

# New York Adopts Drastic New Regulations on Debt Collectors

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Earlier this month, and on the heels of the New York Court System's adoption of new rules requiring parties seeking default judgments to provide a clear chain of title for the debt being collected on, the New York State Department of Financial Services announced the adoption of additional regulations that place strict new requirements on third party debt collectors and debt buyers.

These new regulations place onerous new disclosure obligations on debt collectors that go above and beyond what is already required by the Fair Debt Collection Practices Act (FDCPA). These sweeping new changes, described in more detail below, have the ability to change the landscape of debt collection in New York and may make certain debt almost impossible to collect. These new rules will force debt collectors who collect from New York consumers to overhaul how they collect in New York and, more importantly, how they buy debt portfolios that include debt of New York consumers.

These regulations take effect March 3, 2015, with the exception of two regulations that require documentation of disclosure requirements and validation of debts, which take effect August 30, 2015.

## **Account Disclosure Requirements**

Under these new rules, third party debt collectors must, within five (5) days after the initial communication with a consumer provide the consumer with a written disclosure that informs the consumer that the debt collector is limited by the FDCPA, provide a list of income sources exempt from a judgment (i.e. SSI, social security, disability benefits, pension benefits), and, in the instance of charged-off debt, provide the consumer with the name of the original creditor and an itemized accounting of the debt.

## **Validating the Underlying Debt**

These new rules also formalize procedures by which a debt collector must be able to substantiate a debt. Under these new regulations, if a consumer disputes, whether orally or in writing, the validity of a charged-off debt, the debt collector must inform the consumer that the consumer may request substantiation of the debt in writing. In the event the consumer does requests "substantiation" of the debt, the debt collector must provide, among other things, (1) the signed contract or signed application that created the debt; (2) the charge-off account statement; and (3) a statement describing the complete chain of title from the original creditor to the present creditor, including the date of each assignment, sale, and transfer.

## **Disclosure of Statute of Limitations**

Finally, and perhaps most significantly, debt collectors now “must maintain reasonable procedures for determining the statute of limitations applicable to a debt it is collecting and whether such statute of limitations has expired.” Generally, the statute of limitations in New York will be six (6) years from the time the consumer defaults on the underlying debt.

Moreover, if the debt collector has reason to believe that the statute of limitations for the debt has expired, the debt collector must inform the debtor that, among other things, (1) the debt collector believes the statute of limitations has expired; (2) suing on a debt where the statute of limitations has expired violates the FDCPA; and (3) if the consumer makes a payment on a debt where the statute of limitations has expired or otherwise promises to pay such debt, the statute of limitations may restart.

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