

**ILLINOIS DEPARTMENT OF FINANCIAL  
AND PROFESSIONAL REGULATION  
320 WEST WASHINGTON, 3RD FLOOR  
SPRINGFIELD, IL 62767-0001**

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**COMMENTS OF ACA INTERNATIONAL AND  
THE ILLINOIS COLLECTORS ASSOCIATION  
IN RESPONSE TO THE IDFPF'S REQUEST  
FOR COMMENT RE:**

**Proposed Amendments to Regulations Implementing the Illinois  
Collection Agency Act**

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**FILED September 13, 2010**

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## **INTRODUCTION**

The following comments are submitted on behalf of ACA International, *the Association of Credit and Collection Professionals* (ACA) and the Illinois Collectors Association (ICA) in response to the Illinois Department of Financial and Professional Regulation's (IDFPR) request for comments regarding proposed amendments (Proposed Rules) to regulations implementing the Illinois Collection Agency Act (68 Ill. Adm. Code 1210; 225 ILCS 425).

ACA and ICA respectfully submit the following comments in an effort to highlight changes we support, and also comment on those provisions of concern to our membership and solutions to resolve potential workability issues for the industry. In particular, these comments are offered with respect to the IDFPR's proposal to incorporate by reference ACA International's Code of Ethics and Code of Operations, to define collection agency activity when communicating with consumers, and to restrict the maximum collection fee that may be collected from a consumer by a collection agency.

### **I. Statement on ACA**

ACA International is the association of credit, collection, and debt purchasing professionals who provide a wide variety of accounts receivable management services. Founded in 1939 and headquartered in Minneapolis, Minnesota, ACA represents approximately 5,000 third party collection agency members, asset buyers, attorneys, credit grantors, and vendor affiliates. ACA members include sole proprietorships, partnerships, and corporations ranging from small businesses to firms employing thousands of workers.

ACA helps its members serve their communities and meet the challenges created by changing markets through leadership, education, and service. ACA members comply with all applicable federal and state laws and regulations regarding debt collection as well as ethical

standards and guidelines established by ACA. In addition to the regulatory and enforcement powers of the DCA, ACA members are regulated by the Federal Trade Commission under the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. §§ 1692 – 1692o, the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681 – 1681x, and other state and federal laws.

In addition to complying with federal and state law specifically governing collection practices, third-party debt collectors also must comply with federal and state data security and privacy laws and must also meet security and privacy thresholds as dictated by the collectors’ clients, such as establishing and maintaining certain safeguards at an office location that accepts forms of payment from consumers.

## **II. Statement on ICA**

The Illinois Collectors Association is an independently incorporated organization that concurrently serves as an affiliated unit of ACA International. The Illinois Collectors Association was incorporated in 1945. It currently has 119 collection agency members from all corners of the state of Illinois, each employing an average of 15 employees. ICA sponsors an annual convention for members, and other meetings, usually related to compliance and legislative issues periodically. Its active board of directors meets monthly. ICA has standing committees led by industry members, including Grievance/Ethics, Education, Public Relations, and state and national Legislative Committees.

## **III. Summary of Comments**

These comments focus on Proposed Rule 1210.260 governing unprofessional conduct by collection agencies, and in particular, section (a)(1) governing use of a business name, section (b) incorporating by reference ACA International’s Code of Ethics and Code of Operations, and

section (c) governing reasonable collection fees that may be collected from a consumer by a collection agency.

#### **IV. Specific Comments to Proposed Rule**

ACA and ICA appreciate the Department's desire to provide certain clarity for collection agencies operating in the State of Illinois over their collection practices and to have the authority to develop professional practices for the industry. ACA and ICA agree debt collectors should operate ethically, professionally, and in a way that allows collectors to do their job while simultaneously offering consumers reasonable protection. We hope the following comments are helpful and assist in continuing an important dialogue with the Department.

##### **1) Section 1210.260(a)(1) Should be Amended to Expressly Permit a Collection Agency to Use a Registered Business Name**

ACA and ICA understand the desire by the Department to enforce licenses issued to collection agencies operating in Illinois, but we believe the Department should identify permissible conduct as well as conduct that may be prohibitive. In particular, while we have no objection to the Department prohibiting a collection agency from doing business under a designation or business name or identification that misleads creditors, consumers or the general public to believe that it is an entity other than a collection agency (as provided in Proposed Rule § 1210.260(a)(1)), we respectfully request the Department to explicitly state in the proposed Rule that a collection agency is not in violation of this subsection if the agency is using a registered business name.

As the Department knows, collection agencies may have numerous registered business names filed with applicable state regulatory bodies to operate. These alternative names serve a number of important purposes, including but not limited to, mitigating against any risk of

inadvertent third-party disclosure of a debt which is strictly prohibited by the federal Fair Debt Collection Practices Act.

ACA and ICA are concerned that, as drafted, Proposed Rule § 1210.260(a)(1) is ambiguous and could be interpreted to suggest an accepted registered business name used by a collection agency could be found misleading to a creditor, consumer, or public.

We respectfully submit any ambiguity over this issue will be resolved by stating in the proposed rule that use of an accepted registered business name by a collection agency is permissible conduct.

**2) The IDFPR Should Clarify the Applicability of Proposed Rule § 1210.260(b) which Incorporates By Reference ACA International's Code of Ethics and Code of Operations.**

ACA and ICA strongly urge the Department explicitly clarify the applicability of Proposed Rule § 1210.260(b) at this time or otherwise withdraw its proposal for further consideration. We understand the Department commonly incorporates by reference codes of ethics or other standards of professional conduct for other professionals licensed by the Department, and we agree it is important for licensed professionals in any industry to maintain and abide by professional standards.

However, we respectfully submit the legal framework and ethical standards under which the credit and collection industry operates differ significantly from other professional industries, and these differences warrant further consideration over incorporating by reference a trade association's code of ethics.

As a preliminary matter, we appreciate the fact it is ACA that has adopted the Code of Ethics and Code of Operations that is being considered by the Department and thank the Department for its attention to our code.

ACA International's Code of Ethics and Code of Operations includes, by and large, mandatory requirements for ACA collection agency members, many of which require ACA members to abide by practices above and beyond the federal and state laws and regulations governing the industry. Other codes of conduct, however, may be much more suggestive in their tone, serving as a guidepost for other professionals, or articulating much broader principles than ACA's code, which contains very rigorous and specific requirements.

As discussed below, however, adopting by reference ACA's Code of Ethics and Code of Operations exposes the industry to significant potential liability.

The industry's greatest concern is the Department's formal incorporation by reference of ACA International's Code of Ethics and Code of Operations by regulation creates uncertain liability for debt collectors operating in the State of Illinois. The federal Fair Debt Collection Practices Act (FDCPA), found at 15 U.S.C. § 1692, broadly prohibits debt collectors from engaging in unfair and deceptive collection practices. The FDCPA is a strict liability statute which subjects a debt collector to liability upon a consumer simply proving an action occurred that is deceptive. Whether conduct is deceptive, however, is ultimately determined by a court or jury.

Consumers and consumer attorneys often rely on state law to assert a debt collector violated the FDCPA, including state statutes and regulations governing collection conduct. Importantly, ACA International's Code of Ethics and Code of Operations proscribes conduct above and beyond the FDCPA. ACA and ICA are extremely concerned a consumer will assert a debt collector engaged in unfair collection conduct in violation of the FDCPA by the collector's failure to abide by conduct either recommended or prescribed by ACA International's Code of Ethics and Code of Operations.

Moreover, other licensed professions falling under the jurisdiction on the Department do not fall under a similar legal framework such as the FDCPA which makes incorporation by reference of a professional code of ethics appropriate. For the debt collection industry, following a similar adoption is inconsistent with other licensed professions and results in unintended consequences for the collection agencies licensed by the Department.

In addition and as discussed above, ACA's Code of Ethics and Code of Operations included mandated requirements for its members. For example, our Code of Ethics mandates member collection agencies respond to written verification requests by consumers that are submitted outside the traditional 30-day validation period as mandated by the FDCPA. Other professions licensed by the Department, however, may not have professional codes that mandate conduct, but are instead suggestive.

ACA and ICA respectfully request the Department clarify in the rule that its sole purpose is to enhance the State's regulatory oversight of the debt collection industry, and that the rule is not intended to create a private cause of action for an agency's failure to abide by ACA International's Code of Ethics and Code of Operations. If the Department is unwilling to add language of this nature at this time, we respectfully request the Department withdraw Proposed Rule § 1210.260(b) in order to continue a dialogue with the Department over this proposal given the unique legal structure under which the industry operates.

**3) The IDFPR Should Amend Proposed Rule § 1210.260(c) To Distinguish Between Contracts That Include a Specific Percentage-Based Collection Fee and Those That Do Not.**

ACA and ICA respectfully request the IDFPR refrain from imposing a cap on the collection fee that may be charged to a consumer unless the collection fee is specified in the

contract originating the debt between the consumer and creditor as well as the agreement between the creditor and the collection agency.

Illinois law currently permits the Department to refuse to issue, suspend, or renew a collection agency license if a collection agency charges a fee in excess of the debt unless the fee is expressly authorized by the agreement creating the debt, unless expressly authorized by law, or unless in a commercial transaction such fee is expressly authorized in a subsequent agreement.

225 ILCS 425/9(29). The provision continues,

If a contingency or hourly fee arrangement (i) is established under an agreement between a collection agency and a creditor to collect a debt and (ii) is paid by a debtor pursuant to a contract between the debtor and the creditor, then that fee arrangement does not violate this Section unless the fee is unreasonable. The Department shall determine what constitutes a reasonable collection fee.

The Department through Proposed Rule § 1210.260(c) suggests an unreasonable collection fee is any fee over 29% of the principal balance.

ACA and ICA understand the Department's concern to define reasonable collection fees, and respectfully urge the Department to amend Proposed Rule § 1210.260(c) to distinguish contracts that do not contain a specific percentage-based collection fee from contracts that contain such a fee amount.

We believe this distinction is important to the extent a contract that includes a specific percentage-based collection fee provides clarity to the creditor, collection agency, and consumer over what obligations a consumer may have when making the original purchase that created the debt. Contracts that do not include a specific percentage-based collection fee, on the other hand, provide less clarity.

ACA and ICA support the Department amending the proposed rule to mandate a reasonable collection fee of 29% in the event the contract between the creditor and consumer does not contain a specific percentage-based collection fee. Where the contract between the

creditor and consumer does contain a specific percentage-based collection fee, mandate a reasonable collection fee of no more than 50%.

**CONCLUSION**

ACA appreciates the opportunity to submit written testimony in regards to this matter, and looks forward to working with the Administrator with respect to the Proposed Rules and rule amendments.

Sincerely,

ACA INTERNATIONAL



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ILLINOIS COLLECTORS ASSOCIATION



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