



**National  
Consumer Law  
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*Fighting Together  
for Economic Justice*

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Department of Licensing  
Washington State Board for Architects  
PO Box 9020  
Olympia, WA 98507-9020  
jkonnersma@dol.wa.gov  
VIA E-mail

**RE: Proposed amendments to WAC 308-29-010 and new WAC 308-29-085**

Dear Julie Konnersman:

My name is April Kuehnhoff, and I am a Staff Attorney at the National Consumer Law Center (“NCLC”),<sup>1</sup> where my work focuses on state and local advocacy related to fair debt collection. On behalf of NCLC’s low-income clients, I submit these comments in response to the proposal to make permanent certain emergency provisions allowing debt collection employees to work remotely.

While there is no need to authorize remote collection outside of the current pandemic, any authorization for remote work - even during the pandemic – should adopt adequate safeguards. As discussed further below, the Department of Licensing should:

- Limit the scope of any rulemaking to consumers located in Washington state;
- Add a one-year sunset provision;
- Require careful supervision of remote workers;
- Require in-person training for new employees;
- Ensure robust data security protocols;
- Require collection agencies to inspect and authorize each remote work location; and
- Clarify liability by collection agencies.

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<sup>1</sup> The National Consumer Law Center (“NCLC”) is a national research and advocacy organization focusing on the legal needs of consumers, especially low income and elderly consumers. For over 51 years NCLC has been the consumer law resource center to which legal services and private lawyers, state and federal consumer protection officials, public policy makers, consumer and business reporters, and consumer and low-income community organizations across the nation have turned for legal answers, policy analysis, and technical and legal support. Fair debt collection has been a major focus of the work of NCLC, which publishes *Fair Debt Collection* (9th ed. 2018), a comprehensive treatise to assist attorneys and debt collectors to comply with the law, and *Collection Actions* (5th ed. 2020), detailing defenses to consumer debts. These comments are filed.

## **Limit the Scope of Any Rulemaking to Consumers Located in Washington State**

During the pandemic, some states have enacted temporary provisions to allow debt collectors to work remotely.<sup>2</sup> However, Washington state appears to be the first state to consider permanently amending its rules to allow debt collectors to work remotely.

The proposed rule would allow debt collection employees working remotely in Washington to collect from consumers located anywhere in the country. However, other states have not had time to assess the impact of remote work authorization on consumers or consider the need for additional consumer protections. To give other states more time to assess the issue, the Department of Licensing should limit any provision that they ultimately adopt to allowing remote collection employees to collect from consumers located in Washington. Limiting impacted consumers to residents of Washington will also make it more likely for Washington regulators to hear about any problems related to debt collectors working remotely.

## **Add a One-Year Sunset Provision**

The Department of Licensing's Proposed Rule Making CR-102 Form lists as the reasons for supporting the proposed rule:

As per the Governor's proclamations to keep Washington residents safe and healthy during the Covid-19 pandemic; consistent with other business and professions in this State that are able to perform work from home, it was identified that rule language was needed to allow the option for collection agency licensees and their employees to work remotely. It is necessary to offer licensees the option to remotely work to support the return of commerce in all business sectors.

While this may be a reason for a temporary rulemaking, responding to temporary conditions created by the pandemic should not be the basis for a permanent rulemaking.

The motivation by the debt collection industry to seek permanent approval of remote work models seems to be largely driven by its desire to reduce costs and maximize profits.<sup>3</sup> However, the Department of Licensing has a broader duty to ensure that its licensing scheme protects consumers. As such, it should not make permanent rules based on a temporary pandemic that will have long-term consumer protection implications.

If the current temporary provisions can no longer be extended, a one-year sunset provision should be added to the proposed rule to reflect that fact that the current rule is responding to a temporary problem created by the pandemic and allow for further consideration of the impact of debt collectors working remotely on consumer protection.

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<sup>2</sup> National Consumer Law Center, Can Debt Collectors Work from Home?, *available at* <http://bit.ly/coll-work-home>.

<sup>3</sup> TransUnion, A Year of Pivots, Challenges and Opportunities: The Collections Industry in 2020, p. 17 (Dec. 2020), *available at* <https://solutions.transunion.com/collections-annual-report-2020> (Stating that, “[a] more common way to reduce costs in the future may be to continue some degree of remote work as a new way of doing business,” and quoting a third-party collection industry participant as saying “‘If you can get the remote model approved, why pay for office space and all the expenses that go with it? [It] doesn’t make sense anymore.’”).

## **Require Close Supervision for Remote Workers**

The collection industry is “advocating for the permanent remote work rule to focus on issues related only to remote work and to keep requirements such as call recording and monitoring specific to performing collection activities separate.”<sup>4</sup> We strongly disagree.

As one collection industry article correctly pointed out, supervising remote employees is difficult:

It is more challenging to manage quality assurance, and to meet the differing requirements of each state when workers are remote. Your quality assurance person is unable to wander the floor and observe, so technology becomes more important. You still must be listening in, so make sure your call recording system and process is adequate.<sup>5</sup>

Technology to allow for remote supervision, such as call recording and speech analytics, already exists.<sup>6</sup> Debt collectors that want to take advantage of remote work options should be required to use it.

## **Require In-Person Training for New Employees**

To protect consumers from abusive or harassing collection practices, it is critical that the Department of Licensing require new debt collectors to provide in-person training for new employees and also to require such employees to work on site after their training to facilitate additional supervision, training and mentoring for new employees.

## **Ensure Robust Data Security Protocols**

Debt collectors handle a variety of sensitive financial and personal information. Ensuring the security of this data is crucial to the success of any remote work scheme. Collection agencies must ensure the secure transmission of data, prohibit storage of data on computers used by remote workers, require strong passwords, time-out access for remote employees who are idle, and prohibit local printing, screen capture, or other activities by remote employees to record or share information. The Department of Licensing should require that the collection agency set up, maintain, and inspect the remote work location of each employee.

## **Require Collection Agencies to Inspect and Authorize Each Remote Work Location**

Remote employees should only be authorized to work from a single location. That location should be inspected and approved by the debt collection agency, which should ensure that the workspace is private and verify the security of the connection as discussed above. Private workspaces should have a door that shuts, be separate from other living or working space, have soundproofing to prevent conversations from being overheard, and have separate telephone service that is not accessible to others who are not collection agency employees.

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<sup>4</sup> ACA International, Washington State Department of Licensing Sets Public Hearing on Remote Work Rule (Dec. 2, 2020), available at <https://www.acainternational.org/news/washington-state-department-of-licensing-remote-work-rule-collection-agencies-public-hearing>.

<sup>5</sup> ACA International, Increasing Collections with Changing Regulations – Panel Talk (Dec. 10, 2020), available at <https://www.acainternational.org/news/increasing-collections-with-changing-regulations-panel-talk-remote-work-communications-text-request-aca-international>.

<sup>6</sup> *Supra*, n.3 at 18.

### **Clarify Liability by Collection Agencies**

Whether the debt collector works from a remote location or on site, the Department of Licensing should clarify that the employee's location does not alter the collection agency's liability for violations of state or federal laws, including debt collection, data security, and privacy laws.

Thank you for your time and attention to these comments.

Sincerely,

April Kuehnhoff  
Staff Attorney