

THOMAS J. MILLER
ATTORNEY GENERAL



ADDRESS REPLY TO:
Hoover Bldg., 1305 E. Walnut Street
Des Moines, Iowa 50319

Telephone: 515-281-5926
Toll Free: 888-777-4590 (In Iowa)
Fax: 515-281-6771
www.iowaAttorneyGeneral.org

CONSUMER PROTECTION DIVISION

Department of Justice

September 28, 2011

RE: Independent contractors collecting debt

Dear

This letter is in response to your July 29, 2011 inquiry regarding the registration requirements that your client, a debt collection agency, would face if it hired a foreign call center to make debt collection calls to Iowa consumers. This is just a preliminary review by our office; it is not a formal opinion nor is it legal advice.

The facts of your inquiry are as follows: your client is a debt collection agency that is registered in the State of Iowa. Your client would like to "engage a call center in Latin America to handle overflow call traffic, calls from Spanish speaking consumers, and make outbound collection calls on its behalf to consumers in [Iowa]." You further stated that all contacts will be made in your client's name; that the call center would be hired as an independent contractor; and that your client would handle all payment and remittances with consumers.

Based on this information, you asked us to answer the following questions:

- Is this practice permissible under the licensee's current license?
- Is the licensee responsible to further license the Latin American company as a branch office?
- Is the Latin American company required to seek a collection agency license in your state?

Debt collection is governed by the Debt Collection Practices Act of the Iowa Consumer Credit Code (hereinafter "ICCC"). First, please note that Iowa does not license debt collectors. Instead, Iowa requires debt collectors who collect over \$25,000 a year to

register with the Iowa Attorney General and pay a \$10.00 annual fee. This requirement is detailed in the Iowa Consumer Credit Code (ICCC), chapter 537, Iowa Code §§ 537.6201-537.6203; Iowa Admin. Code r. 61—22.2. Therefore, the relevant issue is whether or not the call center is a debt collector and therefore required to register with the State, not whether or not they must obtain a license.

According to Iowa law, the Latin American call center would be required to register with the State because the call center is a “debt collector.” Under the ICC, a “debt collector” is “a person engaging, directly or indirectly, in debt collection, whether for the person, the person’s employer, or others.” Iowa Code § 537.7102(5). A person includes organizations, partnerships, and other entities. Iowa Code § 537.1301(34). Since the call center would be making calls to collect debts on behalf of your client, they fall within this definition. It does not matter that they would be using your client’s name, because the definition includes those collecting on behalf of others.

The call center must register regardless of the fact that your client will handle all remittances and payments. “Debt collection” is “an action, conduct or practice in soliciting debts for collection or in the collection or attempted collection of a debt.” Iowa Code § 537.7102(4). Therefore, even though the call center will only be making the calls, they are engaged in debt collection because collection includes any action or conduct in soliciting debts.

Each entity fitting the criteria of a debt collector must independently and distinctly fulfill the notification and fee requirements. See Iowa Admin. Code r. 61—22.4(1). As a result, both your client and the call center must be registered with the State of Iowa. Debt collectors are required to file a notification statement with the Iowa Attorney General within 30 days of commencing collection activities in Iowa, and then by January 31 of every subsequent year. The current annual notification fee is \$10. The check should be made payable to the “Iowa Consumer Credit Administration Fund” and sent to the Consumer Protection Division of the Iowa Attorney General’s Office at 1300 East Walnut Street, Des Moines, IA 50319.

These forms can be located online at:

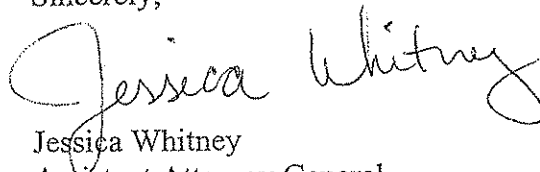
http://www.iowaattorneygeneral.org/protecting_consumers/business_registration_info.html.

Failure to file a notification statement and pay the appropriate fees subjects debt collectors to late fees of \$25 as well as a possible civil action in which the administrator may recoup interest, the costs of the action, and a penalty not exceeding the greater of \$1,000 or three times the fee owed. See Iowa Code §§ 537.6113(3) and 537.6203(4).

Please note, this is an informal opinion of the Administrator, it is neither an official opinion of the Attorney General, nor a formal ruling of the Administrator. And again, we recommend talking with legal counsel.

If you have questions please contact me at the above phone number or address.

Sincerely,

A handwritten signature in cursive script that reads "Jessica Whitney". The signature is written in black ink and is positioned above the typed name and title.

Jessica Whitney
Assistant Attorney General
Deputy Administrator of the
Iowa Consumer Credit Code