

PLEASE NOTE:

As of July 21, 2011, only the Consumer Financial Protection Bureau (“CFPB”) can issue advisory opinions relating to the FDCPA.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

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Dear Mr. Beato:

This is in response to ACA International's ("ACA's") request for a Commission advisory opinion ("Request") regarding whether the Fair Debt Collection Practices Act ("FDCPA") prohibits a debt collector from notifying a consumer who disputed a debt that the collector has ceased its collection efforts. ACA submitted the Request pursuant to Sections 1.1-1.4 of the Commission's Rules of Practice, 16 C.F.R. §§ 1.1-1.4. As explained more fully below, the Commission concludes that a debt collector providing such a notice to a consumer would not violate the FDCPA.

The Request focuses primarily on Section 809 of the FDCPA, 15 U.S.C. § 1692g. Section 809(a) provides that, within five days after its initial communication with a consumer about a debt, a debt collector must send the consumer a written notice. Among other things, this notice must state that "if the consumer notifies the debt collector in writing within [thirty days after receipt of the notice] that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector." Section 809(b) provides that if a consumer provides such a notice, the debt collector must cease collection until it has obtained verification of the debt or a copy of the judgment and mailed it to the consumer.

In July 2007, ACA amended its Code of Ethics and Code of Operations ("Ethics Code"). If a debt collector receives a written request for verification and is unable to verify the debt, the Ethics Code now requires "the cessation of all collection efforts, removal of the account from the consumer's credit report or reporting the account as disputed, and prompt notification of the **creditor or legal owner** of the debt that collection activities have been terminated due to the inability to provide verification information." Request at 3 (emphasis added). ACA "also has considered amending the Ethics Code to promote the notification of a **consumer** that collection activity has been terminated if the debt collector is unable to verify the debt following the receipt of a written request for verification." *Id.* (emphasis added). However, ACA has not yet amended its Ethics Code to include such a provision because of "concern that communication with the consumer following a request for verification might be construed as an attempt to collect, even though the intention merely is to inform the consumer that there will no further collections." *Id.* at 2.

We note first that courts have construed Section 809(b) as giving debt collectors two options when they receive a written dispute or a request for verification¹: (1) provide the requested verification and continue collection activities, or (2) cease all collection activities. If the debt collector ceases collection, it is not required to provide verification. *See, e.g., Guerrero v. RJM Acquisitions LLC*, 2007 U.S. App. LEXIS 20072, at *35-36 (9th Cir. Aug. 23, 2007); *Jang v. A.M. Miller & Assocs.*, 122 F.3d 480,483 (7th Cir. 1997); *Wilhelm v. Credico Inc.*, 426 F. Supp. 2d 1030, 1036 (D.N.D. 2006); *Zaborac v. Phillips and Cohen Assocs.*, 330 F. Supp. 2d 962, 966 (N.D. Ill. 2004); *Sambor v. Omnia Credit Servs., Inc.*, 183 F. Supp. 2d 1234, 1243 (D. Haw. 2002).

The Request poses the question of whether a debt collector that discontinues debt collection activities after receiving a written request for verification can inform the consumer that it has done so without violating the FDCPA. As noted above, Section 809(b) requires a debt collector to cease collection of a debt until the collector has provided verification of the debt to the consumer if the consumer, in writing within the thirty-day window, has either disputed the debt or requested verification. If a debt collector cannot provide such verification to the consumer, merely informing the consumer that debt collection efforts have been terminated is not an attempt to collect a debt and therefore does not violate the FDCPA.²

We note that Congress enacted Section 809 to “eliminate the recurring problem of debt collectors dunning the wrong person or attempting to collect debts which the consumer has already paid.”³ The provision allows a consumer who does not believe that he or she owes a debt to require that the debt collector obtain and provide verification prior to contacting the consumer

¹ Courts interpreting Section 809(b) have used the phrases “disputing the debt,” “requesting verification,” and “requesting validation” interchangeably. *See, e.g., Jang v. A.M. Miller and Assocs.*, 122 F.3d 480, 482 (7th Cir. 1997) (collection agencies “ceased collection activities immediately upon receiving the requests for validation, in compliance with [Section 809(b)]”); *Wilhelm v. Credico Inc.*, 426 F. Supp. 2d 1030, 1036 (D.N.D. 2006) (debt collector’s Section 809(b) obligations triggered “once a debt collector receives a request for verification”); *Sambor v. Omnia Credit Servs., Inc.*, 183 F. Supp. 2d 1234, 1243 (D. Haw. 2002) (debt collector’s Section 809(b) obligations triggered “[w]hen timely asked in writing to validate a debt”); *see also Clark’s Jewelers v. Humble*, 823 P.2d 818, 821 (Kan. Ct. App. 1991) (a consumer need not use the word “dispute” to trigger the debt collector’s obligation to cease collection and provide verification of the debt, as long as the consumer’s notice makes clear that the debt is contested).

² The Request also raises the question whether a notice informing a consumer that collection efforts have ceased “might be construed as a ‘communication’ in furtherance of collecting the debt.” Request at 5. Regardless of whether such a notice is a “communication” under 15 U.S.C. § 1692a(2), a debt collector telling a consumer that debt collection has ceased is not “in furtherance of collecting the debt.”

³ S. Rep. No. 95-382, at 4 (1977), *reprinted in* 1977 U.S.C.C.A.N. 1695, 1698.

again. The purpose of Section 809 therefore is to stop further calls and letters from collectors unless the consumer incurred and continues to owe the debt. Interpreting Section 809 as allowing debt collectors to notify consumers that they have ceased collection efforts, without conveying any other message, is consistent with this purpose. A consumer receiving such a notice would benefit both from having the calls and letters from that collector stop and from knowing that the collector will not renew its collection efforts.⁴

The only other FDCPA provision that could be implicated by the notification that ACA proposes to require of its members is Section 805(c). That provision provides that, if a consumer notifies a debt collector in writing that he or she “refuses to pay a debt or . . . wishes the debt collector to cease further communication,” the debt collector is not permitted to communicate further with the consumer about the debt. However, Section 805(c) includes an express exception to its prohibition on communication that permits a debt collector to “advise the consumer that the debt collector’s further efforts are being terminated.” Thus, even if a consumer demands in writing that a debt collector cease communicating about a debt, the debt collector would not violate Section 805(c) if it notified the consumer that the collector’s collection efforts have ceased.⁵

After reviewing the language of the FDCPA and its legislative history as well as information contained in the Request, the Commission concludes that a debt collector does not violate the FDCPA if, after receiving written notice of a dispute, it informs the consumer that it has ceased collection efforts.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ Even if, as the amended Ethics Code now requires, a debt collector that is unable to provide verification of a debt ceases collection efforts, closes the account, and notifies the credit grantor, client, or owner of legal title to the debt that collection activities have been terminated because the collector could not provide verification of the debt, the credit grantor, client, or debt owner might choose to refer the account to a different debt collector. Thus, although the consumer will no longer be contacted by the first debt collector, he or she might receive collection calls and letters from a different debt collector.

⁵ We note, however, that any such communication must not violate any other FDCPA provision.