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Advisory Opinion - Administrator, Uniform Consumer Credit Code

RE: Colorado Fair Debt Collection Practices Act — Validation of Debts

Pursuant to section 5-16-109(1)(c) of the Colorado Fair Debt Collection Practices Act ("CFDPCA"), C.R.S., in connection with the collection of any debt, a debt collector or collection agency is required to provide a consumer with a written notice, which discloses "[t]hat, unless the consumer, within [30] days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector or collection agency" The section further provides that "if the consumer notifies the debt collector or collection agency in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector or collection agency will obtain verification of the debt or a copy of a judgment against the consumer and a copy of the verification or judgment will be mailed to the consumer by the debt collector or collection agency." 5-16-109(1)(d), C.R.S. In addition, the section provides that "upon the consumer's written request within the thirty-day period, the debt collector or collection agency will provide the consumer with the name and address of the original creditor, if different from the current creditor." 5-16-109(1)(e), C.R.S. Finally, the section provides that "If the consumer notifies the debt collector or collection agency in writing within the thirty-day period described in subsection (1)(c) of this section that the debt, or any portion thereof, is disputed or that the consumer requests the name and address of the original creditor, the debt collector or collection agency shall cease collection of the debt, or any disputed portion thereof, until the debt collector or collection agency obtains verification of the debt or a copy of a judgment or the name and address of the original creditor and mails a copy of the verification or judgment or name and address of the original creditor to the consumer." 5-16-109(2), C.R.S.

The federal Fair Debt Collection Practices Act ("FDCPA") imposes the same requirement on debt collectors, using nearly identical language. See 15 U.S.C. section 1692g(a)(3).

The Consumer Financial Protection Bureau has issued a rule, effective November 30, 2021, that requires debt collectors that send written or electronic validation notices to comply with FDCPA section 1692g(a)(3) by providing consumers with "[t]he date that the debt collector will consider the end date of the validation period", meaning "the date certain on which the consumer's verification rights under [section 1692g(a)(3)] expire." 12 C.F.R.

Section 1006.34(c)(3)(i) (“Reg. F”); Debt Collection Practices (Regulation F), 86 Fed. Reg. 5766, 5796 (Jan. 19, 2021). Reg. F defines “validation period” to mean the period “ending 30 days after the consumer receives or is assumed to receive the validation information”, further providing that “the debt collector may assume that a consumer receives the validation information on any date that is at least [5] days . . . after the debt collector provides it.” 12 C.F.R. section 1006.34(b)(5).

The Administrator believes a debt collector or collection agency may, but are not required to, comply with section 5-16-109, C.R.S. by providing Colorado consumers with the date certain that a consumer’s validation period ends, if that date certain is consistent with the validation period as defined by Regulation F. The Administrator does not intend to take an administrative, disciplinary, or enforcement action for a collection agency or debt collector that complies with section 5-16-109(1)(c), C.R.S.’s “[30] days after receipt of the notice” with a date certain consistent with the validation per Reg. F.

Further, this interpretation constitutes an advisory opinion pursuant to section 5-16-113(6), C.R.S. That provision provides that “[n]o provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any advisory opinion of the administrator, notwithstanding that, after the act or omission has occurred, the opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.”

Illustration

In connection with the collection of a debt, a collection agency provides a Colorado consumer with a written notice. As required by Reg. F, the first page of the notice advises the consumer that they have until April 24, 2022 to dispute the validity of the debt. On the second page (or reverse side of the first page) of the notice, the collection agency again provides the consumer with an April 24, 2022 deadline to dispute the validity of the debt and, further, provides the consumer with the disclosures required by section 5-16-109(1), C.R.S., and 4 C.C.R. 903-1, Rule 2.01. The debt collector has complied with section 5-16-109(1), C.R.S., and 4 C.C.R. 903-1, Rule 2.01. This written disclosure may also contain the disclosures required by section 5-16-105(3)(c) and (d), C.R.S.