2007 SUNSET REVIEW

Colorado Department of Regulatory Agencies
Office of Policy, Research and Regulatory Reform

Regulation of Collection Agencies

October 15, 2007

STATE OF COLORADO

DEPARTMENT OF REGULATORY AGENCIES
Office of Policy, Research and Regulatory Reform
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Bill Ritter, Jr.
Governor

D. Rico Munn
Executive Director

October 15, 2007

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:

The mission of the Department of Regulatory Agencies (DORA) is consumer protection. As a part of the Executive Director's Office within DORA, the Office of Policy, Research and Regulatory Reform seeks to fulfill its statutorily mandated responsibility to conduct sunset reviews with a focus on protecting the health, safety and welfare of all Coloradans.

DORA has completed the evaluation of Colorado's regulation of collection agencies. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2008 legislative committee of reference. The report is submitted pursuant to section 24-34-104(8)(a), of the Colorado Revised Statutes (C.R.S.), which states in part:

> The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section...
>
> The department of regulatory agencies shall 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…

The report discusses the question of whether the regulatory program provided under Article 14 of Title 12, C.R.S., serves to protect the public health, safety or welfare. The report also discusses the effectiveness of the Colorado Attorney General and the Collection Agency Board and staff in carrying out the intent of the statutes and makes recommendations for statutory changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

D. Rico Munn
Executive Director

2007 Sunset Review
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Executive Summary

Quick Facts

What is Regulated? Collection agencies, hired by a creditor to secure payment of a debt from a debtor, and conducting business in Colorado.

Who is Regulated? In fiscal year 05 -06 there were 586 active licensees:

493 license renewals
93 new licenses

How is it Regulated? The Colorado Collection Agency Board (Board) is a Type 2 board administered by, and under the authority of, the Colorado Attorney General (AGO). This involves processing and evaluating applications from prospective licensees, administering examinations, enforcing minimum standards of practice as defined by law under the Colorado Fair Debt Collection Practices Act (CFDCPA), and disciplining those in violation of the law.

What Does it Cost? The fiscal year 05-06 expenditure to oversee this program was $227,035, and there were 4.5 full-time equivalent employees associated with this program.

For fiscal year 07-08, license fees are as follows:

New Collection Agency License	$800
Renewal License	$425
Investigation Fee	$300
Collection Managers Examination Fee	$100

What Disciplinary Activity is There? During fiscal year 05-06, the AGO's disciplinary proceedings consisted of:

Complaints Filed	688
Revocations	1
Letters of Admonition	43
License Denials	5
Cease and Desist Notices	59
Injunctions	22

Where Do I Get the Full Report? The full sunset review can be found on the internet at:
http://www.dora.state.co.us/opr/oprpublications.htm

Key Recommendations

Continue the regulation of collection agencies until 2017, and sunset the Colorado Collection Agency Board. The licensing of collection agencies in Colorado benefits the citizens of Colorado by providing a basic assurance that potential harm to individual creditors and debtors are reduced by means of licensure, regulation, and disciplinary provisions. An AGO Administrator performs effectively to license, discipline, and provide guidance to collection agency licensees.

However, the same cannot be said about the Board. The Board generally functions in an advisory capacity. This sunset review finds no evidence that the Board serves any function that could not just as easily be performed by the AGO without compromising public protection. The Board frequently cancels its regularly scheduled meetings, and has conducted only one rulemaking hearing over the past five years.

Licensing and disciplinary functions are performed by the AGO, with the Board's role limited to offering advice to the AGO on limited disciplinary actions. The licensing and disciplinary criteria are clear, and there have been few disputes regarding regulatory or administrative decisions made by the AGO.

The Board's advice or recommendations to the AGO can just as easily be performed by an *ad hoc* advisory group assembled for specific purposes such as rulemaking.

Increase the administrative fine authorized by section 12-14-130(10), C.R.S., from $1,000 to $2,000. Increasing the program's fining authority will constitute a deterrent effect on undesirable conduct on the part of licensees, and in consequence, help to avert or limit more serious or intentional practice problems. The Administrator has used the fining authority 57 times in the past five fiscal years, which indicates both a willingness and a need for this type of enforcement action

Eliminate the collection managers examination. There is no valid correlation between the collection manager's examination, and licensees' violations of the CFDCPA. The AGO indicates that the violations of the CFDCPA are not due to lack of knowledge or familiarity with the CFDCPA, but rather conduct that is negligent, overreaching, or intentional.

…Key Recommendations Continued

Eliminate the Colorado office requirement.
Colorado laws require that licensed collection agencies maintain an office in Colorado. This may have been useful in the past when most licensees were locally based. Now, however, it is likely that a debtor will be contacted by an out-of-state collection agency, or one located in a different part of the state. So long as an out-of-state collection agency has a registered agent in Colorado (required as part of the application process), and a toll-free telephone number for usage by Colorado consumers, an in-state office is not necessary.

Require collection agencies to notify debtors of their right to request no further contacts. Section 12-14-105(3)(a), C.R.S., allows a debtor to request, in writing, that a collection agency cease communications with the debtor, and requires that the collection agency cease communications with the debtor upon receipt of this written notice. Many debtors are unaware of this statutory provision, and therefore do not consider invoking this right. This recommendation serves to ensure that debtors are aware of their legal rights by including the substantive provisions of section 12-14-105(3)(a), C.R.S., in the initial written communication from the collection agency to the debtor.

Major Contacts Made During This Review

Associated Collection Agencies, Inc.
Office of the Colorado Attorney General
Colorado Collection Agency Board
Collection Agency Regulators from other States
Individual Debtors/Creditors

What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether or not 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

The Sunset Process

Regulation, when appropriate, can serve as a bulwark of consumer protection. Regulatory programs can be designed to impact individual professionals, businesses or both.

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 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.

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 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.

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.

As regulatory programs relate to businesses, they can enhance public protection, promote stability and preserve profitability. But they can also reduce competition and place administrative burdens on the regulated businesses.

Regulatory programs that address businesses can involve certain capital, bookkeeping and other recordkeeping requirements that are meant to ensure financial solvency and responsibility, as well as accountability. Initially, these requirements may serve as barriers to entry, thereby limiting competition. On an ongoing basis, the cost of complying with these requirements may lead to greater administrative costs for the regulated entity, which costs are ultimately passed on to consumers.

Many programs that regulate businesses involve examinations and audits of finances and other records, which are intended to ensure that the relevant businesses continue to comply with these initial requirements. Although intended to enhance public protection, these measures, too, involve costs of compliance.

Similarly, many regulated businesses may be subject to physical inspections to ensure compliance with health and safety standards.

Regulation, then, has many positive and potentially negative consequences.

The regulatory functions of the Colorado Collection Agency Board (Board) and its administrator from the Colorado Attorney General's Office (AGO) in accordance with Article 14 of Title 12, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2008, unless continued by the General Assembly. During the year prior to this date, it is the duty of the Department of Regulatory Agencies (DORA) to conduct an analysis and evaluation of the regulation of collection agencies pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the Board and the currently prescribed regulation of collection agencies should be continued for the protection of the public and to evaluate the performance of the Board and the AGO and staff. During this review, the Board and AGO must demonstrate that the Board and the regulation serve to protect the public health, safety or welfare, and that the regulation is the least restrictive regulation consistent with protecting the public. DORA's findings and recommendations are submitted via this report to the legislative committee of reference of the Colorado General Assembly. Statutory criteria used in sunset reviews may be found in Appendix A on page 38.

Methodology

As part of this review, DORA staff attended Board meetings, interviewed Board members and AGO staff, reviewed Board and AGO records and minutes including complaint and disciplinary actions, interviewed officials with state and national professional associations, reviewed Colorado statutes and AGO rules, and reviewed other state and federal laws.

Profile of the Industry

A collection agency is a third party debt collector, hired by a creditor (the collection agency's client, which can be a large corporation, a small business or anything in between) to secure payment of a debt (sometimes referred to as an "account") from a debtor (a consumer). Although payment arrangements may vary, the client generally pays the collection agency a percentage of the debt upon payment of the debt.

A collection agency may employ one or several individuals, who operate in various capacities. A collection agency must employ a collections manager who runs the collection agency and is responsible for familiarity with the myriad provisions of the Colorado and federal Fair Debt Collection Practices Acts. A solicitor meets with clients and potential clients (creditors), to arrange for the client to hire the collection agency to collect an account or group of accounts. A debt collector is the individual who makes contact with the debtor and facilitates the attempts to collect the debt.

The manner in which the collection agency collects the debt from the debtor is generally controlled in Colorado by statutes and rules enacted by the AGO. Typically, a client hires a collection agency to collect a debt only after it has been unable to secure payment from the debtor on its own. Thus, by the time a collection agency becomes involved, the debtor has already demonstrated a reluctance to pay the debt, for whatever reason.

In cases where the debtor acknowledges the validity of the debt but is unable or unwilling to pay it in full, the collection agency may arrange a payment plan or may arrange for the debtor to pay a percentage of the debt in exchange for forgiving the balance. In cases where the debtor disputes the debt, the collection agency may work with the client and the debtor to determine the validity of the debt.

If the debt is valid and the debtor still refuses to pay the debt, the collection agency may employ a variety of tools to compel payment. In some situations, simply threatening to use a particular tool will compel the debtor to pay. A collection agency may report the incident to the credit bureaus, thus damaging the debtor's credit record and making it more difficult to obtain credit in the future, or it may initiate a legal action in court to compel payment.

Debt collectors are frequently called upon to locate and notify customers of delinquent accounts, usually over the telephone, but sometimes by letter. When customers move without leaving a forwarding address, collectors may check with the post office, telephone companies, credit bureaus, or former neighbors to obtain the new address. The attempt to find the new address is called "skip tracing." New computer systems assist in skip tracing by automatically tracking when customers change their address or contact information on any of their open accounts.

Once collectors find the debtor, they inform him or her of the overdue account and solicit payment. If necessary, they review the terms of the sale, service, or credit contract with the debtor. Collectors also may attempt to learn the cause of the delay in payment. Where feasible, they offer the debtor advice on how to pay off the debts, such as by taking out a bill consolidation loan. However, the collector's prime objective is always to ensure that the debtor pays the debt in question.

If a debtor agrees to pay, collectors record this commitment and check later to verify that the payment was indeed made. Collectors may have authority to grant an extension of time if debtors request one. If a debtor fails to respond, collectors prepare a statement indicating the debtor's action for the credit department of the creditor-customer. In more extreme cases, collectors may initiate repossession proceedings, disconnect the debtor's service, or transfer the account to an attorney for legal action. Most collectors handle other administrative functions for the accounts assigned to them, including recording changes of addresses and purging the records of the deceased.

A debt collector is subjected to limitations in his or her attempt to collect on a debt. A debt collector may not:

- Use obscene or profane language.
- Make repeated telephone calls to annoy or harass.
- Telephone a debtor without stating the debt collector's name and position within 60 seconds of initiating the call. The debt collector may use an alias (false name) if it is listed with the AGO.
- Threaten violence against a debtor's property, or reputation.
- Publish or post the debt through any list other than a credit bureau report.
- State that he or she is an attorney if he or she is not licensed to practice law.
- Claim he or she works for a government agency or has governmental authority, if he or she does not.
- Accuse a debtor of committing a crime or threaten a debtor with arrest.
- Misrepresent that papers are legal documents when they are not, or that papers are not legal documents when in fact they are.
- Misrepresent the amount of the debt or collect an amount greater than the amount a debtor legally owes.
- Threaten to take actions that are illegal.

- Threaten to take or sell property, garnish wages, or attach bank accounts unless that action is legal and the debt collector intends to do it.
- Report false credit information about a debtor.
- Make a debtor accept collect calls or pay for telegrams.
- Deposit a post-dated check before the date on the check. If the check is post-dated by more than five days, the debt collector must inform a debtor in writing, no less than three days nor more than 10 days, before the date the check will be deposited.
- Contact a debtor by postcard.
- Use an envelope that shows that the sender is a collection agency or that the contents concern a debt.
- Call a debtor before 8:00 a.m. or after 9:00 p.m. or at any other time or place which the debt collector knows is inconvenient for the debtor. If 8:00 a.m. to 9:00 p.m. is inconvenient, the debtor may notify the collection agency in writing, and indicate when the debtor can be called.
- Discuss the debt with those who do not owe it without a debtor's consent or a court order. The debt collector cannot state he or she is a debt collector or affiliated with a collection agency unless specifically asked. However, a spouse or co-signor who is also responsible for payment of the debt may be contacted. Neighbors and relatives may only be contacted to obtain a debtor's address and phone number.
- Contact a debtor if the debtor is represented by an attorney.

History of Regulation

The Colorado Fair Debt Collection Practices Act (CFDCPA) can be found at Article 14 of Title 12, C.R.S. The CFDCPA is the state version of the federal Fair Debt Collection Practices Act. The goal of both acts is to protect the public from harassment by third party debt collectors. The CFDCPA is a state law that governs the actions of debt collectors and collection agencies. It provides consumers with certain rights and restricts the practices collection agencies may use to attempt to collect debts. For example, the law prohibits collection agencies from using harassing, misleading, and unfair practices. The law prohibits unnecessary disclosure of the debt to parties not obligated to pay the debt.

The Board was originally established in 1937, in the Office of the Secretary of State. The Board was subsequently moved to DORA in conjunction with 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 AGO by a Type 2 transfer.

Because this transfer placed the Board under the direct supervision and control of the Board's administrator (Administrator), the transfer had the practical effect of vesting the Board's statutory authority, powers, duties and functions in the Administrator. The Administrator was defined as the administrator of the Uniform Consumer Credit Code (UCCC), also administered by the AGO. The administrator of the UCCC, and thus the Administrator, is an Assistant Attorney General. Following the Type 2 transfer, the Administrator delegated a great deal of authority back to the Board.

Since 1977, the Board has had only five individual administrators, with the current administrator having served in this capacity for approximately 20 years.

During the 1990 legislative session, the General Assembly amended the CFDCPA to authorize the Administrator to develop and administer examinations and expressly vested all licensing authority in the Administrator. Since then, the Board has served as an advisory body to the Administrator and has primarily made determinations regarding bond distributions based on claims by clients of collection agencies, and more recently, advising the Administrator on specific disciplinary actions.

A number of contentious issues arose during the 1999 sunset review of the CFDCPA, including DORA's recommendation to discontinue the Board because of its limited effect on regulation. In the 2000 legislative session, the General Assembly re-enacted the CFDCPA, with several DORA-recommended modifications, and postponed the issue of whether to discontinue the Board itself until 2003.

House Bill 03-1219 was enacted by the General Assembly effective May 21, 2003, subsequent to the 2002 sunset review conducted by DORA. This bill continued the Board until July 1, 2008. The general thrust of this legislation was to clarify existing rules, remove unnecessary regulation, repeal rules in conflict with the CFDCPA, and repeal certain consumer advisory notices. Specific consumer and creditor protections were also added, including communications restrictions and website information.

In 2004, through the AGO enacting Rule 1.04(4), the Administrator was authorized to issue advisory letters for minor violations of statutory provisions.

Legal Framework

The Colorado Fair Debt Collection Practices Act (CFDCPA) is nearly identical to the federal Fair Debt Collection Practices Act (federal FDCPA) on substantive issues regarding the collection of debts. However, the federal FDCPA fails to provide for licensure, bonding or discipline of licensees. A comparison summary of the federal and Colorado acts can be found below in Table 1. The CFDCPA contains additional provisions that create the Colorado Collection Agency Board (Board), and that direct the Attorney General's Office (AGO) to promulgate rules to regulate collection agencies in Colorado. These rules are referred to as the Rules of the Administrator, and are found at 4 Code of Colorado Regulations 903.

Table 1
Comparison of Colorado and Federal Regulations

Colorado	Federal
1. Colorado law requires that the first written notice state: For Information about the Colorado Fair Debt Collection Practices Act, see www.ago.state.co.us/CADC/CADCMAIN.CFM	1. There is no similar federal notice requirement.
2. Colorado law requires "meaningful disclosure" of a debt collector's identity within 60 seconds of contact with the debtor. (§12-14-106(1)(f), C.R.S.)	2. The federal law contains no time limitation. (15 U.S.C. 1692d(6))
3. Colorado law prohibits a collection agency from invoking a *cognovit* clause (confession of judgment). (§12-14-128(2), C.R.S.)	3. There is no similar prohibition in the federal FDCPA but other federal laws may prohibit this.
4. Colorado law establishes liability for harassment of a consumer's employer and family in an invasion of privacy action. (§12-14-113(7), C.R.S.)	4. Federal FDCPA does not specifically create this remedy in the act but it may still be actionable.
5. The Colorado act requires surety bonds for non-remittance of consumer funds and trust funds for client monies with requirements as to how often consumer payments must be disbursed to clients. (§§12-14-123(1)(c) & (d) and 12-14-124, C.R.S.)	5. The federal FDCPA provides no creditor protections. Aggrieved creditors have to sue privately in a court action.
6. The Colorado act requires licensure of collection agencies (§12-14-115, C.R.S.). Licenses may be revoked or suspended, licensees may be issued letters of admonition, or fined $1,000 per violation and certain violations of the CFDCPA are criminal misdemeanors. (§§12-14-129 and 12-14-130(10), C.R.S.) Rules and regulations on standards of behavior may be issued.	6. The federal FDCPA is primarily enforced by the Federal Trade Commission. (15 U.S.C. 21) It does not issue any rules and there are no licensure requirements.
7. Collection agencies may not report debts to consumer reporting agencies and credit bureaus until 30 days after the initial written notice is mailed. This does not apply to check collection or if there is not a valid known address for the consumer. (§12-14-108(1)(j), C.R.S.)	7. There is no similar provision in federal law.

While the federal and Colorado acts are very similar, the CFDCPA provides a few additional specific consumer protections. For example, the CFDCPA:

- Requires a collection agency to identify itself as such within the first 60 seconds of a telephone call.
- Requires a collection agency's initial communication with a debtor to also inform the debtor of the AGO's website in order to obtain more information about his/her rights under the CFDCPA.
- Prohibits a collection agency from communicating with a consumer-reporting agency earlier than 30 days after sending the initial notice to the debtor.
- Requires licensing and bonding of collection agencies.

Administrative enforcement of the CFDCPA is vested in the Board.[1] However, the Board is under the direct supervision and control of the Board's administrator (Administrator), who may exercise any of the powers granted to the Board.[2] The Administrator of the Board is also the administrator of the Uniform Consumer Credit Code.[3]

The five members of the Board are appointed by the Governor to three-year terms, and no member may serve more than two consecutive terms.[4] Three of the Board members must have been engaged in the collection business in Colorado with a licensed collection agency, and two of the members represent the general public.[5] Board members receive a $50 per diem and reimbursement of actual expenses for attending Board meetings.[6]

The Board must meet at least annually so that its members can elect its chairperson, vice-chairperson and secretary.[7] Beyond this annual meeting, the Board is only required to meet "regularly" as the business of the Board may necessitate.[8]

The Administrator is authorized to develop any examination required for the administration of the CFDCPA, and to establish any fees associated with, and the passing score for, such examination. Any such examination must be offered at least twice per year.[9] Additionally, the Administrator is authorized to approve or deny any license application.[10]

[1] § 12-14-114, C.R.S.
[2] § 12-14-117(1), C.R.S.
[3] § 12-14-103(1), C.R.S.
[4] § 12-14-116(1), C.R.S.
[5] § 12-14-116(2), C.R.S.
[6] § 12-14-116(3), C.R.S.
[7] § 12-14-116(4), C.R.S.
[8] § 12-14-116(5), C.R.S.
[9] § 12-14-117(2), C.R.S.
[10] § 12-14-117(3), C.R.S.

Any person acting as a collection agency must obtain and maintain a valid license issued by the Administrator.[11] It is unlawful for a collection agency to operate under any name other than that under which it is licensed.[12]

To obtain a license, the collection agency must:

- Be owned by, or employ as a collections manager or executive officer, at least one person who has held a position of responsibility in an established collection agency for at least two years, or other, similar experience as determined by the Board.[13]
- Employ a collections manager who has passed the examination administered by the Administrator and who shall be responsible for the actions of the individual debt collectors in the collection agency's office.[14]
- File a bond in the amount of $12,000, plus $2,000 for each $10,000 remitted or owed to all clients during the previous year, but not to exceed $20,000.[15]

In addition, the collection agency must provide to the Administrator:

- The location, ownership and previous history of the business and name, address, age and relevant debt-collection experience of each of the principals of the business.[16]
- A duly verified financial statement for the previous year.[17]
- If a corporation, the name(s) of the shareholder(s) and number of shares held by any shareholder owning 10 percent or more of the stock.[18]

For each principal and the collections manager, the collection agency must provide information relating to:

- The conviction for any felony or the acceptance by a court of a plea of not guilty or *nolo contendere* to any felony.[19]
- The denial, revocation or suspension of any license issued to any collection agency that employed or was owned by such persons.[20]

[11] §§ 12-14-115(1)(a), and 12-14-118, C.R.S.
[12] § 12-14-115(1)(b), C.R.S.
[13] § 12-14-119(1)(a), C.R.S.
[14] § 12-14-119(1)(b), C.R.S.
[15] § 12-14-124(1), C.R.S.
[16] § 12-14-119(2)(a), C.R.S.
[17] § 12-14-119(2)(b), C.R.S.
[18] § 12-14-119(2)(c), C.R.S.
[19] § 12-14-119(2)(d)(I), C.R.S.
[20] § 12-14-119(2)(d)(II), C.R.S.

- Any other disciplinary or adverse actions taken against any collection agency that employed or was owned by such persons.[21]
- The suspension or termination of approval of any collections manager under the CFDCPA, or any other disciplinary or adverse action taken against the applicant, its principals or collections manager by the Board or any other jurisdiction.[22]

Although collections managers are not licensed, they are required to take and pass a written examination. A person may take the collections manager examination up to three times. If the person cannot pass in three attempts, the collection agency must designate someone else as its collections manager.[23]

A collection agency must obtain a license for its principal place of business, but if the collection agency maintains branch offices, it need only notify the Administrator of the location of each branch office within 30 days of the commencement of business at each branch office.[24]

Finally, a nonrefundable investigation fee, as determined by the Board, must accompany the license application.[25] Once the application is approved, the collection agency must pay a nonrefundable license fee, as determined by the Board.[26]

The Administrator may deny a license or license renewal if any of the grounds for disciplinary action exist: for failure to satisfy the application requirements; if the applicant attempted to obtain or obtained the license fraudulently; or if the collection agency lacks a positive net worth.[27] Any such decision by the Administrator may be appealed pursuant to the State Administrative Procedure Act.[28]

The Administrator may establish ongoing renewal dates.[29] Currently all collection agency licenses expire on July 1 of each year.

If, within 90 days of notification from the Administrator that a renewal application is incomplete, or that any part of the fee due is unpaid, the license is deemed to have lapsed and the collection agency must apply for a new license if it intends to continue operating as such.[30]

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[21] § 12-14-119(2)(d)(III), C.R.S.
[22] § 12-14-119(2)(d)(IV), C.R.S.
[23] Rules of the Administrator, Rule 1.01.
[24] § 12-14-119(7), C.R.S.
[25] § 12-14-119(3), C.R.S.
[26] § 12-14-119(4), C.R.S.
[27] § 12-14-120(2), C.R.S.
[28] § 12-14-120(3), C.R.S.
[29] § 12-14-119(5), C.R.S.
[30] Rules of the Administrator, Rule 1.02(2).

If a licensed collection agency is a corporation and there is a change in ownership of 50 percent or more of the stock, or if there is a change in the ownership structure of the collection agency (i.e., changing to or from a sole proprietorship, partnership or corporation), then the collection agency must apply for a new license.[31]

At all times, a licensed collection agency is obligated to maintain: liquid assets, the value of which shall not be less than $2,500 more than all sums due and owing to all of its clients; an office in this state that is open during normal business hours and staffed by at least one full-time employee; and a trust account for the benefit of its clients that contains funds sufficient to pay all sums due or owing to all of its clients. In addition, all funds collected for a client must be remitted to that client within 30 days after the last day of the month in which such funds were collected.[32]

A licensed collection agency must produce, upon demand of the Board, a complete set of form notices or form letters used by the collection agency. A licensed collection agency is liable for the violations caused by its employees, including its collections manager, debt collectors and solicitors.[33]

The owner of a sole proprietorship, partner of a partnership, member of a limited liability company or officer or director of a corporation that is a licensed collection agency may not have been convicted of, pleaded guilty to or entered a plea of *nolo contendere* in any crime involving fraud, as delineated in Part 4 of Article 4 (theft related crimes) or in Parts 1, 2, 3, 5 or 7 of Article 5 of Title 18, C.R.S. (generally, fraud, forgery, deceptive business practices, and offenses related to the uniform commercial code).[34] No collections manager, debt collector, or solicitor may be employed with such criminal history.[35]

The Board may receive complaints regarding violation of the CFDCPA by any interested person, or it may launch investigations on its own motion.[36] During the course of an investigation, the Board may examine the books, records and files of any licensee; require the licensee to provide a verified statement of assets and liabilities, including a detailed statement of amounts due claimants; issue subpoenas to witnesses and compel them to give testimony under oath.[37]

[31] § 12-14-122(2)(c), C.R.S.
[32] § 12-14-123(1), C.R.S.
[33] Ibid.
[34] § 12-14-123(2)(b), C.R.S.
[35] § 12-14-123(2)(a), C.R.S.
[36] §§ 12-14-130(1) and (2), C.R.S,
[37] §§ 12-14-130(5), (6) and (7), C.R.S.

If the Board finds cause to believe that a violation of the CFDCPA or the rules and regulations promulgated thereunder has occurred and determines to take disciplinary action other than issuing a letter of admonition, it must notify the licensee and either hold a hearing itself, or refer the matter to the Office of Administrative Courts for a hearing before an administrative law judge.[38] The issuance of a letter of admonition does not require a hearing prior to such issuance.[39]

Upon a finding that a collection agency or a collections manager has violated the CFDCPA or the rules and regulations promulgated thereunder, available sanctions include: issuing a letter of admonition; revocation or suspension of the license of such collection agency or the approval of such collections manager; placing such collection agency or collections manager on probation or imposing an administrative fine of up to $1,000 per violation.[40] Similarly, such a finding may also serve as the basis for denying a license.[41]

Either the Board or the Administrator may issue a letter of admonition without a hearing, except that the collection agency or the collections manager receiving such letter may request a hearing before the Board to appeal the issuance of the letter.[42]

If a collection agency's license, or a collections manager's Board approval, is revoked, that person may not be relicensed or reapproved until five years have passed.[43]

Appeals of any final agency action are within the jurisdiction of the Colorado Court of Appeals.[44]

All funds collected pursuant to the CFDCPA, except for fines, are collected by the Administrator and transmitted to the State Treasurer for deposit in the Collection Agency Cash Fund.[45] Fines are transmitted to the state General Fund.[46]

A licensed collection agency must notify the Administrator within 30 days if the collection agency changes its business name or, if a corporation, any change in ownership of 10 percent or more, but less than 50 percent occurred.[47] The license of the collection agency expires on the 30th day after such occurrence if the collection agency fails to submit the proper notifications.[48]

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[38] §§ 12-14-130(8) and (9), C.R.S.
[39] § 12-14-130(10)(b), C.R.S.
[40] § 12-14-130(10)(a), C.R.S.
[41] Ibid.
[42] § 12-14-130(10)(b), C.R.S.
[43] § 12-14-130(10)(d), C.R.S.
[44] § 12-14-130(11), C.R.S.
[45] § 12-14-136(1)(a), C.R.S.
[46] § 12-14-136(2), C.R.S.
[47] § 12-14 122(1)(a), C.R.S.
[48] § 12-14-122(1)(b), C.R.S.

Upon the change of a collections manager, a licensed collection agency must notify the Administrator and appoint a new collections manager within 30 days. The Administrator has 15 days in which to approve or deny the qualifications of the new collections manager.[49]

It is a Class 1 misdemeanor for any person to:[50]

- Refuse or fail to comply with the CFDCPA.
- Aid or abet any person in operating or attempting to operate a collection agency in violation of the CFDCPA.
- Recover or attempt to recover treble damages for any bounced check without complying with section 13-21-109, C.R.S.

It is also a Class 1 misdemeanor:[51]

- For any licensed collection agency or any attorney representing a licensed collection agency to invoke a cognovit clause.
- For any licensed collection agency to render legal services or to advertise that it will render legal services.
- For any licensed collection agency, collections manager, debt collector or solicitor to refuse or fail to comply with any rule or regulation promulgated under the CFDCPA, or to aid or abet any person in such refusal or failure.

The Administrator has promulgated rules and regulations concerning licensing and disciplinary matters, consumer protection, and creditor protections.

The Administrator will not issue a license to a collection agency until all required documents have been filed, all fees paid and the designated collections manager has passed the required examination. A collection agency with an incomplete application has 90 days to provide the required items from the time the Administrator notifies it of any deficiencies. The collection agency may not engage in collections activities until the license is issued.[52]

[49] § 12-14-122(3), C.R.S.
[50] §§ 12-14-128(1), and 12-14-129, C.R.S.
[51] §§ 12-14-128(2)-(4), and 12-14-129, C.R.S.
[52] Rules of the Administrator, Rule 1.02.

If a licensed collection agency's debt collectors use aliases while engaging in collection activities, the collection agency must ensure that each debt collector uses only one alias and the collection agency must keep records for up to two years detailing the aliases and the true names of the debt collectors.[53]

If the Administrator issues a letter of admonition, it must be mailed by first-class certified mail. The recipient may appeal the issuance of the letter within 40 days of the date of the letter.[54]

Upon the revocation, expiration or surrender of a license, the collection agency must cease all collection activities and return all client accounts within 30 days, and file an affidavit with the Administrator attesting that this has been done. Additionally, any consumer payments received after the revocation, expiration or surrender of the license must be immediately forwarded, in full, to the client.[55]

The Administrator has also promulgated rules that are intended to offer protection to debtors. Every collection notice must contain the collection agency's name, mailing address and telephone number, as well as a reference to the AGO's website containing information about consumers rights under the CFDCPA.[56]

Once the collection agency and the debtor enter into a payment agreement or schedule, the collection agency is prohibited from engaging in unnecessary, additional collection activities on that debt.[57]

Unless authorized by statute or the instrument creating the debt, a collection agency is prohibited from collecting or attempting to collect from any debtor any charge for collection.[58]

If a debtor overpays a debt to a collection agency by more than $5, the collection agency must refund the overpayment within 30 days of the end of the month in which the overpayment was made.[59]

If a debtor pays cash to a collection agency, the collection agency must issue a receipt to the debtor within five business days of receiving the payment.[60]

[53] Rules of the Administrator, Rule 1.03.
[54] Rules of the Administrator, Rule 1.04.
[55] Rules of the Administrator, Rule 1.05.
[56] Rules of the Administrator, Rule 2.01, and § 12-14-105(3)(c), C.R.S.
[57] Rules of the Administrator, Rule 2.02.
[58] Rules of the Administrator, Rule 2.03.
[59] Rules of the Administrator, Rule 2.04.
[60] Rules of the Administrator, Rule 2.05.

A collection agency must provide to a debtor, within 10 days of any written request to do so, a written statement of the debtor's payments. The debtor is entitled to one free written statement during any 12-month period. Additional statements may be provided at a cost not to exceed $5. However, once a debt has been paid or settled in full, and the debtor requests it, the collection agency must provide to the debtor, free of charge, a written statement or receipt within five business days.[61]

Collection agencies must maintain accurate and contemporaneous records of all communications with a debtor for two years.[62] Similarly, collection agencies must maintain records of payments for two years.[63]

To better protect the privacy of the debtor, when obtaining or attempting to obtain information as to the location of a debtor, collection agencies are prohibited from using business cards that indicate that the collection agency is engaged in the business of collections.[64]

A collection agency must post a payment to a debtor's account on the day the payment is received, unless payment is made by post-dated check.[65] If a debtor verbally authorizes electronic payment to the collection agency, the collection agency must obtain the debtor's written permission prior to the date of the payment, record the verbal authorization or transfer the phone call to a manager or other debt collector to verify the amount, means and verbal authorization. If the debtor disputes the purported oral authorization, the collection agency must refund the full payment amount within five business days.[66]

If a collection agency receives any payment, but is unable to identify the client account on whose behalf payment was made, the collection agency must return the entire payment within 30 days after the end of the month in which the payment was made.[67]

The Administrator has promulgated several rules to enhance creditor protection. While section 12-14-123(1)(c), C.R.S., requires all licensed collection agencies to maintain trust accounts, a collection agency that maintains one or more trust accounts in another state need not maintain such an account in Colorado. Similarly, if the collection agency does not receive payments from debtors (because payments are remitted directly to the creditor), the collection agency does not need to maintain a trust account.[68]

[61] Rules of the Administrator, Rule 2.06.
[62] Rules of the Administrator, Rule 2.07.
[63] Rules of the Administrator, Rule 3.03.
[64] Rules of the Administrator, Rule 2.08.
[65] Rules of the Administrator, Rule 2.12.
[66] Rules of the Administrator, Rule 2.14.
[67] Rules of the Administrator, Rule 3.02.
[68] Rules of the Administrator, Rule 3.01.

The CFDCPA requires a licensed collection agency to post a bond to protect its clients in the event the collection agency fails to remit payments to its clients. However, in lieu of a bond, the collection agency may maintain a savings account, deposit or certificate of deposit with a bank in Colorado so long as such account is assigned to the Board for a period ending two years after the revocation, expiration or surrender of the collection agency's license.[69]

[69] Rules of the Administrator, Rule 3.04.

Program Description

The Colorado Collection Agency Board (Board) is a Type 2 board that serves in a largely advisory capacity to the Board's administrator (Administrator). The Administrator is an Assistant Attorney General who is also the administrator of the Uniform Consumer Credit Code (UCCC).

The Administrator and the Attorney General's Office (AGO) are not legally required to solicit or adhere to the Board's input regarding licensing and disciplinary matters, rulemaking proceedings or bond hearings. Because the Board may only make recommendations on such issues, the Administrator and the AGO may adopt the Board's recommendations, disregard such recommendations, or avoid soliciting the Board's input altogether.

Prior to 2002, the Board officially met on a quarterly basis, and beginning in 2002, the Board and the Administrator decided to hold monthly meetings on a tentative basis to accommodate a new process for issuing letters of admonition. Although the Board now considers holding meetings on a monthly basis, the reality is that meetings are set based upon the press of business and Board member availability.

Over the four calendar years beginning in 2003, and ending in 2006, the Board met 21 times, an average of slightly over five meetings per year. During fiscal year 06-07, the Board met six times (July, September, November, January, February and May).

The Board had a meeting set for April 2007. However, only two of the five board members attended, causing the meeting to be cancelled as a quorum was not present (three members are necessary for a quorum). The Board also had meetings set for June, July, and August, 2007. Each of these three meetings were cancelled due to a lack of pending business. Additionally, one Board member was absent for the first three meetings in 2007 (January, February, and April).

For the most part, these meetings consist of the Board members hearing statements or explanations from licensees in pending disciplinary actions (and generally involving the issuance of a letter of admonition against the licensee), and subsequently making recommendations relating to the licensees' possible disciplinary sanctions. The Administrator decides the appropriate sanction after the meeting, and informs the Board of the decision at the next scheduled meeting.

Generally, the balance of the meetings consist of the Administrator updating Board members on previous disciplinary actions taken; discussion of budgetary, fee, and bonding matters; as well as discussions regarding possible rule changes.

However, if there are no letters of admonition to discuss, and if there is no business for the Board to address, these meetings are canceled. Board meetings typically last less than two hours, and an average meeting is not attended by members of the public. However, the Board's agendas include time for public comments and questions.

Since July 1, 2005, 4.5 full-time equivalent (FTE) employees have staffed the program. These include 1.0 FTE Program Assistant, 2.0 FTE Compliance Investigators, 1.0 Administrative Assistant, and 0.5 FTE Assistant Attorney General, who represents the program in disciplinary and other legal matters. The position of the program's Administrator, who is also the administrator of the UCCC, is entirely funded by the UCCC. The percentage of time the Administrator actually spends working on program or Board-related issues has steadily increased from approximately 18 percent in fiscal year 97-98, to approximately 45 percent in fiscal year 06-07.

Table 2 illustrates the program's total expenditures and staffing over the five fiscal years indicated. It is noteworthy that this table demonstrates a gradual increase in both expenditures and staffing.

Table 2
Program Expenditures

Fiscal Year	Total Board Expenditure	FTE Employees
01-02	$177,450	2.5
02-03	$192,671	2.5
03-04	$198,727	3.5
04-05	$197,380	3.5
05-06	$227,035	4.5

License/Registration

The Colorado Fair Debt Collection Practices Act (CFDCPA) does not excuse absolve, or otherwise protect debtors from paying lawfully owed debts and makes no attempt to address whether a debt is owed. Rather, the CFDCPA merely establishes the parameters within which collection agencies may attempt to collect payment of the debt. It accomplishes this by prohibiting collection agencies from engaging in certain types of oppressive, unfair and/or abusive practices. Thus, this program which regulates collection agencies has a mission that includes protecting debtors, and creditors who employ licensed collection agencies

To protect debtors, the program, through its statutes, rules and regulations, prohibits unfair, deceptive and abusive collection practices and disclosure of the debt by collection agencies to third parties (such as neighbors, employers, etc.), places limits on the hours during which collection agencies may contact debtors and ensures that the debtor may obtain verification of the debt and may refuse to pay the debt. In addition, the CFDCPA helps to preserve the rights of the debtor by requiring the collection agency to cease communicating with the consumer/debtor upon written request.

To protect collection agency clients, the program, through its statutes, rules and regulations, requires collection agencies to: maintain trust accounts for client funds; provide clients with monthly accountings and remittances; and post surety bonds to partially compensate clients in the event of non-remittance of debts successfully collected from assigned collection accounts.

The program regulates collection agencies through licensing the collection agencies themselves, and by requiring collections managers to pass an examination to ensure that they understand the intricacies of the CFDCPA, and how it differs from the federal FDCPA.

The program is cash funded from license and examination fees, and all fees are set on a yearly basis administratively.

Table 3 contains the fee amounts for fiscal year 06-07, including licensure, investigation, and examination fees.

Table 3
Fees

Type of Fee	Amount of Fee
New Collection Agency License	$750 - increases to $800 for fiscal year 07-08
Investigation Fee	$300
Renewal License Fee	$350 - increases to $425 for fiscal year 07-08
Collections Manager Examination Fee	$100

The Administrator conducts an investigation of all new applicants. An investigation of an applicant for a new license consists of reviewing the application for completeness and accuracy and verifying that the applicant's financial statements are true and correct. In addition, AGO staff confirms the applicant's license status in other states, if applicable, and may also review public documents on file with the Office of the Secretary of State. If the applicant, or any of its principals, were previously licensed, prior licensing records are also reviewed.

The AGO now licenses and regulates almost 600 collection agencies operating in Colorado. That figure is more than twice the number of licensees from 10 years prior (265 licensees in fiscal year 96-97). Table 4 illustrates the total number of new and renewal licenses issued to collection agencies in Colorado over the last five fiscal years, and demonstrates that the number of new licensees and renewals has generally increased over the past five years.

Table 4
Licensing Information

Number of Licenses			
Fiscal Year	New	Renewal	TOTAL
01-02	64	322	386
02-03	84	347	431
03-04	108	385	493
04-05	115	433	548
05-06	93	493	586

Although the AGO does not specifically keep track of this data, the Administrator estimates that, on average, approximately 70 days pass from the time a collection agency license application is filed until the time the license is actually issued. However, the Administrator reports that this lengthy delay is primarily due to the fact that most, if not all, applications are incomplete when originally submitted. Each licensee's collections manager must take and pass the written examination, which is given monthly. New collection agencies typically wait to obtain their surety bond until the collections manager passes this examination. Thus, license applications are often incomplete when originally submitted because either the collections manager has not yet passed the examination or the collection agency has not yet obtained its surety bond, or both. Once an application is complete, however, a license is typically issued within three days.

Pursuant to the Rules of the Administrator, Rule 1.02(2), if a license application is still incomplete 90 days after notification from the Board that said application is incomplete, the application is null and void, and the applicant must start the process anew, including payment of all fees.

Examination Information

The CFDCPA requires all licensed collection agencies to employ an approved collections manager to supervise debt collectors and be responsible for compliance with Colorado's collection laws. Collection managers must pass the collections manager examination and pay a $100 test fee.

The AGO administers the Collections Manager Examination, which is an examination on substantive knowledge related primarily to the CFDCPA. The examination is held in the AGO's Denver offices on the second Friday of each month. Prior to March 2002, the examination was an open book examination. However, since that time, the AGO has made it a closed book examination. The test consists of 30 multiple-choice questions and lasts approximately one hour. The examination covers the CFDCPA, Rules of the Administrator, and laws related to collections activities. As noted earlier, Colorado's collection laws include consumer and creditor protections not found in the federal Fair Debt Collections Practice Act (federal FDCPA). Knowledge of the federal law alone is not sufficient to pass the collections manager examination.

Although test scores have tended to decline since it became a closed book test, no one has failed the examination in the last five fiscal years. Table 5 illustrates the number of examinations given for each of the last five fiscal years.

Table 5
Examination Information

Fiscal Year	Number of Examinations Given
01-02	100
02-03	112
03-04	135
04-05	121
05-06	112

When an examinee passes the examination, the AGO issues a letter attesting to that fact within 10 days of the examination. This letter, in turn, can be used to demonstrate to a collection agency that the individual has passed the examination, and it can be used by a collection agency to demonstrate to the AGO that its collections manager has passed the required examination.

The collections manager applicant may take the examination three times. After three unsuccessful attempts, a new collections manager applicant must be designated.

Out-of-state collection agencies must be licensed in Colorado and are subject to the CFDCPA if they solicit clients in Colorado, if they collect for clients who have a place of business in Colorado, or if they buy Colorado originated debts in default and collect those debts. However, Colorado eliminates state licensing for out-of-state collection agencies that:

- Collect debts incurred outside of Colorado;
- Use only interstate communications to collect these debts; and
- Are located in a state which regulates and licenses collection agencies and does not require licensing for similarly situated Colorado collection agencies.

States with no collection agency licensing and regulation will not meet this last condition. If an out-of-state collection agency regularly collects debts incurred in Colorado, and from Colorado residents, it must be licensed in Colorado. The AGO generally defines "regular" as at least 10 collection accounts per year.

Pursuant to section 12-14-103(2)(e)(ll), Colorado Revised Statutes (C.R.S.), attorneys do not have to be licensed by the Board if they regularly engage in collections or attempted collection of debts in Colorado.

Complaints/Disciplinary Actions

The AGO receives, on average, approximately 700 formal complaints (in writing) each year. The number of formal complaints received has remained relatively constant over the past 10 years. Table 6 provides an illustration of the number and types of allegations contained in the complaints that the AGO has received over the course of the last five fiscal years. The total number of allegations exceeds the total number of complaints because some complaints assert more than a single allegation.

Table 6
Complaint and Allegation Information[70]

Nature of Complaints	FY 01-02	FY 02-03	FY 03-04	FY 04-05	FY 05-06
Amount Not Due	89	202	247	335	414
Costs/Interest Added to Debt	37	56	35	27	22
Credit Reporting	105	120	100	91	80
Failure to Cease Communications	84	81	151	77	79
False or Misleading Representations	38	69	72	24	14
Harassment & Abuse	126	153	176	158	206
NSF[71] Check Collection	32	28	42	15	8
Payment Arrangements	22	32	22	26	21
Third-Party Contact or Disclosure	33	52	78	63	44
Validation Notice of Consumer Rights	64	57	56	37	21
Verification/Proof of Debt	182	140	135	74	63
TOTAL ALLEGATIONS	1,118	1,278	1,634	1,191	1,211
TOTAL COMPLAINTS	456	667	741	787	688
Average Days to Resolve	45	129	72	79	49

For the majority of fiscal year 02-03, personnel issues arose relating to the program's sole investigator. This resulted in a substantial increase in the average number of days necessary to resolve complaints, and is reflected in Table 6, above, and was resolved in the following fiscal year.

Over the past five fiscal years, the most common complaints concern issues relating to debts not owed, harassment and abuse, and debt validity problems. One of the original justifications for enacting the CFDCPA was to help prevent the harassment and abuse of debtors by collection agencies. The complaint figures in Table 6 demonstrate that this justification continues to be a valid concern.

When a complaint is initially received by the AGO, the program's administrative assistant reviews it to ensure that AGO jurisdiction is proper. If the AGO has jurisdiction, a copy of the complaint is mailed to the collection agency, which is given 20 days in which to respond.

[70] Complaint information contains only major categories of complaints. There are approximately 30 different categories of complaints, many consisting of only a few allegations.
[71] NSF = Non-sufficient funds.

One of the compliance investigators reviews the complaint and the collection agency's response, and decides whether additional investigation is necessary to determine whether the law has been violated. If the compliance investigator concludes that the law has not been violated, that an allegation is lacking adequate proof, or that there is no corroborating evidence of pattern, a letter is sent to the complainant advising the consumer of his/her rights, including the right to sue. Additionally, the closure letter may explain why the AGO is unable to take disciplinary action. A copy of this letter is also sent to the collection agency, upon request.

However, if the compliance investigator determines that the law has been violated, the case file is forwarded to the Administrator, who may issue an advisory letter, a letter of admonition, or pursue other disciplinary actions.

When the circumstances warrant, the Administrator may negotiate a stipulation, usually accompanied by a fine, or file a Notice of Charges with the Office of Administrative Courts to pursue license suspension, revocation or fines. This entire process, from the time the written complaint is received until final disposition, frequently takes no more than 45 to 80 days, although this process can take much longer if the matter winds its way through the court and appellate system.

Although the number of complaints received by the AGO is rather high, many of the complaints are dismissed for either lack of jurisdiction, or lack of a specific statutory violation. Nonetheless, Table 7 clearly demonstrates that the total number of disciplinary actions taken has approximately doubled over the last five fiscal years. Significantly, injunctions and letters of admonition have increased dramatically, when other forms of discipline have remained relatively constant.

Table 7
Final Agency Action

Type of Action	FY 01-02	FY 02-03	FY 03-04	FY 04-05	FY 05-06
Revocation	0	0	0	1	1
Summary Suspensions	0	0	1	0	1
Suspensions	0	0	1	0	0
Probation	0	0	0	0	0
Surrender of License	0	0	0	0	0
Letter of Admonition	17	12	16	26	43
Letters of Admonition discussed with Board	*1*	*2*	*1*	*6*	*8*
License/Renewal Denials	0	1	0	1	5
Injunction/Stipulated Agreement (with or without fines)	6	8	16	9	22
Surety Bond Hearings	1	0	1	3	0
Cease & Desist Notices	43	26	58	59	59
TOTAL	67	47	93	99	131

Both the CFDCPA and the federal FDCPA provide for private rights of action for consumers against collection agencies for the same types of actions for which the AGO may proceed administratively. The AGO prefers to refer to its disciplinary case dismissals as “closure – no action” so as not to inhibit a debtor’s ability to take civil action against a collection agency.

Additionally, the term “dismissal” carries the connotation that the actions complained of did not constitute a violation, and this is not always the case. Due to limited resources, the AGO is not able to fully investigate and take disciplinary action on all of the complaints it receives. If an allegation or complaint is going to be particularly difficult to prove and the collection agency has not established a pattern of similar practice, the AGO may close the case without action so that it may dedicate its limited resources to cases that it can prove. An example of this would be where a debtor alleges that the debt collector used profanity during a telephone conversation, the debt collector denies such conduct and the conversation was not recorded. Rather than expend the resources necessary to attempt to determine which party is telling the truth, the AGO closes the complaint without action, which does not impact, as a practical matter, the debtor’s ability to sue the collection agency in court.

The AGO closes a considerable number of cases without taking action. This is due, in large part, to the fact that the majority of complaints it receives fail to clearly establish violations of the CFDCPA. Rather, many complaints are filed by debtors who are angry that a particular collection agency did something that was lawful, but that the debtor dislikes, such as reporting debt information to a credit-reporting bureau.

Table 7 indicates that the AGO revoked two collection agency licenses during the past five years, and suspended one license. However, the AGO did not place any licensees on probation, or effect the surrender of any licenses in this time period. The CFDCPA requires the AGO to hold a hearing before taking any disciplinary action other than issuing a letter of admonition. Since the AGO generally offers to settle cases against collection agencies before going to a hearing, by offering a stipulation that typically could include a fine, the collection agencies affected usually accept the proffered stipulation. The AGO also effected two summary suspensions over the past three years. Summary suspensions may be imposed only when there is at least the potential for imminent public harm, and this action does not require a hearing prior to imposition.

As with many other business-related licensing/regulatory programs, suspending a collection agency's license affects not just the licensee, but all of its employees as well. When a collection agency's license is suspended, the agency is not able to legally engage in collection activities, requiring it to either furlough its employees during the period of suspension or pay them for not working. In addition, a suspension can adversely affect, and be detrimental to, the collection agency's clients. Thus, collection agencies facing a suspension are frequently agreeable to paying a fine, and/or accepting a stipulation as a means of resolving a complaint. As Table 7 indicates, in fiscal years 03-04, 04-05, and 05-06, there was a sizeable increase in the total number of disciplinary actions taken, with the most dramatic increase in the number of letters of admonition issued by the AGO. Letters of admonition do not result in a work stoppage at respondent collection agencies, and consequently a letter of admonition can be a viable option for the respondent who wishes to ensure that a suspension or work stoppage is avoided.

Though fines may be imposed for a variety of reasons, most fines, and those with the largest dollar figures, are typically imposed for unlicensed activity. In determining the amount of such a fine, the Administrator considers the number of accounts the unlicensed collection agency has obtained, the number of consumers contacted, the number of debts collected and the length of time the unlicensed collection agency has been operating as a collection agency. Table 8 more clearly illustrates the amounts of fines imposed during the last five fiscal years.

Table 8
Fine Information

Fiscal Year	Total Number of Fines	Total Amount of Fines	Range of Fines
01-02	5	$48,930	$500-$34,430
02-03	6	$34,397	$1,397-$9,000
03-04	13	$21,155	$500-$4,000
04-05	10	$57,000	$500-$20,000
05-06	23	$119,750	$250-$50,000

Total amount of fines includes fines, reimbursement of costs and attorneys fees, custodial funds for educational and law enforcement purposes, and consumer restitution.

Letters of admonition are issued by the AGO for what some industry members consider to be "technical" violations of the CFDCPA. For example, a debtor directs the licensee, in writing, to cease communication. However, the licensee, due to an alleged clerical or human error, fails to note the request in the debtor's computer file, so the licensee's employees continue to contact the debtor to pursue collection in violation of the CFDCPA.

The AGO views this scenario as a violation of the CFDCPA, but since it is not a major violation, the Administrator issues the lowest form of discipline, a letter of admonition. Many licensees, however, view this practice as overzealous, especially in light of the fact that letters of admonition remain on a licensee's record indefinitely.

To help resolve the tension, in early 2002, the AGO and the Board developed a process whereby a licensee who is to receive a letter of admonition now receives a draft of the letter and is invited to appear before the Board and the Administrator to discuss the matter before the final letter of admonition is issued. The Board then provides the Administrator with its recommendation on the matter (i.e., whether to issue the letter of admonition, dismiss the matter, or take stronger action such as a suspension or revocation). If the letter of admonition is issued, the licensee retains the right to a hearing before an administrative law judge to request that the letter of admonition be vacated.

In addition to formal discipline, in 2001, the AGO began issuing advisory letters. This practice was approved by the AGO, which specifically endorsed advisory letters by enacting Rule 1.04(4), in 2004. Advisory letters are issued in those cases in which minor or technical violations are found to have occurred. Advisory letters generally indicate to licensees that, although a minor or technical violation of the CFDCPA occurred, the Administrator is still concerned about the licensees' behavior. Although advisory letters are, in effect, dismissals, and not formal discipline, they are retained in a licensee's file. However, if someone inquires of the AGO as to whether a particular collection agency has been disciplined and the only document in the collection agency's file is an advisory letter, the AGO's staff has been instructed to indicate that the collection agency has not been the subject of any disciplinary actions.

Table 9 sets forth the number of advisory letters issued to licensees over the past five years. The AGO reports that it has additionally issued 47 advisory letters in fiscal year 06-07 (through May 30, 2007).

Table 9
Advisory Letters

Fiscal Year	Number of Advisory Letters Issued	Number of Collection Agencies Issued Advisory Letters
00-01	10	9
01-02	19	18
02-03	12	11
03-04	26	22
04-05	13	13
05-06	53	44

Analysis and Recommendations

Recommendation 1 – Continue the regulation of collection agencies for nine years, until 2017, and sunset the Colorado Collection Agency Board.

The licensing of collection agencies protects both debtors and clients of the collection agencies from abuse and potential financial harm. The licensing of collection agencies provides a mechanism for enforcement of consumer rights provided for in both the federal and Colorado Fair Debt Collection Practices Acts. The licensing of collection agencies also provides financial protections for the clients of the collection agencies (creditors) by requiring collected funds to be held in trust and a surety bond to provide additional financial recourse.

The Colorado Fair Debt Collections Practice Act (CFDCPA) was enacted to protect consumers from being harassed and coerced by unscrupulous collection agencies. Thus, the CFDCPA is first and foremost, a consumer protection statute that delineates the limits to which a collection agency may legitimately pursue the collection of a debt. Included in these limits is a requirement that the collection agency inform the consumer of his or her rights and, in several instances, the manner in which such notification must be given. Failure to operate within these limits constitutes not only a violation of the general intent of the CFDCPA, but also of its spirit. Therefore, continued regulation is necessary to protect the public. However, it is also necessary to explore whether that regulation is best overseen by the Colorado Collection Agency Board (Board) or the Administrator of the CFDCPA (Administrator).

The regulation of collection agencies is different than the regulation of licensed professionals. For example, the practice of medicine involves a great deal of subjectivity and professional judgment on the part of the practitioner. The state does not clearly define what processes or actions medical doctors must utilize when diagnosing and treating patients as the element of subjectivity and judgment is germane to the profession.

The regulation of collection agencies is far different and focuses, in more objective terms, on the way in which a collection agency may interact with a debtor. For example, the CFDCPA clearly states that if a consumer directs the collection agency, in writing, to cease contact, the collection agency must cease contact. If the collection agency fails to properly record the reception of such a direction and continues to contact the consumer, a violation has occurred and the consumer has suffered exactly the type of harm the CFDCPA was designed to eliminate. It is irrelevant whether the violation was unintentional. Intent plays a role only in determining the level of sanction to be imposed, not whether the violation occurred. In this respect, the subject matter expertise typically offered by a regulatory board is not necessary.

However, following the 2000 legislative session, the Administrator responded to industry concerns that too many letters of admonition were being issued. The Administrator agreed to issue "advisory letters" in those instances in which minor violations of the CFDCPA occurred, but in which there was no harm suffered by the consumer/debtor.

Furthermore, the Administrator agreed that prior to the issuance of any letters of admonition, recipients of such letters would receive a draft of the letter and be given the opportunity to appear before the Board and the Administrator to discuss the issuance of the letter before it is formally issued. The Board would then advise the Administrator as to whether the letter should be issued, although the administrator would make the ultimate decision regardless of the Board's recommendation.

This process was instituted in the first half of 2002, and as demonstrated in Table 7, between fiscal year 01-02, and fiscal year 05-06, only 18 out of 114 (less than 20 percent) licensees issued letters of admonition appeared before the Board to discuss the proposed admonition.

In fiscal year 05-06, in response to 688 complaints received, the AGO took over 130 disciplinary actions against collection agency licensees and non-licensees doing business in Colorado. To add context to this number, there are currently approximately 600 licensed collection agencies in Colorado. This amounts to imposing a form of discipline on almost one-quarter of the collection agencies licensed in Colorado.

Additionally, the duplicative nature of the statutory provisions creating the Board, coupled with the delegation of authority to the AGO, creates an apparent overlap of authority that is unclear and confusing to the public, licensees and industry members.

Section 24-1-113(4)(a), Colorado Revised Statutes (C.R.S.), which partially codified Senate Bill 77-410, places the current Board in the AGO by a Type 2 agency transfer. Pursuant to section 24-1-105(4), C.R.S., when an agency is transferred by a Type 2 transfer, all of that agency's prescribed powers, duties and functions, including rulemaking, regulation, licensing and the rendering of findings, orders and adjudications are transferred to the head of the department into which the agency has been transferred. In the case of the Board, all rulemaking, licensing and disciplinary authority should be vested in the AGO.

However, the Board's organic statute expressly vests in the Board the authority to investigate complaints and to deny, revoke or suspend the license of a collection agency that either the Board or an administrative law judge has found to have violated the CFDCPA. Additionally, section 12-14-114, C.R.S., states that the CFDCPA "shall be enforced by the board," and vests in the Board the power to make reasonable rules and regulations.

These provisions are inconsistent with a Type 2 transfer in that they remove authority that was transferred to the AGO by virtue of the Type 2 transfer, and place those powers with the Board.

The CFDCPA vests in the Administrator the authority to develop and administer examinations and to issue licenses.[72] More importantly, section 12-14-117(1), C.R.S., states,

> Any provision of this article to the contrary notwithstanding, the board . . . is under the supervision and control of the administrator, who may exercise any of the powers granted to the board.

These provisions are confusing because, by virtue of the Type 2 transfer, the AGO already possessed such powers. Finally, these statutory provisions are inconsistent with section 12-14-130, C.R.S., which expressly vests those same powers and duties in the Board, not the Administrator or the AGO.

Since 1992, at the Administrator's discretion, the Board offers input and advice on selected disciplinary matters, and is allowed to conduct bond and rulemaking hearings. However, the AGO is under no legal obligation to heed the advice or input of the Board, and frequently, does not adhere to the Board's recommendation as the Board essentially functions in an advisory capacity. Licensing and disciplinary procedures are the sole responsibility of the Administrator.

Over the past five years, the Board has conducted only five bond hearings, although none in fiscal year 05-06. Bond hearings are held when a collection agency is unable to remit payments to its clients (creditors), who then seek to collect on the collection agency's bond. Therefore, these bond hearings offer financial protection only to creditors who hire collection agencies, not debtors. Additionally, the Board has conducted only one rulemaking hearing during the same five-year period.

Licensees that are the subject of disciplinary actions apparently do not want to discuss their individual alleged statutory violations with the Board. Industry members of the Board are business competitors of other Board licensees, and competitor collection agencies are hesitant to discuss their internal problems before business competitors. Additionally, as discussed above, the Board does not have the final decision-making authority. The Administrator has indicated that many licensees contact the Administrator directly to discuss appropriate disciplinary actions or sanctions.

[72] §§ 12-14-117 and -118, C.R.S.

An area of licensee confusion relates to the current process of disciplinary proceedings. At the regularly scheduled Board meetings, individual licensees are allowed to offer an explanation to the Board and Administrator, relating to the specific complaint under consideration. This is done prior to the imposition of any form of discipline. After the licensee's explanation, the Board verbally votes on whether it feels that discipline is warranted, and if so, what penalty the Board decides is appropriate. The Administrator then informs the licensee that the Board's recommendation will be considered, and a final decision will be issued by the Administrator.

This is confusing to the licensee in that often the Board and the Administrator do not agree on the appropriate sanction to be imposed. Although the Administrator has the ultimate disciplinary authority, the Board's verbal decision creates confusion and the appearance of inconsistency by making recommendations contrary to the ultimate decision. Consequently, it is not necessary for the Board to participate in hearings on disciplinary actions, as the Board has no authority to rule on those matters.

Additionally, the Board has not found it necessary to meet on a regular basis. The first three Board meetings of 2007 were scheduled for January, February, and April. The April meeting had to be cancelled as only two Board members attended, and the January and February meetings were each attended by three Board members. Board meetings set for June, July, and August of 2007, were vacated and cancelled due to a lack of business-related matters on the agenda.

DORA's 1999 sunset review of the Board recommended sunsetting the Board at that time because the review found no evidence that the Board served any function that could not just as easily be performed by the Administrator alone. Many collection agencies disagreed with the sunset review's recommendation. Collection agencies claimed that the Board appeared to serve no function because the Administrator and the AGO failed to give the Board any specific duties. Nonetheless, based on testimony and other public input, the General Assembly continued the Board.

Indeed, the Board has been, in effect, an advisory board in most aspects of collection agency's regulatory scheme. Lending further credence to this position is the fact that the CFDCPA has been enforced, in every practical way, by the Administrator, and not the Board. Collection agencies doing business in Colorado may form an *ad hoc* committee to meet with the Administrator periodically for the purpose of sharing their thoughts and opinions on industry related matters. Of course, rulemaking hearings are open to the public and industry pursuant to state law.

Therefore, the reasons for sunsetting the Board include:

- Frequently cancelled meetings;
- Only one Board rulemaking hearing in the past five years;
- Only five Board bond-hearings since fiscal year 01-02;
- No Board licensure authority;
- Lack of Board disciplinary authority over current licensees;
- Confusion as to roles and responsibilities of the Board and Administrator among the public and licensees; and
- Board does not provide any additional consumer protection that is not currently being performed by the AGO.

In summary, the Board has no viable regulatory role or authority, as recommendations and advice offered by the Board are unheeded and unnecessary. In light of the recommendation that the AGO's role in the regulation of collection agencies should be continued, the Board should be sunsetted.

Recommendation 2 - Increase the administrative fine authorized by section 12-14-130(10)(a), C.R.S., from $1,000 to $2,000 per violation.

An administrative fine utilized as a disciplinary sanction against licensees is authorized by section 12-14-130(10)(a), C.R.S. The statutory fine amount may not exceed $1,000 per violation, and this amount has not been raised or otherwise changed since its inception in 1990.

Other states have provisions to allow for administrative fines for statutory violations. The following states have the indicated fining authority:

- Arizona - $5,000 per violation per day.
- Arkansas - $500 per day.
- Connecticut - $100,000 (maximum).
- Idaho - $2,500 per violation.
- Maine - $5,000 (maximum).
- Maryland - $1,000 per violation.
- Minnesota - $10,000 per violation.
- North Dakota - $5,000 (maximum).
- Tennessee - $1,000 per violation.
- Washington - $5,000 per violation.
- Wyoming - $1,000 per violation.

Over the past 17 years, the maximum fining authority in Colorado for statutory violations has remained constant, and has not been adjusted for inflation or current economic realities. This recommendation seeks to raise the fine amount from $1,000 to $2,000 to increase the accountability of the licensees. Providing greater fining authority to the Administrator enhances public protection, while not being unduly burdensome or unfair to the collection agency industry.

Recommendation 3 - Eliminate the collection managers examination.

The collection manager's examination is administered by the AGO pursuant to section 12-14-119(1)(b)(I)(A), C.R.S. Although the pass rate is 100 percent, the AGO indicates that there is no correlation between the examination and violations of the CFDCPA. The AGO asserts that violations of the CFDCPA are not due to lack of knowledge of the CFDCPA, but rather of conduct that is negligent, overreaching, or intentional.

Specifically, the Administrator noted that generally, the problems that cause licensees to be the subject of disciplinary actions are not related to ignorance of Colorado law. Rather, the majority of violations relate to a human or systems error, or licensees' employees disregarding regulatory statutes and rules. Debt collection is not an occupation that requires any particular educational requirements or specialized training, and no testing requirements exist for those individuals who directly perform collections activities.

It should be noted that the majority of all collection agencies doing business in Colorado are now located out-of-state, requiring collections manager applicants to travel to Denver for an examination from locations as distant as the east coast and foreign countries. This not only slows down the licensure process, but does not provide any additional consumer protection.

Collection agencies licensed in Colorado are directly responsible for the conduct of their employees. Collection agencies act through their employees, and currently, it is sufficient to hold a licensee responsible for the acts of its employees. Because of this, many collection agency licensees currently educate their employees on Colorado statutes and regulations. Consequently, the elimination of this examination requirement would not effect or jeopardize the public protection aspect of the regulation of collection agencies.

The collections manager examination is unnecessary because it does not add meaningful protection to the citizens of Colorado. The fact that the examination has a 100 percent pass rate, and that only one person from a collection agency must take the examination, substantiates the elimination of the examination. The assertion that there is no meaningful correlation between the examination and disciplinary violations further substantiates this recommendation.

Recommendation 4 – Eliminate the requirement that a licensee maintain an office in Colorado, and require each licensee to maintain a toll-free telephone number.

Section 12-14-123(1)(b), C.R.S., currently requires each licensee to maintain an office in Colorado. This may have been useful in the past when most licensees were locally based. Now, however, it is likely that a debtor will be contacted by an out-of-state collection agency, or one located in a different part of the state. So long as an out-of-state collection agency has a registered agent in Colorado (required as part of the application process), an in-state office is not necessary. With the general use and acceptance of e-mail, faxes, and inexpensive cell phone usage, it is unlikely that a Grand Junction consumer benefits from a collection agency having an office in Sterling.

To ensure that Colorado consumers can contact an out-of-state collection agency without incurring unreasonable costs, each collection agency should be required to maintain a toll-free telephone number for usage by Colorado consumers.

Recommendation 5 – Require that a collection agency's initial communication with a debtor notify the debtor of the debtor's right to request, in writing, that the collection agency cease contact with the debtor.

Section 12-14-105(3)(a), C.R.S., allows a debtor to request, in writing, that a collection agency cease communications with the debtor, and requires that the collection agency cease communications with the debtor upon receipt of this written notice. However, even after a debtor requests that a collection agency cease contact pursuant to section 12-14-105(3)(a), C.R.S., a collection agency is allowed to contact the debtor one additional time. This collection agency-initiated contact (after a cease contact request is made by the debtor) is limited to advising the debtor of what legal remedies are being considered or are actively being pursued by the creditor.

Many debtors are unaware of this statutory provision, and therefore do not consider invoking this right. This recommendation serves to ensure that debtors are aware of their legal rights by including the substantive provisions of section 12-14-105(3)(a), C.R.S., in the initial written communication from the collection agency to the debtor. Specifically, the initial communication letter should be required to include, in bold type, an accurate statement of a debtor's right to request that the debtor not be contacted further by the collection agency after said written request.

Recommendation 6 – Modify section 12-14-105(3)(c), C.R.S., by adding the language, "or current website," after the specfic reference to the Attorney General's web-site.

Currently, the initial disclosure form sent to debtors by collection agencies contains a specific reference to the AGO's website, as set forth in section 12-14-105(3)(c), C.R.S. However, due to numerous factors, websites are subject to a change of servers, networks, carriers, or other actions which necessitate the change or modification of a website address. This recommendation merely entails adding the words, "or current website" after the specific AGO website address. This will allow the AGO to require the correct web address transmitted to consumers in the event of a future AGO website change of address.

Recommendation 7 – Include identity theft and computer crimes as grounds for license denial and disciplinary action.

Identity theft, and related crimes, are proscribed in Colorado and are codified in section 18-5-901, *et seq*., C.R.S., of the Colorado criminal code. Computer crimes are also found in the Colorado criminal code, section 18-5.5-101, *et seq.*, C.R.S. These two criminal sections include acts that are relevant to this industry, and should be included as grounds for license denial and discipline.

Debt collectors frequently acquire data and information relating to individual debtors which are the subject of debt collections. Some of this data and information is either confidential information, or information that allows a debt collector to identify individuals through computer searches. Individuals who have been convicted of these criminal activities should not be allowed to have access to personal or confidential information on individual debtors.

Recommendation 8 – Include limited liability companies as business entities subject to notification of license information changes .

Sections 12-14-122(2)(c)(II) and (III), C.R.S., require licensees to inform the Administrator of certain changes to corporate structure, governance and control. However, these statutory provisions do not include limited liability companies, which are a viable alternative to the traditional corporate structure. All licensees, regardless of structure, should be treated the same for licensure and notification purposes.

Appendix A – Sunset Statutory Evaluation Criteria

(I) 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;

(II) 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;

(III) 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;

(IV) Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;

(V) 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;

(VI) The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;

(VII) 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;

(VIII) Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;

(IX) Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.