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NYC FINALIZES COLLECTION RULES FOR LIMITED ENGLISH PROFICIENCY DEBTORS

The New York Department of Consumer Affairs has finalized amendments to New York City's debt collection regulations that require debt collectors to inform consumer debtors residing in New York City of available language access services, to record language preferences of debtors and to provide complete and accurate translations of collection communications when the debt collector provides translations. The regulations become effective on June 27th unless the Department decides to delay the effective date.

The amended regulations apply to the collection or attempted collection of consumer debts. However, some amendments apply to "debt collection agencies" while other amendments apply to "debt collectors" as defined under the New York City regulations.

In addition to other recordkeeping requirements, the amended regulations require debt collection agencies to (i) maintain a record of a consumer's language preference unless the agency is not aware of the preference after reasonable attempts to obtain the preference and (ii) file an annual report in the form provided by the Department that identifies by language the number of accounts that collection agency employees have attempted to collect in a language other than English.

The following rule amendments apply to "debt collectors." In connection with the collection of a debt, a debt collector is prohibited (i) from providing false, inaccurate or partial translations of any communication when the debt collector provides translation services or (ii) from making false representations or omissions of a consumer's language preference when returning, selling or referring for litigation any consumer account, when the debt collector is aware of such preference. A debt collector must not attempt to collect a debt from a consumer without first requesting and recording the language preferences of such consumer.

The amended rules also require a debt collector to provide certain disclosures in validation notices and on its publicly accessible website (if any), informing NYC consumer debtors (i) of any language access services available, including whether a consumer may obtain a translation from the debt collector of any communication into a language other than English, and (ii) that translations and

descriptions of commonly-used debt collection terms are available in multiple languages on the Department's website.

The new rules follow a study by the Department, which found that 25% of the population of New York City does not understand English proficiently.

Not surprisingly the rules themselves raise a host of compliance issues and challenges, but may raise broader compliance issues under other statutes as well. A number of states and statutes address foreign language use in various contexts.

Servicing accounts of limited-English proficiency consumers has been a topic of discussion in the financial services industry since before the Consumer Financial Protection Bureau ("CFPB") published a report in late 2017 discussing how financial institutions can support access to financial products and services and promote financial literacy for limited-English proficiency consumers. The CFPB's proposed debt collection rule addresses debtors with limited-English proficiency in the validation notice requirement. The CFPB's proposed rule (i) gives debt collectors the option to include disclosures in the validation notice on how consumers may request a Spanish-language version of the notice and (ii) addresses sending translations of validation notices to consumers in a language other than English. □

✧ *Mike Tomkies and Susan Seaman*

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