Department of Regulatory Agencies

Office of Policy, Research and Regulatory Reform

2009 Sunset Review: In-State Office Requirement for Collection Agencies

October 1, 2009

Consumer Protection

Department of Regulatory Agencies

Bill Ritter, Jr.
Governor

Executive Director's Office
D. Rico Munn
Executive Director

October 1, 2009

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 the in-state office requirement for Colorado collection agencies. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2010 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 there is a need for the regulation provided under section 12-14-123(1)(b)(I)(A), C.R.S.

Sincerely,

D. Rico Munn
Executive Director

Bill Ritter, Jr.
Governor

D. Rico Munn
Executive Director

Department of Regulatory Agencies

2009 Sunset Review:
In-State Office Requirement for Collection Agencies

Summary

What Is Regulated?
All Colorado-licensed collection agencies, including those based out of state, must maintain a Colorado office that is open to the public during normal business hours, is staffed by at least one full-time employee, and keeps a record of all moneys collected and remitted by the agency.

Who Is Regulated?
As of July 2009, there were a total of 642 licensed collection agencies in Colorado. Of these, 509—or 79 percent—were based out of state.

How Is It Regulated?
The Administrator of the Colorado Fair Debt Collection Practices Act, within the Attorney General's Office (AGO), regulates collection agencies in Colorado.

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

Key Recommendations

Continue the requirement that out-of-state collection agencies maintain an office in Colorado for seven years, until 2017, and further require all collection agencies to notify consumers of the location of the in-state offices and to accept in-person payments at such offices.

Under current law, collection agencies must maintain an in-state office that employs at least one full-time employee, is open during normal business hours, and maintains payment and remittance records on site.

Evidence suggests that very few Colorado consumers are currently visiting these offices. This could be because of the limited services such offices provide, or because consumers are simply unaware the offices exist. In fact, collection agencies—including those based in Colorado—are under no obligation to accept in-person payments at the in-state office, or to provide the address of such office to consumers.

Presumably, the General Assembly established the in-state office requirement to assure that Coloradans would have a way to transact business face-to-face with out-of-state collection agencies. As written, the requirement is not fulfilling its intended purpose. With revision, however, the in-state office has potential to provide Coloradans with a critical opportunity to interact face-to-face with collection agencies. If the General Assembly chooses to continue the requirement, it should strengthen it by requiring all collection agencies to:

- Provide a physical address for local offices on collection notices; and
- Accept in-person payments at the local offices.

Very few Coloradans currently use the in-state office to transact business with collection agencies, but this would likely change if this requirement were revised. For these reasons, the General Assembly should expand and strengthen the requirement, then continue it for seven years, when collection agency regulation is scheduled for its next sunset review.

Major Contacts Made During This Review

Collection Agency Office Association
Colorado Attorney General's Office (AGO)
Colorado Collection Agency Board

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:
Colorado Department of Regulatory Agencies
Office of Policy, Research and Regulatory Reform
1560 Broadway, Suite 1550, Denver, CO 80202
www.dora.state.co.us/opr

Table of Contents

Background

Introduction

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

Sunset reviews are based on the following statutory criteria:

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

[1] Criteria may be found at § 24-34-104, C.R.S.

Types of Regulation

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

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

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

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

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

There are also several levels of regulation.

<u>Licensure</u>

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.

<u>Certification</u>

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

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

Registration

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

Title Protection

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

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

Regulation of Businesses

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

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

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

Sunset Process

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. To facilitate input from interested parties, anyone can submit input on any upcoming sunrise or sunset review via DORA's website at: www.dora.state.co.us/pls/real/OPR_Review_Comments.Main.

The regulatory functions of the Attorney General's Office (AGO), relating to section 12-14-123(1)(b)(I)(A), Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2010, unless continued by the General Assembly. During the year prior to this date, it is the duty of DORA to conduct an analysis and evaluation of this provision pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed requirement that each licensed collection agency, including those based out of state, maintain a physical office in Colorado should be continued for the protection of the public. During this review, the AGO must demonstrate that the regulation serves 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.

Methodology

As part of this review, DORA reviewed licensee data, interviewed AGO staff, and met with people who provide in-state office services to licensed collection agencies based out of state.

Out-of-State Collection Agencies and the In-State Office Requirement

Collection agency regulation underwent a sunset review in 2007. The sunset report recommended, among other things, eliminating the requirement that Colorado-licensed collection agencies maintain an in-state office, on the grounds that the requirement failed to provide any tangible benefit to Colorado consumers. The General Assembly rejected this recommendation, retained the requirement, and directed the Administrator of the Colorado Fair Debt Collection Practices Act (Administrator) to gather certain data from licensed collection agencies regarding the in-state office requirement. The General Assembly also included a sunset provision compelling DORA to evaluate only that portion of the statute based upon the information obtained by the Administrator.

The 2007 Sunset Report defined a collection agency as:[2]

> (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.

In July 2009, there were a total of 642 licensed collection agencies in Colorado. Of these, 509—or 79 percent—were based out of state, and are required to maintain an in-state office despite the fact that their businesses are based elsewhere. Numerous law offices and office-sharing businesses provide shared office space to out-of-state collection agencies in exchange for a monthly fee. Several of these businesses currently serve as the in-state office for over 100 different collection agencies.

[2] *Sunset Review of Collection Agency Regulation*, Department of Regulatory Agencies (2007), p 4.

Legal Framework

History of Regulation

Since 1941, Colorado law has required Colorado-licensed collection agencies to maintain an in-state office. The 2007 Sunset Report recommended eliminating the requirement. Recommendation 4 stated that section 12-14-123(1)(b), Colorado Revised Statutes (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. [3]

To ensure that Colorado consumers would still be able to contact a collection agency easily, the report also recommended that collection agencies be required to maintain a toll-free telephone number. [4]

During the 2008 legislative session, House Bill 08-1240 (HB 1240) was drafted to reflect all the recommendations in the report, including the recommendation to eliminate the in-state office requirement.

When the bill went before the House Committee on Business Affairs and Labor, however, several legislators expressed concern that eliminating the in-state office requirement would harm Coloradans. The in-state office, they argued, provided Colorado consumers an opportunity to interact with creditors face-to-face and to make payments in person. Further, legislators raised concerns that closing the in-state offices would inevitably result in layoffs of Colorado workers. After discussion, the committee restored the in-state office requirement provision.

The Senate Committee on Business, Labor and Technology, however, subsequently eliminated the in-state requirement from HB 1240.

---

[3] *Sunset Review of Collection Agency Regulation*, Department of Regulatory Agencies (2007), p 36.
[4] *Sunset Review of Collection Agency Regulation*, Department of Regulatory Agencies (2007), p 36.

Ultimately, the bill went to conference committee to resolve the discrepancy between the House and Senate versions of the bill. The legislators determined that more information was needed before eliminating the in-state office requirement, and agreed to keep it in place until July 1, 2010. In the meantime, the Administrator of the Collection Agency Board would collect data from Colorado-licensed collection agencies to determine the level of usage of the in-state offices, including the number of payments made in person, and the potential job losses that might result from eliminating the requirement.

Both houses supported the portion of Recommendation 4 that advised requiring collection agencies to maintain a toll-free telephone number, and this provision was included in the final version of the bill.

The bill also directed the Department of Regulatory Agencies to conduct a review of the in-state office provision located at section 12-14-123(1)(b)(I)(A), C.R.S., and report its findings to the General Assembly by October 1, 2009.[5]

Summary of Statute

Under section 12-14-123(1)(b)(I)(A), C.R.S., each Colorado-licensed collection agency must:

> Maintain, at all times, an office within this state that is open to the public during normal business hours, is staffed by at least one full-time employee, and keeps a record of all moneys collected and remitted by the agency for residents of Colorado.

[5] § 12-14-123(1)(b)(I)(B), C.R.S.

Program Description and Administration

After passing House Bill 08-1240, the General Assembly directed the Administrator of the Colorado Fair Debt Collection Practices Act (Administrator), who oversees the regulation of Colorado collection agencies, to gather certain information from licensees regarding the use of in-state offices. In a letter to licensees, the Administrator requested the following information:[6]

- How the Colorado office provides records of moneys collected and remitted;
- The total dollar amount of consumer payments made in person at that office;
- The total number of consumers making payments in person at that office;
- The total number of consumer visits in person to that office to access payment records;
- The total number of creditor visits in person to that office to access payment and remittance records;
- Whether Colorado office employees/contractors are authorized to discuss or negotiate individual collection amounts with consumers; and
- The total number of consumer visits made to that office to discuss/negotiate debts.

The letter is included in its entirety as Appendix A on page 16.

Licensees provided the data to the Administrator as part of their July 1, 2009, license renewal.

As of July 2009, 642 collection agencies were licensed in Colorado. Of these, 509 were based outside of Colorado, and were required to maintain an in-state office pursuant to section 12-14-123(1)(b)(I)(A), Colorado Revised Statutes (C.R.S.). Of the 509 out-of-state collection agencies, 508 completed the renewal survey.

[6] Memorandum dated June 2, 2008, from Laura Udis, Administrator, Colorado Fair Debt Collection Practices Act, to All Licensed Collection Agencies.

Table 1 summarizes the data from the survey.

Table 1
Out-of-State Collection Agencies
July 1, 2008 through July 1, 2009

	Number	Percent
Total number of collection agencies responding to survey	508	100%
Licensees maintaining payment and remittance records on site (as opposed to having records available only from the out-of-state agency)	164	32%
Licensees authorizing employees of the in-state office to negotiate debts	92	18%
Licensees that do not accept in-person payments at in-state offices	60	11.8%
Licensees reporting activity—including in-person payments, and walk-in visits from consumers or creditors—at in-state office	19	3.7%

Although a sizable number of in-state offices maintain payment records on site, and others specifically authorize in-state office employees to negotiate debts with Colorado consumers, very few have actually had an occasion to provide these services. Notably, significantly more licensees prohibit in-person payments at the Colorado office than report activity at the in-state office.

In reviewing the survey data from the 19 licensees reporting activity at the in-state office, a representative of the Department of Regulatory Agencies noted that the survey of a single collection agency skews the overall numbers. According to data from the Administrator, from July 2008 to January 2009, this licensee —headquartered in Austin, Texas— was merged with a Colorado law firm. Rather than printing the address of the Austin corporate headquarters on collection notices, this licensee printed the address of the Colorado office it shared with the local law firm. This resulted in an extremely high number of walk-ins and in-person payments. In January, this licensee separated from the law firm and the number of walk-ins and in-person payments dropped precipitously.

Considering the impact that this single licensee has on the data, Table 2 summarizes the activity reported by collection agencies, first including the licensee, then excluding it.

Table 2
Walk-in Visits to In-State Offices of Collection Agencies
July 1, 2008 through July 1, 2009

	Including Outlier	Excluding Outlier
Consumers making payments	2,544	544
Total dollar amount collected	$307,460	$107,460
Consumers reviewing payment records	3,636	58
Consumers discussing/negotiating debts	880	177
Creditor visits	27	13

*Licensees were directed to count each consumer only once. The above figures do not reflect multiple visits by the same consumer.

Overall, the survey data demonstrate a low level of activity at licensees' Colorado offices. However, the printing of the Colorado address on the collection notices is a critical difference between the outlier licensee and the remaining licensees. Typically, an out-of-state licensee prints the address of its out-of-state headquarters on the collection notice, and there is little indication to the consumer that a Colorado office exists.

.

Analysis and Recommendations

Recommendation 1 - Continue the requirement that out-of-state collection agencies maintain an office in Colorado for seven years, until 2017, and further require all collection agencies to notify consumers of the location of the in-state offices and accept in-person payments at such offices.

The laws relating to the regulation of collection agencies—housed within Article 14 of Title 12, Colorado Revised Statutes—underwent a sunset review in 2007. The report made eight recommendations, including eliminating the requirement that each Colorado-licensed collection agency must:

> Maintain, at all times, an office within this state that is open to the public during normal business hours, is staffed by at least one full-time employee, and keeps a record of all moneys collected and remitted by the agency for residents of Colorado.[7]

The General Assembly voted to continue collection agency regulation for 10 years, until 2017, and made numerous other statutory changes, but declined to eliminate the in-state office requirement. Instead, the General Assembly kept the requirement in place and directed the Department of Regulatory Agencies (DORA) to conduct a separate sunset review of the requirement.

First, it should be clarified that the Colorado Constitution[8] and the Corporations and Associations Act[9] require collection agencies to maintain an in-state registered agent. A registered agent is either an individual or company that a corporation—in this case, a collection agency—authorizes to receive service of process on its behalf.[10] The registered agent requirement is distinct from and in addition to the in-state office requirement, and is not subject to this sunset review.

At issue is whether the in-state office requirement is necessary to protect the public health, safety, and welfare.

[7] § 12-14-123(1)(b)(I)(A), C.R.S.
[8] Article XV, § 10, Colorado Constitution.
[9] § 7-90-701, C.R.S.
[10] § 7-90-704(1), C.R.S.

The law mandates that all collection agencies licensed in Colorado maintain a physical office within the state. Colorado-based licensees meet this requirement easily, but according to data from the Administrator of the Colorado Fair Debt Collection Practices Act (Administrator) in the Attorney General's Office (AGO), a clear majority—about 79 percent—of Colorado-licensed collection agencies are headquartered elsewhere. AGO rules permit an out-of-state collection agency to meet the in-state office requirement by sharing office space with another business.[11] Most of the 509 out-of-state licensees use this option, paying a monthly fee to a Colorado business to satisfy this requirement.

The types of businesses providing these services include attorneys' offices (in some cases the attorney that represents the collection agency will also provide in-state office services); "virtual office" businesses that offer telephone reception, administrative support, and meeting space to a variety of businesses, including collection agencies; and professional service businesses that exist expressly to help collection agencies meet the in-state office requirement. Often, these Colorado companies contract with a number of collection agencies simultaneously: nine companies fulfill the in-state license requirement for over 80 percent of out-of-state licensees, with just two companies providing office services to over 300 collection agencies.[12]

During the debate around the 2007 sunset bill, the General Assembly voted to retain the in-state office requirement. The most prevalent argument in favor of the requirement was that the in-state office provides a place where consumers can meet face-to-face with collection agencies, and submit payments in person.

In an effort to determine the validity of this argument, the Administrator advised all out-of-state collection agencies to begin collecting relevant data from July 1, 2008, forward. The results of the survey are detailed in Tables 1 and 2 above.

The renewal survey focuses almost entirely on the volume of walk-in customers. The survey does not reflect every aspect of the workload incurred by companies providing in-state office services, such as the number of telephone calls and emails, and the time spent reviewing and replying to written correspondence. These functions, however, could just as easily be performed in another state, and consequently are not a good measure of the usefulness of the in-state office. Some consumers might prefer to call a telephone number with a local area code rather than a toll-free number, but these kinds of preferences would be difficult, if not impossible, to track. Foot traffic is one tangible measure of the level of activity at the in-state office.

[11] Rule 2.11 of the Administrator, Colorado Collection Agency Board.
[12] Although AGO rules permit office-sharing, Rule 2.11 requires that in all office-sharing arrangements, all signs, directories, and other business identification information must clearly contain the collection agency's name. How Colorado companies representing literally scores of out-of-state collection agencies meet this requirement is unknown.

Of the 508 licensed collection agencies that returned the renewal survey, only 19 reported any activity at all. One licensee reported a very high volume of walk-in customers and in-person payments. This can be attributed to the fact that this licensee actually printed a local address on the collection notices sent to consumers, while most licensees list an out-of-state address. The remaining 18 licensees reported a total of 544 in-person payments and 248 walk-in customers during a 12-month period. This translates to just under four walk-in customers per month for each office.

Some stakeholders object to the methodology of the survey, stating, for example, that permitting customers to be counted only once is not a true reflection of the level of customer traffic. In other words, a consumer on a weekly payment plan might bring a check by the office every Friday for a year, and the survey only permitted licensees to count these people once. The survey certainly has limitations. But the fact remains that 489 out-of-state collection agencies did not report a single walk-in customer during a 12-month period.

There are several possible reasons for the low level of activity at the in-state offices.

First, many collection agencies offer online and telephone payment services, which consumers might find more convenient to use than the in-state office.

Second, only limited services are available at the in-state offices. According to the renewal survey, roughly two-thirds of licensees do not maintain hard–copy payment and remittance records on site: rather, they make the records available via email, fax, or Internet. Fewer than 20 percent of out-of-state collection agencies authorize their in-state office employees to negotiate debts: presumably, all such negotiation must occur via the corporate office. In other words, a consumer wishing to meet with a creditor face-to-face to negotiate the terms of a debt would often be unable to do so.

Further, roughly 12 percent of collection agencies disclosed that they do not even accept payments at their in-state offices. This information was not specifically requested from licensees, but 60 licensees volunteered this information in a free-text portion of the survey. Had the specific question, “Do you accept payments at the in-state office?” been asked, more licensees might have answered, “No.” In these cases, in-state office staff would direct consumers to submit payment either to the corporate headquarters of the collection agency, or directly to the creditor.

To be clear, collection agencies are not breaking the law by providing few services at the in-state offices. Colorado law requires only that the office be staffed by one full-time employee and maintain payment and remittance records. The law, which applies equally to Colorado-based collection agencies, does not direct these offices to accept payments, or even to accept walk-in customers.

Finally, in-state offices might get so little foot traffic simply because consumers are not aware they exist. Collection agencies must provide copies of collection notices to the AGO. According to AGO staff, out-of-state agencies usually provide an out-of-state address on collection notices. If consumers wanted to find a local office for an out-of-state licensee, it is reasonable to assume that they would search for the company's name in either the telephone book or on the Internet. The AGO provided DORA with a list of licensed collection agencies based out of state that have in-state offices in the Denver metropolitan area. A representative of DORA randomly selected 25 out-of-state licensees from this list, then searched for each company in an online telephone directory, in the business listings in the metropolitan Denver phonebook, and via Google. Of these, a single company could be found on the online directory. None of the 25 was listed in the printed telephone directory, and although most of the selected licensees had websites, not a single one of these websites contained contact information for the Colorado offices.

Supporters of the in-state office requirement argue that the local offices provide an important means for consumers to interact with collection agencies. While it is true that in-state offices could potentially be a valuable consumer resource, it is unclear how consumers even know this option is available.

Recall the "outlier" renewal survey that reported a significant number of walk-in customers. In this instance, the collection agency included a local address on the collection notice, and consequently, many consumers visited the local office. No data are available on the number of customers visiting the offices of Colorado-based collection agencies, but this instance suggests that if collection agencies were to advise consumers that an in-state office was available, consumers would take advantage of it.

But simply notifying the public that the Colorado office exists is not sufficient. Based on the survey data, it is conceivable that consumers might visit an in-state office to discover that the office does not accept in-person payments, and that the employees are not authorized to negotiate the debt. This is equally likely to happen at the office of a Colorado-based collection agency. At a minimum, collection agencies should be required to accept in-person payments at their Colorado offices.

Presumably, the General Assembly established the in-state office requirement to assure that Coloradans would have a way to transact business face-to-face with out-of-state collection agencies. As currently written, the requirement is not serving this purpose. An in-state office that provides scant services, is not mentioned in collection agency correspondence, and is impossible to find in telephone directories or on the Internet offers little benefit to Colorado consumers. Even collection agencies based within Colorado are under no obligation to accept in-person payments or to provide a physical office location to consumers. Without substantive changes, this requirement will continue to function as an administrative hurdle rather than a meaningful public protection tool.

With revision, however, the in-state office has potential to provide Coloradans with a critical opportunity to interact face-to-face with collection agencies. If the General Assembly chooses to continue the requirement, it should strengthen it by requiring all collection agencies to:

- Provide a physical address for local offices on collection notices; and
- Accept in-person payments at the local offices.

Very few Coloradans currently use the in-state office to transact business with collection agencies. This would likely change, were collection agencies required to tell consumers about the existence of their in-state offices and offer a wider range of services. For these reasons, the General Assembly should expand and strengthen the requirement, then continue it for seven years, when collection agency regulation is scheduled for its next sunset review.

Appendix A – Letter to Licensed Collection Agencies from the Administrator of the Colorado Fair Debt Collection Practices Act

JOHN W. SUTHERS
Attorney General

CYNTHIA H. COFFMAN
Chief Deputy Attorney General

DANIEL D. DOMENICO
Solicitor General

STATE OF COLORADO
DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

STATE SERVICES BUILDING
1525 Sherman Street - 7th Floor
Denver, Colorado 80203
Phone (303) 866-4500
Fax (303) 866-5474

June 2, 2008

MEMORANDUM

TO: Licensed Collection Agencies

FROM: Laura E. Udis, Administrator
Colorado Fair Debt Collection Practices Act
Telephone: (303) 866-5706
E-mail: cab@state.co.us

RE: Colorado Office Data

During the 2008 legislative session the Colorado General Assembly considered eliminating the requirement that licensed collection agencies maintain a Colorado in-state office. The legislature ultimately decided to retain the Colorado office requirement for two more years and study its effectiveness. There was little statistical data on in-state office usage and legislators requested that such information be gathered.

Over the next several months, we will contact licensed out-of-state collection agencies to request data on Colorado office usage. Collection agencies located in Colorado will not need to gather or report information. Agencies whose primary location is outside Colorado should, as of July 1, 2008, be able to collect and report the following information only for the required Colorado office location:

- How that office provides records of moneys collected and remitted (on-site records, computer access, telephone access, fax access, other);
- The total dollar amount of consumer payments made in person at that office (report amounts resulting solely from the existence of the statutorily-required Colorado office; do not include amounts collected by that office from other services such as filing lawsuits unless judgment amount is paid in person at the Colorado office);
- The total number of consumers making payments in person at that office (count consumers only once; do not count repeat visits by same consumer unless itemized);
- The total number of consumer visits in person to that office to access payment records (count consumers only once; do not count repeat visits by same consumer unless itemized);

- The total number of creditor visits in person to that office to access payment and remittance records (count creditors only once; do not count repeat visits by same creditor unless itemized)
- Whether your Colorado office employees/contractors are authorized to discuss/negotiate individual collection accounts with consumers; and
- The total number of consumer visits made in-person to that office to discuss/negotiate debts (count consumers only once; do not count repeat visits by same consumer unless itemized).

You should verify that any Colorado office provider you use can collect and report this data starting July 1, 2008. We will likely need your data later in 2008 or in the first half of 2009.

In addition, you should ensure that any in-state office provider's services comply with the Colorado Fair Debt Collection Act's requirements, reprinted below:

§ 12-14-123(1)(b), C.R.S.:

> A licensee shall:
> ...
> Maintain, at all times, an office within this state which is open to the public during normal business hours and which is staffed by at least one full-time employee, said office to keep a record of all moneys collected and remitted by such agency for residents of Colorado;

Rule 2.11, Office Location (Rules of the Administrator):

> A collection agency may share an office location with another business as long as all signs, directories, and other business identification information clearly contain the collection agency's name.

Thank you for your attention to these matters.