

**AGENDA
FINANCIAL SERVICES COMMISSION
OFFICE OF FINANCIAL REGULATION**

<http://www.flofr.com/Cabinet/PublicNotices.htm>

June 16, 2011

MEMBERS

Governor Rick Scott
Attorney General Pam Bondi
Chief Financial Officer Jeff Atwater
Commissioner Adam Putnam

Contact: Andrea Moreland (OFR)
(850) 410-9601

9:00 A.M.
LL-03, The Capitol
Tallahassee, Florida

ITEM	SUBJECT	RECOMMENDATION
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| 1. | The Office requests approval of the minutes of the February 1, 2011, meeting. | |
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(ATTACHMENT 1)

FOR APPROVAL

- | | | |
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| 2. | The Office requests approval to publish a Notice of Proposed Rule for Rule Chapter 69V-180, relating to consumer debt collection. The proposed rules revise the consumer complaint form to conform to statutory requirements, set forth books and records requirements, and establish guidelines for imposing administrative penalties. | |
|----|---|--|

Rule 69V-180.040: Consumer Collection Agency Complaint Form and Procedures

Rule 69V-180.080: Consumer Collection Agency Records

Rule 69V-180.090: Consumer Collection Agency Records Retention and Destruction

Rule 69V-180.100: Guidelines for Imposing Administrative Penalties

(ATTACHMENT 2)

APPROVAL FOR PUBLICATION

ATTACHMENT 1

Financial Services Commission
Office of Financial Regulation
Meeting Minutes
February 1, 2011

THE CABINET
STATE OF FLORIDA

Representing:

STATE BOARD OF ADMINISTRATION

DIVISION OF BOND FINANCE

FINANCIAL SERVICES COMMISSION, OFFICE OF
FINANCIAL REGULATION

The above agencies came to be heard before
THE FLORIDA CABINET, Honorable Governor Scott
presiding, in the Cabinet Meeting Room, LL-03,
The Capitol, Tallahassee, Florida, on Tuesday,
February 1, 2011, commencing at 9:00 a.m.

Reported by:
JO LANGSTON
Registered Professional Reporter
Notary Public

ACCURATE STENOGRAPHY REPORTERS, INC.
2894 REMINGTON GREEN LANE
TALLAHASSEE, FLORIDA 32308
(850) 878-2221

APPEARANCES:

Representing the Florida Cabinet:

RICK SCOTT
Governor

ADAM H. PUTNAM
Commissioner of Agriculture

PAM BONDI
Attorney General

JEFF ATWATER
Chief Financial Officer

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STATE BOARD OF ADMINISTRATION
(Presented by ASH WILLIAMS)

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8	Approved	8

DIVISION OF BOND FINANCE
(Presented by BEN WATKINS)

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FINANCIAL SERVICES COMMISSION, OFFICE OF
FINANCIAL REGULATION
(Presented by TOM CARDWELL)

ITEM	ACTION	PAGE
1	Approved	21
2	Approved	22

CERTIFICATE OF REPORTER 24

1 GOVERNOR SCOTT: The next agenda is the
2 Financial Services Commission, Office of Financial
3 Regulation, presented by Tom Cardwell.

4 Thank you, Mr. Watkins.

5 MR. WATKINS: Thank you.

6 MR. CARDWELL: Good morning, Governor Scott,
7 members of the Cabinet, members of the Financial
8 Services Commission. Two items. First is the
9 approval of the minutes of the October 12th, 2010
10 meeting.

11 GOVERNOR SCOTT: Is there a motion on the
12 minutes?

13 CFO ATWATER: So moved.

14 GOVERNOR SCOTT: Second?

15 ATTORNEY GENERAL BONDI: Second.

16 GOVERNOR SCOTT: Moved and seconded, show Item
17 1 approved without objection.

18 MR. CARDWELL: Thank you. The second item is a
19 request for the final adoption of a rule amending
20 Rule Chapters 69V-85, 160 and 560. This is an
21 amendment to an existing set of rules. The Florida
22 Statutes authorize the agency to require applicants
23 who fill out applications and pay fees to do so
24 electronically. This electronic payment has been a
25 significant efficiency, both for businesses and for

1 the agency.

2 There are, however, a few cases in which the
3 licensees do not have bank accounts or computer
4 access. And the existing rules deal with this by
5 permitting such persons to seek a waiver of the
6 electronic filing by sending a letter, which they
7 must compose, or in one case by actually filing a
8 petition. Last year we had two requests for waiver.

9 It was recommended and we agreed to simplify
10 this process to assist people and to make it easier
11 particularly for small businesses. And we have
12 developed a very simple waiver form. The Small
13 Business Regulatory Council has reviewed the
14 amendment and is supportive of it. This amendment
15 has been in process for some time and I think will
16 be of benefit to the business community and to the
17 agency. And I would request approval for final
18 adoption.

19 GOVERNOR SCOTT: Any questions?

20 CFO ATWATER: So moved.

21 GOVERNOR SCOTT: Second?

22 ATTORNEY GENERAL BONDI: Second.

23 GOVERNOR SCOTT: Moved and seconded. Show Item

24 2 approved without objection. Thank you,

25 Mr. Cardwell.

1 MR. CARDWELL: Thank you.

2 GOVERNOR SCOTT: This concludes our meeting.

3 We are adjourned. Thank you very much.

4 (Whereupon, the meeting was concluded at 9:25
5 a.m.)

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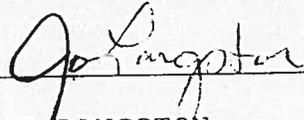
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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, Jo Langston, Registered Professional Reporter,
do hereby certify that the foregoing pages 4 through 23,
both inclusive, comprise a true and correct transcript of
the proceeding; that said proceeding was taken by me
stenographically and transcribed by me as it now appears;
that I am not a relative or employee or attorney or counsel
of the parties, or a relative or employee of such attorney
or counsel, nor am I interested in this proceeding or its
outcome.

IN WITNESS WHEREOF, I have hereunto set my hand
this 14th day of February, 2010.



JO LANGSTON
Registered Professional Reporter

ATTACHMENT 2

FINANCIAL SERVICES COMMISSION
OFFICE OF FINANCIAL REGULATION

AGENDA ITEM #2

ACTION REQUESTED

The Office requests approval to file a Notice of Proposed Rule for Rules 69V-180.040, .080, .090, and .100, relating to consumer debt collection.

STATEMENT OF JUSTIFICATION

Section 559.725(3), F.S., provides that if a person wishes to file a complaint against a consumer debt collection agency, he or she must certify on a form approved by the Financial Services Commission and subject to the penalties of perjury under s. 837.06, F.S., a summary of the nature of the alleged violation and the facts that allegedly support the complaint. The statute provides that the complaint must be filed with the Office. The proposed changes to Rule 69V.180.040, F.A.C., implement this provision.

Section 559.5556(1), F.S., requires each registered consumer collection agency to maintain books and records necessary to determine a registrant's compliance with Part VI of Chapter 559, F.S. Section 559.5556(3), F.S., authorizes the Financial Services Commission to prescribe by rule the minimum information to be shown in the books and records. Proposed Rule 69V-180.080 implements this provision.

Section 559.5556(4), F.S., requires registrants to maintain books and records for at least 3 years after the date that the transaction is completed. This subsection also authorizes the Financial Services Commission to prescribe by rule the requirements for the destruction of books and records. Proposed Rule 69V-180.090 implements this provision.

Section 559.730(3), F.S., requires the Financial Services Commission to adopt rules establishing guidelines for imposing administrative penalties. Proposed Rule 69V-180.100 implements this statutory requirement.

SUMMARY OF THE RULES

Proposed Amendments to Rule 69V-180.040 - Consumer Collection Agency Complaint Form and Procedures: The rule amendments provide a process for consumers to file complaints against consumer collection agencies with the Office on a form that meets statutory requirements. Pursuant to s. 559.725(3), F.S., consumers must certify on a form approved by the Financial Services Commission a summary of the nature of the alleged violation and the facts that allegedly support the consumer's complaint against the consumer collection agency. If the consumer knowingly submits a false statement to the Office, the consumer is subject to the penalty of perjury pursuant to s. 837.06, F.S., which is punishable as a misdemeanor of the second degree. The rule incorporates by reference a revised complaint form, which removes the requirement that the form must be submitted under oath and notarized and puts the consumer on notice that the consumer is subject to the penalty of perjury if he or she knowingly provides false information to the Office.

Proposed Rule 69V-180.80 - Consumer Collection Agency Records: The proposed rule requires consumer collection agencies to maintain minimum information in their books and records so that the Office of Financial Regulation may determine compliance with Part VI of Chapter 559, F.S. Minimum information includes, but is not limited to, basic information about the debt, the debtor's account activity, and copies of correspondence sent to the debtor.

Proposed Rule 69V-180.090 - Consumer Collection Agency Records Retention and Destruction: Section 559.5556(4), F.S., requires all books and records of any debt collection transaction be preserved by the registrant and kept available for inspection by the Office for at least three years after the date the transaction is completed. The rule clarifies that the transaction is complete when the consumer satisfies the debt or the registrant ceases collection efforts.

Section 559.5556(4), F.S., also provides that the Commission may prescribe by rule requirements for the destruction of books and records once the three years has elapsed. The rule adopts the guidance provided in 16 C.F.R. Part 682 (2011) for proper destruction procedures, which include:

- The burning, pulverizing, or shredding of papers containing consumer information so that the information cannot practicably be read or reconstructed.
- The destruction or erasure of electronic media containing consumer information so that the information cannot practicably be read or reconstructed.
- After due diligence, entering into and monitoring compliance with a contract with another party engaged in the business of record destruction to dispose of consumer information in a manner consistent with the rule.

Proposed Rule 69V-180.100 - Guidelines for Imposing Administrative Penalties: Part VI of Chapter 559, F.S., the Florida Consumer Collection Practices Act, authorizes the Office to impose administrative penalties for violations of the act. The proposed rule sets forth guidelines for imposing administrative penalties. The level of sanction imposed for each violation is reflected in the guidelines. The Office will consider a list of circumstances provided in the rule for determining whether a deviation from the range of sanctions specified in the rule is warranted. Circumstances that will be considered by the Office include, but are not limited to, the degree of harm to the public, the disciplinary history of the person, whether the person attempted to conceal the violation, and relevant case specific circumstances.

FEDERAL STANDARDS

Proposed Rule 69V-180.090, relating to records retention and destruction, adopts 16 C.F.R. Part 682 (2011) as guidance with respect to examples of proper procedures to be used when destroying records required to be maintained under Part VI of Chapter 559, F.S. The referenced federal regulations relate to the secure disposal of consumer information under the federal Fair and Accurate Credit Transactions Act of 2003.

STATEMENT OF ESTIMATED REGULATORY COSTS

Statements of Estimated Regulatory Costs have been prepared.

Notice of Proposed Rule

DEPARTMENT OF FINANCIAL SERVICES

Finance

RULE NO.: RULE TITLE:

69V-180.040: Consumer Collection Agency Complaint Form and Procedures

69V-180.080: Consumer Collection Agency Records

69V-180.090: Consumer Collection Agency Records Retention and Destruction

69V-180.100: Guidelines for Imposing Administrative Penalties

PURPOSE AND EFFECT: The proposed rules: 1) revise the consumer complaint form to conform to statutory requirements; 2) adopt books and records requirements for consumer collection agencies; 3) provide guidance regarding the retention and destruction of records; and 4) establish guidelines for imposing administrative penalties.

SUMMARY: The proposed rules: 1) revise the consumer complaint form to conform to statutory requirements; 2) adopt books and records requirements for consumer collection agencies; 3) provide guidance regarding the retention and destruction of records; and 4) establish guidelines for imposing administrative penalties.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The Agency has determined that the proposed rules will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. SERCs have been prepared by the agency, which are summarized as follows. The proposed rules are not likely to: 1) directly or indirectly have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within 5 years after the implementation of the rule; 2) directly or indirectly have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within 5 years after the implementation of the rule; or 3) directly or indirectly increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within 5 years after the implementation of the rule. Accordingly, the Agency has determined that the proposed rules will not require legislative ratification. In addition, the proposed rules do not impose additional costs on the Office; nor do they impose any additional costs on any state or local government entity. There are no anticipated transactional costs and the Office does not foresee any adverse impact on small businesses, small counties or small cities. Rule 69V-180.040 applies to persons wishing to file complaints against consumer collection agencies. Rules 69V-180.080, .090, and 100 apply to consumer collection agencies.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 559.725(3), 559.5556, 559.730(3) FS.

LAW IMPLEMENTED: 559.5556, 559.565(1), 559.72, 559.725(6), 559.730(3) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Andy Grosmaire, Chief, Bureau of Finance Regulation, Office of Financial Regulation, The Fletcher Building, 200 E. Gaines Street, Tallahassee, Florida 32399, (850)410-9848, andy.grosmaire@flofr.com.

THE FULL TEXT OF THE PROPOSED RULE IS:

69V-180.040 Consumer Collection Agency Complaint Form and Procedures.

Each consumer desiring to file a complaint against a consumer collection agency shall submit to the Office of Financial Regulation a completed complaint form, Form OFR-CCA-103, effective _____, available at <http://www.flrules.org/Gateway/reference.asp?No=Ref-00310> ~~2-15-94~~, which is hereby incorporated by reference ~~and available by mail from the Office of Financial Regulation of Agriculture and Consumer Services, Division of Consumer Services, Mayo Building, Tallahassee, Florida 32399-0800.~~ Such form shall be filed with the Office of Financial Regulation, 200 East Gaines Street, Tallahassee, Florida ~~32399-0376~~ 32399-0375.
Rulemaking Specific Authority 559.725(3) 17.29 FS. Law Implemented 559.72, 559.725(3) 559.725 FS. History--New 2-15-94, Formerly 3D-180.040, Amended _____.

69V-180.080 Consumer Collection Agency Records.

A registrant shall, at a minimum, maintain all records specified in this rule. Records shall be kept current to within one week of the current date. Computerized records that contain the equivalent of the information required to be maintained by this rule are acceptable. The following records shall be maintained:

- (1) A copy of the contract or agreement that the registrant will use with its creditors.
- (2) Records relating to the referrals made by a creditor to the registrant, identifying the name of the debtors, and the amount of the debt owed by each.
- (3) The debtor's account of activity disclosing the following:
 - (a) The name and address of the debtor;
 - (b) The date that the account was referred or acquired and the account number;
 - (c) The actual amount of the claim submitted by the creditor;
 - (d) The name and address of the creditor or a means of identifying this information by code or account number; and
 - (e) A record of payments made by the debtor, including the date received and the amount and balance owing;
 - (f) A record of outbound contacts or attempted contacts by the registrant with the debtor including:
 1. The full name of the debtor;
 2. The date and time the contact was placed or received;
 3. The phone number dialed if placing an outgoing phone call;

4. The disposition of the phone call;

5. The name of the person (or alias name of the person) making or attempting to make contact.

(4) A debtor's receipt for cash payments made to the registrant. The document shall provide space for recording:

(a) Name and address of registrant;

(b) Name of debtor;

(c) Date and amount of payment received;

(d) Balance owing;

(e) Name of the creditor; and

(f) Name of the person accepting payment.

(5) Documentation recording the dates and amounts of remittances by the registrant to the creditor.

(6) All form letters and stationery used by a registrant shall be maintained in a file and made available at all times for review by the Office of Financial Regulation.

(7) The name of the financial institution or institutions where the registrant's accounts will be maintained, and the identifying numbers assigned by the financial institutions to the accounts.

(8) All written agreements executed between the registrant and the debtor after the account has been received from the creditor.

(9) Basic information about the debt including, at the minimum:

(a) Documentation of the debt provided by the creditor;

(b) The date the debt was incurred and the date of the last payment;

(c) The identity of the original creditor as known to the debtors;

(d) The amount of the debt principal and an itemization of all interest, fees, or charges added to it by the original creditor and all subsequent holders;

(e) The chain of title if the debt has been sold.

(10) A copy of all letters, emails, and correspondence, written or electronically sent to a debtor.

(11) All phone numbers used by a registrant shall be disclosed and maintained in a file and made available at all times for review by the Office of Financial Regulation.

Rulemaking Authority 559.5556 FS. Law Implemented 559.5556, 559.72 FS. History--New _____.

69V-180.090 Consumer Collection Agency Records Retention and Destruction.

(1) All books, accounts, records, documents, and receipts must be maintained for at least 3 years from the date the consumer satisfied the debt being collected or the registrant has ceased collection efforts from the consumer.

(2) A registrant must have written policies and procedures for the secure handling of all consumer documents and information received in the course of collecting a debt from a consumer. Such procedures must include, at a minimum, the following steps, as appropriate:

(a) A secure method of destroying consumer information, such as those prescribed in 16 C.F.R. Part 682 (2011), which relates to disposal of consumer report information and records under section 216 of the

Fair and Accurate Credit Transactions Act of 2003. Federal regulation 16 C.F.R. Part 682 (2011), available at <https://www.flrules.org/Gateway/reference.asp?No=Ref-00311>, is incorporated by reference in this rule.

(b) Maintaining records of the destruction including which records were destroyed, when were the records destroyed, where were the records destroyed, and who destroyed the records.
Rulemaking Authority 559.5556 FS. Law Implemented 559.5556 FS. History–New _____.

69V-180.100 Guidelines for Imposing Administrative Penalties.

Pursuant to Section 559.730(3), F.S., listed below are guidelines applicable to each ground for disciplinary action that may be imposed by the Office against a person for a violation of Part VI, Chapter 559, F.S. In determining an appropriate penalty within the range of penalties prescribed in this rule for each occurrence as based upon the violation, the Office shall consider the circumstances set forth in subsection (25).

	<u>Statute</u>	<u>Violation Description</u>	<u>1st Occurrence</u>	<u>2nd Occurrence</u>	<u>3rd & Subsequent Occurrences</u>
(1)	<u>559.565(1)</u>	<u>An out-of-state consumer debt collector who collects or attempts to collect consumer debts in this state without first registering in accordance with this part.</u>	<u>Fine: B Cease and Desist</u>	<u>Fine: C Cease and Desist</u>	
(2)	<u>559.72(1)</u>	<u>Simulate in any manner a law enforcement officer or a representative of any governmental agency.</u>	<u>Fine: A</u>	<u>Fine: B</u>	<u>Fine: C Revocation</u>
(3)	<u>559.72(2)</u>	<u>Use or threaten force or violence.</u>	<u>Fine: B</u>	<u>Fine: C Revocation</u>	
(4)	<u>559.72(3)</u>	<u>Tell a debtor who disputes a consumer debt that she or he or any person employing her or him will disclose to another, orally or in writing, directly or indirectly, information affecting the debtor's reputation for credit worthiness without also informing the debtor that the existence of the dispute will also be disclosed</u>	<u>Fine: A</u>	<u>Fine: B</u>	<u>Fine: C Revocation</u>
(5)	<u>559.72(4)</u>	<u>Communicate or threaten to communicate with a debtor's employer before obtaining final judgment against the debtor</u>	<u>Fine: A</u>	<u>Fine: B</u>	<u>Fine: C Revocation</u>
(6)	<u>559.72(5)</u>	<u>Disclose to a person other than the debtor or her or his family information affecting the debtor's reputation, whether or not for credit worthiness, with knowledge or reason to know that the other person does not have a legitimate business need for the information or that the information is false</u>	<u>Fine: A</u>	<u>Fine: B</u>	<u>Fine: C Revocation</u>
(7)	<u>559.72(6)</u>	<u>Disclose information concerning the existence of a debt known to be reasonably disputed by the debtor without disclosing that fact or failed to notify within 30 days the details of the dispute to each person to</u>	<u>Fine: A</u>	<u>Fine: B</u>	<u>Fine: C Revocation</u>

		<u>whom disclosure was made</u>			
(8)	<u>559.72(7)</u>	<u>Willfully communicate with the debtor or any member of her or his family with such frequency as can reasonably be expected to harass the debtor or her or his family, or willfully engage in other conduct which can reasonably be expected to abuse or harass the debtor or any member of her or his family</u>	<u>Fine: A</u>	<u>Fine: B</u>	<u>Fine: C Revocation</u>
(9)	<u>559.72(8)</u>	<u>Use profane, obscene, vulgar, or willfully abusive language in communicating with the debtor or any member of her or his family</u>	<u>Fine: A</u>	<u>Fine: B</u>	<u>Fine: C Revocation</u>
(10)	<u>559.72(9)</u>	<u>Claim, attempt, or threaten to enforce a debt when such person knows that the debt is not legitimate or assert the existence of some other legal right when such person knows that the right does not exist</u>	<u>Fine: B</u>	<u>Fine: C Revocation</u>	
(11)	<u>559.72(10)</u>	<u>Use a communication that simulates in any manner legal or judicial process or that gives the appearance of being authorized, issued or approved by a government, governmental agency, or attorney at law, when it is not</u>	<u>Fine: A</u>	<u>Fine: B</u>	<u>Fine: C Revocation</u>
(12)	<u>559.72(11)</u>	<u>Communicate with a debtor under the guise of an attorney by using the stationery of an attorney or forms or instruments that only attorneys are authorized to prepare</u>	<u>Fine: B</u>	<u>Fine: C</u>	<u>Fine: C Revocation</u>
(13)	<u>559.72(12)</u>	<u>Orally communicate with a debtor in a manner that gives the false impression or appearance that such person is or is associated with an attorney</u>	<u>Fine: A</u>	<u>Fine: B</u>	<u>Fine: C Revocation</u>
(14)	<u>559.72(13)</u>	<u>Advertise for sale any debt as a means to enforce payment except under court order or when acting as an assignee for the benefit of a creditor</u>	<u>Fine: B</u>	<u>Fine: C Revocation</u>	
(15)	<u>559.72(13)</u>	<u>Threaten to advertise for sale any debt as a means to enforce payment except under court order or when acting as an assignee for the benefit of a creditor</u>	<u>Fine: A</u>	<u>Fine: B</u>	<u>Fine: C Revocation</u>
(16)	<u>559.72(14)</u>	<u>Publish or post, or cause to be published or posted before the general public individual names or any list of names of debtors, commonly known as a deadbeat list, for the purpose of enforcing or attempting to enforce collection of consumer debts</u>	<u>Fine: B</u>	<u>Fine: C Revocation</u>	
(17)	<u>559.72(14)</u>	<u>Threaten to publish or post before the general public individual names or any list of names of debtors, commonly known as a deadbeat list, for the purpose of enforcing or attempting to enforce collection of consumer debts</u>	<u>Fine: A</u>	<u>Fine: B</u>	<u>Fine: C Revocation</u>
(18)	<u>559.72(15)</u>	<u>Refuse to provide adequate identification of herself or himself or her or his employer or</u>	<u>Fine: A</u>	<u>Fine: B</u>	<u>Fine: C Revocation</u>

		<u>other entity whom she or he represents if requested to do so by a debtor from whom she or he is collecting or attempting to collect a consumer debt</u>			
(19)	559.72(16)	<u>Mail any communication to a debtor in an envelope or postcard with words typed, written, or printed on the outside of the envelope or postcard calculated to embarrass the debtor</u>	<u>Fine: B</u>	<u>Fine: C</u>	<u>Fine: C</u> <u>Revocation</u>
(20)	559.72(17)	<u>Communicate with the debtor between the hours of 9 p.m. and 8 a.m. in the debtor's time zone without the prior consent of the debtor</u>	<u>Fine: A</u>	<u>Fine: B</u>	<u>Fine: C</u> <u>Revocation</u>
(21)	559.72(18)	<u>Communicate with a debtor if the person knows that the debtor is represented by an attorney with respect to such debt</u>	<u>Fine: A</u>	<u>Fine: B</u>	<u>Fine: C</u> <u>Revocation</u>
(22)	559.72(19)	<u>Cause a debtor to be charged for communications by concealing the true purpose of the communication</u>	<u>Fine: A</u>	<u>Fine: B</u>	<u>Fine: C</u> <u>Revocation</u>
(23)	559.725(6)	<u>Failure to provide a written response to a consumer complaint within 45 days of written request</u>	<u>\$150 per day</u>	<u>\$200 per day</u>	<u>\$250 per day</u>

(24) In accordance with this rule:

(a) Depending on the severity and repetition of specific violations, the Office may impose an administrative fine, suspension of a person, or revocation of a person or any combination thereof;

(b) The Office may impose a cease and desist order, a suspension, or both in conjunction with and in addition to any of the designated sanctions set forth in this rule when appropriate under the circumstances; and

(c) The Office will consider the person's disciplinary history for the past five years in determining an appropriate penalty, and may impose a more severe penalty when the disciplinary history includes past violations.

(25) In accordance with Section 559.730, F.S., the Office shall consider the following circumstances in determining an appropriate penalty within the range of penalties prescribed in this rule for each violation. The Office also shall consider these circumstances when determining whether a deviation from the range of sanctions prescribed in the disciplinary guidelines is warranted:

(a) The degree of harm to the public;

(b) The disciplinary history of the person;

(c) Whether the person detected and voluntarily instituted corrective responses or measures to avoid the recurrence of a violation prior to detection and intervention by the Office;

(d) Whether the person's violation was the result of willful misconduct or recklessness;

(e) Whether at the time of the violation, the person had developed and implemented reasonable supervisory, operational or technical procedures, or controls to avoid the violation;

(f) Whether the person attempted to conceal the violation or mislead or deceive the Office;

(g) The length of time over which the person engaged in the violations; and

(h) Other relevant, case-specific circumstances.

(26) The list of violations cited in this rule is intended to be comprehensive, but the omission of a violation from the list does not preclude the Office from taking any action authorized by Section 559.730, F.S.

(27) The ranges for administrative fines imposed by this rule are \$1,000 to \$3,500 for an “A” level fine; \$3,500 to \$7,500 for a “B” level fine; and \$7,500 to \$10,000 for a “C” level fine.

(28) A previous “occurrence” is the same or similar misconduct which was the subject of a Final Order entered by the Office prior to the acts or omissions which are the subject of the current action by the Office.

Rulemaking Authority 559.730(3) FS. Law Implemented 559.565(1), 559.72, 559.725(6), 559.730 FS. History–New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Andy Grosmaire, Chief, Bureau of Finance Regulation, Office of Financial Regulation, The Fletcher Building, 200 E. Gaines Street, Tallahassee, Florida 32399, (850)410-9848, andy.grosmaire@flofr.com.

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Financial Services Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 16, 2011

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 22, 2010

MATERIALS INCORPORATED BY REFERENCE

- **Complaint Form, Form OFR-CCA-103**
- **16 C.F.R. Part 682 (2011)**



Florida Consumer Collection Practices Act

COMPLAINT FORM

We welcome hearing from you because your complaint may be the one that alerts us to fraud or an unfair practice in the financial industry that needs to be changed. Often it is only through complaints from concerned and responsible citizens that the Office of Financial Regulation becomes aware of unlawful activity. Your complaint will be analyzed, entered into a database and may help OFR detect a pattern of wrong-doing which may indicate the need for formal investigation or action by OFR to protect the broad public interest.

Under Florida law, OFR is charged with enforcing financial regulations and does not intervene on behalf of individuals or mediate private disputes. If your purpose in filing a complaint is to recover money or property, we suggest that you consider arbitration, mediation or the courts. Private rights of action pursuant to arbitration and civil proceedings may have certain filing timeframes. You should consider consulting legal counsel prior to or concurrent with our review. Private causes of action effectively deter abuses and complement the regulatory actions of OFR as well as other regulatory bodies.

Please Read and Sign: To the best of my recollection, the events described in the following complaint are true. I am filing this complaint to notify OFR of these activities. I understand that a copy of this complaint may be provided to the company against whom I am complaining and that my records within that company may be reviewed by OFR or other agencies which may have jurisdiction in this matter. Under penalty of perjury pursuant to Section 837.06, Florida Statutes, I declare the following facts are true, correct, and complete. Section 837.06, Florida Statutes, states: Whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his or her official duty shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Date

Signature

Please send completed form to: Office of Financial Regulation
Division of Finance
Consumer Assistance Group
200 E. Gaines Street
Tallahassee, FL 32399-0381
Tel: (850) 410-9800
Fax: (850) 410-9300

Code of Federal Regulations

Title 16 - Commercial Practices

Volume: 1

Date: 2011-01-01

Original Date: 2011-01-01

Title: PART 682 - DISPOSAL OF CONSUMER REPORT INFORMATION AND RECORDS

Context: Title 16 - Commercial Practices. CHAPTER I - FEDERAL TRADE COMMISSION.
SUBCHAPTER F - THE FAIR CREDIT REPORTING ACT.

Pt. 682

PART 682—DISPOSAL OF CONSUMER REPORT INFORMATION AND RECORDS

Sec.

682.1 Definitions.

682.2 Purpose and scope.

682.3 Proper disposal of consumer information.

682.4 Relation to other laws.

682.5 Effective date.

Authority: Pub. L. 108-159, sec. 216.

Source: 69 FR 68697, Nov. 24, 2004, unless otherwise noted

§ 682.1 Definitions.

(a) *In general.* Except as modified by this part or unless the context otherwise requires, the terms used in this part have the same meaning as set forth in the Fair Credit Reporting Act, 15 U.S.C. 1681 et seq.

(b) "*Consumer information*" means any record about an individual, whether in paper, electronic, or other form, that is a consumer report or is derived from a consumer report. Consumer information also means a compilation of such records. Consumer information does not include information that does not identify individuals, such as aggregate information or blind data.

(c) "*Dispose*," "*disposing*," or "*disposal*" means:

(1) The discarding or abandonment of consumer information, or

(2) The sale, donation, or transfer of any medium, including computer equipment, upon which consumer information is stored.

§ 682.2 Purpose and scope.

(a) *Purpose.* This part ("rule") implements section 216 of the Fair and Accurate Credit Transactions Act of 2003, which is designed to reduce the risk of consumer fraud and related harms, including identity theft, created by improper disposal of consumer information.

(b) *Scope.* This rule applies to any person over which the Federal Trade Commission has jurisdiction, that, for a business purpose, maintains or otherwise possesses consumer information.

§ 682.3 Proper disposal of consumer information.

(a) *Standard.* Any person who maintains or otherwise possesses consumer information for a business purpose must properly dispose of such information by taking reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal.

(b) *Examples.* Reasonable measures to protect against unauthorized access to or use of consumer information in connection with its disposal include the following examples. These examples are illustrative only and are not exclusive or exhaustive methods for complying with the rule in this part.

- (1) Implementing and monitoring compliance with policies and procedures that require the burning, pulverizing, or shredding of papers containing consumer information so that the information cannot practicably be read or reconstructed.
- (2) Implementing and monitoring compliance with policies and procedures that require the destruction or erasure of electronic media containing consumer information so that the information cannot practicably be read or reconstructed.
- (3) After due diligence, entering into and monitoring compliance with a contract with another party engaged in the business of record destruction to dispose of material, specifically identified as consumer information, in a manner consistent with this rule. In this context, due diligence could include reviewing an independent audit of the disposal company's operations and/or its compliance with this rule, obtaining information about the disposal company from several references or other reliable sources, requiring that the disposal company be certified by a recognized trade association or similar third party, reviewing and evaluating the disposal company's information security policies or procedures, or taking other appropriate measures to determine the competency and integrity of the potential disposal company.
- (4) For persons or entities who maintain or otherwise possess consumer information through their provision of services directly to a person subject to this part, implementing and monitoring compliance with policies and procedures that protect against unauthorized or unintentional disposal of consumer information, and disposing of such information in accordance with examples (b)(1) and (2) of this section.
- (5) For persons subject to the Gramm-Leach-Bliley Act, 15 U.S.C. 6081 et seq., and the Federal Trade Commission's Standards for Safeguarding Customer Information, 16 CFR part 314 ("Safeguards Rule"), incorporating the proper disposal of consumer information as required by this rule into the information security program required by the Safeguards Rule.

§ 682.4 Relation to other laws.

Nothing in the rule in this part shall be construed:

- (a) To require a person to maintain or destroy any record pertaining to a consumer that is not imposed under other law; or
- (b) To alter or affect any requirement imposed under any other provision of law to maintain or destroy such a record.

§ 682.5 Effective date.

The rule in this part is effective on June 1, 2005.

STATEMENTS OF ESTIMATED REGULATORY COSTS

Office of Financial Regulation

Statement of Estimated Regulatory Costs

**Proposed Rule 69V-180.040
Consumer Collection Agency Complaint Form and Procedures**

Rulemaking Authority: Section 559.725(3), F.S.

Required Elements

Section 120.541, Florida Statutes (2010), as amended by Chapter 2010-279, Laws of Florida, sets forth the requirements that agencies must follow in preparing Statements of Estimated Regulatory Costs (SERC). Specifically, paragraphs 120.541(2)(a) through (g), F.S., provide that certain information must be addressed in any SERC. The information requirements as they appear in the statute are cited below, with the Office's response to each as related to Rule 69V-180.040, Consumer Collection Agency Complaint Form and Procedures.

(a) 1. Is the rule directly or indirectly likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within 5 years after the implementation of the rule.

No. The proposed rule amendments provide a process for consumers to file complaints against consumer collection agencies with the Office of Financial Regulation on a form that meets statutory requirements. Pursuant to s. 559.725(3), F.S., consumers must certify on a form approved by the Financial Services Commission a summary of the nature of the alleged violation and the facts that allegedly support the consumer's complaint against the consumer collection agency. The rule incorporates by reference a complaint form that reflects the change in the law that the form no longer needs to be submitted under oath and notarized. That requirement was replaced with a provision that subjects a consumer to the penalty of perjury as provided in s. 837.06, F.S., which is punishable as a misdemeanor of the second degree, if the consumer provides false information to the Office.¹

2. Is the rule directly or indirectly likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within 5 years after the implementation of the rule?

No. The rule applies to consumers filing complaints with the Office. See above.

¹ See Section 5 of Chapter 2010-127, Laws of Florida, which reflects changes to s. 559.725, F.S.

3. Is the rule directly or indirectly likely to increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within 5 years after the implementation of the rule.

No. The Office currently accepts and processes complaints concerning consumer collection agencies; therefore, the Office will not be incurring any additional regulatory costs associated with the rule. From the consumer perspective, there are no costs associated with filing complaints with the Office.

(b) A good faith estimate of the number of individuals and entities likely to be required to comply with the rule, together with a general description of the types of individuals likely to be affected by the rule.

The rule applies to any person who wishes to file a complaint against a consumer collection agency. In 2010, the Office received approximately 1,200 complaints against consumer collection agencies.

(c) A good faith estimate of the cost to the agency, and to any other state and local government entities, of implementing and enforcing the proposed rule, and any anticipated effect on state or local revenues.

The rule does not impose any additional costs on the Office; nor does it impose any additional costs on any other state or local government entity. There are no anticipated effects on state or local revenue.

(d) A good faith estimate of the transactional costs likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the rule. As used in this section, "transactional costs" are direct costs that are readily ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring and reporting, and any other costs necessary to comply with the rule.

There are no anticipated transactional costs associated with the implementation of this rule.

(e) An analysis of the impact on small businesses as defined by s. 288.703, and an analysis of the impact on small counties and small cities as defined in s. 120.52. The impact analysis for small businesses must include the basis for the agency's decision not to implement alternatives that would reduce adverse impacts on small businesses.

There is no anticipated adverse impact on small businesses, small counties or small cities.

(f) Any additional information that the agency determines may be useful.

None.

(g) In the statement or revised statement, whichever applies, a description of any regulatory alternatives submitted under paragraph (1)(a) and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule.

No lower cost regulatory alternative to the proposed rule has been submitted to the Office.

Office of Financial Regulation

Statement of Estimated Regulatory Costs

**Proposed Rule 69V-180.080
Consumer Collection Agency Records**

Rulemaking Authority: Section 559.5556(1), F.S.

Required Elements

Section 120.541, Florida Statutes (2010), as amended by Chapter 2010-279, Laws of Florida, sets forth the requirements that agencies must follow in preparing Statements of Estimated Regulatory Costs (SERC). Specifically, paragraphs 120.541(2)(a) through (g), F.S., provide that certain information must be addressed in any SERC. The information requirements as they appear in the statute are cited below, with the Office's response to each as related to Rule 69V-180.080, Consumer Collection Agency Records.

(a) 1. Is the rule directly or indirectly likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within 5 years after the implementation of the rule.

No. The rule requires consumer collection agencies to maintain minimum information in their records necessary for the Office to determine compliance with Part VI of Chapter 559, F.S. The required information is basic data that consumer collection agencies should be already keeping as part of their regular business practices.

2. Is the rule directly or indirectly likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within 5 years after the implementation of the rule?

No. The rule requires all consumer collection agencies subject to the Office's jurisdiction, whether located in this state or out-of-state, to maintain the same minimum information in their records for the Office to determine compliance with Part VI of Chapter 559, F.S. The required information is basic data that consumer collection agencies should be already keeping as part of their regular business practices.

3. Is the rule directly or indirectly likely to increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within 5 years after the implementation of the rule.

No. See above.

(b) A good faith estimate of the number of individuals and entities likely to be required to comply with the rule, together with a general description of the types of individuals likely to be affected by the rule.

Consumer collection agencies are required to comply with the rule. As of April 21, 2011, there were 1,184 consumer collection agencies registered with the Office. A consumer collection agency is defined under s. 559.55(7), F.S., as any debt collector or business entity engaged in the business of soliciting consumer debts, unless otherwise exempt from registration under s. 559.553(4), F.S. Under s. 559.55(6), F.S., a debt collector includes any person who uses any instrumentality of commerce within this state, whether initiated from within or outside this state, in any business the principal purpose of which is the collection of debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. The term "debt collector" includes any creditor who, in the process of collecting her or his own debts, uses any name other than her or his own which would indicate that a third person is collecting or attempting to collect such debts.²

(c) A good faith estimate of the cost to the agency, and to any other state and local government entities, of implementing and enforcing the proposed rule, and any anticipated effect on state or local revenues.

The rule does not impose any additional costs on the agency. Further, the implementation and enforcement of the rule is solely the responsibility of the Office. Accordingly, no other state or local agencies will be impacted by the proposed rule. There are no anticipated effects on state or local revenue.

(d) A good faith estimate of the transactional costs likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the rule. As used in this section, "transactional costs" are direct costs that are readily ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in

² Under s. 559.55(6), F.S., the term "debt collector" does not include:

- a) Any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;
- b) Any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector for persons to whom it is so related or affiliated and if the principal business of such persons is not the collection of debts;
- c) Any officer or employee of any federal, state, or local governmental body to the extent that collecting or attempting to collect any debt is in the performance of her or his official duties;
- d) Any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;
- e) Any not-for-profit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors; or
- f) Any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent that such activity is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; concerns a debt which was originated by such person; concerns a debt which was not in default at the time it was obtained by such person; or concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.

complying with the rule, additional operating costs incurred, the cost of monitoring and reporting, and any other costs necessary to comply with the rule.

There are no anticipated transactional costs associated with the implementation of this rule. As indicated above, the rule requires consumer collection agencies to maintain minimum information in their records necessary for the Office to determine compliance with Part VI of Chapter 559, F.S. The required information is basic data that consumer collection agencies should be already keeping as part of their regular business practices.

(e) An analysis of the impact on small businesses as defined by s. 288.703, and an analysis of the impact on small counties and small cities as defined in s. 120.52. The impact analysis for small businesses must include the basis for the agency's decision not to implement alternatives that would reduce adverse impacts on small businesses.

The rule requires all consumer collection agencies subject to the Office's jurisdiction, whether located in this state or out-of-state, to maintain the same minimum information in their records for the Office to determine compliance with Part VI of Chapter 559, F.S. The required information is basic data that collection agencies should be already keeping as part of their regular business practices. Therefore, while some of the collection agencies may be small businesses, it is not anticipated that the rule will have an adverse impact on them.

There will no impact on small counties or small cities.

(f) Any additional information that the agency determines may be useful.

None.

(g) In the statement or revised statement, whichever applies, a description of any regulatory alternatives submitted under paragraph (1)(a) and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule.

No lower cost regulatory alternative to the proposed rule has been submitted to the Office.

Office of Financial Regulation

Statement of Estimated Regulatory Costs

Proposed Rule 69V-180.090, Consumer Collection Agency Records Destruction

Rulemaking Authority: Section 559.5556, F.S.

Required Elements

Section 120.541, Florida Statutes (2010), as amended by Chapter 2010-279, Laws of Florida, sets forth the requirements that agencies must follow in preparing Statements of Estimated Regulatory Costs (SERC). Specifically, paragraphs 120.541(2)(a) through (g), F.S., provide that certain information must be addressed in any SERC. The information requirements as they appear in the statute are cited below, with the Office's response to each as related to Rule 69V-180.090, Consumer Collection Agency Records Destruction.

(a) 1. Is the rule directly or indirectly likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within 5 years after the implementation of the rule.

No. The rule requires the consumer debt collectors to comply with the federal standards already in existence under the Fair and Accurate Credit Transactions Act of 2003.

2. Is the rule directly or indirectly likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within 5 years after the implementation of the rule?

No. The rule requires the consumer debt collectors to comply with the federal standards already in existence under the Fair and Accurate Credit Transactions Act of 2003.

3. Is the rule directly or indirectly likely to increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within 5 years after the implementation of the rule.

No. The rule requires the consumer debt collectors to comply with the existing federal standards already in existence under the Fair and Accurate Credit Transactions Act of 2003.

(b) A good faith estimate of the number of individuals and entities likely to be required to comply with the rule, together with a general description of the types of individuals likely to be affected by the rule.

Consumer collection agencies are required to comply with the rule. As of April 21, 2011, there were 1,184 consumer collection agencies registered with the Office. A consumer collection agency is defined under s. 559.55(7), F.S., as any debt collector or business entity

engaged in the business of soliciting consumer debts, unless otherwise exempt from registration under s. 559.553(4), F.S. Under s. 559.55(6), F.S., a debt collector includes any person who uses any instrumentality of commerce within this state, whether initiated from within or outside this state, in any business the principal purpose of which is the collection of debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. The term "debt collector" includes any creditor who, in the process of collecting her or his own debts, uses any name other than her or his own which would indicate that a third person is collecting or attempting to collect such debts.³

(c) A good faith estimate of the cost to the agency, and to any other state and local government entities, of implementing and enforcing the proposed rule, and any anticipated effect on state or local revenues.

The rule does not impose any additional costs on the agency. Further, the implementation and enforcement of the rule is solely the responsibility of the Office of Financial Regulation. Accordingly, no other state or local agencies will be impacted by the proposed rule. There are no anticipated effects on state or local revenue.

(d) A good faith estimate of the transactional costs likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the rule. As used in this section, "transactional costs" are direct costs that are readily ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring and reporting, and any other costs necessary to comply with the rule.

There are no anticipated transactional costs associated with the implementation of this rule. Under s. 559.5556, F.S., the Office may prescribe by rule the destruction of the books, accounts, records, and documents of the registrants. The rule provides a framework for the basic data that collection agencies already should be destroying under existing federal standards.

³ Under s. 559.55(6), F.S., the term "debt collector" does not include:

- g) Any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;
- h) Any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector for persons to whom it is so related or affiliated and if the principal business of such persons is not the collection of debts;
- i) Any officer or employee of any federal, state, or local governmental body to the extent that collecting or attempting to collect any debt is in the performance of her or his official duties;
- j) Any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;
- k) Any not-for-profit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors; or
- l) Any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent that such activity is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; concerns a debt which was originated by such person; concerns a debt which was not in default at the time it was obtained by such person; or concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.

(e) An analysis of the impact on small businesses as defined by s. 288.703, and an analysis of the impact on small counties and small cities as defined in s. 120.52. The impact analysis for small businesses must include the basis for the agency's decision not to implement alternatives that would reduce adverse impacts on small businesses.

Under s. 559.556, F.S., the Office may prescribe by rule the destruction of the books, accounts, records, and documents of the registrants. The rule provides a framework for the basic data that collection agencies already should be destroying under existing federal standards. Some of the consumer collection agencies registered with the Office may be small businesses. The propose rule, however, is not anticipated to have an adverse impact on them.

There will no anticipated impact on small counties or small cities.

(f) Any additional information that the agency determines may be useful.

None

(g) In the statement or revised statement, whichever applies, a description of any regulatory alternatives submitted under paragraph (1)(a) and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule.

No lower cost regulatory alternative to the proposed rule has been submitted to the Office.

Office of Financial Regulation

Statement of Estimated Regulatory Costs

**Proposed Rule 69V-180.100
Guidelines for Imposing Administrative Penalties**

Rulemaking Authority: Section 559.730(3), F.S.

Required Elements

Section 120.541, Florida Statutes (2010), as amended by Chapter 2010-279, Laws of Florida, sets forth the requirements that agencies must follow in preparing Statements of Estimated Regulatory Costs (SERC). Specifically, paragraphs 120.541(2)(a) through (f), F.S., provide that certain information must be addressed in any SERC. The information requirements as they appear in the statute are cited below, with the Office's response to each as related to Rule 69V-180.100, Guidelines for Imposing Administrative Penalties.

(a) 1. Is the rule directly or indirectly likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within 5 years after the implementation of the rule.

No. The Office may impose administrative sanctions for violations of Part VI of Chapter 559, F.S. The proposed rule provides guidelines for imposing sanctions, which include increased penalties for repeat violations. Only persons who are determined to have committed violations will be subject to sanctions.

2. Is the rule directly or indirectly likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within 5 years after the implementation of the rule?

No. Only persons who are determined to have committed violations will be subject to the sanction guidelines provided in the rule.

3. Is the rule directly or indirectly likely to increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within 5 years after the implementation of the rule.

No. The rule does not increase regulatory costs on the agency and only persons who commit violations will be subject to administrative sanctions.

(b) A good faith estimate of the number of individuals and entities likely to be required to comply with the rule, together with a general description of the types of individuals likely to be affected by the rule.

Consumer collection agencies are subject to the rule. As of April 21, 2011, there were 1,184 consumer collection agencies registered with the Office of Financial Regulation. A consumer collection agency is defined under s. 559.55(7), F.S., as any debt collector or business entity engaged in the business of soliciting consumer debts, unless otherwise exempt from registration under s. 559.553(4), F.S. Under s. 559.55(6), F.S., a “debt collector” includes any person who uses any instrumentality of commerce within this state, whether initiated from within or outside this state, in any business the principal purpose of which is the collection of debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. The term “debt collector” includes any creditor who, in the process of collecting her or his own debts, uses any name other than her or his own which would indicate that a third person is collecting or attempting to collect such debts.⁴

(c) A good faith estimate of the cost to the agency, and to any other state and local government entities, of implementing and enforcing the proposed rule, and any anticipated effect on state or local revenues.

The rule does not impose any additional costs on the agency. Further, the implementation and enforcement of the rule is solely the responsibility of the Office. Accordingly, no other state or local agencies will be impacted by the proposed rule. There are no anticipated effects on local revenue. Fines that are collected by the Office will have a positive impact on state revenues.

(d) A good faith estimate of the transactional costs likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the rule. As used in this section, “transactional costs” are direct costs that are readily ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license,

⁴ Under s. 559.55(6), F.S., the term "debt collector" does not include:

- m) Any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;
- n) Any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector for persons to whom it is so related or affiliated and if the principal business of such persons is not the collection of debts;
- o) Any officer or employee of any federal, state, or local governmental body to the extent that collecting or attempting to collect any debt is in the performance of her or his official duties;
- p) Any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;
- q) Any not-for-profit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors; or
- r) Any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent that such activity is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; concerns a debt which was originated by such person; concerns a debt which was not in default at the time it was obtained by such person; or concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.

the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring and reporting, and any other costs necessary to comply with the rule.

There are no anticipated transactional costs associated with the implementation of this rule.

(e) An analysis of the impact on small businesses as defined by s. 288.703, and an analysis of the impact on small counties and small cities as defined in s. 120.52. The impact analysis for small businesses must include the basis for the agency's decision not to implement alternatives that would reduce adverse impacts on small businesses.

The guidelines provided in the proposed rule set forth a framework for imposing administrative sanctions against persons who commit prohibited acts. Only persons who commit violations will be subject to sanctions.

There will no impact on small counties or small cities.

(f) Any additional information that the agency determines may be useful.

The proposed rule will assist the Office of Financial Regulation in ensuring that administrative sanctions are imposed in a consistent manner.

(g) In the statement or revised statement, whichever applies, a description of any regulatory alternatives submitted under paragraph (1)(a) and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule.

No lower cost regulatory alternative to the proposed rule has been submitted to the Office.

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