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Department of Justice

August 23, 2012

RE: Status of In-Bound Customer Service Call Center as a Debt Collector

Dear

This letter is in response to your inquiry of March 7, 2012, regarding the status of an out-of-state call center within the meaning of the Iowa Debt Collection Practices Act (IDCPA), specifically whether it meets the definition of a debt collector, which would require it to register with the state as a debt collector. I am responding in my capacity as Deputy Administrator of the Iowa Consumer Credit Code. Bear in mind that this letter represents only an informal review by our office based on the information you provided; it is not a formal opinion of the Attorney General nor is it legal advice.

As you state in your letter, the call center is an affiliate of a national bank. It has no physical presence in Iowa and does not make outbound calls to or communicate in writing with Iowa consumers. Instead, it only receives incoming calls from Iowans who do business with the bank. You also specify that the call center's exclusive purpose is to provide customer service and that it handles only calls dealing with deposit and credit card accounts at the bank. Typical inquiries the center would handle include updating billing addresses, balance inquiries, transaction reviews, and, for credit card accounts, billing disputes. Finally, the notifications the bank provides to customers regarding settling accounts provide phone numbers for divisions other than the call center, and if the center does receive a call from a customer with an account more than thirty days past due, the center will transfer the caller to the bank's Recovery Services department.

The IDCPA defines a debt collector as "a person engaging, directly or indirectly, in debt collection, whether for the person, the person's employer, or others."¹ The law further defines a debt as "an actual or alleged obligation arising out of a consumer credit transaction"² and debt collection as "an action, conduct or practice in soliciting debts for collection or in the collection or attempted

¹ IOWA CODE ANN. § 537.7102(5) (West 1998).

² IOWA CODE ANN. § 537.7102(4) (West 1998).

collection of a debt.”³ Thus, a debt collector is a person who directly or indirectly engages in conduct or practices to collect on an obligation that stems from a consumer credit transaction.

Iowa case law interpreting the term debt collector is thin, however. Although Iowa courts typically consider cases construing the federal Fair Debt Collection Practices Act to help interpret the IDCPA,⁴ such a comparison is of limited value when the analysis focuses on the definition of debt collector. This is because the federal law provides a general definition of the term followed by a list of narrowly drawn exceptions, whereas Iowa law lists no exceptions.⁵ The federal law also stipulates that the debt collection practices must be regular, while Iowa law contains no such qualifying language speaking to the frequency of debt collection activity required to for classification as a debt collector.⁶ Consequently, Iowa law employs a broader meaning of the term than analogous federal law.

Because Iowa law contains no explicit requirement relating to the frequency of debt collection activity necessary to qualify as a debt collector under the IDCPA, and subsequently to become subject to the registration requirements, the key inquiry here is whether the structure of the call center and its functions sufficiently isolate it from engaging in any form of debt collection. The bank has apparently established the affiliate call center in such a way that it is not intended to handle any calls relating, substantively, to debt collection, listing it as a contact center only for customer support and account maintenance. The call center makes no inbound calls to the state and does not initiate any other form of communication with Iowa consumers who may have outstanding credit card debt or overdrawn deposit accounts.

When directing Iowa consumers where to turn for further information regarding past due credit card or deposit accounts, the bank directs debtors to other divisions. Furthermore, the call center transfers calls it may inadvertently receive regarding credit card accounts more than thirty days past due or regarding overdrawn deposit accounts to another division if a review of the account’s status indicates that the division charged with debt collection has already contacted the consumer. With regard to calls received from Iowa consumers with past due credit card or overdrawn deposit accounts, the letter states that the call center will deal with any problems that may have precipitated the call. According to your letter, the closest the call center would come to “offer[ing] assistance to bring the account current” would be helping set up automatic payments for customers to avoid future problems; it does not accept payment.

In summary, assuming the information you provided about the call center’s operations is accurate and, equally important, that the call center follows its protocols for not addressing debt collection and transferring any calls it receives that transition into conversations about debt collection to a separate entity designated to handle debt collections, it should be excluded from the IDCPA’s definition of a debt collector. It bears repeating, however, that the definition of debt collector under

3 IOWA CODE ANN. § 537.7102(3) (West 1998).

4 *Liles v. Am. Corrective Counseling Serv.*, 131 F.Supp.2d 1114, 1120 (S.D.Iowa, 2001) (citing *Pub. Fin. Co. v. Van Blaricome*, 324 N.W.2d 716, 726 (Iowa 1982)).

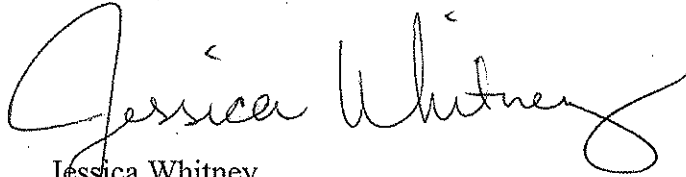
5 *Liles v. Am. Corrective Counseling Serv.*, 131 F.Supp.2d 1114, 1120 (S.D.Iowa, 2001).

6 15 U.S.C.A. § 1692(a)(6) (defining a debt collector as “any person who . . . regularly collects or attempts to collect, directly or indirectly, debts . . . another”); *see Liles v. Am. Corrective Counseling Serv.*, 131 F.Supp.2d 1114, 1118–20 (S.D.Iowa, 2001).

the IDCPA is very broad; any person engaging in even a small, seemingly insignificant amount of activity relating to debt collection would qualify. In particular, arranging for consumers to pay all or part of a debt rather than merely helping them establish automatic payments in the future could constitute a "practice . . . in the collection . . . of a debt" according to Iowa Code § 537.7102(4) and make the call center a debt collector subject to the registration requirements of Iowa Code § 537.6201(2). Even though the call center does not accept payment on credit card or deposit accounts, the language of Iowa Code § 537.7201(5) does not specifically require that debt collectors actually collect payments.

Please note that 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. It does not replace or provide legal advice. If you have any further 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-Iowa Consumer Credit Code