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Consumer Protection Section
Consumer Credit Unit

July 1, 2020

The Honorable Pete Lee (via email)
Chair, Senate Judiciary Committee
Colorado General Assembly
200 E. Colfax Ave.
Denver, CO 80203.

The Honorable Mike Weissman (via email)
Chair, House Judiciary Committee
200 E. Colfax Ave.
Denver, CO 80203

RE: Bi-Annual Report on Colorado Fair Debt Collection Practices Act

Dear Senator Lee and Representative Weissman:

In accordance with Senate Bill 17-216, which amended § 5-16-117(5) of the Colorado Fair Debt Collection Practices Act ("CFDCPA"), I am pleased to submit the Administrator's fifth bi-annual report accounting for the efficient discharge of all responsibilities assigned by law and the general administration of the collection agency licensing program within the Colorado Department of Law.[1]

For the most part, this bi-annual report covers the period of January 1, 2020 through June 30, 2020. This report will follow the order set out in § 5-16-117(5).

Enforcement Actions

1. Lawsuits
    a. *Administrator v. Tormey Bewley Corp.*, Case No. 2019-cv-33428. In September 2019 the Administrator filed suit against Tormey Bewley and Michael C. Tormey in Denver District Court. The suit was based on evidence of failure to remit funds to clients in violation of CFDCPA, §§ 5-16-123(1)(e) and 5-16-123(1)(d). On May 20, 2020 the

[1] Pursuant to § 24-1-136(9), C.R.S., this report shall be electronically filed with the Joint Legislative Library, for delivery and distribution to applicable legislators and legislative committees, and shall be made accessible to the public via the Department of Law website.

Court entered a final consent judgment against all defendants for injunctive relief and restitution. The Administrator is planning to hold a bond hearing and distribute recovered assets in Fiscal Year 2020-21.

b. *Colorado v. Castle Law Group, et al.,* Colorado Court of Appeals Case No. 2017CA923. This was an enforcement action against foreclosure law firm The Castle Law Group, LLC and related individuals and entities. The action, asserted by both the Administrator and the Colorado Attorney General, asserted claims under the CFDCPA and other Colorado laws. The CFDCPA claims alleged that the defendants violated §§ 5-16-107(1)(b)(I) and 5-16-108(1)(a), C.R.S. when pursuing foreclosure actions against Colorado homeowners. After a three-week trial, the trial court entered an order in 2017 dismissing the Administrator's CFDCPA claims, in addition to rulings on other claims in the case. The plaintiffs and defendants both appealed. The appeals were resolved when the Colorado Supreme Court denied petitions for Writ of Certiorari in February 2020. The parties are now addressing remaining fee issues in the trial court.

2. Administrative Enforcement

a. Stipulations & Final Agency Orders, Assurance of Discontinuance[2]

i. Professional Recovery Consultants: $9,000 for failure to reapply for license after change in ownership and unlicensed collection activity.

b. License Denials

i. No licenses were denied during this period.

c. License Revocations

i. No licenses were revoked during this period.

d. Letters of Admonition

i. MRS BPO: Text message resulting in third party disclosure.

ii. Medicredit: Failure to update collection letters to reflect current address of its local Colorado Office.

iii. Professional Debt Mediation: Contact with a consumer before 8 a.m.

[2] MRS BPO has requested an administrative hearing on the Letter of Admonition. None of the other enforcement actions were appealed or otherwise challenged.

iv. Professional Finance Company: Credit reporting before sending the initial notice where last-known address was not known to be invalid.

Complaints & Outcomes:

1. Since January 1, 2020, the Consumer Credit Unit has received 279 complaints.
    a. Of the 279 complaints filed, 174 are against licensed collection agencies, 36 are against unlicensed collection agencies, 29 complaints are against attorneys,[3] and 40 are against other entities such as creditors.
2. Outcomes
    a. 30 complaints have been resolved.
    b. 54 complaints against non-lawyer collection agencies have been referred to other agencies.
    c. 118 complaints resulted in No Action, either because of a lack of jurisdiction, no allegation of a violation of the CFDCPA, or similar deficiencies.
    d. 7 Cease & Desist notices have been issued to unlicensed agencies.
    e. The remaining complaints are still open and under investigation.

Other Actions:

1. 5 Advisory Letters were issued.

Statutory Changes to Collection Agency Licensing Program

1. *Fees, costs, and costs of collection – limitation*: The CFDCPA adds a limitation to fees, costs, and costs of collection for debt due to the state or any political subdivision of the state collected on by a private collection agency or privately retained attorney, except that the limitation does not apply is the state or political subdivision of the state has sold the debt to a third party. This section became effective July 1, 2019.

Significant Legal Filings—Amicus Brief

1. *None.*

Summary of New Regulations

1. *None.*

[3] All complaints against attorneys were referred to the Office of Attorney Regulation Counsel.

Legal Developments

1. *FDCPA Rulemaking*: On May 7, 2019, the Consumer Financial Protection Bureau issued a Notice of Proposal Rulemaking under the Federal Fair Debt Collection Practices Act. On September 18, 2019, Attorney General Weiser submitted a comment expressing concern that the CFPB's proposal fails to achieve balance between consumer protection and the collection of validly owed debt and, further, undermines the Fair Debt Collection Practices Act's stated purpose of "eliminat[ing] abusive debt collection practices by debt collectors". 15 U.S.C. § 1692(e). Also, on September 18, 2019, Attorney General Weiser joined a comment signed by 28 State Attorneys General urging the CFPB to reconsider its proposed rule.

Matters to be Addressed at the Request of the Regulated Community or the Public

The Administrator has received a request for rulemaking from Associated Collection Agencies of Colorado, Wyoming, and New Mexico. She will request additional input at a future stakeholder meeting.

Licensees and other interested parties at prior public meetings raised the following issues:

1. Collection agencies that intentionally sue people that are covered by Medicaid;
2. Licensing of process servers;
3. Converting to licensing through the national multistate licensing system (NMLS);
4. Electronic communications with consumers/debtors;
5. Streamlining the application process, including upon the sale or transfer of a business;
6. Telephone verification of payment;
7. Define/clarify what the "meaningful involvement" of an attorney requires, especially in high volume businesses;
8. The complaint process, including streamlining, guidelines on an information resolution process, and making complaints public;
9. Enhanced communications with the Administrator, including the public meeting process;
10. Updating opinion letters; and
11. Consumer education and outreach.

Meetings

1. **Meetings of relevant licensees, industry groups and associations, and other interested persons**. The Administrator convened meetings, as required by § 5-2-117(7), on July 30, 2018 and on July 29, 2019. The 30-day notice for each meeting was provided directly (via email) to a list of licensees, industry groups and associations, and other interested parties compiled by the Administrator.

2. **Meetings of licensees, consumer advocacy groups and associations, and other interested parties.** The Administrator convened meetings, as required by § 5-2-117(7), on January 25, 2019 and January 23, 2020. *See* Attachment 1 (Transcript). The 30-day notice for each meeting was provided (via e-mail) to all consumer advocacy groups and associations and other interested parties compiled by the Administrator.

Please feel free to contact me if you would like further information.

Respectfully submitted,

MARTHA FULFORD
Administrator, CFDCPA
Martha.Fulford@coag.gov
720-508-6020

Cc: Senate Judiciary Committee members (via email)
House Judiciary Committee members (via email)
Joint Legislative Library (via email)
Kurt Morrison, Colorado Department of Law, Deputy Attorney General for Intergovernmental Affairs (via email)

Attachment

ATTACHMENT 1
Transcript of January 23, 2020, Public Hearing

CONSUMER FOCUS GROUP MEETING
COLORADO FAIR DEBT PRACTICES ACT
DEPARTMENT OF LAW
1300 Broadway
Denver, Colorado, 80203

TRANSCRIPT OF PUBLIC MEETING

Held on January 23, 2020

REPORTER'S TRANSCRIPT

The above-entitled public meeting was held at 1300 Broadway, Denver, Colorado, on January 23, 2020 at 10:06 a.m. before Lisa Erickson, Court Reporter and Notary Public within and for the State of Colorado.

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PROCEEDINGS

* * * * *

MS. FULFORD: I think we'll get started. We'll leave the door open as we get more folks trickling in.

My name is Martha Fulford. I'm the Administrator of the Colorado Fair Debt Practices Act.

Is this on? Probably not. Okay. I'll project.

In particular, our court reporter is here and for folks who end up speaking, if you all can speak loudly and clearly and slowly and, if it's helpful to her, I'll ask you to drop off a business card at the end of the meeting so that she has the spellings of your names and things like that.

So this is the meeting held pursuant to 5-16-117(7)CRS. This is the consumer group focus meeting, but as with some prior meetings that we've held, anyone is welcome to speak. It's an open public meeting.

And as with prior meetings, I am not providing any legal advice nor am I providing any interpretations of the CDFCPA, and I hope we will have an interesting discussion.

So we did put out an agenda as requested.

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It's, hopefully, a little bit more robust than some of our prior meetings, so, hopefully, it's helpful to get the discussion going.

Am I projecting enough? Can you all hear me? Okay, great.

So the first topic on the agenda is a summary of our report to the Legislature. I won't go into too much detail because, actually, we're going to discuss a few of the items contained in that report in greater detail and it is available on our website.

We are going to discuss the Tormey Bewley case in just a moment. I did want to highlight that we did have some administrative enforcement action including finalizing Agency orders and stipulations, quite a few focusing on unlicensed activity and failure to notify the Administration of changes, and we also had a license denial related to Tormey Bewley, which we'll discuss in a moment.

We have been working through complaints and receiving complaints and processing them. Hopefully, that process continues to improve. And it has been going smoothly thanks to our compliance specialist, Patricia Miller, who is over in the corner.

We are going to discuss the Bureau's rulemaking in a moment, so that mostly covers the

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report to the Legislature, but we will probably save questions until the end.

So I will, then, turn it over to Kevin and Nick to talk about the Tormey Bewley case.

MR. BRECHUN: Good morning, everyone. Thank you for being here today. My name is Nick Brechun. I am the compliance supervisor over the collection agency regulation licensing program we have here at the Department of Law.

And as Martha mentioned, we have been working on a case since May or June of last year involving a collection agency located here in Colorado called Tormey Bewley Corporation or TAG, The Advantage Group. That's their DBA.

And a brief history before I turn it over to Kevin: We started getting complaints from businesses that had assigned collection, you know, defaulted debt to TAG. And they were -- it was a little unusual.

The nature of the complaint was that TAG was sending out letters to their clients saying, you know, We collected money for you, but you're not going to get it, for whatever reason. It appears there may have been some financial difficulties with the firm itself.

And we got a handful of complaints in short order. So that scared us because, as you know, non

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remittance is a violation of the Colorado Fair Debt Collection Practices Act.

So then we started getting just, you know, a lot of complaints from a lot of different people. Again, this was all about midway through 2019, of last year.

So we took immediate action. We denied their renewal application, so they are no longer licensed. I think I mentioned they are, I believe, located in Grand Junction. And so they are no longer licensed and they are out of business now.

But we are currently working through all of the legal steps and processes like that. Normally, when we receive a complaint, oftentimes, we will reach out to the collection agency for a response and kind of handle it on my side of things with Patricia Miller, our complaint intake person.

But non remittance is very serious, so we skipped over that part and denied their license renewal application and handed it over to our legal team, which is Kevin, and he can give you the background of where we're at there and what we're doing and what they've done on their side of things.

MR. BURNS: Good morning, everybody. I'm Kevin Burns, part of the legal team. We call ourselves

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the Enforcement Unit. Also on the team is our first, Nikolai Frant, who did probably most of the heavy lifting. I'll summarize his excellent work here. Also, Phil Sparr is part of our legal team.

So what we did here is moved for a temporary restraining order, a TRO, which some of you may know is an injunction. What that is, is a court order that sort of keeps in place the status quo while the case is pending.

Functionally, what we are able to do is shut down the business and freeze all the assets and we were also able to do this ex parte, which means without prior notice to the debt collection agency, which I think is fairly important because, you know, the debt collection agency was served with an order shutting down its business and wasn't even given the opportunity to present its case. The reason being is because we had some fairly strong grounds to pursue this legal action.

As Nick mentioned, we have a letter from the debt collection agency admitting to the non remittance violations and we also have their renewal application, which reported about over a half million dollars in losses and negative net worth.

So we moved quickly. We actually got the

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order entered the day after we moved and, really, that was sort of the end of most of the litigation piece because TAG has chosen not to contest this matter, so, really, it was kind of the, almost, easy part.

Now what we are doing is working with TAG to get our arms around the business, sort of marshal up the assets, and try to maximize the level of restitution that we can provide to the various creditors. Which, you know, we are doing our best, but a lot of the money was dissipated from the business.

But I think this is a great example of some really excellent work that we performed between us as the Enforcement Unit and Nick's team as the Investigative Unit. We have really been working together hand in hand, and this was really kind of a great result that we could offer to the Colorado consumers.

Thanks.

MS. MOODY: I have a question for you. Makyla Moody, M-a-k-y-l-a, Moody, M-o-o-d-y. When you got the order and injunction, did your office intercept the payments that were still being made by the consumers and hold those and return them back to the consumers or what happened? Because any time there's a collection agency, they've got people on payment

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arrangements.

And what happened to the consumers? Were they notified as part of this so they could stop sending payments that they misappropriated or notification to the underlying creditors so they could be given credit for the payments that were made?

MR. BURNS: So we did get the ERTL for freezing the assets, so if any further money was dissipated, there would be recourse there, and we have sent letters to all the clients notifying them.

MS. VISOSKY: Kate Visosky from Optum. Visosky, V-i-s-o-s-k-y. A couple questions. Are you aware if TAG has filed for bankruptcy in any jurisdiction? I wasn't able to find that.

MR. BURNS: I don't believe we have that. We are not aware of that.

MS. VISOSKY: Okay. And with the plan for distribution and what you're looking at, are those with respect to debts that were collected just in the state of Colorado or are you also looking at other jurisdictions where TAG has collected monies?

MR. BURNS: We are collecting all of their assets.

MS. VISOSKY: Thank you.

MR. BURNS: Yes?

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MR. VEDRA: Do you have any idea of the size of assets that were dissipated and have you appointed a receiver?

MS. FULTON: Can you state your name.

MR. VEDRA: Oh, yes. Dan Vedra, V-e-d-r-a.

MR. BURNS: We have decided not to appoint a receiver in this case. As far as the size of the assets collected, that is still an ongoing investigation.

We are planning on having a bond hearing, which would probably take place later this year, perhaps in the summer, and then we'll be disclosing some of that information and will try to make the various creditors as whole as possible.

MR. ROMOLO: Tom Romolo, R-o-m-o-l-o. Are you pursuing any more individuals in this case or just the corporation?

MR. BURNS: We are not. Just the corporation.

MR. ROMOLO: Thank you.

MR. BURNS: Nikolai?

MR. FRANT: Mr. Tormey is named as a defendant in the case as well.

MR. BURNS: Sorry. My mistake. Yeah.

MR. FRANT: I'm Nikolai Frant.

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THE REPORTER: Thank you.

MR. BURNS: All right, thank you.

MS. FULFORD: So on to the next topic we wanted to cover. Attorney General Weiser filed a comment to the Bureau's FDCPA rulemaking and also signed a multi-state AG comment letter. Those are, of course, available publicly on regulations.gov, but I wanted to go over a few of the issues that those letters covered.

So for the AG's Colorado-only comment, we were concerned about the concept of the limited content messages, specifically the need to obtain a borrower's consent before communicating with them electronically.

And in addition, we really thought that the Bureau's concept of limited content messages would be unworkable when delivered to a third party. So we had some concerns on those topics.

We also were concerned about the rules and the entire approach to electronic communications and urged the Bureau to consider an opt-in approach as opposed to an opt-out approach to electronic communications.

And we were concerned the Bureau hadn't fully appreciated the cost of the text messages to consumers, both in the direct cost, that not all consumers have

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unlimited text messages, but then also in the cost of being deluged by electronic communications that are virtually costless from the other side.

The comment letter also expressed concern about the proposed call frequency. The Bureau proposed seven calls per debt per week. And most consumers who are in collections, 75 percent of them have more than one debt in collections, and it's about an average of about five debts in collections. So that gets you up to 35 calls a week pretty quickly, and we thought that perhaps three calls per week would be a more appropriate limit.

We also were concerned with the Bureau's approach to time-barred debts and thought that there could be some perverse incentives to how the Bureau had proposed to address time-barred debts.

Since the comment period closed, the Bureau has explained that they are considering, actually, a second proposal to more specifically address time-barred debts and disclosures related to time-barred debts. In fact, there was a recent Ninth Circuit decision on that issue as well, so that is probably a moving target at this point.

And in the multi-state letter, the letters covered similar topics. They covered a few more

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issues, but the multi-state letter also addressed calls per week, electronic communications, the need for electronic communications to comply with ESign. It addressed concerns about use of social media, limited content messages. It also addressed time-barred debt and the Bureau's approach to meaningful attorney involvement.

So those comments have been received by the Bureau. The Bureau, I think, projects to be finalizing that rule in 2020. I think they also thought that they would be further along in this about five years ago, so we will wait and see where that federal rulemaking lands. And I'm sure we are not the only ones in the room who will be curious about where the final rule ends up.

So Sharon has not shown up, I don't think. No. So we had plans to have Sharon Sturges from the Office of Dispute Resolution from the courts. She had asked for 10 or 15 minutes for this meeting to talk about the work that the Office of Dispute Resolution is doing, and particularly was eager to talk to you, both consumer advocates and folks representing the debt collection industry, because I think that they are interested in alternative resolution. And I was hoping she would be here to explain more about what they are

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doing.

I did just e-mail her when we were getting started and it's possible that she will join us a little later, in which case, hopefully, she'll be able to pass along that information. If not, we will have to figure out another way to convey it to you all. I think it would be of interest.

Since she is not here, we can continue along on the agenda. I wanted to address, specifically, an upcoming CDFCPA rulemaking that our office is looking forward to conducting starting this year.

So, first, I thought it would be helpful to go over the rulemaking process because there are a lot of pieces to it and there are a lot of opportunities for public involvement and we are eager to have input on the rulemaking. So I wanted to be sure you all know when those opportunities come along.

So the first step will be a stakeholder meeting. So we will put together, probably, a list of topics that we are considering covering in a rulemaking. We hope to hold the stakeholder meeting this spring, probably in either March or April.

And then the next step will be to publish in the Colorado Register a proposed rulemaking and then seek formal comments on that. I think we will also

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offer for written comments at the stakeholder meeting. So if written is better or for some reason you're not able to attend the stakeholder meeting, we would certainly be eager to get views at that stage. And that is a particularly helpful stage because it would be early on in the process and so we're better able to incorporate comments.

So I apologize for jumping around. So we will have the stakeholder meeting and then we will publish a proposed rule and seek comment on that proposed rule.

We will then have a rulemaking hearing where we will take oral comments and we will submit all of those comments for the rulemaking record. Then we would publish, adopt, the final rule.

And there's some procedural processes we will go through, including an opinion from the Attorney General that our rulemaking is Constitutional, which we would have no reason to think that we won't get that opinion, but it's an important step, of course.

And then the final rule will be published in the Colorado Register, and following that, there would be an effective date of the rule.

So we have received some rulemaking topics from the folks at ACA, and we have been digesting those

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and are interested in those and those are a part of what we sort of put out there in the agenda.

We also have received -- or have discussed whether in the sunset in 2017, whether there needs to be any additional implementation of the debt buyer definition that was added to the statute.

And then part of the goal of this meeting is to offer up if there are other topics for rulemaking that we should be considering, particularly since this is the consumer meeting.

And, particularly, since we have heard from some of representatives of the collections industry, if there are folks from the consumer side that have particular topics that they think we should be addressing, that would be helpful here.

So I'll toss it open for rulemaking. If there are items that people particularly want to address, that would be helpful.

Come on, guys.

MR. FURMAN: You said you were speaking of clarifying this debt buyer definition, is that. . .

MS. FULTON: Well, it's been on our list. It kind of pre-dates me, so I'm not sure I could put it on our list. But, I mean, it is a new definition in the statute.

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I don't know if, in your practice, Dan, or in other ways you think that adding, you know, additional -- you know, clarifying interpretation of that definition or if you're encountering problems with that definition that a rule might able to clarify.

MR. FURMAN: I was just curious, is that the only topic that's on the list or. . .

MS. FULTON: No. The topics on the list were meant to be exemplary, rather than exclusive. So if there are other topics, we for sure would be interested in hearing them.

And you're also welcome, also, if this isn't an easy forum to discuss the, sort of, easy topics, you know, we would love to hear them. You know, Tom has certainly shared his views, and if there are other ones that you all would like to add to your list, if it's easier to e-mail me -- or e-mail our CAR e-mail address.

MR. FURMAN: I was afraid I didn't hear all of the things you said.

MS. FULTON: Oh, no. I'm sorry. No. We are really, at this point, open to suggestions on what would be appropriate topics. I think I said in the last meeting that, probably because of the stage of the federal rulemaking, we wouldn't be likely to touch a

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whole lot of things that the Bureau is currently interpreting under the FDCPA because the federal rule might change and we want to at least know where they were landing before interpreting the CDFCPA, which contains a lot of similar language.

But there are lot of areas where the federal statute doesn't -- I mean, they don't have any licensing requirements in the federal statute. The debt buyer is another example of items where I think Colorado law could be clarified or improved that don't necessarily touch on what's going on in the federal space.

So that's my thought with this rulemaking, is to try to tackle things that wouldn't create conflict with federal law, particularly when we don't know where they're landing.

MR. ROMOLO: You know, I had to ask this. So this is slightly different than when we had a board, with what you're proposing.

So my first question is, at this stakeholder meeting, what happens after that? Who determines after that meeting what rules will be -- will go forward? Will it be published and discussed at the hearing?

MS. FULTON: So my office -- so I will. And I think that's -- I mean, Nikolai should jump in here.

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I, obviously, wasn't here when we had a board, but I think that's consistent with the APA and with sort of how the board worked previously. I don't quite know how the board and the APA requirements interacted.

MR. FRANT: Ultimately, before, all the decisions were of the administrators.

MR. ROMOLO: And that's not changing, is it?

MR. FRANT: No.

MR. ROMOLO: And that's one of the things -- since we're on the subject here -- the Legislature said in 2017 that they would like to see changed, that there could no longer be one person judge during the execution. You're new, but as you know, we had some problems in the past and they didn't like that.

So you also know the discussions that we're having about the sunset issue. So that's why I'm curious, how is it -- it's going to go back to you only? Basically, that will be your decision?

MS. FULFORD: So a couple things on that, Tom. It reflected in the Legislature's decision in the last sunset that it is maintained that the Administrator is the final decisionmaker.

And I don't believe that it's a sunset for -- actually, the reason why we are here today under 5-16-117 is just a pure repeal. So there is no sunset

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review process for it.

MR. ROMOLO: Got you.

MS. FULTON: So I think we are still very consistent with the APA that we will seek public comment. We will seek it in a couple of venues. And we look forward to gathering the information and we will consider it based on our rulemaking record and on the understanding of the regulatory regime. We'll make the final decisions after seeking public comment.

MR. ROMOLO: Thank you.

MR. FURMAN: How will notice of the stakeholder meetings be disseminated?

MS. FULFORD: I believe we would use our interested parties list, and we will update it based on the sign-in sheet here. And we try to maintain those as currently as possible. If there are folks that people in the room know are not receiving those notices, we can certainly add them to it. But we do try to keep them updated as much as possible.

MR. FURMAN: So as far as the topics for rulemaking you're generating, how are you coming up with those? Is this sort of a complaint-driven process? Is this a stakeholder-driven process? What are your considerations?

MS. FULFORD: Yeah. So it's all of the

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above. So we are certainly looking at issues that we are seeing in complaints. We are looking at other licensing issues that we are experiencing as we process those license applications. And, you know, if there are parts of our rules that are challenging for folks to comply with or are unclear in the application process, we are really considering the entire scope of our regulatory regime if we are identifying issues where we think things could be clarified or made to work better. So we are open to any of those topics.

MR. GREENBERG: Alan Greenberg, G-r-e-e-n-b-e-r-g. We are grateful that you've accepted our comments about the one rule with which we have a problem. The other thing with which our association has a problem with is 128, the criminality of certain violations of FDCPA and our long history of not seeking any kind of waiver from the Administrator when we respond to a complaint.

We're hoping that if the Administrator finds it appropriate, there may be some discussion in a rule of how we can continue to do so without exposing our clientele or any of them individually to any of the criminal sanctions mentioned by the statute.

MS. FULFORD: Is that something you would also put in -- it doesn't have to be a formal memo, but

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if you can highlight that in an e-mail to me, that would be helpful.

MR. GREENBERG: I'll ask my board for permission to do so.

MS. FULTON: Great, thank you.

MS. SHILLIDAY: Holly Shilliday. I mean, I don't know if it's rulemaking, but sometimes trying to work through the rules or the code is just, like, mind-boggling.

So I was thinking maybe some clarification as to the applicability of the rules and who it applies to would be nice because you're jumping from one section to another and then it takes you to a different section altogether, and so that would help for people who cross over or do debt collection and not do debt collection.

MS. FULTON: Thank you. That's helpful. We will have to take that into consideration. I'm not quite sure how to accomplish that, but I do understand what you're saying for sure.

MR. FURMAN: Kind of along the same lines with past administrators issuing guidance letters, what are your thoughts with that? There are a number of them that are published that are, you know, 25 years old and printed on grainy letters, you know. I'm curious what your opinion is on the issues in those

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letters and when you'd consider when to do that.

MS. FULFORD: Yeah. I think we would be open to considering it. Shortly before I arrived, this was on the UCCC side, but we did issue, I think -- was it an opinion letter, Nikolai?

MR. FRANT: Yeah.

MS. FULTON: Interpreting certain provisions of the UCCC. I think we would be open to doing that in the CDFCPA if the right issue presented it. We'd have to consider tool choice, whether an interpretive letter or whether a rulemaking is a clear approach for the regulative community and for consumers as well.

MS. SHILLIDAY: One other question: What would you describe as your realm? I know you are the Administrator for here, but what else do you cover?

MS. FULFORD: Certainly. So in the Consumer Credit Unit, we cover the CDFCPA, so the debt collection world. Under the UCCC, we have supervised lenders, rent to own, self-finance companies, and I'm not to debt management yet. I'm still on retail sellers under the UCCC.

And then we cover debt management under the Debt Management Act for both for-profit and not-for-profit members of that industry or those industries.

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And we just, as of August 2nd of this year, the Colorado Student Loan Servicer Act went into effect and servicers who are servicing loans owned by Colorado residents are required to get a license by the end of this month. So we are busy processing those applications as well.

So it is a pretty broad scope on the non depository side of consumer finance.

MR. ROMOLO: Martha, Tom Romolo again. Is there a timeline on this rulemaking hearing?

MS. FULTON: We're hoping to start that process in the spring. I think I said that we would like to schedule the initial stakeholder meeting in either March or April and then we'll have to go through the process to know whether or not we'd have another stakeholder meeting before proposing or when the proposed rule would come out.

As I just covered, based on Holly's question, we do have a lot on our plates, so this is a priority among many priorities for our office.

MR. ROMOLO: Thank you.

MS. FULFORD: I will give an update. I know it came up in the last meeting and it is something that is another priority, for me in particular, is that our current technology situation is not what we would like

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it to be.

And I think we are very close to finding a vendor who is going to build us a new technology solution. We are hoping to get a final decision from the Attorney General in a week or two.

And then we will -- you know, the process always takes longer than it should. So we'll go through the contacting phase and start a build. But just put that on your radar. We think it will be an improvement for everyone, but there will be some transition when we are finally able to move to a new system.

And so we appreciate your patience with us as we work through the transition and we hope that it will be easier for everyone involved once we do finally get there.

All right. I'll open it up for any other topics that folks want to address.

MR. MCCRACKEN: Good morning. My name is Kirk McCracken from Todd, Bremer, and Lawson. We are a national collection agency licensed all over the country and licensed in Colorado. We work exclusively with colleges and universities.

And my question, I hope, will be passed on to the Attorney General or maybe to you, but it involves

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House Bill 18-1057. As many of you know, that deals with the 18 percent cap on collection fees.

And my question is that we work exclusively with colleges and universities here in Colorado and there seems to be some confusion among the schools as to whether or not that House bill applies to institutions of higher education.

And we have a situation, at least with my clients, where they have gone to their on-campus general counsel and in some cases, they have said that there's a carveout or there's an exception that says that it does not apply to institutions of higher education and some schools say that it does.

So what I'm looking for is some clarification from the Attorney General or from you as to whether or not there's a carveout in this bill that excludes colleges and universities because some schools are right and some schools aren't. It can't be both, and I'm trying to advise my clients -- and I'm not an attorney -- on the best way to go.

And I can tell you that back in July of last year, one of the major universities actually had their general counsel speak with individuals at the Attorney General's office. Unfortunately, it was a verbal conversation and not a written conversation.

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The individuals at the Attorney General's office indicated that the section that deals with institutions of higher education, which is 23-513, was not changed in the new House bill. Because it wasn't changed, the opinion was that institutions of higher education were exempt.

Unfortunately, this was a verbal conversation. I wish it would have been a written conversation. But I guess what we're looking for is a definitive clarification on whether or not colleges and universities, whether they be publicly funded or private schools, whether or not they are exempt from this 18 percent cap.

MS. FULTON: So especially given that my colleagues in our state services group were -- may have been involved in some of these conversations, that's something I will have to take back and it's not something I know off the tip of my tongue. So let's take that back and do some research on it and we'll try to figure out what clarification we can offer.

MR. MCCRACKEN: If I leave my card, would there be some way to be notified or would there be something published that I can. . .

MS. FULFORD: So I don't know precisely where we will end up at the end of the process, but,

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certainly, do leave your card and we will try keep you informed. To the extent that there's a public announcement, we will keep you informed of when it is.

MR. MCCRACKEN: All right. Thank you very much.

MS. FULTON: Absolutely.

MR. MAJOR: Is there any update on mediation processing service? I know the Attorney General filed a case against a licensed collection agency in North Florida, and I don't know if it has ever resolved that.

MR. FRANT: I'm not going to speak to it because I don't want to say anything wrong. I'm not quite sure. Mr. Major, if you want to give me a call, I can update you on that.

MR. MAJOR: Okay.

MR. FURMAN: Hi. Daniel Furman on behalf of the Colorado Creditor Bar Association. Going back to the rulemaking process, I'm just curious if at the stakeholder meeting your office would be open to the idea of, to the extent you know, if there's some rules that you do want to change, whether it would be helpful for all parties to have a copy of a draft rule changes document that we could discuss at the stakeholder meeting before you actually begin the formal rulemaking process.

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MS. FULFORD: So I don't think that we will probably have a draft at the stakeholder meeting. That would be more at the proposed rule stage.

At the stakeholder meeting, I think we are still more open to hearing from folks. We will try to be as specific as we can in terms of topics and in terms of where we think amendments are needed.

But I don't think that we will at that point be able to provide a draft rule for folks to comment on. At that point, I think we would like to keep it more open because there may be a lot of different ways to approach if there are elements of our rules that need to be changed, there may be a lot of different ways we could approach it, and I don't want to cut off that discussion by having a draft.

MR. FURMAN: Sure. So, I guess, one of the ways to handle that, too, is if you wanted to have a stakeholder -- so I understand the intent and the purpose behind it. I guess, then, my question would be, after the stakeholder meeting, would you be open to issuing a draft rule before we begin the rulemaking process?

Other state agencies and departments do that and it just seems like it's a way to be able to facilitate and address some concerns before we get to a

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more formalized rulemaking hearing process. So I didn't know if that was something that you guys would be open to.

MS. FULTON: So it's something I think we can consider. I mean, at this time, I think we would be open to having multiple stakeholder meetings and having them move forward in terms of specificity that we are able to provide.

I think we sort of have to see where we are before we commit to that part of being in the process, but it's helpful to have that feedback that has been helpful for other agencies.

MR. FURMAN: Thank you. As far as the repeal of these meetings, what are the intentions with regard to continuing dialogue between stakeholders and the Administrator on a regular basis?

MS. FULFORD: So this would be our last of these specific kind of meetings. I think at this point, given that we are going to be going through a rulemaking process this year, you all will have plenty of chances to interact with this office on those topics.

Our door is also always open. We can meet with -- I know Tom and Alan and Makyla have come in a couple of times. We would welcome other folks to set

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up a time to meet with us, but given that we're going to be having at least one stakeholder meeting and a formal rulemaking hearing this year, I think that's our current plan in terms of hearing from the public.

All right. Well, unfortunately, Sharon has not joined us, so we will have to figure out way to convey some of the dispute resolution in a different way. But with that, I will end the meeting. I thank you all very much for coming.

(Whereupon, the proceedings concluded at 10:47 a.m.)

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CERTIFICATE

STATE OF COLORADO)
)ss.
COUNTY OF DENVER)

I, Lisa Erickson, Court Reporter and Notary Public for the State of Colorado, do hereby certify that the above-entitled proceedings were taken in shorthand by me and was reduced to typewritten form by computer-aided transcription; that the foregoing is a true transcript of the proceedings had; that I am not an attorney, nor counsel, nor in any way connected with any attorney or counsel for any of the parties to said action or otherwise interested in its event.

IN WITNESS WHEREOF, I have hereunto affixed my hand and notarial seal.

My commission expires June 28, 2021.

LISA ERICKSON
Court Reporter and
Notary Public

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