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# New FTC Debt Collection Rules Kick in Aug. 29

BY E. ANDREW KEENEY

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Rarely does a week go by when we do not receive a call from a credit union regarding potential elder abuse. Recently, the number of calls regarding the legal, moral and ethical means to collect a credit union debt from a deceased member's estate has been increasing. With those credit unions that have an "aging" membership, these issues become more and more paramount.

With little fanfare and very little press coverage, the Federal Trade Commission (FTC) recently published a "Statement of Policy Regarding Communications in Connection with the Collection of Decedents' Debts." The final policy statement is effective Aug. 29, 2011 and impacts all companies that are subject to the Fair Debt Collection Practices Act (FDCPA).

Generally speaking, if a credit union is conducting its collection efforts "in house," it is probably not subject to the FDCPA, but many credit unions utilize CUSOs, collection agencies or collection attorneys, and all of those entities are generally subject to the FDCPA. So please be on alert.

The FTC acknowledged that when a person dies, creditors and debt collectors they hire usually have the right to collect the person's debts from the assets of his or her estate. The FDCPA prohibits debt collectors from contacting individuals other than the debtor to collect a debt unless the individual is the debtor's spouse, parent (in the cases where the debtor is a minor), guardian, executor or administrator.

The FTC had received a number of complaints regarding some debt collectors contacting the decedent's relatives. Often, the relatives do not have the authority to pay the debts from the decedent's estate and perhaps no legal obligation to pay the debts from their own assets.

Struggling to find a middle ground between the rights of the creditors, the actions of debt collectors to collect debts and the grief and vulnerability of spouses and others mourning the death of loved ones, the FTC issued a 33-page statement along with a commentary to provide guidance and direction.

Generally speaking, the FTC announced that to balance the interests and protect consumers from unfair, deceptive and abusive practices, the FTC would forbear enforcement of certain sections of the FDCPA against a debt collector for communicating about a decedent's debts with persons specifically identified as appropriate to contact under the FDCPA or any other person who has the authority to pay the decedent's debts from the assets of the decedent's estate.

The statement further clarified how a debt collector can comply with the law in locating the person who has the requisite authority with whom to discuss the decedent's debts. Finally, the statement explains how a debt collector can avoid engaging in deceptive practices in communicating with a third party about a decedent's debts.

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Noting that "most debts incurred in life do not simply vanish upon death," the FTC acknowledged that formal probate has proven to be time-consuming and expensive for consumers and to require the payment of debts to be processed through formal probate process might be burdensome to heirs and creditors alike.

Specific aspects of the final policy statement are as follows:

1. **Permissible Individuals for Collection Communications.** As noted above, the FTC concluded that they would not bring an enforcement action under the FDCPA against the debt collector for communicating for the purpose of collecting a decedent's debt with any of the following individuals: the decedent's spouse, parent, guardian, executor or administrator, or another person who has authority to pay the decedent's debts from the assets of the decedent's estate. Individuals who have the "requisite authority" may include personal representatives under the informal probate and summary administration procedures of many states, persons appointed as universal successors, persons who sign declarations or affidavits to effect the transfer of estate assets and persons who dispose of the decedent's assets in general.

2. **Locating Proper Individuals for Deceased Account Collection.** In instances in which collectors do not know the identity of those with the authority to pay the decedent's debts, collectors may communicate with others to identify these individuals. For example, they may utilize location information such as a consumer's place of abode and his telephone number at such place or his place of employment. Any collectors seeking such location information must "(1) identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer; and (2) not state that such consumer owes any debt." Struggling to find the middle ground, based on comments received, the FTC noted in its statement that it will forbear from taking enforcement action for violating the FDCPA against a debt collector who includes in location communications a general reference to paying the "outstanding bills" of the decedent out of the estate's assets. Such a reference, according to the FTC, balances the legitimate needs of the collector with the privacy interests of the decedent. Such language should provide sufficient information for the recipient of the communications to identify the person with authority to pay the decedent's debts out of the estate's assets, while minimizing the harm to the decedent's reputation. However, be warned, using the term "outstanding bills" could imply that the decedent was delinquent and such an implication is improper.

3. **Compliance in Communicating With Permitted Individuals.** As always, collectors must not engage in unfair, deceptive, abusive or other unlawful conduct in violation of the FDCPA.

However, the final FTC statement does not include a "cooling-off period." Credit unions and their collectors are encouraged to utilize good judgment.

The FTC statement is a good read. It is clear, concise and well-presented. It is a must read for all credit unions that are in the collection business, as well as their collection agencies and their collection attorneys. Read it quickly. The effective date is Aug. 29, 2011.

*[E. Andrew Keeney](#) is a Norfolk, Va.-based credit union attorney with more than 35 years of experience.*

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