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NEW YORK ANSWERS QUESTIONS REGARDING NEW DEBT COLLECTION REGULATIONS

The New York Department of Financial Services (DFS) has issued a "Frequently Asked Questions" page regarding its recently issued debt collection regulations. In November 2014, the DFS issued regulations governing debt collection by third-party debt collectors and debt buyers at 23 NYCRR 1. See our ALERT dated December 22, 2014. The regulations were designed to combat aggressive and deceptive practices, help stop suits on so-called "zombie debts," establish a new "substantiation" requirement and address other perceived "widespread abuses" in the debt collection industry.

The FAQs have been issued to assist debt collectors, which include debt buyers, in complying with the new rules. Currently there are 16 FAQs and answers set forth on the DFS website.

With respect to applicability, the FAQs answer the following questions:

- (1) Does 23 NYCRR 1 apply to the collection of debts by original creditors?
 - A. No. However, the regulation does apply to third party debt collectors collecting on behalf of original creditors to the extent another exception in the rule is not applicable.
- (2) Does 23 NYCRR 1 apply to New York based debt collectors collecting debts from persons who reside outside of New York?
 - A. *At this time*, the DFS is focused on collection of debts owed or alleged to be owed by New Yorkers, which is the intended scope of the rule.

(Emphasis supplied).

With respect to interaction with the New York City Department of Consumer Affairs (NYCDCA) debt collection requirements the FAQs answer the following questions:

- (1) The DFS and the NYCDCA both require disclosures concerning the statute of limitations. However, the notices differ in some respects. If the debt collector is subject to the NYCDCA rules, are both disclosures required?
 - A. 23 NYCRR 1.3 requires debt collectors to provide certain information about the statute of limitations. Debt collectors

can provide a single disclosure by using language required by the NYCDCA and including any additional information required by 23 NYCRR 1.3 that is not covered by the NYCDCA language. This additional information would include (i) that suing on a debt for which the statute of limitations has expired is a violation of the federal Fair Debt Collection Practices Act and (ii) that if the consumer admits, affirms, acknowledges, or promises to pay a debt for which the statute of limitations has expired, the statute of limitations may restart.

- (2) The DFS and the NYCDCA rules both specify information to be sent to a consumer within five days of the initial communication with a consumer in connection with the collection of any debt. If the debt collector is subject to the NYCDCA rules, are both disclosures required when collecting a debt?
 - A. The information required by the two rules differs in some respects, but does not conflict. If a debt collector is subject to both rules, the information required by the Department and the NYCDCA rules can be provided in one combined initial disclosure.

The FAQs also set forth the DFS' answers to the following questions:

- (1) Is a debt originated by a seller of a good or service sold directly to the consumer subject to 23 NYCRR 1?
- (2) Does 23 NYCRR 1 apply to debts that have not been charged-off?
- (3) Does 23 NYCRR 1 apply to debt servicers, including companies that service student loans, home equity loans or mortgages?
- (4) By limiting the requirement in 23 NYCRR 1.5 to payment arrangements reached "pursuant to Section 1.5 of this Part" does this section only require debt collectors to provide written confirmation of payment arrangements entered into after the enactment of the DFS rules?
- (5) Do debt collectors need to provide a full copy of the original payment agreement and copies of all payment statements in order to comply with the requirements of 23 NYCRR 1.4(c)(4)?
- (6) What happens if the debt collector cannot substantiate the debt within 60 days but does so thereafter?
- (7) Would providing consumers a monthly account statement fulfill

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the requirements of 23 NYCRR 1.5(b)?

- (8) After a legal action has commenced, does a collection attorney need to comply with rules such as 23 NYCRR 1.5(b), which requires sending quarterly statements during scheduled payments?
- (9) Does 23 NYCRR 1 apply to collection of a money judgment?
- (10) If the debt collector provides the notice required in 23 NYCRR 1.3 before accepting payment on a debt where the statute of limitations has expired, must the debt collector provide this notice in every subsequent communication or before accepting every subsequent payment?
- (11) If a debt collector treats a dispute, either oral or written, as a request for substantiation, must the debt collector inform the consumer of the method by which the consumer may request substantiation?
- (12) If a debt collector has provided a consumer with substantiation of an alleged debt, does the debt collector need to provide information about how to request substantiation after any subsequent disputes about the debt?

While it may be helpful to understand the DFS' position with respect to the regulations, we caution that enforcement positions not based on statute, formal regulation or authoritative legal opinion can change over time and so involve a measure of risk. It would be prudent to check back periodically to confirm that the DFS has not changed its position. □

✧ *Mike Tomkies and Margaret Stolar*