



**COLORADO**

**Department of  
Regulatory Agencies**

Colorado Office of Policy, Research &  
Regulatory Reform

**2016 Sunset Review:  
Colorado Fair Debt Collection  
Practices Act**

*October 14, 2016*





**COLORADO**

**Department of  
Regulatory Agencies**

Executive Director's Office

October 14, 2016

Members of the Colorado General Assembly  
c/o the Office of Legislative Legal Services  
State Capitol Building  
Denver, Colorado 80203

Dear Members of the General Assembly:

This year, Colorado's sunset review process celebrates its 40<sup>th</sup> anniversary with the publication of the 2016 sunset reports. The Colorado General Assembly established the sunset review process in 1976 as a way to analyze and evaluate regulatory programs and determine the least restrictive regulation consistent with the public interest. Since that time, Colorado's sunset process has gained national recognition and is routinely highlighted as a best practice as governments seek to streamline regulation and increase efficiencies.

The Colorado Office of Policy, Research and Regulatory Reform (COPRRR), located within my office, is responsible for fulfilling these statutory mandates. To emphasize the statewide nature and impact of this endeavor, COPRRR recently launched a series of initiatives aimed at encouraging greater public participation in the regulatory reform process, including publication of a new "Citizen's Guide to Rulemaking" (available online at [www.dora.colorado.gov/opr](http://www.dora.colorado.gov/opr)).

Section 24-34-104(5)(a), Colorado Revised Statutes (C.R.S.), directs the Department of Regulatory Agencies to:

- Conduct an analysis of the performance of each division, board or agency or each function scheduled for termination; and
- Submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination.

Accordingly, COPRRR has completed the evaluation of the Colorado Fair Debt Collection Practices Act. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2017 legislative committee of reference.

The report discusses the question of whether there is a need for the regulation provided under Article 14 of Title 12, C.R.S. The report also discusses the effectiveness of the Colorado Department of Law, program administrator, and staff in carrying out the intent of the statutes and makes recommendations for statutory and administrative changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

Joe Neguse  
Executive Director





# COLORADO

## Department of Regulatory Agencies

Colorado Office of Policy, Research &  
Regulatory Reform

### 2016 Sunset Review Colorado Fair Collection Practices Act

#### SUMMARY

##### ***What Is the Colorado Fair Debt Collection Practices Act (CFDCPA)?***

Collecting debt is regulated in multiple ways and at multiple levels of government. There is oversight at the federal level through the Fair Debt Collection Practices Act and Consumer Financial Protection Bureau, and by the state through the CFDCPA. The CFDCPA is allowed under the federal Fair Debt Collection Practices Act if it is more restrictive. The major difference is that the CFDCPA provides for collection agency licensing and each agency must have surety in place to cover what it owes to its clients.

##### ***Why is it Regulated?***

The purpose of the CFDCPA is to stop offensive debt collection practices and protect consumers from being mistreated by debt collectors.

##### ***How Is It Regulated?***

The CFDCPA Administrator is the administrator for the Uniform Consumer Credit Code, in the Office of the Colorado Attorney General. Including the Administrator, the program utilizes the services of 6.9 full-time equivalent employees.

##### ***Who Is Regulated by the CFDCPA?***

A collection agency is a person or business that regularly collects or attempts to collect debt owed to another party or solicit for collection debt owed to another party. CFDCPA prohibits debt collectors and collection agencies from using abusive, unfair, or deceptive practices to collect a debt from consumers. In fiscal year 14-15 there were 741 licensed collection agencies operating in Colorado, of those 610 were headquartered in another state.

##### ***What Does It Cost?***

Implementation of the CFDCPA is funded through fees paid into the Collection Agency Cash Fund established by the CFDCPA. During fiscal year 14-15, \$798,845 was expended on program implementation.

##### ***What Disciplinary Activity is there?***

During fiscal year 14-15, there were 1,421 total complaints filed. Nearly 1,200 complaints were resolved without further action taken by the Administrator. The majority of the complaints filed alleged harassment or abuse or acting without a Colorado license. Cases are often terminated because the respondent is not subject to the provisions of the CFDCPA. For example, it may be the actual creditor attempting to collect on its own account receivable and not a collection agency licensed under the CFDCPA.

## KEY RECOMMENDATIONS

### **Continue the Colorado Fair Debt Collection Practices Act for 11 years until 2028.**

The licensing of collection agencies provides financial protections for clients of collection agencies. A licensee must hold liquid assets in the form of a deposit or trust account. Though these financial mechanisms are in place, a major focus of the CFDCPA is on the interactions between a collection agency and a debtor. The CFDCPA stipulates who may be contacted, when someone may be contacted, what can and cannot be communicated during contact, and how a debtor may cease communication, among other protections. A violation of the CFDCPA can result in a licensee being sanctioned or losing its ability to conduct business in Colorado.

*The Denver Post* reported in March of 2016, that the complaints against debt collectors in 2015 outnumbered all other consumer protection complaints received by the Office of the Colorado Attorney General. Because of the effectiveness of its program, the Federal Trade Commission (FTC) presented Colorado a commendation for its role as a partner in protecting consumers.

### **Define what is expected of an individual who purchases, sells, or attempts to collect on purchased debt.**

The overwhelming majority of the debts collection agencies attempt to collect are sent to a collection agency on consignment. The collection agency gets paid a percentage of the account only when it is able to collect from the debtor.

After a 2013 analysis of the debt collection industry, the FTC noted that the most noteworthy change in the industry is the growth of debt buying. Debt buying occurs when an original creditor sells debt rather than keeping the debt on its books. The debt is usually sold at pennies on the dollar. The debt buyer then attempts to collect. There often are no consequences for a collection agency if it is trying to collect on a debt that has been purchased and sold multiple times.

The solutions to these problems lie in amending the CFDCPA to make certain requirements of debt buyers.

## METHODOLOGY

As part of this review, Colorado Office of Policy, Research and Regulatory Reform staff interviewed representatives from the FTC and the Consumer Financial Protection Bureau, the program administrator and staff, current and former advisory committee members, officials with state and national professional associations, representatives from Colorado licensed collection agencies, and a representative from a Colorado consumer advocacy organization; conducted a survey; and reviewed program data, federal laws and rules, and Colorado statutes and rules.

## MAJOR CONTACTS MADE DURING THIS REVIEW

iA Institute  
Associated Collection Agencies of Colorado/Wyoming  
Office of the Colorado Attorney General  
Association of Credit and Collection Professionals  
Colorado Creditors Bar Association

Colorado Public Interest Research Group  
Compliance Professionals Forum  
Consumer Relations Consortium  
Virginia Collectors Association

### **What is a Sunset Review?**

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are prepared by:  
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# Background

## Introduction

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Colorado Office of Policy, Research and Regulatory Reform within the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria<sup>1</sup> and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are based on the following statutory criteria:

- Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;

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<sup>1</sup> Criteria may be found at § 24-34-104, C.R.S.

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- Whether the agency through its licensing or certification process imposes any disqualifications on applicants based on past criminal history and, if so, whether the disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subparagraph (i) of paragraph (a) of subsection (8) of this section shall include data on the number of licenses or certifications that were denied, revoked, or suspended based on a disqualification and the basis for the disqualification; and
  - Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

## Types of Regulation

Consistent, flexible, and fair regulatory oversight assures consumers, professionals and businesses an equitable playing field. All Coloradans share a long-term, common interest in a fair marketplace where consumers are protected. Regulation, if done appropriately, should protect consumers. If consumers are not better protected and competition is hindered, then regulation may not be the answer.

As regulatory programs relate to individual professionals, such programs typically entail the establishment of minimum standards for initial entry and continued participation in a given profession or occupation. This serves to protect the public from incompetent practitioners. Similarly, such programs provide a vehicle for limiting or removing from practice those practitioners deemed to have harmed the public.

From a practitioner perspective, regulation can lead to increased prestige and higher income. Accordingly, regulatory programs are often championed by those who will be the subject of regulation.

On the other hand, by erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services.

There are also several levels of regulation.

### Licensure

Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection - only those individuals who are properly licensed may use a particular title(s) - and practice exclusivity - only those individuals who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

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## Certification

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be more vocational in nature, but the required examination should still measure a minimal level of competency. Additionally, certification programs typically involve a non-governmental entity that establishes the training requirements and owns and administers the examination. State certification is made conditional upon the individual practitioner obtaining and maintaining the relevant private credential. These types of programs also usually entail title protection and practice exclusivity.

While the aforementioned requirements can still be viewed as barriers to entry, they afford a level of consumer protection that is lower than a licensing program. They ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

## Registration

Registration programs can serve to protect the public with minimal barriers to entry. A typical registration program involves an individual satisfying certain prescribed requirements - typically non-practice related items, such as insurance or the use of a disclosure form - and the state, in turn, placing that individual on the pertinent registry. These types of programs can entail title protection and practice exclusivity. Since the barriers to entry in registration programs are relatively low, registration programs are generally best suited to those professions and occupations where the risk of public harm is relatively low, but nevertheless present. In short, registration programs serve to notify the state of which individuals are engaging in the relevant practice and to notify the public of those who may practice by the title(s) used.

## Title Protection

Finally, title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency - depending upon the prescribed preconditions for use of the protected title(s) - and the public is alerted to the qualifications of those who may use the particular title(s).

Licensing, certification and registration programs also typically involve some kind of mechanism for removing individuals from practice when such individuals engage in enumerated proscribed activities. This is generally not the case with title protection programs.

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## Regulation of Businesses

Regulatory programs involving businesses are typically in place to enhance public safety, as with a salon or pharmacy. These programs also help to ensure financial solvency and reliability of continued service for consumers, such as with a public utility, a bank or an insurance company.

Activities can involve auditing of certain capital, bookkeeping and other recordkeeping requirements, such as filing quarterly financial statements with the regulator. Other programs may require onsite examinations of financial records, safety features or service records.

Although these programs are intended to enhance public protection and reliability of service for consumers, costs of compliance are a factor. These administrative costs, if too burdensome, may be passed on to consumers.

## **Sunset Process**

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. Anyone can submit input on any upcoming sunrise or sunset review via COPRRR's website at: [dora.colorado.gov/opr](http://dora.colorado.gov/opr).

The functions of the Colorado Department of Law and the Administrator of the Uniform Consumer Credit Code (Administrator) as enumerated in Article 14 of Title 12, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2017, unless continued by the General Assembly. During the year prior to this date, it is the duty of COPRRR to conduct an analysis and evaluation of the administration of the Colorado Fair Debt Collection Practices Act pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the program to regulate collection agencies should be continued and to evaluate the performance of the Administrator. During this review, the Administrator must demonstrate that the program serves the public interest. COPRRR's findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

## **Methodology**

As part of this review, COPRRR staff performed a literature review; attended the annual Collection Agency Board (Board) meeting; interviewed Board members, the Administrator, and program staff; interviewed representatives from the Federal Trade Commission (FTC) and the Consumer Financial Protection Bureau; reviewed program records; interviewed individual licensees, representatives from state and national professional associations, and a consumer advocacy organization; and reviewed both federal and Colorado statutes and rules.

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Additionally, in conjunction with this sunset review, COPRRR surveyed licensees with an email address on record with the Administrator. A link to the survey was sent to individuals by means of the email address supplied. Surveys were sent to 726 individuals, 704 surveys were successfully delivered<sup>2</sup> and 144 individuals responded. This represents a response rate of 20.5 percent. Survey questions and a summary of the response data may be found in Appendix A.

## Profile of the Industry

A collection agency is a business that collects debt for a third party. As an agent for a creditor<sup>3</sup>, a debt collector is authorized to collect debts on behalf of that creditor. In some cases the debt collector is also able to negotiate with a debtor<sup>4</sup> and modify the terms and conditions for repayment.

Debt collection is a \$13.7 billion industry that employs more than 130,000 people in approximately 6,000 collection agencies nationwide.<sup>5</sup> During fiscal year 14-15, there were 741 collection agencies licensed in Colorado, with more than 80 percent of those headquartered in another state.

Most debt collection revenue is generated from medical debt, student loans, and financial services debt such as credit cards, auto loans, and mortgages. Financial services debt accounts for more than one-third of all debt collection revenue. Often consumers are not aware that they have debts in collection until they receive calls from debt collectors or review their credit reports.<sup>6</sup>

Typically, a collection agency works on a contingency basis. Therefore, if a debt is collected then the agency is paid a commission or fee for its services and if no money is collected, the agency is not paid. However, approximately one-third of debt collection revenue, \$4.4 billion, comes from debt buyers. A debt buyer is a person who purchases accounts receivable from the original creditor or other debt buyers and seeks to collect that debt, either him- or herself or through third-party debt collectors.<sup>7</sup>

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<sup>2</sup> Successful delivery is deemed to have occurred when the email sending the survey was not returned or did not fail.

<sup>3</sup> The use of the term “creditor” in this sunset review pertains to a person or entity to whom a monetary debt is owed.

<sup>4</sup> The use of the term “debtor” in this sunset review pertains to a person that owes a monetary sum to another person or entity.

<sup>5</sup> Consumer Financial Protection Bureau. *Fair Debt Collection Practice Act: CFBP Annual Report 2016*, p.8. Retrieved July 25, 2016, from <http://www.consumerfinance.gov/data-research/research-reports/fair-debt-collection-practices-act-annual-report-2016/>

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.* p. 9.

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The FTC is the main federal regulator of debt collection.<sup>8</sup> It operates under the jurisdiction of the Fair Debt Collection Practice Act (FDCPA). The FDCPA applies only to the collection of debt incurred by a consumer primarily for personal, family, or household purposes. It does not apply to the collection of corporate debt or debt owed for business or agricultural purposes.<sup>9</sup>

The FDCPA governs debt collector actions concerning communication with consumers, providing documentation of a debt, and it also prohibits a collector from harassing consumers. The FTC is empowered by the FDCPA to take action against noncompliant collection agencies.

The Consumer Financial Protection Bureau (CFPB) is another federal program associated with collection agency regulation. The CFPB was created in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, as an agency responsible for consumer protection in the financial sector. It offers a place for consumers to ask questions or to file complaints concerning most any financial issue including those pertaining to collection agencies.

The FDCPA allows that if a state law is more restrictive than it is, the state law displaces it as the implementing authority.<sup>10</sup> The Colorado Fair Debt Collection Practice Act (CFDCPA) is more restrictive than the FDCPA in that it requires licensing for collection agencies that solicit, collect, or attempt to collect debts in Colorado in addition to the provisions of the FDCPA. Beyond licensing, the CFDCPA is substantially similar to the FDCPA.

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<sup>8</sup> Federal Reserve. *Consumer Compliance Handbook: Fair Debt Collection Practices Act*, p.4. Retrieved July 27, 2016, from <http://www.federalreserve.gov/boarddocs/supmanual/cch/fairdebt.pdf>

<sup>9</sup> *Ibid.* p.1.

<sup>10</sup> 15 USC 1692 §§ 816 and 817

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# Legal Framework

## History of Regulation

Regulation of the debt collection industry began when the Collection Agency Board (Board) was established in 1937. At that time regulation was placed under the auspices of the Colorado Secretary of State. The Board was moved to the Department of Regulatory Agencies (DORA) in conjunction by the Administrative Reorganization Act of 1968. Following the recommendations of a 1977 report from the Colorado State Auditor's Office, the General Assembly moved the Board to the Colorado Department of Law where the program resides today.

The move to the Colorado Department of Law was made via a Type 2 transfer. In a Type 2 transfer, all or part of an existing department or agency is transferred to another principal department. Under a Type 2 transfer, all statutory authority, powers, duties, functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, including the functions of budgeting, purchasing, and planning, are transferred to the principal department and the agency being transferred does not retain any independent powers.<sup>11</sup> The Board now serves as an advisory body to the Uniform Consumer Credit Code administrator (Administrator) who administers the Colorado Fair Debt Collection Practices Act (CFDPCA).

During 1978, the U.S. Congress passed the Fair Debt Collection Practice Act (FDCA).<sup>12</sup> It was not until the 1985 legislative session, that the General Assembly passed the CFDPCA. The CFDPCA authorized the Administrator to develop and administer licensing of collection agencies.

In a 1999 sunset review of the CFDPCA DORA recommended to discontinue the Board because of its limited effect on regulation. The General Assembly postponed the issue of whether to discontinue the Board until 2003. At that time the Board was continued. A sunset review conducted in 2007, recommended that the CFDPCA and licensing continue. That review also recommended that an in-state office requirement and the Board sunset. The General Assembly continued the licensing program, continued the Board, and directed that a single subject sunset review be conducted on the in-state office requirement.

The 2009 sunset review of the in-state office requirement for collection agencies recommended that the requirement remain in place.

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<sup>11</sup> Office of Legislative Legal Services; [Colorado LegiSource](https://legisource.net/2012/04/05/powers-duties-and-functions-of-executive-branch-agencies-type-1-type-2-and-type-3-transfers/). *Powers, Duties, and Functions of Executive Branch Agencies (Type 1, type 2, and type 3 transfers)*. Retrieved July 27, 2016, from <https://legisource.net/2012/04/05/powers-duties-and-functions-of-executive-branch-agencies-type-1-type-2-and-type-3-transfers/>

<sup>12</sup> Cornell University Law School. *Fair Debt Collection Practices Act*. Retrieved July 27, 2016, from [https://www.law.cornell.edu/wex/fair\\_debt\\_collection\\_practices\\_act](https://www.law.cornell.edu/wex/fair_debt_collection_practices_act)

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## Legal Summary

Collecting debt is regulated in multiple ways and at multiple levels of government. There is oversight at the federal level through the FDCPA and CFPB, and by the state through the CFDCPA.

The CFPB is an independent agency of the United States government responsible for consumer protection in the financial sector. Its jurisdiction includes banks, credit unions, securities firms, payday lenders, mortgage-servicing operations, foreclosure relief services, debt collectors, and other financial companies operating in the United States. The CFPB's creation was authorized by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. It educates consumers, takes consumer complaints, promulgates needed rules, and takes legal action against out of compliance entities when necessary.

The FDCPA covers the collecting of debts across the nation. Generally, it governs debt collectors' actions concerning communication with consumers and providing documentation of a debt. Most importantly, it prohibits a debt collector from harassing consumers. There are three very important elements of the FDCPA among its other provisions:

- It only applies to consumer debt or debt incurred for personal, family, or household purposes. Business debts are not covered by the FDCPA;
- It applies only to someone who is collecting the debt of another; and
- It allows a consumer to sue a debt collector that violates the FDCPA.

State regulation is allowable under the FDCPA. The FDCPA specifically states that it does not exempt any person from complying with any state law, that state law may afford any consumer with greater protection than the FDCPA,<sup>13</sup> and that the Federal Trade Commission will cede regulation to a state if the regulation is substantially similar to the FDCPA.<sup>14</sup>

Article 14 of Title 12, Colorado Revised Statutes (C.R.S.), is the CFDCPA. The CFDCPA, to a very large extent, mirrors the FDCPA. The major difference between the two laws is that the CFDCPA includes the licensing of the individuals and businesses that collect debts. The CFDCPA regulates, with some specific exemptions, any collection agency, solicitor, or debt collector that collects or attempts to collect debts in Colorado or solicits debts for collection from a Colorado creditor.<sup>15</sup>

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<sup>13</sup> 15 U.S.C. 1692 § 816

<sup>14</sup> 15 U.S.C. 1692 § 817

<sup>15</sup> § 12-14-102, C.R.S.

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A collection agency collects, or attempts to collect, debts owed to another person<sup>16</sup> or solicits or takes assignment of debts for collection.<sup>17</sup> There are several exceptions including:

- A creditor’s officer or employee;
- A business subsidiary that is not primarily a debt collection business;
- A government employee attempting to collect a debt in an official capacity;
  - This does not include a person employed by the Colorado Department of Personnel and Administration (DPA), when collecting debts due to the state.
- Any person serving or attempting to serve legal process in connection with the judicial enforcement of any debt;
- Certain debt-management services providers operating in compliance with or exempt from the Uniform Debt Services Act;<sup>18</sup>
- A person whose principal business is making or servicing loans secured by real property; and
- A limited gaming or racing licensee acting pursuant to Gambling Payment Intercept Act.<sup>19</sup>

A debt collector is employed or engaged by a collection agency to collect debts. This definition includes DPA employees when collecting debt due to the state.<sup>20</sup> A solicitor is employed by a collection agency to seek debts for collection.<sup>21</sup> No collection agency may be owned, operated by, or employ a collection manager, debt collector, or solicitor who has been convicted of, or plead *nolo contendere* to theft, fraud, or computer crimes.<sup>22</sup>

The administrator of the Administrator is empowered to implement the CFDCPA. Implementation power includes rulemaking authority. The CFDCPA also creates the Board under the “supervision and control” of the Administrator.<sup>23</sup>

The Governor-appointed, five-member Board must have three members who are a collection manager, owner, or part owner of a licensed, Colorado collection agency and two members who represent the general public. The public members may not be engaged in the collection industry.<sup>24</sup> Members of the Board, the Administrator, expert witnesses, and consultants are immune from civil liability for good faith actions in connection with proceedings authorized under the CFDCPA. Any person who files a complaint in good faith under the CFDCPA is immune from civil liability.<sup>25</sup>

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<sup>16</sup> § 12-14-103(9.3), C.R.S., defines a person as a natural person, firm, corporation, limited liability company, or partnership.

<sup>17</sup> § 12-14-103(2)(a), C.R.S.

<sup>18</sup> § 12-14.5-201, *et seq.*, C.R.S.

<sup>19</sup> § 24-35-601, *et seq.*, C.R.S.

<sup>20</sup> § 12-14-103(7), C.R.S.

<sup>21</sup> § 12-14-103(10), C.R.S.

<sup>22</sup> § 12-14-123(2), C.R.S.

<sup>23</sup> §§ 12-14-114 and 117, C.R.S.

<sup>24</sup> § 12-14-116(2), C.R.S.

<sup>25</sup> § 12-14-130(12), C.R.S.

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Every collection agency must have a physical office in Colorado that is open to the public during normal business hours. The office must be staffed by at least one full-time employee who keeps records of all money collected and accepts in-person payments for debts being collected. The business must maintain a toll-free consumer number and every written communication by the business must include the address and phone number.<sup>26</sup>

## Licensing and Enforcement

It is a violation of the CFDCPA to advertise, solicit, or act as a collection agency without a license.<sup>27</sup> To qualify for a license an agency must be owned by, or employ, a collection manager that has been engaged in a responsible position in an established collection agency for a period of at least two years or have comparable experience. An agency must also have the statutorily required surety in place and comply with Colorado law if it is a foreign corporation. The collection manager is responsible for the actions of the debt collectors employed by the office.<sup>28</sup>

An applicant for a license must submit an application which includes:<sup>29</sup>

- A verifiable financial statement for the previous year;
- The name and number of shares held by any shareholder owning 10 percent or more, if it is a corporation;
- The name, address, age, and relevant debt-collection experience of each of the principals of the business including:
  - The conviction of any felony or plea of guilty or *nolo contendere* to any felony;
  - The denial, revocation, or suspension of any license issued to any collection agency which, directly or indirectly, employed or was owned by the principal, including a statement of his or her position and authority in the agency;
  - Any outstanding complaints, disciplinary, or adverse actions against any collection agency which, directly or indirectly, employed or was owned by the principal, including a statement of his or her position and authority in the agency; and
  - The suspension, termination of approval, or any other disciplinary or adverse action against the applicant, a collection manager, or a principal in any jurisdiction;
- The location, ownership, and, history of the business, when applicable; and
- A nonrefundable investigation fee.<sup>30</sup>

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<sup>26</sup> § 12-14-123(1)(b), C.R.S.

<sup>27</sup> §§ 12-14-115(1)(a), 115(4), and 118, C.R.S.

<sup>28</sup> §§ 12-14-119, C.R.S.

<sup>29</sup> § 12-14-119(2), C.R.S.

<sup>30</sup> § 12-14-119(3), C.R.S.

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If a license is denied it may be appealed pursuant to the Colorado Administrative Procedure Act.<sup>31</sup> If an application is approved, a license fee is required.<sup>32</sup> A license is only required for the principal place of business. However, the licensee must notify the Administrator of each branch office location within 30 days of operation but no separate license is required.<sup>33</sup> Additionally, the licensee has 30 days to notify the Administrator concerning a change in collection manager,<sup>34</sup> business name, address, or corporate ownership percentages between 10 percent and 50 percent. If notification is not given within the 30 days, the license automatically expires.<sup>35</sup>

A change in the majority ownership of a company requires a new application and license. The application must also be submitted within 30 days. The Administrator then has 25 days to issue or deny a new license. If it is denied, the licensee may resubmit with any changes to the application within 15 days. The Administrator then has 15 days to issue or deny the re-submitted application. As is the case with other changes, if the new application is not filed within 30 days, the existing license automatically expires.<sup>36</sup> Still, if a licensee has submitted an application for a new license, the business may operate under the existing license until the Administrator renders a final opinion.<sup>37</sup> Administrator final opinions may be appealed under the Colorado Administrative Procedure Act.<sup>38</sup>

Every collection agency must hold a surety bond plus liquid assets in deposit accounts or trust accounts of at least \$2,500 more than what is due all of its clients. The money in the account may not be used for operational expenses.<sup>39</sup>

If there is reasonable cause, the Administrator may require a licensee to file a verified statement of assets and liabilities. This may involve a detailed statement of amounts due claimants. Moreover, with cause the Administrator may require an audited statement. This statement is not a matter of public record but may be introduced as evidence in any court or administrative action.<sup>40</sup>

The CFDCPA mandated surety bond can be up to \$20,000 in favor of the Colorado Attorney General for use of the people of the state of Colorado and the Administrator. The bond is to be used by the Administrator to pay clients' or a court appointed receivers' verified claims of money collected by a licensee.<sup>41</sup> The aggregate liability of the surety, for any and all claims on the bond, cannot exceed the penalty of the bond.<sup>42</sup> No action may be brought against a bond more than two years following the surrender, revocation, or expiration of a license.<sup>43</sup>

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<sup>31</sup> § 12-14-120(3), C.R.S.

<sup>32</sup> § 12-14-119(4), C.R.S.

<sup>33</sup> § 12-14-119(7), C.R.S.

<sup>34</sup> § 12-14-122(3), C.R.S.

<sup>35</sup> § 12-14-122(1), C.R.S.

<sup>36</sup> § 12-14-122(2), C.R.S.

<sup>37</sup> § 12-14-122(4), C.R.S.

<sup>38</sup> § 12-14-122(5), C.R.S.

<sup>39</sup> §§ 12-14-123(1)(a) and (1)(c), C.R.S.

<sup>40</sup> § 12-14-130(6), C.R.S.

<sup>41</sup> §§ 12-14-124(1), (2), (3), and (4), C.R.S.

<sup>42</sup> § 12-14-124(7), C.R.S.

<sup>43</sup> § 12-14-124(9), C.R.S.

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Any person with an interest may file a written complaint alleging a violation of the CFDCPA or associated rules against any person. The administrator must conduct an investigation based on a complaint or if the Administrator finds there is reasonable cause to believe there is a violation of the CFDCPA.<sup>44</sup> The Administrator is empowered to hold hearings or appoint an Administrative Law Judge (ALJ) to hold hearings to consider violations.<sup>45</sup> Any person who files a complaint in good faith is immune from civil suit.<sup>46</sup>

The Administrator may apply to the Denver District Court for an injunction or other appropriate order restraining any person from any violation of the CFDCPA. The court has the ability to appoint a receiver or award other relief to implement the provisions of the CFDCPA; order restitution for consumers or creditors for violations of this article; impose civil penalties up to \$1,500 per violation of the CFDCPA; and award reasonable costs and attorney fees to the Administrator, if the Administrator prevails in an action.<sup>47</sup>

If the Administrator or an ALJ finds that a licensee or collection manager has committed a violation, the Administrator may deny, revoke, or suspend the license of the licensee or approval of the collection manager; place the licensee or collection manager on probation; or impose administrative fines of up to \$1,500.<sup>48</sup> No person whose license or approval has been revoked can be licensed again for five years.<sup>49</sup>

The Administrator may also issue letters of admonition (LOA) without a hearing. A recipient licensee or collection manager may request an LOA appeal hearing before the Administrator.<sup>50</sup>

Beyond the administrative violations and remedies, any person who violates the CFDCPA commits a Class 1 misdemeanor. Conviction of a Class 1 misdemeanor is governed by section 18-1.3-501, C.R.S. The penalties are 6 to 18 months in prison, a fine of \$500 to \$5,000 or both.<sup>51</sup> The local district attorney has the responsibility to prosecute the violations that occur in his or her district<sup>52</sup> and county courts have concurrent jurisdiction with the district courts in all criminal prosecutions.<sup>53</sup>

In addition to the administrative and criminal remedies, the CFDCPA also provides a framework for civil actions brought by a “consumer”<sup>54</sup> who believes he or she has been harmed by a debt collector.<sup>55</sup> A consumer’s civil action must be brought within one year from the date on which the violation occurred.<sup>56</sup>

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<sup>44</sup> §§ 12-14-130(1) and 130(2), C.R.S.

<sup>45</sup> §§ 12-14-130(8) and 130(9), C.R.S.

<sup>46</sup> § 12-14-130(12), C.R.S.

<sup>47</sup> § 12-14-135, C.R.S.

<sup>48</sup> § 12-14-130(10)(a), C.R.S.

<sup>49</sup> § 12-14-130(10)(d), C.R.S.

<sup>50</sup> § 12-14-130(10)(b), C.R.S.

<sup>51</sup> § 12-14-129, C.R.S.

<sup>52</sup> § 12-14-133, C.R.S.

<sup>53</sup> § 12-14-132, C.R.S.

<sup>54</sup> § 12-14-103(4), C.R.S. Defines consumer as any natural person obligated or allegedly obligated to pay any debt.

<sup>55</sup> § 12-14-113, C.R.S.

<sup>56</sup> § 12-14-113(4), C.R.S.

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An attorney who regularly engages in collecting or attempting to collect debts in Colorado is a collection agency. While the attorney must follow the standards in the CFDCPA, he or she is not required to be licensed under the CFDCPA.<sup>57</sup> Notwithstanding the license exemption, any CFDCPA-based complaint received by the Administrator concerning an attorney is required to be forwarded to the Colorado Supreme Court's Attorney Regulation Counsel.<sup>58</sup>

## Business Operations

The CFDCPA establishes many standards under which debt collection must proceed. These standards are largely created in the FDCPA and are uniform nationwide. For example, if a debt collector communicates with a person who is not the debtor to obtain location information about the debtor, the debt collector must:<sup>59</sup>

- Identify him- or herself and state that the purpose for the communication is for collecting or confirming location information about the consumer, and, only if expressly requested, identify his or her employer;
- Not communicate that the consumer owes a debt;
- Not communicate with any person more than once unless requested to do so by the person or unless the debt collector reasonably believes that the initial information given is erroneous or incomplete and that the person now has correct or complete location information;
- Not communicate by postcard;
- Not use any language or symbol, in or on, any communication that indicates that the communication relates to the collection of a debt; and
- After the debt collector is aware that the consumer is represented by an attorney, not communicate with any person other than that attorney, unless the attorney fails to respond within 30 days.

This example illustrates that the CFDCPA's standards for practice are highly prescriptive. The CFDCPA elaborates on several standards related to debt collection practices and the conduct of debt collectors. Among them are:

- Section 12-14-105, C.R.S., Communication in connection with debt collection;
- Section 12-14-106, C.R.S., Harassment or abuse;
- Section 12-14-107, C.R.S., False or misleading representations;
- Section 12-14-108, C.R.S., Unfair practices;
- Section 12-14-109, C.R.S., Validation of debts;
- Section 12-14-110, C.R.S., Multiple debts;
- Section 12-14-111, C.R.S., Legal actions by collection agencies; and
- Section 12-14-112, C.R.S., Deceptive forms.

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<sup>57</sup> § 12-14-103(2)(e)(II), C.R.S.

<sup>58</sup> § 12-14-117(4), C.R.S.

<sup>59</sup> § 12-14-104, C.R.S.

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## Program Description and Administration

The administrator of the Uniform Consumer Credit Code (Administrator) within the Colorado Department of Law is vested with the authority to regulate collection agencies by the Colorado Fair Debt Collection Practices Act (CFDCPA).<sup>60</sup> Implementation of the CFDCPA is funded through fees paid into the Collection Agency Cash Fund established by the CFDCPA.<sup>61</sup>

Table 1 illustrates the monetary and full-time equivalent (FTE) employee expenditures associated with program implementation during the period examined for this sunset review.

**Table 1**  
**Program Expenditures**  
**Fiscal Years 10-11 through 14-15**

Fiscal Year	Monetary Expenditures	FTE
10-11	\$473,766	5.5
11-12	\$485,946	5.5
12-13	\$515,878	5.6
13-14	\$608,804	6.2
14-15	\$798,845	6.9

Table 1 indicates that program expenditures increased dramatically in fiscal years 13-14 through 14-15. The Administrator explained that this was due to increases from a program reorganization and the associated operations and administration costs.

Among the FTE listed in Table 1 are the primary program staff. The list below includes the title of each and a brief job description:

**Administrator**

- Administers the CFDCPA regulatory program, manages the staff, and promulgates rules.

**Program Manager**

- Supervises the work of the program assistant and the administrative assistant;
- Develops the guidelines and processes for the licensing of agencies; and
- Develops and maintains the system to collect, organize and maintain the volume of complaints.

**Compliance Investigator I (2.0 FTE)**

- Reviews consumer complaints and collection agency responses, and recommends further action where appropriate;
- Conducts compliance examinations and writes reports;

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<sup>60</sup> § 12-14-114, C.R.S.

<sup>61</sup> § 12-14-136(1)(a), C.R.S.

- Reviews and processes applications and renewals where additional investigation is needed;
- Investigates unlicensed activity; and
- Assists attorneys in enforcement actions.

#### Program Assistant I

- Reviews and processes new and renewal license applications and makes initial licensing recommendations to the compliance investigators;
- Maintains records of licensees and updates Unit's database;
- Answers inquiries about license requirements and procedures; and
- Assists with preparation for advisory board meetings.

#### Administrative Assistant II

- Provides intake on consumer complaints and logs consumer complaints,
- Provides information to consumers about their rights, and
- Provides general administrative support for the program.

## Licensing

To become a licensed collection agency in Colorado, all necessary applications, documents, and other information must be filed, all fees must be paid, and the designated collection manager must be qualified.<sup>62</sup> When applications are submitted to the Administrator, an applicant must also submit a \$500 nonrefundable investigation fee.<sup>63</sup> The CFDCPA directs the Administrator to investigate and confirm the qualifications of agency principals and the collection manager. Possible disqualifications include:

- The conviction, plea of guilty, or *nolo contendere*, to any felony;
- The denial, revocation, or suspension of a collection agency license;
- The receipt of disciplinary or adverse action or the existence of an outstanding complaint against a collection agency owned by a principal or employer of the collection manager; and
- The suspension or termination of program approval of any collection manager under the CFDCPA or a disciplinary or adverse action taken against the applicant, principal, or collection manager in another jurisdiction.

The Administrator requires an application for the agency which includes an application form for the collection manager to submit. In addition to the applications and the investigation fee, an applicant for initial licensure must also submit the following:<sup>64</sup>

- A financial statement;
- Personal affidavits, attesting to qualifications to be licensed;

<sup>62</sup> 4 CCR § 903-1-1.02, Rules of the Administrator Colorado Fair Debt Collection Practices Act.

<sup>63</sup> § 12-14-119(3), C.R.S. and Office of the Colorado Attorney General. *Collection Agency Regulation: Licensing*. Retrieved March 24, 2016, from <http://www.coloradoattorneygeneral.gov/car/licensing>.

<sup>64</sup>State of Colorado Department of Law. *Collection Agency Licensing Instructions & Application. License Application Checklist*. Retrieved March 24, 2016, from [http://www.coloradoattorneygeneral.gov/sites/default/files/contentuploads/cp/ConsumerCreditUnit/CAR/cab\\_licensing\\_application.pdf](http://www.coloradoattorneygeneral.gov/sites/default/files/contentuploads/cp/ConsumerCreditUnit/CAR/cab_licensing_application.pdf)

- Approved certificates of good standing for corporations, limited liability companies, and limited partnerships;
  - Sole proprietors must submit a notarized affidavit of citizenship/residency and verifiable identification.
- An approved trade name or assumed name;
- Trust account information on bank account form;
  - No trust account is needed if the collection agency does not receive or have access to payments.<sup>65</sup>
- An operating account on bank account form;
- A surety bond of \$12,000 to \$20,000 in the name of the Colorado Attorney General;
- A current list of employed debt collectors and solicitors;
- A branch office list;
- A list of states to which the applicant mailed license verification forms; and
- A sample validation/first notice containing Colorado-specific requirements.

After receipt of the application, a letter requesting any missing or additional items may be sent to the applicant. Those items must be submitted within 90 days. If the application is approved, a \$1,000 license fee is charged and the license is issued.

Collection agency licenses are valid from the date of issuance to the following July 1st.<sup>66</sup>

Table 2 shows the program’s licensing data for the period examined for this sunset review.

**Table 2  
License Information  
Fiscal Years 10-11 through 14-15**

Number of Licenses				
Fiscal Year	New	Renewal	Out-of-State Licenses	TOTAL
10-11	148	615	598	763
11-12	122	656	623	778
12-13	126	660	636	786
13-14	94	680	629	774
14-15	99	642	610	741

<sup>65</sup> Rule 4 CCR § 903-1-3.01, Rules of the Administrator Colorado Fair Debt Collection Practices Act.

<sup>66</sup> Rule 4 CCR § 903-1-1.06, Rules of the Administrator Colorado Fair Debt Collection Practices Act.

Table 2 indicates the number of new licenses issued decreased by approximately one-third during the period under review. This decrease coincides with an improvement in the economy which caused less demand for collection agency services. Table 2 also indicates that the vast majority of licenses are issued to businesses not headquartered in Colorado. Approximately, 80 percent of the licenses issued during the period under review were issued to out-of-state collection agencies.

The program is cash-funded. The fees it charges are determined by approximating the direct and indirect cost of implementation. Table 3 shows the changes in the fee structure during the period examined for this sunset review.

**Table 3  
Licensing Fees  
Fiscal Years 10-11 through 14-15**

<b>Fiscal Year</b>	<b>New License</b>	<b>Renewal</b>	<b>Investigation</b>
10-11	\$900 (July 1-December 31) \$450 (January 1-June 30)	\$425	\$300
11-12	\$750	\$375	\$300
12-13	\$1,000	\$500	\$300
13-14	\$1,000	\$500	\$300
14-15	\$1,000	\$1,000	\$500

The change in the fiscal year 10-11 license fee was made mid-year to avoid anticipated noncompliance with the cash reserves requirements of Part 4 of Article 75, Title 24, C.R.S., which governs state cash-funded programs. The fluctuations in the licensing fees stem from changes in the program’s administrative structure that triggered the resetting of fees several times during the period under review. The fees appear to have leveled out at the current rates by the end of the sunset review period.

### **Complaints and Discipline**

Complaints come to the Administrator in multiple ways, but the majority of consumer complaints come through the program’s website. The Administrator may also initiate a complaint if he or she becomes aware of a violation. Because regulation under the CFDCPA extends beyond the licensing of agencies and individuals and governs the conduct of most commercial entities that collect debt in Colorado, jurisdiction has broader implications than license violations. For example, attorneys are exempt from licensing but must comply with the other provisions of the act when collecting a debt for another party. A preliminary investigation of each complaint determines if there is jurisdiction over the complaint.

Once jurisdiction is verified, program staff sends a letter to the licensee for a response. If it is a case of unlicensed practice, the program investigates to locate the firm/individual to cease operations, license it, or act against it. If an attorney is involved, the CFDCPA directs that the complaint must be forwarded to the Colorado Supreme Court's Attorney Regulation Counsel (ARC).<sup>67</sup> The Administrator enforces the provisions of the CFDCPA on the attorneys but the ARC handles complaints against any attorneys' license.

Table 4 shows the complaints received by the program staff and the initial classification of the complaint.

**Table 4**  
**Category and Number of Complaints**  
**Fiscal Years 10-11 through 14-15**

Nature of Complaints	FY 10-11	FY 11-12	FY 12-13	FY 13-14	FY14-15
Amount Not Due	353	473	473	527	714
Costs/Interest Added to Debt	44	41	67	65	71
Credit Reporting	123	129	181	152	161
Failure to Advise of Rights	17	13	14	8	14
Failure to Cease Communications	93	99	77	67	52
False or Misleading Representations	17	14	23	31	29
Harassment and Abuse	351	263	219	268	264
Legal Action (Service/venue)	68	84	78	111	95
Third-Party Contact or Disclosure	37	30	30	41	32
Unlicensed Collection Agency	76	78	29	371	524
Verification/Proof of Debt	163	159	130	74	87
<b>TOTAL COMPLAINTS</b>	<b>1,243</b>	<b>1,040</b>	<b>969</b>	<b>881</b>	<b>1,421</b>

<sup>67</sup> § 12-14-117(4), C.R.S.

Incoming complaints may initially be classified in more than one category. Consequently, the reported “Total Complaints” for each year are less than the sum of the categorized complaints. This table does not include those complaints immediately dismissed for lack of jurisdiction. Those cases are not tracked by the program. The dramatic increase in the number of “Amount Not Due” complaints may be due to the proliferation of debt buyers, people that purchase debts as a commodity. If a debtor does not recognize the name of the creditor, because it is a purchaser of the debt and not the original creditor, it may be reported as an amount not due. The increase in the number of “Unlicensed Collection Agency” complaints is due to a change in classification policy for the incoming complaints during fiscal year 13-14.

If the Administrator finds that an agency or collection manager has violated the CFDCPA, the Administrator may discipline the violator. The disciplinary options available are: letters of admonition; deny, revoke, or suspend the applicable license; place the licensee or collection manager on probation; and issue fines up to \$1,500 per violation.<sup>68</sup> If the Administrator determines that a violation is minor or technical, he or she has the discretion to issue an advisory letter in lieu of discipline.<sup>69</sup>

Table 5 enumerates the actions taken by the Administrator during the period under sunset review.

**Table 5**  
**Disciplinary Actions**  
**Fiscal Years 10-11 through 14-15**

Type of Action	FY 10-11	FY 11-12	FY 12-13	FY 13-14	FY14-15
Advisory Letter	9	20	17	24	15
Letter of Admonition	9	19	19	7	7
Summary Suspension	0	0	0	0	0
Suspension	0	0	0	0	0
Probation	0	0	0	1	0
Revocation	0	0	0	0	1
License/Renewal Denial	0	0	0	1	6
Injunction/Judgment/Stipulated Agreement	32	59	50	26	21
Surety Bond Demands	1	0	0	31	10
Cease & Desist	70	87	65	88	169
<b>TOTAL</b>	<b>121</b>	<b>185</b>	<b>151</b>	<b>178</b>	<b>229</b>

<sup>68</sup> § 12-14-130(10)(a), C.R.S.

<sup>69</sup> Rule 4 CCR §903-1-1.04(4)

When comparing Table 4 and Table 5, one can see that the overwhelming majority of complaints are resolved without further action. In fiscal year 14-15 alone, nearly 1,200 complaints were resolved in this manner. Often, the cases are terminated because the respondent is not subject to the provisions of the CFDCPA (i.e., It may be the actual creditor attempting to collect on its own account receivable and is therefore not culpable under the CFDCPA.). Table 5 also shows that the Administrator issues several cease and desist orders annually. These are generally issued to agencies that were attempting to collect a debt in Colorado without first obtaining the proper license.

The increase in the number of “Surety Bond Demands” for fiscal years 13-14 and 14-15 is due to a case where several creditors made demands on the surety of a single collection agency.

Finally, Table 5 shows an increase in the fiscal year 11-12 and 12-13 “Injunction/Judgment/Stipulated Agreement” and “Letter of Admonition” categories and Table 6 shows an increase in the number of fines issued during that same time. Staff explains that these increases are likely due to a sharp increase in new licenses issued during fiscal years 08-09 and 09-10. New licensees tend to be less familiar with the CFDCPA and its provisions. Therefore, violations appear more often in the earlier renewal periods.

Not included in Table 5 are the fines issued by the Administrator. Table 6 enumerates the number of fines, the total amount of those fines, and the monetary range of the fines.

**Table 6**  
**Fine Information**  
**Fiscal Years 10-11 through 14-15**

<b>Fiscal Year</b>	<b>Total Number</b>	<b>Total Amount</b>	<b>Range of Fines</b>
10-11	28	\$96,800	\$500 - \$18,000
11-12	57	\$406,351	\$500 - \$110,000
12-13	50	\$762,142	\$500 - \$200,000
13-14	24	\$207,145	\$500 - \$70,000
14-15	21	\$1,698,698	\$500 - \$613,500

The Total Amount of Fines includes fines, reimbursement of costs and attorney’s fees, custodial funds for educational and law enforcement purposes, and consumer restitution. The fiscal year 14-15 total of nearly \$1.7 million is due mostly to one case. In that case the fines assessed totaled approximately \$1.4 million.

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## Collection Agency Board

The CFDCPA creates a Governor appointed, five-member, Collection Agency Board (Board) under the supervision and control of the Administrator.<sup>70</sup> Three members of the Board must have been involved with a collection agency in Colorado either as a collection manager or in agency ownership. The two remaining members represent the general public and cannot be involved in the collection business.<sup>71</sup> The CFDCPA does not assign specific duties to the Board. Because it is under the supervision and control of the Administrator, it acts solely in an advisory capacity. During the period covered by this sunset review the Board meet one time per year for less than a full morning.

## Collateral Consequences

Section 24-34-104(6)(b)(IX), C.R.S., requires the Colorado Office of Policy, Research and Regulatory Reform to determine whether the agency under review, through its licensing processes, imposes any disqualifications on applicants or licensees based on past criminal history, and if so, whether the disqualifications serve public safety or commercial or consumer protection interests.

The CFDCPA provides that the conviction or plea of guilty or *nolo contendere* to specified crimes may disqualify a business or individual from operating in Colorado.<sup>72</sup> It also states that:<sup>73</sup>

No person whose license has been revoked shall be licensed again under the terms of this article for five years. No person hired as a collection manager whose approval has been terminated by the Administrator for a violation of the CFDCPA shall be hired again as a collection manager for five years.

Therefore, if a person has had a licensed revoked for committing or pleading *nolo contendere* to one of the enumerated crimes, that person or business is disqualified for five years.

The Administrator has not tracked these actions, if any. Consequently, this sunset review cannot report on them.

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<sup>70</sup> §§ 12-14-116(1) and 117(1), C.R.S.

<sup>71</sup> § 12-14-116(2), C.R.S.

<sup>72</sup> §§ 12-14-119(2)(d)(I), 123(2), and 130(3), C.R.S.

<sup>73</sup> § 12-14-130(10)(d), C.R.S.

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## Analysis and Recommendations

### Recommendation 1 – Continue the Colorado Fair Debt Collection Practices Act for 11 years, until 2028.

The Consumer Sentinel Network is a database developed by the Federal Trade Commission (FTC). It keeps track of millions of consumer complaints and makes the information available to law enforcement. In calendar year 2015, collection complaints outnumbered all others, moving past identity theft for the first time.<sup>74</sup>

Both the federal Fair Debt Collection Practices Act (FDCPA) and Colorado Fair Debt Collection Practices Act (CFDCPA) prohibit debt collectors and collection agencies from using abusive, unfair, or deceptive practices to collect a debt from consumers. A collection agency is a person or business that regularly collects or attempts to collect debt owed to another party or solicit for collection debt owed to another party.<sup>75</sup>

The CFDCPA mirrors the FDCPA in most respects but it takes an additional step in requiring that collection agencies be licensed prior to operating in Colorado. The mandatory license is an instrument that protects clients, who are the creditors owed a debt, from financial harm and consumers, who are the debtors, from abuse and from potential financial harm.

The licensing of collection agencies provides financial protections for clients of collection agencies. A licensee must hold liquid assets in the form of a deposit or trust account of at least \$2,500 more than what is due all of its clients, and secure a surety bond of up to \$20,000. The surety must be payable to the Colorado Attorney General. The Colorado Department of Law is where the program that administers the CFDCPA is housed. The bond is in place to be used by the program administrator (Administrator) to pay valid monetary claims made against a licensee's business. In total, these financial instruments are in place to ensure that clients are paid the money owed to them by a licensee.

Though these financial mechanisms are in place, a major focus of the CFDCPA is on the interactions between a collection agency and a debtor. The CFDCPA stipulates who may be contacted, when someone may be contacted, what can and cannot be communicated during contact, and how a debtor may cease communication, among other protections. A violation of the CFDCPA can result in a licensee being sanctioned or losing its ability to conduct business in Colorado.

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<sup>74</sup> Federal Trade Commission. *Consumer Sentinel Network Data Book for January - December 2015*. Retrieved June 27, 2016, from <https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-january-december-2015/160229csn-2015databook.pdf>

<sup>75</sup> § 12-14-103(2)(a), C.R.S.

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Additionally, attorneys who collect debts on a regular basis are exempt from the licensing provisions of the CFDCPA but must comply with these contact provisions. They may be investigated by the Administrator who is mandated to forward any complaint to the Colorado Supreme Court's Attorney Regulation Council.<sup>76</sup>

The mission of the CFDCPA is clearly to protect clients and consumers from harm. Still, a sunset review of any program derived from a federal program must question the need for a state-operated program. What would happen if the General Assembly eliminated the state program and returned to federal implementation?

The FTC is the federal agency charged with implementing the FDCPA. The most lawsuits ever brought in one year by the FTC is 12, nationwide. Colorado is far more action-oriented than the FTC. *The Denver Post* reported in March of 2016, that the complaints against debt collectors in 2015 outnumbered all other consumer protection complaints received by the Office of the Colorado Attorney General.<sup>77</sup> This sunset review recounted, on page 20, that in fiscal year 14-15 alone, the Administrator took action on 229 complaints. Moreover it issued \$1.7 million in fines to 21 agencies. Using enforcement actions as a measure of consumer protection, the Colorado program provided much more protection than did the federal program.

Because of the effectiveness of its program the FTC presented Colorado a commendation for its role as a partner in protecting consumers. The Commendation read:

In recognition of the Colorado Attorney General's collaboration with the Bureau of Consumer Protection to combat illegal debt collection and fight deception in the marketplace. The Attorney General's participation in Operation Collection Protection, joint filing of lawsuits against illegal robocallers and deceptive advertisers, and collaborative consumer education and outreach efforts have significantly advanced our shared consumer protection mission.

The regional administrator for the FTC stated that FTC focus is not as action-focused and it relies on the states to execute that piece of the program. The General Assembly adopted the CFDCPA which puts the consumer protections in place at the state level. The Administrator takes the steps necessary to prevent harm from occurring. In cases when harm does occur, it helps creditors and debtors by acting against those that created the harm.

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<sup>76</sup> § 12-14-117(4), C.R.S.

<sup>77</sup> *Denver Post*. "Top 10 Consumer Complaints of 2015." Retrieved March 11, 2016, from [http://www.denverpost.com/business/ci\\_29611043/top-10-consumer-complaints-2015-colo-attorney-generals](http://www.denverpost.com/business/ci_29611043/top-10-consumer-complaints-2015-colo-attorney-generals)

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It is clear that the licensing of collection agencies is necessary to protect Colorado's citizens. Additionally, the program protects Colorado citizens to a far greater extent than relying solely on the federal program. However, because the CFDCPA is founded on the FDCPA and this sunset review does not call for any major changes to the licensing program, there is no urgent need for the General Assembly to revisit the CFDCPA soon. Therefore, the General Assembly should continue the CFDCPA for 11 years until 2028.

**Recommendation 2 - Define what is expected of an individual who purchases, sells, or attempts to collect on purchased debt.**

The overwhelming majority of the debts collection agencies attempt to collect are sent to a collection agency on consignment. The collection agency gets paid a percentage of the account only when it is able to collect from the debtor.

After a 2013 analysis of the debt collection industry, the FTC noted that the most noteworthy change in the industry is the growth of debt buying. Debt buying occurs when an original creditor sells debt rather than keeping the debt on its books. The debt is usually sold at pennies on the dollar. The debt buyer then attempts to collect.

Problems tend to follow when the first debt buyer cannot collect the debt and subsequently sells it to another debt buyer. The FTC notes that debt buying "may raise significant consumer protection concerns."<sup>78</sup> The major issues involve harassment of consumers and a lack of documentation of the debt.

When a debt is initially purchased, the first purchaser may receive the documentation concerning the origins of the debt from the original creditor. However, if debts are deemed "uncollectable" by that purchaser, they may be bundled with other uncollectable debts, from different sources, and sold to another buyer. This may be repeated a number of times. With each subsequent sale, less documentation concerning the original transaction and creditor survives. These problems can be compounded if the debt has been disputed.

A debt buyer is not obligated to inform the next buyer that the debt is under dispute. Under the CFDCPA if a consumer disputes a debt, the debt collector must stop contacting that consumer until verification documentation is produced. Rather than providing the documentation required in the CFDCPA, that it may not have, the new debt "owner" just bundles it again and sells it off to another buyer. If the debt is sold and a different collection agency contacts the consumer not knowing it has been disputed, then the new agency has done nothing wrong. The CFDCPA does not prohibit debt buyers from reselling disputed debts to other purchasers without notifying the buyer of a dispute. Nor does it prohibit any subsequent buyer from contacting the consumer seeking to collect the debt.

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<sup>78</sup> Federal Trade Commission. The Structure and Practices of the Debt Buying Industry, (2013). Page i. Retrieved June 2, 2016, from <https://www.ftc.gov/sites/default/files/documents/reports/structure-and-practices-debt-buying-industry/debtbuyingreport.pdf>

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The CFDCPA and the Administrator have jurisdiction over a debt buyer because section 103(2)(a)(II)(C) of the CFDCPA, defines a collection agency as a person who, “Directly or indirectly solicits for collection debts owed or due or asserted to be owed or due another.” The action of purchasing debt constitutes a debt owed to another person for which the purchaser wishes to collect. Therefore, under Colorado law that debt buyer must be licensed and is subject to the CFDCPA.

The CFDCPA prohibits a collection agency from harassing a consumer. If a consumer is contacted by a debt collector claiming that money is owed when the bill has been paid, that customer may feel harassed. If that same consumer is contacted multiple times for that same bill, even if the contact is not made in an intimidating or badgering way, he or she is being harassed.

These actions are not only annoying for a consumer, they may hurt a now-suspicious consumer when a valid contact for collection happens. If a consumer feels hassled by debt collectors, he or she may ignore a legitimate attempt to collect money owed. This can result in the creditor reporting the debt to credit agencies which will hurt a consumer’s credit rating. It may also result in the consumer going to court adding to the expense of the original valid debt.

There often are no consequences for the collection agency if it is trying to collect on a debt that has been purchased and sold multiple times. The debt collector may not be aware of any of the debt’s history, when or where the debt originated, or whether the debt has been paid.

Nonetheless, consumers feel harassed. This cycle can go on for years. The term of art in the industry for this is called “Zombie Debt” because it never dies. To combat Zombie Debt, some states have instituted a statute of limitations on collecting an old debt. In most states the time period is four to six years after the last payment was made on the debt.<sup>79</sup>

The solutions to these problems lie in amending the CFDCPA to require that:

- When a debt is sold all relevant documentation concerning the original transaction and creditor verifying the debt must be included in the transaction. The required information and documentation should be enumerated by the Administrator in rule;
- If a debt is disputed, any sale of that debt must include documentation that it is under dispute and that the consumer may not be contacted unless verification of the debt is documented;
- No retired debt may be sold as an account receivable; and
- After the last payment was made on the debt, a four-year statute of limitations begins, on a collection agency’s ability to take a debtor to court and at that time contacting a debtor should be a violation of the CFDCPA.

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<sup>79</sup> Credit.com. Managing Debt; Does Your Old Debt Have an Expiration Date? Retrieved July 19, 2016, from <http://blog.credit.com/2012/12/does-your-old-debt-have-an-expiration-date-63536/>

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The practice of trading debt as a commodity has left consumers exposed to the type of excessive harassment that the CFDCPA was adopted to prevent. Therefore, the General Assembly should act to define what is expected of an individual who purchases, sells, or attempts to collect on purchased debt.

**Recommendation 3 - Repeal the phrase “arising out of a transaction” from CFDCPA’s definition of “debt.”**

The definition of “debt” in the CFDCPA reads:

“Debt” means any obligation or alleged obligation of a consumer to pay money arising out of a transaction, whether or not such obligation has been reduced to judgment. “Debt” does not include a debt for business, investment, commercial, or agricultural purposes or a debt incurred by a business.<sup>80</sup>

Some court actions have served to undermine the consumer protections provided in the CFDCPA.

In *Rector v. City and County of Denver*, the Colorado Court of Appeals decided that among other things, the inclusion of the word “transaction” in the definition of “debt” means that the CFDCPA applies only to debt that “has arisen as a result of the rendition of a service or purchase of property or other item of value.”<sup>81</sup> In *Ybarra v. Greenberg & Sada, P.C.*, the Colorado Court of Appeals cited *Rector* and affirmed that there are times that money owed is not considered a debt under the CFDCPA.<sup>82</sup>

Both of these cases nullify the intent of the CFDCPA. In effect, this means that there are times when an individual owes money to another party and that obligation is not considered a debt. Therefore, any collection agency that attempts to collect on that obligation is not subject to the behaviors, the precautions, and the consumer protections established by the General Assembly in the CFDCPA. In *Ybarra*, the court ruled that Ms. Ybarra was not protected under the CFDCPA harassment provisions because the debt she owed was not the result of a transaction, it was the result of a car accident and subsequent court action. She owed the debt, but was not protected by the CFDCPA.

Similarly, in *Rector* the court nullified the protections in the CFDCPA because it ruled that the obligation, which began as a parking meter violation, arose out of the need to create public safety and not out of the purchase of something of value. Therefore, the obligation was not a transaction and not a debt covered under the CFDCPA.

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<sup>80</sup> § 12-14-103(6), C.R.S.

<sup>81</sup> *Rector v. City and County of Denver*, 122 P.3d. 1010, 1016 (Colo. App. 2005), citing *Staub v. Harris*, 626 F.2d 275, 278 (3<sup>rd</sup> Cir. 1980), which addressed a similar provision in the FDCPA.

<sup>82</sup> *Ybarra v. Greenberg & Sada, P.C.*, -- P.3d --, 2016 WL 4247809 ¶39 (Colo. App. 2016).

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The General Assembly adopted the CFDCPA to protect consumers from harassment and to protect creditors from collection agencies. The origins of the debt should not determine whether a consumer can be harassed or protected. By disallowing certain monetary obligations and narrowing the definition of debt, consumers are left unprotected from being harassed by a debt collector.

Resolving this issue and continuing to protect citizens as intended by the CFDCPA requires striking the phrase “arising out of a transaction” from the CFDCPA’s definition of debt. The statute will then be clear that when a collection agency attempts to collect on any debt, that the CFDCPA applies. For that reason, the General Assembly should repeal the phrase “arising out of a transaction” from section 12-14-103(6)(a), Colorado Revised Statutes (C.R.S.).

**Recommendation 4 – Clarify that the statute of limitations in CFDCPA enforcement actions is four years.**

Section 12-14-113, C.R.S., explains that a collection agency that violates the CFDCPA may have a civil action brought against it by a consumer. The section provides that an action to enforce liability under the CFDCPA must be filed within one year from the date of the violation.

In multiple enforcement cases filed by the Administrator, the defendants argued that the one year statute of limitations applied to enforcement actions. Both district and administrative courts held that the one year limitation period applied only to private causes of action and not the Administrator’s governmental enforcement actions.<sup>83</sup>

In *State of Colorado, et al., v. The Castle Law Group, et al.*, however, a trial court found that the CFDCPA contains no specific statute of limitations addressing the Administrator’s enforcement actions. Because the CFDCPA is silent on enforcement actions, a one year limitation is also applicable to civil penalty claims asserted by the Administrator in enforcement actions.<sup>84</sup>

Consequently, even though the trial court decision holds no precedential value, the decision shows that interpretations of the CFDCPA are ambiguous. Ambiguous laws are difficult to implement with certainty and therefore leave citizens exposed to harm. The General Assembly should amend the CFDCPA clarifying its position.

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<sup>83</sup> *State of Colorado v. United Credit Recovery,; Leonard Potillo ; GTF Services LLC.; and Standley & Associates*, Motion to Dismiss, 2013CV35182 (April 17, 2014). *State of Colorado v. Robert Hopp & Associates, LLC.; The Hopp Law Firm, LLC. National Title Insurance, LLC.; First National Title Residential, LLC. Safehaus Holdings Group, LLC.: Lori L Hopp and Robert J Hopp*, Motion to Dismiss, 2014CV34780, (June 8, 2015). Disciplinary Proceeding Against the Collection Agency License of Van Ru Credit Corporation, Order Striking Affirmative Defense, 2013CV35182, (March 3, 2014).

<sup>84</sup> *State of Colorado, et al., v. The Castle Law Group, et al.*, 14CV32763, (November 12 2014).

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The Consumer Protection section of the Colorado Department of Law administers other consumer-oriented programs. In those programs, the Administrator typically has four years to file an action for a violation of the regulating statutes. Therefore, the General Assembly should be consistent and add a four-year statute of limitations to CFDCPA enforcement actions.

### **Recommendation 5 – Sunset the Collection Agency Board.**

The CFDCPA creates a Governor appointed, five-member, Collection Agency Board (Board) under the supervision and control of the Administrator.<sup>85</sup> Three members of the Board must have been involved with a collection agency in Colorado either as a collection manager, owner, or part owner of an agency. The two remaining members represent the general public and cannot be involved in the collection business.<sup>86</sup> The CFDCPA does not assign specific duties to the Board. Because it is under the supervision and control of the Administrator, it acts in an advisory capacity.

Neither the Administrator nor Board members, past or present, acknowledge much utility in the current Board function. In theory the Board meets one time per year for less than a full morning to discuss changes in regulation and the industry. However, that is not the reality of how the Board operates.

Consider the annual meeting held during April of 2016. The meeting was scheduled to last for two and one-half hours. The majority of the meeting consisted of a question and answer session with the Colorado Office of Policy, Research and Regulatory Reform staff member in attendance concerning the sunset review of the CFDCPA. There was some discussion of industry and regulatory happenings but there was very little back-and-forth between the Administrator and staff, and Board members or the public. The advisory function of the Board was nonexistent.

The Administrator speaks with Colorado-licensees on a daily basis concerning regulatory issues so there are no new perspectives brought into the annual meetings. If the Administrator perceives a need to reach out to the regulated community for information, then the Administrator can convene an ad hoc advisory committee. In that case there would be utility in convening a group of interested stakeholders. Currently, the only purpose for holding the annual meeting is because the CFDCPA reads, “The board shall meet annually for the purpose of organization by electing a chairman, a vice-chairman, and a secretary of the board for the ensuing year.”<sup>87</sup> The Administrator must fulfill this statutory function.

Because it has no functional value to the Administrator and has no impact on program execution, the General Assembly should sunset the Board.

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<sup>85</sup> §§ 12-14-116(1) and 117(1), C.R.S.

<sup>86</sup> § 12-14-116(2), C.R.S.

<sup>87</sup> § 12-14-116(4), C.R.S.

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**Recommendation 6 - Allow consumers who have a monetary judgment against a collection agency, access to surety bond funds.**

Section 12-14-124, C.R.S., states that every licensee must have a bond in place to make “clients,” i.e., creditors, whole in cases when a licensee does not pay the client money it is owed. The money is generally accessed when a company goes out of business without first paying its obligations and it is the only thing left of any value.

The CFDCPA provides that a consumer who believes he or she has been wronged may bring a civil suit against a collection agency within one year of a violation.<sup>88</sup> The CFDCPA also provides that a consumer may be awarded restitution by a collection agency.<sup>89</sup> Currently however, the consumer has no right to the bond money. Only clients have the ability to collect on money owed by a collection agency through the bond.

If a collection agency has money or surety held specifically to satisfy unpaid debts, then it should be accessible by any person or entity authorized by law to collect money it is owed. Therefore, the General Assembly should allow consumers who have a judgment against a collection agency, access to surety bond funds.

**Administrative Recommendation 1 – The Administrator should track license disqualifications based on criminal history.**

During the 2013 legislative session, the General Assembly added a criterion to those that govern the research and reporting in sunset reviews. Criterion IX asks,

Whether the agency through its licensing or certification process imposes any disqualifications on applicants based on past criminal history and, if so, whether the disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subparagraph (i) of paragraph (a) of subsection (5) of this section shall include data on the number of licenses or certifications that were denied, revoked, or suspended based on a disqualification and the basis for the disqualification.<sup>90</sup>

Because it is a newer reporting requirement, some programs and organizations, do not track this information. Because the General Assembly finds this information to be an important function of a sunset review, the Administrator should track disqualifications for licenses based on past criminal history.

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<sup>88</sup> § 12-14-113(4), C.R.S.

<sup>89</sup> § 12-14-135, C.R.S.

<sup>90</sup> § 24-34-104(6)(b)(IX), C.R.S.

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## Appendix A - Survey Summary Statistics

In conjunction with this sunset review, the Colorado Office of Policy, Research and Regulatory Reform surveyed licensees with an email address on record with the Administrator. A link to the survey was sent to individuals by means of the email address supplied. Surveys were sent to 726 individuals, 704 surveys were successfully delivered<sup>91</sup> and 144 individuals responded. This represents a response rate of 20.5 percent. Survey questions and a summary of the response data are recorded in this Appendix A.

### How long have you been licensed as a collection agency in Colorado?

0-5 years	45	31.3%
6-10 years	42	29.2%
11-15 years	16	11.1%
16-20 years	20	13.9%
More than 20 years	21	14.6%

### In how many states do you collect debt?

1-5	17	12.1%
6-10	2	1.4%
11-20	10	7.1%
21-30	14	9.9%
More than thirty	98	69.5%

### How many people do you employ?

11-25	24	16.8%
25-50	25	17.5%
51-100	31	21.7%
More than 100	36	25.2%

### In what state is your collection business headquartered?

Colorado	24	17.5%
Other	113	82.5%

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<sup>91</sup> Successful delivery is deemed to have occurred when the email sending the survey was not returned or did not fail.

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**Do you operate a Colorado office or contract with a professional services company, Colorado-based attorney, or a virtual office space to satisfy the conditions of the CFDCPA?**

Operate own office	<b>30</b>	<b>21%</b>
Contract office and services	<b>113</b>	<b>79%</b>

**How often does a consumer walk into your Colorado office for a consultation or to make a payment?**

Several times per day	<b>8</b>	<b>5.8%</b>
1-5 per week	<b>5</b>	<b>3.6%</b>
1-5 per month	<b>3</b>	<b>2.2%</b>
1-10 per year	<b>4</b>	<b>2.9%</b>
Less than 1-10 per year	<b>119</b>	<b>85.6%</b>

**How many people do you employ in your Colorado Office?**

1	<b>15</b>	<b>10.6%</b>
2-10	<b>10</b>	<b>7.1%</b>
11-20	<b>4</b>	<b>2.8%</b>
21-50	<b>7</b>	<b>5%</b>
51-100	<b>1</b>	<b>0.7%</b>
More than 100	<b>2</b>	<b>1.4%</b>
I have no employees: we contract services	<b>102</b>	<b>72.3%</b>