



## New Economy Project

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By e-mail

Max Dubin

Department of Financial Services

One State Street

New York, NY 10004-1511

[Max.Dubin@dfs.ny.gov](mailto:Max.Dubin@dfs.ny.gov)

RE: Proposed Debt Collection Rules, I.D. No. DFS-34-13-00002-P

Dear Mr. Dubin:

New Economy Project (formerly NEDAP) appreciates the opportunity to comment on the Department of Financial Services' proposed debt collection rules. We commend DFS for releasing strong proposed rules that will help curb abusive debt collection practices, and urge DFS to enact certain changes that will further strengthen the rules.

New Economy Project works to promote community economic justice in New York City neighborhoods and to eliminate discriminatory economic practices that harm communities and perpetuate inequality and poverty. For years, we have operated a legal hotline serving low-income New Yorkers aggrieved by abusive debt collection practices. We have spoken to thousands of New Yorkers facing unfair and abusive debt collection practices. Our callers frequently complain, for example, that despite repeated requests they cannot obtain information about an alleged debt from the debt collectors that have been harassing them. Others are frustrated because they had been paying a debt collector for months or even years and believe they must have paid off the debt, but are unable to obtain any kind of payment history or accounting from the debt collector. Or they reached a settlement with one debt collector and began making payments, only to have that debt collector transfer the debt to a different entity that refused to honor the deal.

Many people we assist are elderly or disabled and dependent on Social Security as their only source of income, or subsist on other exempt income such as public assistance, unemployment insurance, or earned income that is so low that it is entirely protected from debt collection. These callers often do not know that their income is exempt – in some cases because the debt collectors falsely claimed such income was not exempt. Some of our callers have agreed to make payments that they cannot afford, and then they find themselves unable to pay rent or buy food because they are giving their protected, subsistence income to a debt collector. Others live in fear that they can be arrested or otherwise punished for failing to make payments out of their government benefits.

The proposed rules include vital protections for New Yorkers. In particular, we strongly support the requirements that debt collectors:

- Have in hand basic information before they contact someone about a debt;
- Notify people that their income may be exempt from collection;
- Provide a meaningful response, including documentation, when a person disputes or requests verification of a debt; and
- Furnish people who agree to pay a debt with a written settlement agreement and quarterly accountings.

These protections, if enacted, would help to significantly decrease abusive debt collection practices in New York and would add transparency to the process, by requiring debt collectors to obtain and disclose key information about a debt at the time they initiate collection efforts. The proposed rules would also strengthen the verification process by ensuring that debt collectors provide adequate documentation if a person challenges the validity of a debt.

While New Economy Project strongly supports these increased protections, we have concerns about several aspects of the proposed rules, and we urge DFS to enact changes to strengthen the rules in the following respects:

### **1. Revise the Statute of Limitations Disclosure**

While we support the basic principle that debt collectors should disclose when they are collecting on time-barred debt, the proposed language for the disclosure is too long, confusing, and in some respects incorrect.

First, we object to the following proposed sentence: “If the creditor sues you to collect on this debt, court rules require you to tell the court that the statute of limitations has expired to prevent the creditor from obtaining a judgment against you.” This statement misstates a person’s rights under the FDCPA and state law and rules. Such a suit would violate the FDCPA; even a debt collector’s statement that it *may possibly* sue on a time-barred debt would violate the FDCPA and expose the debt collector to liability and enforcement action by regulators. Including this statement in the disclosure would wrongly imply that a person could lawfully be sued on a time-barred debt, which is not the case.

This statement also wrongly suggests that entry of judgment is automatic unless the person sued comes forward with a statute of limitations defense. Although the statute of limitations is an affirmative defense, there is no court rule requiring a defendant in a lawsuit to inform the court that the statute of limitations has expired in order to prevent the entry of judgment against him. The laws and rules governing statute of limitations defenses are complex and cannot be captured accurately in a disclosure. We therefore strongly recommend omitting this sentence in its entirety.

Second, we oppose the following part of the statute of limitations disclosure: “Failure to pay the debt may negatively affect your credit history and credit score and your ability to obtain credit.” The Consumer Financial Protection Bureau recently issued guidance stating that representations regarding the relationship between paying debts in collection and improvements in a consumer’s credit report, credit score, or creditworthiness may be deceptive representations under the

FDCPA and/or the Dodd-Frank Act. Given “the numerous factors that influence an individual consumer’s credit score,”<sup>1</sup> and the fact that failing to pay an old debt typically does not affect a person’s credit score, the proposed disclosure is inaccurate and potentially deceptive. Such a disclosure – which debt collectors would be required to make only for old, time-barred debts – may even have the effect of frightening people into making payments on old debts, even though payment on those debts would likely have little to no effect on their credit scores; as a result, people who are juggling debt payments may even end up forgoing the opportunity to address more recent debts that actually *would* affect their credit scores. We therefore strongly recommend omitting this sentence in its entirety as well.

For the reasons above, we suggest that DFS simplify the proposed statute of limitations disclosure by replacing the second, third and fourth paragraphs with the following: “The law limits how long you can be sued on a debt (“statute of limitations”). Because of the age of this debt, you CANNOT be sued on it. You may lose this protection if you make a payment on the debt or sign a paper admitting that you owe it.”

## **2. Amend the Definitions of “Debt” and “Debt Collector”**

The proposed rules establish important consumer protections that should apply to every New Yorker facing debt collection, regardless of the type of debt or who is doing the collecting. We are concerned that the definitions of “debt” and “debt collector” may exclude significant categories of debt, such as medical debt or debt collected by original creditors.

Section 1.1(d) defines “debt” as arising from a transaction “wherein credit has been offered or extended.” This definition could exclude debts arising from transactions that may not necessarily involve offers or extensions of credit, such as medical debts or telephone debts.<sup>2</sup> We therefore recommend deleting the phrase “wherein credit has been offered or extended” from the first sentence of the proposed definition, so it reads as follows: “Debt means any obligation or alleged obligation of a natural person for the payment of money or its equivalent which arises out of a transaction in which the money, property or service which was the subject of the transaction was primarily for personal, family or household purposes.”

Section 1.1(e) defines “debt collector” as any person engaged in a business with a “principal purpose” of collecting debts, or any person who collects debts “due another.” The proposed language specifically states that the definition includes debt buyers, a clarification we strongly support. The specific mention of debt buyers, however, raises questions about whether the definition applies to financial institutions collecting on their own debt. Many people who have outstanding debts engage directly with their original creditors and never encounter third-party debt collectors. Unless the definition of debt collector is clarified, these New Yorkers may not benefit from the vital protections set forth in the proposed rules. To ensure that the proposed rules apply to financial institutions’ in-house debt collectors, the first sentence of the definition should be amended as follows: “Debt collector means (1) any person engaged in a business with

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<sup>1</sup> CFPB Bulletin 2013-08, July 10, 2013, “Representations Regarding Effect of Debt Payments on Credit Reports and Scores.”josh

<sup>2</sup> For instance, medical debts would generally not be considered as having arisen from the extension of “credit” as it is defined under the federal Truth in Lending Act, though they may under the federal Equal Credit Opportunity Act’s broader definition of credit.

the principal purpose of collecting or attempting to collect debts; (2) any person who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another; or (3) any person who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due to any person who offers or sells financial products or services to consumers.”

### **3. Improve the Exempt Income Disclosures (Sections 1.2 and 1.5)**

While we strongly support requiring debt collectors to provide information about exempt income, the first three sentences of the disclosure are too long, contain too much information, and are therefore too difficult to read. We recommend replacing them with simpler language, as follows: “Some income is exempt from debt collection. Even if a creditor sues you and wins, state and federal law prevent the following types of income from being taken...”

In addition, the disclosure leaves out critical information about exempt income for working people. To fill this gap, we recommend adding the following to the list of exempt income: “11. 90% of recent earned income (consult an attorney for more information).” Without this information, working people may not be aware of their rights under state law.

### **4. Notify People of the Right to Cease Contact**

The required initial disclosures proposed in Section 1.2 should include notification of the right that a person has under the Fair Debt Collection Practices Act (FDCPA) to have a third-party debt collector cease contact upon the person’s request. Although this is one of the most critical protections under the FDCPA, many people are not aware of this right. Requiring disclosure of this right in the initial disclosure would provide another key protection for New Yorkers facing the debt collection process. We suggest the following language: “debt collectors, in accordance with the federal Fair Debt Collection Practices Act, 15 U.S.C § 1692 et seq., must cease contact if the consumer so requests and are prohibited from engaging in abusive, deceptive, and misleading debt collection efforts, including but not limited to. . . .”

Thank you for the opportunity to comment. Please do not hesitate to contact us with any questions.

Sincerely,

Claudia Wilner  
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