

Regulations against Abusive, Deceptive and Unfair Debt Collection Practices

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The New York State Department of Financial Service has issued new regulations against abusive, deceptive, and unfair debt collection practices. These new regulations, which are effective on March 3, 2015, will provide new consumer protections that are in addition to those protections already in place under both federal and New York State law.

These new regulations will supplement existing consumer protections set forth in the federal Fair Debt Collection Practices Act (“FDCPA”) and the New York General Business Law. Since both those statutes and these new regulations all share the same purpose of consumer protection, they only apply to the collection of consumer debt primarily for personal, family or household purposes; they do not apply to the collection of business-related debt. Also, the new regulations—like the FDCPA—do not apply to a creditor seeking to collect debts through its employees and in its own name. The new regulations only apply to a debt collector that engages in debt collection as its principal business purpose or regularly collects debts owed another, or a buyer of debts who seeks to collect such debt.

As discussed below, the new regulations require debt collectors to provide enhanced initial disclosures, notifications when attempting to collect “time-barred debt,” substantiation of consumer debt allegedly owed, written confirmation of settlement agreements, and an opportunity for communication through email.

- ## Enhanced Initial Disclosure

Debt collectors are required to provide additional information beyond current federal requirements including the debtor’s rights, the original creditor’s information, and specific information about charged-off debts such as the total amount owed at charge-off, total post-charge-off interest, charges, fees and payments made.

- ## Disclosure of Debtor’s Defense for “Time-Barred Debt”

Debt collectors must maintain reasonable procedures to detect whether the statute of limitations on a debt has expired. Prior to accepting any payment on a debt that the debt collector knows or has reason to know is time-barred, the debt collector must provide a notice to consumers that includes a statement about the possible

expiration of the statute of limitations on the debt, the consequences of making payments, and the possible statute of limitations defense in any lawsuit.

- ## Substantiation of Consumer Debts

To ensure the legitimacy of consumers' debts, if a consumer makes a request to a debt collector for substantiation of a charged-off debt, the debt collector must cease collection and, within 60 days of receiving the request, provide written substantiation of the debt to the consumer. The debt collector's substantiation to the consumer must include a copy of a judgment against the consumer or other documentation, including the signed contract that created the debt, account statements, a prior settlement agreement, and documentation indicating a chain of title. Upon providing such substantiation to the consumer, the debt collector may recommence collection activities.

- ## Written Confirmation of Settlement Agreements

To ensure a debt collector's compliance with settlement agreements, within 5 business days of entering into the agreement, consumers must be provided with written confirmation of the payment schedule and a delineated notice. The debt collector must also provide an accounting of the debt on at least a quarterly basis. Additionally, within 20 business days of the receipt of a payment satisfying a consumer's debt, the debt collector must provide to the consumer a written confirmation of the satisfaction.

- ## Opportunity for Communication Through Email

Consumers will now have the opportunity to communicate with a debt collector through email if consumers choose to provide the debt collector with their individual email accounts and consent in writing to receive email correspondence.

Please note that this advisory is a general overview of the new regulations and is not intended as a comprehensive explanation of all aspects of the regulations or as formal legal advice. If you have any questions regarding the regulations or debt collection issues in general, please feel free to contact Joseph D. Simon at 516-357-3710 or via email at jsimon@cullenanddykman.com, Kevin Patterson at 516-296-9196 or via email at kpatterson@cullenanddykman.com, or Mandy Xu at 516-357-3850 or via email at mxu@cullenanddykman.com.

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