

NEW YORK CITY DEPARTMENT OF CONSUMER AFFAIRS

Notice of Public Hearing and Opportunity to Comment

What are we proposing? The Department of Consumer Affairs is proposing new rules to implement changes to subchapter 14-a of chapter 5 of title 20 of the New York City Administrative Code, amended by Local Law 63 for the Year 2017, relating to the Department's rules governing immigration assistance service providers.

When and where is the Hearing? The Department of Consumer Affairs will hold a public hearing on the proposed rule. The public hearing will take place at 10:00 AM on Friday, July 13, 2018. The hearing will be in the 5th floor hearing room at 42 Broadway, New York NY.

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to the Department of Consumer Affairs through the New York City rules Web site at <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to rulecomments@dca.nyc.gov.
- **Mail.** You can mail written comments to Casey Adams, Director of City Legislative Affairs, Department of Consumer Affairs, 42 Broadway, 8th Floor, New York, NY 10004.
- **Fax.** You can fax written comments to the Department of Consumer Affairs, 646-500-5962.
- **By Speaking at the Hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling 212-436-0095. You can also sign up in the hearing room before the hearing begins at 10:00 AM on Friday, July 13, 2018. You can speak for up to three minutes.

Is there a deadline to submit comments? Yes. Written comments must be submitted on or before 5:00 PM on Friday, July 13, 2018.

What if I need assistance to participate in the Hearing? You must tell the Department's External Affairs Division if you need a reasonable accommodation of a disability at the Hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at 212-436-0095. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by 5:00 PM on Wednesday, July 11, 2018.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the Website at <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online, copies of all written

comments, and a summary of oral comments concerning the proposed rule will be available to the public at the office Casey Adams, Director of City Legislative Affairs, Department of Consumer Affairs, 42 Broadway, 8th Floor, New York, NY 10004.

What authorizes DCA to make this rule? Sections 1043, 2203(f) and 2203(h)(1) of the New York City Charter and Sections 20-779.3 and 20-779.1(a)(2) of the New York City Administrative Code authorize DCA to make these proposed rules. These proposed rules were not included in the regulatory agenda of the Department of Consumer Affairs for this Fiscal Year because they were not contemplated when the Department published the agenda.

Where can I find the DCA's rules? The Department of Consumer Affairs' rules are in Title 6 of the Rules of the City of New York.

What rules govern the rulemaking process? The Department of Consumer Affairs must meet the requirements of Section 1043 of the New York City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

Statement of Basis and Purpose of Proposed Rule

The Department of Consumer Affairs (“DCA”) proposes the amendment of Subchapter N, Chapter 5, Title 6 to reflect Local Law 63 for the Year 2017 (“Local Law 63”), which amended subchapter 14-a of chapter 5 of the Administrative Code of the City of New York (“Code”). Among other things, Local Law 63 added required statements and information to the required written agreement, lengthens the period of time provider must maintain a surety bond, contract of indemnity or irrevocable letter of credit, requires signage explaining a new mechanism for consumers to file complaints, renumbers the sections in Chapter 14-a (previously Chapter 14), and increases penalties.

Specifically, the proposed rules:

- Replace “type” with “font.”
- Replace “consultant” with “provider.”
- Update Code references.
- Remove a section about size of letters on signage.
- Delete a requirement that providers post a sign regarding how to file a DCA complaint.
- Amend the surety sign requirement.
- Update the penalty schedule.

Sections 1043, 2203(f) and 2203(h)(1) of the New York City Charter and Section 20-779.3 of the Code authorize the Department of Consumer Affairs to make these proposed rules.

New material is underlined.

[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Proposed Rule Amendment

Section 1. Section 5-261 of subchapter N of chapter 5 of title 6 of the Rules of the City of New York is amended to read as follows:

§ 5-261 Requirements for Written Agreements.

The statements required to be included in written agreements pursuant to subdivisions one through seven and nine through twelve of § [20-772] 20-777 of the New York City Administrative Code shall all be included together in a box that is set off from the rest of the text of the written agreement. The text of the required statements shall be in at least twelve (12) point [type] font. The box containing the required statements shall appear immediately above the place for the consumer’s signature.

§ 2. Section 5-262 of subchapter N of chapter 5 of title 6 of the Rules of the City of New York is amended to read as follows:

§ 5-262 Completing Form Preparation Declaration.

Every immigration assistance service [consultant] provider shall complete and sign the form preparation declaration contained on any form that was directly or indirectly prepared by such [consultant] provider as part of the service for which the consumer is charged a fee under the written agreement required by § [20-772] 20-777.

§ 3. Section 5-263 of subchapter N of chapter 5 of title 6 of the Rules of the City of New York is REPEALED and a new section 5-263 is added to read as follows:

§ 5-263 Exemption Obtained by Fraud or Misrepresentation.

Any person or organization that obtained by fraud or misrepresentation any status set forth in § 20-775(b)(1)-(7) of the New York City Administrative Code, which otherwise would have entitled such person or organization to an exemption from regulation as a provider of immigration assistance services pursuant to subchapter 14-a of chapter 5 of title 20 of the New York City Administrative Code, shall be deemed to have been a provider of immigration services and never exempt from such regulation.

§ 4. Section 5-264 of subchapter N of chapter 5 of title 6 of the Rules of the City of New York is amended to read as follows:

§ 5-264 Disclosure of Surety Maintained by Provider.

(a) Every immigration assistance service provider shall post a sign that shall be not less than eleven (11) inches by seventeen (17) inches in dimension stating that the provider is by law required to maintain in full force and effect, for the entire period during which the provider provides immigration assistance service and for one year after the provider ceases to do business as an immigration assistance service provider, a surety bond, contract of indemnity, or irrevocable letter of credit, payable to the people of the City of New York, in the principal amount of \$50,000.00 [and]. The sign must also include the name, address and telephone number where a claim against such surety bond, contract of indemnity, or irrevocable letter of credit is required to be filed. Such sign shall be conspicuously displayed in the area where it will be clearly visible to consumers entering and leaving the premises.

(b) Every immigration assistance service provider shall also furnish to each consumer, upon signing a contract, the same information required to be posted on such sign. The information shall be furnished to each consumer on a separate sheet of paper in at least twelve (12) point bold faced [type] font and in a color that contrasts sharply with the color of the paper.

§ 5. Section 6-56 of subchapter B of chapter 6 of title 6 of the Rules of the City of New York is amended to read as follows:

§ 6-56 Immigration Assistance Service Penalty Schedule.

All citations are to Title 20 of the Administrative Code of the City of New York or Title 6 of the Rules of the City of New York.

Unless otherwise specified, the penalties set forth for each section of law or rule shall also apply to all subdivisions, paragraphs, subparagraphs, clauses, items, or any other provision contained therein. Each subdivision, paragraph, subparagraph, clause, item, or other provision charged in the Notice of Violation shall constitute a separate violation of the law or rule.

Unless otherwise specified by law, a second or third or subsequent violation means a violation by the same respondent, whether by pleading guilty, being found guilty in a decision, or entering into a settlement agreement for violating the same provision of law or rule, within two years of the prior violation(s).

Citation	Violation Description	First Violation	First Default	Second Violation	Second Default	Third and Subsequent Violation	Third and Subsequent Default
Admin Code [§ 20-771] § 20-776	Engaging in prohibited conduct	[\$1,875] <u>\$3,750</u>	[\$2,500] <u>\$5,000</u>	[\$4,500] <u>\$9,000</u>	[\$5,000] <u>\$10,000</u>	[\$5,000] <u>\$10,000</u>	[\$5,000] <u>\$10,000</u>
Admin Code [§ 20-772] § 20-777	Improper written agreement	[\$1,875] <u>\$3,750</u>	[\$2,500] <u>\$5,000</u>	[\$4,500] <u>\$9,000</u>	[\$5,000] <u>\$10,000</u>	[\$5,000] <u>\$10,000</u>	[\$5,000] <u>\$10,000</u>
Admin Code § 20-777(14)	Failure to include most recent "Consumer Bill of Rights" on separate page of contract	<u>\$3,750</u>	<u>\$5,000</u>	<u>\$9,000</u>	<u>\$10,000</u>	<u>\$10,000</u>	<u>\$10,000</u>
Admin Code [§ 20-773] § 20-777.1	Failure to post sign or improper sign	[\$1,875] <u>\$3,750</u>	[\$2,500] <u>\$5,000</u>	[\$4,500] <u>\$9,000</u>	[\$5,000] <u>\$10,000</u>	[\$5,000] <u>\$10,000</u>	[\$5,000] <u>\$10,000</u>
Admin Code [§ 20-774] § 20-777.2	Improper advertisements	[\$1,875] <u>\$3,750</u>	[\$2,500] <u>\$5,000</u>	[\$4,500] <u>\$9,000</u>	[\$5,000] <u>\$10,000</u>	[\$5,000] <u>\$10,000</u>	[\$5,000] <u>\$10,000</u>
Admin Code [§ 20-775] § 20-778	Improper document retention	[\$1,875] <u>\$3,750</u>	[\$2,500] <u>\$5,000</u>	[\$4,500] <u>\$9,000</u>	[\$5,000] <u>\$10,000</u>	[\$5,000] <u>\$10,000</u>	[\$5,000] <u>\$10,000</u>
Admin Code [§ 20-776] § 20-779	Failure to comply with surety requirements	[\$1,875] <u>\$3,750</u>	[\$2,500] <u>\$5,000</u>	[\$4,500] <u>\$9,000</u>	[\$5,000] <u>\$10,000</u>	[\$5,000] <u>\$10,000</u>	[\$5,000] <u>\$10,000</u>
6 RCNY § 5-260	Failure to comply with location or availability of records requirement	[\$1,875] <u>\$3,750</u>	[\$2,500] <u>\$5,000</u>	[\$4,500] <u>\$9,000</u>	[\$5,000] <u>\$10,000</u>	[\$5,000] <u>\$10,000</u>	[\$5,000] <u>\$10,000</u>
6 RCNY § 5-261	Failure to comply with written agreement requirements	[\$1,875] <u>\$3,750</u>	[\$2,500] <u>\$5,000</u>	[\$4,500] <u>\$9,000</u>	[\$5,000] <u>\$10,000</u>	[\$5,000] <u>\$10,000</u>	[\$5,000] <u>\$10,000</u>
6 RCNY § 5-262	Failure to complete form preparation declaration	[\$1,875] <u>\$3,750</u>	[\$2,500] <u>\$5,000</u>	[\$4,500] <u>\$9,000</u>	[\$5,000] <u>\$10,000</u>	[\$5,000] <u>\$10,000</u>	[\$5,000] <u>\$10,000</u>
[6 RCNY § 5-263]	[Failure to comply with sign posting requirements]	[\$1,875]	[\$2,500]	[\$4,500]	[\$5,000]	[\$5,000]	[\$5,000]
6 RCNY § 5-264	Failure to comply with disclosure of surety requirements	[\$1,875] <u>\$3,750</u>	[\$2,500] <u>\$5,000</u>	[\$4,500] <u>\$9,000</u>	[\$5,000] <u>\$10,000</u>	[\$5,000] <u>\$10,000</u>	[\$5,000] <u>\$10,000</u>

NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028

CERTIFICATION PURSUANT TO
CHARTER §1043(d)

RULE TITLE: Amendment of rules regarding immigration assistance services.

REFERENCE NUMBER: 2018 RG 033

RULEMAKING AGENCY: Department of Consumer Affairs

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose;
and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: 6/4/2018

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Amendment of rules regarding immigration assistance services.

REFERENCE NUMBER: DCA-73

RULEMAKING AGENCY: Department of Consumer Affairs

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because rule violations arise from completed events, the consequences of which are immediate, which makes a cure period impracticable under the circumstances.

/s/ Francisco X. Navarro

Mayor's Office of Operations

June 5, 2018

Date