December 12, 2024

Commissioner Vilda Vera Mayuga
New York City Department of Consumer and Worker Protection
42 Broadway
New York, NY 10004
Submitted via email: rulecomments@dcwp.nyc.gov

Re: Proposed Amendment of Final Rules Relating to Debt Collectors

Dear Commissioner Mayuga:

The American Bankers Association[1] and the Consumer Bankers Association[2] (the "Associations") appreciate the opportunity to submit this comment letter on the New York City Department of Consumer and Worker Protection (DCWP) proposed amendment[3] to its previously-finalized debt collection rules[4] (the "Proposal").

The Associations strongly urge the DCWP to withdraw its extension of ill-suited procedural requirements to creditors collecting their own debts in their own names. At a minimum, DCWP should follow a more deliberate process by reopening the comment period and suspending the effective date of the Proposal. With the benefit of a further opportunity to consider comments, the Associations are confident that the DCWP will conclude that the Proposal does not give sufficient notice to affected creditors, would substantially harm and confuse consumers, imposes illogical obligations on their creditors, and likely is preempted by federal and state law.

1. The Rulemaking process did not give required notice to affected creditors.

The process that DCWP followed with respect to the Proposal did not provide the required time to consider the wide-ranging impacts of the Proposal. After a two-year rulemaking process, DCWP finalized its debt collection rules in August 2024 (DCWP Final Rules). Nowhere in that 24-month rulemaking record did DCWP state that the proposed or final rules would apply to creditors collecting their own accounts and doing so using their own names. Rather, the definition in the original proposal and in the DCWP Final Rules defined debt collector to include

[1] The American Bankers Association is the voice of the nation's $23.9 trillion banking industry, which is composed of small, regional and large banks that together employ approximately 2.1 million people, safeguard $18.8trillion in deposits and extend $12.5 trillion in loans.
[2] The Consumer Bankers Association is the only national financial trade group focused exclusively on retail banking and personal financial services—banking services geared toward consumers and small businesses. As the recognized voice on retail banking issues, CBA provides leadership, education, research, and federal representation for its members. CBA members include the nation's largest bank holding companies as well as regional and super community banks that collectively hold two-thirds of the total assets of depository institutions.
[3] NYC DWCP, Notice of Public Hearing and Opportunity to Comment on Proposed Rules (Nov. 15, 2024), DCWP-Proposed-Amendment-of-Rules-Related-to-Debt-Collectors.pdf [Proposal].
[4] NYC DWCP, Notice of Adoption (Aug. 12, 2024), https://rules.cityofnewyork.us/wp-content/uploads/2024/08/DCWP-NOA-Debt-Collectors.pdf [Final Rules].

"any creditor that, in collecting its own debts, uses any name other than its own that would suggest or indicate that someone other than such creditor is collecting or attempting to collect such debts."[5]

Notably, DCWP stated that it initiated the rulemaking to conform its rules to the Consumer Financial Protection Bureau's recent final Regulation F promulgated pursuant to the federal Fair Debt Collection Practices Act (FDCPA). The FDCPA applies only to debt collectors collecting on behalf of another and thus explicitly does not apply to creditors.[6]

Then, during a November 7, 2024 webinar, DCWP abruptly changed course and stated that the DCWP Final Rules do apply to creditors collecting their own accounts.[7] On November 15, 2024, the DCWP issued an amended notice of proposed rulemaking.[8] The amended notice seeks to "clarify that the definition of 'debt collector' continues to include those collecting debts they originated."[9] The DCWP states this amendment is needed due to stakeholder "confusion" about whether the DCWP Final Rules apply to creditors collecting on accounts they originated in their own names. As represented by the membership of the Associations, virtually the entire population of U.S. banks—collectively the original creditors of trillions of dollars of consumer debts—evaluated the initial proposed rules and the DCWP Final Rules and concluded they did not apply to creditors collecting their own debt in their own name and instead applied to third-party debt collectors and debt buyers consistent with the federal FDCPA and New York state law. The DCWP's belated attempt to reinsert creditors into an onerous regulatory framework written to regulate "debt collection agencies" and seek comment in less than thirty days has injected confusion into what was a settled issue in this debt collection rulemaking.

DCWP's Proposal is not consistent with the City's Administrative Procedure Act (CAPA).[10] Under Section 1043(b) of the CAPA, New York City agencies are to provide at least thirty days' notice of a proposed rule before holding a public hearing. Instead, DCWP issued its Proposal on November 15, 2024 and set the hearing and comment deadline for December 12, 2024, with 26 days' notice (including Thanksgiving Day). In addition, Section 1043(d)(1) requires city officials to certify that proposed rules do not conflict with "other applicable laws" and "minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule."[11] Yet, the certifications appended to the proposed notice[12] fail to account for the conflict between the proposed clarification to add creditors to the rule and applicable New York state and federal laws governing the debt collection industry. And no justification can be provided to support the contention that the proposed amendment minimizes compliance costs for creditors given that the proposed amendment would require them to

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[5] *Id.* at p. 8.
[6] *See* 12 C.F.R. § 1006.2(i).; 15 U.S.C. § 1692a(6). *See also*, *Henson v. Santander Consumer USA Inc.*, 137 S. Ct. 1718, 1721 (2017) ("Both sides accept that third party debt collection agents generally qualify as 'debt collectors' under the relevant statutory language, while those who seek only to collect for themselves loans they originated generally do not. These results follow, the parties tell us, because debt collection agents seek to collect debts 'owed . . . another,' while loan originators acting on their own account aim only to collect debts owed to themselves.").
[7] *See* DCWP 101: New Rules for Debt Collectors (originally aired Nov. 7, 2024), https://youtu.be/IzpgBAzTq1Y.
[8] NYC DCWP, Proposal, *supra* note 3.
[9] *Id.* at 2 (although document is unnumbered).
[10] N.Y.C. City Charter, Chapter 45, Section 1043, https://rules.cityofnewyork.us/capa/.
[11] *Id.* at Section 1043(d)(1).
[12] NYC DCWP, Proposal, *supra* note 3, at 5-6.

comply with an extensive third-party debt collection and debt buyer framework to which they are not subject under federal[13] or New York state laws.[14]

2. **The proposed amendment would harm and confuse consumers while imposing illogical obligations on their creditors.**

In its proposed amended rule, DCWP states that it intended for the amendments finalized in August 2024 to apply to all persons that fall within the definition of debt collector including creditors and that its definition never "included an exception for debt collection activity that concerns a debt which was originated by the creditor."[15] However, the definition of debt collector in the September 23, 2023 reproposal—which was not amended in the DCWP Final Rules—does not appear to support that reading:

> The term "debt collector" means [an individual who, as part of his or her job, regularly collects or seeks to collect a debt owed or due or alleged to be owed or due] any person engaged in any business with the principal purpose of which is the collection of any debts or who regularly collects, or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due to another person.[16]

This language is nearly identical to the definitions of debt collector in the parallel federal FDCPA[17] and New York state law.[18] In addition, the DCWP Final Rules define "original creditor and originating creditor" solely as "any person, firm, corporation, or organization who originated the debt, including by extending credit and creating the debt." If the DCWP intended the original creditor or originating creditor to also be a debt collector, the definition of "debt collector" should have included those defined terms.

To now propose an amendment to "clarify" that this definition applies to original creditors disregards the plain meaning of the words used in the definition: original creditors are not engaged in a business "the principal purpose of which is the collection of any debts." Nor, as the Supreme Court observed in *Henson*, do original creditors "regularly collect[] or attempt to collect[], directly or indirectly, debts owed or due or asserted to be owed or due to another person."

Even assuming DCWP's original definition encompassed original creditors, the entirety of the rulemaking proposal is then ill-suited for its intended purpose. While some original creditors currently voluntarily comply with some provisions of DCWP's pre-existing debt collection rules, the DCWP's debt collection regulatory framework is designed entirely for the third-party collection industry. To apply the DCWP Final Rules to creditors would result in confusing and illogical outcomes for consumers and their creditors. As the legislative purpose supporting

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[13] Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692-1692p, and its implementing Regulation F, 12 C.F.R. pt. 1006.
[14] 23 Comp. R. & Regs. of N.Y. § 1 (Debt Collection by Third-Party Debt Collectors and Debt Buyers), available at Browse - Unofficial New York Codes, Rules and Regulations.
[15] NYC DCWP, Proposal, *supra* note 3, at 2.
[16] NYC DCWP Final Rules, *supra* note 4, at 8-9 (underlined text reflecting amended language).
[17] 15 U.S.C. § 1692a(6).
[18] 23 Comp. R. & Regs. of N.Y. § 1.1(e).

passage of the federal FDCPA[19] and all subsequent parallel rulemakings made clear,[20] the protections in third-party collection regulatory regimes are necessitated precisely because original creditors hire third-party collectors to collect accounts in default and for which the original creditors are no longer themselves collecting on. To reduce consumer confusion at the point of hand-off from creditor to debt collector, the federal FDCPA and parallel state laws established a framework that provides the right level of information to avoid confusion. Under these regimes, consumers have an ability to identify who is contacting them (since third-party collectors use their own names, not the creditors' name in communications), for what account they are collecting, and if there is a discrepancy between the consumer's records and the third-party collector's records, an ability to seek validation of the underlying information the third-party collector received from the original creditor.

Consumer confusion about why a debt collector is contacting them and which account is involved buttresses the entire debt collection canon of laws, including the DCWP Final Rules. An obvious example of how this framework is meant to help reduce consumer confusion and hold debt collection agencies accountable to them appears in the definitions section of the DCWP Final Rules which require debt collectors to "provide the consumer the address of the '***originating creditor***' within 45 days of receiving a request for the consumer for such an address." (emphasis supplied).[21] If this final rule was clearly intended to apply to original creditors, why would it also include this provision? Requiring original creditors to validate to their own customers an account the creditor originated provides an incongruous, repetitive outcome that makes no sense, adds no value, and provides no protection to consumers, the stated goal of the rulemaking.

If indeed the final rules were meant to apply to original creditors, DCWP must reevaluate each provision in the final rules to determine how they would apply to original creditors and how to remedy the confusion and harm caused to consumers. An example of just a handful of those questions follows:

- If the purpose of the rulemaking was to conform to the Consumer Financial Protection Bureau (CFPB)'s parallel rulemaking under the federal FDCPA, how does DCWP justify the extension of its rule to creditors collecting accounts in their own name when the CFPB's regulation applies only to nonbank third-party collectors?
    - The CFPB has consistently acknowledged that, while there are overlaps, there are important distinctions between the two markets—particularly when it comes to the procedural steps that existing FDCPA and DCWP regulations mandate for third-party collectors but that are not required of first-party creditors.
    - In the Small Business Review Panel process for the CFPB's Regulation F rulemaking, the CFPB consistently noted this distinction. CFPB Bulletin 2013-07 likewise itemized only certain first-party collection conduct that might violate the prohibition on unfair, deceptive, or abusive practices.[22] For New York City to take

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[19] 15 U.S.C. § 1692(e)("[I]t is the purpose of this subchapter to eliminate abusive debt collection practices by *debt collectors*, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to promote consumers against debt collection abuses.").

[20] 85 Fed. Reg. 76,734 (Nov. 30, 2020); 86 Fed. Reg. 5766 (Jan. 19, 2021).

[21] NYC DCWP Final Rules, *supra* note 4, at 8.

[22] Consumer Fin. Prot. Bureau, CFPB Bulletin 2013-07 (July 10, 2013), https://files.consumerfinance.gov/f/201307_cfpb_bulletin_unfair-deceptive-abusive-practices.pdf.

such an unprecedented and drastic approach would require creditors to substantially overhaul their communications practices with no meaningful benefit to consumers.

- How does DCWP account for the fact that the word "creditor" appears 54 times in the DCWP Final Rules and yet, in none of those references do the rules require the creditor to undertake the obligations applied to third-party debt collectors?

- Why would a creditor (whom the consumer affirmatively selected to do business with) in communicating with its own customer regarding amounts owed, including accounts that are not in default, do any of the following that the Proposal would require?

  - Disclose the existence of the debt to consumers before reporting information about the debt to a nationwide consumer reporting agency (excluding the specialty consumer reporting agencies that collect deposit account information). Creditors already furnish the tradelines represented by these debts at account opening. To require creditors to provide notice of continued furnishing is absurd. Moreover, the CFPB regulation on which the DCWP modeled its provision was justified precisely because original creditors already furnish the tradeline on which third-party collectors are collecting.

  - Provide a "mini-Miranda" warning to the customer whose account is not in default, given that the definition of "debt" in the existing rule is already overbroad.

  - Retain records on consumer complaints that were sent to a debt collection agency.

  - Validate the existence of the debt, using information that the creditor already has provided to the customer, when the account's validity is already known to the customer who opened the account . These types of communications will only confuse and cause concern with the customers when receiving these types of communications with their banks or other creditors particularly regarding accounts where they are paying as agreed. Also, the required information in the validation notice only exists at the time of charge-off, yet the text of the rule says it needs to be sent within 5 days after initial communication about the "debt", making compliance impossible.

  - Make attempts to reach out to individual customers about all of their debts (which could include accounts in good standing) no more than three times in seven days, when the customers may have multiple products handled by different divisions, and creditors may have an urgent need to reach the customers so they do not lose access to credit, lose access to their vehicle, or potentially be sued for non-payment.

  - Identify only one natural person to a consumer at one telephone number that must be answered by a human, who is available to address questions customers may have about their debt, without any consideration for internal staffing, vacation/time off schedules, and overall call volumes, instead of using modern, effective, pooled dialing strategies that emphasize customer experience.

  - Send an "unverified debt notice" if certain information is not provided to a consumer within an arbitrary 45-day window, after the creditor had been sending months, and potentially years, worth of statements to the creditor since the time of origination.

- The Proposal gives no justification for applying these requirements on creditors for their customers for accounts subject to DCWP's authority. It is unreasonably burdensome for creditors who maintain accounts with consumers subject to DCWP's authority with little if any benefit, nor would DCWP have the resources to review the voluminous records this extension of authority the Proposal would trigger.

The DCWP Final Rules define the class of actors subject to the rule as "debt collectors" and applies the parallel obligations on those debt collectors—and not creditors—as exist in New York state and federal FDCPA laws. The Proposal articulates no justification for its clarification, which would necessitate a thorough review of all the provisions already promulgated.

Undertaking such a broad extension of these obligations via an inappropriately short clarification process highlights the need for an appropriate rulemaking effort. If the DCWP were to follow an appropriately deliberate process as required by New York City law to consider the costs and benefits of the proposed expansion, the Associations are confident that it would reach a different conclusion as to the Proposal.

3. DCWP's proposed amendment is likely preempted by federal and state law.

As demonstrated by the original proposal and the DCWP Final Rules, DCWP understood the significance of the federal FDCPA and sought to mirror its obligations to avoid an impermissible conflict between federal and New York state laws. In issuing the Proposal, the DCWP's application of these rules to original creditors is in direct conflict with federal and New York state law.

a. The Proposal is likely preempted by the federal FDCPA and Regulation F.

Upon challenge, a federal court would likely hold that the DCWP's Proposal is preempted by the federal FDCPA. The implementing Regulation F of the FDCPA states that:

> Neither the Act nor the corresponding provisions of this part annul, alter, affect, or exempt any person subject to the provisions of the Act or the corresponding provisions of this part from complying with the laws of any State with respect to debt collection practices, except to the extent that those laws are inconsistent with any provision of the Act or the corresponding provisions of this part, and then only to the extent of the inconsistency. For purposes of this section, a State law is not inconsistent with this subchapter if the protection such law affords any consumer is greater than the protection provided by this subchapter.[23]

First, the Proposal's conflicting provisions do not afford greater protection to consumers. In fact, the Proposal is likely to result in significant consumer harm rather than enhanced consumer protection. By restricting early communications with customers,[24] the Proposal would limit creditors' ability to engage with struggling consumers during critical early stages of delinquency. This could lead to accounts becoming more severely past due, negatively impacting consumers' credit scores and their future access to financial services. Delayed communication may also prevent creditors from offering timely assistance programs, such as hardship accommodations or payment plans, for accounts at risk of aging into default.

[23] 12 C.F.R. § 1006.104.
[24] NYC DCWP Final Rules, *supra* note 4.

Further, the restriction on communication attempts—limiting creditors and collectors to three times within seven days—creates a barrier to effective early intervention. This restriction reduces opportunities to resolve debts amicably, thereby increasing the likelihood of litigation and foreclosing access to hardship programs. Additionally, combining communications for multiple accounts into a single message risks creating confusion for consumers, as it conflates separate obligations and may inadvertently violate FDCPA or the prohibition on Unfair, Deceptive, or Abusive Acts or Practices.

The proposal would also disrupt well-established, consumer-preferred channels such as email and text messaging. This could delay essential notifications, such as fraud alerts or payment reminders, and expose consumers to financial harm. Moreover, the mandate to include the name of a specific natural person as a contact in all communications is impractical for large creditors and introduces operational inefficiencies. This requirement could lead to poor customer experiences, such as extended wait times or confusion when employees leave their positions or transfer roles.

Furthermore, in cases where a creditor may be subject to the FDCPA and Regulation F, there are several provisions within the DCWP's Final Rules that would not only cause consumer harm but would be operationally infeasible due to the inconsistencies. For example, Section 5-77 states:

> During the validation period, a debt collector must not engage in any collection activities or communications that overshadow or are inconsistent with the disclosure of the consumer's rights to dispute the debt and request the name and address of the original creditor.

This section extends the concept of the validation period indefinitely without specifying when it ends, creating uncertainty about when regular collection activities can resume. By contrast, the FDCPA provides a clear 30-day validation period during which consumers can dispute the validity of a debt or request information about the original creditor.[25] This lack of clarity could lead to conflicts where creditors are uncertain if their actions violate the indefinite restriction under the Proposal to amend the DCWP's Final Rules, even after the federally mandated 30-day period has passed.

Similar to the consumer harms mentioned above, requiring creditors to send validation notices could confuse consumers about their rights and obligations and overwhelm them with overlapping and redundant notifications. For instance, a consumer with debts owed to both a first-party creditor and a third-party debt collector might receive mixed messaging about dispute periods, communication rights, and what actions are allowed, making it harder to understand their rights and resolve their debts. A consumer might also disregard a first-party creditor's notices because they appear non-urgent, only to face escalated debt collection actions later, including lawsuits or credit reporting.

In summary, the clarification not only conflicts with the carefully calibrated regulatory framework established by the FDCPA and Regulation F and New York state law, but also imposes burdensome and counterproductive requirements that harm consumers and undermine creditors' ability to assist them effectively. It creates operational hurdles, confuses consumers,

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[25] *See* 15 U.S.C. § 1692g(b).

and thwarts early intervention efforts, ultimately making financial outcomes worse for struggling individuals.

b. The rule is likely preempted by the National Bank Act.

The Proposal also failed to address the significant concerns of applying the rule to national banks, including many of the Associations' members. Apart from the lack of any policy reason to impose these procedural and recordkeeping requirements on national banks whose collection activities are already supervised by the Office of the Comptroller of the Currency and, in many cases, the CFPB, these requirements go so far as to risk impermissibly interfering with banks' exercise of core banking powers to lend money. If it elects to reissue the Proposal in a more deliberate fashion, the DCWP should, at a minimum, exempt banks from its scope or, alternatively, limit its application to circumstances following the initiation of formal debt collection procedures by creditors.

The National Bank Act (NBA) was specifically designed to protect national banks from a patchwork of state and local laws and regulations. The NBA preempts any state or local law that would "prevent or significantly interfere with [a] national bank's exercise of its powers," whether those powers are enumerated or incidental.[26] This principle ensures that national banks, which serve customers nationwide, are shielded from potentially conflicting local regulations. The law was intended to provide "needed protection from possible unfriendly state legislation"[27] and to prevent the "[c]onfusion" that "would necessarily result from control possessed and exercised by two independent authorities."[28]

The DCWP Final Rules impose restrictions on debt collection activities, including communication frequency limits, mandatory validation periods, and disclosures tailored to New York City residents. These restrictions directly interfere with national banks' ability to collect debts in a manner that aligns with their federally sanctioned practices. It would significantly interfere with routine customer communications, even before an account is charged off and potentially reaching multiple unrelated accounts, and deprive national banks of this critical credit risk management tool and the flexibility national banks need to "manage credit risk exposures,"[29] thus significantly interfering with national banks' ability "to carry on the business of banking."[30] Such interference is precisely what the NBA's preemption doctrine was designed to prevent.

For example, the proposal includes an unverified debt notice requirement mandating banks to permanently halt collection activities and notify consumers that debts cannot be collected if verification deadlines are missed. The rule arbitrarily imposes a 45-day deadline for responding to consumer validation requests, with no exception for inadvertent administrative oversights. As a result, financial institutions could be permanently barred from collecting valid debts, which undermines their rights and poses systemic risks to the credit industry. Such restrictions not

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[26] *Barnett Bank of Marion Cnty., N.A. v. Nelson*, 517 U.S. 25, 32-33 (1996).
[27] *Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 10 (2003).
[28] *Watters v. Wachovia Bank, N.A.*, 550 U.S. 1, 14 (2007).
[29] OCC, Office of Thrift Supervision Integration; Dodd-Frank Act Implementation, 76 Fed. Reg. 43,549, 43,557 (July 21, 2011).
[30] *Watters v. Wachovia Bank, N.A.*, 550 U.S. 1, 6 (2007). The Supreme Court has "repeatedly made clear that federal control shields national banking from unduly burdensome and duplicative state regulation … [and] when state prescriptions significantly impair the exercise of authority, enumerated or incidental under the [National Bank Act], the State's regulations must give way." Id. at 11-12 (citing *Barnett Bank of Marion County., N.A. v. Nelson*, 517 U.S. 25, 32–34 (1996)).

only impair national banks' ability to recover debts but also jeopardize the stability and soundness of credit markets.

Additionally, the final rule's restrictive communication requirements fail to consider the operational realities of national banks, which often manage multiple accounts for a single customer. For instance, if a customer is delinquent on a credit card payment, the rules appear to severely limit or cease communications about other accounts held by the same customer, such as auto loans, mortgages, or deposit accounts. These limitations hinder national banks' ability to fulfill their obligations under federal laws, such as the Fair Credit Billing Act and the Real Estate Settlement Procedures Act, both of which require timely and effective consumer communication.

The NBA also preempts state and local laws that create significant operational inefficiencies or harm consumers by restricting national banks from exercising their federally authorized powers efficiently. By imposing excessive restrictions, the DCWP's rules undermine national banks' ability to engage in early, proactive communication with borrowers, particularly those at risk of delinquency. Early intervention is a cornerstone of federally approved strategies to assist consumers in managing financial difficulties. The rules' constraints on communication channels and procedural hurdles delay the resolution of delinquent accounts, increasing the likelihood of consumer harm through heightened fees, litigation, or adverse credit reporting.

In summary, the Proposal to amend DCWP's Final Rules not only contradicts the NBA's preemption doctrine but also undermines its purpose by imposing significant burdens on national banks and harming the very consumers it purports to protect. To align with federal law and prevent further consumer harm, the DCWP should explicitly exclude national banks from the rule's scope in any reissued proposal. This exemption would ensure compliance with the NBA's preemption principles, maintain regulatory consistency, and preserve national banks' ability to operate efficiently and effectively in serving customers nationwide.

c. DCWP's amendment is likely preempted by state law.

Aside from conflicting with the FDCPA and the NBA, DCWP's proposal, if finalized, would also conflict with New York state law and policy that recognize the critical distinction between original creditors and debt collectors.[31] This distinction is reflected in Article 29-H of the New York General Business Law that distinctly defines "principal creditor" and "debt collector." N.Y. Gen. Bus. Law § 600 (3, 7). This distinction is also evident in how the New York State Department of Financial Services (DFS) regulates debt collection practices through its Debt Collection Regulation, which is Part 1 of Title 23 of the New York Codes, Rules, and Regulations.

Specifically, those DFS regulations separately define "original creditor" and "debt collector," the latter definition expressly excluding "any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor." N.Y. Comp. Codes R. & Regs. tit. 23, § 1.1 (e, f). This distinction is also found across other New York laws, including the Civil Practice Laws and Rules governing enforcement of default judgments, as highlighted in the lawsuit recently brought by ACA International, Inc. and Independent Recovery Resources, Inc. that seeks to enjoin DCWP Final Rules.[32]

[31] *See Eric M. Berman, P.C. v. City of New York*, 25 N.Y.3d 684, 690 (2015) (recognizing state preemption occurs when a local government adopts a law inconsistent with New York State law).
[32] Complaint for Declaratory and Injunctive Relief, ACA International Inc. v. Adams (2024), https://www.consumerfinancialserviceslawmonitor.com/wp-content/uploads/sites/880/2024/10/ACA_v._Adams.pdf.

Not only do these New York state laws and regulations distinguish creditors from debt collectors in their defined terms, they also differentiate based on the types of obligations to which the parties are subject. For example, DFS regulations, including requirements to provide statements of consumer rights, debt validation notices, an itemized accounting of the debt, and restrictions on electronic communication apply to third party debt collectors and specifically exclude creditors. The proposed DCWP amendments clearly conflict with the state's approach to regulating the activities of debt collectors differently from those of creditors, by imposing the types of obligations that the state of New York intentionally chose not to require of creditors.

Conclusion

The Associations appreciate the opportunity to comment on the proposed amendment to the DCWP's debt collection rules. We strongly urge the DCWP to withdraw its extension of procedural requirements to first-party creditors, as these requirements are ill-suited, operationally burdensome, and conflict with existing federal and state regulatory frameworks. The rulemaking process also failed to provide adequate notice or time for stakeholders to evaluate the wide-ranging implications of these changes.

We welcome further discussion and collaboration to address the concerns raised in this comment letter. Should you have any questions, please feel free to contact the undersigned.

Sincerely,

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