

Preliminary Evaluation of the State Collection Agency Licensing Board

Recommendation: Full Evaluation

The Sunset Review Process

This evaluation was undertaken under the auspices of the Maryland Program Evaluation Act (§ 8-401 *et seq.* of the State Government Article), which establishes a process better known as “sunset review” because most of the agencies subject to review are also subject to termination. Since 1978, the Department of Legislative Services (DLS) has evaluated about 70 State agencies according to a rotating statutory schedule as part of sunset review. The review process begins with a preliminary evaluation conducted on behalf of the Legislative Policy Committee (LPC). Based on the preliminary evaluation, LPC decides whether to waive an agency from further (or full) evaluation. If waived, legislation to reauthorize the agency typically is enacted. Otherwise, a full evaluation typically is undertaken the following year.

The State Collection Agency Licensing Board last underwent a preliminary evaluation as part of sunset review in 1999. The preliminary evaluation determined that, while the board operated efficiently and effectively, the authorizing statute required updating to reflect changes within the industry. As a result, DLS recommended that LPC waive the board from full evaluation, and that the board submit a follow-up report to LPC by October 1, 2000, detailing the board’s recommendations for revising its authorizing statute, the Maryland Collection Agency Licensing Act (MCALA). Chapter 79 of 2000 extended the board’s termination date to July 1, 2012, and the board submitted a follow-up report in September 2000 stating that it was not pursuing any revisions to its authorizing statute.

In conducting this preliminary evaluation, DLS staff interviewed board members, staff, and a licensee; reviewed pertinent State statutes and regulations; attended a board meeting; reviewed board meeting minutes; and visited the board’s office. In addition, DLS staff analyzed data relating to the board’s administration of licenses, complaints, and finances.

The State Collection Agency Licensing Board reviewed a draft of this preliminary evaluation and provided the written comments attached at the end of this document as **Appendix 1**. Appropriate factual corrections and clarifications have been made throughout the document; therefore, references in board comments may not reflect the final version of the report.

The Collection Agent Industry

State statute defines collection agencies as third parties that collect consumer debt or sell systems used to collect consumer debt. Most entities that collect their own debt are not considered collection agencies and, therefore, are not regulated by the board. The board does regulate debt purchasers that collect a consumer claim acquired when the claim is in default.

The federal Fair Debt Collection Practices Act, enforced by the Federal Trade Commission, prohibits debt collectors from using abusive, unfair, or deceptive practices to collect debt. The federal Act specifically prohibits debt collectors from:

- contacting third parties other than a debtor's attorney for any reason other than to locate the debtor. In contacting third parties, collection agents must state their name but may not reveal that they are calling about a debt or state the agency's name unless asked;
- contacting a debtor directly who is represented by an attorney unless the debtor gives the agent permission to contact the debtor directly. Collection agents may not call debtors before 8 a.m. or after 9 p.m., and may not contact them at work if the employer specifically prohibits collection calls;
- using threats or actual violence against a debtor or another person. Collection agents may not publish a debtor's name on a "blacklist" or other public posting;
- lying about the debt, their identity, the amount owed, or the consequences of not paying the debt. Collection agents may not send documents that resemble legal documents or offer incentives to disclose information; and
- engaging in unfair or shocking methods to collect debt, including adding interest or fees to the debt, threatening criminal prosecution, or threatening to seize property to which the agent has no right.

The federal Act also exempts specific federal benefits from garnishment, including Social Security and other federal retirement payments and student assistance.

The State Collection Agency Licensing Board

The State Collection Agency Licensing Board is located within the Department of Labor, Licensing, and Regulation's (DLLR) Office of the Commissioner of Financial Regulation. Board membership consists of the Commissioner of Financial Regulation, two collection agency industry representatives, and two consumer members. The commissioner chairs the board. The other four members are appointed by the Governor with the Senate's advice and consent for

four-year terms. The consumer members must be either board officers or members of a Maryland consumer group or an employee of one of Maryland’s legal consumer protection units. Consumer members cannot serve as board members if they are subject to board regulation. They also must not have financial interests with or be paid by someone regulated by the board.

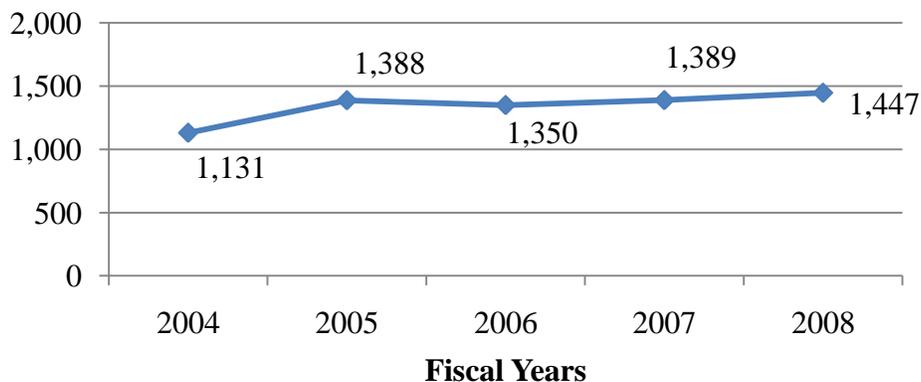
The board is served by two administrative officers from the Office of the Commissioner of Financial Regulation and by the office’s legal counsel. Additional support comes from the office’s executive, complaint, licensing, investigative, legal enforcement, and other support staff.

The board provides consumers with an alternative venue for consumers who otherwise would have to pay expensive attorney fees or file time-consuming claims with the Federal Trade Commission. As of July 27, 2009, there were 1,452 collection agency licensees, but only 1,018 collection agency firms operating in Maryland, not including all branch offices.

Number of Licensed Collection Agencies Has Grown

Exhibit 1 shows that the number of collection agencies has steadily increased. But while revenues from collection agencies have increased along with the size of the industry, the basic licensing fees charged by the industry have not. Applicants for a two-year collection agency license must submit an application, a \$400 nonrefundable application fee, and a \$5,000 surety bond. The surety bond is available to reimburse anyone who suffers damage from a collection agency. The board may renew the license for a two-year term if the collection agency is in good standing and submits a renewal application form, a \$400 renewal fee, and a bond or bond continuation certificate.

Exhibit 1
Growth in Collection Agency Licensees
Fiscal 2004-2008



Source: State Collection Agency Licensing Board

Despite Some Changes, Licensing Remains Similar

The board must process collection agency licenses within 60 days. The board currently processes licenses within 14 to 60 days. Although the board implemented an electronic licensing mechanism that was expected to significantly reduce processing time, the length of time necessary to process an initial application has remained the same. While e-licensing has streamlined the application and payment processes, staff must still collect all pertinent documents and review and decide on the merits of each applicant. Renewing licenses electronically is now easier, however, because most documentation is already on file.

Some collection agencies may remain unlicensed. Operating a collection agency without a license is a misdemeanor under State law, subject to a \$1,000 fine and imprisonment for up to six months. Even if an agency is licensed, the board may reprimand a collection agency, or suspend or revoke its license, if the agency or any owner, director, officer, member, partner or agent of the collection agency commits certain acts. These include making a material misstatement in an application for a license; being convicted under U.S. or State law of a felony, or a misdemeanor directly related to engaging in the collection agency business; committing fraud or engaging in illegal or dishonest activity in connection with the collection of a consumer claim; knowingly or negligently violating the Maryland Consumer Debt Collection Act; and failing to comply with a lawful order the board passes under the Maryland Collection Agency Licensing Act. The board may also impose a fine of up to \$500 for violating a board order. The board may deny an application if an applicant fails to meet licensure requirements, or if the applicant has committed any act that would be a ground for reprimand, suspension, or revocation of a license.

If the board denies a license application, or takes action against a licensee, the licensee or license applicant is entitled to a hearing and a judicial appeal.

Statutory and Other Changes Affecting the Board Since 1999 Sunset Review

Since the preliminary evaluation of 1999, a few statutory changes have affected board operations. As shown in **Exhibit 2**, the General Assembly extended the board's operations until 2012. In the following year, the General Assembly added a tenth exemption from the Maryland Collection Agency Licensing Act and added other exclusions.

Due to a desire to continue to regulate collection agencies effectively, and in order to stop the subsidization by other industries of the regulatory costs associated with collection agencies, the board is considering seeking legislation authorizing the board to set reasonable licensing fees in a manner that will produce the funds necessary to cover the direct and indirect cost of regulating collection agencies.

Exhibit 2
Major Legislative Changes Since 1999 Sunset Review

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2000	79	Extends board's termination date by 10 years to July 1, 2012.
2001	558	Subject to registration requirements, exempts a person that is collecting a debt for another person from the scope of the Maryland Collection Agency Licensing Act if both persons are related by "common ownership," the person who is collecting a debt does so only for those persons to whom the person is related by "common ownership," and the "principal business" of the person who is collecting a debt is not the collection of debts.
2007	472	Extends regulation by the board to debt purchasers that collect a consumer claim acquired when the claim was in default. Sets qualifications for licensure, clarifies the grounds for denial of an application, and establishes the right to a hearing before the board for persons that are denied a license. Expands the board's authority to reprimand a licensee or suspend or revoke a license.

Source: Laws of Maryland

Complaints Have Increased Over the Past Five Years

Collection agencies typically begin collecting debt by finding a consumer's mailing address and phone number and notifying the consumer of the alleged debt. The collection agency can request that the consumer pay the debt once the consumer has been notified. The consumer can dispute the alleged debt or ask the collection agency to verify the debt. If a consumer writes to the collection agency to dispute the debt, refuses to pay the alleged debt, or asks the collection agency to stop its communications, the federal Fair Debt Collection Practices Act requires an agency to either stop contacting the debtor and/or to try to recover the debt through a specified remedy, including a civil lawsuit.

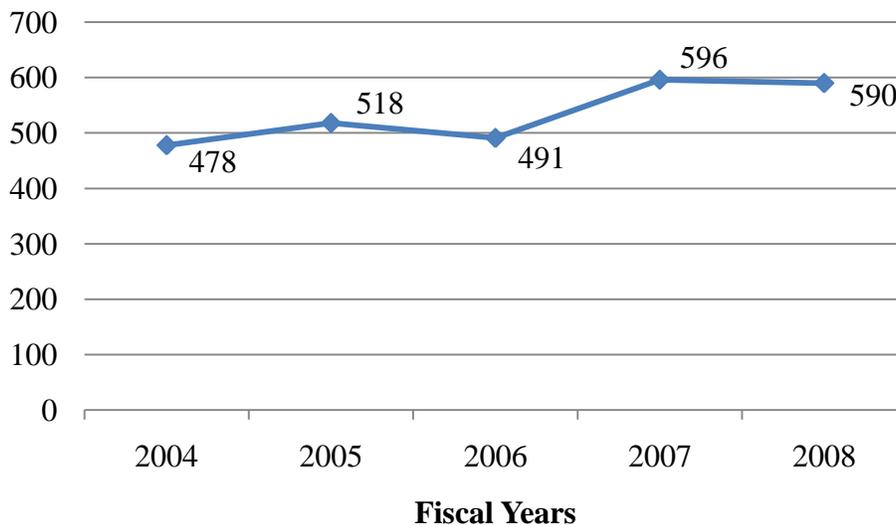
Collection agencies may either receive a percentage of the amount they collect or try to collect the debt after having purchased it themselves, usually at a deeply discounted price. Collection agencies may report debts to credit reporting bureaus or sue for the debt in addition to or instead of contacting customers through conventional means. The incentives to collect debt

and the methods that may prove successful may engender abusive and illegal practices like harassment, fraudulent activity, and discrimination. Consumers that believe a collection agency has engaged in illegal practices may submit a complaint to the board.

Board staff logs each complaint in a complaint database, and each complaint is assigned to an investigator within the Office of the Commissioner of Financial Regulation. The board administrator may also investigate complaints, particularly those that relate to collection agency practices. If investigative staff determines that enough evidence exists to charge a collection agency, then the board members review the charges.

Exhibit 3 illustrates a gradual increase in complaint activity from fiscal 2004 to 2008. In fiscal 2008, 491 of the 590 complaints were against collection agencies, 68 complaints were made against law firms, and 31 were filed against debt purchasers, who were required to be licensed in 2007.

Exhibit 3
Collection Agency Complaint History
Fiscal 2004-2008



Source: State Collection Agency Licensing Board

Of the complaints filed in fiscal 2008, 46% involved disputed claims, while 33% involved unprofessional or harassing conduct. Complaints categorized as payment history issues, fraudulent activity, lack of jurisdiction, payment mediation, inquiries, disputed fees, and client/agency relationship issues constituted the remaining 21%.

Of the 590 complaints, 86% involved debt recovery organizations based outside of Maryland, and 25 complaints (4%) were filed by out-of-state consumers.

The vast majority of complaints (82%) are resolved in fewer than 90 days, but as **Exhibit 4** demonstrates, some take longer to resolve. Complaint unit examiners received extensive training in the mechanics of the Fair Debt Collection Practices Act and the Maryland Consumer Debt Collection Act in February 2009. The training provided a basis for amendments to the Maryland Act, but the board does not plan to revisit the Act until after the sunset process is complete.

Exhibit 4
Collection Agency Complaint Resolution
Fiscal 2008

	Up to 30 <u>Days</u>	31 to 60 <u>Days</u>	61 to 90 <u>Days</u>	91 to 120 <u>Days</u>	More Than <u>120 Days</u>
Days to Complaint Resolution	35%	33%	14%	7%	11%

Source: State Collection Agency Licensing Board

Revenues and Expenditures Are Difficult to Ascertain

The commission is budgeted within the Office of the Commissioner of Financial Regulation. The office prepares five budgets: four special fund budgets for activities paid for by special funds and one small general fund budget for all other office activities and expenses. Since the State Collection Agency Licensing Board is general funded, a separate budget for the board is not available.

Upon request, the office estimated that, for fiscal 2009, it received \$270,000 in revenues from licensing fees. The office also projected a budget of \$474,142 in expenses. The expenses included \$55,853 for shared administrative and legal staff; \$150,600 for work performed by the office’s complaint unit; \$61,880 for work by the licensing unit; \$28,000 for executive staff time; \$47,413 for human resources and other DLLR support; \$45,938 for investigative staff; \$10,375 for legal enforcement; and \$74,083 for materials, rent, information technology, and other costs. However, DLS cannot attest to the reliability of these figures, and the commissioner’s office noted that providing greater budgetary detail would be of questionable reliability.

The commissioner’s office is currently planning to seek regulatory authority from the General Assembly to set its fees according to the cost of regulating the collection agency

industry. The office has also communicated a desire to regulate collection agencies more actively. The level of desired regulation, however, is not clear.

Recommendation

There is a continued need for regulation of collection agencies in the State to protect the public from harassment and illegal conduct. **However, given the board's placement within the larger Office of the Commissioner of Financial Regulation, as well as potential changes to the way the State regulates and funds the regulation of collection agencies, the Department of Legislative Services recommends that a full evaluation of the State Collection Agency Licensing Board be included as part of the proposed full evaluation of the Office of the Commissioner of Financial Regulation, and that it address the following issues:**

- **how the board functions within the Office of the Commissioner of Financial Regulation:** A full evaluation should collect more accurate data on the board's revenues and expenditures and determine whether it should be funded differently. It should also examine how the board's placement within the office of the commissioner affects its operation.
- **whether MCALA should be revised to enhance the board's capacity to regulate collection agencies, and if so, how:** A full evaluation should look at how the board is functioning, including whether collection agencies need more State regulation given the role of the Federal Trade Commission in enforcing federal statutes. That review should include a determination as to whether the board needs more authority or resources to regulate collection agencies effectively and resolve all complaints within a reasonable timeframe.

If a full evaluation of the Office of the Commissioner of Financial Regulation is not pursued, an independent full evaluation of the State Collection Agency Licensing Board should pursue the same issues identified above.

**Appendix 1. Written Comments of the
State Collection Agency Licensing Board**

December 3, 2009

Department of Legislative Services
Office of Policy Analysis
Attn: Michael C. Rubenstein, Principal Policy Analyst
90 State Circle
Annapolis, Maryland 21401-1991

Re.: Sunset Review—Preliminary Evaluation of the State Collection Agency
Licensing Board

Dear Mr. Rubenstein:

On behalf of the State Collection Agency Licensing Board (the "Board"), this will acknowledge our receipt of your letter of November 19, 2009 and the Preliminary Evaluation of the State Collection Agency Licensing Board. The Board has reviewed the draft and our staff has provided policy analyst Andrew Johnston with factual corrections and clarifications under separate cover.

If we can be of any further assistance in providing your office with additional information or clarification, please feel free to contact the Board's Administrator, Michael Jackson at 410-230-6017.

Sincerely,



Sarah Bloom Raskin, Chairman
State Collection Agency Licensing Board

cc: Alexander M. Sanchez, Secretary, Department Labor, Licensing, and Regulation
Mark Kaufman, Deputy Commissioner of Financial Regulation
Michael Jackson, Administrator, Collection Agency Licensing Board
Karl S. Aro, Executive Director, Department of Legislative Services

