The Cass-Lefevre letter

Opinion letter: Regarding whether or not a collection agency can report your listing to a CRA if they have not validated the debt.

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Federal Trade Commission

December 23, 1997

Robert G. Cass
Compliance Counsel
Commercial Financial Services, Inc.
2448 E. 81st Street, Suite 5500
Tulsa, OK 74137-4248

Dear Mr. Cass:

Mr. Medine has asked me to reply to your letter of October 28, 1997, concerning the circumstances under which a debt collector may report a "charged-off debt" to a consumer reporting agency under the enclosed Fair Debt Collection Practices Act. In that letter, you pose four questions, which I set out below with our answers.

I. "Is it permissible under the FDCPA for a debt collector to report charged-off debts to a consumer reporting agency during the term of the 30-day validation period detailed in Section 1692g?" Yes. As stated in the Commission's Staff Commentary on the FDCPA (copy enclosed), a debt collector may accurately report a debt to a consumer reporting agency within the thirty day validation period (p. 50103). We do not regard the action of reporting a debt to a consumer reporting agency as inconsistent with the consumer's dispute or verification rights under § 1692g.

II. "Is it permissible under the FDCPA for a debt collector to report, or continue to report, a consumer's charged-off debt to a consumer reporting agency after the debt collector has received, but not responded to, a consumer's written dispute during the 30-day validation period detailed in § 1692g?" As you know, Section 1692g(b) requires the debt collector to cease collection of the debt at issue if a written dispute is received within the 30-day validation period until verification is obtained. Because we believe that reporting a charged-off debt to a consumer reporting agency, particularly at this stage of the collection process, constitutes "collection activity" on the part of the collector, our answer to your question is No. Although the FDCPA is unclear on this

point, we believe the reality is that debt collectors use the reporting mechanism as a tool to persuade consumers to pay, just like dunning letters and telephone calls. Of course, if a dispute is received after a debt has been reported to a consumer reporting agency, the debt collector is obligated by Section 1692e(8) to inform the consumer reporting agency of the dispute.

III. "Is it permissible under the FDCPA to cease collection of a debt rather than respond to a written dispute from a consumer received during the 30-day validation period?" Yes. There is nothing in the FDCPA that requires a debt collector to continue collecting a debt after a written dispute is received. Further, there is nothing in the FDCPA that requires a response to a written dispute if the debt collector chooses to abandon its collection effort with respect to the debt at issue. See Smith v. Transworld Systems, Inc., 953 F.2d 1025, 1032 (6th Cir.
1992).

IV. "Would the following action by a debt collector constitute continued collection activity under § 1692g(b): reporting a charged-off consumer debt to a consumer reporting agency as disputed in accordance with § 1692e(8), when the debt collector became aware of the dispute when the consumer sent a written dispute to the debt collector during the 30-day validation period, and no verification of the debt has been provided by the debt collector?" Yes. As stated in our answer to Question II, we view reporting to a consumer reporting agency as a collection activity prohibited by § 1692g(b) after a written dispute is received and no verification has been provided. Again, however, a debt collector must report a dispute received after a debt has been reported under § 1692e(8).

I hope this is responsive to your request.

Sincerely,
John F. LeFevre
Attorney