



# **NEW YORKERS FOR RESPONSIBLE LENDING**

---

c/o New Economy Project / 176 Grand Street, Suite 300 / New York, NY 10013  
Tel: (212) 680-5100 / Fax: (212) 680-5104 / [nyrl@neweconomynyc.org](mailto:nyrl@neweconomynyc.org)

---

August 15, 2014

BY E-MAIL

Max Dubin  
Department of Financial Services  
One State Street  
New York, NY 10004-1511  
[FSLReg@dfs.ny.gov](mailto:FSLReg@dfs.ny.gov)

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

Dear Mr. Dubin:

The 41 undersigned members of the New Yorkers for Responsible Lending (NYRL) coalition appreciate the opportunity to comment on the Department of Financial Services' revised proposed debt collection rules. Coalition members commented on the original proposed rules, and we are pleased to see that the revised proposal reflects some of our recommendations.

We believe that the revised proposed rules will go a long way towards helping curb abusive debt collection by third-party debt collectors and debt buyers. For the reasons set forth below, however, we urge DFS to remove the newly proposed exemption for banks and their in-house collectors, and to make other important changes described below.

Please consider this comment letter to constitute 41 separate letters, for the purposes of counting total comments DFS receives on this proposal.

Founded in 2000, NYRL is a state-wide coalition that promotes access to fair and affordable financial services and the preservation of assets for all New Yorkers and their communities. NYRL's more than 160 members include community development financial institutions, community-based organizations, affordable housing groups, advocates for seniors, legal services organizations, housing counselors, and community reinvestment, fair lending, labor and consumer advocacy groups.

For years, NYRL members have worked to combat the profound harm that abusive debt collection practices have caused New Yorkers, particularly in lower-income communities and communities of color. Debt collectors routinely employ unfair and deceptive tactics to collect on debts about which they have little or no documentation or other basic information. These tactics

often include coercing people – including those whose income is exempt from collection – into making payments on debts which cannot be verified, and may not even be valid to begin with.

The proposed rules include vital protections for New Yorkers. In particular, NYRL strongly supports 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 would help to significantly decrease abusive debt collection practices in New York and 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 someone challenges the validity of a debt.

Although NYRL strongly supports these increased protections, we urge DFS to make the following changes to ensure that New Yorkers have certain basic, but critical, protections against unfair, deceptive, and abusive debt collection practices by bank’s in-house collectors, as well as third-party collectors and debt buyers:

**1. Amend the definition of “debt collector” to include banks’ in-house collectors.**

We are troubled that the revised proposal wholly exempts original creditors and their in-house collectors from the proposed rules, by way of an express exemption from the definition of “debt collectors.” (The title of the proposed rules has also changed accordingly, from simply “Debt Collection” to “Debt Collection by Third-Party Debt Collectors and Debt Buyers.”) With respect to banks, which routinely use their own in-house collectors to collect on their defaulted and charged-off debts, this new proposed exemption is both inappropriate and unwarranted.

Low-income New Yorkers repeatedly face unfair debt collection practices by banks’ in-house collectors. For example, Ms. F, a 62-year-old, African-American Bronx resident whose only income is her Social Security disability benefits, received calls from her bank seeking to collect on a debt. Only after Ms. F contacted a legal hotline for help did she learn that the debt was past the statute of limitations and that, at any rate, her disability benefits were exempt from collection.

The important consumer protections contained in the rules should apply to every New Yorker facing debt collection, regardless of the entity doing the collecting. The DFS rules should not deny New Yorkers like Ms. F these protections simply because a bank’s in-house collector, and not a third-party debt collector, is the one contacting them. We therefore recommend

amending the proposed definition so that the rules do not unduly exempt banks' in-house collectors.

**2. Require that debt collectors notify people of their right under federal law to have third-party debt collectors cease contact.**

As we stated in our comment on the original proposal, we strongly recommend that the required initial disclosure proposed in section 1.2(a) include notification of the right that a person has under the federal 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.

**3. Require that banks' in-house collectors also be required to cease contact upon request.**

The proposed rules should not only cover banks' in-house collectors in general, but should also require that banks' in-house collectors cease contact upon a person's request, and that they be required to notify people of this right.

Many lower-income New Yorkers, particularly seniors on fixed incomes, have been harassed by round-the-clock debt collection calls, including from banks' in-house collectors. For example, a bank's collection department made constant, harassing phone calls to Mr. and Mrs. G, an elderly couple in their 80s who live in Queens, even though the Gs' only sources of income are Social Security and a pension, both of which are exempt from debt collection. The barrage of calls caused the couple, already in poor health, to suffer chest pains, insomnia, anxiety, and even thoughts of suicide. It took outreach to the bank by a legal advocate for the calls finally to cease. Mr. R, a disabled senior who lives in the Bronx and suffers from cancer, was so distraught by the relentless collection calls he received from his credit card company that he constantly felt pressured to use his Supplemental Security Income (SSI) for credit card payments instead of for co-payments for his medications. DFS rules should require banks' in-house collectors, and not just third-party debt collectors, to comply with a person's request that the collector cease all contact.

**4. Clarify that interest must be included in the itemized accounting that a debt collector provides to a consumer.**

Section 1.2(b)(2), which requires the debt collector to provide the consumer with an itemized accounting, uses the terms "charge" and "fee" but not the term "interest." We are concerned that debt collectors may interpret this to mean that they do not have to include interest in the itemized accounting, even when interest typically comprises a substantial portion of an alleged debt. We therefore recommend clarifying that debt collectors must itemize interest (post-charge off interest, for charged-off debts) as well.

**5. Clarify what documents would suffice as evidence of a consumer’s alleged indebtedness to the original creditor.**

Section 1.4(c), which requires that a debt collector provide a consumer with certain documentation in response to a dispute or request for substantiation of a debt, states that a debt collector may provide “the signed contract or signed application that created the debt, or, *in the case of a transaction that does not involve a signed contract or signed application, other documents evidencing the indebtedness of the consumer to the original creditor*” (emphasis added). We have two primary concerns with this language: (1) it is unclear what it means to “not involve” a signed contract or signed application; and (2) the language concerning what “other documents” may suffice is too vague and may result in the debt collector providing inadequate documentation that does not in fact demonstrate the consumer’s indebtedness (*e.g.*, a document created by the debt collector itself). We recommend clarifying this language to indicate more precisely when a debt collector does not have to provide a signed contract or signed application, and what other documents may suffice as evidence of someone’s indebtedness to the original creditor.

**6. Require that a debt collector transfer substantiating documentation about a debt if and when the debt is sold or transferred to a debt buyer.**

Debt buyers frequently resell accounts to other debt buyers. The more often that account information and documentation changes hands, the more likely it becomes that account information will be incomplete and inaccurate, especially since subsequent debt buyers do not have a contractual right to obtain information or documentation from the creditors that originated the accounts.

We commend DFS for requiring that a debt collector retain substantiating documentation about a debt until the debt is discharged, sold, or transferred (section 1.4(d)), but recommend requiring that debt collectors also pass on such documentation if and when the debt is sold or transferred. This would be in keeping with the Office of the Comptroller of the Currency’s recently issued guidance, in which the OCC advised its regulatee banks to ensure that purchase and sale agreements with debt buyers “obligate the initial debt buyer...to pass on all account information and documentation in its possession to a subsequent buyer.”<sup>1</sup>

Thank you for the opportunity to comment.

Sincerely,

Affordable Housing Partnership of the Capital Region Inc.  
Albany County Rural Housing Alliance, Inc.  
Association for Neighborhood and Housing Development (ANHD)

---

<sup>1</sup> <http://www.occ.gov/news-issuances/bulletins/2014/bulletin-2014-37.html>

Bedford-Stuyvesant Community Legal Services  
Brooklyn Housing and Family Services  
Buffalo Urban League  
BWICA Educational Fund  
CAMBA Legal Services, Inc.  
Central New York Citizens in Action, Inc.  
CNY Fair Housing Council  
Consumer Justice for the Elderly: Litigation Clinic of St. John's University School of Law  
Consumers Union  
Cypress Hills Local Development Corp.  
District Council 37 Municipal Employees Legal Services  
Empire Justice Center  
Fifth Avenue Committee  
Genesee Co-op Federal Credit Union  
Grow Brooklyn  
Housing Help Inc.  
Housing Resources of Columbia County Inc.  
JASA/Legal Services for the Elderly in Queens  
The Legal Aid Bureau of Buffalo, Inc.  
The Legal Aid Society  
Legal Services NYC  
Legal Services NYC- Bronx  
Long Island Housing Services, Inc.  
Margert Community Corporation  
MFY Legal Services, Inc.  
Neighbors Helping Neighbors  
New Economy Project  
New York Legal Assistance Group (NYLAG)  
New York StateWide Senior Action Council  
New York Public Interest Research Group, Inc. (NYPIRG)  
PathStone  
Pratt Area Community Council  
Queens Legal Services  
South Brooklyn Legal Services  
Staten Island Legal Services  
Syracuse University Securities Arbitration and Consumer Clinic  
Westchester Residential Opportunities, Inc.  
Western New York Law Center