50th Anniversary: Mobilizing for Justice

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Via email to FSLReg@dfs.ny.gov

August 15, 2014

Max Dubin
Department of Financial Services
One State Street
New York, NY 10004-1511

Re: Proposed Debt Collection Rule Making
I.D. No. DFS-34-13-00002-RP

Dear Mr. Dubin:

MFY Legal Services, Inc. submits the following comments to the revised rules regarding debt collection proposed by the New York State Department of Financial Services (DFS), and published in the New York State Register on July 16, 2014.

MFY envisions a society in which no one is denied justice because he or she cannot afford an attorney. To make this vision a reality, for 50 years MFY has provided free legal assistance to residents of New York City on a wide range of civil legal issues, prioritizing services to vulnerable and under-served populations, while simultaneously working to end the root causes of inequities through impact litigation, law reform and policy advocacy. We provide advice and representation to more than 8,500 New Yorkers each year. MFY launched its Consumer Rights Project in 2005 in response to our clients' growing demand for legal representation and information about debt collection and other consumer issues. Through a weekly hotline and our participation in courthouse clinics, we see first-hand debt abuses and unfair practices by debt collectors and their attorneys, and provide these comments from that perspective.

As we expressed in our comments to the original proposed rules, we welcome DFS's actions to help alleviate debt collection problems in New York, which are rampant among our clients. We reiterate that we believe that these rules, with the changes suggested below, and coupled with aggressive investigations and enforcement measures, will protect New Yorkers and provide a model for other states and federal agencies to emulate. We appreciate that in revising the rules, DFS made several of our prior recommended changes. However, as explained below, the rules still require revisions and changes, which we believe are necessary to make the rules strong and beneficial to consumers.

Following are our specific suggested changes and modifications to each section of the proposed rules.

§ 1.1 Definitions

We are very concerned that the revised definition of "debt collector" explicitly excludes original creditors and their in-house collectors, and that the title of the rules has been changed to "Debt Collection by Third-Party Debt Collectors and Debt Buyers." As recognized by the Consumer Financial Protection Bureau (CFPB), in-house collectors of financial institutions frequently engage in abusive and deceptive debt collection tactics.[1] Many of our clients face harassing debt collection tactics by original creditors, including major banks, and without robust rules that apply to in-house collectors, New York consumers will continue to suffer abuses without recourse.

§ 1.2 Required initial disclosures by debt collectors

As previously recommended, we think the most important information for consumers to know is their right under the FDCPA to request that a debt collector cease contacting them, and that this information should be added to § 1.2(a)(1). Also, the provision under § 1.2(b) that requires disclosure regarding the nature of the consumer's defaulted debt is still missing the last date a payment was made or should have been made, which is a critical piece of information for consumers that should be added. And finally, we believe that the itemized accounting required under § 1.2(b)(2) should include the term "interest" in addition to "charge" and "fee" for absolute clarity.

§ 1.3 Disclosures for debts in which the statute of limitations may be expired

First, we point out that although the sample notice requirement in § 1.3(c) includes encouraging a consumer to consult an attorney about his or her rights and options, this language is not included in the requirements in § 1.3(b). As for the sample disclosure language included in § 1.3(c) regarding debts beyond the statute of limitations, we continue to have concerns about the language causing confusion for consumers who may be unsophisticated. We again suggest using straightforward language that simply states it is illegal to sue someone on a time-barred debt, rather than describe the steps consumers must take if they are sued. Alternatively, we agree with the revised language suggested by the New York City Bar Association on this point in its comments to the revised rules.

§ 1.4 Substantiation of consumer debts

We welcome requirements for robust substantiation of consumer debts, which we believe will help consumers recognize and pay legitimate debts. However, the current two-step process of requiring consumers who dispute the validity of debts to also separately request substantiation of the debts seems confusing and unnecessary. We suggest that any written dispute by a consumer be considered a request for substantiation. We also have concerns about the fact that there is no prohibition against debt collectors selling or transferring debts even if they do not respond to a substantiation

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[1] *See* Consumer Financial Protection Bureau, CFPB Bulletin: Prohibition of Unfair, Deceptive, or creditors are prohibited from engaging in unfair and deceptive acts when involved with collecting debts); Jessica Silver-Greenberg and Edward Wyatt, *U.S. Vows to Battle Abusive Debt Collectors*, N.Y. Times, July 10, 2013 at B1, *available at* http://dealbook.nytimes.com/2013/07/10/u-s-vows-to-battle-abusive-debt-collectors/?_php=true&_type=blogs&_r=0.

request. Specifically, § 1.4(b) requires a debt collector to provide substantiation of a debt within 60 days of receiving a substantiation request, and § 1.4(d) requires a debt collector to retain the customer's substantiation request and responsive documents until the debt is sold or transferred. But the rules do not prohibit a debt collector from selling or transferring an account before responding to a substantiation request. We believe this is a significant loophole that debt buyers who lack the necessary documentation will exploit to avoid having to comply with substantiation requests. Also of concern is the fact that under § 1.4(d), a debt collector must only retain requests for substantiation and evidence of substantiation "*until* the debt is discharged, sold, or transferred" (emphasis added). Debt collectors should be required to maintain these important records for a set period of time, and to be required to transfer these documents whenever they sell or transfer an account. Further, under § 1.4(c)(1)(i), as written, collectors must provide "other documents evidencing the indebtedness of the consumer to the original creditor." These documents are not specified in the rules, but should be clearly spelled out to ensure that debt collectors do not create documents out of whole cloth or abuse the intent of the rules. We suggest using the language required by the California Debt Buying Practices Act §1788.52(b), which delineates what documents suffice for evidencing a consumer's agreement to the debt.

Conclusion

Finally, as we previously noted, we suggest that: DFS consult with disclosure experts to ensure that all of the disclosures are drafted in a way that unsophisticated consumers can easily understand the information being conveyed; that other states' disclosures not appear on communications with consumers in New York State; and that if simpler or stronger local language is already mandated, that debt collectors only include one set of disclosures. We also again urge DFS to publicize its complaint procedures so that consumers may report debt collectors that do not comply with these rules.

Thank you for the opportunity to comment on these rules. If you have any questions, please feel free to contact us.

Sincerely,

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