

percent of the voting shares of Bank of Nichols Hills, Oklahoma City, Oklahoma (in organization).

In connection with this application, Pioneer Bancshares, Inc., Employee Stock Ownership Plan, Ponca City, Oklahoma, and its subsidiary, Pioneer Bancshares, Inc., Ponca City, Oklahoma; have applied to become bank holding companies by acquiring 100 percent of the voting shares of Bancshares of Nichols Hills, Inc., Oklahoma City, Oklahoma, proposed parent of Bank of Nichols Hills, Oklahoma City, Oklahoma (in organization).

2. *Platte Valley Bancshares, Inc.*, Kansas City, Missouri, and Peoples Bancshares of Schuyler County, Kansas City, Missouri, through their subsidiary Lindsey Bancshares, Inc., Harrisonville, Missouri; to acquire 100 percent of the voting shares of Harrisonville Bancshares, Inc., Harrisonville, Missouri, and thereby indirectly acquire Allen Bank & Trust Co., Harrisonville, Missouri.

In connection with this application, Peoples Bancshares of Schuyler County and Lindsey Bancshares, Inc., also have applied to become bank holding companies.

F. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. *FNB Bancorp*, Los Angeles, California; to acquire Founders National Bank of Los Angeles, Los Angeles, California. Consummation of this application must be received by January 16, 1996.

Board of Governors of the Federal Reserve System, December 20, 1995.

Jennifer J. Johnson,

*Deputy Secretary of the Board.*

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## FEDERAL TRADE COMMISSION

### Notice of Maine Exemption From The Fair Debt Collection Practices Act

**AGENCY:** Federal Trade Commission.

**ACTION:** Exemption from Sections 803-812 of the Fair Debt Collection Practices Act granted to State of Maine.

**SUMMARY:** The Commission is hereby publishing its decision to grant the State of Maine an exemption from Sections 803-812 of the Fair Debt Collection Practices Act for various classes of debt collection practices conducted in Maine, in accordance with Section 817 of that Act.

**EFFECTIVE DATE:** March 26, 1996.

**FOR FURTHER INFORMATION CONTACT:** John F. LeFevre, Division of Credit Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580; (202) 326-3224.

**SUPPLEMENTARY INFORMATION:** The Fair Debt Collection Practices Act, 15 U.S.C. 1691 *et seq.* ("FDCPA"), prohibits a number of deceptive, unfair and abusive practices by third party debt collectors.

Section 817 of the FDCPA requires that the Commission exempt from its requirements any class of debt collection practices within any State if, upon application, the Commission determines that under the law of the State, the class of debt collection practices is subject to requirements substantially similar to those imposed by the FDCPA, and that there is adequate provision for enforcement. The State of Maine Bureau of Consumer Credit Protection ("Applicant") has filed an application seeking exemption from the FDCPA for various classes of debt collection practices in Maine.

The FDCPA prohibits debt collectors from using false or misleading statements, harassing or abusive conduct or any unfair methods to collect debts. Among the practices which are specifically prohibited are making false threats to coerce payment (such as false threats of suit); using deceptive collection notices that falsely appear to be from an attorney or court; and engaging in any sort of harassment, such as threatening violence, using profanity and obscenities, or making continuous phone calls. The FDCPA also restricts the extent to which debt collectors may call a consumer at work and prohibits them from making calls to consumers very early in the morning or late at night. With a few narrow exceptions, it prohibits collectors from contacting third parties and revealing the existence of a consumer's debt. In addition, the FDCPA prohibits collectors from adding charges to a debt unless the consumer involved agrees to them or they are permitted by law, and from filing suit against a consumer outside of the district of the consumer's residence or where the contract creating the debt was signed.

Under the FDCPA, if a consumer disputes the debt in writing, the collector is required to stop all collection efforts until the debt is verified. The FDCPA also states that if the consumer demands in writing that the debt collector cease all further collection efforts, the debt collector must comply even if the debt is valid. Finally, the FDCPA gives a consumer the right to bring suit against a debt collector in any court for violations of

the FDCPA and, if successful, to receive actual damages and additional damages up to \$1,000, as well as costs and attorney's fees.

The FDCPA is enforced primarily by the Federal Trade Commission. A violation of the FDCPA is deemed an unfair or deceptive practice in violation of the Federal Trade Commission Act. All of the functions and powers of the Federal Trade Commission Act are available to the Commission to enforce compliance with the FDCPA by any person. The Commission may enforce the provisions of the FDCPA in federal court, seeking civil penalties and injunctive and other relief as appropriate.

The Commission has promulgated procedures for state applications for exemption from the provisions of the FDCPA, which are published in 16 C.F.R. 901 (1995) ("Procedures"). Section 901.2 of the Procedures provides that any state may apply to the Commission for a determination that, under the laws of that State, (1) any class of debt collection practices within that State is subject to requirements that are substantially similar to, or provide greater protection for consumers than, those imposed under Sections 803 through 812 of the FDCPA; and (2) there is adequate provision for state enforcement of such requirements. Section 901.4 of the Procedures describes the criteria for making the determination. Section 901.4(a) requires that (1) the definitions and rules of construction in the state law import the same meaning and have the same application as those prescribed by the FDCPA; (2) debt collectors provide all the applicable notifications under the state law that are required by the FDCPA; (3) debt collectors under the state law take all affirmative actions and abide by obligations substantially similar to, or more extensive than, those prescribed by the FDCPA; (4) debt collectors under the state law abide by the same or more stringent prohibitions as are prescribed by the FDCPA; (5) obligations and responsibilities imposed on consumers under the state law are no more costly, lengthy, or burdensome than corresponding obligations or responsibilities imposed on consumers by the FDCPA; and (6) consumers' rights and protections under the state law are substantially similar to, or more favorable than, those provided by the FDCPA. Section 901.4(b) requires that the Commission consider (1) the facilities, personnel and funding devoted to administrative enforcement of the state law; (2) provisions in the state law for civil liability (for actions brought in the private sector) as

compared with Section 813 of the FDCPA; and (3) the statute of limitations for civil liability in the state law (for actions brought in the private sector) which should be substantially similar or longer than that in the FDCPA. The Commission must consider each provision of the state law in comparison with each corresponding provision in Sections 803 through 812 of the FDCPA, and not the state law as a whole in comparison with the FDCPA as a whole.

Section 901.3 of the Procedures requires that an application be accompanied by a variety of documents including (1) the state law; (2) a comparison of the provisions of the state law with various sections of the FDCPA; (3) a copy of the full text of the law that provides for its enforcement; (4) a comparison of provisions of the law that provides for enforcement with the provisions of Section 814 of the FDCPA; and (5) a statement identifying the state office designated to administer the state law, along with a description of the ability of that office to effectively administer the statute. If an application is filed in accordance with the Procedures, Section 901.5 states that the filing shall be published in the Federal Register. Section 901.6 provides that the Commission may grant an exemption under the provisions of the Procedures.

Maine's application requests exemption from the provisions of the FDCPA for various classes of debt collection practices in Maine governed by Title 32 of the Maine Revised Statutes, Section 11001 *et seq.* Maine seeks an exemption for the following classes of practices: Collection by means of the mails and other interstate and intrastate written communications; collection by use of telephone and other electronic means of transmission; in-person collection; and repossession or other "enforcement of security interest" activity. In filing the application, Maine complied with Section 901.3 of the Procedures.

On May 27, 1993, Applicant filed an addendum to its application of February 25, 1993, stating that certain changes had been made to Title 32 of the Maine Revised Statutes, Section 11002.6. The definition of the term "debt collector" was broadened to include attorneys whose principal activities include collection of debts for clients. Subsection 6 was further amended by including within the definition of "debt collector" any person who regularly engages in the enforcement of security interests securing debts, but excluding any person who retrieves collateral when a consumer has voluntarily surrendered possession. A new Section 11017 authorizes a debt collector to take

possession of collateral after default under certain conditions.

Applicant asserts that the provisions of Maine's Fair Debt Collection Practices Act ("Maine Act"), Me. Rev. Stat. Ann., Title 32 Section 11011 *et seq.*, and related statutes are substantially similar to, or provide greater protection for consumers than, the equivalent provisions of the FDCPA, and that the State of Maine is able to provide adequate enforcement of the Maine Act's requirements. Applicant's request was published in the Federal Register for sixty days of comment.<sup>1</sup>

After evaluating the request and the comments received, the Commission has determined that an exemption from Sections 803-812 of the FDCPA for debt collection practices conducted within Maine should be granted. Pursuant to Section 817 of the FDCPA, the Commission analyzed whether the level of protection to consumers under the Maine Act is substantially equivalent to that provided in the FDCPA and whether there is adequate provision for enforcement of the Maine Act by the State. In making this determination, the Commission considered each provision of the Maine Act and compared it with the corresponding provision in the FDCPA, in accordance with 16 C.F.R. 901.4, as discussed below. The exemption proceeding as a whole was conducted pursuant to 16 C.F.R. 901 *et seq.*

#### Comments

Two comments were received. One comment was from a consumer from Virginia who objected to "certain provisions of the debt collection act being waived" and expressed concern over "state licensing to avoid the Federal Debt Collection Practices Act" and the monitoring of state requirements. The second comment was from Harry W. Giddinge, Deputy Superintendent of the Bureau of Consumer Credit Protection of the State of Maine, addressing each question posed in the Commission's Request for Comment and concluding in each case that the protection afforded consumers by the Maine Act are substantially similar to, or greater than, those provided by the FDCPA.

#### I. The Level of Protection to Consumers Provided by the Maine Act Is Substantially Equivalent to or Greater Than That Provided by the FDCPA

Generally, the Maine Act either replicates the language of the FDCPA or provides greater protection than the FDCPA. In the Federal Register notice

of Maine's application for exemption, the Commission highlighted the language differences between the various sections of the Maine Act and the FDCPA, each of which discussed is below.

#### A. Definitions (Section 803 of the FDCPA; Sections 11002, 11003, 11012 of the Maine Act)

##### 1. Conducting Business Within the State

Section 11002.2 of the Maine Act limits the coverage of the Maine Act to those conducting business in Maine; it has no precise counterpart in the FDCPA because the FDCPA's jurisdiction is nationwide. The jurisdiction of the Maine Act extends to violations by debt collectors physically located in Maine and to non-residents doing business in Maine, to the extent that the State's long-arm statute affords jurisdiction over non-resident defendants.<sup>2</sup>

The definition reflects the limits of Maine's jurisdiction in policing debt collectors as compared to the nationwide jurisdiction of the Commission in policing debt collectors. The language limiting the scope of Maine's enforcement only to violations committed in the State by resident debt collectors as well as non-resident collectors acting within the State does not affect the level of protection afforded to Maine residents by the Maine Act as compared to the protection afforded to Maine residents by the FDCPA.

##### 2. Definition of Debt Collector

Maine's definition of debt collector in its Act is identical to section 803(6) of the FDCPA, except that section 11002.6 of the Maine Act also includes:

Persons who furnish collection systems carrying a name which simulates the name of the debt collector and who supply forms or form letters to be used by the creditor even though the forms direct the debtor to make payments directly to the creditor.

Applicant views this provision as a logical extension of the portion of section 803(6) that includes creditors using names other than their own within the definition of debt collector. The State provision functions to prevent creditors from using collection systems that create the false impression in the mind of the consumer that a debt

<sup>2</sup>Maine's jurisdiction would extend, therefore, to those transacting any business within the State to the extent permitted by the due process clause of the Fourteenth Amendment of the U.S. Constitution. Me. Rev. Stat. Ann., Title 14 §§ 704-A.1-A.2.A (1975).

<sup>1</sup>59 FR 24,159 (May 10, 1994).

collector is involved in the collection process rather than the creditor.<sup>3</sup>

As compared to section 803(6) of the FDCPA, therefore, section 11002.6 of the Maine Act provides greater protection to the consumer because it specifically includes those who routinely provide creditors with the means of misrepresent the involvement of a debt collector in the creditor's collection activities.

### 3. Collection Activities Related to a Business

Section 11003.8 of the Maine Act excludes from the definition of "debt collector" those whose collection activities are confined or directly related to the operation of a business other than that of a debt collector, such as a financial institution already regulated under title 9-B of the Maine Banking Code. The FDCPA does not contain this precise exclusion, although section 803(6) does exclude creditors collecting their own debts in their own names, as well as other designated groups such as government employees, process servers, non-profit organizations and mortgage servicers.<sup>4</sup> The section 11003.8 exclusion appears to be directed to persons who are not collection agencies but collect their own debts on occasion. Presumably, these groups are employees or officers of creditors such as financial institutions who collect only for themselves or others whose principal business is not debt collection but who sometimes engage in collection activity. These groups are also excluded by section 803(6) of the FDCPA. Thus, the scope of the section 11003.8 exclusion in the Maine Act is no greater than that provided by section 803(6) of the FDCPA. The coverage of the two Acts, therefore, remains "substantially similar."

### 4. Attorneys

Section 11002.6 of the Maine Act specifically includes within the definition of debt collector "any attorney-at-law whose principal activities include collecting debts as an attorney on behalf of and in the name of clients."<sup>5</sup> Section 803(6) of the FDCPA

defines debt collectors as persons who regularly collect debts for others or who are engaged in a business the principal purpose of which is debt collection. An attorney could fall within this definition. The FDCPA, however, does not specifically cover attorneys, as a group, as does Section 11002.6 of the Maine Act. In any event, the principle in both is the same: a party must regularly collect debts for others or run a debt collection business to be covered.

The Maine Act<sup>6</sup> differs from the FDCPA only in that it specifically identifies attorneys who collect debts for clients as "debt collectors."

Because it specifically addresses attorneys, the definition of debt collector in the Maine Act is more precise as to attorneys than section 803(6) of the FDCPA. Its coverage may be slightly more restrictive than that of the FDCPA, depending upon how the phrase "principal activities include collecting debts" is interpreted. We do not regard this latter difference as significant. Neither Act excludes attorneys. As far as attorneys are concerned, the requirements are substantially similar and the level of protection afforded by the Maine Act is essentially the same as that of the FDCPA.

### 5. Enforcement of Security Interests

Section 11002.6 of the Maine Act includes within the definition of "debt collector" any person regularly engaged in the enforcement of security interests. According to the Applicant, this includes persons who have engaged in this activity more than five times in the current or previous calendar year. The definition expressly excludes persons who routinely retrieve collateral when a person has voluntarily surrendered possession. Similarly, the FDCPA's definition of "debt collector" (Section 803 (6) (A)) includes any "person \* \* \* in any business the principal purpose of which is the enforcement of security interests."

The Maine Act is more specific than the FDCPA and arguably more strict since it would expressly include persons enforcing security interests as infrequently as six times per year, whether or not that activity is the "principal purpose" of the business, as set forth in the FDCPA. Additionally, the FDCPA has never been interpreted to include parties who are hired simply to "pick up" collateral. The coverage of the Maine Act in this area is at least

equal to, and probably greater than, that of the FDCPA. Thus, the level of protection provided is also at least equal to, and probably greater than, that provided by the FDCPA.

### 6. Repossession Activity

Section 11017 of the Maine Act defines how repossession is to take place and requires (1) that the debt collector/reposessor take inventory of any unsecured property that it acquires along with the repossessed property; and (2) that it notify the consumer that the unsecured collateral will be available at the consumer's convenience. There is no comparable definition in the FDCPA. Since Section 11017 of the Maine Act places additional requirements on the debt collector to supply information to the consumer, it provides greater protection to the consumer in this area than does the FDCPA.

### 7. Conclusion

These comparisons reveal that the definitions of terms in the Maine Act as a whole import the same meaning and have the same application as those prescribed by Sections 803-812 of the FDCPA, in accordance with Section 901.4(a) (1) of the Procedures. Therefore, as a whole, they function to provide substantially similar or greater protection to consumers than do the analogous definitions in the FDCPA.

#### *B. Acquisition of Location Information (Section 804 of the FDCPA; Section 11011 of the Maine Act)*

Section 11011 of the Maine Act is virtually identical to Section 804 of the FDCPA; therefore, its requirements are "substantially similar" to those in the FDCPA and debt collectors' obligations and prohibitions under the Maine Act are the same as those prescribed in the FDCPA, as mandated by Sections 901.4(a) (3) and (4) of the Procedures.

#### *C. Debt Collection Communications (Section 805 of the FDCPA; Section 11012 of the Maine Act)*

Section 805 of the FDCPA and Section 11012 of the Maine Act are virtually identical, with the exception of non-substantive language differences and dissimilar references to related state and federal laws. Thus, Maine's requirements in this area also meet the "substantially similar" test and debt collectors' obligations and prohibitions under the Maine Act satisfy the requirements of Sections 901.4(a) (3) and (4) of the Procedures. Section 11012 of the Maine Act also satisfies Section 901.4(a)(6) of the Procedures since the consumer's cease communication rights

<sup>3</sup>As such, Section 11002.6 also provides much the same protection as Section 812 of the FDCPA (which addresses form-sellers).

<sup>4</sup>Section 11003.1 of the Maine Act also excludes creditors collecting in their own names.

<sup>5</sup>Section 11003.1 of the Maine Act, which previously excluded attorneys from the definition of "debt collector," was repealed following Maine's initial request for exemption of February 25, 1993. Maine submitted an addendum to its application, dated May 27, 1993, reporting that Section 11002.6 of the Maine Act had been modified by the legislature to include attorneys at law collecting debts on behalf of their clients (Maine Public Law

126, May 18, 1993). The modification became effective in September 1993.

<sup>6</sup>The Maine Act requires that the attorney's "principal activities" include collecting debts.

under that Section are the same as those in Section 805(c) of the FDCPA.

*D. Harassment and Abuse (Section 806 of the FDCPA; Section 11013.1 of the Maine Act)*

1. Publication of Debtor Lists

Like Section 806(3) of the FDCPA, Section 11013.1.C of the Maine Act prohibits publication of lists of consumers who refuse to pay debts. Both state and federal laws, however, except publications to consumer reporting agencies or persons meeting the requirements of their respective credit reporting acts, as defined in Sections 603(f) or 604(3) of the federal Fair Credit Reporting Act ("federal FCRA") for the FDCPA and Title 10 of the Maine Fair Credit Reporting Act ("Maine FCRA") for the Maine Act.

The definition of a consumer reporting agency (Section 603(f), federal FCRA; Section 1312.9, Maine FCRA) and the parties who have a permissible purpose to receive the lists at issue (Section 604(3), federal FCRA; Section 1312.1.33, Maine FCRA) are essentially the same in both statutes. In fact, the Maine FCRA is based upon, and was designed to supplement, the federal FCRA.<sup>7</sup> Since the definitions are the same, the limits on distribution of debtor lists are also the same. Thus, the state law referenced in Section 11013.1 of the Maine Act is substantially similar to Sections 603(f) and 604(3) of the federal FCRA; it follows that the Maine Act's reference to the Maine FCRA does not adversely affect the level of protection afforded by the Maine Act as compared to Section 806(3) of the FDCPA.

2. Reports to Consumer Reporting Agencies [Sections 806(3) and 807(8) of the FDCPA; Section 11013.4 of the Maine Act]

There is nothing in the FDCPA that prohibits a collection agency from reporting credit information to a consumer reporting agency. As discussed above, Section 806(3) expressly permits distribution of debtor lists to credit bureaus; Section 807(8) prohibits the communication of false credit information and requires that a disputed debt be reported as disputed. The Maine Act contains the same

<sup>7</sup>Maine points out that in most cases in Maine FCRA is more restrictive than the federal FCRA. The Maine FCRA (1) limits the cost of credit reports; (2) limits the time in which a credit reporting agency must investigate and verify or delete trade lines; and (3) requires compliance by any credit reporting agencies serving users in the State of Maine. The law also requires registration of credit reporting agencies operating within the State.

prohibitions. In addition, however, Section 11013.4 of the Maine Act prohibits a debt collector from reporting a debt solely in its own name and requires instead that the name of the original creditor also be included. The FDCPA contains no comparable requirement. The additional Maine provision is designed to allow consumers who review their credit reports to determine the source of a listed trade line rather than require them to contact the collection agency to determine the identity of the original creditor. Thus, the provision makes it easier for consumers to verify the existence of debts as well as the parties to whom they are owed. It provides greater protection in this area than does the FDCPA.

3. Shame Automobiles and Shame Cards

Section 11013.1G. of the Maine Act specifically prohibits the use of shame cards, shame automobiles and similar devices.<sup>8</sup> Section 806 of the FDCPA contains no comparable prohibition. In all other respects, Section 11013.1 of the Maine Act and Section 806 of the FDCPA are identical. Thus, to the extent that "shame" devices are still in use, the Maine Act arguably provides greater protection in this area than does the FDCPA.

4. Compliance With Section 901.4(a) of the Procedures

The obligations and prohibitions applicable to debt collectors required by Section 806 of the FDCPA are substantially the same as those required by Section 11013.1 of the Maine Act. Therefore, Sections 901.4(a)(3) and (4) of the Procedures are satisfied.

*E. False and Misleading Representations (Section 807 of the FDCPA; Section 11013.2 of the Maine Act)*

The two Acts prohibit the same false, deceptive or misleading representations in the same manner except for the following:

1. Reference to the Maine Consumer Credit Code

Both Section 807(6) of the FDCPA and Section 11013.2.F(2) of the Maine Act address false representations of the effect of a sale or transfer of interest in a debt on the consumer. The two provisions are the same, except that the Maine Act refers to practices prohibited

<sup>8</sup>A shame car is an automobile with the name of the collection company emblazoned on the door that is parked in front of the debtor's residence and left there. A shame card is a calling card containing the name of the collection agency that is left posted on the debtor's door or other conspicuous spot that can be observed by others.

by Title 9-A of the Maine Consumer Credit Code and the FDCPA does not.<sup>9</sup> Title 9-A of the Maine Consumer Credit Code prohibits a number of actions that are not prohibited by the FDCPA, including confessions of judgment, post-dated instruments, use of cross-collateral and wage assignments. These and other similar provisions all inure uniquely to the benefit of consumer-debtors in the State of Maine. Reference to these practices in Section 11013.2.F(2) of the Maine Act, therefore, provides an added measure of protection not present in Section 807(6) of the FDCPA.

2. Reference to Maine Fair Credit Reporting Act

Section 11013.2.P. of the Maine Act prohibits the false representation or implication that a debt collector operates or is employed by a "consumer reporting agency," as defined by Title 10, Section 1312, Subsection 4, of the Maine Fair Credit Reporting Act. Section 807(16) of the FDCPA contains identical language, except that it refers to a "consumer reporting agency" as defined by the federal Fair Credit Reporting Act, 15 U.S.C. 1681a(f). As discussed previously, the definitions of "consumer reporting agency" in both the Maine Act and FDCPA are basically the same and the term has the same meaning in both statutes.<sup>10</sup> Thus, Section 11013.2.P. of the Maine Act is substantially similar to Section 807(16) of the FDCPA.

3. Compliance With Section 901.4(a) of the Procedures

Section 807(11) requires that debt collectors clearly disclose the nature and purpose of all communications made to collect a debt. The Maine Act contains an identical requirement. Since the same notification is mandated by both Acts, Section 901.4(a)(2) of the Procedures, which requires that all notifications be the same, is satisfied insofar as Section 807(11) is concerned. Similarly, since the FDCPA and the Maine Act are identical in this area, with the exception of references to state law, Sections 901.4(a) (2), (3) and (4) of

<sup>9</sup>The Maine Act prohibits: The false representation or implication that a sale, referral or other transfer of any interest in a debt shall cause the consumer to: (1) Lose any claim or defense to payment of the debt; or (2) Become subject to any practice prohibited by the Act or the Maine Consumer Credit Code, Title 9-A. (Emphasis added.) The FDCPA is the same except for the underlined portion.

<sup>10</sup>The definition of "consumer reporting agency" in the Maine Act refers to "investigative consumer reports" as well as "consumer reports" while the definition in the FDCPA refers only to "consumer reports." For these purposes, they are the same.

the Procedures, requiring the same or more stringent notifications, obligations and prohibitions, are satisfied.

*F. Unfair Practices (Section 808 of the FDCPA; Section 11013.3 of the Maine Act)*

Section 808 of the FDCPA prohibits eight specified unfair practices; the preamble to Section 808 prohibits unfairness generally. Section 11013.3 of the Maine Act prohibits precisely the same practices as the FDCPA, plus several additional practices that are not included in the FDCPA,<sup>11</sup> and also contains a general prohibition against unfairness. The inclusion of several additional practices in the Maine Act increases the level of protection provided by the Maine Act, as compared with the FDCPA. As such, the Maine Act provides for more extensive obligations and more stringent prohibitions in this area than does the FDCPA, in compliance with Sections 901.4(a)(3) and (4) of the Procedures.

*G. Debt Validation (Section 809 of the FDCPA; Section 11014 of the Maine Act)*

Section 809 of the FDCPA requires disclosure of the amount of the debt and the creditor, and requires a validation notice. It also requires the debt collector to verify the debt if the consumer disputes it within thirty days. Section 11014 of the Maine Act is identical. Section 901.4(a)(2-4) of the Procedures, requiring that all applicable notifications, obligations and prohibitions be the same or more stringent, are satisfied since the requirements are identical. Therefore, the protection they provide is "substantially similar."

*H. Multiple Debts (Section 810 of the FDCPA; Section 11015 of the Maine Act)*

Section 810 of the FDCPA directs debt collectors to apply payments for multiple debts in accordance with the directions of the consumer. Section 11015 of the Maine Act is identical. Those requirements are, therefore, also "substantially similar" and the protection they provide is the same. In the same manner, Sections 901.4(a)(3), (4) and (6) of the Procedures are satisfied.

*I. Legal Actions by Debt Collectors (Section 811 of the FDCPA; Section 11013.3.N of the Maine Act)*

Section 811 of the FDCPA permits debt collectors to bring legal actions against consumers, but only in certain

venues.<sup>12</sup> Section 11013.3.N of the Maine Act prohibits debt collectors from instituting suit in their own names or on behalf of others in any venue. Since no suits are permitted, no venue provisions are appropriate. Since the Maine Act insulates consumer from debt collector lawsuits in Maine, the Maine Act provides greater protection to consumers than does the FDCPA, which permits them. The fact that no suits are permitted also means that the obligations and prohibitions applicable to debt collectors in Maine are more stringent than those contained in the FDCPA, in compliance with Sections 901.4(a)(3) and (4) of the Procedures.

*J. Furnishing Deceptive Forms (Section 812 of the FDCPA; Section 11016 of the Maine Act)*

Section 812 of the FDCPA prohibits furnishing collection forms, knowing that they would be used to create a false impression that a third party is involved in the collection of the debt. Section 11016 of the Maine Act is identical. Since both statutes are substantively the same, Sections 901.4(a)(3) and (4) of the Procedures are satisfied and the level of protection provided to Maine consumers by the Maine Act is the same as that provided by the FDCPA.

*K. Civil Liability (Section 813 of the FDCPA; Section 11054 of the Maine Act)*

Section 901.6(d) of the Procedures specifies that no exemption shall extend to the civil liability provisions of Section 813 of the FDCPA, which authorizes aggrieved consumers to sue debt collectors that violate the Act privately. Therefore, Section 813 of the FDCPA is not included within the scope of the exemption granted by the Commission in response to Maine's request.<sup>13</sup>

*L. Compliance With Sections 901.4(a)(5) and (6) of the Procedures*

Section 901.4(a)(5) and (6) require that (1) the obligations and responsibilities of consumers be no more costly, lengthy or burdensome under the Maine Act than they are under the FDCPA; and (2) consumers' rights and protections be substantially similar to or greater under the Maine Act than those provided by the FDCPA. The Commission has already determined that the protections

provided by the Maine Act are the same or greater than those provided by the FDCPA. In addition, consumers must do nothing more under the Maine Act to receive these protections than they do under the FDCPA. Therefore, the Commission determines that the obligations and responsibilities of consumers under the Maine Act are no greater than those imposed by the FDCPA. Thus, the Maine application complies with Sections 901.4(a)(5) and (6) of the Procedures.

*M. Conclusion*

Comparison of Sections 803-812 of the FDCPA with pertinent portions of the Maine Act supports the following findings which meet the minimum requirements of Section 901.4(a) of the Procedures: (1) Definitions and rules of construction in the two laws import the same meaning and have the same or similar application; (2) Debt collectors provide all applicable notifications required by the FDCPA under the Maine Act; (3) Debt collectors are required by the Maine Act to take affirmative actions and abide by obligations that are substantially similar to those required by the FDCPA within the same or similar time periods; (4) Debt collectors must abide by the same or more stringent prohibitions under the Maine Act as those under the FDCPA; (5) Obligations and responsibilities of consumers under the Maine Act are no more costly, lengthy or burdensome than those under the FDCPA; and (6) The rights and protections of consumers under the Maine Act are substantially similar to or more favorable than those provided by the FDCPA. Therefore, the provisions of the Maine Act in general are substantially similar to, or provide greater protection than, the provisions of the FDCPA.

**II. Enforcement of the Maine Act Is Adequate**

In order for an exemption to be granted pursuant to Section 901.6 of the Procedures, the Commission must find that provisions for enforcement of the Maine Act by the State are adequate. In order to make this finding, the Commission must determine that the Maine Act makes sufficient provision for: (1) Administrative enforcement, including the necessary facilities, personnel and funding; (2) civil liability under Section 813 for failure to comply; and (3) a statute of limitations for civil liability of similar or longer duration than that in Section 813 of the FDCPA.<sup>14</sup>

<sup>11</sup> These include use of a notary to collect, commingling the funds of the debt collector and its client, failing to return collected funds to the creditor, and soliciting loans to pay a debt.

<sup>12</sup> Proper venues are where the real property is located or, if no real property is involved, where the consumer lives or signed the contract.

<sup>13</sup> The civil liability provisions of Section 11054 of the Maine Act are identical to those in Section 813. This is also true for the statute of limitations provided in Section 11054.4 of the Maine Act (one year) which is the same as that provided in Section 813(d) of the FDCPA for private suits.

<sup>14</sup> Procedures, Section 901.4(b). See also footnote 13. The civil liability provisions and corresponding statute of limitations for private suits are the same.

### A. Authority

Section 814 of the FDCPA authorizes the Commission to exercise all its functions and powers under the Federal Trade Commission Act in enforcing the FDCPA. A violation of the FDCPA constitutes an unfair or deceptive act or practice in violation of the Federal Trade Commission Act. The Federal Trade Commission Act authorizes a civil penalty of up to \$10,000 for each violation of the FDCPA done with actual or implied knowledge of the FDCPA. Additionally, the Commission is empowered to seek various forms of injunctive relief, as appropriate. The Statute of limitations for actions brought by the Commission against debt collectors is five years. 28 U.S.C. 2462.

Under the FDCPA, the Commission has no licensing or other regulatory powers and cannot "promulgate trade regulation rules or other regulations with respect to the collection of debt collectors \* \* \*" <sup>15</sup> Nor does the Commission have the power to pursue criminal liability or impose criminal penalties for FDCPA violations. The Commission's jurisdiction extends to any debt collector, as defined, located in the United States.

Subchapters III and IV of the Maine Act govern the licensing of Maine's debt collectors as well as the administration and enforcement of the Maine Act. In fact, a significant portion of Maine's authority to administer and enforce its debt collection law lies in its licensing power. No debt collector may conduct business in the State without a license, which must be renewed every two years. In order to get a license, a debt collector must submit financial statements and references and agree to an investigation of its personnel and business practices. Changes in ownership or management require a new license. <sup>16</sup> Licensees must be bonded. <sup>17</sup> The State is responsible for the safety and soundness of licensed debt collectors, as well as for subsequent management if they become insolvent, much like a receiver. <sup>18</sup> Unlicensed debt collectors operating in the State are subject to criminal penalties. <sup>19</sup>

The State may make rules, in addition to those in the Maine Act, pertaining to the operation of a debt collector's business to safeguard the public interest <sup>20</sup> and may issue "advisory

rulings" concerning the Maine Act. <sup>21</sup> All form letters used by licensed debt collectors in Maine must be approved by the State. Additionally, consumers must be able to contact licensed Maine debt collectors at least 20 hours per week.

The Maine Act authorizes the State, through the Maine Attorney General, to bring an action for civil penalties, not to exceed \$5,000 per count, against any person who willfully violates the Maine Act, no more than two years after the violation occurred. <sup>22</sup> Additionally, the State may, after appropriate investigation and examination of a licensee's records, file a complaint with the State's administrative court to suspend or revoke a debt collector's license for violation of the Maine Act. <sup>23</sup> There is no statute of limitations for a license revocation proceeding. Finally, the State may also seek injunctive relief, as appropriate. <sup>24</sup>

While the civil penalties authorized by the Maine Act are smaller than those authorized by the FDCPA and the statute of limitations for actions brought by the State of Maine is shorter, there are also significant strengths in the Maine Act that are not present in the FDCPA. Overall, we believe that the strengths more than offset the weakness to meet the test of adequacy in Section 817 of the FDCPA.

Principal in Maine's enforcement powers is its ability to suspend or revoke a debt collector's license, effectively putting the collector out of business in the State. There is no comparable power granted in the FDCPA. In addition, the State can proceed against a debt collector for civil penalties (albeit not as large as available under the FDCPA) and injunctive relief and can criminally prosecute a debt collector for operation without a license, which can result in a jail term. The latter remedy also has no counterpart in the FDCPA. Maine's general supervisory powers are also more extensive than the Commission's powers. Aside from the State's investigatory authority in determining whether to issue a license, it is responsible for monitoring the financial stability of its licensees and may issue additional rules and regulations governing their conduct—a power specifically denied the Commission by Section 814(d) of the FDCPA.

Typically, the State takes action against an offending debt collector fairly

quickly after a violation is discovered. <sup>25</sup> Because of this, the average civil penalty recovered by the State is only \$1,000–1,500. Time-consuming investigations are rare; one or two violative letters often trigger the commencement of an inquiry. Because the State takes a "hands-on" approach to enforcement, an inquiry can often be resolved expeditiously before much damage is done. This is an extra benefit to the public and is in contrast to the more extensive investigations pursued by the Commission where larger penalties are usually more appropriate. We do not believe that the State's more limited civil penalty authority and shorter statute of limitations significantly impede its ability to enforce the Maine Act. Given its other powers and the speed of its investigations, the State's overall enforcement authority and effectiveness appear to be at least as great as that possessed by the Commission in administering and enforcing the FDCPA.

### B. Personnel and Facilities

The FDCPA is administered and enforced primarily by the staff of the Division of Credit Practices in the Bureau of Consumer Protection. Enforcement actions are typically pursued not only by headquarters staff but also by regional office personnel. At any given time, the Commission has several debt collection matters in investigative stages or in the courts. Like other Commission staff, attorneys working on debt collection cases have the resources of the federal government from which to draw support.

The Bureau of Consumer Credit Protection in the State of Maine enforces the Maine Act, Maine's Fair Credit Reporting Act and the Maine Consumer Credit Code. The Bureau is staffed by fifteen employees, including office staff, plus five field examiners. Its examiners review collection agency practices and conduct investigations for the purpose of licensing collection agencies. The examiners are trained in financing and consumer credit and most have employment experience with banks or mortgage companies. Examiners also attend a school for examiners conducted by the National Association of Consumer Credit Administrators to learn both state and federal debt collection statutes. Examiner trainees accompany experienced examiners for an eight month period of on-the-job-training. In exercising their responsibilities, examiners spend about

<sup>15</sup> Section 814(d), FDCPA.

<sup>16</sup> Section 11031, Subchapter III, Maine Act.

<sup>17</sup> Section 11032, Subchapter III, Maine Act.

<sup>18</sup> Section 11038, Subchapter III, Maine Act.

<sup>19</sup> Section 11040, Subchapter III, Maine Act.

<sup>20</sup> Section 11034, Subchapter III, Maine Act.

<sup>21</sup> Section 11035, Subchapter III, Maine Act.

<sup>22</sup> Section 11053, Subchapter III, Maine Act.

<sup>23</sup> Section 11052, Subchapter III, Maine Act.

<sup>24</sup> Maine Rules of Civil Procedure § 65 (1967).

<sup>25</sup> Interview, William Lund, Superintendent, Maine Bureau of Consumer Credit Protection, September 6, 1994.

fifteen percent of their time enforcing the Maine Act. Debt collector licensing is also the primary responsibility of the Superintendent and Deputy Superintendent of the Bureau of Consumer Credit Protection.

The Maine Bureau reviews the financial posture of collection firms applying for licenses and handles numerous written debt collector complaints each year, along with hundreds of telephone complaints and questions. Three additional individuals in the office (consumer assistance specialists) are trained to respond to these inquiries about the activities of debt collectors, with regard to both federal and state debt collection law; they also routinely petition the administrator to initiate enforcement proceedings to deal with suspected violations of the Maine Act. The agency has been involved in at least four court actions in the past two years relating to unlicensed practice or license revocation. In addition, the Maine Bureau has obtained voluntary Assurances of Discontinuance from ten debt collectors during the same time period. The Maine Bureau publishes its enforcement actions and mails the information to all licensed companies as a deterrent to further violative practices.

All license fees and examination reimbursement costs accrue to the agency as dedicated revenue within the State's budget process. In addition, a portion of creditor and lender "volume fees" based upon the amount of consumer credit extended is also dedicated to enforcement activities of the Maine Bureau, on the theory that the hiring of collection agencies by consumer creditors justifies the funding by those creditors of a portion of the cost of regulating them. Approximately \$100,000 of the Maine Bureau's total budget of \$800,000 is derived from sources of revenue related to debt collection activity and directed toward enforcement of the Maine Act.

Thus, the personnel, facilities and funding devoted to administering and enforcing the Maine Act are comparable to the resources expended by the Commission in enforcing the FDCPA. The fact that these resources will be directed at the activities of debt collectors in one state supports Maine's contention that it will have a greater enforcement presence in the State of Maine under the Maine Act than the Commission does nationally under the FDCPA.

### C. Conclusion

After consideration of the facilities, personnel and funding devoted to administrative enforcement of the

Maine Act and the Maine Act's provisions for civil liability and appropriate statutes of limitations for both private and governmental actions, the Commission finds that provisions for enforcement of the Maine Act are adequate, as required by Section 901.4(b) of the Procedures.

### Action Taken

Based on the submissions of the Maine Bureau of Consumer Credit Protection in support of its request for an exemption and upon the comments received, the Commission concludes that the Maine Act is substantially similar to, and in some instances provides greater protection than, the FDCPA and contains provisions for adequate enforcement. As such, it meets all of the criteria set forth in Section 901.4 (a) and (b) of the Procedures. The Commission has granted to the State of Maine an exemption from Sections 803-812 of the FDCPA for debt collection practices conducted within the State on that basis, in accordance with Section 817 of the FDCPA. The exemption will remain in effect as long as state law continues to afford substantially equivalent protection to that of the FDCPA.

To ensure that the conditions for an exemption continue to be met, the State of Maine must provide notice to the Commission of any change in its law, policies or procedures, including court decisions, that would significantly affect whether the state law continues to afford substantially equivalent protection and whether the State is effectively enforcing the Maine Act. In any event, the State of Maine must provide a report to the Commission not later than two years after the date this exemption becomes effective, and every two years thereafter, concerning the manner in which the State has enforced its law. The Commission reserves the right to revise this reporting requirement at a later date if circumstances warrant or to request additional information as needed.

By direction of the Commission.

Donald S. Clark,

Secretary.

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### Advisory Committees; Notice of Meetings

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1-800-741-8138 or 301-443-0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

**MEETINGS:** The following advisory committee meetings are announced:

#### Allergenic Products Advisory Committee

*Date, time, and place.* January 22, 1996, 3 p.m., Food and Drug Administration, Bldg. 29, conference room 121, 8800 Rockville Pike, Bethesda, MD.

*Type of meeting and contact person.* This meeting will be held by a telephone conference call. A speaker telephone will be provided in the conference room to allow public participation in the meeting. Open public hearing, 3 p.m. to 4 p.m., unless public participation does not last that long; open committee discussion, 4 p.m. to 4:40 p.m.; closed committee deliberations, 4:40 p.m. to 5:30 p.m.; William Freas or Sheila D. Langford, Center for Biologics Evaluation and Research (HFM-21), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301-827-0314, or