June 10, 2025

Department of Consumer and Worker Protection
42 Broadway
New York, NY 10004
Via email: rulecomments@dcwp.nyc.gov

Re: Proposed Amendment to Rules Relating to Debt Collectors

To Whom It May Concern:

On behalf of the American Financial Services Association (AFSA),[1] thank you for the opportunity to express our continued concerns with the Department of Consumer and Worker Protection's ("DCWP" or "the Department") updated proposed amendments to its rules relating to debt collectors.

We share DCWP's goal of promoting fair debt collection practices, and we appreciate DCWP's consideration of our previous comments. Nevertheless, we believe additional amendments are necessary to avoid significant unintended consequences for New York individuals and families as well as the financial institutions that serve them.

Though we have multiple concerns about the current state of the proposed amendments, our primary concern relates to their applicability to original creditors. This will drive consumer harm and disrupt the provision of safe affordable credit in New York. Critically, federal and state preemption concerns call into question the rule's viability.

1. Applicability

As we have commented previously, applying the same debt collection rules to creditors, including assignees of motor vehicle retail installment contracts, in the proposed amendments draw distinctions between original creditors and other creditors that yield inconsistent results that the Department may not have intended (e.g., to distinguish original creditors from other creditors

[1] Founded in 1916, the American Financial Services Association (AFSA), based in Washington, D.C., is the primary trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including traditional installment loans, direct and indirect vehicle financing, mortgages, and payment cards. AFSA members include national banks and non-bank state licensed financial institutions. AFSA does not represent payday lenders, title lenders, or credit unions.

servicing performing accounts for purposes of the contact frequency limitations). We respectfully recommend that the final rule treat all "creditors" who either originate or service current credit obligations the same. As we discuss further below, for regulatory purposes, the "creditor" (regardless of whether that party is simply called the "creditor" or the "original creditor") should be understood to mean the person to whom the repayment obligation is currently owed—whether that be the party who initially extended credit and entered into the credit obligation with the consumer (regardless of whether that obligation is a direct loan, a line of credit, or a credit sale obligation—such as a retail installment contract) or parties who are assigned or purchase such a credit obligation before it is in default. Applying the same language to third-party debt collectors will disrupt the beneficial communication between creditors and consumers. This will result in reduced customer service quality and limit creditors' ability to offer tailored financial solutions, potentially forcing creditors to take escalated collection measures (e.g., suing or repossessing) sooner than they otherwise would have, ultimately harming consumers.

1.1 Request for Exemption of Licensed Financial Institutions

We urge the Department to exempt national and state-chartered banks as well as New York-licensed financial institutions, as defined under the Gramm-Leach-Bliley Act. One solution would be to incorporate statutory language that exempts "licensed financial institutions" under existing federal or state supervision:

> *"This rule shall not apply to any person, firm, corporation, or organization that is licensed and regulated under the laws of this state, any other state, or the United States relating to banks, credit unions, trust companies, savings associations, or other licensed financial institutions, or to the affiliates of any of the foregoing."*

This framework provides clarity while preserving regulatory oversight and mitigates the risk of institutions already overseen by federal regulators being subject to duplicative and conflicting standards for New York-licensed financial institutions and already regulated state and national banks.

1.2 Suggested Revisions for Defining "Original Creditor"

As written, the definition of "original creditor" is unclear and does not account for modern credit and servicing structures. The current definition— "any person, firm, corporation, or organization who originated the debt, including by extending credit and creating the debt"—fails to clarify whether it includes indirect finance companies that acquire contracts shortly after origination under dealer-based auto financing models. These companies are integral to the origination process in the vehicle finance market and frequently play a material role, accounting for a substantial share of sales finance activity (excluding buy-here-pay-here businesses).

The term "extending credit" is undefined and introduces uncertainty in the vehicle finance context. We request the Department adopt the definition of "credit" found in federal Regulation B Section 1002.2(j) to help address this issue.

We recommend clarifying that "original creditor" includes entities that acquire an account after origination and before default, as well as their servicing affiliates. This clarification would align with longstanding federal interpretations and reflect the reality of indirect auto lending. We propose the following revision, modeled after language in the New York Uniform Civil Rules:

> *"Original creditor means the financial institution that owned the consumer credit account at the time the account was charged off, or any affiliate thereof, even if that financial institution did not originate the account. Charged-off consumer debt means a consumer debt that has been removed from an Original Creditor's books as an asset and treated as a loss or expense."*

Alternatively, we suggest the Department incorporate industry-standard language into the definition of original creditor:

> *"Except a person or entity that originated the account or acquired the account before default, including its servicing affiliate, and is collecting the debt for its own account."*

In addition, we recommend the Department incorporate a narrower exemption—modeled after the federal Fair Debt Collection Practices Act (FDCPA) and Regulation F—by excluding from the definition of "debt collector" any entity servicing a debt that was not in default at the time it was acquired. This approach would bring the rule into alignment with federal and state standards and address concerns raised by indirect auto finance companies with affiliated servicers.

If the Department refuses to exempt licensed financial institutions or original creditors, we respectfully request the Department to confirm that the proposed rules do not apply to regulated creditors; consistent use of defined terms and triggers for requirements and conduct limitations throughout the final rule will clarify its scope and application and help companies subject to the rule comply with it. For purposes of AFSA's comments, and consistent with our recommendation above, we refer to "creditors" as original creditors and other creditors who are servicing and collecting debts from a time before charge-off and/or the time when they initiate "debt collection procedures," which should be revised as discussed below. We understand that "creditor" will not refer to entities whose servicing business model involves internal transfers or pre-charge-off activity; a contrary conclusion risks unintended consequences and misclassifies

essential servicing functions as "debt collection procedures." This would expose creditors to compliance obligations even before any delinquency has occurred—obligations that were originally intended to apply to the purchase of defaulted debts for the purposes of collection (i.e., "debt collectors" under the federal Fair Debt Collection Practices Act).

Additionally, indirect finance companies often utilize a separate but affiliated entity to perform a variety of servicing functions, including collections. To avoid unintentionally omitting this structure from the above exception, we recommend an additional revision to the definition of "debt collector," specifically exempting persons collecting debt that was not in default at the time it was obtained, which is present in the FDCPA/Reg. F and state-specific laws. We respectfully request the following clarification of "Debt Collector" within section 5-76:

> *"Debt collector: The term "debt collector" means any person engaged in any business the principal purpose of which is the collection of any debts or who regularly collects, or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due to another person. The term does not include:*
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> > (6) *any person collecting or attempting to collect any debt owed or due, or asserted to be owed or due to another, to the extent such debt collection activity concerns a debt that was not in default at the time such person obtained it."*

2. "Debt Collection Procedures"

The proposed definition of "Debt Collection Procedures" is vague and may unintentionally capture routine internal account management practices. For example, the phrase "placing the debt with another department or unit for collection" could unintentionally capture standard intra-organizational servicing activity—such as when different departments simultaneously manage billing, credit reporting, and outbound communications prior to charge-off. This could trigger unnecessary and confusing compliance obligations such as validation notices and opt-out rights, even when no actual collection calls are placed, or collection letters are sent. Additionally, "selling the debt" could capture benign transactions such as portfolio sales, bank mergers, assignments of the debt to affiliates, or assignments into and out of securitization trusts, which are quite common in the marketplace and are not part of the collection process.

Ordinary servicing activity—such as communication between different internal departments related to collections and credit reporting—should not trigger the rules. Applying these provisions to such conduct would cause unnecessary consumer confusion and create compliance challenges for original creditors, their affiliates, state-licensed finance companies, national banks and banks chartered under the laws of other states.

We recommend removal of Subpart (4) or, in the alternative, that Subpart (4) of the definition be revised to clarify that "Debt Collection Procedures" apply only after or where the debt has been sold or assigned to a distinct, unaffiliated third party after default. For example:

> *"…the creditor has accelerated, charged off, or transferred or sold the debt to a collection agency to collect, or sold to or placed the debt with a debt collection agency, an attorney or law firm; or after relinquishing all servicing rights by placing the debt with a separate, unaffiliated third party or legal entity. Transferring the debt to another excludes a motor vehicle dealer as the original creditor that assigns the retail installment contract to a lender at originations of the contract."*

To further avoid ambiguity, we also recommend clarifying that the definition of "debt" only includes accounts that have been charged off, as this would ensure the rules do not inadvertently apply to pre-charge-off servicing activity conducted by vendors or internal departments.

Additionally, the proposed definition of "Debt Collection Procedures" appears to conflict with the rule's definition of "pre-charge-off period," which is defined as the time before a debt is charged off. Under the current drafting, collection procedures could be considered to begin during this pre-charge-off period—such as when an account is simply transferred internally between departments, which creates ambiguity and frustrates compliance efforts. This overlap risks triggering collection obligations for accounts that are still performing or not yet delinquent, undermining the intent of both definitions.

AFSA strongly recommends that the rules clarify that for creditors, "debt collection procedures" only begin after acceleration or after the debt is charged off, regardless of which department or division is involved.

3. Validation Notice Requirements

AFSA members are concerned that the proposed validation notice requirements are not appropriately scoped for creditors while undertaking ordinary account servicing. The current provisions impose unnecessary burdens, risk confusion for consumers, and cause operational disruption for financial institutions.

At a minimum, and depending on whether the definition of "Debt Collection Procedures" is updated, any Validation of Debt Notice should only be triggered upon acceleration of the debt, and not any earlier.

3.1 Duplication of Existing Federal Regulations

The proposed requirement to send validation notices largely overlaps with obligations already imposed under the Truth in Lending Act (TILA), Fair Credit Reporting Act (FCRA), Fair Credit Billing Act (FCBA), Regulation Z, and the Real Estate Settlement Procedures Act (RESPA). These federal laws, along with supervisory oversight by multiple federal agencies, including, without limitation, the OCC and the FDIC, provide comprehensive frameworks that govern consumer disclosures, dispute resolution, and error correction processes.

AFSA appreciates that the Department has reinserted the exemption to the validation notice requirement for those who are subject to and comply with the dispute provisions of the FCBA. However, we note that closed-end creditors (like sales finance companies and banks making direct closed-end loans) are not excluded from the DCWP's validation notice requirement because they are not subject to the FCBA dispute procedures. This omission results in inconsistent obligations across a creditor's loan portfolio—for example, student loans, personal loans, and closed-end mortgages would be subject to validation requirements, while credit cards, HELOCs and other account types may not be. This inconsistency creates compliance uncertainty and raises operational burdens without consumer benefit.

AFSA recommends expanding the validation notice exemption to include creditors servicing performing debts in general, not just those covered by the FCBA. This change would harmonize the rules with federal law and ensure consistent treatment across product types. At a minimum, we respectfully request that the Department confirm the validation notice requirement is fulfilled by issuing the letter once during the life of the loan. Given the circular nature of a loan's life-cycle, it's possible a customer continuously flows in and out of Debt Collection Procedures.

3.2 Exclusion of All Original Creditors from the Validation Notice Requirement

The purpose of sending a validation letter is twofold: (1) to introduce the consumer to the debt collector; and (2) to make sure the consumer and debt collector have the correct information about the debt so the consumer can raise questions they may have. These purposes do not apply and are unnecessary for entities and creditors collecting their own debt. Regardless of loan product, the creditor would have already satisfied the purposes of this notice by previously communicating with the consumer about the account at account origination or when it was transferred to the creditor shortly after account opening—well before any collection activity begins and prior to the debt becoming delinquent. By doing so, it has already introduced itself to the consumer and provided them with the necessary information about the loan product. Thus, "reintroducing" the creditor to the consumer after the institution of debt collection procedures is duplicative, unnecessary, and potentially confusing to the consumer.

AFSA recommends expanding the validation notice exemption to include creditors servicing performing debts in general, not just those covered by the FCBA. This change would harmonize the rules with federal law and ensure consistent treatment across product types.

3.3 Natural Person Contact Information

Another reason that this requirement would be particularly burdensome for creditors is that the Department has retained the requirement that the Validation Notice include both "the name of the natural person for the consumer to contact" and "the telephone number that is answered by a natural person during all time when a debt collector conducts business with consumer." This creates both serious privacy and security concerns for those named in letters and unnecessary operational burdens on creditors that will lead to worse customer service. Individuals named in debt collection letters will be at an increased risk of harassment and potential physical attack. Debt collection in even the most customer-friendly setting can create understandable anxiety amongst consumers. As we have unfortunately seen recently in the healthcare space, making an employee's name public can leave them exposed to online harassment, or worse.

Implementing this requirement poses considerable challenges for creditors, which typically operate large call centers staffed by specialists who handle incoming calls. Customers are commonly not assigned specific employees for collections, leading to interactions with multiple representatives throughout the process. While creditors are committed to providing exceptional service, it is impractical for any business to include a specific person's name on every communication for direct consumer contact. Even if creditors invested a substantial amount of time and money to be able to offer a natural person's name to the customer, it would be unsustainable and lead to poor customer experience. If multiple customers are calling the same person, this will result in long customer wait times and frustration without any benefit for the customer, when other available agents are fully capable of providing the help that the customer needs. Furthermore, sharing an employee's name and phone number raises privacy and security concerns for creditors and their employees. We recommend that validation notices be required to include only the debt collector’s name and the contact number for its Collections department.

Additionally, strict compliance would require disproportionate operational resources. For example, what if the individual named in the letter leaves the company or changes job functions prior to the consumer reaching out; which is incredibly common at large original creditors? Would the sender have to re-send the letter? This would require the sender to have to monitor all validation letters against all employment decisions, which provides no benefit to the consumer.

Similarly, requiring that a covered entity have a phone line that is answered by a natural person would create undue burden for the creditor and no real benefit for the consumer. Consumers would inevitably be faced with long wait times while an agent becomes available to answer a phone call. Modern call answering technology much more efficiently manages call flows so that customers who wish to self-service via the phone can do so, enabling those wishing to speak with an agent to reach one.

While we still believe that all creditors should be exempted from the validation notice requirement entirely, AFSA recommends that the requirement to provide the contract for a natural person in the validation notices be removed, as this is not reflective of how a consumer’s relationship with a creditor functions.

At a minimum, we respectfully request that the Department confirm the validation notice requirement is fulfilled by issuing the validation notice once during the life of the loan. Given the circular nature of a loan’s life-cycle, it’s possible a customer continuously flows in and out of Debt Collection Procedures.

3.4 Non-English Validation Notices and Language Access Services (LAS)

The rules under **§ 5-77(f)(3)** are likely to chill the provision of a non-English communication by original creditors for the consumer’s benefit. Creditors may be forced to cease sending debt validation notices in a customer’s preferred language because these rules would impose an affirmative obligation on the creditor to, from that point forward, provide full servicing in that language other than English. This will dissuade creditors from offering spontaneous non-English creditor-to-consumer communication, such as by customer service representatives.

We have heard from our members that it is common for a consumer or creditor to *temporarily* engage in non-English communication with each other without the expectation of altering the consumer-to-creditor business relationship that was established in English. Moreover, Subparagraph (iii) creates significant operational barriers for creditors seeking to comply with these rules; such as requiring creditors to maintain extensive libraries of accurately translated non-English statutorily required letters, complaints, call scripts, and other documents.

Critically, **§ 5-77(f)(3)** and its subparagraphs ignore the modern, free translation services employed by millions of consumers to translate any text to their preferred language. AFSA appreciates the perspective of the Department for protecting consumers who prefer to speak in a language other than English, but we believe that these translation services largely solve the ills that the Department seeks to mitigate.

At minimum, AFSA recommends striking Subparagraph (ii) so the non-English validation notice and resulting Language Access Services have a simple, one-trigger mechanism by consumer request. This revision will maintain the rule's intent of consumer protection while streamlining practical compliance. AFSA again urges the Department to revise the rule to exempt original creditors, who provide LAS, to relieve them of the compliance burdens under **§ 5-77(f)(3)**. We further recommend that the Department amend Paragraph **(f)(3)** to use the **§ 5-76** definition of LAS to ensure legal clarity.

3.5 Operational Challenges and Consumer Confusion

Requiring duplicative validation notices may confuse consumers, especially if they have already received billing statements and disclosures required under federal law. It also increases the risk of regulatory inconsistencies and litigation exposure for original creditors.

We are concerned that triggering validation notices early in the account lifecycle (such as upon first communication) may give the misleading impression that the account is in default. Such communication could create consumer anxiety and generate unnecessary disputes, particularly in auto-finance contexts where accounts are acquired post-origination but pre-default.

AFSA urges the Department to revise the rule to exempt original creditors who already provide consumer disclosures under federal law, and to permit validation requirements to be met via such statements, where applicable.

4. Credit Reporting (14-Day Delay)

The proposed rule still requires that a debt collector send some sort of notice stating the debt will be reported to a consumer reporting agency—at an undefined point in time—and wait 14 days before furnishing information about the debt to a consumer reporting agency (CRA). The revisions to this provision create additional confusion about when the obligation is triggered, and do not account for creditors who are *already* furnishing information to the CRAs about the debt. Moreover, these entities that already furnish account information to the CRAs are already required under federal law to notify consumers that negative information may be furnished. Thus, this provision would create both operational and compliance risk for those already furnishing in compliance with under the FCRA, and create confusion for customers.

Furthermore, a law that imposes requirements or prohibitions with respect to a subject matter already regulated under sections of the FCRA will be considered preempted. Specifically, AFSA highlights that any attempt by DCWP to regulate the duties of data furnishers is expressly preempted. 15 U.S.C. § 1681t(b)(1)(F).

The requirement for separate notification of credit bureau furnishing and a 14-day reporting delay conflicts with the FCRA, which preempts state laws that impose additional requirements on data furnishers. National banks, which furnish credit information as part of their federally regulated operations, could challenge these municipal-level restrictions as they interfere with their ability to comply with FCRA standards. This preemption issue is likely to result in legal disputes, as national banks seek to maintain their established reporting practices without additional state-imposed burdens.

4.1 Operational Challenges

First, the revisions are unclear as to when the obligation is actually triggered. The Department should explicitly state the point in time at which the obligation begins and provide additional notice and comment on that revision.

Second, the proposed rule provides no exception for original creditors who continuously furnish account information to consumer reporting agencies (CRAs) under FCRA beginning when the account was opened and prior to any collection activity. Pausing and resuming furnishing introduces serious compliance risks and may result in inaccurate or incomplete reporting. Many posting and billing systems are not designed to suppress reporting temporarily, particularly for accounts that fluctuate in and out of delinquency, leading to misaligned reporting histories and increased consumer confusion. In addition, CRAs may flag these furnishing changes as illogical or reject them entirely, and there does not appear to be a mechanism within the Metro 2 reporting format to support the pause-and-resume structure contemplated by the proposed rule.

Third, the proposed rule creates unnecessary operational burdens on creditors by requiring them to send the notice at a minimum via the mail and in any other channel in which they are collecting debt. This unnecessarily requires creditors to bombard consumers with notices in multiple channels, when the information could just as easily be provided in one. Covered entities should be able to comply with this by sending it via one channel: either the channel in which they are collecting or via mail.

4.2 Redundancy with Federal Law

Original creditors are already required by 15 U.S.C. § 1681s-2(a)(7) to provide a notice of negative reporting to consumers. Entities complying with this provision have already met the intent of the Proposed Rule's 14-day delay, which is to notify consumers that the debt will be furnished to the CRAs. Adding a separate local requirement introduces duplication and legal uncertainty and may even inadvertently incentivize inaccurate furnishing.

4.3 Request for Exemption

We recommend revising 6 RCNY § 5-77(e)(10) to exempt financial institutions that have complied with 15 U.S.C. § 1681s-2(a)(7) and have been continuously furnishing account information (both positive and negative) under the FCRA.

4.4 Suggested Language

> Paragraph (e)(10) does not apply to:
> (1) a debt collector's furnishing of information about a debt to a nationwide specialty CRA that compiles and maintains information on a consumer's check-writing history, as described in section 603(x)(3) of the FCRA; or
> (2) financial institutions that are subject to and have complied with 15 U.S.C. § 1681s-2(a)(7).

If the Department does not adopt the exclusion above, we urge removal of the requirement to monitor for delivery of the credit reporting disclosure notice. Creditors should be permitted to satisfy this requirement by sending the notice to the debtor's last known address, consistent with standard consumer protection practices in other jurisdictions. Requiring affirmative monitoring for undeliverability introduces unnecessary complexity and is not technically feasible for many entities.

5. Electronic Communications

Debt collectors that are creditors or have acquired accounts through mergers or acquisitions and have already obtained consent to contact customers relating to their accounts should not be required to re-inform consumers of their right to revoke such consent once debt collection procedures begin at the time such consent is obtained. Requiring an additional disclosure after the start of collection activity is redundant and unnecessarily burdensome and could result in customers not receiving important account information, including information about loss mitigation programs.

It appears that **6 RCNY § 5-77(b)(5)(v)** would require debt collectors—including original creditors and creditors with inherited accounts—to include in *every* electronic communication (e.g., emails, texts) a clear and conspicuous written disclosure of:

- The consumer's ability to revoke consent to receive electronic communications at any time, and
- A reasonable method to opt out of further electronic communications or attempts to communicate.

This raises serious operational and interpretive concerns. For example:

- If a consumer replies "STOP" to a text, a character-count constrained channel of communication, but one consumers request and creditors leverage to convey important information to consumers, must the debt collector treat that as a revocation of *all* electronic communications (including emails), or just text messages?
- Would this require two distinct disclosures in each message—one for opting out of texts and another for emails or other electronic media?

Additionally, the **CTIA Short Code Monitoring Program Handbook**[2] for text communications already mandates compliance with "STOP" and similar keywords. The Proposed Rule appears to duplicate and potentially conflict with those industry standards. We recommend clarifying that the opt-out mechanism should be medium-specific (e.g., a "STOP" reply in a text revokes only text communications), and that outbound communications consistent with a customer's previously specified contact preferences and compliance with CTIA is sufficient for satisfying this requirement.

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[2] https://api.ctia.org/wp-content/uploads/2024/01/CTIA-Short-Code-Monitoring-Handbook-v1.9-FINAL.pdf

- 6 RCNY § 5-77(b)(5)(i)(B) should be amended as follows:
  - The debt collector is the original creditor or a creditor who has acquired accounts via a merger or acquisition, and obtained consent from the consumer, given directly to the debt collector, to use such email address, text message number, social media account, or another electronic medium of communication to communicate about the specific account ~~prior to the institution of debt collection procedures~~, and the consumer has not since revoked such consent, ~~provided that, after the institution of debt collection procedures, such debt collector informs such consumer in writing of their right to revoke such consent to use such email address, text message number, social media account, or another electronic medium of communication to communicate about the specific account~~;

6. Notice of Unverified Debt

If the Department declines to expand the validation notice exemption beyond creditors subject to the FCBA, then in the alternative, AFSA recommends revising or removing the proposed requirement that original creditors issue a "Notice of Unverified Debt" if they are unable or otherwise fail to verify the debt within 60 days of a consumer's request. This provision is unnecessary and counterproductive.

This provision is outlined in § 5-77(f)(7)(iv) and would impose operational challenges without offering meaningful benefit to consumers.

Consumers are already protected during the validation period, as collection efforts must be paused while verification is pending. Adding a separate, mandatory "unverified" notice risks causing confusion—especially where account histories are complex or involve legacy systems, multiple transfers, or older data.

For original creditors, (both original creditors and creditors that obtain the obligation shortly after origination and prior to any default), particularly those who maintain account servicing from inception, the risk of unverifiable debt is extremely low since the creditor and debt would be known to the consumer based on their relationship with the creditor. Yet, the rule imposes this obligation uniformly, regardless of risk level or practical challenges. The rigid 60-day timeframe may not account for all verification scenarios, creates material risk of customer confusion upon receipt of this letter, and could lead to unintended noncompliance despite good faith efforts.

We respectfully recommend that the Department **remove the requirement for a "Notice of Unverified Debt"** for creditors. Alternatively, at a minimum, creditors should be allowed more flexibility in the verification timeline and relieved of this notice requirement when they are already subject to federal standards and systemically pause collection efforts upon a timely dispute.

7. Verification of Debt Content

The current proposal would require original creditors to include records of *all* prior settlement agreements in the debt verification notice — even those that were never completed or were later breached. Additionally, the current proposal also requires the debt collector to include the final account or charged-off statement or any document reflecting the total outstanding balance owed, which was mailed to the debtor on or before the charge-off date and prior to collection of the charged-off balance.

Including expired or broken settlement offers isn't helpful to consumers and could actually lead to more confusion and even deception. It may give the impression that those settlement terms are still available or imply that the debt is negotiable, when that may not be the case. The purpose of the verification process should be to clearly confirm the *current* amount owed—not to revisit every negotiation attempt that may have occurred in the past.

Operationally, many systems don't retain historical settlement records in a way that makes this requirement feasible. Even if they do, surfacing that information serves little purpose once a settlement has lapsed or been voided.

The current proposal allows debtors to request verification or dispute a debt at any time. Therefore, requiring creditors to send a final account statement, charge-off notice, or any document showing the outstanding balance owed—mailed to the consumer before initiating debt collection procedures—could create confusion. This is because the outstanding balance at the time of verification may differ significantly from the amount originally disclosed at or before charge-off. Additionally, not all creditors issue such documents at charge-off or immediately beforehand.

We recommend narrowing this provision to focus only on **active or completed settlements and require a current account payment history, reflecting the debtor's current outstanding balance, in lieu of a prior statements or notices sent to the consumer**. This would ensure that the information provided to consumers is current, accurate, and relevant, without creating unnecessary confusion or operational burden.

8. Communication Restrictions at Place of Employment

The proposed restriction under **§ 5-77(b)(6)** prohibits debt collectors from communicating with a consumer during the consumer's work hours or through employer-provided contact information if the collector "knows or should know" such information is associated with the consumer's employment. While the provision includes an exception for communications made with prior, written revocable consent, the standard of what a collector "should know" is vague and difficult to apply consistently.

In practice, it is often not possible to determine a consumer's work hours or whether a contact number or email address is employer-issued, particularly in the absence of explicit disclosure by the consumer. This creates uncertainty and potential compliance risk, even where communications are made in good faith. For instance, if a consumer provides a mobile phone number or personal email that is later determined to be work-related, the collector could be penalized despite having no actual knowledge of the association.

In addition, permitting communications to employer-issued contact numbers or email addresses only where the consumer provided prior *written* revocable consent is inconsistent with federal and state law, including the Telephone Consumer Protection Act (TCPA), Electronic Signatures in Global and National Commerce Act (ESIGN) and other electronic-record laws, and industry practice. Written consent is not required in order to send servicing related communication to customers via email or contact numbers. Existing laws appropriately protect customers and creating an elevated standard that consent be captured in writing will add unnecessary complexity with no customer benefits. For example, the TCPA only requires prior express written consent for marketing communications and requires prior express consent for servicing communications. As a result, certain NYC residents will stop receiving important communications from creditors in the manner they are accustomed to, and potentially specifically requested, receiving simply because the status of their account triggers these NYC regulations. This will result in customer harm to NYC residents as their accounts go further past due as a result of not receiving certain past due notifications and proactive outreach relating to loss mitigation programs, resulting in increased fees and negatively effecting credit scores.

We recommend that the Department:

- Revise this section to clarify that the restriction applies **only when a collector has actual knowledge** that the contact method is employer-issued or that the communication is occurring during work hours. This clarification would better align the regulation with operational realities and reduce the risk of unintended violations, particularly for original creditors managing large and diverse portfolios.

- Remove the “written” requirement and only require “prior revocable consent” to align with existing laws, industry practice and customer expectations, and revise to include e-mails in this consent-exception.

8.1 Inconvenient Time

The proposed restriction would prohibit communications after 9 p.m. and before 8 a.m. without written consent. The current standard provides an assumption that phone calls made during such time are *assumed* to be inconvenient. Creditors are not interested in making calls to their customers at any inconvenient time, but they should be able to make a call at a customer’s request at a time specified by that customer. Creditors should not be required to inconvenience a customer who asks for a call at 9:15 p.m. by demanding the customer send such request in writing—doing so only serves to damage the relationship between creditor and customer, and may lead to delays for the customer receiving needed assistance. Further, given the broad definition of “communication,” a creditor’s attempts to reach a consumer during presumed convenient times, may not be delivered or retrieved by the consumer until after 9 p.m., leading to presumed violations of this proposed rule (e.g. a collector may send an email before 9 p.m., but a consumer’s server could cause delays resulting in the message being delivered in an in-box after 9 p.m., a situation completely outside of the collector’s control).

8.2 Cease and Desist

The proposal seeks to eliminate the written requirement for consumers seeking full cease and desist treatment from a debt collector. The written requirement is critically important for consumers and debt collectors alike to provide a clear understanding of the consumer’s request. This provision could be subject to multiple interpretations as debt collectors try to determine what constitutes “notice” of a consumer’s interest in ceasing ALL communication. For example, would a customer’s request to “please stop calling me” constitute notice to cease all communications, or just phone calls? While debt collectors should honor a consumer’s request to communicate through a particular channel and avoid communicating during known inconvenient times, it may not always be clear to a phone specialist when a customer is seeking to end all communications, and asking the customer to submit such a request in writing will establish clarity for both sides. Debt collectors who have no further means to communicate are more likely to accelerate litigation, as one of the only remaining means to recover from a consumer, so ensuring that accounts are not treated as “full cease and desist” if a consumer really did not intend to request such, is critical to protect the interests of consumers and encourage ongoing communications between the parties.

8.3 During Work Hours and through Employer Provided Channels

The proposed restriction under **§ 5-77(b)(6)** prohibits debt collectors from communicating with a consumer during the consumer's work hours or through employer-provided contact information if the collector "knows or should know" such information is associated with the consumer's employment. The standard of what a collector "should know" is vague and difficult to apply consistently. While the provision includes an exception for communications made with prior, written revocable consent, that exception only applies to "direct numbers" and not e-mail addresses.

In practice, it is often not possible to determine a consumer's work hours or whether a contact number or email address is employer-issued, particularly in the absence of explicit disclosure by the consumer. This creates uncertainty and potential compliance risk, even where communications are made in good faith. For instance, if a consumer provides a mobile phone number or personal email that is later determined to be work-related, the debt collector could be penalized despite using contact information specifically provided by the consumer and having no actual knowledge of the association.

We recommend that the Department revise this section to clarify that the restriction applies **only when a debt collector has actual knowledge** that the contact method is employer-issued or that the communication is occurring during work hours. This clarification would better align the regulation with operational realities and reduce the risk of unintended violations, particularly for original creditors managing large and diverse portfolios. We also recommend that the Department remove the "written" requirement and only require "prior revocable consent" to align with existing laws, industry practice and customer expectations, and expand that exception to e-mails as well as direct numbers.

9. Frequency of Communications

AFSA appreciates the Department's revisions to **§ 5-77(b)(1)(iii)(A)** that clarify communication frequency limits apply on a **per-account basis** rather than a per-consumer basis. This change reflects a more practical and operationally feasible framework, particularly for creditors managing multiple products or accounts for a single consumer.

However, even under the per-account approach, there remains a risk that the frequency limitation could unintentionally restrict helpful or necessary communications—such as those related to payment assistance, account clarification, responses to consumer inquiries, or important notices about imminent consequences of non-payment (e.g., notices about repossession, negative credit reporting, imposition of late fees, etc.).

AFSA recommends that the Department:

1. **Retain the per-account standard**, which better reflects industry operations and reduces the likelihood of consumer confusion.
2. Clarify that **customer-initiated communications, mailed correspondence, billing statements, and legally required notices** are excluded from the frequency calculation, as these serve important consumer protection functions and are not indicative of harassment.
3. **Increase the frequency limit**, particularly for non-phones channels which have been recognized by the CFPB as less intrusive communication methods, to allow opportunities for open dialogue with customers to avoid additional fees, negative credit reporting, or further delinquency.

This balanced approach would preserve the rule's intent while allowing for efficient, compliant, and consumer-focused account servicing.

AFSA recommends revising the proposed Statute of Limitations (SOL) disclosure requirements to avoid unnecessary duplication and operational burden. Specifically, we urge the Department to eliminate the requirement to redeliver a written SOL disclosure after every oral communication, as long as the disclosure has already been made orally in a compliant manner. We also recommend removing the requirement to monitor for undeliverable return mail. Instead, creditors should be permitted to satisfy their obligation by sending the disclosure to the consumer's last known address, consistent with common standards under other consumer protection statutes.

10. Public Websites

The proposed rules require that debt collectors with websites accessible to NYC consumers include specific disclosures on their public homepage. This includes a reference to the NYC Department of Consumer and Worker Protection (DCWP) and a required link to "a Glossary of Common Debt Collection Terms and other resources available in different languages at www.nyc.gov/dcwp" (§ 5-77(f)(1)(vi); § 5-77(h)(2)). However, when clicking the link, consumers are directed to the DCWP's main landing page. A per se "glossary" does not appear to exist using the site's search function, and the only visible language feature is a general "Translate" drop-down menu. Including a direct link to a glossary—if one exists—or revising the disclosure language to better reflect the actual content available could help avoid unnecessary consumer confusion.

In addition to this ambiguity, the requirement poses broader concerns for original creditors. Unlike third-party debt collectors, whose websites are focused solely on collections, creditors often offer a range of financial products and services on their websites. Embedding a collection-related link across a general-use site could mislead consumers, especially those from outside NYC who are visiting the site to explore loan or account options. This misalignment may inadvertently suggest the consumer is in collections, harming the customer experience and introducing reputational risks.

Further, requiring public homepages to include government-hosted links raises security, privacy, and legal concerns, particularly when the linked resources are not actively maintained or do not function as described. Creditors would also bear the ongoing burden of verifying that third-party links remain accurate and up to date, increasing compliance uncertainty.

AFSA recommends that the Department remove this provision or, alternatively, revise this provision to reflect the actual structure of the DCWP site, and to account for the operational and legal implications of applying this mandate to creditor websites not solely dedicated to debt collection.

11. Record Retention

The rules do not clearly specify how debt collectors should manage records for consumers who relocate in and out of New York City over the life cycle of an account. Debt collectors should not be obligated to retain records indefinitely, as this heightens the risk of data breaches and raises privacy concerns. We request that the Department provide clarity regarding collectors' responsibility to maintain records.

12. Effective Date

The proposed amendments represent a sweeping and complex overhaul of New York City's debt collection rules. As currently drafted, the rules are scheduled to take effect on October 1, 2025. We strongly urge the Department to postpone the effective date and provide the industry with **no less than 18 months from the date of final adoption** to come into full compliance. Furthermore, the scope of the rule should only cover those debts that are accelerated or charged off after the effective date of the rule. This will allow creditors the appropriate time needed to undertake the modification of a host of operational processes to implement the new rules and is essential to allow for full compliance across systems, disclosures, and workflows.

Without further amendments, as described above, given the breadth of these changes, implementation will require substantial modifications to systems, disclosures, compliance workflows, and consumer communication protocols that cannot be resolved in a short timeframe. We respectfully ask the Department to recognize that a compliance window of at least 18 months from finalization of the rules is necessary to ensure consumer protections are met without triggering unintended disruptions, inaccurate reporting, or rushed legal exposure. This extended timeline is consistent with how similar rules have been implemented in other jurisdictions and aligns with the operational reality of financial institutions and third-party servicers.

CONCLUSION

We respectfully request that the Department carefully consider these likely consequences and take action to protect both NYC consumers and financial institutions from the unintended negative effects of the proposed rules. We urge the Department to exclude creditors collecting their own debts, including assignees of motor vehicle retail installment contracts, from the amended rules or, at a minimum, limit their applicability to only after the debt is accelerated or charged-off. Additionally, we recommend revising specific provisions to align with the operational realities of creditors and extending the implementation timeline by at least 18 months to ensure smooth and full compliance—unless the scope of the final rule is narrowed significantly to reduce the associated burden.

Thank you in advance for your consideration of our comments. If you have any questions or would like to discuss this further, please do not hesitate to contact me at dfagre@afsaonline.org or Elora Rayhan erayhan@afsamail.org at your convenience.

Sincerely,

Danielle Fagre Arlowe
Senior Vice President
American Financial Services Association