Via Electronic Submission

June 10, 2025

Commissioner Vilda Vera Mayuga
New York City Department of Consumer & Worker Protection
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Dear Commissioner Mayuga:

The New York Bankers Association ("NYBA")[1] submits this comment letter in response to the New York City Department of Consumer & Worker Protection's ("DCWP") Notice of Proposed Amendments to the rules governing debt collectors, published in the New York City Record on April 10, 2025 ("Proposed Amendments").[2] We share the Department's goal of preventing abusive and predatory debt collection practices and we thank you for the opportunity to provide our views on this matter.

General Comments

DCWP's efforts to amend the rules governing debt collectors began in November 2022. Under its original proposal, creditors collecting debts in their own name did not fall within the definition of "debt collector."[3] DCWP retained this definition in the re-noticed amendments it proposed in September 2023[4] and adopted in August 2024.[5] After two years of consistent messaging, DCWP abruptly and inexplicably changed its tune and announced in November 2024 that creditors collecting on debts in their own name would be subject to the rules governing debt

1 NYBA comprises smaller community, mid-size regional, and large banks across every region of New York State. Together, NYBA members employ nearly 200,000 New Yorkers, safeguard $2 trillion in deposits, and extend nearly $70 billion in home and small business loans. NYBA members also support their communities through an estimated $200 million in community donations and 500,000 employee volunteer hours.

2 Department of Consumer & Worker Protection, Notice of Public Hearing and Opportunity to Comment on Proposed Rules, The City Record, Vol. CLII, No. 69, April 10, 2025, at 1899-1910.

3 Department of Consumer & Worker Protection, Notice of Public Hearing and Opportunity to Comment on Proposed Rules, The City Record, Vol. CXLIX, No. 213, Nov. 4, 2022, at 5485.

4 Department of Consumer & Worker Protection, Notice of Public Hearing and Opportunity to Comment on Proposed Rules, The City Record, Vol. CL, No. 188, Sept. 29, 2023, at 4995.

5 Department of Consumer & Worker Protection, Notice of Adoption, The City Record, Vol. CLI, No. 155, Aug. 12, 2024, at 4071.

collectors.[6] Following pushback from stakeholders, including NYBA, who argued, among other things, that the November 2024 proposal did not provide stakeholders with sufficient notice, DCWP issued the current Proposed Amendments on April 10, 2025.

The Proposed Amendments' definition of "debt collector"—though narrower than the definition proposed in November 2024—still includes an expansive group of original creditors, including banks, collecting debt after the initiation of "debt collection procedures." Although this is an improvement over the November 2024 amendments, it remains highly problematic. The Proposed Amendments now tie the definition of "debt collector" to the initiation of "debt collection procedures." They also substantially broaden the definition of "debt collection procedures." As a result, banks must now comply with the rules governing debt collectors in a wide array of new circumstances. To make matters worse, the amendments DCWP adopted in August 2024—on which it "welcomes comments"[7]—impose a number of burdensome obligations on debt collectors. When DCWP proposed and adopted these obligations, however, the proposed definition of "debt collector" did not include banks and other original creditors.[8]

The net effect of these changes is that the Proposed Amendments will impose additional, substantial operating burdens and costs on banks and consumers without yielding any enhancements to the broad range of consumer protections already applicable to bank customers under state and federal law. Indeed, the Proposed Amendments will only reduce the frequency and quality of communications between banks and consumers and lead to higher prices and reduced availability of credit products. The Proposed Amendments will also incentivize banks to more rapidly accelerate or charge-off consumer accounts, resulting in accounts being sent to third-party debt collectors earlier than they otherwise would, if at all. This, in turn, will result in more frequent litigation over the collection of consumer debts. The Proposed Amendments will thus significantly harm New York City's banking industry and the millions of City residents who rely daily upon it.

In addition, application of the Proposed Amendments to banks is preempted by both state and federal law. The New York Banking Law is a comprehensive regulatory scheme that forecloses local regulation of banks chartered by New York State. The Proposed Amendments are thus preempted as a matter of state law. This conclusion means the Proposed Amendments are also preempted under the National Bank Act, which preempts laws that discriminate against national banks. Here, applying the Proposed Amendments to national banks, but not state-chartered banks, would discriminate against national banks by placing additional restrictions on

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6 Department of Consumer & Worker Protection, Notice of Public Hearing and Opportunity to Comment on Proposed Rules, The City Record, Vol. CLI, No. 217, Nov. 12, 2024, at 5639-5640.

7 Department of Consumer & Worker Protection, Notice of Public Hearing and Opportunity to Comment on Proposed Rules, The City Record, Vol. CLII, No. 69, April 10, 2025, at 1900.

8 *See* Department of Consumer & Worker Protection, Notice of Adoption, The City Record, Vol. CLI, No. 155, Aug. 12, 2024, at 4071; Department of Consumer & Worker Protection, Notice of Public Hearing and Opportunity to Comment on Proposed Rules, The City Record, Vol. CL, No. 188, Sept. 29, 2023, at 4995.

their ability to collect on their debts relative to state-chartered banks. Moreover, certain sections of the Proposed Amendments may be preempted by the National Bank Act for a second reason: they significantly interfere with and prevent the exercise of national banks' powers by sharply limiting banks' ability to collect on their own debts.

For these reasons, and as we outline below in more detail, DCWP should return to its original inclination in this rulemaking process and exempt original creditors collecting debts in their own name from the rules governing debt collectors.

I. Banks Should Not Be Subject to the Rules Because Banks are Fundamentally Different than Third-Party Debt Collectors

The Proposed Amendments are an improvement from DCWP's November 2024 proposal insofar as they draw some distinctions between banks and third-party debt collectors. At bottom, though, the Proposed Amendments remain seriously flawed because they still subject banks to similar regulations as third-party debt collectors. Such treatment is completely unwarranted, however, because the two types of entities have vastly different regulatory frameworks, business models, and relationships with consumers.

To begin, banks' interactions with consumers are already governed by a robust set of federal and state consumer-protection laws and regulations. For example, depending on the specific product offered, banks must comply with the Electronic Fund Transfer Act,[9] the Truth in Lending Act,[10] and/or the Real Estate Settlement Procedures Act,[11] among others. Banks must also comply with the Fair Credit Reporting Act when furnishing information to consumer-reporting agencies.[12] Many of these statutes require banks to provide disclosures and make available dispute-resolution procedures to consumers. Moreover, banks are subject to regular supervisory examinations by the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corp., the Consumer Financial Protection Bureau, and/or the New York State Department of Financial Services to ensure compliance with these laws, as well as regular internal and external audit requirements.

In addition, banks and third-party debt collectors have very different business models and relationships with consumers. Consumers voluntarily select the institution with which they bank, and similarly choose from among the range of credit and loan products available from that bank. Often, consumers form lasting relationships with their bank, maintaining multiple accounts and obtaining multiple separate credit and other products over time. A consumer may have, for example, a checking account, a savings account, a credit card, an automobile loan, and a residential mortgage all with the same bank. Banks have a vested interest in fostering and expanding this long-lasting, voluntary relationship. Banks therefore seek to work with consumers to resolve a

9 15 U.S.C. § 1693 *et seq*.

10 15 U.S.C. § 1601 *et seq*.

11 12 U.S.C. § 2601 *et seq*.

12 15 U.S.C. § 1681 *et seq*.

consumer's financial issues while avoiding the negative credit consequences that result from charging off the consumer's account. To do so, they employ a variety of intervention efforts, such as workout programs and payment extensions, and only charge-off accounts as a last resort.

In contrast, third-party debt collectors have an involuntary, transient relationship with consumers that begins when the debt collector purchases the right to collect the consumer's debt or receives the debt from the original creditor. A third-party debt collector typically has no other relationship with a consumer. Nor does it have an interest in forming a lasting relationship with the consumer; it simply wishes to collect the debt. In part because of these differences, third-party debt collectors are not subject to many of the consumer-protection statutes discussed above.

It is because of these differences between banks and third-party debt collectors that state and federal law—as well as DCWP through almost two years of this rulemaking process—distinguish between banks, on one hand, and third-party debt collectors, on the other hand, in regulation and oversight. For example, the federal Fair Debt Collection Practices Act excludes original creditors, such as banks, from its scope.[13] So too do the New York State Department of Financial Services' debt-collection regulations.[14] New York General Business Law Article 29-H likewise distinguishes between principal creditors, such as banks, and debt-collection agencies.[15] These exclusions recognize the comprehensive regulatory framework already governing banks' interactions with consumers, while at the same time facilitating the safe, transparent, and largescale extension of credit on a daily basis to millions of New York City residents.

In ignoring the crucial differences between banks and third-party debt collectors, the Proposed Amendments conflict with existing state and federal approaches by imposing obligations that both New York State and the Federal Government intentionally chose not to require of banks. Worse still, DCWP has introduced this conflict between its rules and the state and federal approaches without justification. Nowhere has DCWP explained why, despite their differences, banks should be regulated the same as third-party debt collectors. Nor has DCWP acknowledged the significant compliance costs the Proposed Amendments will impose on banks and, more importantly, the harms that will befall consumers.

The harms to consumers will be both significant and immediate. The Proposed Amendments jeopardize important consumer benefits derived from the banking relationship. Subjecting banks to the proposed versions of sections 5-77(b) and 5-77(f) will, at a minimum, require banks to reconsider the frequency and means by which they communicate with consumers regarding their debts, given the limitations and obligations those sections impose on when and how banks may communicate with consumers. The likely result will be less-informed consumers who have a more distant relationship with their bank. This will directly harm consumers by depriving them of information on available debt-relief options. As discussed in greater detail below, section

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13 15 U.S.C. § 1692a(6)(A); *see also* S. Rep. No. 95-382, at 3 (1977) ("The term debt collector is not intended to include the following: 'in house' collectors for creditors so long as they use the creditor's true business name when collecting").

14 23 N.Y. C.R.R. § 1.1(e)(1).

15 N.Y. Gen. Bus. L. § 600.

5-77(f) of the Proposed Amendments is also likely to confuse consumers because it requires mandatory disclosures that duplicate information that banks already provide, with only a limited exception if the bank is required to comply with 15 U.S.C. § 1666 (Fair Credit Billing Act). Section 5-77(e)(10) of the Proposed Amendments may also cause higher costs and reduced availability of a wide range of safe and transparent credit products and loss-mitigation options that are currently available to New York City consumers by undermining the accuracy of the consumer-reports on which banks rely to make underwriting decisions. Indeed, the cumulative effect will be to increase the cost of credit for New York City residents, given that banks must make costly modifications to their systems and practices to comply with the Proposed Amendments. Rather than implementing these burdensome modifications, banks may simply charge-off and send accounts to third-party debt collectors earlier than they otherwise would.

II. The Proposed Amendments are Preempted by Both State and Federal Law

The New York State legislature has declared that it is "the policy of the state of New York that the business of all banking organizations shall be supervised and regulated through the department of financial services."[16] In light of this declaration, the Department of Financial Services has "broad powers of regulation to control and police the banking institutions under [its] supervision."[17] The Department administers the New York Banking Law, which grants state-chartered banks the power to "negotiate promissory notes, drafts, bills of exchange, other evidences of debt, and obligations in writing to pay in installments or otherwise all or part of the price of personal property or that of the performance of services" and the power to "lend money on real or personal security," as well as "all such incidental powers as shall be necessary to carry on the business of banking."[18] Collecting on their own debts is a necessary corollary to these explicitly enumerated powers and thus qualifies as an incidental power of state banks.[19] In addition to its supervisory role over New York chartered banks, the Department of Financial Services is also tasked with "oversight of debt collectors" and sets the "basic rules for debt collection in New York."[20] In this role, it has issued detailed regulations governing debt-collection practices by third-party debt collectors that explicitly exclude banks and other original creditors.[21]

The New York Banking Law "evinces an intent to preempt the field of regulating state-chartered banks."[22] It thus preempts DCWP's Proposed Amendments as applied to banks

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16 N.Y. Banking L. § 10.

17 *New York Bankers Ass'n, Inc.* v. *City of New York*, 119 F. Supp. 3d 158, 194 (S.D.N.Y. 2015) (quoting *N.Y. State Banker's Ass'n* v. *Albright*, 38 N.Y.2d 430, 440 (1975)).

18 N.Y. Banking L. § 96(1).

19 *See Yerkes* v. *Nat'l Bank of Port Jervis*, 69 N.Y. 382, 386 (1877) (A "large branch of banking business" is "that of collecting notes, checks, bills of exchange and other evidences of debt, for other persons.").

20 2013 N.Y. Reg. 334713 (Aug. 21, 2013).

21 *See* 23 N.Y. C.R.R. §§ 1.1-1.7.

22 *New York Bankers Ass'n*, 119 F. Supp. 3d at 194 (citation and alteration omitted).

chartered by New York State. State law preempts local law when the State has "assumed full regulatory responsibility" in the area and the local law "prohibits conduct which the state law, although perhaps not expressly speaking to, considers acceptable or at least does not proscribe or imposes additional restrictions on rights granted by state law."[23] New York State has "assumed full regulatory responsibility" over the field of banking,[24] as the New York "Banking Law contains a comprehensive regulatory scheme which evidences the state's intent to occupy the field."[25] The Proposed Amendments impermissibly intrude upon this field by imposing "additional restrictions on" state banks' incidental powers and prohibiting conduct that the Department of Financial Services "considers acceptable or at least does not proscribe."[26] Indeed, the Department of Financial Services exempts banks from its rules governing debt collectors.[27]

This conclusion also means that national banks and banks chartered by other states would not be subject to the Proposed Amendments either. The National Bank Act preempts the application of the Proposed Amendments to national banks. The National Bank Act preempts state law that "discriminates against national banks as compared to state banks."[28] Subjecting national banks to the Proposed Amendments would discriminate against national banks by placing additional burdens on them vis-à-vis banks chartered by New York State, which would not be subject to the Proposed Amendments as a matter of state preemption.[29] As for banks chartered by other states, the New York Banking Law provides that "[a]n out-of-state bank that opens, occupies, or maintains a branch in this state . . . shall have in this state the same powers under the laws of this state as a like-type banking organization."[30] Out-of-state banks accordingly would not be subject to the Proposed Amendments if the Proposed Amendments are preempted as to banks chartered by New York State.

The Proposed Amendments may also be preempted by the National Bank Act for a second reason as well. The National Bank Act preempts non-discriminatory state law that "prevents or significantly interferes with the exercise by the national bank of its powers."[31] Collecting on their

23 *Police Benevolent Ass'n* v. *City of New York*, 40 N.Y.3d 417, 423 (2023) (citation and alterations omitted).

24 *Id.*

25 *Mayor of City of New York* v. *Council of City of New York*, 4 Misc. 3d 151, 160 (N.Y. Sup. Ct. 2004).

26 *Police Benevolent Ass'n*, 40 N.Y.3d at 423 (citation omitted).

27 23 N.Y. C.R.R. § 1.1(e)(1).

28 *Cantero* v. *Bank of Am., N.A.*, 602 U.S. 205, 213 (2024) (citation omitted); 12 U.S.C. § 25b(b)(1)(A).

29 *See Michigan Nat'l Bank* v. *Michigan*, 365 U.S. 467, 476 (1961) (a "State's tax system . . . discriminates against national banks" if "an investment in national bank shares was placed at a disadvantage by the practical operation of the State's law"); *Cf. United Haulers Ass'n, Inc.* v. *Oneida-Herkimer Solid Waste Mgmt. Auth.*, 550 U.S. 330, 338 (2007) ("[D]iscrimination simply means differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter.") (citation omitted).

30 N.Y. Banking L. § 226.

31 *Cantero*, 602 U.S. at 209 (citation omitted); 12 U.S.C. § 25b(b)(1)(B).

own debts likely qualifies as one of national banks' incidental powers, as it is "a logical outgrowth of" and "convenient or useful to"[32] banks' enumerated powers to "discount[] and negotiat[e] promissory notes, drafts, bills of exchange, and other evidences of debt" and "loan[] money on personal security."[33] It is true that federal regulations provide, as a general matter, that state laws governing "[r]ights to collect debts" are not preempted "to the extent" those laws do not prevent or significantly interfere with national banks' powers.[34] But DCWP's Proposed Amendments are more burdensome than the debt-collection laws that federal courts have upheld in the face of preemption challenges.[35] As discussed below in greater detail, aspects of the Proposed Amendments significantly interfere with national banks' powers by drastically limiting banks' ability to collect on their own debts and regulating how banks conduct their business operations. Most notably, Section 5-77(f)(11) of the Proposed Amendments seemingly "prevents" national banks from being able to collect on their own debts because it contains a loophole that allows consumers to indefinitely delay collection.

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In light of these problems, the Proposed Amendments are ill suited to banks. Ultimately, by regulating banks in the same or similar manner as third-party debt collectors, the Proposed Amendments will do more harm than good. To avoid this harm, we strongly urge DCWP to exempt banks from the rules governing debt collectors.

<u>Specific Comments</u>

If DCWP nonetheless decides that banks should remain subject to the rules governing debt collectors, we strongly urge it to consider the following comments and recommendations regarding specific provisions of the Proposed Amendments.

I. <u>Definition of "Debt Collection Procedures" – Section 5-76</u>

The Proposed Amendments' definition of "debt collection procedures" is vague and overbroad. DCWP should clarify several aspects of this definition. At bottom, the simplest fix would be to state that for creditors, debt-collection procedures only begin after the creditor has accelerated the unpaid balance of the debt or demanded the full balance due. Short of that, DCWP should consider the following clarifications.

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32 12 C.F.R. § 7.1000.

33 12 U.S.C. § 24(7); *see Miller* v. *King*, 223 U.S. 505, 510 (1912) (National banks "may do those acts and occupy those relations which are usual or necessary in making collections of commercial paper and other evidences of debt."); *First Nat'l Bank* v. *Nat'l Exchange Bank*, 92 U.S. 122, 127 (1875) (The National Bank Act's grant of incidental powers "necessarily implies the right of a bank" to "become the creditor of others" and ensure that "debts due to it" are "collected or secured.").

34 12 C.F.R. § 7.4008(e)(4); *see also Cantero*, 602 U.S. at 213-214.

35 *See Epps* v. *JP Morgan Chase Bank, N.A.*, 675 F.3d 315, 318 n.2 (4th Cir. 2012); *Aguayo* v. *U.S. Bank*, 653 F.3d 912, 919 (9th Cir. 2011).

To start, the Proposed Amendments add a new subsection to the definition of "debt collection procedures," which provides that "the term 'debt collection procedures' means any attempt by any person to collect a debt after . . . the original creditor has transferred the debt to another person to collect, including but not limited to charging off the debt, selling the debt, or placing the debt with a collection agency, an attorney or law firm, *or with another department or unit for collection*."[36] As applied to banks, this subsection imposes substantial burdens with no corresponding benefits to consumers, as it may capture routine internal transfers between departments that could occur as early as day one of delinquency. In these scenarios, it is highly likely that the bank continues to service the account under its own name and the consumer is unaware that a different unit is servicing—or performing a portion of the servicing for—the account. And from the consumer's perspective, it makes little difference which unit or department of the bank is servicing various aspects of the account. The consumer continues to pay and contact the same entity through the same means. Moreover, it is unclear how this provision applies when multiple units or departments are involved in servicing or collection, *e.g.*, when the bank only transfers responsibility for certain aspects of the account to another department. Furthermore, in certain instances federal law already requires loan servicers to inform consumers when the servicer transfers the consumer's account to another non-affiliated entity, rendering this provision unnecessary.[37] DCWP should therefore provide that internal transfers do not trigger debt-collection procedures.

Likewise, this new subsection includes situations where "the original creditor has transferred the debt to another person to collect, including but not limited to . . . selling the debt."[38] This could include any sale of an account or asset, such as portfolio acquisitions and mortgage transfers, even if the account is has not yet been accelerated or charged off. Such a definition sweeps far too broadly. It would require the acquirer to comply with the rules governing debt collectors even if it has no intention of immediately initiating collection and the account has not yet been accelerated or charged off. This would sharply curtail early stage communications with consumers because the acquirer would seemingly have to abide by the communication restrictions set out in section 5-77(b), which limits the frequency and means by which debt collectors can contact consumers. Such early contact frequently helps consumers avoid a variety of potentially negative credit consequences by giving banks the opportunity to offer remediation options, such as workout programs, payment extensions, and loss-mitigation or foreclosure-prevention actions. DCWP should thus alter the definition of "debt collection procedures" such that only sales to entities intending to initiate collection procedures qualify as "selling the debt."

Moreover, the Proposed Amendments also define "debt collection procedures" as "any attempt by any person to collect a debt after . . . the creditor has . . . taken or threatened to take legal action against the consumer."[39] The phrase "legal action" is vague. So too is what constitutes

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36 § 5-76 (emphasis added).

37 *See* 12 U.S.C. § 2605; 12 C.F.R. § 1024.33.

38 § 5-76.

39 § 5-76.

a "threat" of legal action. The combination imposes significant uncertainty on banks, who will be unsure whether routine communications with consumers will trigger their obligations under these rules. For example, it is unclear whether loan-servicing communications that inform consumers of the consequences of default qualify as "threatened . . . legal action." Prohibiting such communications would deprive consumers of useful information on the status of their accounts, their legal obligations, and the ways in which they can avoid default, with no corresponding benefit. To avoid such issues, DCWP should delete the language that a creditor's "threat[] to take legal action against the consumer" qualifies as debt-collection procedures. At a minimum, DCWP should clarify what qualifies as a "threat" and state that "legal action" means filing a lawsuit.

II. Definition of "Original Creditor" – Section 5-76

The Proposed Amendments' definition of "original creditor" is also vague and unclear. An "original creditor" is defined as "any person . . . who originated the debt, including by extending credit and creating the debt."[40] But it is unclear what constitutes "extending credit." Moreover, the definition does not address situations where one entity performs servicing for another or when an account is acquired shortly after its creation. The result is a lack of clarity on who exactly qualifies as an original creditor. To provide one example, in the indirect auto-financing context, a vehicle dealer originates the contract giving rise to the debt and assigns it to the indirect-finance company. In this scenario, it is unclear whether the indirect-finance company also qualifies as an original creditor. To remedy this uncertainty, DCWP should amend this definition to provide that entities who acquire accounts pre-charge-off or engage in servicing prior to charge-off are "original creditors."[41]

III. Communication Restrictions – Section 5-77(b)

The Proposed Amendments' contact restrictions are tailored to third-party debt collectors and, if applied to banks, will cause significant consumer harm. Due to the Proposed Amendments' overbroad definitions of "debt collector" and "debt collection procedures," these restrictions will reduce banks' ability to send early-delinquency communications, which are crucial to assisting consumers in avoiding acceleration or charge-off. The communications restrictions will, therefore, result in more accounts being charged off, which harms both banks and consumers.

A. Contact-Frequency Restriction – Section 5-77(b)(1)(iii)

Section 5-77(b)(1)(iii) of the Proposed Amendments prohibits more than three non-exempt attempted communications within a seven-day period for each distinct account when the debt collector is an original creditor. Although NYBA appreciates the changes DCWP has already made, this section still imposes far more stringent contact limitations than those imposed by state

40 § 5-76.

41 Any revisions proposed in this Comment Letter pertaining to "original creditors" presuppose the acceptance of this suggested revision.

and federal debt-collection rules.[42] Imposing such stringent contact limitations is unnecessary, given that existing consumer-privacy laws and laws prohibiting unfair or deceptive acts and practices already protect consumers from harassing or abusive communications. And unlike third-party debt collectors, the ongoing nature of the consumer-banking relationship incentivizes banks to ensure that consumers have positive customer experiences, even regarding debt collection. Consumers who feel harassed by their bank are unlikely to return to the bank for their future needs, which results in lost revenue and market share for the bank. DCWP should consider further increasing this numerosity restriction, at least as applied to banks, to ensure that banks remain able to have valuable conversations with consumers regarding the status of their accounts and various debt-relief options.

B. Cease-and-Desist Requests – Section 5-77(b)(4)

Section 5-77(b)(4) of the Proposed Amendments will seemingly prohibit banks from requiring a written cease-and-desist notice from consumers to stop collection procedures. This provision provides that debt collectors cannot "communicate or attempt to communicate with a consumer with respect to a debt if the consumer has notified the debt collector that the consumer wishes the debt collector to cease further communication with the consumer with respect to that debt."[43] Oral cease-and-desist requests are thus seemingly sufficient under the rule. A written request, however, provides clarity and certainty for both banks and their customers with respect to the specific debt communications at issue and helps ensure that banks can continue to communicate vital information to account holders concerning matters separate from the specified debt. Under many banks' current practices, when a consumer orally requests that a bank "stop calling," the bank will cease calls but continue to send other communications via email or regular mail, including communications for financial assistance options. In contrast, at least some banks treat formal cease-and-desist requests as revocations of consent under the Telephone Consumer Protection Act,[44] meaning the bank will no longer transmit crucial messages such as fraud alerts to the consumer. Clarity about which communications the consumer wishes to cease is thus essential. The best way to ensure that clarity is through a written request—something the current rule seemingly prohibits. Applying this requirement for an oral (as opposed to written) request in the banking context will thus cause more harm than good.

Furthermore, oral requests will also make compliance with the Proposed Amendments' record-retention rules—which include retention of cease-and-desist documentation[45]—particularly difficult. Written requests would simplify banks' record-keeping obligations under Section 5-77(k) of the Proposed Amendments. DCWP should accordingly revise Section 5-

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42 *See* 12 C.F.R. § 1006.14(b)(2) (calling a consumer "[m]ore than seven times within seven consecutive days" presumptively violates the FDCPA); N.Y. Gen. Bus. L. § 601(6) (Prohibition on "communicat[ing] with the debtor or any member of his family or household with such frequency or at such unusual hours or in such a manner as can reasonably be expected to abuse or harass the debtor" without a numerical restriction).

43 § 5-77(b)(4).

44 *See* 47 U.S.C. § 227(b)(1)(B).

45 § 5-77(k)(2)(iii).

77(b)(4) of the Proposed Amendments to specify that original creditors can require cease-and-desist requests to be made in writing.

C. Electronic Communications – Section 5-77(b)(5)

There are several issues with the Proposed Amendments' prohibition on contacting consumers through electronic means, which provides that debt collectors cannot "[c]ontact a New York City consumer by electronic communication" unless the debt collector uses a "medium of communication" that is "private and direct to the consumer," obtains the consumer's consent, and informs the consumer of their ability to opt-out of electronic communication.[46]

First, it is unclear what constitutes a "private and direct" means of communication. Section 5-77(b)(5) provides that a debt collector can only communicate electronically with a consumer through "private and direct" means. But the Proposed Amendments do not explain what qualifies as "private and direct." At a minimum, DCWP should confirm that banks can presume that any email address, text-message number, or social-media account which has been provided to the bank by the consumer is "private and direct." Without further clarity, banks and other creditors, if subject to the Proposed Amendments, may have difficulty determining which of these channels is "private and direct" and thus may have to curtail their methods of communication, regardless of consumer preference and expectation. This is particularly burdensome for consumers who have already provided consent to electronic communication using such a specified medium but never confirmed that the medium was "private and direct."

Second, original creditors should not have to re-inform consumers that the consumer can revoke their consent to electronic communications after the institution of debt-collection procedures.[47] Section 5-77(b)(5)(v) already requires debt collectors to include a "clear and conspicuous" opt-out notice "in every electronic communication to the consumer." This opt-out notice adequately informs consumers of their right to revoke consent. Requiring banks to send an additional, standalone notification to consumers upon institution of debt-collection procedures would be burdensome and duplicative with no real benefit.

Third, DCWP must clarify what constitutes compliance with the notice requirement. Section 5-77(b)(5)(iv) requires a "debt collector who sends any disclosures required by this subchapter electronically" do so "in a manner that is reasonably expected to provide actual notice." This provision, however, provides no explanation of what satisfies this requirement. Without additional clarification, the phrase "reasonably expected to provide actual notice" is ambiguous. DCWP should make clear that sending disclosures to any email address, text-message number, or social-media account for which the debt collector has been granted permission to communicate with the consumer satisfies this requirement.

Fourth, DCWP must also clarify the scope of the requirement that creditors provide an "opt-out" option to consumers. Section 5-77(b)(5)(v) appears to require that creditors include an

46 § 5-77(b)(5)(i), (v).

47 *See* § 5-77(b)(5)(i)(B).

opt-out notice in every electronic communication and accept a response from a consumer indicating their desire to opt out of electronic communication. But as currently worded, it is not clear if any reasonable opt-out method is acceptable or if creditors must only permit consumers to reply to an email with "STOP" or a similar phrase. Many banks and other large creditors typically include a link in their emails to enable email opt outs but may not offer two-way email communication platforms. It is unclear if banks' current opt-out systems comply with the rule, or if DCWP is requiring banks to develop specific electronic communication systems capable of monitoring and recognizing various opt-out phrases in various languages. The complexity and risks associated with implementing such systems may deter some banks from utilizing electronic communication altogether and could frustrate consumers who prefer this method of interaction. If DCWP requires banks to implement such systems, it must clarify whether banks need to treat an opt-out request (such as "STOP") as a request to cease all electronic communications, or only cease the specific method of electronic communication. To provide a hypothetical: if a consumer texts a bank "STOP," must the bank cease emailing the consumer? Given these shortcomings, DCWP must clarify what is required under this section. Alternatively, DCWP could provide that any opt-out method that complies with the Fair Debt Collection Practices Act is sufficient.[48]

Fifth, the Proposed Amendments introduce a new subsection, 5-77(b)(5)(i)(B), that exempts original creditors from the written-consent requirement for electronic communications if the creditor obtained consent prior to initiating debt-collection procedures. While this revision is a welcome addition, DCWP should provide banks with a blanket exception to the written-consent requirement if the bank previously obtained consent for electronic communication from the consumer. As currently written, banks may still have to obtain written consent in some circumstances. If, for example, the consumer revokes their prior consent upon initiation of debt-collection procedures but then changes their mind and wishes to resume electronic communications, it appears that the bank must obtain written consent before reinitiating electronic communications. In such circumstances, however, the written-consent requirement serves no real purpose.

D. Communications at Place of Employment – Section 5-77(b)(6)

The Proposed Amendments' new prohibition on contacting consumers during work hours is burdensome and unlikely to benefit consumers. The Proposed Amendments insert language that prohibits debt collectors from attempting to communicate "with a consumer at a time the debt collector knows or should know is during the consumer's work hours" without prior written consent.[49] It is unclear, however, whether or how a bank "should know" a consumer's work hours. Banks do not track their customers' employment, let alone their precise hours. And, as currently written, the provision is extraordinarily broad. For example, if a bank sends a letter to a consumer regarding their account, and the letter is delivered while the consumer is working from home, it is conceivable that the bank has violated this provision. Without clarification, banks could be forced to cease communications with consumers during ordinary work hours (9:00 a.m. to 5:00 p.m.) to avoid inadvertent violations of the rule. This would result in drastically fewer communications

48 *See* 12 C.F.R. § 1006.6(e).

49 § 5-77(b)(6).

between banks and consumers regarding the consumers' debt, leaving consumers less informed about the status of their accounts. The end result will be more accounts sent to third-party debt collectors or law firms, exposing these New Yorkers to litigation and crippling them further financially.

Moreover, when viewed in conjunction with the general prohibition against communicating with consumers before 8:00 a.m. and after 9:00 p.m.,[50] the remaining "convenient" hours are anything but. Debt collectors' communications with consumers would be restricted to: 8:00 a.m. to 8:59 a.m. and 5:01 p.m. to 9:00 p.m. (weekdays) and 8:00 a.m. to 9:00 p.m. (weekends). Not only would restricting communications during these times be inconvenient for consumers, but it would be extremely difficult to implement.

In addition, this section also prohibits debt collectors from communicating with consumers at an email address or phone number the debt collector "knows or should know is provided to the consumer by the consumer's employer."[51] This requirement will pose significant challenges if applied to banks, as they will need to implement new systems to identify and exclude employer-provided contact information. The requirement also fails to account for consumers who are sole proprietors and may only use a single method of electronic communication for their personal and business communications. The additional costs associated with developing and maintaining such a system may further discourage banks from using electronic communication methods, despite their popularity amongst consumers.

Finally, while subsection 5-77(b)(6) allows such communications if the consumer has given "prior written revocable consent," that exception only applies to a "direct number provided by the consumer's employer." As such, it would appear that, even when a consumer opts to provide a debt collector with a work e-mail, the debt collector would not be permitted to contact the consumer via that channel, despite the consumer's preference.

To address these issues, DCWP should eliminate the prohibitions on contacting consumers during work hours and at email addresses and phone numbers provided by their employers.

IV. Language Preference – Section 5-77(e)(9)

Section 5-77(e)(9) of the Proposed Amendments provides that it is "unfair or unconscionable" for a debt collector to collect or attempt to collect a consumer's debt "without recording the language preference of such consumer, except where the debt collector is not aware of such preference despite reasonable attempts to obtain it." It is not clear what exactly this provision prohibits. The first clause of the provision seemingly only penalizes debt collectors who fail to note a consumer's language preference when the consumer informs the debt collector of such a preference. The second clause, however, seems to impose an affirmative duty on debt collectors to determine what a consumer's language preference is before initiating debt-collection procedures. This could be immensely burdensome for banks, who would seemingly have to

50 § 5-77(b)(1)(i).

51 § 5-77(b)(6).

contact every customer based in New York City. Relatedly, it is unclear what, if anything, the bank must do if it only communicates with consumers in English and the consumer expresses a preference for another language, especially given that the DCWP has no authority to require banks to service customers in a language in which they did not contract. Given these issues, DCWP must clarify what exactly this provision requires.

V. Furnishing Information to Consumer-Reporting Agencies – Section 5-77(e)(10)

The Proposed Amendments' fourteen-day restriction on furnishing information to consumer-reporting agencies is preempted by federal law and is not suitable to apply to banks. DCWP has also introduced new language to this provision that could be construed as requiring banks to contact consumers in a manner potentially perceived as threatening and coercive.

The Fair Credit Reporting Act provides that "[n]o requirement or prohibition may be imposed under the laws of any State . . . with respect to any subject matter regulated under" 15 U.S.C. § 1681s-2, "relating to the responsibilities of persons who furnish information to consumer reporting agencies."[52] Section 1681s-2, in turn, imposes a number of responsibilities on financial institutions, including a duty to continually update credit-reporting agencies to ensure the integrity and accuracy of consumer reports.[53] Consistent with this requirement, 15 U.S.C. § 1681s-2(a)(7) authorizes financial institutions to furnish negative information about a consumer to a consumer-reporting agency and notify the consumer after the fact.[54] Section 5-77(e)(10) of the Proposed Amendments, however, prohibits just that, as it imposes a fourteen-day waiting period before a debt collector can furnish information about a debt to a consumer-reporting agency. This waiting period also arguably conflicts with banks' duty under 15 U.S.C. § 1681s-2 to continually update consumer-reporting agencies. It is therefore a "prohibition . . . with respect to" the "subject matter regulated under" 15 U.S.C. § 1681s-2 and, accordingly, preempted.[55]

In addition to the preemption issue, application of this provision to banks could significantly interfere with their ability to lend. As a general matter, banks typically begin reporting information to consumer-reporting agencies at the inception of an account—prior to any potential collection activity—in order to maintain a healthy credit ecosystem. The Proposed Amendments seemingly require banks to halt their reporting once they begin collecting upon a debt. This requirement could significantly interfere with banks' ability to make responsible, accurate underwriting decisions regarding New York consumers because it means that consumer reports may lack important information about a consumer's creditworthiness. Beyond that, implementing this requirement will be difficult and burdensome for banks given limitations in the

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52 15 U.S.C. § 1681t(b)(1)(F).

53 *See* 15 U.S.C. § 1681s-2(a)(2).

54 15 U.S.C. § 1681s-2(a)(7)(B)(i).

55 15 U.S.C. § 1681t(b)(1)(F); *see Galper* v. *JP Morgan Chase Bank, N.A.*, 802 F.3d 437, 446 (2d Cir. 2015) (Section 1681s-2 preempts "those claims that concern a furnisher's responsibilities.") (emphasis omitted).

software and reporting guidelines that many banks use.[56] In addition, if banks simply cease furnishing information to a consumer-reporting agency regarding a debt, the agency may infer that something negative—such as default—has occurred. Once again, this will necessarily and negatively impact the price and availability of credit to New York City consumers without yielding any additional consumer benefit.

The Proposed Amendments also insert new language to section 5-77(e)(10) that requires a debt collector to send a notice to consumers "in the medium of communication used to collect the debt," and "via U.S. Mail or other delivery service" which states that the debt collector intends to report information about the debt to a consumer-reporting agency. This addition seemingly requires banks to provide consumers with at least two notices: one for each "medium of communication used to collect the debt" and one written copy "via U.S. Mail or other delivery service." But bombarding consumers with multiple notices could be interpreted as a threatening or coercive means of collecting the debt.

To address these concerns, DCWP should amend the last paragraph of section 5-77(e)(10) to state that it does not apply to financial institutions who are subject to 15 U.S.C. § 1681s-2(a)(7). At the very least, DCWP should provide that while banks must notify consumers before reporting information about a debt to a consumer-reporting agency, they need not pause their reporting after sending the notice. DCWP should also delete the new language it has inserted into section 5-77(e)(10) and provide that debt collectors, including banks, need only send one notice to the consumer.

VI. Validation of Debts – Section 5-77(f)

Section 5-77(f) of the Proposed Amendments requires debt collectors, others than those subject to the Fair Credit Billing Act, to send a debt-validation notice to consumers, temporarily pause collection activities, and respond to consumers' disputes about a debt in specific ways. Although the exemption for creditors subject to the Fair Credit Billing Act is a meaningful step in the right direction, it does not go far enough because the FCBA is subject to a number of exceptions. It does not, for example, cover loans "made, insured, or guaranteed pursuant to a program authorized by Title IV of the Higher Education Act of 1965."[57] Nor does it appear to cover overdrafts on deposit bank accounts or auto loans.[58] DCWP should expand this exemption to include all original creditors, not just those subject to the Fair Credit Billing Act.

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56 Many banks use "Metro 2," which is the "standard electronic data reporting format" that has been adopted by "the credit reporting industry." *See Metro 2® Format for Credit Reporting*, CONSUMER DATA INDUSTRY ASSOCIATION, https://www.cdiaonline.org/resources/furnishers-of-data-overview/metro2-information/ (last accessed June 7, 2025). It does not appear that Metro 2 provides a mechanism for furnishers to pause reporting. Even if furnishers could institute a pause, it may be flagged by the consumer-reporting agency.

57 *See* 15 U.S.C. § 1603(7).

58 *See Rajapakse* v. *Credit Acceptance Corp.*, 2021 WL 3059755, at *3 (6th Cir. March 5, 2021) ("The FCBA applies to open end consumer credit plans, specifically credit card accounts" and "does not apply" to "a closed-end consumer credit transaction," such as a "vehicle loan.") (citation and alteration omitted).

Indeed, the debt-validation requirements are particularly ill-suited to banks, who already provide much of the information contained in the debt-validation notice to consumers as part of the ordinary banking relationship and allow the consumer to dispute this information through the existing state and federal consumer-protection laws discussed above. The debt-validation requirements ensure that a debt collector can prove that it has sufficient information about the debt to justify its collection and provides consumers with sufficient information to identify and confidently engage with the debt collector. This is particularly important if time has elapsed between when the creditor initially stopped collecting the debt and the resumption of communication, or where the debt has been charged-off by the original creditor and sold or otherwise discharged to a third-party who then attempts to collect the debt.

These justifications, however, do not apply to banks because the information provided through a debt-validation notice is duplicative of the timely account information regularly and directly provided to consumers through, for example, statements and other correspondence typical of the ongoing consumer-banking relationship. That is particularly true here as banks may—given the overbroad definition of debt-collection procedures—have to send a debt-validation notice before charge-off while the consumer is still receiving periodic statements and other regular communications regarding their account. Moreover, consumers already can exercise broad rights to dispute and require proof of an alleged debt under existing consumer-protection laws, including the Fair Credit Billing Act[59] and Fair Credit Reporting Act.[60] Requiring banks to send debt-validation notices is thus duplicative and burdensome for banks and confusing for consumers, with no corresponding benefits.

In addition, aspects of the debt-validation requirements also may be preempted by the Fair Credit Reporting Act. Section 5-77(f)(8)(iv) of the Proposed Amendments requires debt collectors to provide disputed debt information to a consumer-reporting agency. It is therefore a "requirement" imposed "with respect to any subject matter regulated under" 15 U.S.C. § 1681s-2 "relating to the responsibilities of persons who furnish information to consumer reporting agencies."[61]

The FCRA separately preempts any "requirement or prohibition" imposed "with respect to any subject matter regulated under" 15 U.S.C. § 1681c, "relating to information contained in consumer reports."[62] Section 5-77(f)(10)(i)(B) of the Proposed Amendments prohibits debt collectors from furnishing information on medical debt to a consumer-reporting agency. But the

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59 15 U.S.C. § 1666.

60 15 U.S.C. § 1681s-2(a)(8); 12 C.F.R. § 1022.43.

61 15 U.S.C. § 1681t(b)(1)(F); *see Galper*, 802 F.3d at 446 (Section 1681s-2 preempts "those claims that concern a furnisher's responsibilities.") (emphasis omitted).

62 15 U.S.C. § 1681t(b)(1)(E).

FCRA allows most medical-debt information to be included in consumer reports.[63] Likewise, 15 U.S.C. § 1681s-2 does not prohibit furnishers from reporting medical-debt, so long as the information is accurate.[64] Section 5-77(f)(10) may therefore amount to a "prohibition" "with respect to" the "responsibilities of persons who furnish information to consumer reporting agencies" and the "information contained in consumer reports."[65]

In light of these issues, DCWP should not subject banks to the debt-validation requirements imposed by section 5-77(f) of the Proposed Amendments.

A. Validation Notice – Section 5-77(f)(1)

If DCWP nonetheless determines that banks must comply with the debt-validation requirements for certain lending products, it should alter several aspects of the validation notice.

First, DCWP must further explain the dictate that the validation notice include "any and all information required by federal and state law,"[66] as well as an itemization of debt containing "the items required under federal or New York State law."[67] It is not clear what this means when applied to original creditors such as banks. Although it seems DCWP is referring to information required by the Fair Debt Collection Practices Act[68] and the New York Department of Financial Services' rules governing debt collection,[69] neither of those laws are applicable to original creditors.[70] It is unclear whether DCWP is incorporating the requirements of those laws into section 5-77(f)(1) by reference, such that banks must include this information in a validation notice, or if only those entities subject to the FDCPA and Department of Financial Services' rules must include the information they require in the validation notice. DCWP should therefore clarify

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63 *See* 15 U.S.C. §§ 1681c, 1681b(g); 12 C.F.R. § 1022.30. In the final days of the Biden Administration, the Consumer Financial Protection Bureau issued a rule that generally prohibits consumer-reporting agencies from including medical debt in consumer credit reports and prohibits creditors from considering medical information in credit eligibility determinations. *See* Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information, 90 Fed. Reg. 3276, 3277-3278 (Jan. 14, 2025). Industry groups sued to block the rule, Complaint, *Cornerstone Credit Union League*, 4:25-cv-16, ECF No. 1 (E.D. Tex. Jan. 7, 2025), and the CFPB's current leadership agrees that the rule is unlawful, Joint Motion to Approve Consent Judgment, *Cornerstone Credit Union League*, 4:25-cv-16, ECF No. 33 (E.D. Tex. April 30, 2025). The district court overseeing the litigation is currently considering whether to invalidate the rule. *See* Scheduling Order, *Cornerstone Credit Union League*, 4:25-cv-16, ECF No. 36 (E.D. Tex. May 9, 2025).

64 *See* 15 U.S.C. § 1681s-2(a)(1).

65 15 U.S.C. § 1681t(b)(1)(E), (F).

66 § 5-77(f)(1).

67 § 5-77(f)(1)(viii).

68 15 U.S.C. § 1692 *et seq.*

69 23 N.Y. C.R.R. § 1.1 *et seq*.

70 *See* 15 U.S.C. § 1692a(6)(A); 23 N.Y. C.R.R. § 1.1(e)(1).

what the obligation to include information "required under federal or state law" means when applied to banks and other original creditors.

Second, the requirement that the validation notice include "the name of the natural person for the consumer to contact" is not feasible for banks given the existing structure of their customer-service systems.[71] Banks may field thousands of customer-service calls daily across a wide range of product lines. It is simply not feasible to assign a specific individual contact point for each consumer account given the large number of accounts, the diverse lines of products, and employee turnover. Indeed, this is a recipe for long wait times and poor customer service, as multiple consumers may call the same person and inevitably be put on hold. In addition, many banks utilize automated-voice systems to initially route calls to the appropriate department and ensure that, when the consumer reaches a live customer-service representative, the representative has all the necessary information to assist the consumer. As written, it is unclear whether section 5-77(f)(1)(ii) prohibits the use of these systems. At a minimum, banks will likely have to modify these systems substantially to comply with the rule, which will be a costly, burdensome endeavor with no real benefit to consumers. The likely result will be more charge-offs and more customers being placed with third-party debt collectors when frustrated customers abandon attempts to negotiate repayment plans and settlements with their creditors. DCWP should thus exempt banks from this requirement.

The natural-person requirement is also problematic because it poses serious privacy concerns for bank employees. Many banks have a policy of not disclosing personal information of their employees to consumers. The Proposed Amendments, however, would contravene these policies and require banks to provide the name and contact information of their employees of thousands of consumers. DCWP should therefore eliminate the requirement that the validation notice include the natural person whom the consumer can contact.

B. Verification of Debt – Section 5-77(f)(7)

DCWP should also alter the contents of the verification of debt. As it currently stands, section 5-77(f)(7)(v)(B) requires the verification of debt to include "records reflecting the amount and date of any prior settlement agreement reached in connection with the debt." But requiring banks to include such information is irrelevant and distracts from the verification's purpose—ensuring the bank has sufficient information to collect on the debt and the consumer has sufficient information to engage with the debt collector by confirming the current amount owed. It may also confuse consumers by creating the mistaken impression that the debt is negotiable or the consumer is still eligible for an expired settlement. DCWP should therefore limit the required information in the verification of debt to active or successfully completed settlement agreements.

Relatedly, section 5-77(f)(7)(iv)'s new requirement that original creditors send a notice of unverified debt to consumers if the creditor is unable to verify the debt within 60 days will confuse consumers. A bank's inability to verify the debt within 60 days would likely be due to inadvertent oversight or the complexity of the account rather than an inability to obtain the necessary information. In other words, any delay in sending the verification notice will be temporary.

71 § 5-77(f)(1)(ii).

Sending a notice of unverified debt in this instance has no real purpose, as Section 5-77(f)(7)(ii) already prohibits debt collectors from attempting to collect on the debt until it sends the consumer a written verification of debt. Moreover, sections 5-77(f)(7)(iv) and 5-77(f)(8)(iii) allow original creditors to resume collection efforts upon sending a verification of debt even if a notice of unverified debt has already been sent to the consumer. Requiring banks to send consumers a notice of unverified debt in this situation will only confuse consumers as to the status of their account. DCWP should therefore eliminate the requirement that original creditors, including banks, send consumers a notice of unverified debt if the creditor is unable to verify the debt within 60 days.

C. Expanded Itemization of Debt – Section 5-77(f)(11)

Section 5-77(f)(11) of the Proposed Amendments contains a loophole that seemingly allows consumers to continually delay collection efforts. This section requires debt collectors to treat a consumer's request for an expanded itemization of debt as "an obligation to provide verification of the debt in accordance with" section 5-77(f)(7). Section 5-77(f)(7)(ii), in turn, requires a debt collector to cease collection activity until five business days after sending a verification of debt. And while section 5-77(f)(7) provides that a debt collector need only send a written verification of debt in response to a consumer's first dispute under section 5-77(f)(6), it contains no similar proviso regarding section 5-77(f)(11). Consumers could thus continually and indefinitely delay collection activities by repeatedly requesting an expanded itemization of debt under section 5-77(f)(11). DCWP should close this loophole by making clear that a debt collector need only provide a written expanded itemization of debt in response to the consumer's first request.

This provision is also likely preempted by the National Bank Act. As discussed above, the National Bank Act preempts state law that "prevents or significantly interferes with the exercise by the national bank of its powers."[72] Collecting on their own debts qualifies as one of national banks' incidental powers.[73] Section 5-77(f)(11) of the Proposed Amendments "prevents" national banks from exercising that power, as it effectively prohibits banks from collecting on their own debts.

VII. Links to DCWP's website – Sections 5-77(f)(1)(iv) and 5-77(h)(1)

Several provisions of the Proposed Amendments require debt collectors to include a link to DCWP's website in their communications with consumers or on their own website, if such website is "accessible to the public."[74] This requirement contravenes the security policies of several large banks, which generally prohibit links to external websites. That prohibition is necessary to ensure the safety and security of banks' systems and consumer's information, as banks cannot ensure that third-party websites remain secure. As the recent data breach at the OCC

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72 *Cantero*, 602 U.S. at 209 (citation omitted); 12 U.S.C. § 25b(b)(1)(B).

73 *Miller,* 223 U.S. at 510 (National banks "may do those acts and occupy those relations which are usual or necessary in making collections of commercial paper and other evidences of debt."); *First Nat'l Bank*, 92 U.S. at 127 (The National Bank Act's grant of incidental powers "necessarily implies the right of a bank" to "become the creditor of others" and ensure that "debts due to it" are "collected or secured.").

74 *See* §§ 5-77(f)(1)(vi), 5-77(h)(2).

demonstrates, this concern applies equally to both private and government-run websites.[75] DCWP should thus eliminate the requirements that debt collectors include links to DCWP's website in their communications to consumers.

VIII. Time-Barred Debts – Section 5-77(i)

The provision governing time-barred debt is problematic for several reasons. First, many large banks who operate across multiple jurisdictions apply the shortest statute of limitations to which they are subject in every jurisdiction. It is unclear whether this qualifies as "reasonable procedures for determining the statute of limitations applicable to a debt."[76] Second, the time-barred disclosure, which the debt collector must provide in each communication with the consumer, may give the mistaken impression that there are no consequences for default. The disclosure explains that a debt collector may not sue a consumer after the statute of limitations has expired.[77] But information regarding a defaulted debt will remain on the consumer's credit report for seven years regardless of whether the consumer is sued in connection with the debt.[78] And as currently written, it seems that banks cannot inform consumers of this fact until at least fourteen days after they have sent the consumer the time-barred disclosure. The end result may be that consumers are unwilling to engage with banks regarding time-barred debt and thus suffer negative credit consequences. To avoid these consequences, DCWP would ideally exempt banks from the requirements regarding time-barred debts. At a minimum, it should allow banks to inform consumers of the negative credit consequences of time-barred debt in the time-barred disclosure.

IX. Record-retention requirements – Section 5-77(k)

DCWP must clarify several aspects of the record-retention requirement. First, DCWP must clarify how to calculate the three-year retention period for revolving credit accounts, such as credit cards. As it stands, it is unclear when exactly banks' duty to retain records ceases for such accounts. The following hypothetical demonstrates the difficulty: a consumer falls behind on their credit-card payments in 2026, enters into a voluntary remediation plan with a bank later that year, and successfully completes the plan in 2027, becoming current on their account at that time. Does the banks' duty to retain records "for three years after the debt collector's last collection activity on the debt" cease, *i.e.*, in 2030? Or must the bank retain the records for as long as the consumer maintains their credit-card account with the bank?

Second, it is unclear how exactly this provision applies if a consumer moves to or from New York City while the bank is engaged in debt-collection procedures. DCWP should make clear that a debt collector need not begin maintaining records until the consumer informs the debt

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75 *See OCC Notifies Congress of Incident Involving Email System,* OFFICE OF COMPTROLLER OF THE CURRENCY (April 8, 2025) https://www.occ.gov/news-issuances/news-releases/2025/nr-occ-2025-30.html.

76 § 5-77(i)(1).

77 *See* § 5-77(i)(2).

78 *See* 15 U.S.C. § 1681c(a)(4).

collector that they have established a New York City residence. Similarly, it should make clear that the duty to retain records ceases if a consumer moves from New York City.

X. Effective Date

Currently, the Proposed Amendments are scheduled to take effect on October 1, 2025. The Proposed Amendments, however, are a sea change for the banking industry. Developing the systems necessary to comply with the Proposed Amendments will be a lengthy, resource-intensive process for banks. To ensure adequate time for industry compliance, DCWP should extend the effective date to no earlier than eighteen months after the Proposed Amendments are finalized and adopted.

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In summary, while we share DCWP's commitment to protect consumers from abusive debt-collection practices, we believe that the Proposed Amendments do not further that goal insofar as they apply to banks. The Proposed Amendments are a significant and unwarranted departure from DCWP's prior practice, as well as established state and federal regulatory frameworks. Adoption of the Proposed Amendments will cause significant harm to New York City's banking sector and consumers by undermining existing consumer-banking relationships without providing meaningful new consumer protections. We urge DCWP to withdraw or further modify the Proposed Amendments to exempt banks from the rules' scope or, at a minimum, to adopt our suggested changes to the Proposed Amendments' substantive provisions. We thank you for the opportunity to provide our views and would welcome the chance to discuss these concerns further.

Respectfully Submitted,

The New York Bankers Association