the FDCPA for appropriate criteria to use in collecting their own debts. In addition, the Commission's jurisdiction under Section 5 has been sufficient to regulate the collection activities of creditors when necessary. Also, to the extent that the Commission has proceeded against creditors for violations of Section 5 in their debt collection activities, it has used the FDCPA as a model for appropriate standards of conduct—not the Guides. Thus, the Guides have not been useful to the Commission's debt collection enforcement program against either creditors or debt collectors.

2. Debt [Section 237.0(b)]

The Guides' definition of "debt" is similar to that in the FDCPA [Section 803(5)] except that it includes "commercial" as well as "consumer" debts.5 Congress determined in enacting the FDCPA that there was no need to cover "commercial" debts. The Commission's experience in enforcing the FDCPA supports this decision. The Commission has received few complaints from commercial enterprises about debt collection abuse. If the Commission finds that there is a problem with the collection of commercial" debts, the problem can be addressed adequately under Section 5.

3. Debtor [Section 237.0(c)]

The Guides define a "debtor" as one who owes or allegedly owes a money debt. The FDCPA's definition of "consumer" as "any natural person obligated or allegedly obligated to pay any debt" is analogous. From the Commissions standpoint, they are substantively identical. The absence of the Guides will have no effect upon who is considered a "debtor."

4. Creditor [Section 237.0(d)]

The Guides' definition of "creditor" includes all parties to whom money is owned or allegedly owed. Since creditors can also be "industry members" under the Guides, the definition does not affect the scope of the Guides' coverage. The FDCPA's definition of "creditor" is similar except that it excludes those who receive or are assigned debts in default for purposes of collection.

5. Credit Bureau [Section 237.0(e)]

There is no provision in the FDCPA that is analogous to the Guides' definition of "credit bureau." ⁶ Sections

806(3) and 807(16) of the FDCPA, however, make two references to the definition of a "consumer reporting agency" (credit bureau) contained in Section 603(f) of the Fair Credit Reporting Act (FCRA).7 The FCRA definition of "consumer reporting agency" has rendered the Guides definition of "credit bureau" obsolete; the FCRA definition is keyed to the concept of a "consumer report" in the FCRA and was obviously drafted in a credit reporting context. The FCRA definition governs insofar as the Commission's law enforcement activities are concerned.

6. Collection Agency [Section 237.0(f)]

The Guides define a "collection agency" as any entity that collects money debts for others. This is essentially the focus of the FDCPA's definition of "debt collector" in Section 803(6) as one "who regularly collects or attempts to collect, directly or indirectly, debts owed * * * another." Thus, the Guides' definition has been subsumed by the FDCPA.

B. Deception (general), Guide 1 [Section 237.1]

Section 807(10) of the FDCPA is virtually identical to Guide 1.8 Thus, elimination of Guide 1 will have no effect on the Commission's debt collection enforcement policy.

C. Disclosure of Purpose, Guide 2 [Section 237.2]

Section 807(11) of the FDCPA 9 paraphrases Guide 2(a) of the Guides, 10

requiring that all communications made to collect a debt contain a disclosure that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose. Guide 2(b) prohibits placing communications in the hands of others that do not contain the required disclosure. Similarly, knowingly placing communications in the hands of others that violate the FDCPA is a violation of Section 807(10) as well as the preamble to Section 807 of the FDCPA with respect to "debt collectors" covered by the Act. Thus, Guide 2(b) is also subsumed by Section 807 of the FDCPA.

D. Government Affiliation, Guide 3 [Section 237.3]

Guide 3 prohibits false representations of government affiliation.¹¹ Section 807(1) of the FDCPA is virtually identical.¹² Thus, elimination of Guide 3 will have no effect on the Commission's debt collection enforcement policy.

E. Organizational Titles, Guide 4 [Section 237.4]

Guide 4 prohibits conveying a false impression that an "industry member" is a "credit bureau." ¹³ The analogous provision in the FDCPA is Section 807(16), which prohibits the same practice. ¹⁴ As a result, elimination of Guide 4 will have no effect on the Commission's debt collection enforcement policy.

F. Trade Status, Guide 5 [Section 237.5]

Guide 5 prohibits an "industry member" from creating the false impression that it is a collection agency. ¹⁵ Since the FDCPA principally regulates the activities of genuine collection agencies, it has no analogous provision. To the extent that it regulates the activities of "creditors," Section

 $^{^5}$ ''Debt shall mean money which is due or alleged to be due from one to another.''

 $^{^6}$ "Credit Bureau is any * * * legal entity engaged in gathering, recording, and disseminating favorable as well as unfavorable information relative to the

credit worthiness, financial responsibility, paying habits and character of * * * any other legal entity being considered for credit extension, so that (the) prospective creditor may be able to make a sound decision in the extension of credit.''

⁷Consumer reporting agency is "any person which, for monetary fees, dues or on a cooperative nonprofit basis, regularly engages * * * in the practice of assembling or evaluating consumer credit information on consumers for the purpose of furnishing consumer reports to third parties.* * *"

⁸ Guide 1 states that an industry member "shall not use any deceptive representation or deceptive means to collect or attempt to collect debts or to obtain information concerning debtors." Section 807(10) states that a debt collector shall not "use any false representation or deceptive means to collect or attempt to collect any debt or to obtain information about a consumer."

⁹ Section 807(11) requires that a debt collector "disclose clearly in all communications made to collect a debt or to obtain information about a consumer that the debt collector is attempting to collect a debt and that any information will be used for that purpose."

^{10 &}quot;An industry member shall not use or cause to be used in connection with the collection of or the attempt to collect a debt or * * * obtaining or attempting to obtain information concerning a debtor any * * material printed or written which does not * * * disclose * * * the purpose of collecting or attempting to collect a debt or to obtain or attempt to obtain information concerning a debtor."

^{11 &}quot;An industry member shall not use any trade name, address, insignia, picture, emblem or any other means which creates a false impression that such industry member is connected with or is an agency of government."

¹² A debt collector may not falsely represent or imply that it is "vouched for, bonded by or affiliated with the United States or any State, including the use of any badge, uniform or facsimile thereof."

^{13 &}quot;An industry member which is not in fact a "Credit Bureau * * * shall not use the term * * * in its corporate or trade name; nor shall it use any other term of similar import or meaning * * * as to create the false impression that such industry member is a credit bureau."

¹⁴ A debt collector may not falsely represent or imply that it "operates or is employed by a consumer reporting agency. * * * "

consumer reporting agency. * * * *''

15 "In collecting debts * * * an industry member shall not, through the use of any designation or by other means, create the impression that he is a collection agency, unless he is such as defined in this part."