



April 28, 2010

Ms. Marla Tepper  
General Counsel  
New York City Department of Consumer Affairs  
42 Broadway  
New York, NY 10004

**VIA E-MAIL**

**RE: Industry Concerns Regarding Final Rules Implementing Local Law No. 15**

Dear Ms. Tepper:

Thank you for taking the time to meet with representatives of ACA International and DBA International via conference call on April 26, 2010 with respect to the effectiveness and implementation of the Final Rules implementing provisions of Local Law No. 15. We hope to continue a working dialogue with the New York City Department of Consumer Affairs (“Department”) to ensure debt collection agencies have as much clarity as possible in complying with New York City laws and regulations.

As discussed on the call, third-party debt collection agencies, debt collection law firms, and debt buyers are struggling to ensure compliance with the April 24, 2010 effective date provided for by the Final Rules. Failure to meet the effective date has not been due to ignorance of the requirements – our associations continue to field questions from our members who are undertaking a good faith effort to satisfy the significant and extensive requirements provided by the Final Rules.

A number of circumstances have made it extremely difficult for our members to meet the April 24, 2010 compliance deadline:

1. Debt collection agencies will need a sufficient amount of time to properly undertake a review of their collection letters to ensure compliance with special text requirements provided by the Final Rules.

2. Many of the record maintenance requirements under § 2-193 require agencies to either overhaul, modify, or otherwise replace current data storage and retention systems in order to properly search for information as required.
3. Agencies that do not record calls need to undertake a bidding effort as well as an implementation, training, and monitoring process to ensure a call recording system is working properly.

The above circumstances do not suggest an inadvertent attempt by debt collection agencies to delay complying with the Final Rules, but underscore practical and unequivocal challenges for agencies to comply with the Final Rules in good faith.

Although we understand the effective date for the Final Rules has already passed, we respectfully request the Department postpone formally enforcing the Final Rules to allow debt collection agencies sufficient time to comply with the Final Rules. We strongly encourage the Department to postpone enforcement of the Rules until July 1, 2010, approximately 60 days from the effective date of the Final Rules.

However, understanding certain requirements under the Final Rules dictate immediate compliance, we would request the Department postpone enforcement of § 2-191 (statute of limitations disclosure) and § 2-193 (record maintenance requirements). As described above, these two provisions require the most time to comply with.

In addition, our debt collection agency members continue to struggle complying with certain provisions of both Local Law No. 15 as well as the Final Rules. We would like to formally request the Department provide a written interpretation as to the following issues as we believe it is in the best interest of both consumers as well as the debt collection and debt buying industry to have clarity under the law.

1. Section 20-493.1 requires a debt collection agency provide in any permitted communication with the consumer certain information.
  - a. Is a communication for purposes of Local Law No. 15 defined under 15 U.S.C. § 1692a(2) of the FDCPA? (“the conveying of information regarding a debt directly or indirectly to any person through any medium.”)
  - b. Does this include any voicemail message, e-mail, or text message?
  - c. We respectfully requests the Department clarify the definition of a communication due to recent court decisions requiring debt collectors to provide meaningful disclosure of their identity while being subject to liability under the Fair Debt Collection Practices Act (FDCPA) for disclosing information about a debt to third parties.
2. Section 20-493.1(a)(ii) requires a debt collection agency provide in any permitted communication with the consumer the name of the agency.
  - a. Is the agency permitted to use a d/b/a or other business name registered with the New York Secretary of State or with DCA as part of the agency’s license application?

3. Section 20-493.1(a)(iv) requires a debt collection agency provide in any permitted communication with the consumer the name of the person to call back.
  - a. Given the particular language of this provision, we infer this provision only applies to oral communications initiated by an individual debt collector to a consumer. Is providing the name of a person to call back limited to situations in which the consumer has made an initial oral communication with a collection agency employee?
  - b. If not, is the first written communication (the initial notice) required to give the name of a person to call back given accounts are not typically assigned to an individual debt collector at the time of sending an initial notice?
  - c. Does this provision permit the use of an alias unless otherwise prohibited by law?
  
4. Section 20-493.1(a)(v) requires a debt collection agency provide in any permitted communication with the consumer the amount of the debt at the time of the communication.
  - a. While debt collection agencies usually provide the amount of the debt owed in a collection notice to the consumer, we are concerned debt collection agencies complying with this requirement are substantially exposed to potential violation of FDCPA's prohibition on third-party disclosure. Given the particular language of this provision, we believe this provision requires a debt collection agency to provide accurate information concerning the amount of the debt when actually and directly speaking with the consumer. Otherwise, there is concern the debt collection agency would be violating the FDCPA's prohibition on third-party disclosure. Does the Department agree with this interpretation?
  - b. The amount of the debt often changes because of accruing interest and fees as required under the agreement creating the original financial obligation. What level of accuracy is required of debt collection agencies in complying with this provision given the total amount of debt is often fluctuating?
  - c. Moreover, certain debt collection agencies do not accrue interest on a principal obligation until commencing litigation to enforce the debt. We requests DCA provide clarification on what "amount of debt" must be provided to the consumer at the time of the communication.
  
5. Section 2-191 of the Final Rules requires a debt collection agency to record complete conversations with all consumers or with a randomly selected sample along with contemporaneous notes. We request the Department confirm the call recording requirement only applies to calls made to consumers located in New York City.

We appreciate the opportunity and look forward to working with the DCA to discuss these questions and concerns in the immediate future.

Barbara Sinsley can be contacted at (813) 500-3636 or by e-mail at [bsinsley@bns-law.com](mailto:bsinsley@bns-law.com).

Valerie Hayes can be contacted at (952) 928-8000, ext. 103 or by e-mail at [hayes@acainternational.org](mailto:hayes@acainternational.org).

Thank you for your attention to this matter.

Yours truly,

DBA International

A handwritten signature in black ink, appearing to be 'BS' with a long horizontal line extending to the right.

Barbara A. Sinsley  
General Counsel

ACA International

A handwritten signature in black ink, appearing to be 'Valerie Hayes' in a cursive style.

Valerie Hayes  
General Counsel