

**NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES**

23 NYCRR 1

DEBT COLLECTION BY THIRD-PARTY DEBT COLLECTORS AND DEBT BUYERS

I, Benjamin M. Lawsky, Superintendent of Financial Services, pursuant to the authority granted by Sections 202, 302, and 408 of the Financial Services Law, do hereby promulgate a new Part 1 of Title 23 of the Official Compilation of Codes, Rules, and Regulations, to take effect upon publication in the State Register, to read as follows:

(ALL MATERIAL IS NEW)

§ 1.1 Definitions.

For the purposes of this Part:

(a) *Charge-off* means the accounting action taken by an original 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) *Consumer* means any natural person who owes or who is alleged to owe a debt.

(d) *Debt* means 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 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. 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. 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) *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. Debt collector includes without limitation a buyer of debts who seeks to collect such debts either directly or indirectly. 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 serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;

(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;

(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 not in default at the time it was obtained by such person; or (iv) 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.

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

§ 1.2 Required initial disclosures by debt collectors.

(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 in the initial communication or the consumer has paid the debt, provide the consumer clear and conspicuous written notification of the following:

(1) that debt collectors, in accordance with the Fair Debt Collection Practices Act, 15 U.S.C. § 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.

(2) the following written notice:

“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.”

(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 or fees accrued since charge-off;

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

§ 1.3 Disclosures for debts for which the statute of limitations 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 that the statute of limitations for a debt may be expired, before accepting payment on the debt, the debt collector must provide the consumer with clear and conspicuous notice, 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 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. § 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

(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.

(c) The following language satisfies the notice requirement contained in section 1.3(b) of this Part:

“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 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. § 1692 et seq., to sue to collect on a debt for which the statute of limitations has expired. However, if the creditor sues you to collect on this debt, you may be able to prevent the creditor from obtaining a judgment against you. To do so, you must tell 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, admit to owing the 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.”

§ 1.4 Substantiation of consumer debts.

(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 request substantiation of the debt, unless the debt collector has already provided the consumer the information required in this section. The debt collector may treat such dispute as a request for substantiation, or:

(1) If the consumer disputes the debt orally, 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 days of receiving a request for substantiation of the debt and must cease collection of the debt until written substantiation has been provided to the consumer. 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 a copy of a judgment against the consumer or:

(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 while the account was active, demonstrating that the debt was incurred by the debtor. 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) the charge-off account statement, or equivalent document, issued by the original creditor to the consumer;

(3) 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

(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 section 1.4(a) of this Part, the debt collector must retain the following documentation until the debt is discharged, sold, or transferred:

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

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

§ 1.5 Debt payment procedures.

(a) Within 5 business days of agreeing to a debt payment schedule or other agreement to settle a debt, a debt collector shall provide the consumer with:

(1) a written confirmation of the debt payment schedule or other agreement to settle the debt. This written confirmation shall include all material terms and conditions relating to the payments and schedule to which the consumer agreed; and

(2) the following notice:

“If a creditor or debt collector receives a money judgment against you in court, state and federal laws 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.”

(b) If a consumer agrees to a debt payment schedule or other agreement to settle a debt, the debt collector shall provide the consumer with an accounting of the debt on at least a quarterly basis while the consumer is making scheduled payments.

(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 original creditor and the account number.

§ 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.

(b) A debt collector may correspond with a consumer through electronic mail before satisfying subsection (a) of this section only in order to satisfy the requirements of subsection (a) of this section.

§ 1.7 Effective date.

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.