



Frequently Asked Questions:

New Rules for Debt Collectors Regarding Language Access

On June 27, 2020, new rules took effect that, among other things, require debt collectors to:

- request and record the language preference of each consumer from whom they collect; and
- inform each consumer if they offer any services in a language other than English.

Because of the COVID-19 crisis, the Department of Consumer Affairs (DCA) has extended the enforcement grace period to October 1, 2020. DCA will not issue any new rule violations before October 1, 2020.

DCA created these frequently asked questions to help debt collectors comply with the new rules. DCA intends to modify the new rules to reflect the answers and interpretations in this document.

Who is required to maintain a record indicating the language preference of each consumer under 6 RCNY § 2-193(b)(5) and an annual report of certain agency information under 6 RCNY § 2-193(c)(3)?

Anyone required to obtain a Debt Collection Agency license must comply with these requirements. See New York City Administrative Code (NYC Admin. Code) § 20-489 for the definition of debt collection agencies for licensing purposes.

What is a debt collection agency required to do with the annual report it prepares to comply with 6 RCNY § 2-193(c)(3)?

As of September 1, 2020, a debt collection agency must maintain the annual report in its records and produce it to DCA upon request.

Where can I find the annual report form referenced in 6 RCNY § 2-193(c)(3)?

The annual report form is available at nyc.gov/BusinessToolbox.

Are there instances when a debt collector may infer the language preference of a consumer?

No. Under 6 RCNY § 5-77(e)(9), a debt collector may not attempt to collect a debt without requesting and recording a consumer's language preference.

Also, under 6 RCNY § 2-193 (b)(5), a debt collection agency must maintain a record of the language preference for each consumer from whom it attempts to collect debt.

The only exception is when a debt collector is not aware of the consumer's preference despite reasonable attempts to obtain it.

Is a debt collector required to request a consumer's language preference in each communication with the consumer?

No. Debt collectors must make reasonable attempts to obtain and record a consumer's language preference in the collection process.

Once a debt collector requests and records a consumer's language preference on a consumer's account, the collector does not have to request this information in later communications on the same account.

If a consumer declines to provide a language preference, the collector may record the consumer's non-response, which will satisfy its obligation.

Do the new rules apply to creditors that are attempting to collect debts they own and that are not in default?

Yes, no, and it depends. See below for an explanation.

Yes (rule applies):

- Creditors must comply with 6 RCNY § 5-77(d)(18), which prohibits “the false, inaccurate, or partial translation of any communication when the debt collector provides translation services.”

No (rule does not apply):

- 6 RCNY § 5-77(f)(2)(vii)-(viii) does not apply to creditors at any stage of the debt collection process.

It depends (rules may apply):

- 6 RCNY § 2-193(b)(5) applies if creditors are also licensed debt collection agencies.
- 6 RCNY § 5-77(d)(19) and (e)(9) apply only when debt collection procedures have begun.
- 6 RCNY § 5-77(h) applies only if creditors maintain a website accessible to the public that relates specifically to creditors' collection of debts after debt collection procedures have begun.

Under 6 RCNY § 5-77(e)(9), must a debt collector request the language preference of a consumer before providing the “Mini-Miranda” notice required by 6 RCNY § 5-77(d)(15) or 15 U.S.C. § 1692e(11)?

No. Before requesting language preference, debt collectors may first:

- confirm the identity of the consumer with whom they are speaking; and
- provide any legally required notices.

If collectors use language access services that enable them to communicate in the consumer's preferred language, the collector must offer those services and repeat all notices in that language.

What does the phrase “language access services” mean in 6 RCNY §§ 5-77(f)(2)(vii) and (h)(1)?

“Language access services” are any service available in a language other than English that a debt collector provides to consumers. Language access services include, but are not limited to, the use of:

- collection letters in a language other than English;
- customer service representatives who collect or attempt to collect debt in languages other than English;
- a translation service for the collector's website; and
- a service that interprets phone conversations in real time.

Do the new rules require debt collectors to provide any language access services to consumers?

No, the new rules do not require debt collectors to provide any language access services to consumers. However, under 6 RCNY §§ 5-77(f)(2)(vii), (h)(1), debt collectors must inform consumers of any language access services they offer, including:

- the option for consumers to speak with a multilingual company representative and to receive collection letters in their preferred language; and
- the language(s) in which the debt collector provides language access services.

If a debt collector states in an initial validation notice or on its website that it provides specific language access services, the debt collector must actually provide those services upon request to a consumer.

If a debt collector does not provide any language access services to consumers, does it need to include a statement informing consumers of that on its initial validation notice and on its publicly accessible website?

Yes. A debt collector that does not offer any language access services must include a statement to that effect in its initial validation notice and on its publicly accessible website.

If a debt collector provides the opportunity for a consumer to speak with a customer service representative in the consumer's preferred language, does the collector also have to provide written collection letters in the consumer's preferred language?

No. A debt collector may provide certain—not all—language access services, so long as the collector clearly and conspicuously notifies consumers of the specific services it provides, and in which languages, on:

- the collector's validation notice (per 6 RCNY § 5-77(f)(2)(vii)); and
- any website maintained by the collector and accessible to the public that relates specifically to the collection of debts after debt collection procedures have begun (per 6 RCNY § 5-77(h)(1)).

A debt collector may provide a service in only a certain language(s) even if it provides its other services in other/more languages.

Is a debt collector that performs numerous business activities required to disclose the two statements set forth in 6 RCNY § 5-77(h) on all of its publicly accessible websites?

No. A debt collector must include the two required statements only on its publicly accessible websites that relate specifically to the collection of debts after debt collection procedures have begun. The statements must be clear and conspicuous.

Do the new rules extend to litigation activities that only a licensed attorney can perform?

No. The new rules do not apply to litigation activities that only a licensed attorney can perform, such as:

- filing a lawsuit; or
- requesting an income execution.