



June 11, 2020

Commissioner Lorelei Salas
New York City Department of Consumer Affairs
42 Broadway
New York, NY 10004

Dear Commissioner Salas:

As the nonprofit trade associations representing the collection industry in New York State, we are jointly writing to you to express our mutual concern regarding the process utilized by the New York City Department of Consumer Affairs (DCA) in the noticing and adoption of debt collection rules during a worldwide pandemic with minimal public outreach.

The past three months have been exceedingly difficult on all Americans as we dealt with the health and financial hardships associated with the COVID-19 pandemic. Nowhere is this perhaps more true than in New York City. Many of our members laid off employees or closed their businesses while others had to learn how to operate from the homes of their employees. We suspect DCA was required to make many difficult adjustments during this time as well which may have resulted in reduced public outreach on the proposed foreign language access rule.

Given that the timing of the publication and adoption of DCA's rule on foreign language access, and the entirety of the comment period, fell during the global COVID-19 pandemic, we respectfully request that DCA extend the effective date of the adopted rule from June 28, 2020 to three months after the final rule publication and reopen an abbreviated comment period to solicit industry and public comments. While it is noteworthy, it is not surprising, there were no comments on the proposed rule from either the industry or the public given the chaotic circumstances the world was dealing with at that time.

The first knowledge that any of our trade associations had concerning the proposed DCA rule was on May 20, 2020, when it was discovered on the DCA website. This was 40 days after the comment period ended on April 10, 2020, which coincided with the date of a public hearing on the rule.

Each of our respective associations, and many of our members, would certainly have provided comment on the proposed rule had we known of its existence. Case in point, the federal Consumer Financial

Protection Bureau (CFPB) received more than 50 responses that addressed foreign language requirements in the proposed Debt Collection Practices Rule (Regulation F) issued by the CFPB on May 6, 2019 (Docket No. CFPB-2019-0022/RIN 3170-AA41).

Given that this rule is not urgent in nature and that other proposed DCA rules during the same time period were extended because of the pandemic, we feel an extension is a reasonable request given the circumstances taking place at the time of its adoption. An additional three months would provide adequate time to work on potential modifications as well as obtain written DCA clarifications so that this rule can be operationalized by our respective memberships. While we list some of our concerns needing clarification below, we note that if we were able to respond in April, our paramount concern would be the length of time our member businesses would need for system upgrades and employee training. The adopted rule has a number of operational challenges that need to be addressed before it takes effect. Simply stated, businesses that are just returning from three months away are not realistically able to operationalize these requirements in 17 days.

We appreciate our collegial and collaborative relationship with DCA and look forward to continuing this dialogue in an expedited manner given the impending implementation date. In no particular order, here are some of the concerns we have identified that require clarification:

1. Can English be inferred to be a consumer's preferred language if the debt collector is able to have a conversation in English and the consumer is responding in English? There are already numerous notice requirements under state and federal laws and regulations and having to ask a question with an obvious answer based on the real time conversation taking place would not only be awkward but could potentially violate other state and federal notice requirements.
2. For purposes of §2-193(b)(5), if the consumer has more than one language preference, which one should be recorded?
3. For purposes of §2-193(5), if the consumer responds to the debt collector's request for their language preference in a language the debt collector does not speak, and the debt collector therefore cannot understand the answer, is that sufficient to make the debt collector "unaware" of the consumer's language preference? If not, how would a debt collector be able to record the language preference?
4. Will the debt collector's completed annual report referenced in §2-193(c)(3) be made public on the Department's website, or is it only a downloadable form that the debt collector can use to create its annual report that will be "made publicly available" upon request?
5. For purposes of §5-77(d)(18), what standard will be used to determine whether a translation is "false, inaccurate, or partial"?
6. Does the requirement in §5-77(d)(18) only apply to translations of communications that originally were made in English, or does it apply when communicating with the consumer in a language other than English in the first instance?

7. What is meant by “clearly and conspicuously” in §5-77(h)?

We appreciate the dialogue that DCA staff is having with several industry participants which is resulting in several meetings on or around June 17th. However, with the implementation date just 11 days after those meetings, we remain concerned that the industry is not going to be prepared to operationalize these new requirements without extending the date. As such, we would like to formally request an opportunity to have a joint call with you to discuss this matter. We appreciate your time and attention to this issue.

Sincerely,

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