



**National
Consumer Law
Center**

*Fighting Together
for Economic Justice*

NATIONAL HEADQUARTERS
7 Winthrop Square, Boston, MA 02110
(617) 542-8010

WASHINGTON OFFICE
Spanogle Institute for Consumer Advocacy
1001 Connecticut Avenue, NW, Suite 510
Washington, DC 20036
(202) 452-6252

NCLC.ORG

November 8, 2021

Consumer Protection and Financial Enforcement
New York State Department of Financial Services
One State Street, 20th Fl.
New York, NY 10004
meredith.weill@dfs.ny.gov
VIA E-mail

RE: Draft of Proposed Amendment to 23 NYCRR 1

Dear Attorney Weill:

My name is April Kuehnhoff, and I am a Staff Attorney at the National Consumer Law Center (“NCLC”),¹ where my work focuses on federal and state advocacy related to fair debt collection. On behalf of NCLC’s low-income clients, I submit these comments to support the Department of Financial Services’ (“DFS”) efforts to strengthen these regulations and to offer suggestions for additional improvements.

Section 1.2

Name of the creditor. The draft regulation includes the name of the current and original creditors in the list of information about the debt. We agree that both pieces of information are helpful to consumers. However, we are concerned that, together with the requirements under federal Fair Debt Collection Practices Act regulations,² these requirements could result in three separate creditors being listed if the original creditor, current creditor, and creditor on the itemization date

¹ The National Consumer Law Center (“NCLC”) is a national research and advocacy organization focusing on the legal needs of consumers, especially low income and elderly consumers. For over 50 years NCLC has been the consumer law resource center to which legal services and private lawyers, state and federal consumer protection officials, public policy makers, consumer and business reporters, and consumer and low-income community organizations across the nation have turned for legal answers, policy analysis, and technical and legal support. Fair debt collection has been a major focus of the work of NCLC, which publishes Fair Debt Collection (9th ed. 2018), a comprehensive treatise to assist attorneys and debt collectors to comply with the law, and Collection Actions (5th ed. 2020), detailing defenses to consumer debts.

² Regulation F contains the debt collection regulations issued under the Fair Debt Collection Practices Act. It takes effect on November 30, 2021 and will be published at 12 C.F.R. Part 1006.

are all different.³ The DFS should evaluate whether there are ways to minimize consumer confusion that may result in this situation.

Account number. The regulations should specify which account number should be produced since an account may be associated with different account numbers at different times - *e.g.*, an account may have one account number with the original creditor and another account number after it is purchased by a debt buyer. If DFS does not specify which account number, it is likely that the debt collector will provide the account number on the itemization date as required by Regulation F.⁴ Since Regulation F allows for multiple possible itemization dates,⁵ different debt collectors might list different account numbers for the same account.

Date of default and last payment. In order to avoid consumer confusion, DFS should require that the dates be labeled - *e.g.* the consumer defaulted on the account on January 1, 2020, and the last payment was made on June 13, 2020. Under Regulation F, there will already be one unexplained date on the validation notice - the itemization date.⁶ The itemization date may be different from the date of default or the last payment date.⁷

Applicable statute of limitations. The proposed regulations require the debt collector to disclose the length of the relevant statute of limitations in years. Information about the statute of limitations will be much clearer and more usable to consumers if it is stated as a specific date - *e.g.*, this statute of limitations will run on June 4, 2024. The addition of this information is particularly important since consumers will otherwise be unsure whether the statute of limitations runs from the default date or the last payment date.

Itemization. The draft proposed regulation does not specify whether the itemized accounting should be from the default date, the date of last payment, or some other date. It also does not specify what information should be provided in the itemization. If DFS does not provide more details about the itemization, debt collectors will likely comply with Regulation F requirements for itemization in the validation notice.⁸ Since Regulation F allows for multiple possible itemization dates,⁹ different debt collectors might provide different itemizations of the same account as a result of choosing different starting dates for the itemization.

³ See Reg. F § 1006.34(c)(2)(iii) (if collecting consumer financial product or services debt, the collector must provide the name of the creditor as of the itemization date); Reg. F § 1006.34(c)(2)(v)(requiring the current creditor to be named).

⁴ Reg. F § 1006.34(c)(2)(iv).

⁵ Reg. F § 1006.34(b)(3). See also NCLC, et al, Comments to the Consumer Financial Protection Bureau on its Proposed Debt Collection Rule p. 149 (Sept. 19, 2019) available at: https://www.nclc.org/images/pdf/debt_collection/comments-debt-collection-sept2019.pdf (discussing problems with different possible itemization dates).

⁶ See Reg. F, Appx. B-1.

⁷ See Reg. F § 1006.34(b)(3).

⁸ See Reg. F § 1006.34(b)(3), (c)(2)(vi) - (ix).

⁹ Reg. F § 1006.34(b)(3). See also NCLC, et al, Comments to the Consumer Financial Protection Bureau on its Proposed Debt Collection Rule p. 149 (Sept. 19, 2019) available at: https://www.nclc.org/images/pdf/debt_collection/comments-debt-collection-sept2019.pdf (discussing problems with different possible itemization dates).

Location on the validation notice. To the extent that the requirements of 23 NYCRR 1 differ from Regulation F requirements, debt collectors will likely place such information on the back of the validation notice.¹⁰ If DFS wants information that is not required by Regulation F to appear on the front of the validation notice, it should specify this in the regulations.

Delivery of disclosures. We applaud DFS for clarifying that these disclosures must be made in writing, rejecting provisions in Regulation F that would allow for oral provision of the validation information in the initial communication.¹¹ Written disclosures can be more easily saved, shared, and researched. As a result, they will protect consumers better than oral disclosures that are likely to be ignored, misunderstood, or forgotten.

We also applaud DFS for addressing electronic delivery of these disclosures. Requiring consumer consent before electronic delivery (discussed in Section 1.6) will better protect consumer privacy while also ensuring that consumers can access the electronic notice at the address where it is provided.

Section 1.3

Time-barred debt disclosure. We are concerned about the length and complexity of the time-barred debt disclosure and the ability of the least sophisticated consumer to understand such a disclosure.¹² We recommend instead that DFS prohibit all collection of time-barred debt to protect consumers against abusive practices related to the collection of time-barred debts, or at a minimum prohibit suits or threats of suits on revived debts. Alternatively, DFS could define attempts to collect time-barred debts as unfair and deceptive, or at a minimum define suits or threats of suits on revived debts as deceptive.

To the extent that DFS retains this disclosure, we applaud the clarification that such disclosure must be made in all communications. Additionally, to the extent that time-barred debt collection is allowed to continue at all, we agree that it should be limited to communications in writing as the DFS has proposed here. When dealing with a long and complicated disclosure, it is far more likely that the consumer will be able to understand that disclosure or find someone to help explain it when the disclosure is in writing.

Section 1.4

Method of dispute. DFS should amend the proposed regulations to require the same treatment for all disputes, whether they are made orally or in writing and whether that writing is submitted

¹⁰ See Reg. F § 1006.34(d)(3)(iv).

¹¹ See Reg. F § 1006.34(a)(1)(ii).

¹² See Consumer Fin. Protection Bur., Disclosure of Time-Barred Debt and Revival: Findings from the CFPB's Quantitative Disclosure Testing (Feb. 2020) available at: https://files.consumerfinance.gov/f/documents/cfpb_debt-collection-quantitative-disclosure-testing_report.pdf (discussing CFPB testing of different validation notices). See also NCLC, Comments to the Consumer Financial Protection Bureau on its Supplemental Notice of Proposed Rulemaking p. 12 (Aug. 4, 2020) available at: https://www.nclc.org/images/pdf/debt_collection/NCLC-Comments-for-Supplemental-Debt-Rule.pdf (discussing concerns that the CFPB has failed to propose time-barred debt disclosures that are comprehensible to the least sophisticated consumer)

via postal mail or electronically through any means of electronic communication used by the debt collector.¹³

Section 1.6

Limiting collection phone calls. We applaud DFS for proposing limits of one phone conversation and three attempted phone calls per seven-day period per consumer. This will protect consumers in New York from the excessive call volume that has been authorized by Regulation F.¹⁴

Requiring consent for electronic communications. We applaud DFS for requiring consumer consent¹⁵ before collectors can use electronic communications (other than an initial message to request such consent). This will protect consumer privacy and make it more likely that the consumer will receive such messages at the correct email address. DFS also appropriately clarifies that such consent is revocable and requires information about the consumer's ability to revoke consent.

Thank you for your time and attention to these comments.

Sincerely,

April Kuehnhoff
Staff Attorney

¹³ See Reg. F Official Interpretations § 38-1(iii) (providing that a dispute submitted "to the debt collector using a medium of electronic communication through which the debt collector accepts electronic communications from consumers" is considered to be a dispute submitted in writing).

¹⁴ See Reg. F § 1006.14(b)(2).

¹⁵ In contrast, Regulation F provides much weaker protections - not requiring consumer consent at all and providing safe harbors to debt collectors using emails obtained from creditors or prior debt collectors. See Reg. F § 1006.6(d)(4)(ii), (iii).