	$75.00
Total non-interest charges or fees accrued since charge-off:	$25.00
Total payments made since charge-off:	$50.00
Total adjustments made since charge-off:	(+/-) $0.00
Total amount of the debt now:	$ 2,284,56

YOU CANNOT BE SUED ON THIS DEBT BECAUSE OF ITS AGE. SEE THE REVERSE SIDE FOR MORE INFORMATION ON YOUR IMPORTANT RIGHTS.

Question 2: Is there any exception to the requirement to send a written notice to the consumer after each contact confirming the account is out of statute? Without an exception, sending the letter could result in an agency unintentionally violating the contact frequency limits. The written notice becomes redundant when the statute of limitation disclosure is given in every verbal and written communication. Can an agency be excused from sending the letter is it can confirm the disclosure was given verbally on a recorded call with the consumer?

Thank you for your consideration of the above.

James K. Schultz, Attorney | Sessions, Israel & Shartle
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Online comments: 3

- **Martin Lynch**
  My comments on behalf of the Financial Counseling Association of America are included in the attached file. Thank you for the opportunity.

  Comment attachment
  FCAA-Testimony-on-NYC-expanded-definition-of-debt-collector-12-11-2024.docx

  Comment added December 11, 2024 11:52pm

FCAA | Financial Counseling Association of America

December 11, 2024

To: The Department of Consumer and Worker Protection

RE: Proposed Amendments to Title 6, Chapter 55, Subchapter A, Part 6, Section 5-76, "Definition of a Debt Collector"

To Whom It May Concern:

The Financial Counseling Association of America, a trade association comprised of 17 non-profit credit counseling agencies, is thankful for the opportunity to offer comments on the proposed changes to the definition of "debt collector." Though our non-profit members are specifically and appropriately exempt from the revised definition, the FCAA objects to the expanded designation that the new rule would codify. While we understand the intent of the proposed rule, we feel strongly that it would do much more harm than good, and that creditors who are original lenders must be exempt from the amended rule's provisions.

When a lender has made a loan to a consumer and that borrower misses a payment, lenders do not harass those clients as the rule seemingly presumes. Relentless and intimidating phone calls may certainly be common practice among debt buyers and third-party collectors, but that is simply not the way most lenders communicate with borrowers who miss payments. Those clients are still *clients*, mind you. The lending community works hard to acquire new clients at significant cost. They do not want to lose or dismiss those clients after a missed payment or two. In fact, the tenor and substance of the original lender's calls typically include offers of assistance if the client has experienced a financial setback of some kind. By restricting contact with the borrower, however, the city would actually become an obstacle in the process of providing support to the client – precisely where a good regulator doesn't want to be.

Similarly, the restrictions on client contact ignore the fact that major lenders often make multiple loans to individual clients. (My current mortgage and car loans were made by Bank of America, for example.) Those loans are handled by completely different sections of the bank, as the loans are significantly different products. If I experienced a financial setback and missed payments on both of those loans, two different departments within the bank would be reaching out to me to see what kind of issue I might be experiencing, and they'd also be offering different types of workout plans to get me back on track. The auto loan representative isn't equipped to offer me a mortgage workout plan, but according to the restrictions this rule would impose, if that auto loan representative called me three times, then no one from the mortgage department would be able to contact me, and I'd fall into greater difficulty. That's the kind of outcome this expanded definition will produce, and it won't be the exception. It will harm *many* consumers who do most or all of their borrowing through a single bank. As any credit counselor can attest, when people hit a rough patch in their life, they fall behind on *many* of their accounts. It's rarely just one.

Again, we understand and support the city's intent to protect consumers from harassing phone calls, texts, and emails from debt collectors, but the tactics used by those businesses are not employed by responsible lenders. Unfortunately, because the proposed rule and its expanded definition ignores that distinction, the FCAA feels obligated to urge you to remove or revise your definition of "debt collector."

Sincerely,

Martin Lynch
President, the Financial Counseling Association of America

- **Brent Gordon Weitzberg**

  On behalf of the New York Bankers Association, please see our attached comments.

  Comment attachment

  Final-NYC-Debt-Collection-NYBA-Comment.pdf

  Comment added December 12, 2024 3:08pm

NEW YORK BANKERS ASSOCIATION NYBA

Via Electronic Submission

December 12, 2024

Commissioner Vilda Vera Mayuga
New York City Department of Consumer and Worker Protection
42 Broadway
New York, NY 10004

Dear Commissioner Mayuga:

The New York Bankers Association ("NYBA")[1] submits this comment letter in response to the New York City Department of Consumer and Worker Protection's ("DCWP" or "the Department") newly Proposed Amendment relating to the definition of "debt collector," published in the New York City Record on November 12, 2024[2] (the "Proposed Amendment" or the "proposal"). We share the Department's general goal of preventing abusive and predatory debt collection practices and we thank you for the opportunity to provide our views on this matter.

General Comments

The Proposed Amendment's unexpected expanded definition of Debt Collector to include original creditors collecting debts on their own behalf would, if applied to banks, result in significant harm both to New York City's banking industry, and to the millions of City residents who rely daily upon it.[3] Respectfully, we do not agree that the Proposed Amendment constitutes a mere "clarification" of an existing rule (the "Rule")[4]. Contrary to DCWP's assertion, its adoption would be a definitive change that circumvented required rule making processes and could potentially subject banks to a host of new, substantive City debt collection requirements in conflict with comprehensive State and federal regulations already governing how banks communicate with account holders on a range of matters, including payments.[5] It would saddle banks with an unwieldy and unsuitable regulatory framework designed to govern *third-party debt* collection, without yielding any enhancement to the broad range of consumer protections already applicable to bank customers under State and federal law.

Moreover, such a course reversal would be as sudden as it is stark. The Department's efforts to revise the City's debt collection rules to more closely align with State and federal law began in November 2022. Part of that alignment, as reflected in the Department's first proposed amendments published on November 4, 2022, was the exclusion of creditors collecting their debts in their own name from the definition of "debt

[1] NYBA is comprised of the smaller community, mid-size regional, and large banks across every region of New York State. Together NYBA members employ nearly 200,000 New Yorkers, safeguard $2 trillion in deposits, and extend nearly $70 billion in home and small business loans. NYBA members also support their communities through an estimated $200 million in community donations and 500,000 employee volunteer hours.
[2] *See generally*, Consumer and Worker Protection, Notice, The City Record, Vol. CLI, No. 217, Nov. 12, 2024, at 5639-5640.
[3] *See generally*, Consumer and Worker Protection, Statement of Basis and Purpose of Proposed Rules, The City Record, Vol. CLI, No. 217, Nov. 12, 2024, at 5639-5640.
[4] *See generally*, The Rules of the City of New York, Title 6, Ch. 5, Sub. A, Pt. 6, § 5-76 (2024).
[5] *See*, Consumer and Worker Protection, Statement of Basis and Purpose of Proposed Rules, The City Record, Vol. CLI, No. 217, Nov. 12, 2024, at 5639-5640.

collector."[6] That exclusion remained consistent in the re-noticed proposed amendments (September 29, 2023) and again in the final published amendments (August 12, 2024). As such, the November 12, 2024 Proposed Amendment to revise the definition of "debt collector" to expressly include such creditors came after more than two years of consistent messaging precisely to the contrary.[7] This abrupt deviation left no opportunity for banks and other creditors to meaningfully assess and comment on the Rule.[8]

In both substance and process, therefore, the Proposed Amendment's speedy introduction and limited comment period underestimate its potentially seismic impact on New York City's banking sector. Plainly stated, its adoption will impose substantial operating burdens and costs on banks and their customers, without enhancing consumer protections. Worse, adoption of the Proposed Amendment will likely have a significant negative impact on the cost and availability of a range of safe and transparent credit products and workout/loss mitigation options currently available to New York City residents through banks. As we outline below, we are respectfully requesting that the Proposed Amendment be withdrawn or paused to allow for a fulsome and legally required comment period for all stakeholders.

I. Banks Should not be Subject to the Rule Because Banks are Fundamentally Different than Debt Collectors

DCWP's last-minute proposal to regulate banks and other original creditors in the same manner as third-party debt collectors should be rejected in its entirety. Banking operations – including but not limited to lending and collection activities – are already governed by a comprehensive web of federal and State consumer protection laws and regulations. Subjecting banks to the Rule's ill-fitting restrictions on *third-party* debt collection will only harm New York City consumers, without providing any additional consumer benefit.

State and federal statutes and legal rules governing debt collection generally distinguish between banks, on the one hand, and third-party debt collectors, on the other hand, in regulation and oversight. As noted, New York State's debt regulation excludes banks from its scope, as do multiple federal examples. These exclusions recognize the comprehensive regulatory framework already governing banks, which provides appropriate consumer protections for bank borrowers, while at the same time facilitating the banking sector's safe, transparent and largescale extension of credit on a daily basis to millions of New York City residents.

Supporting a regulatory distinction between banks and third-party debt collectors is a necessary and appropriate reflection of their distinct business models and the expectations of customers. Consumers voluntarily select their banks, and similarly choose from among the range of credit and loan products available through their bank. This

[6] As published in both the November 4, 2022 and September 29, 2023 proposed amendments, "debt collector" was revised to mean (in pertinent part) "any person engaged in any business with the principal purpose of which is the collection of any debts or who regularly collects, or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due to another person…"

[7] Indeed, as seemingly recognized by the Department in its November 7, 2024 webinar, the Rule's definition of "debt collector" was widely understood to exclude such creditors.

[8] *See*, Consumer and Worker Protection, Notice, The City Record, Vol. CLI, No. 217, Nov. 12, 2024, at 5639-5640.

contrasts sharply with the typical relationship between a consumer and third-party debt collector, which is involuntary at inception and generally only forms after the collector independently acquires contractual rights to collect the consumer's debt – often after it has been charged-off by the issuing creditor. Bank customers, instead typically form lasting relationships with their banks, and frequently maintain multiple separate accounts with the same institution over time. Similarly, they may obtain numerous separate loans and credit extensions from the same bank over time, for matters as varied as consumer credit cards, automobile loans, or residential mortgages, to name a few. It is within this context – and not the involuntary, transient nature of the consumer- debt-collector relationship – that most banks routinely communicate with their customers on a range of matters, including but not limited to payments.

The Proposed Amendment threatens to confusingly merge these distinctions, with no consideration of the compliance costs imposed on creditors and, most importantly, the harms incurred by consumers. At a minimum, this can be expected to cause banks to reevaluate and potentially curtail their existing communications with customers, much of which is routine servicing, recurring, and does not relate to debt collection, but which may nonetheless be viewed as a potential violation of the Rule.

The harm to consumers going through difficult financial times will be immediate. When banks communicate with a customer regarding a past due debt, the purpose of the communication frequently is to avoid a default, help the customer get current on their account again, and/or avoid the account charging-off, and being placed with a third-party collector for collection or potentially a lawsuit. This intervention could happen through a modification of payment terms, loan forbearance, or another arrangement. Application of the Proposed Rule to banks and other original creditors will limit such communication, impairing customers' ability to receive information on available debt relief options such as forbearance or hardship programs which may allow for reduced payments to even keep the account current. This risk is greater for consumers with limited financial literacy who may not know to reach out to request information on these options.

The Proposed Amendment conflicts with the federal Fair Debt Collection Practices Act ("Regulation F" or "FDCPA")[9] and New York State law and policy that recognize the critical distinction between original creditors and debt collectors.[10] This distinction is reflected in Article 29-H of the New York General Business Law that distinctly defines "principal creditor" and "debt collector."[11] This distinction is also evident in how the New York State Department of Financial Services ("DFS") regulates debt collection practices through its Debt Collection Regulation, which is Part 1 of Title 23 of the New York Codes, Rules, and Regulations. Specifically, those DFS regulations separately define "original creditor" and "debt collector," the latter definition expressly excluding "any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor."[12] This distinction is also found across other New York laws, including the Civil Practice Laws and Rules governing enforcement of default judgments, as highlighted in

[9] Fair Debt Collection Practices Act, 12 CFR Part 1006 ("Regulation F").
[10] *See Eric M. Berman, P.C. v. City of New York*, 25 N.Y.3d 684, 690 (2015) (recognizing state preemption occurs when a local government adopts a law inconsistent with New York State law).
[11] N.Y. Gen. Bus. Law § 600 (3, 7).
[12] 23 NYCRR 1.1 (e, f).

the lawsuit recently brought by ACA International, Inc. that seeks to enjoin these DCWP proposed rules. Not only do these New York state laws and regulations distinguish creditors from debt collectors in their defined terms, they also differentiate based on the types of obligations to which the parties are subject. For example, DFS regulations, including requirements to provide statements of consumer rights, debt validation notices, an itemized accounting of the debt, and restrictions on electronic communication apply to third party debt collectors and specifically exclude creditors. The Proposed Amendment clearly conflict with the state's approach to regulating the activities of debt collectors differently from those of creditors, by imposing the types of obligations that the state of New York intentionally chose not to require of creditors.

The Proposed Amendment thus jeopardizes important consumer benefits derived through the banking relationship, including but not limited to ongoing, regular communications with their institution of choice and constructive opportunities to avoid default. Consequently, and as a result also of the comprehensive State and federal consumer protections already applicable to banks, adoption of the Proposed Rule risks doing more harm than good for consumers.

II. Banks Already are Subject to Stringent State and Federal Oversight

As noted above, unlike debt collectors, banks are subject to comprehensive State and federal rules with respect to all aspects of their operations, including how and when they communicate with customers. Moreover, banks are subject to regular supervisory examinations by the Office of the Comptroller of the Currency ("OCC") and the New York State Department of Financial Services ("DFS"), to ensure compliance with those rules, and are subject also to regular internal and external audit requirements. It is no surprise, then, that banks collecting debts on their own behalf are potentially excluded from State and federal rules regulating third-party debt collectors.[13]

As discussed in more detail below, DCWP's Proposed Amendment would create significant confusion on the part of banks and their customers, as well as burdensome and unnecessary implementation barriers, by supplanting longstanding, well-understood and uniform national and statewide consumer protection requirements with a cumbersome municipal regulation intended to govern both banks and third-party debt collectors, notwithstanding their vastly different business models and regulatory environments. This will likely have a negative impact on the price and availability of bank-offered credit for New York consumers, potentially depriving them of consumer benefits available elsewhere throughout the rest of the State and country.[14]

[13] New York Codes, Rules and Regulations (NYCRR), 23 NYCRR 1.1; Fair Debt Collection Practices Act (FDPA), 15 USC 1692 (a)(6) et seq.

[14] Although not addressed here, it is reasonable to conclude that application of the Rule to banks may be subject to preemption under State and federal banking laws. We refer DCWP to comments submitted by the American Financial Services Association ("AFSA"), which NYBA hereby adopts and incorporates by reference. *See generally*, American Financial Services Association, Comment Letter re: Proposed Amendment of Rules Relating to Debt Collectors, New York City Department of Consumer and Worker Protection, December 10, 2024.

III. DCWP Failed to Provide Sufficient Time to Comment on the Proposed Amendment and to Implement the Rule

The final version of the Rule published by DCWP on August 12, 2024, defines the term "debt collector" to *exclude* banks and other original creditors collecting on their behalf unless they do so under a different name.[15] As noted above, this definition is consistent with that found in State and federal laws governing debt collection, which also could exclude banks.[16] Banks and other original creditors were similarly excluded from the definition of "debt collector" contained in the initially proposed version of the Rule, published in November 4, 2022 and the re-noticed proposed amendments from September 29, 2023.[17] Consequently, banks and other original creditors who now may be made subject to the Proposed Amendment have not had adequate notice and opportunity to comment on its provisions, due to a sense of detrimental reliance.

DCWP's characterization of the Proposed Amendment as merely clarification, ignores the Rule's express drafting history, analogous State and federal rules, and well-settled industry and consumer expectations. Its adoption would mark a sea-change in the regulation of New York's banking industry and give rise to numerous burdensome and costly implementation challenges that don't provide a countervailing benefit. In accordance with the requirements of the New York City Administrative Procedures Act ("CAPA"), the Rule should be re-proposed in its entirety to afford banks and other creditors a full, fair and meaningful opportunity to comment on its provisions, unless the latest proposed amendment of November 2024 is otherwise stricken.[18] If not, we will be forced to seek an alternative legal remedy.

Specific Comments

I. Contact Frequency - §5-77(b)(1)

The Rule's requirements are tailored to the third-party debt collection industry and, if applied to banks, will cause significant consumer harm. The Rule imposes more stringent contact limitations than found under State and federal debt collection rules, and would prohibit communication attempts by banks via any method, more than three times in a seven calendar-day period at a customer level.

To the extent banks are made subject to the Rule, its provisions restricting contacts with a consumer should be applied at the *account–level* and not, as reflected in the current Rule, at the consumer-level. Consumer-level contact restrictions will adversely impact consumers if creditors are not able to have valuable conversations to

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[15] *See*, Department of Consumer and Worker Protection, Statement of Basis and Purpose of Rule, The City Record, Vol. CLI, No. 155, Aug. 12, 2024, at 4071.

[16] New York Codes, Rules and Regulations (NYCRR), 23 NYCRR 1.1; Fair Debt Collection Practices Act (FDCPA), 15 USC 1692 (a)(6) et seq.

[17] *See*, Department of Consumer and Worker Protection, Proposed Rule Amendment, The City Record, Vol. CXLIX, No.213, Nov. 4, 2022, at 5485; *See also*, Department of Consumer and Worker Protection, Proposed Rule Amendment, The City Record, Vol. CL, No. 188, Sept. 29, 2023, at 4995.

[18] *See*, New York City Administrative Procedures Act (CAPA) § 1043; *See also*, New York City Department of Consumer and Worker Protection, Frequently Asked Questions on new Rules for Debt Collectors, (2024). The need for re-proposal is underscored by the Rule's current compliance deadline of April 1, 2025. The Rule's requirements would impose substantial new, unprecedented and costly implementation burdens on banks, as well as significant operational challenges, with little or no opportunity to assess, let alone comment on, its provisions.

advise their customers on a range of matters, including the status of their various accounts, available resources such as financial literacy and anti-fraud tools, and a range of other matters. Once again, while such restrictions may be well suited to third-party debt collection, they do not reflect the nature of the voluntary relationship between a consumer and bank, which is long-term and typically involves a multitude of bank products and services over time.

Even when a bank contacts its customer for collection purposes, early contact is often in the customer's best interest and more servicing in nature. Banks often attempt collection activity in early stage delinquency, when a consumer is still living in the house, driving the car, or able to use the credit card that is the subject of the contact. Such early contact with consumers frequently helps them avoid a variety of potentially negative credit consequences, such as a negative furnishing to credit bureaus, charge-off , foreclosure, repossession, or loss of future credit by giving banks the opportunity to offer more options for resolution of the troubled debt, such as workout programs, payment extensions, and loss mitigation/foreclosure prevention actions. Especially with early-intervention, our members are able to provide possible assistance including reducing interest rates and in certain cases even having not-for-profit consumer credit agencies help the consumer with holistic credit restructuring. These types of actions benefit consumers by encouraging early discourse and early outreach by creditors while favorable solutions are still an option for the consumer.

Moreover, unlike third-party debt collectors, many banks' information technology systems are maintained at the product level, rather than the consumer level, to ensure compliance with regulations applicable to the specific bank products and services (e.g. Real Estate Settlement Procedures Act ("RESPA" or "Regulation X") for mortgage loans [19], and the Truth In Lending Act ("TILA" or "Regulation Z") for credit cards[20]). If the proposed amendment is adopted, a bank with a customer who has multiple loan products would be restricted in its ability to reach out to said customer in connection with each product. As one example, if, in a 7 day period, a creditor were to make a phone call to a customer with a past due home loan, send a text message to a customer with a late credit card payment, and mail a notice that a deposit account is overdrawn, under the Rule the creditor would not then be able to reach out further to advise the customer that their car is also at risk of repossession, since to do so would presumably risk violating the Rule's contact frequency limits. Such a result would be absurd and ultimately risks consumer harm that far outweighs any perceived benefits obtained by subjecting banks to the Rule.

If enacted, this proposed amendment would also have financial effects on the most financially struggling New Yorkers across low-and-moderate income (LMI) communities. In sum, these struggling New Yorkers would be robbed of the opportunity to work with their banking institutions to enter customized repayment programs. Instead, city regulations would force all delinquent accounts – from home to auto to credit – into the hands of debt collection agencies, exposing these New Yorkers to litigation and crippling them further financially.

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[19] Real Estate Settlement Procedures Act, 12 CFR 1024 ("Regulation X").
[20] Truth In Lending Act, 12 CFR 1026 ("Regulation Z").

Cease and Desist Requests - §5-77(b)(4)

If banks are brought in under debt collection rules, they could prohibit banks from requiring customers to submit a written cease-and-desist request to stop collection communications. Once again, applied in the banking context this requirement will likely cause more harm than good. A written request provides clarity and certainty for both banks and their customers with respect to the specific debt communications at issue and helps ensure that banks can continue to communicate vital information to account holders concerning matters separate from the specified debt.

Electronic Communications - §5-77(b)

Section 5-77(b)(5) of the Rule appears to require prior express *written* consent from the consumer for a creditor to send servicing and collection communications electronically to consumers. Neither the Telephone Consumer Protection Act ("TCPA")[21] or any other federal or state law of which we are aware requires prior express *written* consent to send non-marketing related communications to customers. Typically, all that is required for collection texts and calls is prior express consent and nothing is required for collection emails. Were the Rule, with this proposed amendment, now apply to banks and other original creditors, in both substance and scope, New York City would likely become *the most restrictive jurisdiction in the country* with respect to the nature of consent required for banks to send non-marketing electronic communications to their customers. DCWP has provided no policy rationale explaining why existing federal and State laws – and even other municipal laws – that require only prior express consent are insufficient to protect New York City consumers and yet the measure's potential harms are manifest.

If this is not addressed, banks and other original creditors may be forced to curtail a range of beneficial electronic communications with consumers in order to avoid the additional uncertainty and related compliance burdens stemming from this requirement. For example, it is conceivable that once an account is past due, a bank will not transmit fraud alerts or payment reminders unless they receive the required consent envisioned by the Rule. This will also result in consumers not being able to use their preferred methods of communication, which increasingly are through electronic channels, and lead to a poor customer experience and frustration. Indeed, were the Rule applied to banks, millions of consumers who have routinely been receiving electronic communications from banks may stop receiving them in their preferred channel without significant notice or explanation, jeopardizing their ability to meaningfully engage with their creditors to regain access to credit, avoid repossession or other adverse legal action, and on a range of other matters including, as noted above, fraud alerts. Moreover, this outcome is unnecessary - consumers receiving electronic communications already have a method of stopping unwanted communications: by using widely-utilized, industry standard one-click opt-outs or requesting that creditors stop communications entirely. Requiring express written permission will not provide additional material consumer protections.

The DCWP should also confirm that creditors can presume that any email address, text message number, or social media account, for which they have been granted

[21] Telephone Consumer Protection Act, 47 U.S.C. § 227.

permission to communicate with by the consumer, is "private and direct." Section 5-77(b)(5)(i) of the Rule specifies that electronic communication can be used only if it is "private and direct" to the consumer. While we believe this was only intended to modify the description of "specific electronic medium of communication," the DCWP should either confirm and clarify that in the text of the rule, or clarify that email addresses, text message numbers, and social media accounts provided by and/or used by the consumer satisfy this provision. Without further clarity, banks and other creditors, if subject to the Proposed Amendment, may have difficulty determining which of these channels is "private and direct" and thus may have to curtail their methods of communication, regardless of consumer preference and expectation. This is particularly burdensome for customers who have already provided consent for their creditor to communicate with them using such a specified medium but who never confirmed that the medium was "private and direct".

DCWP must also clarify the scope of the Rule's requirement that creditors provide an "opt-out" response to consumers. Section 5-77(b)(5)(v) appears to require that creditors include an opt-out notice in every electronic communication and accept any response from a consumer indicating their desire to opt out of electronic communication. But as currently worded, it is not clear if any reasonable opt out method is acceptable or if creditors must only permit consumers to reply to an email with "STOP" (as opposed to, for example, including a link for the consumer to click to opt out). Many banks and other large creditors typically include a link in their emails to enable email opt outs but may not offer two-way email communication platforms. As currently worded and without clarification, this requirement could be read to require the development of specific electronic communication systems capable of monitoring and recognizing various opt-out phrases, and in various languages. The complexity and risk associated with implementing such systems may deter some creditors from utilizing electronic communication altogether and could frustrate consumers who prefer this method of interaction. Alternatively, DCWP should clarify that any opt-out method that complies with the FDCPA[22] is sufficient.

Communications at Place of Employment - §5-77(b)(6)

Section 5-77(b)(6) of the Rule prohibits debt collectors from communicating with consumers at their place of employment, including sending electronic messages to email addresses and phone numbers that the debt collector knows or should know are provided by the consumer's employer. This requirement will pose significant challenges if applied to banks, as they will need to implement new systems to identify and exclude employer-provided contact information. The requirement also fails to account for consumers who are sole proprietors and may only use a single method of electronic communication for their personal and business communications. The additional costs associated with developing and maintaining such a system may further discourage banks from using electronic communication methods, despite their popularity among consumers.

[22] Fair Debt Collection Practices Act, 12 CFR Part 1006 ("Regulation F").

Credit Bureau Reporting - §577-(e)

The Rule's restrictions on credit bureau reporting are not suitable for banks and if applied to banks will likely conflict with federal law. Moreover, application of the restrictions to banks could significantly interfere with their ability to lend. § 5-77(e)(10) of the Rule mandates that a validation notice be sent and a 14-day waiting period observed before a debt collector can furnish information to a credit reporting agency ("CRA"). As a general matter, however, in order to maintain a healthy credit ecosystem, banks typically begin reporting information to CRAs at the inception of an account. Indeed, under the federal Fair Credit Reporting Act, creditors are obligated to continuously update such reporting to ensure its integrity and accuracy.[23] While §5-77(e)(10) aligns with federal Regulation F, which requires a debt collector to wait a "reasonable period of time" after providing notice to a consumer before reporting the debt to a CRA, Regulation F applies to third-party debt collectors, not original creditors such as banks.[24] Consequently, compliance with the Rule would potentially require that banks violate concurrent federal legal requirements or, at a minimum, undertake the impossible task of ensuring that CRA's daily delete reported data in order to comply with the Rule's 14-day waiting period.

Requiring banks to curtail their reporting of data on charged-off debts could also significantly interfere with their ability to make responsible, accurate underwriting decisions. Once again, this will necessarily and negatively impact the price and availability of credit to New York City consumers without yielding any additional consumer benefit.

Validation of Debts - §5-77(f)

Banks and other original creditors should not be required to send debt validation notices to consumers under §5-77(f) of the Rule. The general purpose of a validation notice is to require a debt collector to prove that it has sufficient information about the debt so that it is appropriate for them to collect it, and to provide consumers with sufficient information about the debt so that the consumer can identify it and confidently engage with the entity attempting to collect it. This is particularly important if time has elapsed between when the creditor initially stopped collecting the debt and the resumption of communication, or where the debt has been charged off by the original creditor and sold or otherwise discharged to a third-party who then attempts to collect the debt.

Moreover, consumers already are subject to substantial protections under federal law with respect to dispute rights they may assert with banks and other creditors. In particular, consumers already may exercise broad rights to dispute and require proof of an alleged debt under the Truth In Lending Act ("TILA" or "Regulation Z") [25], Credit Card Accountability Responsibility and Disclosure Act of 2009 ("CARD Act")[26], and Fair Credit

[23] 15 U.S.C. § 1681s-2.
[24] 12 C.F.R. 1006.30(a)(1).
[25] Truth In Lending Act, 12 CFR 1026 ("Regulation Z").
[26] Credit Card Accountability Responsibility and Disclosure Act of 2009, 15 U.S.C. §§ 1601-1667f, 1681 et seq. and 1693 et seq.

Reporting Act ("FCRA")[27]. Application of the Rule's debt validation requirements to banks and other original creditors would therefore be duplicative, unduly burdensome, and potentially conflicting without affording any additional consumer benefit.

Indeed, the Rule's specific validation requirements are facially tailored for use in the third-party debt collection context and would cause significant confusion for consumers and banks alike. For example, §5-77(f)(1)(viii) of the Rule requires validation notices for open-ended loans to include an itemization of the debt as of the "itemization reference date," which is defined as the charge-off date, as well as any changes to the amount being collected or collection procedures since the charge-off date. The requirement under §5-77(f)(7) for creditors to provide a consumer with verification of the debt being collected requires that the creditor provide the consumer with a copy of the charge-off statement for the debt. Similarly, the Rule's restrictions under §5-77(f)(4) and (5) on "communications" following a consumer's receipt of a debt validation notice fail to contemplate the ongoing nature of a bank's relationship and contacts with its customers.

Once again, the utility of such requirements is clear in the context of third-party debt collection, where the relationship between the consumer and debt collector is involuntary, tenuous, and usually transitory. Banks, however, routinely communicate with their customers concerning debts before they have been charged-off and in many cases such communications are for the purposes of making loan modifications or other arrangements designed to avoid charge-off or eventual default. Application of the Rule to banks will likely hinder such efforts for fear of potential liability under the Rule. This risk is compounded by the Rule's vague definition of "debt" to include "[a]ny obligation or alleged obligation to pay money … whether or not such obligation has been reduced to judgment," and its requirement that validation notices be sent "five days after the initial communication with a New York City consumer in connection with the collection of a debt."[28]

The expanded debt itemization requirements under §5-77(f)(12) of the Rule, if also applied to Original Creditors, are nonsensical in the context and, as written, nearly impossible for banks and other creditors to implement. The general purpose of debt itemization in the collection context is to ensure that entities *subsequent* to the original creditor have complete and accurate information and documentation concerning the debt in order to substantiate and prove the debt to the consumer. The information provided through debt itemization, however, is duplicative of the timely account information regularly and directly provided to consumers by banks and other original creditors through, for example, statements and other correspondence that characterize their ongoing account relationship. Applying the requirement to banks and other creditors would impose costly and unnecessary compliance burdens as well as consumer confusion for no clear purpose.

More fundamentally, as currently written this provision, especially if modified by the Proposed Amendment, is vague, confusing and likely impossible for banks to implement. By its express terms, §5-77(f)(12) would require banks to treat the expanded itemization

[27] Fair Credit Reporting Act, 15 U.S.C. §§ 1681-1681x.
[28] §5-76; §5-779f)(1).

requirement, once triggered, as “an obligation to provide verification of the debt” in accordance with §5-77(f)(7) of the Rule. That provision, however, generally only requires debt collectors to provide a consumer with one additional debt verification after the provision of a first verification. §5-77(f)(12) appears to contain no similar limiting language, creating a potential loophole that could permit consumers to indefinitely delay collection activities by repeatedly requesting an expanded debt itemization under §5-77(f)(12).

In summary, while we share the Department’s commitment to protecting New Yorkers from abusive debt collection practices, the Proposed Amendment represents a substantive and unwarranted departure from established State and federal regulatory frameworks, as well as dramatically changes the implications for its own initial Rule. Adoption of this new proposal risks significant harm to New York City’s banking sector and its consumers, undermining the benefits of existing banking relationships without adding meaningful consumer protections. We respectfully urge the DCWP to pause or withdraw this rulemaking and instead re-propose the amendment through a proper process under CAPA, ensuring sufficient notice and opportunity for meaningful stakeholder engagement. We thank you for the opportunity to provide our views and would welcome the chance to discuss these concerns further.

Respectfully Submitted,
THE NEW YORK BANKERS ASSOCIATION

- **Teshale Smith**
  The American Bankers Association and the Consumer Bankers Association submit this joint comment regarding the DCWP's Proposed Amendment of Final Rules Relating to Debt Collectors.

  Comment attachment
  ABA-CBA-NYC-Debt-Rule-Comment_Submitted-12.12.2024.pdf

  Comment added December 12, 2024 6:08pm

December 12, 2024

Commissioner Vilda Vera Mayuga
New York City Department of Consumer and Worker Protection
42 Broadway
New York, NY 10004
Submitted via email: rulecomments@dcwp.nyc.gov

Re: Proposed Amendment of Final Rules Relating to Debt Collectors

Dear Commissioner Mayuga:

The American Bankers Association[1] and the Consumer Bankers Association[2] (the "Associations") appreciate the opportunity to submit this comment letter on the New York City Department of Consumer and Worker Protection (DCWP) proposed amendment[3] to its previously-finalized debt collection rules[4] (the "Proposal").

The Associations strongly urge the DCWP to withdraw its extension of ill-suited procedural requirements to creditors collecting their own debts in their own names. At a minimum, DCWP should follow a more deliberate process by reopening the comment period and suspending the effective date of the Proposal. With the benefit of a further opportunity to consider comments, the Associations are confident that the DCWP will conclude that the Proposal does not give sufficient notice to affected creditors, would substantially harm and confuse consumers, imposes illogical obligations on their creditors, and likely is preempted by federal and state law.

1. The Rulemaking process did not give required notice to affected creditors.

The process that DCWP followed with respect to the Proposal did not provide the required time to consider the wide-ranging impacts of the Proposal. After a two-year rulemaking process, DCWP finalized its debt collection rules in August 2024 (DCWP Final Rules). Nowhere in that 24-month rulemaking record did DCWP state that the proposed or final rules would apply to creditors collecting their own accounts and doing so using their own names. Rather, the definition in the original proposal and in the DCWP Final Rules defined debt collector to include

[1] The American Bankers Association is the voice of the nation's $23.9 trillion banking industry, which is composed of small, regional and large banks that together employ approximately 2.1 million people, safeguard $18.8trillion in deposits and extend $12.5 trillion in loans.
[2] The Consumer Bankers Association is the only national financial trade group focused exclusively on retail banking and personal financial services—banking services geared toward consumers and small businesses. As the recognized voice on retail banking issues, CBA provides leadership, education, research, and federal representation for its members. CBA members include the nation's largest bank holding companies as well as regional and super community banks that collectively hold two-thirds of the total assets of depository institutions.
[3] NYC DWCP, Notice of Public Hearing and Opportunity to Comment on Proposed Rules (Nov. 15, 2024), DCWP-Proposed-Amendment-of-Rules-Related-to-Debt-Collectors.pdf [Proposal].
[4] NYC DWCP, Notice of Adoption (Aug. 12, 2024), https://rules.cityofnewyork.us/wp-content/uploads/2024/08/DCWP-NOA-Debt-Collectors.pdf [Final Rules].

"any creditor that, in collecting its own debts, uses any name other than its own that would suggest or indicate that someone other than such creditor is collecting or attempting to collect such debts."[5]

Notably, DCWP stated that it initiated the rulemaking to conform its rules to the Consumer Financial Protection Bureau's recent final Regulation F promulgated pursuant to the federal Fair Debt Collection Practices Act (FDCPA). The FDCPA applies only to debt collectors collecting on behalf of another and thus explicitly does not apply to creditors.[6]

Then, during a November 7, 2024 webinar, DCWP abruptly changed course and stated that the DCWP Final Rules do apply to creditors collecting their own accounts.[7] On November 15, 2024, the DCWP issued an amended notice of proposed rulemaking.[8] The amended notice seeks to "clarify that the definition of 'debt collector' continues to include those collecting debts they originated."[9] The DCWP states this amendment is needed due to stakeholder "confusion" about whether the DCWP Final Rules apply to creditors collecting on accounts they originated in their own names. As represented by the membership of the Associations, virtually the entire population of U.S. banks—collectively the original creditors of trillions of dollars of consumer debts—evaluated the initial proposed rules and the DCWP Final Rules and concluded they did not apply to creditors collecting their own debt in their own name and instead applied to third-party debt collectors and debt buyers consistent with the federal FDCPA and New York state law. The DCWP's belated attempt to reinsert creditors into an onerous regulatory framework written to regulate "debt collection agencies" and seek comment in less than thirty days has injected confusion into what was a settled issue in this debt collection rulemaking.

DCWP's Proposal is not consistent with the City's Administrative Procedure Act (CAPA).[10] Under Section 1043(b) of the CAPA, New York City agencies are to provide at least thirty days' notice of a proposed rule before holding a public hearing. Instead, DCWP issued its Proposal on November 15, 2024 and set the hearing and comment deadline for December 12, 2024, with 26 days' notice (including Thanksgiving Day). In addition, Section 1043(d)(1) requires city officials to certify that proposed rules do not conflict with "other applicable laws" and "minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule."[11] Yet, the certifications appended to the proposed notice[12] fail to account for the conflict between the proposed clarification to add creditors to the rule and applicable New York state and federal laws governing the debt collection industry. And no justification can be provided to support the contention that the proposed amendment minimizes compliance costs for creditors given that the proposed amendment would require them to

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[5] *Id.* at p. 8.
[6] *See* 12 C.F.R. § 1006.2(i).; 15 U.S.C. § 1692a(6). *See also*, *Henson v. Santander Consumer USA Inc.*, 137 S. Ct. 1718, 1721 (2017) ("Both sides accept that third party debt collection agents generally qualify as 'debt collectors' under the relevant statutory language, while those who seek only to collect for themselves loans they originated generally do not. These results follow, the parties tell us, because debt collection agents seek to collect debts 'owed . . . another,' while loan originators acting on their own account aim only to collect debts owed to themselves.").
[7] *See* DCWP 101: New Rules for Debt Collectors (originally aired Nov. 7, 2024), https://youtu.be/IzpgBAzTq1Y.
[8] NYC DCWP, Proposal, *supra* note 3.
[9] *Id.* at 2 (although document is unnumbered).
[10] N.Y.C. City Charter, Chapter 45, Section 1043, https://rules.cityofnewyork.us/capa/.
[11] *Id.* at Section 1043(d)(1).
[12] NYC DCWP, Proposal, *supra* note 3, at 5-6.

comply with an extensive third-party debt collection and debt buyer framework to which they are not subject under federal[13] or New York state laws.[14]

2. The proposed amendment would harm and confuse consumers while imposing illogical obligations on their creditors.

In its proposed amended rule, DCWP states that it intended for the amendments finalized in August 2024 to apply to all persons that fall within the definition of debt collector including creditors and that its definition never "included an exception for debt collection activity that concerns a debt which was originated by the creditor."[15] However, the definition of debt collector in the September 23, 2023 reproposal—which was not amended in the DCWP Final Rules—does not appear to support that reading:

> The term "debt collector" means [an individual who, as part of his or her job, regularly collects or seeks to collect a debt owed or due or alleged to be owed or due] any person engaged in any business with the principal purpose of which is the collection of any debts or who regularly collects, or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due to another person.[16]

This language is nearly identical to the definitions of debt collector in the parallel federal FDCPA[17] and New York state law.[18] In addition, the DCWP Final Rules define "original creditor and originating creditor" solely as "any person, firm, corporation, or organization who originated the debt, including by extending credit and creating the debt." If the DCWP intended the original creditor or originating creditor to also be a debt collector, the definition of "debt collector" should have included those defined terms.

To now propose an amendment to "clarify" that this definition applies to original creditors disregards the plain meaning of the words used in the definition: original creditors are not engaged in a business "the principal purpose of which is the collection of any debts." Nor, as the Supreme Court observed in *Henson*, do original creditors "regularly collect[] or attempt to collect[], directly or indirectly, debts owed or due or asserted to be owed or due to another person."

Even assuming DCWP's original definition encompassed original creditors, the entirety of the rulemaking proposal is then ill-suited for its intended purpose. While some original creditors currently voluntarily comply with some provisions of DCWP's pre-existing debt collection rules, the DCWP's debt collection regulatory framework is designed entirely for the third-party collection industry. To apply the DCWP Final Rules to creditors would result in confusing and illogical outcomes for consumers and their creditors. As the legislative purpose supporting

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[13] Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692-1692p, and its implementing Regulation F, 12 C.F.R. pt. 1006.
[14] 23 Comp. R. & Regs. of N.Y. § 1 (Debt Collection by Third-Party Debt Collectors and Debt Buyers), available at Browse - Unofficial New York Codes, Rules and Regulations.
[15] NYC DCWP, Proposal, *supra* note 3, at 2.
[16] NYC DCWP Final Rules, *supra* note 4, at 8-9 (underlined text reflecting amended language).
[17] 15 U.S.C. § 1692a(6).
[18] 23 Comp. R. & Regs. of N.Y. § 1.1(e).

passage of the federal FDCPA[19] and all subsequent parallel rulemakings made clear,[20] the protections in third-party collection regulatory regimes are necessitated precisely because original creditors hire third-party collectors to collect accounts in default and for which the original creditors are no longer themselves collecting on. To reduce consumer confusion at the point of hand-off from creditor to debt collector, the federal FDCPA and parallel state laws established a framework that provides the right level of information to avoid confusion. Under these regimes, consumers have an ability to identify who is contacting them (since third-party collectors use their own names, not the creditors' name in communications), for what account they are collecting, and if there is a discrepancy between the consumer's records and the third-party collector's records, an ability to seek validation of the underlying information the third-party collector received from the original creditor.

Consumer confusion about why a debt collector is contacting them and which account is involved buttresses the entire debt collection canon of laws, including the DCWP Final Rules. An obvious example of how this framework is meant to help reduce consumer confusion and hold debt collection agencies accountable to them appears in the definitions section of the DCWP Final Rules which require debt collectors to "provide the consumer the address of the '***originating creditor***' within 45 days of receiving a request for the consumer for such an address." (emphasis supplied).[21] If this final rule was clearly intended to apply to original creditors, why would it also include this provision? Requiring original creditors to validate to their own customers an account the creditor originated provides an incongruous, repetitive outcome that makes no sense, adds no value, and provides no protection to consumers, the stated goal of the rulemaking.

If indeed the final rules were meant to apply to original creditors, DCWP must reevaluate each provision in the final rules to determine how they would apply to original creditors and how to remedy the confusion and harm caused to consumers. An example of just a handful of those questions follows:

- If the purpose of the rulemaking was to conform to the Consumer Financial Protection Bureau (CFPB)'s parallel rulemaking under the federal FDCPA, how does DCWP justify the extension of its rule to creditors collecting accounts in their own name when the CFPB's regulation applies only to nonbank third-party collectors?
    - The CFPB has consistently acknowledged that, while there are overlaps, there are important distinctions between the two markets—particularly when it comes to the procedural steps that existing FDCPA and DCWP regulations mandate for third-party collectors but that are not required of first-party creditors.
    - In the Small Business Review Panel process for the CFPB's Regulation F rulemaking, the CFPB consistently noted this distinction. CFPB Bulletin 2013-07 likewise itemized only certain first-party collection conduct that might violate the prohibition on unfair, deceptive, or abusive practices.[22] For New York City to take

[19] 15 U.S.C. § 1692(e)("[I]t is the purpose of this subchapter to eliminate abusive debt collection practices by *debt collectors*, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to promote consumers against debt collection abuses.").
[20] 85 Fed. Reg. 76,734 (Nov. 30, 2020); 86 Fed. Reg. 5766 (Jan. 19, 2021).
[21] NYC DCWP Final Rules, *supra* note 4, at 8.
[22] Consumer Fin. Prot. Bureau, CFPB Bulletin 2013-07 (July 10, 2013), https://files.consumerfinance.gov/f/201307_cfpb_bulletin_unfair-deceptive-abusive-practices.pdf.

such an unprecedented and drastic approach would require creditors to substantially overhaul their communications practices with no meaningful benefit to consumers.

- How does DCWP account for the fact that the word “creditor” appears 54 times in the DCWP Final Rules and yet, in none of those references do the rules require the creditor to undertake the obligations applied to third-party debt collectors?

- Why would a creditor (whom the consumer affirmatively selected to do business with) in communicating with its own customer regarding amounts owed, including accounts that are not in default, do any of the following that the Proposal would require?

    - Disclose the existence of the debt to consumers before reporting information about the debt to a nationwide consumer reporting agency (excluding the specialty consumer reporting agencies that collect deposit account information). Creditors already furnish the tradelines represented by these debts at account opening. To require creditors to provide notice of continued furnishing is absurd. Moreover, the CFPB regulation on which the DCWP modeled its provision was justified precisely because original creditors already furnish the tradeline on which third-party collectors are collecting.

    - Provide a “mini-Miranda” warning to the customer whose account is not in default, given that the definition of “debt” in the existing rule is already overbroad.

    - Retain records on consumer complaints that were sent to a debt collection agency.

    - Validate the existence of the debt, using information that the creditor already has provided to the customer, when the account’s validity is already known to the customer who opened the account . These types of communications will only confuse and cause concern with the customers when receiving these types of communications with their banks or other creditors particularly regarding accounts where they are paying as agreed. Also, the required information in the validation notice only exists at the time of charge-off, yet the text of the rule says it needs to be sent within 5 days after initial communication about the “debt”, making compliance impossible.

    - Make attempts to reach out to individual customers about all of their debts (which could include accounts in good standing) no more than three times in seven days, when the customers may have multiple products handled by different divisions, and creditors may have an urgent need to reach the customers so they do not lose access to credit, lose access to their vehicle, or potentially be sued for non-payment.

    - Identify only one natural person to a consumer at one telephone number that must be answered by a human, who is available to address questions customers may have about their debt, without any consideration for internal staffing, vacation/time off schedules, and overall call volumes, instead of using modern, effective, pooled dialing strategies that emphasize customer experience.

    - Send an “unverified debt notice” if certain information is not provided to a consumer within an arbitrary 45-day window, after the creditor had been sending months, and potentially years, worth of statements to the creditor since the time of origination.

- The Proposal gives no justification for applying these requirements on creditors for their customers for accounts subject to DCWP's authority. It is unreasonably burdensome for creditors who maintain accounts with consumers subject to DCWP's authority with little if any benefit, nor would DCWP have the resources to review the voluminous records this extension of authority the Proposal would trigger.

The DCWP Final Rules define the class of actors subject to the rule as "debt collectors" and applies the parallel obligations on those debt collectors—and not creditors—as exist in New York state and federal FDCPA laws. The Proposal articulates no justification for its clarification, which would necessitate a thorough review of all the provisions already promulgated.

Undertaking such a broad extension of these obligations via an inappropriately short clarification process highlights the need for an appropriate rulemaking effort. If the DCWP were to follow an appropriately deliberate process as required by New York City law to consider the costs and benefits of the proposed expansion, the Associations are confident that it would reach a different conclusion as to the Proposal.

3. DCWP's proposed amendment is likely preempted by federal and state law.

As demonstrated by the original proposal and the DCWP Final Rules, DCWP understood the significance of the federal FDCPA and sought to mirror its obligations to avoid an impermissible conflict between federal and New York state laws. In issuing the Proposal, the DCWP's application of these rules to original creditors is in direct conflict with federal and New York state law.

a. The Proposal is likely preempted by the federal FDCPA and Regulation F.

Upon challenge, a federal court would likely hold that the DCWP's Proposal is preempted by the federal FDCPA. The implementing Regulation F of the FDCPA states that:

> Neither the Act nor the corresponding provisions of this part annul, alter, affect, or exempt any person subject to the provisions of the Act or the corresponding provisions of this part from complying with the laws of any State with respect to debt collection practices, except to the extent that those laws are inconsistent with any provision of the Act or the corresponding provisions of this part, and then only to the extent of the inconsistency. For purposes of this section, a State law is not inconsistent with this subchapter if the protection such law affords any consumer is greater than the protection provided by this subchapter.[23]

First, the Proposal's conflicting provisions do not afford greater protection to consumers. In fact, the Proposal is likely to result in significant consumer harm rather than enhanced consumer protection. By restricting early communications with customers,[24] the Proposal would limit creditors' ability to engage with struggling consumers during critical early stages of delinquency. This could lead to accounts becoming more severely past due, negatively impacting consumers' credit scores and their future access to financial services. Delayed communication may also prevent creditors from offering timely assistance programs, such as hardship accommodations or payment plans, for accounts at risk of aging into default.

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[23] 12 C.F.R. § 1006.104.
[24] NYC DCWP Final Rules, *supra* note 4.

Further, the restriction on communication attempts—limiting creditors and collectors to three times within seven days—creates a barrier to effective early intervention. This restriction reduces opportunities to resolve debts amicably, thereby increasing the likelihood of litigation and foreclosing access to hardship programs. Additionally, combining communications for multiple accounts into a single message risks creating confusion for consumers, as it conflates separate obligations and may inadvertently violate FDCPA or the prohibition on Unfair, Deceptive, or Abusive Acts or Practices.

The proposal would also disrupt well-established, consumer-preferred channels such as email and text messaging. This could delay essential notifications, such as fraud alerts or payment reminders, and expose consumers to financial harm. Moreover, the mandate to include the name of a specific natural person as a contact in all communications is impractical for large creditors and introduces operational inefficiencies. This requirement could lead to poor customer experiences, such as extended wait times or confusion when employees leave their positions or transfer roles.

Furthermore, in cases where a creditor may be subject to the FDCPA and Regulation F, there are several provisions within the DCWP's Final Rules that would not only cause consumer harm but would be operationally infeasible due to the inconsistencies. For example, Section 5-77 states:

> During the validation period, a debt collector must not engage in any collection activities or communications that overshadow or are inconsistent with the disclosure of the consumer's rights to dispute the debt and request the name and address of the original creditor.

This section extends the concept of the validation period indefinitely without specifying when it ends, creating uncertainty about when regular collection activities can resume. By contrast, the FDCPA provides a clear 30-day validation period during which consumers can dispute the validity of a debt or request information about the original creditor.[25] This lack of clarity could lead to conflicts where creditors are uncertain if their actions violate the indefinite restriction under the Proposal to amend the DCWP's Final Rules, even after the federally mandated 30-day period has passed.

Similar to the consumer harms mentioned above, requiring creditors to send validation notices could confuse consumers about their rights and obligations and overwhelm them with overlapping and redundant notifications. For instance, a consumer with debts owed to both a first-party creditor and a third-party debt collector might receive mixed messaging about dispute periods, communication rights, and what actions are allowed, making it harder to understand their rights and resolve their debts. A consumer might also disregard a first-party creditor's notices because they appear non-urgent, only to face escalated debt collection actions later, including lawsuits or credit reporting.

In summary, the clarification not only conflicts with the carefully calibrated regulatory framework established by the FDCPA and Regulation F and New York state law, but also imposes burdensome and counterproductive requirements that harm consumers and undermine creditors' ability to assist them effectively. It creates operational hurdles, confuses consumers,

[25] *See* 15 U.S.C. § 1692g(b).

and thwarts early intervention efforts, ultimately making financial outcomes worse for struggling individuals.

b. The rule is likely preempted by the National Bank Act.

The Proposal also failed to address the significant concerns of applying the rule to national banks, including many of the Associations' members. Apart from the lack of any policy reason to impose these procedural and recordkeeping requirements on national banks whose collection activities are already supervised by the Office of the Comptroller of the Currency and, in many cases, the CFPB, these requirements go so far as to risk impermissibly interfering with banks' exercise of core banking powers to lend money. If it elects to reissue the Proposal in a more deliberate fashion, the DCWP should, at a minimum, exempt banks from its scope or, alternatively, limit its application to circumstances following the initiation of formal debt collection procedures by creditors.

The National Bank Act (NBA) was specifically designed to protect national banks from a patchwork of state and local laws and regulations. The NBA preempts any state or local law that would "prevent or significantly interfere with [a] national bank's exercise of its powers," whether those powers are enumerated or incidental.[26] This principle ensures that national banks, which serve customers nationwide, are shielded from potentially conflicting local regulations. The law was intended to provide "needed protection from possible unfriendly state legislation"[27] and to prevent the "[c]onfusion" that "would necessarily result from control possessed and exercised by two independent authorities."[28]

The DCWP Final Rules impose restrictions on debt collection activities, including communication frequency limits, mandatory validation periods, and disclosures tailored to New York City residents. These restrictions directly interfere with national banks' ability to collect debts in a manner that aligns with their federally sanctioned practices. It would significantly interfere with routine customer communications, even before an account is charged off and potentially reaching multiple unrelated accounts, and deprive national banks of this critical credit risk management tool and the flexibility national banks need to "manage credit risk exposures,"[29] thus significantly interfering with national banks' ability "to carry on the business of banking."[30] Such interference is precisely what the NBA's preemption doctrine was designed to prevent.

For example, the proposal includes an unverified debt notice requirement mandating banks to permanently halt collection activities and notify consumers that debts cannot be collected if verification deadlines are missed. The rule arbitrarily imposes a 45-day deadline for responding to consumer validation requests, with no exception for inadvertent administrative oversights. As a result, financial institutions could be permanently barred from collecting valid debts, which undermines their rights and poses systemic risks to the credit industry. Such restrictions not

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[26] *Barnett Bank of Marion Cnty., N.A. v. Nelson*, 517 U.S. 25, 32-33 (1996).
[27] *Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 10 (2003).
[28] *Watters v. Wachovia Bank, N.A.*, 550 U.S. 1, 14 (2007).
[29] OCC, Office of Thrift Supervision Integration; Dodd-Frank Act Implementation, 76 Fed. Reg. 43,549, 43,557 (July 21, 2011).
[30] *Watters v. Wachovia Bank, N.A.*, 550 U.S. 1, 6 (2007). The Supreme Court has "repeatedly made clear that federal control shields national banking from unduly burdensome and duplicative state regulation … [and] when state prescriptions significantly impair the exercise of authority, enumerated or incidental under the [National Bank Act], the State's regulations must give way." Id. at 11-12 (citing *Barnett Bank of Marion County., N.A. v. Nelson*, 517 U.S. 25, 32–34 (1996)).

only impair national banks' ability to recover debts but also jeopardize the stability and soundness of credit markets.

Additionally, the final rule's restrictive communication requirements fail to consider the operational realities of national banks, which often manage multiple accounts for a single customer. For instance, if a customer is delinquent on a credit card payment, the rules appear to severely limit or cease communications about other accounts held by the same customer, such as auto loans, mortgages, or deposit accounts. These limitations hinder national banks' ability to fulfill their obligations under federal laws, such as the Fair Credit Billing Act and the Real Estate Settlement Procedures Act, both of which require timely and effective consumer communication.

The NBA also preempts state and local laws that create significant operational inefficiencies or harm consumers by restricting national banks from exercising their federally authorized powers efficiently. By imposing excessive restrictions, the DCWP's rules undermine national banks' ability to engage in early, proactive communication with borrowers, particularly those at risk of delinquency. Early intervention is a cornerstone of federally approved strategies to assist consumers in managing financial difficulties. The rules' constraints on communication channels and procedural hurdles delay the resolution of delinquent accounts, increasing the likelihood of consumer harm through heightened fees, litigation, or adverse credit reporting.

In summary, the Proposal to amend DCWP's Final Rules not only contradicts the NBA's preemption doctrine but also undermines its purpose by imposing significant burdens on national banks and harming the very consumers it purports to protect. To align with federal law and prevent further consumer harm, the DCWP should explicitly exclude national banks from the rule's scope in any reissued proposal. This exemption would ensure compliance with the NBA's preemption principles, maintain regulatory consistency, and preserve national banks' ability to operate efficiently and effectively in serving customers nationwide.

c. DCWP's amendment is likely preempted by state law.

Aside from conflicting with the FDCPA and the NBA, DCWP's proposal, if finalized, would also conflict with New York state law and policy that recognize the critical distinction between original creditors and debt collectors.[31] This distinction is reflected in Article 29-H of the New York General Business Law that distinctly defines "principal creditor" and "debt collector." N.Y. Gen. Bus. Law § 600 (3, 7). This distinction is also evident in how the New York State Department of Financial Services (DFS) regulates debt collection practices through its Debt Collection Regulation, which is Part 1 of Title 23 of the New York Codes, Rules, and Regulations.

Specifically, those DFS regulations separately define "original creditor" and "debt collector," the latter definition expressly excluding "any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor." N.Y. Comp. Codes R. & Regs. tit. 23, § 1.1 (e, f). This distinction is also found across other New York laws, including the Civil Practice Laws and Rules governing enforcement of default judgments, as highlighted in the lawsuit recently brought by ACA International, Inc. and Independent Recovery Resources, Inc. that seeks to enjoin DCWP Final Rules.[32]

[31] *See Eric M. Berman, P.C. v. City of New York*, 25 N.Y.3d 684, 690 (2015) (recognizing state preemption occurs when a local government adopts a law inconsistent with New York State law).
[32] Complaint for Declaratory and Injunctive Relief, ACA International Inc. v. Adams (2024), https://www.consumerfinancialserviceslawmonitor.com/wp-content/uploads/sites/880/2024/10/ACA_v._Adams.pdf.

Not only do these New York state laws and regulations distinguish creditors from debt collectors in their defined terms, they also differentiate based on the types of obligations to which the parties are subject. For example, DFS regulations, including requirements to provide statements of consumer rights, debt validation notices, an itemized accounting of the debt, and restrictions on electronic communication apply to third party debt collectors and specifically exclude creditors. The proposed DCWP amendments clearly conflict with the state's approach to regulating the activities of debt collectors differently from those of creditors, by imposing the types of obligations that the state of New York intentionally chose not to require of creditors.

Conclusion

The Associations appreciate the opportunity to comment on the proposed amendment to the DCWP's debt collection rules. We strongly urge the DCWP to withdraw its extension of procedural requirements to first-party creditors, as these requirements are ill-suited, operationally burdensome, and conflict with existing federal and state regulatory frameworks. The rulemaking process also failed to provide adequate notice or time for stakeholders to evaluate the wide-ranging implications of these changes.

We welcome further discussion and collaboration to address the concerns raised in this comment letter. Should you have any questions, please feel free to contact the undersigned.

Sincerely,

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