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New York State Department of Financial Services
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Commissioner

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42 Broadway
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Re: Bail Bond Regulation, Proposed Amendments to 11 NYCRR §§ 28, 33, & 66

Ms. Geisel:

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nyc.gov/consumers

The New York City Department of Consumer Affairs (“DCA”) appreciates the opportunity to comment on the proposed rules of the New York State Department of Financial Services (“DFS”) regarding proposed amendments to sections 28, 33, and 66 of title 11 of the New York Code of Rules and Regulations, which would regulate the bail bond industry (the “Proposed Regulations”).

As the largest municipal consumer protection agency in the country, DCA licenses more than 81,000 businesses in more than 50 industries and enforces key consumer protection, licensing, and workplace laws that apply to countless more. The bail bond industry holds tremendous power over criminal defendants jailed pending trial and those who are desperate to secure their release. Municipal agencies can play an important role in holding the industry accountable. This is especially true in New York City, where a significant portion of the bail agents registered with DFS transact business. DCA has the tools to police bail agents’ interactions with vulnerable consumers, including the ability to impose fines of up to \$5,000 per violation under the City Bail Law.

In May 2018, the New York City Council enacted sections 830 to 835 of title 20 of the Administrative Code of the City of New York, which is enforced by DCA and requires bail agents to make certain disclosures and maintain certain records (the “City Bail Law”). The City Bail Law will go into effect on February 4, 2019. DCA is working on the rules necessary to implement the City Bail Law, including drafting the required disclosures.

DCA submits this comment to suggest that the Proposed Regulations either provide a carve-out for New York City or be modified to complement the City Bail Law within New York City.

I. The Proposed Regulations Should Carve Out New York City Bail Agents or, At Least, Align Its Disclosure and Receipt Requirements with the City Bail Law.

Both the City Bail Law and the Proposed Regulations mandate disclosures in the form of documents and signs. The disclosures overlap in much of their content but are not identical.

The City Bail Law requires that consumers receive a “Consumer Bill of Rights” and a flier containing information specific to the bail agent. City Bail Law § 20-831(c). The Proposed Regulations require that bail agents give consumers a set of disclosures before executing the transaction (Proposed Regulation § 28.19(a)) and another set afterward (*id.* § 28.19(b)). These disclosures do not exactly match those required by the City Bail Law. For example, only the City Bail Law requires that consumers receive information about the bail bond process generally (§ 20-831(a)(1)), while only the Proposed Regulations require that bail agents disclose that the consumer is entitled to receive a receipt (§ 28.19(a)(2)).

Similarly, the receipt and signage requirements of the Proposed Regulations and the City Bail Law do not entirely align.

Figure 1 summarizes the relationship between the two laws.

Figure 1

	Proposed Regulation	City Bail Law
Handouts	§ 28.19 <ul style="list-style-type: none"> • Pre-transaction document • Post-transaction document 	§20-831(c) <ul style="list-style-type: none"> • Consumer Bill of Rights • Flier with bail agent's information
Signs	§ 28.6(c) <ul style="list-style-type: none"> • License of at least one agent • DFS information 	§§ 20-831(b), 20-832(a) <ul style="list-style-type: none"> • Contact and license information for all office's agents • DFS/DCA information, availability of Consumer Bill of Rights, compensation caps¹ (sign produced by DCA)
Receipts	§ 28.17 <ul style="list-style-type: none"> • Premium, collateral • Bail bond amount • Consumer's name • Bailee's name 	§ 20-831(d) <ul style="list-style-type: none"> • Premium, collateral • Bail bond amount • Name, license number, address, phone number of bail agent • When bail will be posted • Statement of any money paid to a third party by the consumer and the purpose of it.

DCA proposes several solutions in the alternative:

- a. DFS should carve out New York City bail agents from the Proposed Regulations' requirements specified in Figure 1. This is the optimal solution: DCA could use its localized expertise and knowledge to rigorously enforce against bail agents where much of New York State's bail bond activity is occurring, a goal of both the City Bail Law and the Proposed Regulations.

Moreover, if DFS wanted to review bail agents' violations for purposes of determining their general fitness under Insurance Law § 6802 (or for any other reason), DCA could provide the information to DFS upon request.

¹ Pursuant to Insurance Law § 6804.

DCA is also concerned that, absent a carve-out, consumers would receive four sets of disclosures and see four signs on the bail agent's walls, and the most crucial information might be diluted.

- b. If DFS declines to support a carve-out for New York City bail agents, it should modify Proposed Regulations §§ 28.6(c), 28.17, and 28.19 to state that they may be satisfied by compliance with corresponding City Bail Law provisions. See Figure 1.
- c. Alternatively, DFS could modify Proposed Regulations §§ 28.6(c), 28.17, and 28.19 to match precisely the corresponding City Bail Law provisions. See Figure 1.

II. The Proposed Regulations Should Exempt DCA-Created Forms from DFS Pre-Approval.

Regardless of which approach DFS takes to align the Proposed Regulations with the City Bail Law, it should amend Proposed Regulation § 28.13, which currently provides that bail agents “shall not use any contract or form that has not been approved by the superintendent[.]” See also id. § 66.1. As written, this language would require bail agents to seek approval from DFS for any forms created by DCA pursuant to the City Bail Law. Such a requirement would lead to unnecessary inefficiencies and undermine enforcement of the City Bail Law.

Accordingly, DCA asks that DFS exempt DCA forms from this requirement. It could do this by adding a clause to the existing, proposed language: “shall not use any contract or form that has not been approved by the superintendent **except for any form that has been promulgated or approved by a government agency with jurisdiction over any aspect of the bail agent’s business.**” (Additional language in bold.)

The exemption would allow bail agents to use forms that DCA promulgated under the City Bail Law without waiting for DFS approval, and it would reduce DFS’ administrative burden.

DCA looks forward to continued dialogue with DFS as it reviews comments from stakeholders and the public.

Sincerely,



Lorelei Salas
Commissioner