



## **Neighborhood Economic Development Advocacy Project**

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### **Comment on Proposed Rule Regarding Debt Collection Agencies Before the New York City Department of Consumer Affairs**

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Thank you for the opportunity to comment on the proposed rules regarding debt collection agencies.

NEDAP is a nonprofit resource and advocacy center that provides legal, technical and policy support to community groups in New York City's low income neighborhoods and communities of color. NEDAP promotes economic justice and works to eliminate discriminatory economic practices that harm communities and perpetuate inequality and poverty. Through the NYC Financial Justice Hotline, NEDAP has provided legal assistance to thousands of low income New York City residents who need help with debt collection matters.

NEDAP applauds DCA's efforts to curb abusive debt collection practices, and urges DCA to take strong action to protect low income New Yorkers from unlawful debt collection harassment. The recent improvements to local debt collection law provide powerful tools to protect consumers from debt collection harassment. However, these tools are useful only to the extent that the new laws and rules are enforced. We urge DCA to take enforcement seriously – to use its subpoena power, to conduct investigations, to bring enforcement actions, and to revoke or deny licenses where debt collectors fail to comply with the law. We have been heartened by the recent enforcement actions taken by the New York State Attorney General, and we encourage DCA to adopt a similar approach to consumer protection.

NEDAP believes that the proposed rules are necessary to curb common debt collection abuses faced by our clients. However, we have several concerns and suggestions about the specific wording of some of the rules, discussed in more detail below.

#### 1. Documentation of the debt

Proposed rule § 2-190(a) defines written documentation identifying the creditor as “a copy of the original debt document or a written confirmation evidencing the indebtedness to the original creditor.” We are concerned that this definition does not offer sufficient protection to New Yorkers who must deal with debt buyers and not original creditors. The rule as drafted does not require that the debt collector go back to the original creditor to confirm the accuracy of the debt. A debt buyer could comply with the rule simply by sending a letter “confirming” that the consumer once owed a debt to a particular original creditor. In other words, the proposed rule allows debt buyers to continue with business as usual, collecting debts without ever having to provide meaningful verification to the consumer. Also, the term “original debt document” is unclear.

We believe that any proposed rule should clarify that the debt collector must seek verification of the debt *from the original creditor*. If a debt collector cannot obtain verification from the original creditor, then it should not be collecting the debt at all.

Proposed § 2-190(b) is somewhat confusing as well. In fact, we originally read it as requiring the debt collector to list each and every item that had ever been charged to the account. As the statutory language set forth at N.Y.C.R.R. § 20-493.2(a) seems clear without additional amplification, we recommend deleting this paragraph entirely.

Therefore, we suggest combining § 2-190(a) and (b) into a single § 2-190, as follows: “In addition to itemizing the principal balance of the debt that remains or is alleged to remain due and all other charges that are due or alleged to be due, the written documentation required pursuant to section 20-493.2(a) of the Administrative Code shall include: (1) a copy of the final statement of account issued by the original creditor; or (2) written confirmation from the original creditor that the debt and amount are valid.”

## 2. Disclosure of the statute of limitations

One of the worst abuses that we see occurs when a debt collector hounds a consumer to make a “good faith payment” on a very old debt. Of course, the real purpose of this payment is not to show the consumer’s good faith, but to trick the consumer into reviving the debt so that he or she can be sued. For example, our client Robert is nearly homebound due to a lower back injury that causes him to suffer excruciating and disorienting pain. Two years ago, Robert started receiving calls from a debt buyer about a 15-year-old debt. The debt buyer hounded Robert mercilessly until he agreed to make a “good faith payment” of \$25. After Robert made the payment, the debt buyer sued him for the full amount of the debt.

Robert’s story illustrates why it is important to require debt collectors collecting on time-barred debts to advise consumers that the statute of limitations has expired on the debt and that making a payment could revive their obligation to pay. The language proposed in § 2-191, however, comes up short. First, it does not require the debt collector to state plainly that the statute of limitations on the debt has expired. Second, it does not explain the statute of limitations. Third, we think that this warning as currently drafted may be unduly alarming to some consumers. To address these concerns, we suggest revising the warning as follows: “We are required by law to disclose the following information. **THE CREDITOR IS NOT ALLOWED TO SUE YOU ON THIS DEBT BECAUSE IT IS TOO OLD AND THE STATUTE OF LIMITATIONS HAS EXPIRED.** You may **CHOOSE** to make payments. However, be aware that if you make a payment you may **RESTART** the creditor's right to sue you on the entire debt. If you have any questions, call 311 and ask to speak to a Department of Consumer Affairs representative.”

## 3. Written confirmation of settlement agreement

The right to written confirmation of a settlement agreement is very important. Too often, people negotiate with debt collectors over the phone and make payments in good faith only to find that the debt collector refuses to honor the agreement. The individual finishes making

payments pursuant to the agreement, but the debt collector demands more money to release the debt. Or the debt may be sold to another entity that refuses to honor the previous agreement and claims to have no record of it. The individual is left helpless with no way to establish the terms of the agreement. This provision will go a long way towards curbing these kinds of abuses.

We do have a few minor comments on this section. First, we think that the debt collector should also provide the original account number, as that will help consumers to identify which debt has been settled.<sup>1</sup> This information would be particularly helpful in situations in which the consumer has more than one debt with a particular creditor. Second, we believe the reference to “the address where the payments are to be mailed” is too narrow because it does not encompass other possible methods of payment. Finally, we think that if a settlement was negotiated in a language other than English, then the consumer should receive written confirmation of the settlement in the language used during the negotiation.

#### 4. Documentation of traverse hearings

As has been brought up multiple times in previous hearings, there is a longstanding connection between litigation by debt buyers and “sewer service.” NEDAP and other advocates have repeatedly testified that consumers only rarely receive notice of lawsuits that have been brought against them. The recent actions by the Attorney General against American Legal Process and Forster and Garbus only underscore this pattern.

We recommend that DCA take advantage of its rulemaking authority to require that debt collectors notify DCA when a traverse hearing is scheduled in a case. Currently, process servers are required to notify DCA of a traverse hearing after it has taken place. In theory, such notification enables DCA to monitor possible instances of sewer service. In practice, however, many more traverse hearings are scheduled in debt collection lawsuits than actually take place. This is because the debt collector usually chooses to abandon the case rather than go through with the hearing. The process server may never know that a traverse hearing was even scheduled. As a result, DCA currently does not hear about the many cases where the court found a genuine issue of fact as to whether service was proper, and therefore scheduled a traverse hearing.

Debt collectors, and in particular debt collection law firms, are in the best position to know when a traverse hearing is scheduled, and should therefore be required to report scheduled traverse hearings to DCA. This reporting would enable DCA to detect and investigate possible patterns of sewer service by particular debt collection law firms, debt buyers, and process servers, and to take enforcement action to revoke licenses from repeat offenders.

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<sup>1</sup> We propose the same amendment to the recordkeeping requirements set forth in proposed rule § 2-193(b)(3).