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RE: Billing Services and "In-House" Contract Debt Collectors

Dear:

You recently asked whether a business would be considered a collection agency as a result of collection services it provides in the name of its clients. Depending on how the business structures its services, it may be subject to the Colorado Fair Debt Collection Practices Act ("the Colorado Act") or it may be exempt. This opinion is also based on the similar federal Fair Debt Collection Practices Act ("the federal Act") and interpretations thereof.

The definition of a "collection agency" within the Colorado Act includes those persons whose principal purpose is the collection of debts and those persons who regularly collect or attempt to collect debts owed or due another. Section 12-14-103(2)(a), C.R.S. (1991). This definition is similar to the federal Act's definition of "debt collector" in § 803(6), 15 U.S.C. § 1692a(6). There is no provision in the Colorado Act or the federal Act that the debt or money owed be in default. See, § 12-14-103(6); federal Act § 803(6), 15 U.S.C. 1692a(5). Thus, the collection of accounts receivable or the billing of accounts constitutes the collection of debts if the business is regularly engaged in the business of collecting debts owed or due another.

While the regular collection of debts for others, whether or not in default, means a business is a collection agency under the Colorado Act, there are exemptions in both acts for the collection of debts not in default when obtained for collection. Section 12-14-103(2)(b)(VII)(C), C.R.S. (1991) and federal Act § 803(6)(F)(iii), 15 U.S.C. § 1692a(6)(F)(iii). As long as the debt to be collected is not in default when obtained, the business fits within the exemption from the Colorado definition of "collection agency" or the federal Act's definition of "debt collector."\*\*1 Note that under the Colorado Act, if the ac-

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1\*\* The question of whether a debt is in default when obtained for collection will depend on how the creditor treats the account. For example, if the client has a contract with the con-

count is not in default when obtained for collection but later defaults, the business must then comply with the substantive collection standards of the Colorado Act with regard to that debt but not with the Colorado Act's licensure provisions. Section 12-14-103(2)(b)(VII)(C), C.R.S. (1991).

This exemption is typically applicable to a billing service. The billing service sends one or more bills on the account for a limited period of time, may make a few telephone calls, and then returns the account to the client if the billing has not resulted in payment. The billing service ordinarily does not report derogatory credit information, threaten or file a lawsuit, or contact the consumer on a regular basis over time. After the account has been deemed non-performing or uncollectible, the client may decide what further action to take, including possible assignment of the debt to a collection agency. See Federal Trade Commission Informal Staff Letter to Gibson (Feb. 21, 1990).

The typical billing service also bills in the client's name. If it makes telephone calls or receives them, the billing service is identified with the client's name. If a third party name is used different from the client's name, the billing service's exemption for the collection of debts not in default when obtained is lost and it then is subject to the Colorado Act. See section 12-14-103(2)(b)(I), C.R.S. (1991); federal Act § 803(6)(A), 15 U.S.C. § 1692a(6)(A).

Another scenario occurs when a business provides "in-house" contract collection services to a creditor. Ordinarily, a creditor collecting its own debts is also exempt from the definition of a "collection agency" or "debt collector". *Id.* According to the Federal Trade Commission, which enforces the federal Act, a business may use "de facto" contract employees and not be a "debt collector." If a collection agency provides employees to act as in-house collectors for a creditor who collect on the creditor's premises, are subject to the creditor's direct supervision or control, and use the creditor's name in all communications, the collection agency or debt collector is a de facto employee of the creditor and exempt from scope of the federal and Colorado Acts.

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sumer, the contract may state that bills are payable when due or on a date specified on the billing statement, that payment is late after a certain number of days, and that after a fixed period of time, the account is in default and may be assigned for collection or litigation. Alternatively, a client's determination of default may be established by the client's subsequent actions. Factors to be considered include whether the client continue to provide new services to the consumer despite the failure to pay, files a lawsuit against the consumer, or assigns the account for traditional third party collection.

Federal Trade Commission Official Staff Commentary on §803(6) - comment 4, 53 Fed. Reg. 50097,50102 (December 13, 1998). See Also FTC Informal Staff Letters to Knobel (Oct. 5, 1987) and LaBran (Oct. 9, 1980).

I have not discovered any opinions which address the additional issue of to whom payment is directed. However, if the de facto employees are collecting on the creditor's premises and under the creditor's supervision and control, I would assume that all payments are made out to the creditor and mailed to the creditor's premises or a post office box in the creditor's name. Alternatively, payments might be directed to a post office box of the creditor's bank accessed by a bank employee who deposits the funds directly in the creditor's bank account. If the payments were to be deposited into a bank account of the collection agency, this would seem to negate the control and supervision requirements needed to establish a de facto or in-house contract debt collector. I have not researched whether there is any case federal law on this topic. If you are aware of any such cases, I would appreciate your bringing them to my attention. In addition, you may wish to ask the Federal Trade Commission for an opinion on this question.

It is possible that the business you described is exempt from the definition of a collection agency either because it bills for accounts not in default when obtained or because it attempts to collect debts as a de facto employee of its client. I hope this information has been helpful to you.

Sincerely,



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