

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 Ms. Anderson and Mr. Beato:

This responds to an issue raised in your comment filed on February 11, 2008, on behalf of American Collectors Association International, with the Federal Trade Commission (“Commission”) and other agencies charged by Congress in Section 312 of the FACT Act with writing regulations relating to certain duties of furnishers of information to consumer reporting agencies (“CRAs”). On pages 7-8 of your comment, you urged the following action:

To avoid a statutory conflict between the FDCPA and FACT Act, the regulation should clarify that the act of responding to a consumer dispute is not an attempt to collect a debt under the FDCPA. Further the regulation should clarify that a consumer that sends a written dispute to a furnisher *after* having invoked his or her cease communication rights under the FDCPA has revoked his or [her] cease communication instruction for purposes of communicating with the furnisher to process the dispute. (Emphasis yours)

The Commission is treating this portion of your comment as a request for an advisory opinion interpreting the Fair Debt Collection Practices Act (FDCPA) pursuant to Sections 1.1-1.4 of its Rules of Practice. 16 C.F.R. §§ 1.1-1.4. The subject matter of the request and consequent publication of this Commission advice is in the public interest. 16 C.F.R. § 1.1(a)(2). Specifically, it is in the public interest for the Commission to clarify the intersection of the FDCPA and this new rule implementing the FACT Act, thus encouraging debt collector compliance with both laws.

The applicable provisions of the FDCPA and the furnisher disputes rule (Rule) are:

- Section 805(c) of the FDCPA provides that if a consumer has notified a debt collector in writing that “the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate with the consumer with respect to such debt” (with some exceptions not applicable here).
- The Rule requires furnishers of information to CRAs to report the results of a direct dispute to the consumer, 16 CFR § 660.4(e)(3), or notify the consumer if the furnisher determines the dispute is frivolous or irrelevant. 16 CFR § 660.4(f)(2).

The potential conflict arises when a consumer orders a debt collector in writing to cease communication, but at some future time submits a direct dispute about information the debt collector has provided to a CRA. The Rule requires the collector to notify the consumer either of the results of the investigation or of its determination that the dispute is frivolous or irrelevant. Section 805(c) of the FDCPA, however, prohibits the collector from communicating with that consumer with respect to the debt, which could be interpreted to include providing the notice that the Rule requires.

The Commission does not believe that providing the notice the Rule requires undermines the purpose of Section 805(c) of the FDCPA. Section 805(c) empowers consumers to direct collectors to cease contacting them to collect a debt so that consumers can be free of the burden of being subject to unwanted communications. In contrast, communications from debt collectors which do nothing more than respond to disputes consumers themselves have raised do not impose such a burden. Rather, such communications benefit consumers through providing them with information demonstrating that collectors have been responsive to their disputes.

After reviewing the language of the FDCPA and the Rule, and considering the goals of the statute and the regulation, the Commission concludes that a debt collector does not violate Section 805(c) of the FDCPA if the consumer directly disputes information after sending a written “cease communication” to the collector, and the collector complies with the Rule by means of a communication that has no purpose other than complying with the Rule by stating (1) the results of the investigation or (2) the collector’s belief that the communication is frivolous or irrelevant.

By direction of the Commission.

Donald S. Clark
Secretary