



February 28, 2018

Attorney General Maura Healey
Office of the Attorney General
One Ashburton Place
Boston, MA 02108

Request for Guidance

Dear Attorney General Healey:

ACA International (“ACA”) and the New England Collectors Association (NECA) respectfully submit this request for guidance on whether and to what extent the requirements found at 940 CMR 7.00 apply to third party debt collection agencies, specifically, the validation requirements set forth in 940 CMR 7.08.

ACA is the leading trade association for credit and collection professionals. Founded in 1939, ACA represents approximately 2,500 members, including credit grantors, third-party collection agencies, asset buyers, attorneys, and vendor affiliates in an industry that employs almost 220,000 employees worldwide.

NECA promotes lawful consumer debt collection for creditors and government. NECA serves its more than 60 member credit and collection companies, a majority of which are based in Massachusetts, by providing education and training; promoting ethical professional conduct; and acting as a voice in business, legal, regulatory and legislative matters. ACA and NECA members include the smallest of businesses that operate within a limited geographic range of a single state, and the largest of publicly held, multinational corporations that operate in every state.

Our members work diligently to remain compliant with all federal, state and local regulations and we strive to provide them with accurate compliance guidance. Recently there has been some confusion regarding the scope of 940 CMR 7.08. Are third party debt collectors acting on behalf of the original creditors subject to the validation requirements set forth in 940 CMR 7.08?

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Historically, the understanding was that traditional third party collection agencies are governed by the regulations promulgated by the Division of Banks at 209 CMR 18.00. On the other hand, creditors (who were not subject to the Division of Banks jurisdiction and control) were governed by the Attorney General regulations found at 940 CMR 7.00.

The current regulations were updated in 2012. At that time the definition of Creditor was updated to include debt buyers. Specifically, 940 CMR 7.03 defines creditor:

Creditor means any person and his or her agents, servants, employees, or attorneys engaged in collecting a debt owed or alleged to be owed to him or her by a debtor and shall also include a buyer of delinquent debt who hires a third party or an attorney to collect such debt provided, however, that a person shall not be deemed to be engaged in collecting a debt, for the purpose of 940 CMR 7.00, if his or her activities are solely for the purpose of serving legal process on another person in connection with the judicial enforcement of a debt.

At the time these changes were adopted, ACA/NECA consulted with the Attorney General's office and confirmed that the changes would not apply to third party debt collectors seeking to collect funds on behalf of the original creditors; they only applied to debt buyers and the original creditors collecting their own accounts. In reliance on those assurances, ACA informed its members through various publications that those who did not fall within the definition of a creditor or debt buyer (i.e. traditional third party agencies) were not subject to the regulations.

Traditional third party debt collectors are not agents in the legal sense of the word; instead, they are third party independent contractors. They are not typically in a position to bind the principal through their actions. Consequently, the prior understanding as confirmed in 2012 is consistent with this definition.

Of late, various ACA and NECA members have raised issues questioning these regulations and their applicability. In an effort to stem those concerns, ACA and NECA seek guidance. More specifically, the validation requirements set forth in the regulations place higher burdens on agencies and their creditor clients.

Under the FDCPA, a request for validation requires the agency to confirm that it is collecting the correct amount from the correct person. However, the statute is silent as to how that may be accomplished.

[V]erification of a debt involves nothing more than the debt collector confirming in writing that the amount being demanded is what the creditor is claiming is owed; the debt collector is not required to keep detailed files of the alleged debt. *Chaudhry v. Gallerizzo*, 174 F.3d 394 (4th Cir.1999).

The Massachusetts regulations, found at 940 CMR 7.08, provide very specific and detailed requirements when validating a debt. These include most significantly providing copies of the documentation with the consumer's signature and a ledger reflecting all payments, credits, balances and charges. While these requirements may seem reasonable on their face, this can create a substantial burden on an agency's creditor clients, particularly in the case of small

balance accounts or where the account has been in existence for many years. Often in these cases, the documentation required does not exist and does not always fit this type of payment obligation. (The regulations were aimed at large balance credit accounts such as mortgages and car loans where such documentation is routinely used and more easily accessible by the creditor or debt buyer; small balance accounts often do not have the same type of documents at the time the account is created). While the regulation allows for the possibility that the information might not exist, it still requires a diligent search and only after that is accomplished can the creditor continue collection.

Creditors who do not believe that the regulations should apply may be reluctant or unwilling to provide the information required. Thus, agencies who request the information (particularly in light of the initial guidance provided when the definition was changed) may find themselves at a competitive disadvantage over agencies who are not asking their clients for this information. Therefore, in an effort to avoid further ambiguity and to assist our member agencies, we request guidance on whether and to what extent the validation requirements in section 7.08 apply to third party debt collectors who are merely contractors and not lawful agents are required to comply with this rule.

ACA and NECA appreciate your consideration of this important request. Please feel free to contact, NECA President Jeff DiMatteo at jeff.dimatteo@americanprofit.net or (248) 948-1234 or ACA Vice President of State Government Affairs Andy Madden at madden@acainternational.org or (202) 547-2681.

Sincerely,



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President
New England Collectors Association



Andrew Madden
Vice President State Government Affairs
ACA International