

## **Summary of new rule: Debt Collection by Third-Party Debt Collectors and Debt Buyers Regulation—23 NYCRR 1**

This rule sets forth rules for the third-party debt collectors and debt buyers collecting certain debts from New York consumers.

Section 1.1 provides definitions applicable to the rule.

Section 1.2 describes disclosures debt collectors must provide to consumers when the debt collector initially communicates with a consumer. The section also describes additional disclosures that must be provided when the debt collector is communicating with a consumer regarding a charged-off debt.

Section 1.3 requires debt collectors to disclose to consumers when the statute of limitations on a debt has expired. The section outlines specific information that must be disclosed and offers debt collectors optional model language that can be used to comply with this section.

Section 1.4 outlines a process where consumers can request additional documentation from a debt collector proving the validity of the charged-off debt and the debt collector's right to collect the charged-off debt. This section provides processes debt collectors should use to determine if a request for such substantiation of the debt is requested and the timing in which to respond to such requests.

Section 1.5 requires debt collectors to provide consumers written confirmation of debt settlement agreements and regular accounting of the debt while the consumer is paying off a debt pursuant to a settlement agreement. Debt collectors must also provide consumers with important disclosures of their rights when settling a debt.

Section 1.6 allows debt collectors to correspond with consumers by electronic mail in limited circumstances.

Section 1.7 sets the effective dates of the rules.

## **Assessment of Public Comment—23 NYCRR 1: Debt Collection By Third-Party Debt Collectors And Debt Buyers**

The New York State Department of Financial Services (the “Department”) received many comments on revised proposed rule 23 NYCRR 1. The following report summarizes the comments and describes some revisions made in response to these comments that have been incorporated into the adopted version of the rule.

Comments came primarily from debt collectors and consumer protection advocates in New York. The overview below summarizes the comments by section of the proposed rule.

### **Section 1.1 Definitions:**

- Attorney debt collectors commented that they are pleased that the amended rules do not apply to a debt collector who is engaged in litigation to collect the debt, however they requested further clarity of this rule. The Department made additional amendments to the rule to clarify that the rule does not cover collection of a debt through litigation or when enforcing a money judgment.
- Comments also urged the Department to include original creditors under the definition of debt collector. The Department recognizes that some original creditors, like some third-party debt collectors and debt buyers, may engage in abusive and deceptive debt collection practices. While the New York state fair debt collection practices law, violations of which the Department enforces via the Financial Services Law, applies to original creditors, this rule is focused on the activities of third-party debt collectors and debt buyers.

### **Section 1.2 Required initial disclosures by debt collectors:**

- Both debt collectors and consumer advocates wanted clearer disclosure language of consumers’ rights under the Exempt Income Protection Act. Industry commenters were also concerned that the Department’s required language could be interpreted as a threat of a lawsuit. The language was amended to address these concerns. The Department also received comments suggesting that this disclosure should not be provided to all alleged debtors since some collectors never sue. While a collector may choose not to sue, the Department views the disclosure of consumers’ rights regarding protected income to be important and should thus be required by the rule.
- Comments suggested reducing some disclosures and posting education about consumer rights on debt collector or New York State websites. While such links are not required, debt collectors are free to link to additional information in their correspondence.
- Debt collectors commented that the requirement to disclose a breakdown of the alleged debt was unclearly written and could result in voluminous production of documents evidencing interest and other charges, which would not be helpful to consumers. The final version clarifies this requirement and ensures that alleged debtors will not receive overly voluminous and confusing documentation.
- Commenters requested additional disclosures of federal rights, including the right to request that a debt collector cease communication. The required disclosures are not

exhaustive. The Department wished to limit the number of required disclosures so as to render them easily readable and impactful, but will continue to educate consumers about their rights and protections vis-à-vis debt collection.

#### Section 1.3 Disclosures for debts in which the statute of limitations may be expired:

- Comments suggested that all statute of limitations disclosures include a warning that consumers should consult an attorney. While the optional disclosure language does contain this disclosure, the required items in any disclosure are limited to certain factual statements. If a debt collector chooses to use unique disclosures, these disclosures could still include a warning that a consumer should consult an attorney.

#### Section 1.4 Substantiation of consumer debts:

- Debt collectors were seeking further clarity on what documentation is required for substantiation of a debt. Using language suggested in some comments, the rule clarifies this requirement. The rule acknowledges that an original signed copy of the contract or application for debt may not exist and defines what other documents can be provided to substantiate the debt. This amendment also addresses concerns that debt collectors may not possess all of the original documentation for debts charged-off prior to the effective date.
- Comments suggested that some information, like the full chain-of-title or prior settlement agreements, is unnecessary. However, many consumer debts are sold and resold several times, and in some cases, debt brokers may sell the same debts multiple times. A history of the debt is important to establish that the creditor has the right to collect the debt and to provide consumers with important records if other creditors try to collect the same debt.
- Commenters warned that debt collectors typically have not retained evidence of past settlement agreements. The rule clarifies that this requirement only pertains to settlements made pursuant to section 1.5 of this rule. Therefore, debt collectors must produce documentation of only settlements made after this rule is effectuated.

#### Section 1.5 Debt payment procedures:

- Debt collectors urged the Department that they need additional time to ensure that a debt is satisfied prior to providing consumers with a written confirmation of satisfaction, including waiting for checks to clear. The final rules provide some additional time.

#### Section 1.6 Communication through electronic mail:

- Some comments suggested that if consumers initiate electronic mail communication with debt collectors, debt collectors should be able to respond via electronic mail to confirm that (1) the consumer consents to electronic communication regarding a specific debt and (2) that the consumer affirms that the email is not furnished or owned by the consumer's employer. The rule reflects this common-sense adjustment, so that if a consumer contacts a debt collector electronically, the debt collector does not need to obtain, by mailed letter confirmation, the consumer's authorization to communicate through electronic mail.

#### Section 1.7 Effective date:

- Debt collectors were concerned about the applicability of the rules requiring the production of documentation to debts that had already been sold by the original creditor. As discussed above, some changes were made to accommodate the challenges of gathering information and provide flexibility in the types of documentation required if a consumer requests substantiation of the debt. The final rule also gives additional time to gather materials from original creditors and build out compliance procedures for the sections that require production of documents or data evidencing a debt.
- Comments pointed out that the effective date gives further time to build in compliance for only part of section 1.4. This was a drafting error. The additional time applies to all of section 1.4.

#### Other comments:

- Debt collectors inquired whether the rule creates a private right of action. The rules are not privately enforceable. The rules are state regulations enforceable by the Department, and may be enforceable by other regulators or prosecutors.
- Comments suggested referencing municipal-level debt collection rules. While these are important protections for many New Yorkers, varied disclosures across the state would create compliance and enforcement challenges for a state level rule.

## Regulatory Impact Statement for new 23 NYCRR 1

No new Regulatory Impact Statement is needed. The changes to the rule are substantively similar and address the same debt collection practices. The amendments clarify the rule and provide additional time to prepare for compliance.

Regulatory Flexibility Analysis for Small Businesses and Local Governments for new 23  
NYCRR 1.

No new Regulatory Flexibility Analysis for Small Businesses and Local Governments is needed. The changes to the rule are substantively similar and address the same debt collection practices. The amendments clarify the rule and provide additional time to prepare for compliance.

## Job Impact Statement for new 23 NYCRR 1

No new Job Impact Statement Analysis is needed. The changes to the rule are substantively similar and address the same debt collection practices. The amendments clarify the rule and provide additional time to prepare for compliance.

## Rural Area Flexibility Analysis for new 23 NYCRR 1

No new Rural Area Flexibility Analysis is needed. The changes to the rule are substantively similar and address the same debt collection practices. The amendments clarify the rule and provide additional time to prepare for compliance.