consumer relations consortium
connect | collaborate | advance

December 2, 2022
Re: DWCP Proposed Amendments to Rules Relating to Debt Collectors

To: Department of Consumer and Worker Protection
Via email: Rulecomments@dca.nyc.gov

Comment to Proposed Amendment to Rules relating to Debt Collection; Section 5-77 of Part 6 of Subchapter A of Chapter 5 of Title 6 of the Rules of the City of New York

The Consumer Relations Consortium (CRC) is an organization comprised of more than 60 national companies representing creditors, data and technology providers, and compliance-oriented debt collectors that are larger market participants. Established in 2013, CRC is dedicated to a consumer-centric shift in the debt collection paradigm. It engages with all stakeholders—including consumer advocates, federal and state regulators, academic and industry thought leaders, creditors, and debt collectors—and challenges them to move beyond talking points. The CRC's focus is on fashioning real-world solutions that seek to improve the consumer's experience during debt collection. CRC's collaborative and candid approach is unique in the market.

CRC members exert substantial positive impact in the consumer debt space, servicing the largest U.S. financial institutions and consumer lenders, major healthcare organizations, telecom providers, government entities, hospitality, utilities, and other creditors. CRC members engage in millions of compliant and consumer-centric interactions every month at all stages of the revenue cycle. Our members subscribe to the following core principle:

"Collect the Right Debt, from the Right Person, in the Right Way."

We appreciate the opportunity to respond to the Notice of Public Hearing and Opportunity to Comment on Proposed Rules dated October 13, 2022. As explained in the enclosed comment, the CRC is concerned that, though well-intentioned, the DWCP's proposed rule regarding text messages will have multiple unintended negative consequences that harm consumers, particularly those who are most vulnerable (e.g., the disabled). We believe the DWCP can update its proposal to avoid these unintended consequences.

Sincerely,

Missy Meggison

Missy Meggison
Executive Director, Consumer Relations Consortium

Comment to Notice of Proposed Rules

Direct consent ignores a consumer's previously expressed choice to receive communications about their account through text messages

The proposed amendments to § 5-77(b)(5)(i)(A) of Part 6 of Subchapter A of Chapter 5 of Title 6 of the Rules of the City of New York prohibits debt collectors from sending consumers text messages without specific consent from the consumer directly to the debt collector. This prohibition ignores the consumer's choice. The consumer told the creditor how they prefer to communicate. Policies that block these communications take that choice away from consumers, limiting their options. Direct consent rules burden consumers by forcing them to endure unwanted calls and letters unless they contact the debt collector to opt-in to text messages: a process that would repeat with each new collector. It's redundant, inconvenient, and frustrating. It's all burden to the consumer, with no benefit. Under Regulation F, a consumer who changes their mind about receiving text messages may opt out at any time and debt collectors are required to honor that choice.

Text messages are more convenient and private than phone calls and letters

Modern consumers (especially younger generations) expect self-service and "on-demand" communication options. They also expect a seamless customer service experience no matter who handles their account.

Phone calls are noisy and disruptive. The timing is unpredictable because it is based on the collector's convenience, not the consumer's. If answered, calls require the consumer to shift their attention immediately. Letters are bad for the environment and easily lost or forgotten. Letters can also be embarrassing for anyone who lives with another person because people will notice letters piling up.

Conversely, text messages are quiet, private, and environmentally friendly. Text messages respect the consumer's time by allowing them to decide when, where, and how they want to communicate. They are also an easy-to-find record of back-and-forth communications, making it easier for consumers to review and keep track of information. (The CFPB made similar arguments in the Reg F section-by-section analysis).

Restrictions on text messages limit accessibility for the most vulnerable consumers, denying them equal treatment

Restricting the use of text messages leads to unequal treatment for at-risk groups who heavily rely on texts to communicate. These groups include the following:

- Deaf consumers. Research indicates the deaf community increasingly relies on electronic communication, including text messages, because they are more convenient than TTY/VOC technology and put the consumer on even ground with others (e.g., electronic communications do not reveal their limitations). Many deaf consumers have data-only plans that only allow text messages and other data access, not telephone calls.[1] Requiring these consumers to opt-in to receive text messages could lead to them being unable to access much-needed information until they can figure out how to opt-in, a process they may have already gone through with the original creditor.

- Blind consumers. Like most consumers, they're unlikely to answer calls from unknown numbers and letters would likely need to be read to them by a third party, denying them equal access to privacy. Text messages allow them to use an electronic reader at their convenience and where they believe it is appropriate to hear the message.

- Neurodiverse consumers (e.g., autism spectrum, ADHD, developmental disorders, people struggling with anxiety or mental illness). These consumers may be particularly sensitive to noise or social interactions, including telephone calls. Many also suffer from cognitive impairments related to processing information, memory formation and recall, and executive functions needed to plan and prioritize tasks. In some instances, telephone calls and lengthy letters may also cause so much anxiety or overwhelm a consumer to the point that they choose not to respond. Research indicates that members of this community strongly prefer communicating via text message because it is a short-written communication that the consumer can respond to on their own timetable and they can easily find and refer back to it if they need a reminder.[2]

- Persistently impoverished consumers (those with unreliable access to a private phone or unstable living arrangements). These consumers may

[1] *See* https://www.cbsnews.com/news/for-deaf-texting-offers-new-portal-to-world/

[2] *See* https://journals.sagepub.com/doi/full/10.1177/13623613211014995

miss calls or letters but they can access text messages sent through certain platforms (such as WhatsApp) from a borrowed device or a public library.

Rules that require consumers to take a step they have already taken with the original creditor, such as opting into text messaging, are an inconvenience to consumers and make it harder for them to communicate. Putting additional hurdles in a consumer's path to communicating with a debt collector puts them at an increased risk of negative credit reporting and litigation. Most importantly, it disparately impacts the most vulnerable consumers (including those who are disabled) by limiting accessibility and denying them equal treatment.

The solution is simple: allowing debt collectors to respect the consumer's original choice conveyed to the original creditor regarding text messaging will create less annoyance to consumers and avoid unintentional harm. Regulation F requires debt collectors to include simple opt-out instructions in all electronic communications and to honor a consumer's request to opt-out. Therefore, if a consumer changes their mind about their preferred method of contact, all they have to do is tell the debt collector to stop. For consumers, opting out is easier than opting in.

The CRC respectfully requests DWCP consider the above as it reviews its proposed amendments to the debt collection rules.