



August 11, 2014

MASSACHUSETTS AGENCY OPINES ON VALIDATION OF DEBT RULE

The Massachusetts Division of Banks recently opined that a debt collector's receipt of an oral request for records is sufficient to trigger the "five business day" period set forth in the Division's validation of debt rule at Section 18.18(3). The advisory opinion, which was issued on July 18, 2014, was in response to a specific request for interpretation of the regulation.

Section 18.18 of the Division's Conduct of the Business of Debt Collectors and Loan Servicers regulations governs validation of debts. Section 18.18(1) and (2) generally align with the federal Fair Debt Collection Practices Act requirements set forth in Section 1692g(a) and (b). Section 18.18(1) requires a debt collector to provide the required response to a consumer within five days after the initial communication with a consumer. Under Section 18.18(2), if a consumer disputes the debt, the debt collector must cease collection activities and take additional actions to validate the debt upon receipt of written notification from the consumer. Section 18.18(3) provides that a debt collector must provide to a consumer or any attorney for a consumer, within five business days, certain information set forth in the regulation, but does not specify whether a request for the information must be in writing or when the five-day period begins.

In interpreting the regulation, the Division looked to the plain language of Section 18.18(3), which it noted does not require a written request. This is in contrast to Section 18.18(2), which explicitly requires that the consumer's notice to the debt collector of the disputed debt be in writing. Also, the Division found no indication in Section 18.18(3) that oral notice was to be considered ineffective. In addition to the plain language of the regulation, the Division said that it was guided by what it termed the well-established principle that inclusion of particular language in one part of a statute and omission of the same language in another is deemed to be an intentional and purposeful act by the legislature. Because the Division in drafting Section 18.18(3) was aware of the oral notice and writing requirements of Section 18.18(1) and (2), the opinion concludes that exclusion of an express writing requirement indicates that written notice is not necessary. Thus, the opinion states that under Section 18.18(3), the debt collector's receipt of an oral request for records from the consumer, or the consumer's attorney, is sufficient to trigger

the debt collector's obligation and may serve to commence the five business day period in which the required response must be returned to the consumer. ☐

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