

**NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES
PROPOSED
AMENDMENT TO 23 NYCRR 1**

DEBT COLLECTION BY THIRD-PARTY DEBT COLLECTORS AND DEBT BUYERS

I, Adrienne A. Harris, Superintendent of Financial Services, pursuant to the authority granted by Sections 102, 201, 202, 301, 302, and 408 of the Financial Services Law, do hereby promulgate the following amendment to Part 1 of Title 23 of the Official Compilation of Codes, Rules and Regulations of the State of New York, to take effect 180 days after the notice of adoption is published in the State Register, to read as follows:

(NEW MATTER UNDERSCORED; DELETED MATTER IN BRACKETS)

Section 1.1 is amended as follows:

For the purposes of this Part:

(a) *Charge-off* means the accounting action taken by [an original] a creditor to remove a debt obligation from its financial statements by treating it as a loss or expense.

(b) *Clear and conspicuous* means that the statement, representation or term being disclosed is of such size, color, and contrast and/or audibility and is so presented as to be readily noticed and understood by the person to whom it is being disclosed. If such statement is necessary as a modification, explanation or clarification to other information with which it is presented, it must be presented in close proximity to the information it modifies, in a manner so as to be readily noticed and understood.

(c) *Communication* means the conveying of information regarding a debt directly or indirectly to any person through any medium.

(d) *Creditor* means any person or such person's successor in interest by way of merger, acquisition, or otherwise, to whom a debt is owed or allegedly owed.

[(c)] (e) *Consumer* means any natural person who owes or who is alleged to owe a debt.

[(d)] (f) *Debt* means any obligation or alleged obligation, whether absolute or contingent, of a consumer for the payment of money or its equivalent which arises out of a transaction [wherein credit has been extended to a consumer, and the money, property or service which was the subject of the transaction was] primarily for personal, family or household purposes, whether or not such an obligation has been reduced to a judgment. This term includes the obligation of a consumer who is a co-maker, guarantor, or endorser[, as well as the obligation of the consumer to whom the credit was originally extended] of such transaction. [Debt shall not include any obligation or alleged obligation of a consumer for the payment of money or its equivalent which arises out of a transaction wherein credit has been provided by a seller of goods or services directly to a consumer exclusively for the purpose of enabling that consumer to purchase such consumer goods or services directly from the seller.]

[(e)] (g) *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. Notwithstanding the exceptions contained in this subdivision, [Debt] debt collector includes without limitation a buyer of debts who seeks to collect such debts either directly or indirectly, as well as 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. The term does not include:

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

(2) any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts;

(3) any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his or her official duties;

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

(5) any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors; and

(6) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity:

(i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement;

(ii) [concerns a debt which was originated by such person;

(iii)] concerns a debt [which was] arising out of a transaction wherein credit has been extended to a consumer that was not in default at the time it was obtained by such person, and the money, property or service which was the subject of the transaction was primarily for personal, family or household purposes; or

[(iv)] (iii) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor[; and].

[(7) any person with respect to:

(i) serving, filing, or conveying formal legal pleadings, discovery requests, judgments or other

documents pursuant to the applicable rules of civil procedure;

(ii) communicating in, or at the direction of, a court of law or in depositions or settlement conferences or other communications in connection with a pending legal action to collect a debt on behalf of a client; or

(iii) collecting on or enforcing a money judgment.

(f) *Original creditor* means any person, or such person's successor in interest by way of merger, acquisition, or otherwise, who extends credit creating a debt.]

(h) *Electronic communication* means communication by electronic means, rather than oral communication by telephone or hard copy communication by mail.

[(g)] (i) *Person* has the same meaning as prescribed in Financial Services Law section 104(a)(3).

Section 1.2 is amended as follows:

(a) Within 5 days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information[,] is contained, clearly and conspicuously, in the initial communication and the initial communication was in writing, or the consumer has paid the debt, provide the consumer clear and conspicuous written notification of the following:

(1) Information about the debt:

(i) Validation information as set forth in Regulation F, 12 C.F.R. section 1006.34(c), except that:

(a) a debt collector shall not use charge-off date as a reference date for the itemization date of the alleged debt unless the account was a revolving or open-end credit account; and

(b) other than for revolving or open-end credit accounts, a debt collector shall use the last payment date as the itemization date if it is available.

(ii) A statement indicating which type of reference date, among those permitted to be used by subparagraph (i) of this paragraph, was relied on by the debt collector in determining the itemization date;

(iii) For revolving or open-end credit accounts, the account number, if any, or a truncated version of such account number, associated with the debt on the last payment date, or, if the consumer made no payment on the debt, associated with the debt on the last statement date, with a statement informing the consumer that the account number or truncated account number is associated with either the last payment date or the last statement date, as applicable.

(iv) The merchant brand, affinity brand, or facility name, if any, associated with the debt, and in the case of a debt arising from a revolving credit account, an account statement reflecting

the merchant brand, affinity brand, or facility name attached to the validation notice will fulfill the requirement of this subdivision;

(v) If known, the date and amount of the last payment, or if no payment was made, a statement that the consumer made no payment on the debt;

(vi) For a debt that has not been reduced to a judgment, the applicable statute of limitations for the debt, expressed in years; and

(vii) For a debt that has been reduced to a judgment, a statement that the debt has been reduced to a judgment, the name of the court in which judgment was entered and the date entered, the caption, and the index number associated with the judgment.

(2) [that] That debt collectors, in accordance with the Fair Debt Collection Practices Act, 15 U.S.C. section 1692, et seq., are prohibited from engaging in abusive, deceptive, and unfair debt collection efforts, including but not limited to:

(i) the use or threat of violence;

(ii) the use of obscene or profane language; and

(iii) repeated phone calls made with the intent to annoy, abuse, or harass[.];

(3) That the consumer has the right to dispute the validity of the debt, in part or in whole, including instructions on how to dispute the validity of the debt.

[(2)] (4) [the following] A notice in substantially the following form:

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

1. Supplemental security income[,] (SSI);
2. Social security;
3. Public assistance (welfare);
4. Spousal support, maintenance (alimony) or child support;
5. Unemployment benefits;
6. Disability benefits;
7. Workers’ compensation benefits;
8. Public or private pensions;
9. Veterans’ benefits;

10. Federal student loans, federal student grants, and federal work study funds; [and]

11. Ninety percent of your wages or salary earned in the last sixty days; and[.]

12. COVID-19 stimulus relief funds.”

(5) A statement informing the consumer of any language access services available, including whether a translation of any communication into a language other than English is available to the consumer, as well as a request for a consumer’s language preference if other than English. A debt collector shall record the consumer’s language preference if other than English.

(b) [Within 5 days after the initial communication with a consumer in connection with the collection of any charged-off debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, provide the consumer clear and conspicuous written notification of the following:

(1) the name of the original creditor; and

(2) an itemized accounting of the debt, including:

(i) the total amount of the debt due as of charge-off;

(ii) the total amount of interest accrued since charge-off;

(iii) the total amount of non-interest charges accrued or fees accrued since charge-off;

(iv) the total amount of payments made on the debt since the charge-off.]

The disclosures required under subdivision (a) of this section may not be made exclusively by electronic communication pursuant to subdivision (b) of section 1.6 of this Part unless provision by electronic communication has been affirmatively requested by a consumer, including pursuant to section 601-b of the General Business Law.

(c) If a consumer has requested communication in an alternative, reasonably accommodatable format pursuant to section 601-b of the General Business Law, a debt collector shall provide notice as described in paragraphs 1 through 4 of this subdivision in the format requested by the consumer regardless of whether the initial communication was in writing and clearly and conspicuously contained such notice.

(d) A communication in the form of a pleading in a civil action shall not be treated as an initial communication for the purposes of subdivision (a) of this section.

Section 1.3 is amended as follows:

§ 1.3 Disclosures [for debts for which] relating to the statute of limitations applicable to a debt [may be expired].

(a) 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.

(b) If a debt collector [knows or has reason to know] seeks to collect on a debt for which the debt collector has determined, including pursuant to subdivision (a) of this section, or otherwise knows or has reason to know, that the statute of limitations for a debt may be or has expired, [before accepting payment on the debt,] the debt collector must, in all communications with the consumer regarding such debt, including those required under subdivision (a) of section 1.2 of this Part, provide the consumer with clear and conspicuous notice, in writing unless the consumer has requested communication in another form, [in the same medium (such as via telephone or electronic communication) by which the debt collector will accept payment,] that:

(1) the debt collector believes that the statute of limitations applicable to the debt may be or has expired;

(2) suing on a debt for which the statute of limitations has expired is a violation of the Fair Debt Collection Practices Act, 15 U.S.C. section 1692, et seq.;

(3) if the consumer is sued on a debt for which the statute of limitations has expired, the consumer may be able to stop the lawsuit by responding to the court that the statute of limitations has expired;

(4) the consumer is not required to provide the debt collector with an admission, affirmation, or acknowledgment of the debt, a promise to pay the debt, or a waiver of the statute of limitations; and

(c) For those debts not subject to section 214-i of the Civil Practice Law and Rules as added by chapter 593 of the laws of 2021, in addition to and in the same form as the disclosures in subdivision (b) of this section, the debt collector must notify the consumer that

[(5)] if the consumer makes any payment on a debt for which the statute of limitations has expired or admits, affirms, acknowledges, or promises to pay such debt, the statute of limitations may restart[.];

(d) The debt collector may not, without the prior written and revocable consent of the consumer alleged to owe such debt given directly to the debt collector, a request from the consumer alleged to owe such debt pursuant to section 601-b of the General Business Law, or the express permission of a court of competent jurisdiction, communicate with such consumer in connection with the collection of such debt exclusively by telephone or by other means of oral communication.

[(c)](e) The following language satisfies the notice requirement contained in [section 1.3(b)] subdivision (b) of this [Part] section for debts subject to section 214-i of the Civil Practice Law and Rules as added by chapter 593 of the laws of 2021:

“We are required by regulation of the New York State Department of Financial Services to notify you of the following information. This information is NOT legal advice:

Your creditor or debt collector believes that it is illegal for a creditor or debt collector to sue you to collect on this debt because this debt is too old (the statute of limitations has expired)[the legal time limit (statute of limitations) for suing you to collect this debt may have expired.] It is a violation of the Fair Debt Collection Practices Act, 15 U.S.C. section 1692 et seq., to sue to collect on a debt for which the statute of limitations has expired. Your creditor or debt collector will NOT sue you to collect this debt.

[However, if the] If any person [creditor sues] does sue you to collect on this debt, you may be able to prevent the [creditor] person from obtaining a judgment against you[. To do so, you must tell] by telling the court that the

statute of limitations has expired.

[Even if the statute of limitations has expired, you may choose to make payments on the debt. However, be aware: if you make a payment on the debt,] You are not required to admit [to owing the] that you owe this debt, promise to pay the debt, or waive the statute of limitations on the debt[, the time period in which the debt is enforceable in court may start again].

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

(f) The following language satisfies the notice requirement for debts not subject to section 214-i of the Civil Practice Law and Rules as added by chapter 593 of the laws of 2021:

“We are required by regulation of the New York State Department of Financial Services to notify you of the following information. This information is NOT legal advice:

Your creditor or debt collector believes that it is illegal for a creditor or debt collector to sue you to collect on this debt because this debt is too old (the statute of limitations has expired). Your creditor or debt collector will NOT sue you to collect this debt.

If any person does sue you to collect on this debt, you may be able to prevent the person from obtaining a judgment against you by telling the court that the statute of limitations on the debt has expired.

You may choose to make payments on the debt, but be aware: if you make a payment on the debt, admit to owing the debt, promise to pay the debt, or waive the statute of limitations on the debt, you may give a creditor or debt collector more time under the law to sue you to collect on this debt.

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

Section 1.4 is amended as follows:

(a) If a consumer disputes, orally or in writing, the validity of a [charged-off] debt or the right of the debt collector to collect on a [charged-off] debt, the debt collector [must inform the consumer that the consumer may] shall treat such dispute as a request for substantiation of the debt, unless the debt collector has already provided the consumer the information required in this section. [The debt collector may treat the dispute as a request for substantiation, or:

(1) If the consumer disputes the debt orally] (b) For any request for substantiation, the debt collector must:

(i) make reasonable efforts to inform the consumer, in the conversation in which the dispute was communicated, how the consumer can make a written request for substantiation of the debt in writing; and

(ii) within 14 days of the consumer disputing the debt, provide the consumer clear and conspicuous written instructions on how to request substantiation of the debt; or

(2) If the consumer disputes the debt in writing, within 21 days of the debt collector receiving that writing,

the debt collector must provide the consumer clear and conspicuous written instructions on how to request substantiation of the debt.

(b) A debt collector must] provide the consumer written substantiation of a [charged-off] debt within [60] 45 days of receiving a request for substantiation of the debt and must cease collection of the debt until such written substantiation has been provided to the consumer. A debt collector must provide such substantiation to the consumer in hard copy by mail unless the consumer has consented to receive electronic communication pursuant to subdivision (b) of section 1.6 of this Part, in which case a debt collector may provide substantiation in writing by electronic communication, or unless the consumer has requested the information be provided in a format other than hard copy writing pursuant to section 601-b of the General Business Law, in which case such substantiation shall be provided in the format requested by the consumer. For substantiation sent by first class mail or electronic means, a consumer shall be deemed to have been provided the substantiation upon receipt by the consumer or five days after mailing, whichever is earlier. A debt collector must substantiate a [charged-off] debt pursuant to this section only once during the period that the debt collector owns or has the right to collect the debt.

(c) Substantiation of a [charged-off] debt shall include:

(1) the signed contract or signed application that created the debt or, if no signed contract or application exists, a copy of a document provided to the [alleged debtor] consumer while the account was active, demonstrating that the debt was incurred by the [debtor] consumer. For a revolving credit account, the most recent monthly statement recording a purchase transaction, payment or balance transfer shall be deemed sufficient to satisfy this requirement;

(2) if the alleged debt was charged off, the charge-off account statement, or equivalent document, issued by the [original] creditor to the consumer at the time of charge-off or default; and

(3) the chain of title documentation described in subdivision (f) of this section or a statement describing the complete chain of title [from the original creditor to the present creditor, including the date of each assignment, sale, and transfer;] and notice to the consumer alleged to owe the debt that the consumer may request further documentation and describing how to make such a request.

(i) For a revolving credit or open-end credit account, complete chain of title shall be from the creditor at the time of charge-off or default to the current creditor or owner of the debt.

(ii) For a closed-end credit account or other debt that did not arise from a revolving or open-end credit account, complete chain of title shall be from the creditor to whom the debt was originally owed to the present creditor or owner of the debt, or, if the debt collector is acting on behalf of the creditor to whom the debt was originally owed or alleged to be owed, a statement to that effect; and

(4) records reflecting the amount and date of any prior settlement agreement reached in connection with the debt pursuant to section 1.5 of this Part.

(d) If a consumer requests substantiation of a [charged-off] debt pursuant to subdivision (a) of this section, the debt collector must retain the following documentation until the debt is discharged, sold, or transferred, or for six (6) years or as otherwise required by law, whichever is longer:

(1) evidence of the consumer's request for substantiation; and

(2) all documents the debt collector provided in response to the request.

(e) The document retention required by subdivision (d) of this section shall not require a debt collector to dispose of such retained documents once the debt is discharged, sold, or transferred, and shall not shorten any other document retention obligation applicable to such debt collector.

(f) If a consumer requests documentation as provided for in paragraph three of subdivision (c) of this section, within 45 days after the consumer makes such request, the debt collector shall provide to the consumer documents showing the complete chain of title as described herein, including the specific dates on which the debt was assigned, sold or transferred and names of each previous owner of the account from the creditor to which the debt was originally owed, or alleged to be owed, to the current owner, or, if the debt collector is acting on behalf of the creditor to whom the debt was originally owed, a statement to that effect.

(g) A responsive pleading by a consumer in a civil action to collect a debt shall not be considered a dispute for the purposes of subdivision (a) of this section.

(h) If a debt collector provides for consumers to submit written disputes electronically through a website, such website must generate automatically a copy of each written dispute that a consumer can print, save, or have emailed to them. A consumer shall not be required to waive any rights to make use of such online submission option.

Section 1.5(c) is amended as follows:

(c) Within 20 business days of the receipt of a payment satisfying a consumer's debt, the debt collector shall send to the consumer a written confirmation of the satisfaction of the debt that identifies the name of the [original] creditor to whom the debt was originally owed and the account number, unless otherwise stipulated in an agreement filed in court.

Section 1.6 is amended as follows:

§ 1.6 Communication [through electronic mail].

(a) [After mailing a consumer written disclosures as required under section 1.2 of this Part, a debt collector may provide subsequent correspondence to the consumer through electronic mail only if the consumer has:

(1) voluntarily provided an electronic mail account to the debt collector which the consumer has affirmed is not an electronic mail account furnished or owned by the consumer's employer; and

(2) consented in writing to receive electronic mail correspondence from the debt collector in reference to a specific debt. A consumer's electronic signature constitutes written consent under this section.]

No debt collector shall communicate or attempt to communicate excessively with a consumer. For the purposes of this section, as to communication by telephone, it shall be presumed that a debt collector is in compliance with this section if the debt collector does not, without the prior written and revocable consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, communicate with a consumer in connection with the collection of any debts by more than one completed

telephone call and three attempted telephone calls per seven-day period per alleged debt. Telephone calls in excess of such limits are permitted when such communication is required under this Part or other federal or state law, or when such communication is made in response to the consumer's request to be contacted, so long as those communications are otherwise permitted by this section and are made in the manner indicated by the consumer, if any.

(b) A debt collector may communicate with a consumer exclusively through electronic communication to collect a debt only if:

(1) the consumer has voluntarily provided contact information for electronic communication, such as electronic mail address, telephone number to receive SMS text messages, or social media account, to the debt collector and which contact information the consumer has affirmed is not furnished or owned by the consumer's employer;

(2) the consumer has given revocable consent in writing to receive electronic communication from the debt collector in reference to a specific debt using such contact information. A consumer's electronic signature constitutes written consent under this section; and

(3) such written consent is retained by the debt collector until the debt is discharged, sold, or transferred, or for six (6) years, whichever is longer; or

(4) if the consumer has requested communication in such form pursuant to General Business Law section 601-b.

(c) any electronic communication pursuant to subdivision (b) of this section initiated by a debt collector shall include a clear and conspicuous disclosure that the consumer may revoke consent to receive electronic communication at any time; and

(d) such electronic communication shall be private and direct to the consumer.

[(b)] (e) A debt collector may [correspond] communicate with a consumer through electronic [mail] means before satisfying subdivision [(a)] (b) of this section only in order to [satisfy] facilitate the accomplishment of the requirements of [subdivision (a)] paragraphs (b)(1) and (b)(2) of this section.

(f) If a consumer notifies a debt collector that the consumer wishes the debt collector to cease any means of or all electronic communication with the consumer, the debt collector shall consider such notification a revocation of the consent granted under subdivision (b) of this section, whether for a particular means of electronic communication or all electronic communication, as applicable.

(1) If such notice is made in writing, notification shall be complete upon receipt. If such notice is made orally, notification shall be complete at the time such notice is given; and

(2) Confirmation of receipt of such notice conveyed via the means of electronic communication specified in the notice shall not constitute a violation of this subdivision.

(g) This section shall not apply to a debt collector's communications related to the collection of any debts with:

- (1) the consumer's attorney;
- (2) a consumer credit reporting agency, if otherwise permitted by law;
- (3) the creditor;
- (4) the creditor's attorney;
- (5) the debt collector's attorney;
- (6) a court; or
- (7) persons as reasonably necessary to effectuate a post-judgment judicial remedy.

Section 1.7 is amended as follows:

§ 1.7 [Effective date] Relation to other laws.

[This Part shall become effective 90 days after publication in the State Register, except that sections 1.2(b) and 1.4 of this Part shall become effective 270 days after publication in the State Register.]

(a) A local law is not inconsistent with this Part if the protection such law affords is greater than the protection provided by this Part.

(b) This Part does not exempt any person subject to the provisions of this Part from any licensing, registration, or other administrative requirement required by any law, regulation, or authority.

(c) This Part does not preempt any procedure required by law or court administrative rule with respect to debt collection.

(d) No debt collector shall violate any applicable local laws or regulations related to debt collection.

A new section 1.8 is added as follows:

§ 1.8 Severability.

If any provision of this Part or the application thereof to any person or circumstance is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this Part or the application thereof to other persons or circumstances.