

**ADMINISTRATOR,
COLORADO FAIR DEBT COLLECTION PRACTICES ACT
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DENVER, CO 80203**

**COMMENTS OF ACA INTERNATIONAL
IN RESPONSE TO THE COLORADO FDCPA ADMINISTRATOR'S
REQUEST FOR COMMENT RE:**

**Proposed Rules and Rule Amendments Implementing House
Bill 10-1222**

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INTRODUCTION

The following comments are submitted on behalf of ACA International, *the Association of Credit and Collection Professionals* (“ACA”), in response to the Colorado Fair Debt Collection Practices Act Administrator’s (Administrator) request for comments regarding both proposed new rules and amendments (Proposed Rules) to the Rules of the Administrator, Colorado Collection Agency Board (Rules) which seek to implement HB 10-1222 which was enacted by the Colorado Legislature in May 2010 and is effective July 1, 2010.

ACA respectfully submits the following comments in an effort to highlight changes that it supports, and also comment on those provisions of concern to its membership and solutions to resolve potential workability issues for the industry.

I. Statement on ACA

ACA International is an 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 agencies, 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.

The collection services provided by ACA members are an essential part of a healthy domestic economy. ACA members return billions of dollars to the United States economy every year. In 2007 alone, debt collectors recovered more than \$40 billion, a massive infusion of money into the economy.¹ Debt collectors also help consumers obtain or regain favorable credit, help businesses design credit policies that minimize bad debt, and lower the economic burden placed on responsible consumers who ultimately bear the cost of bad debt.

II. Summary of Comments

Debt collection agencies attempting to collect debt in Colorado are gravely concerned with the practical and financial challenges in complying with Colorado HB 10-1222. Although collection agencies were already required under Colorado law to maintain an in-state office as a condition of licensure to operate in Colorado, HB 10-1222 requires the in-state office to accept payments physically made at the office for any debt the agency is attempting to collect. In addition, the bill requires an agency to include the address and telephone number of the in-state office in each written communication to a consumer from whom the agency is attempting to collect a debt. HB 10-1222 is effective July 1, 2010.

¹ PricewaterhouseCoopers, *Value of Third-Party Debt Collection to the U.S. Economy in 2007: Survey and Analysis*, June 12, 2008.

The Proposed Rules intend to implement HB 10-1222, and ACA appreciates the Administrator's perspective to permit agencies to continue satisfying Colorado's in-state office requirement by contracting with a third party, a practice typically exercised by out-state agencies. ACA believes a majority of the Proposed Rules is satisfactory, and we understand the Administrator's obligation to ensure the Rules comport with new law.

At the same time, we believe the Proposed Rules can be further modified to provide clarity to collection agencies, third parties who serve as the in-state office for an agency, and to reduce the administrative, financial, and practical burden imposed by HB 10-1222 without impacting the legislation's intent to offer consumers greater opportunities to communicate with debt collectors to resolve outstanding financial obligations.

Most importantly, ACA believes certain changes must be considered to the Proposed Rules to mitigate the risk of error in processing consumer payments and the risk of improper disclosure of sensitive consumer personal and financial information.

III. Specific Comments to Proposed Rule

ACA respectfully submits the Proposed Rules serve as a framework for offering added transparency without significantly burdening collection agencies and third parties serving as an in-state office for an agency. Specifically, ACA wishes to comment regarding the provisions of the Proposed Rules concerning the local Colorado office (Rule 1.09) and the notice and disclosure requirements requiring disclosing an agency's in-state office address and telephone number in all written collection notices as well as upon a consumer's or person's request when contacted by a collection agency for location information (Rules 2.01 and 2.15, respectively).

ACA also respectfully requests the Administrator consider amending Rule 2.12 regarding the crediting of accepted consumer payments to allow sufficient time for a third-party in-state office to properly communicate payment information to a collection agency.

ACA supports the Administrator's proposed changes to Rules 1.07 and 2.11. ACA's suggested amendments to the Proposed Rules are also in Appendix A to these comments.

1) A Collection Agency Should be Permitted to Use its Toll-Free Telephone Number As its Local Office Telephone Number (amending Rule 1.09(E); Rule 2.01(2); and Rule 2.15)

ACA respectfully requests the Administrator amend the Proposed Rules to permit a collection agency to use its toll-free telephone number to satisfy § 12-14-123(1)(b)(1)(B) when providing a consumer the agency's local office telephone number in all written communications concerning collection of a debt.

As the Administrator knows, one third party may be retained by multiple out-state collection agencies to serve as the in-state office for those agencies. Agencies attempting to collect debt in Colorado already have a toll-free number as required by Colorado law and the Rules. Permitting the toll-free number to serve as the number for the local office resolves many of the impracticalities of HB 10-1222 while simultaneously ensuring a consumer is routed to the proper party because using one telephone number instead of two will reduce consumer confusion as to which number to call and alleviates the need for a third party local office to establish more onerous call answering policies and procedures.

In fact, a consumer may be better served by calling a toll-free telephone number and then being properly routed to the local office, instead of calling a traditional telephone number that routes the consumer only to an agency's local office. For example, many collection agencies offer the consumer a menu when a consumer calls a toll-free telephone number. Options may include allowing the consumer to choose to: (a) pay a debt without speaking to a representative;

(b) speak with a representative; or (c) obtain information about his or her account. Allowing the agency to use the toll-free telephone number allows the agency to add a fourth option: to contact the agency's local Colorado office.

A consumer, in other words, is given a wide range of options when calling a collection agency's toll-free telephone number. If a consumer just calls a telephone number to the local office, that local office may be unable to properly discuss the circumstances of the consumer's debt due to the contractual relationship between the local office and the collection agency. If a consumer chooses to communicate with the third-party local office, then the office could answer the phone by stating "Collection Agency,"² and proceed to determine for which agency the consumer is calling. Moreover, using a toll-free telephone number would also satisfy the Administrator's requirement under Proposed Rule 1.09(1)(E) that the number ring to the local office.

To satisfy the above proposal, ACA respectfully requests the Administrator amend the Proposed Rules as follows (ACA's proposed changes are either in bold and underlined or are marked as a strikethrough; text that is capitalized reflects the Administrator's Proposed Rules). We believe this amendment offers consumers the best options to communicate with either the agency directly or to call the local Colorado office, and is consistent with the spirit of HB 10-1222.

Rule 1.09 Local Colorado Office

(1) A COLLECTION AGENCY MAY SATISFY THE LOCAL COLORADO OFFICE REQUIREMENT OF SECTION 12-14-123(1)(B), C.R.S BY CONTRACTING WITH A THIRD-PARTY IF THE THIRD-PARTY:

(E) PROVIDES A TELEPHONE NUMBER THAT MAY BE A SHARED TELEPHONE NUMBER **OR THE AGENCY'S TOLL-FREE TELEPHONE**

² This is an example for illustrative purposes only. A third-party local Colorado office may answer the telephone using a different introduction so long as the telephone is answered in a manner that does not mislead consumers.

NUMBER THAT RINGS TO THE LOCAL COLORADO OFFICE, AND IS ANSWERED IN A MANNER THAT DOES NOT MISLEAD CONSUMERS;

Rule 2.01 Notices

- (2) Every collection notice mailed or delivered by a licensee must contain the collection agency's name, mailing address, ~~and~~ toll-free telephone number, AND THE ADDRESS AND TELEPHONE NUMBER **(IF DIFFERENT FROM THE AGENCY'S TOLL-FREE TELEPHONE NUMBER)** OF ITS LOCAL COLORADO OFFICE. The collection agency's address (ES) may not be printed only on any portion of the collection notice designed to be returned to the agency with the consumer's communication or payment. "Toll-free" means a call made at no cost to the consumer.

Rule 2.15 Disclosure of Contact Information

Upon the request of a consumer or person contacted for location information, a licensee shall provide THE ADDRESS OF its principal place of business, mailing address, toll-free telephone number, ADDRESS AND TELEPHONE NUMBER **(IF DIFFERENT FROM THE AGENCY'S TOLL-FREE TELEPHONE NUMBER)** OF ITS LOCAL COLORADO OFFICE, and, if applicable, facsimile number.

2) A Collection Agency's Liability For A Third Party's Violation of the Colorado Fair Debt Collection Practices Act Should Depend on Contractual Relationship Between the Two Parties

ACA urges the Administrator to eliminate Proposed Rule 1.09(2) which mandates a collection agency using a third party as the agency's local office is responsible for the third party's actions in violation of the CFDCPA.

ACA recognizes the Administrator's concerns in drafting this Proposed Rule, and the industry appreciates the need to hold a third party accountable if its actions are in violation of the FDCPA. Respectfully, we believe any potential concerns regarding violations of the CFDCPA are properly addressed under current law.

The relationship between an agency and third party serving as the agency's local Colorado office currently rely on contract and employment law. The third party's responsibilities to the agency will be explicitly defined in the agreement between the third party and the agency (e.g., whether the third party will process non-payment communications, communicate with

consumers about a debt other than to provide basic information to the consumer, etc.). The third party's responsibilities will also depend on whether the third party serves as an employee or as an independent contractor for the agency.

As a result, a consumer alleging a third-party local office committed a CFDCPA violation should only result in potential liability for the agency if the misconduct occurred within the scope of the third party's responsibilities to the agency as dictated under the agreement between the two parties. If a third party, on the other hand, commits a CFDCPA violation when acting *outside* the scope of the third party's responsibilities, then liability should not be imposed upon the agency.

For example, a third party agrees to serve as the local office for an agency and only agrees to accept payments physically made at the office by consumers – the agency is not permitted to discuss the debt with the consumer. A consumer visits the third party office, pays a debt, and the third party harasses the consumer by demanding a greater payment. The agency should not be liable for the third party's CFDCPA violation because the third party acted outside the scope of its responsibilities as dictated by the agency.

Alternatively, Proposed Rule 1.09(2), as drafted, does not clarify that an agency is responsible for a third party's actions *on behalf of the agency*. Without this clarification, a collection agency may be responsible for the alleged misconduct of a third party local office that was undertaken on behalf of another agency that has retained the same third party to serve as the agency's local office.

3) A Third Party Local Office Should be Required to Only Accept Cash, Check, and Similar Payments

ACA respectfully recommends the Administrator clarify a third party's obligation in complying with § 12-14-123(1)(b)(I)(A) to the extent a local office must *accept payments*

physically made at the local office for any debt the agency is attempting to collect. Specifically, the term “accepts” and the term “payments physically made” should be addressed to give agencies sufficient guidance in complying with the law.

First, with respect to the term “accepts,” ACA believes a third party complies with this requirement if the third party takes physical possession of a payment given by the consumer to the third party at the local office. The third party would not be required to process the payment upon taking physical possession of the payment at the local office. A third party would also not be required to open mail sent to the local Colorado office to determine whether the envelope contains payment – the local office would be permitted to simply forward the mail to the agency.

Second, with respect to the term “payments physically made,” a local office for an agency should only be required to accept payments physically made at the local office by a consumer, namely cash, check, money order, and similar payment instruments. Consumers can pay a debt in a number of ways, but HB 10-1222 states a local office is required to only accept *payments physically made* at the office for any debt the agency is attempting to collect.

ACA believes it is critical to define what “payments physically made” means, in order to clarify a local office’s obligation regarding accepting payment of a debt and to mitigate disclosure of sensitive financial information to the third party local office and any ambiguity of § 12-14-123(b)(I)(A). In addition, properly restricting the scope of HB 10-1222 also ensures local offices understand their obligations to accept payment. Of course, a local office may accept other forms of payment if permitted by the agency contracting with the local office to service as the agency’s in-state office.

ACA requests the Administrator adopt the following amendment to Proposed Rule 1.09:

(2) A LOCAL COLORADO OFFICE COMPLIES WITH THE REQUIREMENTS OF SECTION 12-14-123(1)(B), C.R.S. IF THE LOCAL

COLORADO OFFICE ONLY RECEIVES PAYMENT OF A DEBT, OR A PORTION THEREOF, IN CASH, CHECK, MONEY ORDER, OR SIMILAR PAYMENT INSTRUMENT, FROM A CONSUMER PHYSICALLY AT THE LOCAL COLORADO OFFICE, WITHOUT PROCESSING PAYMENT.

ACA also believes, as discussed below, the above suggested amendment to Proposed Rule 1.09 must also allow third party local offices sufficient time to forward consumer payments to the agency for processing.

4) The Rules Should be Amended to Allow a Third Party Local Office Sufficient Time to Inform the Agency of a Payment Received at the Local Office

HB 10-1222 creates significant practical problems for collection agencies to comply with already existing law and rules governing collection practices in Colorado. One of the more challenging provisions is compliance with Rule 2.12 which requires all accepted consumer payments to be credited to a consumer's account to reflect payment no later than the next business day following the date payment was received, subject to certain exceptions.

A third party local office needs more time to physically take a payment made by a consumer at the local office, record payment was made, and properly forward payment to the agency. ACA simply does not believe the new in-state office requirement can be complied with without creating significant delay in the transmittal of payment information to a collection agency. More importantly, while collection agencies are committed to ensuring the proper transmittal of consumer information, it is impractical to require a third party local office to immediately and verbally contact an agency and relay information to the agency regarding a consumer payment – the potential for error is heightened significantly, and these concerns are amplified due to the requirements of Rule 2.12.

Although ACA understands the need for collection agencies to credit consumer payments to his or her account in a timely manner, we respectfully urge the Administrator to amend Rule

2.12 to permit an agency to credit a consumer payment to his or her account by the next business day only after accepting payment directly from a consumer (where a consumer submits payment directly to the agency via mail or in electronic form) *or* where the agency receives payment from the local Colorado office.

This proposed amendment ensures the local office provides a timely update to the agency of consumer payments physically made at the local office, allows the agency sufficient time to properly and effectively credit and process payment to the consumer's account, and reduces the potential for error by removing the need for the local office and agency to transmit payment information immediately after the local office accepts a payment physically made at the office.

ACA's proposed amendment to the Proposed Rules follows:

(1) All accepted consumer payments must be credited to a consumer's account to reflect payment no later than the next business day following the date payment was received **DIRECTLY FROM THE CONSUMER OR FROM THE COLLECTION AGENCY'S LOCAL COLORADO OFFICE** unless the delay will result in any economic harm to the consumer or the payment is by post-dated check. Post-dated checks shall be credited to the consumer's account to reflect payment as of the date of deposit in the collection agency's trust account.

5) A Collection Agency Should be Permitted to Limit a Third Party Local Office's Communication With Consumers

Lastly, ACA respectfully requests the Administrator clarify a local office is not required to engage in any additional activity other than accepting payments physically made at the office, in accordance with § 12-14-123(1)(b)(I)(A).

HB 10-1222 has the unintentional consequence of allowing consumers to attempt to communicate with a local office in ways other than to simply having the office accept payments physically made at the local office. This unintended consequence opens a Pandora's Box whereby a local office may be exposed to significant consumer personal and financial information and believed to be able to respond to other requests that frequently arise throughout

the debt collection process. This includes responding to written disputes, processing written cease and desist requests, and investigating identity theft claims.

A collection agency should be able to prohibit the local office from addressing these issues to preserve the agency's integrity in properly collecting consumer debt and to protect the privacy of the consumer's information. ACA urges the Administrator to adopt the following amendment to Proposed Rule 1.09 which creates a floor for local offices and, as a result, allows the agency to clearly define the local office's obligations when communicating with consumers.

- (3) **A LOCAL COLORADO OFFICE IS NOT REQUIRED TO COMMUNICATE WITH A CONSUMER OTHER THAN TO ACCEPT PAYMENTS PHYSICALLY MADE AT THE OFFICE AS REQUIRED BY SECTION 12-14-123(1)(B), C.R.S.**

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



David D. Cherner, Esq.
Director of State Government Affairs

APPENDIX A

This appendix includes ACA's proposed amendments to the Proposed Rules as well as to Rule 2.12 which is not included in the Proposed Rules. ACA's suggested amendments to Rule 1.09 are in bold, underlined, and capitalized, or are stricken. (see Rules 1.09(2) and 2.09(2)).

Proposed Amendments and New Rules

(Note: proposed changes are shaded with new language in capital letters. Deleted language is shown with a line through it. Only proposed new or amended rules are reprinted below.)

RULES OF THE ADMINISTRATOR, COLORADO COLLECTION AGENCY BOARD

(effective ~~November 1, 2008~~ JULY 30, 2010)

4 Code of Colorado Regulations 903-1

Rule 1.07 Address Changes

~~For purposes of section 12-14-122(1)(a), C.R.S. mandating written notice to the Administrator within thirty days of a change of business address, the business address is the principal place of business printed on the collection agency's license.~~

A COLLECTION AGENCY'S OBLIGATION TO PROVIDE WRITTEN NOTICE TO THE ADMINISTRATOR WITHIN THIRTY DAYS AFTER AN ADDRESS CHANGE APPLIES TO BOTH THE LOCAL COLORADO OFFICE AND THE PRINCIPAL PLACE OF BUSINESS PRINTED ON THE COLLECTION AGENCY'S LICENSE.

RULE 1.09 LOCAL COLORADO OFFICE

(1) A COLLECTION AGENCY MAY SATISFY THE LOCAL COLORADO OFFICE REQUIREMENT OF SECTION 12-14-123(1)(B), C.R.S BY CONTRACTING WITH A THIRD-PARTY IF THE THIRD-PARTY:

(A) MAINTAINS AN OFFICE IN COLORADO OPEN TO THE PUBLIC DURING NORMAL BUSINESS HOURS THAT MAY BE A SHARED OFFICE LOCATION IF SIGNS OR DIRECTORIES ARE

POSTED OR DISPLAYED LISTING ALL COLLECTION AGENCIES FOR WHOM THE THIRD-PARTY PROVIDES A LOCAL COLORADO OFFICE;

(B) MAINTAINS AT THAT OFFICE RECORDS, OR FREE AND EASY ACCESS TO RECORDS, OF ALL MONEYS COLLECTED AND REMITTED FOR COLORADO RESIDENTS;

(C) ACCEPTS AT THAT OFFICE PHYSICAL PAYMENTS OF DEBTS THE AGENCY IS ATTEMPTING TO COLLECT;

(D) STAFFS THAT OFFICE WITH A FULL TIME EMPLOYEE WHO MAY BE A SHARED EMPLOYEE;

(E) PROVIDES A TELEPHONE NUMBER THAT MAY BE A SHARED TELEPHONE NUMBER OR THE AGENCY'S TOLL-FREE TELEPHONE NUMBER THAT RINGS TO THE LOCAL COLORADO OFFICE, AND IS ANSWERED IN A MANNER THAT DOES NOT MISLEAD CONSUMERS; AND,

(F) COMPLIES WITH ALL APPLICABLE PROVISIONS OF THE COLORADO FAIR DEBT COLLECTION PRACTICES ACT.

~~(2) A COLLECTION AGENCY THAT USES A THIRD PARTY TO PROVIDE A LOCAL COLORADO OFFICE IS RESPONSIBLE FOR ACTIONS OF THE THIRD PARTY THAT VIOLATE THE COLORADO FAIR DEBT COLLECTION PRACTICES ACT.~~

(2) A COLLECTION AGENCY COMPLIES WITH THE REQUIREMENTS OF SECTION 12-14-123(1)(B), C.R.S. IF THE LOCAL COLORADO OFFICE ONLY RECEIVES PAYMENT OF A DEBT, OR A PORTION THEREOF, IN CASH, CHECK, MONEY ORDER, OR SIMILAR PAYMENT INSTRUMENT, FROM A CONSUMER PHYSICALLY AT THE LOCAL COLORADO OFFICE, WITHOUT PROCESSING PAYMENT.

(3) A THIRD PARTY SERVING AS A LOCAL COLORADO OFFICE IS NOT REQUIRED TO COMMUNICATE WITH A CONSUMER OTHER THAN TO ACCEPT PAYMENTS PHYSICALLY MADE AT THE OFFICE AS REQUIRED BY SECTION 12-14-123(1)(B), C.R.S.

Chapter 2

Consumer Protections

Rule 2.01 Notices

- (1) The consumer rights information required to be in the initial written communication and the validation of debts notice may be printed on two (2) separate pages provided that the first page contains language referring the consumer to the second page and the two (2) pages are attached together.
- (2) Every collection notice mailed or delivered by a licensee must contain the collection agency's name, mailing address, ~~and~~ toll-free telephone number, **AND THE ADDRESS AND TELEPHONE NUMBER (IF DIFFERENT FROM THE AGENCY'S TOLL-FREE TELEPHONE NUMBER) OF ITS LOCAL COLORADO OFFICE.** The collection agency's address (ES) may not be printed only on any portion of the collection notice designed to be returned to the agency with the consumer's communication or payment. "Toll-free" means a call made at no cost to the consumer.

Rule 2.11 Office Location

SUBJECT TO RULE 1.09, aA collection agency may share an office location with another business as long as all signs, directories, and other business identification information clearly contain the collection agency's name.

Rule 2.12 Consumer Payments

(1) All accepted consumer payments must be credited to a consumer's account to reflect payment no later than the next business day following the date payment was received **DIRECTLY FROM THE CONSUMER OR FROM THE COLLECTION AGENCY'S THE LOCAL COLORADO OFFICE** unless the delay will result in any economic harm to the consumer or the payment is by post-dated check. Post-dated checks shall be credited to the consumer's account to reflect payment as of the date of deposit in the collection agency's trust account.

Rule 2.15 Disclosure of Contact Information

Upon the request of a consumer or person contacted for location information, a licensee shall provide **THE ADDRESS OF** its principal place of business, mailing address, toll-free telephone number, **ADDRESS AND TELEPHONE NUMBER (IF DIFFERENT FROM THE AGENCY'S TOLL-FREE TELEPHONE NUMBER) OF ITS LOCAL COLORADO OFFICE,** and, if applicable, facsimile number.