INDUSTRY WHITE PAPER

# Selecting a Third-Party Commercial Collection Agency

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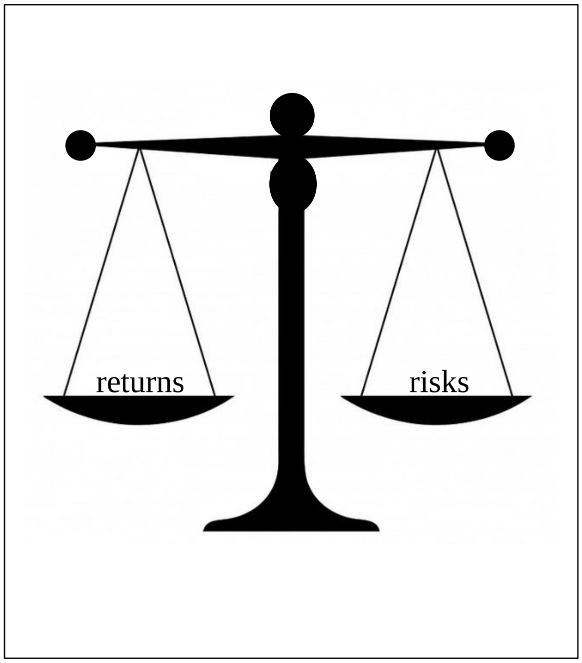
# INTRODUCTION




Choosing a third-party commercial collection agency is of vital importance to any organization that extends funding or that provides Business-to-Business services on credit, including equipment finance companies, Merchant Cash Advance factors, and traditional commercial lenders.

While most companies choose a third-party commercial collection agency based upon the potential returns that a given agency might provide, it is also critical to consider the potential risks that are borne by such a choice.

In short, choosing a third-party commercial collection agency is a matter of comparing potential returns *and risks* in order to achieve an optimal balance of both, and the purpose of this paper is to present one possible outline for making such a balanced choice.

# AGENCY ETHICS

Perhaps the most fundamental risk arising from the choice of a third-party commercial collection agency is whether those involved will be honest, open, and transparent, both when interacting with you and when interacting with debtors on your behalf. That is, will the agency behave ethically?

Making this determination requires more than merely asking if they're ethical. Consider that many well-known people of supposedly good character have been found to be ethically deficient once their unknown activities came to light. Their public persona didn't control their actions when no one was looking.

So, when making a choice between agencies, do you want an agency that will be open, honest, and transparent with you *only when you're watching them,* or open, honest, and transparent *all the time in all of their dealings with you and with others?* Obviously, the latter is the much better–and ultimately safer–bet. You should want ethics in your business dealings, you should want to be surrounded by ethical people, and you therefore should want your agency to act ethically as well.

But how will you know before making your selection that an agency will act ethically? That's the critical question, and in order to answer it, consider the following:

*Unless there's something you know about tomorrow that will make it look different from today, most people would expect tomorrow to look pretty much the same as today, and they'd probably be right most of the time.*

In other words, without some sort of information that indicates that the past will be different from the future in some meaningful way, the best indicator of how an agency will act tomorrow is how they act today and how they've acted in the past.

Therefore, if you want to know if an agency will act ethically, you should investigate whether they've acted ethically with others in the past.

- Ask for references from their other clients and check with your competitors if you're comfortable doing so. Do they have a reputation for acting ethically, or are they known for pushing ethical boundaries to a point at which you feel uncomfortable.

- Look at their online reviews, including Glassdoor®, Google®, and social media. Subtract the bottom 10% (because you can't please everyone) and get a sense of what online people complain about and what online people praise the agency for.

- Look at their history of regulatory and Better Business Bureau® complaints. (In fact, see if they are even a member of the Better Business Bureau®, which gives an indication that the agency is aligned with industry best practices and overall ethical standards.)

  Again, subtract the bottom 10% (because you can't please everyone) and get a sense of what people have felt about strongly enough to go the extra mile with their complaint.

- Look at their history of lawsuits. However, be careful of drawing strong negative conclusions unless the volume of suits seems high or the overall trend is clear and consistent. Unfortunately, imaginative attorneys have created an entire business model that is focused exclusively on the collection industry, so be cautious when drawing conclusions in this area.

  Consider that someone filing a Better Business Bureau® complaint has no reasonable incentive other than to vent, receive an apology, or cause a change in perceived problematic business practices, whereas a plaintiff filing a lawsuit has the potential of receiving tens or even hundreds of thousands of dollars in damages for something as simple as alleging that they "heard a click and a pause" when they received a call, so the agency "must" have been using a predictive dialing system.

- Ask your peers for a review. Does the agency have a reputation for consistently "forgetting" to remit client balances, and then "apologizing" when their errors are discovered?

> *An ethical agency will be honest, open, and transparent both when interacting with you and when interacting with debtors on your behalf, and the best measure of whether an agency will act ethically with you is whether it has acted ethically in the past.*

# INDUSTRY AND PRODUCT EXPERIENCE

Another fundamental risk arising from the choice of a third-party commercial collection agency is the risk that an agency lacks the necessary experience in the relevant industry and with the relevant product. For example, an MCA is not equipment finance and equipment finance is not traditional commercial lending, so having experience with one does not automatically translate into having experience with the other.

You don't want your agency learning on the job at your expense, and without experience in your industry and with your product, that is exactly what you are likely to get.

Notice that agency longevity, by itself, is not a good indicator of an agency's ability to provide what you need in this area. Commercial credit is not–in any way, shape, or form–the same as consumer credit, a local or regional agency footprint will not be adequate to service a nationwide need, and a lack of legal resources will restrict an agency from taking your collections to the next level when necessary.

Of course, such experience must ultimately be possessed by the agency's collectors themselves. As such, you should ask the agency how many years on average its collectors have worked in your industry and what the typical minimum industry experience level is for someone to be hired by the agency. In addition, you should ask the same questions about the agency's collection managers and its C-suite executives in order to determine the level of oversight, mentoring, and coaching that can be provided to the agency's collectors.

On a more general level, you should ask the agency how much familiarity its collectors and collection managers have with the legal issues surrounding commercial collections, as well as their overall knowledge of general business issues regarding your own commercial products.

*An established agency with a long-term presence in your industry, deep experience with your products, and the necessary resources to meet all of your collection needs will be an agency that does not have to learn on the job at your expense.*

# INDUSTRY CONNECTION

A third-party commercial collection agency needs to be keenly aware of emerging legal, regulatory, and compliance issues. This allows the agency to alter its processes when necessary and to manage emerging risks.

In addition, a third-party commercial collection agency needs to be in a position from which it can influence potential changes that might negatively affect both its own industry and yours.

Being an integral and involved member of relevant trade associations, as opposed to being merely a dues-paying member or not even being a member at all, is a good sign. Investing and assisting in effective lobbying efforts in order to be heard on important issues is important, since this gives the agency an avenue to actively advocate for both its own industry and yours.
Agencies that are active in trade associations and lobbying groups will better understand the issues confronting your business, the current needs of your business, and what your competition is currently doing. All these things will enable the agency to give you better advice, avoid potential risks, and make itself a valuable resource to you and your business.

*An agency that is active in trade associations and lobbying groups will be in a better position to give you advice, help you avoid potential risks, and make itself a valuable resource to you.*

## ORGANIZATIONAL RISK

Another fundamental risk arising from the choice of a third-party commercial collection agency is the risk that an agency is not in compliance with its legal obligations, including the following:

- State, local, and city agency branch and collector licensing requirements.
- Minimum agency fidelity bonding requirements.
- Minimum agency insurance requirements.
- Foreign and domestic corporate registration requirements.
- Foreign and domestic agent for service of process requirements.

Agencies often find compliance in these areas to be one of the biggest initial hurdles that they face, and sometimes agencies therefore decide to "cut corners" in order to minimize what would otherwise be significant initial and ongoing expenses, which essentially means that they are taking a gamble that they–and you–will never be found to be out of compliance in these areas.

Unfortunately, the penalties for non-compliance can be severe, and can range from fines to lawsuits and even to an absolute ban from working in a particular location. Moreover, a number of states, localities, and cities do not even follow their own requirements in some cases, potentially making an agency's initial and ongoing compliance quite difficult, and an agency's knowledge of its initial and ongoing obligations absolutely critical.

Regarding insurance requirements, notice that it is not enough for the agency to have complied with minimum regulatory requirements. It is also important that agencies maintain other coverages, including acceptable amounts of the following:

- General liability:
  To protect against claims for bodily injury and property damage.

- Errors and omissions (also known as Professional):
  To protect against claims for inadequate work or the negligent delivery of services.

- Cyber:
  To protect against claims for internet-based risks and from risks related to the structure and use of their information technology.

- Employment practices liability:
  To protect against claims for wrongful termination, sexual harassment, discrimination, invasion of privacy, and wage and hour law violations.

- Auto:
  To protect against property, liability, and medical claims arising from an automobile accident.

- Workers compensation:
  To provide wage replacement and medical benefits to employees who are injured in the course of their employment in exchange for the mandatory relinquishment of their right to sue the employer for negligence.

- Key person:
  To protect against the sudden loss of a key executive would have a large negative effect on the company's operations

An agency's initial and ongoing insurance coverages are an area of great importance, and an agency's awareness of its obligations and its attention to these obligations is therefore of critical importance.

One related, and frankly counter-intuitive, area of concern regarding corporate legal risk is whether an agency asks you to indemnify them for damages that are caused by your own employees. Of course, the initial reaction of most companies when asked to do so might very well be "absolutely not." However, the following is worth considering before you respond to the agency's request.

The mere act of asking for such indemnification indicates the following:

- The agency has considered the risks of its business.

- The agency actively manages the risks of its business.

- The agency is less likely to act recklessly in areas that might create risks for it–and therefore you.

- The agency is telling you that it is unwilling to "race to the bottom" and take any business at any risk.

- The agency conducts its business in a thoughtful and strategic way.

- The agency is communicating with you regarding what it considers to be appropriate business practices and standards.

- The business possesses administrative employees who are well-trained and thoughtful about their roles in the agency.

- The agency expects to work with companies that share the goal of treating others with respect.

Because, of these, and other, reasons, you might wish to reconsider whether you will refuse to indemnify an agency for damages *that are caused by your own employees.*

Of course, finding and working with an agency that handles its business affairs correctly and manages its risks appropriately can be difficult, and if you do find one, you should expect to compensate it for its efforts because it is truly looking out for you in ways that you might never realize.

> *An agency that either does not understand what it must legally and practically do in order to provide its services, or that tries to cut corners in the way that it operates, is an agency that is gambling both with its own future and with yours.*

## BUSINESS STYLE

The term "business style" refers to how an agency is willing to work with you. Do they offer a one-size-fits-all business model, or do they adapt to your business needs? Do they focus on what's important to them, or do they focus on what's important to you?

Things to consider when choosing an agency should include the following:

- Will they treat you like a valued business partner (a partnership style), or do they seem to only care about their "cut" each month (a transactional style)?

- Are they adaptive to your placement, reporting and remittance needs, or do they use a one-size-fits-all model that makes things easier for them rather than for you?

- Does the agency conform to your ideals regarding corporate citizenship and stewardship, and is the agency aligned with your company's philanthropic goals?

- Does their process make you feel like you would be working *for* them, as opposed to working *with* them?

- Do they enhance your corporate brand? That is, if you chose to work with the agency, do you believe that they would do a good job of representing what you stand for as a business? Do you believe that you would find yourself wanting to promote the agency to others, or do you think that you would prefer that it operate without your being associated with it?

> *An agency should be able to adapt to your needs, operate in a way that is consistent with your company's concepts of corporate citizenship and stewardship, and best represent your business brand.*

## COMMUNICATION STYLE

How a third-party commercial collection agency communicates with you can either be one of the most frustrating, or most satisfying, aspects of your relationship with it. You should expect that an agency will communicate with you as much as possible and whenever you want *while they are asking for your business.* It is usually only after an agency has been chosen that communication problems begin to arise.

As such, you should consider the following when choosing an agency:

- Will the agency give you the amount of communication that you ask for in the way that you ask for it, or do you get the feeling that their process would keep you on a "need-to-know" basis, with them determining both when and what you actually need to know?

- Do the types of reports that the agency normally generates strike you as sufficient in terms of type, timing, information content, and format?

- Is the agency both willing and able to adapt the type, timing, information contained, and format of reporting to your specific needs?

- Is the agency going to work with your team as "partners" in order to determine your specific needs, or are they just going to guess at what your specific needs actually are?

- Will the agency provide a real-time, online data portal so that you can see negotiation status, collection status, notes, and financial results on your accounts whenever you want? Is the agency willing (and eager) to have you audit your portal information at your discretion, or do you sense a reluctance to share what they know about your accounts with you?

- Will the agency help you "true up" your remittances and their reporting in order to ensure accuracy in both their data and your receipts, and do they seem eager or reluctant to do so?

- Will the agency be readily available to handle questions and issues in person, or will you have to wade through numerous voicemail prompts in order to leave a message and wait for a response?

- If you have future questions or issues, what do you think the agency's response will be in terms of getting you what you need when you need it, and do think that your questions and issues will be viewed as a priority or as an annoyance?

- When you call the agency, are you met with an automated greeting, a "phone calling tree," an automated message that their voicemail mailbox is full, or an actual person who can efficiently route your call? When choosing an agency, be sure to make a few random calls to your candidates in order to see if you are treated the way that your debtors would like to be treated if they were trying to pay off one of your debts.

- When you consider dealing with the agency on a day-to-day basis, do you think that you would find it to be a pleasant experience, or do you think that you'd find yourself dreading the task?

- Will the agency readily accept, and even encourage, your feedback? If you give the agency feedback, do you think that would do something with it in order to improve their service to you, or do you think that they would treat it as a distraction from their process? If something goes wrong, do you think that they would apologize when warranted, or do you think that the agency's demeanor would be closer to "stuff happens and we're no worse than anyone else"?

- Lastly, consider how a person who owes you money would react if they called your selected agency in order to pay his or her debt. Do you think that the agency would respond–or would even be capable of responding–to such a call in an appropriate way, or would the caller face unnecessary hurdles in paying you what they're owed?

> *Don't underestimate the importance of communication style. An agency should be able to give you the information that you need in the way that you need it.*

## ONBOARDING RISKS

Different agencies have different procedures for hiring new employees. However, not all hiring processes are created equal. As such, you should evaluate the following when choosing an agency:

- Does the agency require new-hire criminal background checks as a part of its interviewing process, and if so, then how are these carried out?

- If a criminal background check discloses past offenses, then what categories of offenses are considered acceptable, and what other criteria such as the age of offenses and the age when the offenses were committed are considered in the interviewing process?

- Does the agency require ongoing, periodic criminal background checks, and if so, then how are these done and how often are these carried out?

- Does the agency require new-hire drug tests as a part of its interviewing process, and if so, then how are third parties selected to carry these out?

- Does the agency require the completion and retention of Form I-9 in order to verify the identity and eligibility of individuals who are considered for employment?

An agency's onboarding procedures obviously affect the reliability and security of the services that it provides. Less obvious, but equally important, is the possibility that deficient agency onboarding procedures could result in direct legal claims against you and your company, alleging that you were negligent in hiring an agency that was negligently hiring its own employees.

> *Deficient agency onboarding procedures could affect the reliability and security of the services that it provides to you, as well as result in direct legal claims against you.*

# TRAINING PROGRAMS

Different agencies have different procedures for training both new and veteran employees. However, not all training procedures are equally effective. As such, you should evaluate the following when choosing an agency:

- Does the agency have a standardized training program for new collectors, including written material, coaching, and mentoring components? Must its new collectors demonstrate a pre-established level of competency before they can begin making uncoached collection calls?

- Does the agency have increasing, pre-established performance levels that its new collectors must achieve in order to remain employed with the agency?

- Does the agency update its training as necessary for its collectors, including training on new policies and procedures that are introduced because of changes in laws and regulations?

- Does the agency's training program include specific modules on regulatory and legal compliance, collection style, agency culture, and respectful treatment of debtors?

- Does the agency treat its training program as proprietary information? If it does, then it considers its program to be standard setting, which gives the agency a competitive advantage. If it doesn't, then it probably hasn't put much time, effort, or thought into how it conducts its training activities.

> *The best agency training procedures will give the agency a competitive advantage, thereby allowing it to provide industry-standard-setting levels of service to you.*

## COUNTRY RISK

Especially given the importance of information security when using a third-party commercial collection agency, it is vital for you to understand in what country the agency will store your confidential information and to what country your confidential information could be moved. Thus, you should ascertain the following if your business is based within the United States:

- Will the agency only use collectors who are located within the United States?
- Will the agency only conduct business from within the United States?
- Will the agency only deal with third parties that are located within the United States?

Because of the extremes in reporting, privacy, data transfer, data storage, and regulatory requirements from one country to the next, it is vital that your confidential information be both stored and kept within the boundaries of the United States if your business is based within the United States.

> *A business that is based in the United States should avoid, whenever possible, moving its data to or from other countries, and should use an agency that is aware of the risks that arise from doing otherwise.*

## COLLECTION STYLE

An agency's "collection style" refers to how it will go about collecting for you. It is the way that the agency will affect your brand identity as they collect your debts.

You should consider how a potential agency will protect your brand, and if it will, then you should also consider whether this matters to you. This is a fundamental question that you must be able to answer in order to choose the best agency for your needs.

For example:

- You might want an agency that will coax every last dollar out of your accounts as soon as possible, and how they accomplish that is of no concern to you. If the agency gets sued, of if the agency gets you sued, or if one or both of you become the subject of tabloid headlines because of alleged improper business practices, well then, that's just a problem for another day.

- Then again, maybe the very last thing you want is for you, or a third-party you contract with, to be the target of a lawsuit or a tabloid campaign. Collecting a little more slowly and carefully is worth it to you in order to avoid what could later turn out to be a very public and catastrophic event.

Notice that neither of these alternatives is necessarily a bad choice, but how a company goes about making that choice should control its choice of agency. Every agency is different, and you need to choose one that prioritizes your needs in the same way that you do, rather than an agency that says it thinks the way you do, and then actually does the opposite.

There are numerous ways to objectively determine an agency's style, including the following:

- Look for online comments, including Better Business Bureau®, Glassdoor®, Google®, and social media. (In fact, just being a member of the Better Business Bureau® will tell you a great deal about the agency's attention to best practices and adherence to industry standards.) Be sure to eliminate the bottom 10% of such comments, because some people will never be satisfied no matter how they are treated.

  Then ask yourself if you are comfortable with any patterns that seem to exist in these comments, and–more importantly–if you are comfortable with the agency's responses in terms of both substance and style. Are you satisfied with the way the agency responded (when possible) to these comments? Are you comfortable with the ratio of positive to negative comments?

  You should be comfortable if you are going to be associated with that agency, because those comments will soon become associated with your brand when reviewers talk about how they were treated by your agency when your agency was trying to collect *your* debt.
- Look at the agency's litigation history as a defendant. While no agency can avoid being sued forever, and no plaintiff can be relied upon to avoid "embellishing" their claims when monetary damages are within their view, you can still assess how these suits were decided and whether the claims made you uneasy. Much more importantly, you can assess whether there is a clear pattern to these suits, and whether you are comfortable with such a pattern if one exists.

- Look at the agency's public relationships with its regulators. While regulators can certainly find things to privately inquire about from time to time, there should be no public pattern of enforcement actions, stipulation agreements, or lawsuits brought by state attorneys general. Even one public action, though, should at least lead you to enquire about how the issue was resolved and what the agency has done in order to prevent it from happening again.

- Is the agency "FDCPA Friendly"?

  Section 803(3) of 15 USC 1692a, commonly referred to as the Fair Debt Collections Practices Act or FDCPA, states that the term "consumer" means "any natural person obligated…to pay any debt" and section 803(5) states that the term "debt" means "any obligation or alleged obligation of a consumer.…"

As such, some commercial collection agencies have interpreted these two sections to mean that *commercial* collectors have free reign to do whatever they want to do, since they aren't dealing with "*consumers*." However, working with an agency that chooses to ignore the FDCPA and its restrictions for this reason is risky.

Consider the following selected Congressional findings for the FDCPA from sections 802(a) and (c):

(a) Abusive practices: There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.

(c) Available non-abusive collection methods: Means other than misrepresentation or other abusive debt collection practices are available for the effective collection of debts.

Many of the practices that are prohibited by the FDCPA are, for want of a better term, common sense. Just because an agency is dealing with a business owner "as a business owner" rather than "as a consumer" doesn't change the fact that calling him or her at 11:00 at night or leaving 10 or 20 or even more voicemail messages every day (all of which is prohibited by the FDCPA) will probably be both unproductive and annoying.

Ultimately, unless you are only looking for an agency that will attempt to coax every last dollar out of your accounts as soon as possible with no concern for how they do it, being unproductive and annoying isn't going to get you the recovery that you are looking for, if for no other reason than that people who feel unfairly pushed tend to want to unfairly push back.

This is what is meant by the term "FDCPA Friendly." Even if a commercial agency is *technically* free from FDCPA restrictions, it doesn't hurt if the agency is still mindful of those restrictions and, whenever possible, tries to act in accordance with the spirit of those restrictions.

- Is the agency aware of their duties when handling Personally Identifiable Information and Sensitive Personal Information in terms of website privacy requirements and data security requirements? More importantly, has the agency taken steps to create policies and procedures in order to conform to those requirements?

- Is the agency aware that many lawsuits against collection agencies and their clients can ultimately be traced to how debtors felt they were being treated by the agencies? Does the agency therefore have a zero-tolerance policy against disrespectful treatment at all levels of the agency? Do the agency's collectors, managers, salespeople, and C-suite executives all refer to a common goal of brand protection and respectful treatment?

- Has the agency identified the best times to attempt debtor contact and does the agency maintain adequate staffing during those local times in order to take advantage of a national agency footprint?

- Does the agency have policies and procedures in place to ensure that debtors who have demanded that all contact be ceased are taken out of the agency's communication's queue when appropriate, and does the agency conform to these policies and procedures?

> *Many lawsuits against collection agencies and their clients can ultimately be traced to how debtors felt they were being treated by the agencies. A third-party commercial collection agency should be "FDCPA Friendly" and avoid, under all circumstances, employing abusive and underhanded practices.*

## COMMERCIAL COLLECTION ABILITIES

A third-party commercial collection agency needs to have numerous, specialized abilities in order to successfully collect business debts. The minimum required "toolkit" of such abilities includes the following:

- Does the agency always receive your permission before accepting settlements on your accounts, or at least establish clear standards and limits with you ahead of time? If not, then you need to find another agency. Period.

- Does the agency use the best, most effective methods and tools in order to perform asset searches? Any agency can do a Google® search on social media in order to do a free and quick asset "search." However, the best agencies will use specialized (and oftentimes costly) methods in order to do a much deeper asset search and produce much more effective results for you.

- Does the agency use the best, most effective methods and tools in order to perform skip tracing, which is the way that agencies find individuals who are missing or who have defaulted on a debt? Much like asset searches, any agency can do a quick Google® "search" on someone in order to see if any relevant information is available. However, the best agencies will once again use specialized (and oftentimes costly) methods in order to do a much deeper skip trace and produce much better results for you.
- Does the agency use the best, most effective methods and tools in order to search for bankruptcy-related filings? Unlike asset searches and skip tracing, where a "small" mistake can usually be corrected, an agency making a "small" mistake regarding bankruptcy-related filings can create enormous issues for both themselves and you. As such, it is imperative that you determine if the agency understands just how important these filings are, how the agency searches for such filings before they attempt collections, and how they ensure that their searches are accurate.

- Does the agency use the best, most effective methods and tools in order to asses and handle Statute of Limitations-related accounts? As with bankruptcy-related filings, an agency making a "small" mistake regarding Statute of Limitations-related accounts can create enormous issues for both themselves and you. As such, it is imperative that you determine if the agency understands just how important these accounts are, how the agency identifies such accounts before they attempt collections, and how they ensure that their identifications are accurate.

- Does the agency have the ability to internally score your placed accounts, using appropriate information, and select the collection method(s) that will more likely result in maximized collection amounts for you? Every placed account is not the same, and the ability to put the correct amount of time and type of effort into the correct type of account is a critical success factor for a third-party collection agency. The agency must invest its resources in a smart and effective manner in order to generate the maximum benefit for you.

- Does the agency use the best, most effective methods and tools in order to secure credit reports and third-party credit scores? Many agencies attempt to avoid taking these expensive steps. However, the agency's ability to effectively internally score your accounts is often dependent upon first performing these steps, and without them, the agency is ignoring some of the better methods for assessing negotiation leverage points and obtaining deeper insight into your accounts.

- Does the agency have the ability to make appropriate use of I9 credit reporting? As with bankruptcy-related filings and Statute of Limitations-related accounts, an agency making a "small" mistake regarding I9 credit reporting can create enormous issues for both themselves and you. As such, it is imperative that you determine if the agency understands how important these credit reports are and how they ensure that their reporting is accurate. In addition, the agency must understand when the judicious use of such reporting is likely to result in more-successful collections.

- Does the agency make the best use of various communication methods, including phone calls, voicemails, emails, and texts? More importantly, does the agency understand the legal and compliance issues surrounding each of these methods? Does the agency understand the differences between consumer and commercial restrictions, such as FDCPA and the Telephone Consumer Protection Act (commonly referred to as TCPA)? Does the agency utilize best practices by adhering to common sense, self-imposed restrictions even when they are not technically required, such as calling-time restrictions and daily call attempt limitations?

> *An agency needs both an extensive toolkit and the*
> *knowledge of how to use it effectively in order to handle your collection needs.*

## LEGAL SERVICES ABILITIES

A third-party commercial collection agency sometimes needs the ability to take your accounts to the next level, which in the context of commercial collections means employing the services of a licensed attorney. The minimum required "toolkit" of such abilities includes the following:

- Does the agency always receive your permission before "going legal" on your accounts, and is the agency sensitive to the issue of your legal fees? If not, then you need to find another agency. Period.

- Does the agency have the ability to effectively internally score your accounts for potential value before recommending you "go legal" on a given account, or does it merely suggest that all accounts be placed with an attorney after expending minimal collections efforts on them?

- Does the agency know what it's doing in this area and bring value to the table as potential legal action is being considered, or does it rely unquestioningly on the advice of attorneys as to what should or shouldn't be done on a given account? Does it fully understand both the process and the limitations of "going legal" on an account?

- Does the agency have a nationwide network of pre-vetted attorneys with predetermined, contingency-based fee schedules so that litigation costs do not spiral out of control as they often do under an hourly fee arrangement? If it does, then you should also find out how the agency selects them.

- Does the agency monitor your accounts once they have been placed within their legal network and periodically report on their progress? These cases can in some cases last for years, migrate through numerous legal proceedings, and generate enormous amounts of important and detailed information. An agency that will take on the laborious task of monitoring their progress for you is providing significant, albeit often overlooked, value.

  You should therefore focus on what the agency's process is and how they plan for employee turnover while your accounts proceed through the legal system. Ultimately, your goal is to find an agency that will not lose track of your accounts no matter how long the process takes and will keep you apprised as to the progress of your accounts through the system.

- Does the agency understand, secure, and provide information, such as asset location, that will motivate an attorney to aggressively pursue an account, or does the agency merely forward accounts to get them warehoused as dormant default judgments?

*An agency needs both an extensive legal toolkit and the knowledge of how to use it effectively in order to handle your collection needs once routine collection activities have been exhausted and legal remedies are called for.*

## BANKRUPTCY-RELATED SERVICES ABILITIES

A third-party commercial collection agency sometimes needs the ability to monitor an account's progress through the Chapter 7, Chapter 9, Chapter 11, Chapter 12, Chapter 13, and Chapter 15 jungle of 11 U.S.C. §101 et seq. and related state laws, collectively referred to as "bankruptcy."

As with legal services abilities, bankruptcy-related cases can in some cases last for years, migrate through numerous legal proceedings, and generate enormous amounts of important and detailed information. An agency that will take on the laborious task of monitoring their progress for you is providing significant, albeit often overlooked, value.

You should therefore once again focus on what the agency's process is and how they plan for employee turnover while your accounts proceed through the bankruptcy process. Ultimately, your goal is to find an agency that will not lose track of your accounts no matter how long the process takes and will keep you apprised as to the progress of your accounts through the bankruptcy process.

> *An agency needs both an extensive legal toolkit and the knowledge of how to use it effectively in order to navigate specialized, bankruptcy-related collection issues.*

## ESTATE-RELATED SERVICES ABILITIES

Experian recently conducted a study, reported in Money Magazine and CBS News, that showed almost 75% of all Americans dying in debt. As a result, a third-party commercial collection agency often needs the ability to monitor an account's progress through estate probate proceedings.

An agency that is able to identify non-exempt assets, file timely and accurate claims, identify viable co-obligors, monitor probate proceedings, and still comply with all relevant debt collection laws can be an invaluable asset for your company.

As with legal services and bankruptcy-related services abilities, though, these cases can sometimes take years to finalize, migrating through numerous legal proceedings and generating enormous amounts of important and detailed information. An agency that will take on the laborious task of monitoring their progress for you is providing significant, albeit often overlooked, value.

You should therefore focus on what the agency's process is and how they plan for employee turnover while your accounts proceed through the probate system. Ultimately, your goal is to find an agency that will not lose track of your accounts no matter how long the probate takes and will keep you apprised as to the progress of your accounts through the system.

> *An agency needs both an extensive legal toolkit and the knowledge of how to use it effectively in order to navigate specialized, estate-related collection issues.*

# OPERATIONAL ABILITIES

Different agencies have different operational abilities, meaning that there is no one-size-fits-all agency for all account volumes, all account balances. Rather, you must assess the following when choosing an agency:

- Does the agency understand the vastly different collection styles that are required for micro, small, and large account balances and differentiate how they work accounts in each category in order to work them in the most effective manner?

- Will the agency honestly disclose whether they have the current capacity to handle your current account volume, or will they take whatever account flow they can get from you and "figure out how to handle it" later? Given that time is money, the longer the agency takes to "figure out how to handle" your account volume, the lower will be your chances for maximum recoveries.

- What are the capabilities of the agency to grow with your needs and adapt to future account volumes when needed, and what is their scaling plan to add this capacity?

- Is the agency's fee structure appropriate for the level of talent that is possessed by its collectors? The higher the skill level of its collectors, the higher will be the agency's collection rates and the higher should be your recoveries.

  Agencies often race to the bottom in terms of what they charge their clients in an effort to maximize their account placements. These same agencies ("puppy mills" in industry jargon) then place those accounts with lower-skilled, inexpensive collectors in order to work the easiest accounts ("the cream" in industry jargon) and hope that their short-term results are enough to justify continued client placements.

  This style of collections almost always leaves significant money on the table for their clients, and is not a good long-term strategy for maximizing overall collections. However, the phrase "you get what you pay for" applies in this instance as it does in so many others, and if this collection strategy is not what you desire, then you should discuss this issue with any agency that you are considering and expect to pay more for better service.

  In the final analysis, it isn't actually going to cost you more to pay for higher quality right away, since accounts that are placed with puppy mills often end up getting moved to subsequent agencies at higher second- and third-placement rates anyway, and are often made much harder to collect after they have been battered and beaten by lower-skilled collectors.

- Does the agency maintain a trust account that is kept separate from its operating accounts, and does the agency "true up" its trust account balance on a monthly basis in order to ensure proper remittances and prevent abuses? Even though the existence of a trust account is typically required by regulatory authorities, irregularities in these accounts might not surface for months unless the agency takes it upon itself to maintain the integrity of its trust account.

- Will the agency maintain a separate trust account just for your accounts? Being able to provide such a service might be important to you, though issues of irregularities and abuse are not made smaller by the existence of a separate account. However, you should realize that creating and maintaining a separate trust account that is dedicated solely to your business creates significant additional costs for the agency, and like all other businesses, you should expect to pay extra for the service.

  Often, clients aren't even aware of the reason for requesting a separate trust account, other than that their attorneys told them that it was "necessary." In truth, if you are receiving less than $100,000 in remittances per month on average, then the cost that you are incurring in terms of higher collection fees is probably going to exceed whatever benefits that you might derive.

  And, if an agency is willing to agree to your request for a separate trust account without significant account flow, then you should then revisit whether you are dealing with an agency that is in a race to the bottom in terms of what they charge their clients and consider whether the expected result from such a puppy mill is worth your short-term savings.

- Does the agency have a set of client remittance policies and procedures in place, and does it periodically audit its performance against them?

- Does the agency have a remittance schedule, and can it be adapted to your needs? For example, if you need bi-monthly remittances, can the agency provide such a schedule?

- Does the agency have a policy in place for internally reporting critical incidents, and does it have procedures in place to appropriately respond and make corrections in order to prevent further incidents?

- Does the agency have specific policies and procedures in place to handle demands to cease texting, emailing, phone calling, and other contact methods, and does the agency adhere to these policies and procedures?

- Does the agency have a disaster recovery plan in place and does the agency review it annually in order to minimize unexpected disruptions to its operations?

- Does the agency use an automatic telephone dialing system or predictive dialing system? If so, is the agency aware of the extensive litigation that has been generated relating to these systems, and is the agency aware of its potential liability under the TCPA arising form the use of such systems?

- If the agency does not use an automatic telephone dialing system or predictive dialing system, has it considered the risk that a "creative" attorney could argue that its systems are the "equivalent" of such systems, and has the agency taken steps to insulate itself–as much as possible–from such creative legal reasoning?

- Does the agency comply with collection-related federal and state legislation?

- Does the agency possess and use effective onboarding procedures with new clients that provide for two-way communication, transparency, and problem-solving opportunities? Are proper expectations set for new clients? Do new clients receive assistance when needed in order to learn new procedures?
- Does the agency provide training and coaching to new clients in order to learn the agency's systems and procedures?

- Does the agency record all calls with debtors and periodically audit these recordings in order to ensure compliance with legal requirements, collection standards, and internal policies and procedures?

> *You need to choose a helpful agency that possesses the necessary operational abilities to successfully handle your current account volumes and account balances, as well as the capability to handle your future account volumes and account balances.*

## INFORMATION RISK

An absolutely critical risk arising from the choice of a third-party commercial collection agency is the risk that an agency would not adequately protect your confidential information. The topic of information security could–and in fact does–fill multiple books, reference manuals, and seminars, and so will not be addressed in detail here. However, the following constitute some of the key preliminary issues that should be addressed when choosing a third-party commercial collection agency:

- Can the agency's IT department give you a full breakdown on how your confidential information is stored, transported, and protected?

- Can the agency's IT department give you a full breakdown on their firewall and server protection levels and protocols?

- Can the agency's IT department give you a full breakdown on how it protects itself from hackers who might try to use the agency as a conduit into your own IT systems?

- Can the agency's IT department give you a full breakdown on their access protocols and barriers to unauthorized access?

- Can the agency's IT department give you a full breakdown on how physical access to servers and other IT hardware is protected by physical security measures such as punch pads and key cards?

- Has the agency's IT department tried to do all if its information security itself in order to save money, or has it availed itself of responsible, well-known, third-party business partnerships in order to achieve protection levels that would otherwise be unattainable?

Moreover, if it has availed itself of such partnerships, then can the agency's IT department give you a full breakdown on how these third parties have been vetted in order to ensure that they will also protect your confidential information?

- Does the agency use comprehensive confidentiality agreements with its own third-party business partners?
- Can the agency's C-suite executives explain how they have implemented all reasonable risk mitigation procedures and how the topic of information risk management has become an integral part of the agency's overall culture?
- Are the agency's filing cabinets physically locked each night?
- Are the agency's desks cleared of confidential information each night?
- Are the agency's computers password protected with appropriate time-out limits and screensavers that automatically require re-logging after a certain period of inactivity?
- Is the agency's computer collection software containing Personally Identifiable Information and Sensitive Personal Information protected with time-out limits that require re-logging after a certain period of inactivity?
- Is the agency's Personally Identifiable Information and Sensitive Personal Information protected by a minimum of three layers of security?
- Does the agency make use of physical security measures such as punch pads and key cards in order to enter into its collection offices and onto its collection floor?
- Does the agency prohibit cellphones, cameras, and other recording devices in the agency's collection offices and on the agency's collection floor?
- Does the agency have policies and procedures in place in order to determine who is granted access to Personally Identifiable Information and Sensitive Personal Information?
- Does the agency attempt, as much as possible, to avoid storing Personally Identifiable Information and Sensitive Personal Information on paper, and when this is not possible, does the agency provide secured shred bins from reputable third parties for discarded documents?
- Does the agency provide for offsite laptop access to its computer systems, and if so, then what security measures has the agency's IT department put in place in order to secure such access? Moreover, what security measures have the agency's C-suite executives adopted in order to ensure that only proper individuals have been granted the privilege of offsite access?
- Can the agency's IT department C-suite executives explain how they have determined what they consider to be appropriate cybersecurity insurance coverages and how they maintain these coverages?

- Are interior and exterior entrances into the agency's offices continuously video recorded?
- Is the agency's collection floor continuously video recorded?
- Are the agency's offices locked during non-business hours and are they protected by physical security measures such as punch pads and key cards?
- Is the agency's building locked during non-business hours and is it protected by physical security measures such as punch pads and key cards?
- Does the agency change passwords at least every 90 days?
- Does the agency change physical security measures after employee terminations?

> *You need to choose an agency that is sensitive to all aspects of information security–both technological and physical–and that can successfully protect your confidential information.*

# PERFORMANCE ASSESSMENT

When choosing a third-party commercial collection agency, it is tempting to focus on how many dollars you expect to receive from the agency each month, or your gross collections. After all, the usual thinking is that more collections must mean better agency performance.

However, conducting an accurate assessment of an agency's performance is quite a bit more subtle than just measuring your gross receipts each month.

**The basics**

The first issue with using gross collections to assess an agency's performance is, obviously, the issue of how many accounts you gave the agency to collect in the first place. For example, an agency receiving 20 accounts will, on average, collect less per month than another agency receiving 200 accounts.

The next issue with using gross collections is that the relative size of the accounts received will affect gross collections. For example, an agency receiving 20 accounts with a $10,000 average balance will, on average, collect less per month than another agency receiving 20 accounts with a $100,000 average balance.

The next issue with using gross collections is that the relative age of the accounts received will affect gross collections. For example, an agency receiving 20 accounts with an average overdue age of six months will, on average, collect less per month than another agency receiving 20 accounts with an average overdue age of two months.

The final issue with using gross collections is that the collection history of the accounts received will affect gross collections. For example, an agency receiving 20 accounts that have been through three previous agencies will, on average, collect less per month than another agency receiving 20 accounts that have not yet been through even one previous agency.

Thus, there are several basic reasons why focusing on gross collections is an inaccurate way to assess an agency's performance.

**The two key metrics**

A well-run third-party commercial collection agency will obviously be able to maximize your gross collections once the preceding basic issues have been taken into consideration. In addition, such an agency should also be able to supply you with the two most important key metrics that you can use in order to perform a more in-depth assessment of the agency's performance.

**1) The Payer Rate**

The Payer Rate measures:

- the total number of new accounts on which payments have been received by the agency,
- in relation to the total number of new accounts that were placed with the agency over a given period of time, expressed as a percentage.

The formula for the Payer Rate is as follows:

$$\text{Payer Rate} = \frac{\text{total number of new accounts on which payments have been received}}{\text{total number of new placed accounts}}\ x\ 100$$

Equation 1

An example:

Client X places 10,000 new accounts with Agency Y during the year, and Agency Y receives payments from 1000 of these accounts during that year. Thus:

$$\text{Payer Rate} = \frac{1000}{10{,}000} \text{ x } 100 = 10\%$$

**2) The Account Liquidation Rate**

The Account Liquidation Rate measures:

- the total dollar amount that has been successfully collected by the agency,
- in relation to the total dollar amount of new accounts that were placed with the agency over a given period of time, expressed as a percentage.

The formula for the Account Liquidation Rate is as follows:

$$\text{Account Liquidation Rate} = \frac{\text{total dollar amount successfully collected}}{\text{total dollar amount of new placed accounts}}\ x\ 100$$

Equation 2

An example:

Client X places $1 million of new accounts with Agency Y during the year, and Agency Y collects $150,000 during that year. Thus:

$$\text{Account Liquidation Rate} = \frac{\$150{,}000}{\$1\text{ million}} \text{ x } 100 = 15\%$$

Notice that as the Payer Rate increases, so too should the Account Liquidation Rate. Therefore, you should first focus on the Payer Rate, and then monitor whether increases in that rate are, in fact, leading to increases in the Account Liquidation Rate.

Notice also that both metrics are relatively simple, and can be subject to variation because of such variables as the age of the accounts being measured or the types of accounts being measured. Perhaps most importantly, these metrics can be subject to variation because of "batching."

**The batching issue**

The term "batching" refers to the groups, or cohorts, that are used when computing the Payer Rate and the Account Liquidation Rate. Depending upon which cohorts are chosen, the apparent performance of a third-party commercial collection agency can result in wildly different assessments regarding an agency's performance.

An example:

Client X places 5 new accounts with Agency Y every month from January through June of Year 1, each with a $50,000 unpaid balance, and 10 new accounts with Agency Y from July through December of Year 1, each with a $200,000 unpaid balance.

- In the first six months of the year, Agency Y collects nothing and sets up no accounts on repayment plans.

- In the second six months of Year 1, Agency Y collects $2000 each month and sets up two accounts on repayment plans each month.

What are the agency's Payer Rate and the Account Liquidation Rate for the second six months of the year? The answer is: it depends. First, consider what we know, summarized as follows, with "k" signifying thousands:

| | **Jan** | **Feb** | **Mar** | **Apr** | **May** | **Jun** | **Jul** | **Aug** | **Sep** | **Oct** | **Nov** | **Dec** |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| # placed | 5 | 5 | 5 | 5 | 5 | 5 | 10 | 10 | 10 | 10 | 10 | 10 |
| $ placed | $50k | $50k | $50k | $50k | $50k | $50k | $200k | $200k | $200k | $200k | $200k | $200k |
| # set up | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 2 | 2 | 2 | 2 | 2 |
| $ rec'd | $0 | $0 | $0 | $0 | $0 | $0 | $2k | $2k | $2k | $2k | $2k | $2k |

Next, consider what we *don't* know: Exactly which accounts were collected in the second six months of the year?

Unfortunately, this lack of knowledge creates a great deal of uncertainty as to the agency's Payer Rate and Account Liquidation Rate for the second six months of the year.

One way to proceed would be to first label January through June accounts as Batch #1 and July through December accounts as Batch #2. Next, we would decide whether the July through December collections should be compared to Batch #1 or Batch #2.

| | **Jan** | **Feb** | **Mar** | **Apr** | **May** | **Jun** | **Jul** | **Aug** | **Sep** | **Oct** | **Nov** | **Dec** |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Batch #** | **1** | | | | | | **2** | | | | | |
| # placed | 5 | 5 | 5 | 5 | 5 | 5 | 10 | 10 | 10 | 10 | 10 | 10 |
| $ placed | $50k | $50k | $50k | $50k | $50k | $50k | $200k | $200k | $200k | $200k | $200k | $200k |
| # set up | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 2 | 2 | 2 | 2 | 2 |
| $ rec'd | $0 | $0 | $0 | $0 | $0 | $0 | **$2k** | **$2k** | **$2k** | **$2k** | **$2k** | **$2k** |

If we choose to compare the July through December collections to Batch #1, then our rates would be calculated as follows:

$$\text{Payer Rate} = \frac{\text{total number of new accounts on which payments have been received}}{\text{total number of new placed accounts}}\ x\ 100$$

$$= \frac{12}{30}\ x\ 100\ =\ 40.0\%$$

$$\text{Account Liquidation Rate} = \frac{\text{total dollar amount successfully collected}}{\text{total dollar amount of new placed accounts}}\ x\ 100$$

$$= \frac{\$12{,}000}{\$300{,}000}\ x\ 100\ =\ 4.0\%$$

In contrast, if we choose to compare the July through December collections to Batch #2, then our rates would be calculated as follows:

$$\text{Payer Rate} = \frac{\text{total number of new accounts on which payments have been received}}{\text{total number of new placed accounts}} \ x\ 100$$

$$= \frac{12}{60}\ x\ 100 \ = \ 20.0\%$$

$$\text{Account Liquidation Rate} = \frac{\text{total dollar amount successfully collected}}{\text{total dollar amount of new placed accounts}} \ x\ 100$$

$$= \frac{\$12{,}000}{\$1{,}200{,}000}\ x\ 100 \ = \ 1.0\%$$

Thus, as was said earlier, our initial decision regarding the correct batch to use in our calculations has resulted in wildly different assessments regarding the agency's performance.

As a result, you should keep the following points in mind when assessing agency performance:

- You should be consistent in your mathematical approach from one period to the next when measuring an agency's performance.
- When comparing agencies and reviewing their reports to you, you should fully determine how each agency computes its own Payer Rates and Account Liquidation Rates in order to make legitimate comparisons between agencies possible.
- You should carefully consider the best way for your business to calculate relevant batches when calculating Payer Rates and Account Liquidation Rates.
- You should communicate how you would like a chosen agency to calculate its Payer Rates and Account Liquidation Rates so that its reports conform to your needs.

Therefore, you should ask the following questions when choosing an agency:

- Can you track my account placements by the batches that make the most sense for my business so that I can easily see your performance on each batch?
- Can you track my account placements by the batch that makes the most sense for my business so that I can easily see the migration over time of each batch's performance?
- Can you track my account placement batches by their actual liquidation rates of placed amounts?
- Can you track my account placement batches by their actual payer rates?

- Can you track my account placement batches by the time it takes to get them into some sort of repayment plan?

And before making your final decision, you should carefully consider the following points:

1. Any agency can make its Payer Rate look temporarily better by doing one of the following:
   - Accepting smaller payments very quickly instead of investing more effort into securing larger payments that would take more time to negotiate.
   - Accepting unsupportable large payments that default after the first payment is made.
2. Any agency making its Payer Rate look temporarily better by doing taking of the preceding actions will ultimately end up with a lower Account Liquidation Rate.

Therefore, before making your final decision, you must determine whether you ultimately want your third-party commercial collection agency to:

1. make its Payer Rate look temporarily better at the expense of their long-term Account Liquidation Rate, or
2. take a little longer so that your agency can invest more time and effort, at the expense of a temporarily lower Payer Rate, in order to generate a higher overall, long-term Account Liquidation Rate.

> *You should know how to properly assess an agency's performance, and you should clearly communicate the performance that you value the most.*

## SELF-ASSESSMENT

Working with a third-party commercial collection agency will create a time-intensive and data-intensive business relationship. As such, there will be pain points, also known as stress points or pinch points, that can cause anything from confusion and inefficiency to distrust and termination of your business relationship.

As such, an important part of choosing an agency is assessing *yourself* in order to determine how you will want your agency relationship to work, and then discussing your expectations with any agency that you might be considering.

The following is a list of some of the common pain points that you might encounter while working with an agency. Knowing how both you and the agency would want these situations handled will help ensure that you have partnered with the right agency for your needs.

- You have been contacted by a commercial debtor whose account has been delinquent for six months, and whose account was placed with your agency two days ago for a minimum placement period of 90 days. This debtor has offered to pay one third of its outstanding balance directly to you as a settlement in full.

  Your agency contract states that you will transfer all such calls to the agency and that you will owe a full collection fee to your agency for all such transferred calls if a payment is ultimately made.

  What will you do? Will you transfer the call to your agency, or will you negotiate directly with the debtor? Will you pay your agency its full collection fee, a "token" collection fee, or no collection fee at all?

- You have just placed a large number of accounts with your new agency. On balance, do you expect the agency to push harder for quick settlements at relatively low rates or do you expect the agency to push for extended payment arrangements that will ultimately recover more of your total balances? Have you told your agency that this is what you expect?

- You have just placed a large number of accounts with your new agency, and have told the agency that you would prefer that they push harder for quick settlements at relatively low rates.

  Are you willing to accept that looking for low-payment quick settlements will tend to overwork ("burn" in industry jargon) your portfolio and make second and third placements of your remaining uncollected accounts more difficult later on?

- You have just placed a large number of accounts with your new agency, and have told the agency that you would prefer that they push for extended payment arrangements that will ultimately recover more of your total balances.

  Are you willing to accept payment plans extending to four or five years, or would you want such payment plans to extend no more than, say, two or three years? Have you told your agency that this is what you prefer?

- You have just placed a large number of accounts with your new agency. When you ask for basic information regarding those accounts, will you typically expect a response in 20 minutes, two hours, or two days? Have you told your agency that this is what you expect?

- When you place accounts with an agency, do you give them honest feedback–both positive and negative–on their performance, or do you prefer to just keep saying "you're not doing as well as your competition" in order to make them work harder for you?

  Notice that providing honest feedback–both positive and negative–on your agency's performance will allow them to (1) enhance what is already working well, and (2) alter what is not.

In contrast, if your feedback always consists of "you're not doing as well as your competition," this gives the agency nothing to specifically improve, this could cause the agency do *less* of what is currently working well, and this will therefore ultimately result in less-effective collections for you.

- When you place accounts with an agency, do you prefer to only use one agency at a time, or do you consistently use multiple agencies and honestly compare their performance over time? If you use multiple agencies and honestly compare them, do you also share your conclusions with the agencies in a fair manner so that they can attempt to improve their performance for you, or do you merely continue to use the best performer for that time period and drop the others?

- When you place accounts with an agency, do you have your documentation available on a File Transfer Protocol, or FTP, basis using unique claim number identifiers so that the agency can retrieve any information that it needs as it's needed, or do you require the agency to make manual document requests of your team every time that information is needed?

- If you place accounts with an agency without using an FTP process, do you first convert account information by manually typing the information into a pdf or other format before sending it?

  If so, then you should recognize that this process creates numerous opportunities for transcription errors that could lead to improper or ineffective collection efforts on your behalf. You should also recognize that this process will result in long delays while the agency attempts to verify and correct the information that it has been sent.

- When you place accounts with an agency, are the documents for each file available immediately, or does your team send the documents several days–or even weeks–later? You should recognize that your agency needs those documents in order to begin its verification and collection process, so any delays in sending documents will result in longer and less effective collections for you.

- When you place accounts with an agency, what are your work standard expectations for those accounts, do you clearly communicate those standards, and how do you determine those standards?

  A superior collection agency will have a proprietary process to route each placed account into its work flow for optimal results, and if you have expectations that you don't communicate to your agency, and it doesn't meet those expectations, then it might appear that the agency is not performing well, when in fact it is providing superior service to you.

- When you place accounts with an agency, are you willing to discuss the agency's determination that a given account might not be worth pursuing when they evaluate it on a risk-versus-reward basis, or do you typically override these recommendations without discussion?

- When you place accounts with an agency, do you discuss which collection methods the agency doesn't use, and why the agency doesn't use them, or do you merely choose the agency that uses every possible collection method?

Notice that if you typically choose the every-possible-collection-method agency without first having such a conversation, you might be incurring more risk than you realize. A good agency will constantly monitor both its industry and yours in order to determine which collection methods are currently disfavored and which collection methods are generally considered to be abusive, and will be able to explain to you why and how they want to steer you away from taking unnecessary risks.

- When you place accounts with an agency, do you have access to in-house or retained counsel who can interact with the agency when needed in order to clarify potential legal issues in your accounts, or do you prefer to ignore such potential issues and just “use what you’ve got” on each account?

- When you place accounts with an agency, do you identify the key performance indicators that you will be using in order to assess the agency’s performance, such as liquidation rates, time-to-first-contact measures, and payer rates, and do you compare your computation methods and the agency’s computation methods in order to determine if they are the same? Moreover, do you discuss whether the agency can calculate and report these performance indicators in the way that is most helpful to you?

- When you place accounts with an agency, do you automatically require a separate trust account? While a separate trust account is a requirement in consumer collections, it is not generally a requirement in commercial collections, and while the existence of a separate trust account might provide to you some intangible feelings of security, you should be aware that you could end up paying higher collection rates in order to cover the agency’s increased costs.

- When you place accounts with an agency, do you think of the agency as a business partner into which you are willing to invest resources in order to create beneficial, long-term results for both parties, or do you think of the agency as merely a current service provider that you will replace when convenient?

  Selecting an agency that thinks of its business as creating business partnerships, and then treating it as merely a current service provider that will be replaced when convenient, will lead to ineffective communications, unmet expectations, and–ultimately–poor collection results for you.

- When you place accounts with an agency, do you discuss how you’d like account information such as collector notes to be made available to you, and do you select an agency that can meet those needs?

- When you place accounts with an agency, do you consider how your communication styles will interact? For example, when you send an email to your agency, do you typically expect the agency to respond to five or 10 members of your team in order to “keep everyone in the loop”? Do you have pre-established, dedicated email addresses that your agency can respond to such as “info@____” or “accounting@____ ,” so that when one of your team leaves, their email address doesn’t become obsolete and unmonitored?

> *You should work with an agency that shares your way of doing business, so you should first be honest regarding how <u>you</u> do business, and then choose an agency accordingly.*

## SUMMARY

Choosing a third-party commercial collection agency is of vital importance to any organization that extends funding or that provides Business-to-Business services on credit, including equipment finance companies, Merchant Cash Advance factors, and traditional commercial lenders.

While most companies choose a third-party commercial collection agency based upon the potential returns that a given agency might provide, it is also critical to consider the potential risks that are borne by such a choice.

In short, choosing a third-party commercial collection agency is a matter of comparing potential returns *and risks* in order to achieve an optimal balance of both, and the purpose of this paper has been to present one possible outline for making such a balanced choice.

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## ABOUT THE AUTHOR

Smith is the CEO and CFO of Dedicated Commercial Recovery Inc. Shawn is a trusted producer, manager, closer, and trainer in the Commercial Recovery Industry, and has built a reputation of excellence, professionalism, and passion in both his business and his personal life.

Shawn has developed best practices from the ground up, starting in the industry as a commercial collector and rising to ownership of his own commercial agency. Shawn is blessed with a wonderful wife, Stephanie, and three amazing children. He is active in church, volunteering, and mentoring. Shawn is currently Executive Director of the Jenika Francois Foundation. Shawn also works to mentor for inner city youth and donates his time to several non-profit organizations here and around the world.