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The City that Never Sleeps on Debt Collection: A Primer on New York City's Debt Collection Regulations

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The New York City Department of Consumer and Worker Protection ("DCWP") (formerly the Department of Consumer Affairs) promulgated new debt collection rules this spring to provide protections to consumers with limited English proficiency. The new rules are intended to address concerns identified by the DCWP in its 'Lost in Translation: Findings from Examination of Language Access by Debt Collectors" report that was issued in the fall of last year.

The rules require certain disclosures on both public websites and in consumer-facing communications regarding the availability of language access services, require persons collecting debt to request consumers' language preferences, and require collection agencies licensed by the DCWP to maintain records concerning consumers' language preferences. The rules do not require creditors, debt collectors, or collection agencies to make any services available in any particular language or to honor consumers' language access preferences.

While the rules are not particularly arduous (especially compared with the balance of New York City's debt collection regulations, discussed in more detail below), the DCWP's rulemaking procedure attracted national attention. The agency proposed the rules on March 5, 2020 and scheduled a public hearing on the rules for April 10, 2020, in the midst of widespread shutdowns in the New York City metro area, and received no comments on the rules before allowing them to become effective on June 27. Facing pressure from industry groups, the DCWP agreed to delay enforcement of the rules twice, until at least October 1, 2020. On August 6, 2020 the DCWP released a guidance document with a list of frequently asked questions that clarified concerns expressed by industry. And on August 7, 2020 the DCPW released a revised guidance document.

Although probably not the intent of the DCWP, the uproar over the agency's apparent procedural missteps brought attention to the entire body of New York City's debt collection regulations, not just the new requirements. Creditors, in particular, have been looking more closely at the contours of New York City's debt collection regulations and asking whether and to what extent the more onerous and technical requirements apply to a creditor collecting its own debts.

Of particular concern are the requirements and restrictions in 6 R.C.N.Y. § 5-77. These conduct-regulating requirements and restrictions appear in the New York City Unfair

Trade Practices rules, and apply to "debt collectors." This term is defined to mean any individual who regularly collects "debt[s] due or alleged to be owed or due" which is broad enough to apply requirements of the ordinance to creditors collecting their own debts. 6 R.C.N.Y. § 5-76. While many of these provisions track the provisions of the federal Fair Debt Collection Practices Act (most provisions of which many creditors already comply as a matter of best practice), there are two provisions in particular that are highly technical and strict.

First, New York City requires certain creditors collecting their own debts, after accelerating the unpaid balance or demanding the full balance due, to provide a debt validation notice. New York City is one of only a very small number of jurisdictions to require *creditors* to provide a debt validation notice. But, New York City does not require *all* creditors to provide the notice. Certain open-end creditors are exempt from New York City's debt validation notice requirement.

Second, New York City has perhaps the most onerous creditor collection contact frequency restrictions in the country. The regulations provide that, after instituting "debt collection procedures," a creditor may not contact a consumer more than ***two times each seven-calendar-day period***. This contact frequency limit includes not just phone calls, but any other type of communication, such as emails, text messages, and letters. Certain communications are excluded from the limit (a response to an oral communication from the consumer, returned and unopened mail, certain messages left with third parties that contain only limited information, and communications required by law). An important caveat to this strict limit is that it only applies after the creditor institutes "***debt collection procedures***," a term that has different meanings depending on the type of credit. For most closed-end credit, though, "debt collection procedures" refers to an attempt to collect after the creditor has "accelerated the unpaid balance of the debt or demanded the full balance due." Therefore, generally speaking (and depending on the type of credit) the strict two-contacts-per-week limit applies only after the creditor has either accelerated the unpaid balance or demanded the "full balance due" (an undefined term that probably refers to the unaccelerated outstanding amount due on the date of the demand).

In summary, while the new regulations do increase the compliance burden on creditors, the balance of New York City's debt collection regulations are already some of the most onerous in the country and are somewhat unique in that they generally apply to creditors collecting their own debts. Given the DCWP's recent activity in the area of debt collection, which signals a desire to pursue collection activity aggressively, creditors should proceed with caution in the city that never sleeps.

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