

New Law Requires Notice to Consumer Debtors About Receiving Alternative, Reasonably Accommodatable Communications

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A new law in New York requires debt collectors and principal creditors, including financial institutions, to provide a notice in the initial communication to a debtor regarding a consumer claim that each communication to that debtor can be provided in an alternative, reasonably accommodatable format. This requirement is effective November 7, 2021.

Governor Kathy Hochul signed legislation on October 8, 2021 amending New York's General Business Law to require this new notice. The notice requirement applies to both "principal creditors"^[1] and "debt collectors."^[2] Given the definition of "principal creditor," this new requirement will apply to financial institutions and not just third parties collecting debts for such institutions.^[3]

The amendments require that the initial "communication"^[4] to the debtor disclose that each communication to that debtor can be provided in an alternative, reasonably accommodatable format. The disclosure must substantively contain the following: (a) a statement that the consumer may request the letter in an alternative, reasonably accommodatable format selected by the principal creditor or debt collector such as large print, braille, audio compact disc, or other means; and (b) a business phone number that the consumer may call to make such a request. A principal creditor or debt collector providing reasonable accommodation in compliance with the Americans with Disabilities Act will not be deemed to have violated this law.

The required notice must be provided to any natural person who owes or who is asserted to owe a "consumer claim." A "consumer claim" is defined as "any obligation of a natural person for the payment of money or its equivalent which is or is alleged to be in default and which arises out of a transaction wherein credit has been offered or extended to a natural person, and the money, property or service which was the subject of the transaction was primarily for personal, family or household purposes. The term includes an obligation of a natural person who is a co-maker, endorser, guarantor or surety as well as the natural person to whom such credit was originally extended."

Please note that this advisory is a general overview of the new law and is not intended as legal advice. If you have any questions regarding the new law, please feel free to contact Joseph D. Simon at (516) 357-3710 or via email at jSimon@cullenllp.com, Elizabeth A. Murphy at (516) 296-9154, or via email at emurphy@cullenllp.com, or Mandy

Xu at (516) 357-3850 or via email at mxu@cullenllp.com.

Footnotes

[1] “Principal creditor” is defined as “any person, firm, corporation or organization to whom a consumer claim is owed, due or asserted to be due or owed, or any assignee for value of said person, firm, corporation or organization.”

[2] “Debt collector” is defined as “an individual who, as part of his or her job, regularly collects or attempts to collect debts: (a) owed or due or asserted to be owed or due to another; or (b) obtained by, or assigned to, such person, firm or corporation, that are in default when obtained or acquired by such person, firm or corporation.”

[3] It does not appear that this law would be preempted by federal law with respect to principal creditors that are federally chartered.

[4] “Communication” is defined as “the conveying of information regarding a debt directly or indirectly to any person through any medium.”

Practices

- Regulatory and Compliance

Attorneys

- Joseph D. Simon
- Elizabeth A. Murphy