COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE
COMMITTEE REPORT
1350 Pennsylvania Avenue, NW, Washington, DC 20004 **DRAFT**

TO: All Councilmembers

FROM: Chairman Phil Mendelson
Committee of the Whole

DATE: March 15, 2022

SUBJECT: Report on Bill 24-357, "Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2022"

The Committee of the Whole, to which Bill 24-357, the "Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2022" was referred, reports favorably thereon with amendments, and recommends approval by the Council.[1]

CONTENTS

I. BACKGROUND AND NEED

On July 12, 2021, Bill 24-357, the "Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2021" was introduced by Chairman Mendelson with Councilmember Cheh as a co-sponsor. The bill would include all consumer debt under the District's collection law and prohibit deceptive behavior and certain threats from debt collectors, prohibit the communication of consumer indebtedness to employers, friends, or neighbors, prohibit debt collectors from making more than three calls per account in any 7-day period, prohibit debt collectors from sending more than one email, text message, or private message prior to obtaining consent from the consumer, limit the number of emails, text messages, and private messages that can be sent by debt collectors in any 7-day period after receiving a consumer's consent, require certain notices to be sent by debt collectors to consumers, establish requirements for debt collectors

[1] The title has been updated to reflect the current year.

initiating a cause of action against a consumer for consumer debt, allow for the collection of damages and other fees to a consumer for a violation of this bill, prohibit imprisonment or jailing of consumers for failure to pay a consumer debt, and establish debt collection protections during a public health emergency declared by the Mayor.

The Scope and Impact of Consumer Debt in the District

Thousands of District residents have delinquent debt, receive communications from debt collectors, and face lawsuits for failure to pay outstanding debts. According to the Urban Institute's *Debt in America*, nearly 26% of adults in the District have debt in collections. The most common form of debt in collections is student loan debt (11%), followed by medical debt (7.3%) and auto-loan debt (6%), as shown in Table 1.[2]

Table 1. Adults in the District With Debt in Collections

	Percent with Debt in Collections
Any Debt	25.7%
Medical Debt	7.3%
Student Loan Debt	11%
Auto-Loan Delinquency Rate	6%
Credit Card Delinquency Rate	3.4%

While we do not have data on household debt in collections by race, the Urban Institute's data suggests that people who live in communities of color in the District are much more likely to have debt in collections than people who live in majority-white communities (Table 2).[3] Additionally, the median debt in collections for people who live in communities of color is nearly $400 higher than those in majority-white communities.

Table 2. Debt in Collections by Debt Type and Community Racial Demographics

	Lives in White Community	**Lives in Community of Color**
Any Debt	7.4%	36.3%
Medical Debt	2.5%	9.7%
Student Loan Debt	4.5%	13.8%
Auto-Loan Delinquency Rate	1%	8%
Credit Card Delinquency Rate	1%	5%
Median Debt in Collections	$1,281	$1,627

Data on consumer complaints about debt collection in the District suggest that residents regularly experience problematic debt collection practices. According to the National Consumer Law Center, the District has the second-highest number of debt collection complaints per capita at 114 per 100,000.[4] In 2018, residents filed nearly 3,000 complaints against debt collectors. Of these

[2] Breno Braga, Alexander Carther, Kassandra Martinchek, Signe-Mary McKernan, and Caleb Quakenbush. Debt in America 2021, https://datacatalog.urban.org/dataset/debt-america-2021.
[3] The Urban Institute defines communities of color as being at least 60% non-white (Braga et al. [2021]. *Debt in America: Technical Appendix*, pg. 2).
[4] National Consumer Law Center, Debt Collection in the States 2019 (Fact Sheet), https://www.nclc.org/images/pdf/debt_collection/fact-sheets/fact-sheet-debt-collection-complaints-in-states.pdf.

complaints, 29% involved debt collectors making calls after getting a "stop calling" notice, 26% involved debt collectors calling repeatedly, and 24% involved debt collectors making false representations about the debt.[5]

If District residents cannot pay or do not respond to debt collectors, data from Superior Court suggests that original creditors and debt collectors file thousands of cases in Small Claims Court. From 2016 through 2019, five entities—Midland Funding LLC (a subsidiary of Encore Capital Group), Capital One, LVNV Funding LLC, Portfolio Recovery Associates, and Bank of America—filed nearly 13,500 cases.

Table 3. Small Claims Case Filings by Five Entities

	Cases Filed by Entities	Total Cases Filed	% of Cases Filed
2016	2,284	5,580	40.9%
2017	2,858	7,096	40.2%
2018	4,167	9,261	44.9%
2019	4,148	9,198	45%

Of the 9,198 small claims cases filed in 2019, 4,148 cases—or 45% of all filings— were filed by these five entities. Table 3 shows the number of cases by filer and the amount owed. Claims between $500.01 and $2,500 were the most common, accounting for 66% of cases filed by the five entities.

Table 4. Small Claims Cases Filed in 2019 by Claim Amount

	Midland	Capital One	LVNV	PRA	BOA
<$500	1	0	1	0	0
$500.01-$2,500	1,170	524	816	405	10
$2,500.01-$10,000	217	546	55	97	306

Note: PRA = Portfolio Recovery Associates; BOA = Bank of America.

The Committee analyzed a sample of 450 cases filed by the entities in Table 4.[6] The total amount allegedly owed is nearly $1,000,000, and the median amount allegedly owed by defendants was $1,543. Approximately 70% of these cases were dismissed, either because of a court rule or the plaintiff dismissed it. Of 131 cases in the sample that were not dismissed, 63% were resolved via a default judgment, and 34% were resolved via a stipulation agreement.[7] Data on the race of the defendants is not readily available. However, the complaint files contain the address of each defendant. The addresses were matched to Census Tracts to determine whether the defendant lived in a majority Black or majority white community.[8] The results suggest that nearly two-thirds of

[5] National Consumer Law Center, District of Columbia, Debt Collection Fact Sheet, https://www.nclc.org/images/pdf/debt_collection/fact-sheets/D.C.pdf.

[6] The Committee used a stratified random sampling procedure where cases were grouped by plaintiff and claim amount ranges. The number of cases randomly selected for each group was determined by the proportion of cases in each category. For instance, Midland Funding filed 1,170 cases for claims ranging from over $500 to $2,500. This accounts for 26% of all cases filed by the five entities, so 26% was multiplied by 450 and 120 cases were selected.

[7] Based on a random sample of approximately 450 cases filed by the five entities in Table 3. This mirrors data in the courts annual report, which provides statistics on methods of disposition for small claims cases.

[8] Majority-Black means more than 50% of the population is Black, and majority-white means more than 50% of the population is white.

debt collection cases involve residents who live in majority-Black communities. In contrast, less than 25% of debt collection cases involve residents in majority-white communities (Table 5).

Table 5. Case Filings, Race and Poverty

	Percent of Cases Filed	Median Amount Owed
Lives in Majority-Black Community	62.4%	$1,278
Lives in Majority-White Community	24.6%	$2,219
Tract w/ Poverty Rate Over 20%	40.9%	$1,169

With the COVID-19 pandemic now approaching two years, more consumers will likely have delinquent debt and face lawsuits due to loss of income, closing of businesses, and ballooning medical debt, making the modernization of our debt collection law more urgent.

History and Background of Current Debt Collection Laws

In 1969, a group of District residents sued Retail Adjustment Bureau, Inc., a debt collection agency in northwest D.C, for harassing and intimidating them to collect on debts. According to affidavits of five women in Anacostia, agents of the company misrepresented themselves as lawyers and police officers, threatened seizure of assets without court authorization, and talked to their employers and housing providers to get them fired from their jobs and evicted from their houses.[9] U.S. District Court Judge Gerhard Gesell issued a temporary restraining order against the company in response to the affidavits.[10]

Unfortunately, this experience was not unique to the District residents in *Miller v. Retail Adjustment Bureau, Inc.* By all accounts, harassment, deception, and other unfair practices were widespread at the time.[11] They were common enough that the Federal Trade Commission established a guide to deceptive collection practices meant to educate consumers.[12] However, most other residents had no recourse because the District, like many other jurisdictions, did not have any laws or rules regulating the conduct of debt collectors.[13] This dynamic changed in 1971 when Congress approved "An Act to amend certain provisions of subtitle II of title 28, District of Columbia Code, relating to interest and usury" (Public Law 92-200, Stat. 665).

While the primary focus of Public Law 92-200 was to reform consumer lending laws in the District,[14] the law includes provisions that prohibit debt collectors from using threats or coercion to collect a debt, harassing, or abusing consumers in connection with the collection of debt, publicizing alleged indebtedness of consumers or using fraudulent, deceptive, or misleading

[9] *Miller v. Retail Adjustment Bureau, Inc.* (D. C. D. C. 1969). See, also, Paul Valentine, "Judge to Curb Tactics of Debt Collection Firm," The Washington Post, May 15, 1969, at A1; David Pike, "Collection Agency Sued by Low-Income Debtors," *The Washington Evening Star*, May 18, 1969, at C-2.
[10] *Supra* note 1.
[11] Richard E. Prince, "GW Law School Group Hits Unfair Collection Practices," *The Washington Post*, January 8, 1970, at D2.
[12] Federal Trade Commission. Guides Against Debt Collection Deception. Adopted June 30, 1965. (January 1966).
[13] See, for instance, Shenfield, S. D. Debt Collection Practices: Remedies for Abuse. *Com. LJ*, 74, 336. (1969).
[14] Legislative History of the District of Columbia Consumer Credit Protection Act of 1971 P.L. 92-200. Washington, Arnold and Porter.

representation to collect a debt. Its passage was an important step forward for consumer protections in the District, but even in 1971, it contained significant gaps in protections, including that it applies only to debt arising from consumer credit sales, leases, or direct installment loans, it does not establish hours for phone contact, and it does not prohibit debt collectors from communicating with consumers at their place of employment. Some of these gaps would be addressed six years later when Congress approved the federal Fair Debt Collection Practices Act (FDCPA) on September 20, 1977. But the FDCPA has not been altered since, and the only substantive change to the District's debt collection law since its passage in 1971 was in 2011 when the Council approved the "Creditor Calling Act of 2011" (D.C. Law 19-59; 58 DCR 8973), which clarified that the District's debt collection statute applies to creditors collecting their own debts in addition to third-party debt collectors.[15] Meanwhile, significant economic and technological changes have made the protections in both laws entirely inadequate.

First, from the 1970s to the present day, new technology and forms of communication, such as email, text messaging, and social media, have emerged. Data suggests that:

- Approximately 93% of adults use the internet, and of these adults, 90% have active email accounts;[16]
- Approximately 97% of adults have a cell phone, and over 70% of these adults send or receive text messages; and[17]
- Approximately 72% of adults use at least one social media site.[18]

While debt collectors still use phone calls and physical letters as their primary form of communication, a consumer survey fielded by the Bureau of Consumer Finance Protection (CFPB) in 2014 and 2015 found that, of consumers who had been contacted by a creditor or debt collector about debt, 15% were contacted by email or other means, including via text messages or social media.[19] More recent data from debt collection agencies suggests that more than half communicate with consumers via email, 22% via text message, and 2% via social media.[20] None of these forms of communication are covered in the District's law or the FDCPA, and recent regulations promulgated by the Consumer Finance Protection Bureau do not place any limits on these forms of communication.[21]

---

[15] Committee on Public Services and Consumer Affairs, Report on Bill 19-230, pg. 2. Available at https://lims.dccouncil.us/downloads/LIMS/25986/Committee_Report/B19-0230-COMMITTEEREPORT.pdf.

[16] Internet/Broadband Fact Sheet, Pew Research Center (April 7, 2021), https://www.pewresearch.org/internet/fact-sheet/internet-broadband/; Share of internet users in the United States participating in select digital activities as of August 2019. Statista (January 2020), https://www.statista.com/statistics/184559/typical-daily-online-activities-of-adult-internet-users-in-the-us/.

[17] Mobile Fact Sheet, Pew Research Center (April 7, 2021), https://www.pewresearch.org/internet/fact-sheet/mobile/.

[18] Social Media Fact Sheet, Pew Research Center (April 7, 2021), https://www.pewresearch.org/internet/fact-sheet/social-media/.

[19] Consumer Financial Protection Bureau. "Consumer experiences with debt collection: findings from the CFPB's survey of consumer views on debt," (January 2017), https://files.consumerfinance.gov/f/documents/201701_cfpb_Debt-Collection-Survey-Report.pdf.

[20] A Year of Pivots, Challenges and Opportunities: The Collections Industry in 2020, TransUnion, https://solutions.transunion.com/collections-annual-report-2020/.

[21] Aimee Picchi, "Emails, texts from debt collectors? More repayment reminders could be coming under a new rule," USA Today, November 4, 2020. Available at https://www.usatoday.com/story/money/2020/11/04/debt-collection-calls-joined-texts-emails-under-cfpb-rule/6163784002/.

Second, the debt collection industry has changed dramatically over 40 years. The most important of these changes is the rise of debt buying after the Savings and Loan crisis in the late 1980s.[22] While Public 92-200 and the FDCPA encompass debt buyers, the practice of debt buying, in and of itself, complicates the picture. This is because, unlike an original creditor attempting to collect its own debt or a third-party agency contracted with an original creditor to do so, debt buyers purchase accounts that have been charged off and bundled into portfolios for pennies on the dollar. These portfolios may contain limited or inaccurate information about the accounts. An analysis of debt buyer portfolios by the Federal Trade Commission in 2013 found that 38% of accounts obtained by debt buyers did not specify the type of debt, 70% did not include information about interest rates applied by the original creditor, and 63% did not include information about finance charges or fees applied to the debt, making debt validation all the more critical.[23]

Third, due to the high cost of healthcare in the United States, medical debt has overtaken nonmedical debt as the largest source of debt in collections.[24] Data from the Census Bureau's Survey of Income and Program Participation suggests that 19% of households carried medical debt, and medical debt is more likely to be incurred by Black households (27.9%) than white households (17.2%).[25] The scope of medical debt has likely grown since the start of the COVID-19 pandemic in early March 2020. A July 2021 survey of over 5,000 non-elderly adults by the Commonwealth Fund found that 38% of people tested positive for COVID-19, and 50% of people who lost income due to the COVID-19 pandemic, had trouble with medical bills or medical debt.[26]

Bill 24-357

The Committee Print retains many of the updates made to § 28–3814, including requiring debt collectors to commence an action to collect a debt within 3 years of accrual, prohibiting the imprisonment or jailing of any consumer for failure to collect a consumer debt, and requiring a moratorium on debt collection activities during, and for 60 days after, public health emergencies declared by the Mayor. Objections to these items were not raised at the hearing, so the Committee Print does not make any substantive changes. Several important concerns and substantive changes made to the bill via the Committee Print are discussed below.

---

[22] The Structure and Practices of the Debt Buying Industry, (January 2013), The Federal Trade Commission, https://www.ftc.gov/sites/default/files/documents/reports/structure-and-practices-debt-buying industry/debtbuyingreport.pdf.

[23] *Id.*

[24] Kluender, R., Mahoney, N., Wong, F., & Yin, W. Medical Debt in the US, 2009-2020. *JAMA*, 326(3), 250-256, (2021).

[25] Neil Bennett, Jonathan Eggleston, Laryssa Mykyta, and Briana Sullivan, "19% of U.S. Households Could Not Afford to Pay for Medical Care Right Away," United States Census Bureau, April 7, 2021.

[26] Sara R. Collins, Gabriella N. Aboulafia, and Munira Z. Gunja, As the Pandemic Eases, What Is the State of Health Care Coverage and Affordability in the U.S.? Findings from the Commonwealth Fund Health Care Coverage and COVID-19 Survey, March–June 2021 (July 2021), https://www.commonwealthfund.org/publications/issue-briefs/2021/jul/as-pandemic-eases-what-is-state-coverage-affordability-survey#:~:text=More%20than%20half%20(54%25),for%20longer%20than%20a%20year..

Application to Original Creditors, Condo Associations/HOAs, and Other Forms of Debt

Consistent with the bill as introduced, the Committee Print makes two critical changes that expand the scope of the District's debt collection law. First, the Print includes original creditors within the definition of debt collectors. As noted earlier in the report, the Council amended Public Law 92-200 in 2011 with the approval of the "Creditor Calling Act of 2011" (D.C. Law 19-59; 58 DCR 8973). The stated purpose of Law 19-59 was to "apply debt collection restrictions to creditors as well as debt collectors." Unfortunately, the law may not have accomplished its stated purpose. Debt collection restrictions under D.C. Code § 28-3814 apply only to conduct and practices in connection with the collection of debt arising from "consumer credit sales, consumer leases, and direct installment loans."[27] Pursuant to D.C. Official Code § 28-3802(2), a "consumer credit sale" is defined as a sale of goods and services in which:

> *(A) a credit is granted by a person who regularly engages as a seller in credit transactions of the same kind;*
> *(B) the buyer is a natural person;*
> *(C) the goods or services are purchased primarily for a personal, family, household, or agricultural purpose;*
> *(D) either the debt is payable in installments, or a finance charge is made; and*
> *(E) the amount financed does not exceed $25,000.*

This definition does not include "revolving credit accounts," which is defined separately in D.C. Official Code § 28-3701(1) and includes credit cards.[28] Rather, it covers the extension of credit for specific retail goods, such as under a rent-to-own agreement, or specific services such as work, labor, other personal services, home sale solicitations, entertainment or transportation privileges, and insurance provided by a person other than the insurer.[29] While these types of consumer credit sales still exist, original creditors rarely extend this type of credit to consumers today. As such, original creditors collecting debts for credit cards, the largest source of delinquent consumer debt, are not bound by the law.[30]

Original creditors argue that their relationship with the consumer is different from third-party debt collectors. This is true in so far as third-party debt collectors are not extending consumers' credit, and creditors may take a slightly less aggressive approach to retain consumers. However, original creditors often collect on their own debt using the same mechanisms as third-party collectors. In 2019, four original creditors (Bank of America, Capital One, Discover Bank, and Wells Fargo) filed at least 1,585 cases against consumers for small claims in D.C. Superior Court.[31] These four original creditors accounted for nearly 1 in 5 cases filed in small claims court.

---

[27] D.C. Official Code § 28-3814(a).
[28] The definition of "consumer credit sale" in Public Law 92-200 is identical to the 1968 version of the Uniform Consumer Credit Code, which explicitly exempts credit cards or revolving credit accounts from the definition.
[29] Moo, P. R. Legislative control of consumer credit transactions. *Law and Contemporary Problems*, 33(4), 656-670, (1968).
[30] Federal Reserve Bank of New York, Household Debt and Credit Report (Q4 2021), Percent of Balance 90+ Days Delinquent.
[31] See page 3 of this report.

Analysis of data from other states paints a similar picture, which may be why debt collection laws in states such as California,[32] Pennsylvania,[33] Florida,[34] Iowa,[35] Massachusetts,[36] and Wisconsin[37] all apply to original creditors as well as third-party collectors. Given this reality, exempting original creditors from the law could put thousands of District residents at risk. Therefore, the Committee Print ensures the law applies to original creditors.

Second, the Print's expanded scope—inclusive of all consumer debt—would cover medical debt and condominium and homeowner association debt. At the Committee's hearing on Bill 24-357, several condominium and homeowner's association representatives suggested that the bill be amended to exempt condominium and homeowner associations altogether. These witnesses contended that homeowners are not "consumers," and assessments paid by these homeowners are not "consumer debt."[38] These arguments do not convince the Committee. While Public Law 92-200 does not currently apply to condominium or homeowner association assessments, they fall under the definition of debt in the FDCPA. Under the FDCPA, the term "debt" is defined as any "obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are subject of the transaction are primarily for personal, family, or household purposes…"[39]

Courts have largely agreed that condominium and homeowner association assessments are debt under the FDCPA.[40] In *Newman v. Boehm, Pearlstein & Bright, Ltd.*, for instance, the United States Court of Appeals for the Seventh Circuit concluded that homeowner associations assessments are considered under the FDCPA because the obligation to pay assessments arose in connection with the purchase of the home.[41] Additionally, the court noted that the assessments meet the requirement that the debt is tied to "personal, family, or household purposes" because they directly benefit the household paying the assessments. Where courts have concluded otherwise, this is because the assessments were not tied to the purchase of the property or the plaintiff failed to demonstrate why they purchased the home.[42] Exempting condominium and homeowner associations from Bill 24-357 would mean that they are subject to a federal law that provides fewer protections to consumers, but not to the law of the District, which the Committee aims to enhance. For that reason, the Committee Print does not exempt condominium and homeowner associations or the assessments levied by these associations when they seek to collect them as debt.

---

[32] California Civil Code § 1788 *et seq*.
[33] 73 Pennsylvania Statutes § 2270.4(b)
[34] Florida Statutes § 559.55 *et seq*.
[35] Iowa Code § 536.7101 *et seq*.
[36] Massachusetts General Laws C. 93, § 49.
[37] Wisconsin Statutes § 427.101 *et seq*.
[38] See, for instance, the Testimony of Molly Peacock, Esq. November 29, 2021.
[39] 15 U.S. Code § 1692a(5).
[40] See, for instance, *Newman v. Boehm, Pearlstein & Bright, Ltd.*, 119 F.3d 477; *Thies v. Law Offices of William A. Wyman*, 969 F. Supp. 604; *Garner v. Kansas*, 1999, U.S. Dist.; *Cole v. Toll*, 2007, U.S. Dist.; and *Ferrell v. Cmty. Mgmt. Servs. LLC*, 2011, U.S. Dist.
[41] In the *Newman* case, the homeowner association required the owner to agree to the bylaws of the association, which included payment of any association fees and assessments.
[42] See, for instance, *Spiegel v. Kim*, 2018 U.S. Dist., and *Camaj v. Makower Abbate Guerra Wegner Vollmer, PLLC*, 2019 U.S. Dist.

The Call Cap and Other Forms of Communication

As introduced, the bill would cap the number of calls a debt collector could make to a consumer to 3 in any 7-day period. At the Committee's hearing on Bill 24-357, representatives of the debt collection industry requested that the call cap be changed to seven calls per account per week, consistent with Section 1006.14(b)(2)(i)(A) of the CFPB Regulation F. While the Committee understands the desire to have District law and federal regulations align, the Committee rejects this recommendation for two reasons. First, it is worth noting that under § 1006.104 of Regulation F explicitly states:

> *Neither the Act nor the corresponding provisions of this part annul, alter, affect, or exempt any person subject to the provisions of the Act or the corresponding provisions of this part from complying with the laws of any State with respect to debt collection practices except to the extent that those laws are inconsistent with any provision of the Act or the corresponding provisions of this part, and then only to the extent of the inconsistency. For purposes of this section, a State law is not inconsistent with the Act or the corresponding provisions of this part if the protection such law affords any consumer is greater than the protection provided by the Act or the corresponding provisions of this part.*[43]

This means states, including the District, may adopt and enforce laws that afford consumers greater protections than the FDCPA or Regulation F. Second, the Committee believes the requested call cap is unnecessarily excessive. For instance, a consumer with two accounts could be called by debt collectors up to 14 times a week. In a month, they could receive as many as 56 calls. Data suggests that the average American receives 93 phone calls in a month.[44] Allowing up to 56 calls a month from debt collectors would represent a significant increase in the potential volume of calls received by consumers in the District.

Instead of simply copying the call cap in Regulation F, the Committee Print contains a call cap of 4 calls per account per week. The "per account" language was added because original creditors and debt collectors indicated that, in many circumstances, different divisions or employees handle specific types of debt, and so two representatives of a debt collector may need to contact the consumer separately, for instance. Calls made to a debt collector by a consumer, a single completed phone call made by a debt collector in response to a consumer's request for a returned phone call, calls with a busy signal, or calls made to a wrong number not affiliated with the consumer or the consumer's family would not apply toward the call cap. Additionally, once a conversation has taken place over the phone, the debt collector cannot call the consumer again for 7 days unless otherwise requested, and consumers may opt out of receiving phone calls in writing at any time. The Committee believes this is significantly more reasonable than the call cap in

[43] Regulation F § 1006.104. Relation to State laws.
[44] State of the Phone Call: Half-Yearly Report 2019, Hiya, https://assets.hiya.com/public/pdf/HiyaStateOfTheCall2019H1.pdf.

Regulation F and still provides plenty of opportunities for debt collectors to contact consumers via phone.

In addition to phone calls, debt collectors may contact consumers via text message, email, or private message. As introduced, Bill 24-357 does not contain any restrictions on communications with consumers via text message, email, or private message. Regulation F provides some protections to consumers, but they are inadequate in many respects. For instance, debt collectors may only send emails to a consumer if:[45]

1. The consumer used the email address to communicate with the debt collector about the debt, and the consumer has not opted out of communications via email;
2. The debt collector received prior consent from the consumer to use the email address to communicate about the debt;
3. A creditor used the email address to communicate with the consumer, the debt will be transferred to a debt collector, and the creditor noted that the debt collector may use the email to communicate with the consumer; or
4. A prior debt collector used the email address, and the consumer did not opt-out.

If the debt collector satisfies any of the above, there is no cap on the number of emails a debt collector may send. This is problematic for several reasons. First, the agreement to communicate over email was between the creditor and the consumer, not a third-party debt collector. Consumers may feel differently about communicating with a third-party debt collector via email than they do with a creditor. Second, email communications may be missed or sent to spam if the debt collection company has never contacted the consumer via email before. Third, scammers are using sophisticated spoofing techniques to pose as debt collectors. A consumer who receives an unsolicited email or text message may find it difficult to distinguish between a legitimate debt collector and a scam artist.[46] Finally, the CFPB's survey of consumers found that only 13% of consumers contacted about a debt in collection prefer communicating with debt collectors via email, text message, or social media. By contrast, 42% prefer communication via letter, and 30% prefer oral communication via a landline or cell phone.[47] This suggests that consumers prefer more traditional methods of communication with third-party debt collectors. As such, the Committee Print would prohibit debt collectors from sending text messages, emails, and private messages through social media *before* obtaining a consumer's express consent, except that a debt collector may send a text message, email, or private message to obtain consent to communicate via that manner, similar to current regulations in New York.[48] Once a debt collector has obtained the consumer's consent, they could send up to five text messages, emails, ***and*** private messages in any 7-day period unless the consumer agrees to receive more communications. As with the call cap, there are some messages that would not apply to the cap on electronic communications. Consistent with Regulation F, the Print requires debt collectors to allow consumers to opt of these communications at any time. This approach limits unwanted and

[45] Regulation F § 1006.6(d)(4)-(5).
[46] See, for instance, Washington State Department of Financial Institutions, Alert Number CA052361_7/30/2020. Available at https://dfi.wa.gov/consumer/alerts/acs-incorporation.
[47] *Supra* note 19, pg. 37.
[48] 23 CRR-NY 1.6.

voluminous communications while also allowing debt collectors to contact and communicate with consumers outside of phone calls.

Notice Requirements

As introduced, Bill 24-357 contained few notice provisions, but identical emergency and temporary bills moved by the Chairman contained several notice provisions due to consultation with various stakeholders. The Committee Prints adopts the notice requirements in the temporary bill but slightly tweaks the language in the notice to increase its readability. Research suggests that the average literate American citizen reads at an 8th-grade level.[49] An analysis of the language by Readable finds that the language scores a 7.5 on the Flesch-Kincaid Grade Level Formula and an overall readability rating of A, meaning the vast majority of the general public will not have trouble understanding the language on the notice.[50] The Print adds an additional requirement to provide the notice in English and Spanish unless a language other than Spanish is principally used in the original contract, in which case, they must send the notice in English and the language principally used in the contract. Spanish was chosen as the default language for the non-English notice because it is the second most spoken language in the District, and nearly 25% of Spanish-speaking households speak limited English.[51]

The notice required under (m)(2)(a), as well as notices or communications made pursuant (n)(2) and (q), must also include a statement that the consumer may have income and resources protected from the claims of debt collectors. Federal law protects social security benefits, veteran's benefits, and supplemental security income payments from garnishment, for instance,[52] and District law also provides for additional protection by exempting TANF, alimony, and worker's compensation.[53] Additionally, the Print requires the statement under (q) to include the current number or numbers for civil legal services in debt collection cases, as published by the Superior Court.

Debt Collection and the Courts

As demonstrated earlier in the report, debt collectors file thousands of cases in small claims court every year in the District. Given the volume of cases and the impacts these cases have on consumers, the Committee Print makes several notable changes to filing and pleading requirements that will benefit consumers. First, the Print requires debt collectors to submit proof of address verification. In small claims cases analyzed by the Committee, approximately 70% of cases were dismissed. Of those dismissed cases, roughly 60% were dismissed because debt collectors did not prove they served a summons and complaint on the defendant. In some cases, debt collectors had to send multiple summons and complaints due to having outdated or inaccurate addresses for the defendant.

---

[49] *What's the latest U.S. literacy rate?* Wylie Communications, (August 2021). Available at https://www.wyliecomm.com/2021/08/whats-the-latest-u-s-literacy-rate/.
[50] Analysis of reading levels conducted via Readable. Available at https://readable.com/.
[51] American Community Survey, 2015-2019 (5-Year Estimates). Language Spoken at Home for the Population 5 Years and Older (C16001); Household Language by Household Limited English-Speaking Status (C16002).
[52] 42 U.S.C. § 407 and 38 U.S.C. § 5301.
[53] D.C. Official Code §§ 15-501(a)(7)(C), 15-501(a)(7)(D), and 32-1517.

Second, the Print requires debt collectors to attach certain information to a complaint or statement of claim, including the basis for any interest and fees charged and a list of all past and current owners of the debt, including the date of each transfer. Additionally, the Print requires debt collectors to validate the amount and nature of the debt via business records authenticated by an affiant or affiants with knowledge of how records were kept by the original creditor, and the filing of affidavits and business records before the entry of a default or summary judgment. These provisions are based on laws and rules in New York State and North Carolina that are meant to provide key information to consumers and safeguard against claims that are not legally enforceable.[54] They are also intended to address the problem of so-called "zombie debt," which refers, among other things, to debt that is time-barred debt, past the statute of limitations, already paid, not owed by the person being contacted by the debt collector, or other attempts to revive a debt. While there is little information on the scope of zombie debt, an analysis of complaints to the CFPB shows that almost half of the complaints regarding debt collection are about debt collectors trying to collect debt not owed by the consumer,[55] and multiple articles suggest that debt collectors regularly pursue "zombie debt" claims in court.[56] By requiring debt collectors to validate the nature and amount of debt and provide evidence as to the chain of custody, etc., it will be easier for courts to assess the validity of claims and easier for defendants to contest claims involving this zombie debt.

Third, the Print requires the court to assess the plaintiff's compliance with subsections (o) through (r) before entering a judgment and allows defendants to raise a violation of the law as a defense. In either scenario, if the court finds that the plaintiff hasn't complied, the court must dismiss the case. If the plaintiff's noncompliance is willful, the court must dismiss the case with prejudice. This ensures that cases are not allowed to be refiled where a debt collector knowingly flouts the law, as opposed to making mistakes unknowingly.

Fourth, the Print provides for statutory damages of anywhere from $500 to $4,000 per violation and does not establish a ceiling for damages in class action cases. Under the FDCPA, statutory damages may not exceed $1,000 per violation, and damages in class action lawsuits are restricted to the lesser of $500,000 or one percent of the debt collector's net worth.[57] At the Committee's hearing, debt collectors advocated for similar language to be included in this bill, but the Committee finds their arguments unpersuasive for two reasons. First, courts have placed the burden of proof on plaintiffs to produce evidence of a debt collector's net worth, which can be difficult to do,[58] particularly since there is no simple statutory definition of net worth and many

[54] See 22 CRR-NY 202.27-a; N.C. Gen. Stat. Ann. § 58-70-155.
[55] CFPB Annual Report 2021, Fair Debt Collection Practices Act, Bureau of Consumer Financial Protection, https://files.consumerfinance.gov/f/documents/cfpb_fdcpa_annual-report-congress_03-2021.pdf.
[56] See, for instance, Walgenkim, Y. (2011). Killing Zombie Debt through Clarity and Consistency in the Fair Debt Collection Practices Act. *Loy. Consumer L. Rev.*, 24, 65; Sobol, N. L. (2014). Protecting consumers from zombie-debt collectors. NML Rev., 44, 327; Serafine, J. F. (2017). WWZZZ: Zombie Debt, the Zlaket Rules, and Regulation Z. *Geo. J. on Poverty L. & Pol'y*, 25, 1; and Smart, M. A. (2017). Dawn of the Debt: The Increasing Problem of Creditors Infecting the Discharge Injunction with Zombie Debt. *Me. L. Rev.*, 70, 35.
[57] 15 U.S.C. § 1692k(a)(2)(A) and (B).
[58] See, for instance, *Tourgeman v. Nelson & Kennard*, 900 F.3d 1105.

debt collection entities are subsidiaries.[59] Second, this would significantly restrict the amount of damages awarded to class members, no matter how severe the violations or negative the impacts. For instance, in a class-action lawsuit against LVNV in New Jersey, it was determined that 378,733 people would be class members, and each class member would receive $6.34.[60] As such, the Committee Print does not alter the statutory damages and maintains the language establishing a ceiling for class action damages.

Finally, the Print makes a critical change to the provision regarding recovery of attorney's fees. As introduced, the bill would cap attorney's fees at no greater than 15% of the debt owed. At the Committee's hearing on Bill 24-357, several witnesses—mostly attorneys and homeowners associated with condominium and homeowner associations—expressed concern about a hard cap on attorney's fees, noting that this may cause attorneys to pass their costs on to the association. To address this concern, the Print amends the language to allow a prevailing plaintiff to submit evidence to the court showing why recovering attorney's fees higher than 15% of the amount of the debt is necessary, should the attorney require higher fees for their work. In taking this approach, the Print effectively balances the need to limit excessive attorney's fees with the need to provide a mechanism for attorneys who rightfully deserve higher fees a chance to recover them. This would only apply to debt collection cases filed outside of small claims court, as attorney's fees are capped at no greater than 15% of the debt owed in small claims court pursuant to court rules.[61]

Miscellaneous Changes

In addition to the changes noted above, the Print makes several technical and clarifying amendments, including striking the term "claim" throughout the law, inserting the term "consumer debt" in its place, defining the term "consumer," and clarifying that itemized accounting for credit card debt is measured from the charge-off balance. These amendments will lessen confusion as to what debt is covered and how credit card debt that has been charged off is to be reported.

Applicable Date

Given the numerous changes made to the bill when compared with the introduced version, debt collectors and original creditors have expressed a need for time to come into compliance with the law. The Print includes an applicability date of November 1, 2022, which is approximately 180 days after the anticipated second reading of the bill.

Conclusion

Debt collection impacts thousands of District residents every year, particularly residents of color. The District's current law, passed over 50 years ago, provides limited protection to consumers who may experience harassment or abuse at the hands of debt collectors, does not apply

[59] For instance, in a class action case against LVNV Funding LLC in the U.S. District Court for the South District of Indiana, a corporate disclosure statement showed that LVNV is owned by Sherman Originator LLC, which is owned by Sherman Financial Group LLC.
[60] Order granting final approval of class action settlement agreement *In re LVNV LLC Fair Debt Collection Practices Act Litigation*, United States District Court, District of New Jersey.
[61] D.C. Superior Court Rules of Procedure for Small Claims, Rule 19, Limitation of Allowance of Attorney's Fees.

to all forms of consumer debt, and does not address court processes for debt collection cases. The Committee Print addresses these issues and more, modernizing the District's debt collection law and providing significantly more protection to residents in debt. Given these facts, the Committee recommends Council approval of the Print.

II. LEGISLATIVE CHRONOLOGY

July 12, 2021	Bill 24-357, the "Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2021" is introduced by Chairman Phil Mendelson with Councilmember Mary Cheh as a co-sponsor.
July 13, 2021	Bill 24-357 is "read" at a legislative meeting; on this date the referral of the bill to the Committee of the Whole is official.
July 16, 2021	Notice of Intent to Act on Bill 24-357 is published in the *District of Columbia Register*.
November 29, 2021	The Committee of the Whole holds a public hearing on Bill 24-357.
March 15, 2022	The Committee of the Whole marks-up Bill 24-357.

III. POSITION OF THE EXECUTIVE

The Executive did not provide comments or testimony on Bill 24-357.

IV. COMMENTS OF ADVISORY NEIGHBORHOOD COMMISSIONS

The Committee did not receive comments from any Advisory Neighborhood Commissions (ANC) regarding this Bill.

V. SUMMARY OF TESTIMONY

The Committee of the Whole held a public hearing on several bills, including Bill 24-357, on Monday, November 29, 2021. The testimony summarized below pertains to Bill 24-357. Copies of written testimony are attached to this report.

David Reid, General Counsel with Receivables Management Association International, testified in opposition to the bill as introduced and urged the Committee to work with the debt collection industry to address their concerns.

Tamar Yudenfruend, Senior Director of Public Policy with Encore Capital, testified in opposition to the bill as introduced and encouraged the Committee to adopt specific changes to the bill.

Andrew Madden, Vice President of Government and State Affairs with ACA International, testified in opposition to the bill as drafted and encouraged the Committee to adopt specific changes to the bill.

Orjanel Lewis, Policy Advisor with PRA Group, testified in opposition to the bill.

Jan Stieger, Executive Director with Receivables Management Association International, testified in opposition to the bill as introduced and urged the Committee to aim for uniformity with the FDCPA.

Don Maurice, outside counsel to Receivables Management Association International, testified in opposition to the bill.

Matt Kownacki, Director of State Research and Policy with American Financial Services Association, testified in opposition to the bill as introduced and urged the Committee to exempt original creditors.

Deborah Hill, Senior Staff Attorney with Legal Counsel for the Elderly, testified in support of the bill, noting the importance of limiting excessive legal fees in debt collection cases involving condominium or homeowner associations.

Jonathan Grossman, representing the Estate Debt Collection, testified that the Committee should make specific amendments to the bill to ensure estate debt collectors are not unduly restricted in their operations in the District.

Cary Devorsetz, Attorney with Alderman, Devorsetz & Hora, testified in opposition to the bill as introduced and urged the Committee to exempt condominium and homeowner association debt and lift the cap on attorney's fees.

Karen Dale, Market President with AmeriHealth Caritas DC, testified in support of the bill.

Lillian Moy, public witness, testified in support of the bill and shared her experience dealing with debt collectors during the pandemic.

Molly Peacock, Rees Broome, testified in opposition to the bill as introduced and urged the Committee to exempt condominium and homeowner association debt.

Cecelia Wimbish, public witness, testified in support of the bill.

Yaida Ford, Community Associations Institute National, testified in opposition to the bill as introduced and urged the Committee to exempt condominium and homeowner association debt.

Paul Horton, CEO of Quality 1 Property Management, testified in opposition to the bill as introduced and urged the Committee to lift the cap on attorney's fees.

Lee Kincaid, President of Village at Dakota Crossing Homeowners Association, testified in opposition to the bill as introduced and urged the Committee to lift the cap on attorney's fees.

Ruhi Mirza, Rees Broome, testified in opposition to the bill as introduced and urged the Committee to lift the cap on attorney's fees.

Roy Murray, Vice President of Advocacy with MD/DC Creditor's Bar Association, testified in opposition to the bill and urged the Committee to exempt original creditors.

Anne Thomas, Cavalry Portfolio Services, LLC, testified in opposition to the bill.

Eugene Wilkerson, Walter E. Washington Estates, testified in opposition to the bill as introduced and urged the Committee to lift the cap on attorney's fees.

Jennifer Lavallee, Supervising Attorney with Legal Aid Society of D.C., testified in support of the bill.

Ariel Levinson-Waldman, Founding President and Director-Counsel with Tzedek D.C., testified in support of the bill.

Erika Rickard, Project Director with Pew Charitable Trusts, testified in support of the bill.

Jeremiah Montague, ANC Commissioner for 5C07, testified in support of the bill.

Wendy Weinberg, Senior Assistant Attorney General with the Office of the Attorney General, testified in support of the bill. Ms. Weinberg noted that the current law is outdated and provides inferior protections compared to many other state debt collection laws. She testified that the bill would resolve these issues by expanding the scope of the law to cover medical and credit card debt, prohibit specific forms of harassment, explicitly cover the activity of third-party debt buyers, and prohibit the jailing of anyone for failing to pay a debt.

In addition to the testimony summarized above, the Committee received several comments in writing, summarized below.

The Trial Lawyers Association of Metropolitan Washington, D.C., provided written comments in support of the bill.

Yasmin Farahi, Center for Responsible Lending, provided written comments in support of the bill.

Kelly Knepper-Stephens, Chief Compliance Officer and General Counsel with True Accord, provided written comments in opposition to the bill as introduced and encouraged specific changes be made.

Mitchell Williamson, Barron & Newburger, P.C., provided written comments in opposition to the bill as introduced and encouraged specific changes be made.

Marceline White, Executive Director of Maryland Consumer Rights Coalition, provided written comments in support of the bill.

Virginia Woodfin, a District resident in Ward 5, provided written comments in support of the bill.

VI. IMPACT ON EXISTING LAW

Bill 24-357 would amend D.C. Official Code § 28-3814 to include all consumer debt under the District's collection law and prohibit deceptive behavior and certain threats from debt collectors, to prohibit the communication of consumer indebtedness to employers, friends, or neighbors, to prohibit debt collectors from making more than three calls per account in any 7-day period, to prohibit debt collectors from sending more than one email, text message, or private message prior to obtaining consent from the consumer, to limit the number of emails, text messages, and private messages that can be sent by debt collectors in any 7-day period after receiving a consumer's consent, to require certain notices to be sent by debt collectors to consumers, to establish requirements for debt collectors initiating a cause of action against a consumer for consumer debt, to establish certain requirements for pleadings in court cases involving debt collection, to allow for the collection of damages and other fees to a consumer for a violation of this bill, to prohibit imprisonment or jailing of consumers for failure to pay a consumer debt, and to establish debt collection protections during a public health emergency declared by the Mayor.

VII. FISCAL IMPACT

The attached March 14, 2022 fiscal impact statement from the District's Chief Financial Officer states that funds are sufficient in the fiscal year 2022 through fiscal year 2025 budget and financial plan.

VIII. RACIAL EQUITY IMPACT ASSESSMENT

IX. SECTION-BY-SECTION ANALYSIS

Section 2

(a) Amends lead-in language to make the law applicable to all consumer debt.

(b) Strikes the definition for the term "claims" and "creditor" and inserts definitions for "consumer debt," "debt buyer," "original creditor," "person," and "public health emergency."

(c) Amends paragraphs (2) and (4) of subsection (c) and adds new paragraphs (6)-(9) to prohibit the disclosure or threat of disclosure of certain from debt collectors.

(d) Amends paragraph (3) and adds new paragraphs (4)-(6) to restrict the number of phone calls, text messages, emails, and private messages a debt collector may send and to prohibit debt collectors from visiting the household the consumer or place of employment of the consumer except to serve a lawsuit.

(e) Amends paragraphs (1), (2), and (3) of subsection (e) to prohibit the debt collector from communicating with the consumers' employee, with limited exception, and to prohibit the disclosure of information about the consumer's indebtedness.

(f) Amends the lead-in language and paragraphs (2) and (4) to ensure debt collectors disclose certain information to consumers whenever they contact said consumers.

(g) Adds a new paragraph (6) that prohibits attempting to collect debts owed by a deceased consumer from someone with no legal obligation to pay the debts.

(j) Amends paragraphs (1) and (2) to clarify that debt collectors are liable for a violation of the law and provide for punitive damages where applicable.

(k) Amends subsection (k) to prohibit debt collectors from making calls or sending text messages to consumers before 8 a.m. or after 9 p.m. EST or EDT.

(l) Adds new subsections (l)-(cc) which require debt collectors to be in possession of or have access to certain documents before commencing an action, require specific notices to be sent to the consumer and provide language for those notices, requires debt collectors to commence an action for consumer debt within 3 years of accrual, require debt collectors to submit certain information to the court at the time of initial pleading and prior to a default or summary judgment, require the court to dismiss cases when the court finds that a debt collector has not substantially complied with the law, provides for punitive damages and a ceiling on class action damages, generally limits the amount of attorney's fees that may be recovered to 15% of the debt owed but provides a mechanism to request a greater amount be recovered, prohibits the imprisonment or jailing of anyone for failure to pay a consumer debt, and establishes a moratoria on certain debt collection activity during, and for 60 days after, a public health emergency declared by the Mayor.

Section 3 Fiscal impact statement.

Section 4 Effective date.

X. COMMITTEE ACTION

XI. ATTACHMENTS

1. Bill 24-357 as introduced.
2. Written Testimony.
3. Fiscal Impact Statement for Bill 24-357.
4. Legal Sufficiency Determination for Bill 24-357.
5. Racial Equity Impact Assessment for Bill 24-357.
6. Comparative Print for Bill 24-357
7. Committee Print for Bill 24-357.

COUNCIL OF THE DISTRICT OF COLUMBIA
1350 Pennsylvania Avenue, N.W.
Washington D.C. 20004

Memorandum

To : Members of the Council

From : Nyasha Smith, Secretary to the Council

Date : Monday, July 12, 2021

Subject : Referral of Proposed Legislation

Notice is given that the attached proposed legislation was introduced in the Office of the Secretary on Monday, July 12, 2021. Copies are available in Room 10, the Legislative Services Division.

TITLE: "Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2021", B24-0357

INTRODUCED BY: Chairman Mendelson

The Chairman is referring this legislation to Committee of the Whole.

Attachment
cc: General Counsel
Budget Director
Legislative Services

Chairman Phil Mendelson

A BILL

_____

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

_____

To amend DC Code Section 28-3814 to include all consumer debt under the District's collection law; to prohibit deceptive behavior from debt collectors including threatening to accuse people of fraud, threatening to sell or assign consumer debt such that the consumer would lose defense to a claim or disclosing or threatening to disclose consumer debt information without acknowledging such debt is in dispute or in a way that would harm the consumers reputation for credit worthiness; to prohibit debt collectors from making more than three phone calls to a consumer in seven days; to prohibit the communication of consumer indebtedness to employer's, except when such indebtedness is guaranteed by the employer, the employer requests the loan, or the information is an attachment to an execution or judgment allowed by law; to prohibit debt collectors from communicating an individual's indebtedness to family, friends or neighbors except through proper legal processes; to require debt collectors to have complete documentation related to the consumer debt being collected; to require debt collectors who enter into a payment schedule or settlement to provide a written copy of said schedule or agreement; to implement specific requirements for a debt collector when initiating a cause of action against a consumer for consumer debt; to allow for the awarding of damages and other fees to a consumer where a debt buyer or debt collector violates this section; to establish specific requirements for the awarding of attorney's fees where the plaintiff is the prevailing party; to establish specific requirements for courts to issue a bench warrant for civil arrest for failure to appear in a debt collection case; to prohibit the imprisonment or jailing or any consumer for failure to pay consumer debt; and to establish debt collection protections during a public health emergency declared by the Mayor.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2021".

Sec. 2. Section 28-3814 of the District of Columbia Official Code is amended as follows:

(a) Subsection (a) is amended to read as follows:

"(a) This section applies to conduct and practices in connection with collection of obligations arising from any consumer debt (other than a loan directly secured on real estate or a direct motor vehicle installment loan covered by Chapter 36 of Title 28).".

(b) Subsection (b) is amended to read as follows:

"(b) As used in this section, the term –

"(1) "claim" means any obligation or alleged obligation, arising from a consumer debt;

"(2) "consumer debt" means money or its equivalent, or a loan or advance of money, which is, or is alleged to be, more than 30 days past due and owing, unless a different period is agreed to by the debtor, as a result of a purchase, lease, or loan of goods, services, or real or personal property for personal, family, medical, or household purposes;

"(3) "creditor" means a claimant or other person holding or alleging to hold a claim;

"(4) "debt buyer" means a person or entity that is engaged in the business of purchasing charged-off consumer debt or other delinquent consumer debt for collection purposes, whether it collects the debt itself or hires a third party for collection, including an attorney, in order to collect such debt. A debt buyer is considered a debt collector for all purposes;

"(5) "debt collection" means any action, conduct or practice in connection with the collection of consumer debt;

"(6) "debt collector" means a person engaging directly or indirectly in debt collection, and includes any person who sells or offers to sell forms represented to be a collection system, device, or a scheme or method intended or calculated to be used to collect claims;

"(7) "person" means an individual, corporation, business trust, estate, trust partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity; and

"(8) "public health emergency" means a period of time for which the Mayor has declared a public health emergency pursuant to § 7-2304.01, or a state of emergency pursuant to § 28-4102.".

(c) Subsection (c) is amended as follows:

(1) Subsection (c) is amended by striking the term "of the following ways:" and inserting "way, including:" in its place.

(2) Paragraph 2 is amended to read as follows:

"(2) the accusation or threat to falsely accuse any person of fraud or any crime, or any conduct which, if true, would tend to disgrace such other person or in any way subject the person to ridicule, contempt, disgrace, or shame;"

(3) Paragraph 4 is amended to read as follows:

"(4) the threat to sell or assign to another the consumer debt with a representation or implication that the result of such sale or assignment would be that the

consumer would lose any defense to the claim or would be subjected to collection attempts in violation of this section;"

(4) Paragraph 5 is amended by striking the period at the end of the sentence and inserting a semi-colon in its place.

(5) New paragraphs 6, 7, and 8 are added to read as follows:

"(6) the threat of any action which the creditor or debt collector cannot legally take or any action which the creditor or debt collector in the usual course of business does not in fact take;

"(7) disclosing or threatening to disclose information concerning the existence of a debt known to be disputed by the consumer without disclosing the fact that the debt is disputed by the consumer; and

"(8) disclosing or threatening to disclose information affecting the consumer's reputation for credit worthiness with knowledge or reason to know that the information is false.".

(d) Subsection (d) is amended as follows:

(1) Subsection (d) is amended by striking the term "of the following ways:" and inserting "way, including:" in its place.

(2) Paragraph 2 is amended by striking the term "and."

(3) Paragraph 3 is amended to read as follows:

"(3) causing expense to any person incurred by a medium of communication, or by concealment of the true purpose of the notice, letter, message, or communication; and"."

(4) A new paragraph 4 is added to read as follows:

"(4) communicating with the consumer or any member of the consumer's family or household in such a manner that can reasonably be expected to abuse or harass the consumer, including, but not limited to communications at an unreasonable hour or with unreasonable frequency, or by making in excess of three phone calls, inclusive of all phone numbers and accounts the creditor or debt collector has for the consumer, in any 7-day period.".

(e) Subsection (e) is amended as follows:

(1) Subsection (e) is amended by striking the term "any of the following ways:" and inserting the phrase "such a manner as to harass or embarrass the alleged debtor in any way, including:" in its place.

(2) Paragraph 1 is amended to read as follows:

"(1) the communication of any information relating to a consumer's indebtedness to any employer or employer's agent, except where such indebtedness had been guaranteed by the employer or the employer has requested the loan giving rise to the indebtedness and except where such communication is in connection with an attachment or execution after judgments as authorized by law;"

(3) Paragraph 2 is amended to read as follows:

"(2) the disclosure, publication, or communication of information relating to a consumer's indebtedness to any relative, family member, friend or neighbor of the consumer, except through proper legal action or process or at the express and unsolicited request of the relative or family member;"

(f) Subsection (f) is amended as follows:

(1) Subsection (f) is amended to read as follows:

"(f) No creditor or debt collector shall use any unfair, fraudulent, deceptive, or misleading representation, device, or practice to collect a consumer debt or to obtain information in conjunction with their collection of claims in any way, including:"

(2) Paragraph 4 is amended by inserting the striking the phrase "name and full business address" and inserting "name, phone number, email address, and full business address" in its place.

(3) New paragraphs 10 and 11 are added to read as follows:

"(10) initiating a cause of action to collect a consumer debt when the debt collector knows or reasonably should know that the applicable statute of limitations period has expired; or

"(11) seeking to collect funds from a consumer that the debt collector knows or has reason to know are exempt from attachment or garnishment under federal or state law.".

(g) Subsection (g) is amended as follows:

(1) Subsection (g) is amended by striking the term "of the following ways:" and inserting "way, including:" in its place.

(2) Paragraph 4 is amended by striking the term "; and" and inserting a semi-colon in its place.

(3) Paragraph 5 is amended by striking the period and inserting "; and" in its place.

(4) A new paragraph 6 is added to read as follows:

"(6) attempting to collect debts owed by a deceased consumer from a person with no legal obligation to pay the amounts alleged to be owed.".

(h) Subsection (j) is amended as follows:

(1) Paragraph 1 is amended by striking the terms “willfully” and “of the foregoing subsections.”

(2) Paragraph 2 is amended to read as follows:

“(2) Punitive damages may be awarded to any person affected by a willful violation of any provision of this section, when and in such amount as is deemed appropriate by the court or trier of fact.”.

(i) Subsection (k) is amended by striking the phrase “before 8 a.m. and after 9 p.m.” and inserting the phrase “before 8 a.m. or after 9 p.m.” in its place.

(j) New subsections (l)-(cc) are added to read follows:

“(1) Notwithstanding any other provision of law, when the applicable statute of limitations period has expired, any subsequent payment toward or written or oral affirmation of such consumer debt shall not extend the limitations period.

“(m)(1) No debt collector shall collect or attempt to collect a consumer debt, unless the debt collector has complete and authenticated documentation that the person attempting collection is the owner of the consumer debt, and the debt collector is in possession of the following information or documents:

“(A) Documentation of the name of the original creditor as well as the name of the current creditor or owner of the consumer-debt;

“(B) The debtor's last account number with the original creditor;

“(C) A copy of the signed contract, signed application, or other documents that provide evidence of the consumer’s liability and the terms thereof;

"(D) The date that the consumer debt was incurred; provided, that in the case of a revolving credit account, the date that the consumer debt was incurred shall be the last extension of credit made for the purchase of goods or services, for the lease of goods, or as a loan of money;

"(E) The date and amount of the last payment by the consumer, if applicable; and

"(F) An itemized accounting of the amount claimed to be owed, including the amount of the principal; the amount of any interest, fees or charges; and whether the charges were imposed by the original creditor, a debt collector, or a subsequent owner of the debt. If the debt arises from a credit card, the account shall include copies of the last twenty-four (24) periodic statements required by the Truth in Lending Act, 15 U.S.C. § 1637(b), that evidence the transactions, purchases, fees and charges that comprise the debt.

"(2) A debt collector shall provide the information or documents identified in paragraph (1) of this subsection to the consumer in writing within 5 days after the initial communication with the consumer and shall cease all collection of the consumer debt until such information is provided.

"(n)(1) A debt collector who enters into a payment schedule or settlement agreement regarding a consumer debt shall provide a written copy of the payment schedule or settlement agreement to the consumer within 7 days.

"(2) A consumer shall not be required to make a payment on a payment schedule or settlement agreement until the written agreement required by paragraph (-1) of this subsection has been provided by the debt collector."

"(o) Any action for the collection of a consumer debt shall only be commenced within 3 years of accrual. This period shall apply whether the legal basis of the claim sounds in contract, account stated, open account or other cause, and notwithstanding the provisions of any other statute of limitations unless that statute provides for a shorter limitations period. This time period also applies to contracts under seal. This paragraph shall apply to all claims brought after the date of enactment of this Act.

"(p) Immediately prior to commencing a legal action to collect a consumer debt, the plaintiff shall undertake a reasonable investigation to verify the defendant's current address for service of process.

"(q) In a cause of action initiated by a debt collector to collect a consumer debt, the debt collector shall attach to the complaint or statement of claim a copy of the signed contract, signed application, or other documents that provide evidence of the consumer's liability, and shall allege the following information in the complaint or statement of claim:

"(1) A short and plain statement of the type of consumer debt;

"(2) The information enumerated in § 28-3814(m)(1), except that the debt collector shall only include the last four digits of the debtor's last account number with the original creditor;

"(3) The basis for any interest and fees charged;

"(4) The basis for the request of attorney's fees, if applicable;

"(5) That the debt collector is the current owner of the consumer debt and a chronological listing of the names of all prior owners of the consumer debt and the date of each transfer of ownership, beginning with the original creditor; and

"(6) That the suit is filed within the applicable statute of limitations period.

"(r) In a cause of action initiated by a debt collector to collect a consumer debt, prior to entry of a default judgment or summary judgment against a consumer, the plaintiff shall file evidence with the court to establish the amount and nature of the debt. The only evidence sufficient to establish the amount and nature of the debt shall be authenticated business records that shall include the information enumerated in § 28-3814(m)(1), except that the debt collector shall only include the last four digits of the debtor's last account number with the original creditor.

"(s) In a cause of action initiated by a debt collector to collect a consumer debt, prior to entry of a default judgment or summary judgment against a consumer, the plaintiff shall file a copy of the assignment or other writing establishing that the plaintiff is the owner of the debt. If the debt has been assigned more than once, then each assignment or other writing evidencing transfer of ownership must be attached to establish an unbroken chain of ownership. Each assignment or other writing evidencing transfer of ownership must contain the last four digits of the original account number of the debt purchased and must clearly show the debtor's name associated with that account number.

"(t) In a cause of action initiated by a debt buyer or debt collector to collect a consumer debt, if a debt buyer or debt collector seeks a judgment or order against the defendant and has not complied with the requirements of this section, the court shall dismiss the action with prejudice.

"(u) A debt buyer or debt collector that violates any provision of this section with respect to a consumer shall be liable to the consumer for the following:

“(1) Actual damages;

“(2) Costs and reasonable attorney's fees;

“(3) Punitive damages;

“(4)(A) If the consumer is an individual, the court may award an additional penalty in an amount not less than $500 per violation and not to exceed $4,000 per violation; or

“(B) In the case of a class action, the amount for each named plaintiff as could be recovered under paragraph (4) of this subsection and an amount as the court may determine for each class member, not exceeding the amount per person that could be recovered under paragraph (4) of this subsection times the number of class members; and

“(5) Any other relief which the court determines proper.

“(v) If the plaintiff is the prevailing party in any action to collect a consumer debt, the plaintiff shall be entitled to collect attorney’s fees only if the contract or other document evidencing the indebtedness sets forth an obligation of the consumer to pay such attorney’s fees, and subject to the following provisions:

“(1) If the contract or other document evidencing indebtedness provides for attorney’s fees in some specific percentage, such provision and obligation shall be valid and enforceable up to but not in excess of fifteen percent (15%) of the amount of the debt excluding attorney’s fees and collection costs.

“(2) If a contract or other document evidencing indebtedness provides for the payment of reasonable attorney’s fees by the debtor, without specifying any specific percentage, such provision shall be construed to mean the lesser of 15% of the amount of the debt, excluding attorney’s fees and collection costs, or the amount of attorney’s fees calculated

by a reasonable rate for such cases multiplied by the amount of time reasonably expended to obtain the judgment.

"(3) The documentation setting forth a party's obligation to pay attorney's fees shall be provided to the court before a court may enforce those provisions. Such documentation must include all of the materials specified in subsection (o) of this section.

"(w) Before a court may issue a bench warrant for civil arrest for failing to appear in a debt collection case under this section, the following conditions must be met:

"(1) The plaintiff must have personally served its motion for contempt, or other related motion or filing, on the defendant; and

"(2) The defendant must have failed to appear at two contempt hearings.

"(x) Notwithstanding any other law or court rule, a consumer who is compelled to attend pursuant to a civil arrest warrant shall be brought before the court the same day.

"(y) Notwithstanding any other law or court rule, no person shall be imprisoned or jailed for failure to pay a consumer debt, nor shall any person be imprisoned or jailed for contempt of court or otherwise for failure to comply with a court order to pay a consumer debt in part or in full.

"(z) A violation of the Fair Debt Collection Practices Act, approved September 20, 1977 (91 Stat. 874; 15 U.S.C. § 1692 *et seq*.), as amended, shall constitute a violation of this section.

"(aa)(1) Notwithstanding subsection (a) of this section, subsections (aa) and (bb) of this section shall apply to any debt, including loans directly secured on motor vehicles or direct motor vehicle installment loans covered by Chapter 36 of this title.

"(2) During a public health emergency and for 60 days after its conclusion, no creditor or debt collector shall, with respect to any debt:

"(A) Initiate, file, or threaten to file any new collection lawsuit;

"(B) Initiate, threaten to initiate, or act upon any statutory remedy for the garnishment, seizure, attachment, or withholding of wages, earnings, property, or funds for the payment of a debt to a creditor;

"(C) Initiate, threaten to initiate, or act upon any statutory remedy for the repossession of any vehicle; except, that creditors or debt collectors may accept collateral that is voluntarily surrendered;

"(D) Visit or threaten to visit the household of a debtor at any time for the purpose of collecting a debt;

"(E) Visit or threaten to visit the place of employment of a debtor at any time; or

"(F) Confront or communicate in person with a debtor regarding the collection of a debt in any public place at any time, unless initiated by the debtor.

"(3) This subsection shall not apply to:

"(A) Collecting or attempting to collect a debt that is, or is alleged to be, owed on a loan secured by a mortgage on real property or owed for common expenses pursuant to § 42-1903.12; or

"(B) Collecting or attempting to collect delinquent debt pursuant to [subchapter XVII of Chapter 3 of Title 1].

"(4) Any statute of limitations on any collection lawsuit is tolled during the duration of the public health emergency and for 60 days thereafter.

"(bb)(1) During a public health emergency and for 60 days after its conclusion, no debt collector shall initiate any communication with a debtor via any written or electronic communication, including email, text message, or telephone. A debt collector shall not be deemed to have initiated a communication with a debtor if the communication by the debt collector is in response to a request made by the debtor for the communication or is the mailing of monthly statements related to an existing payment plan or payment receipts related to an existing payment plan.

"(2) This subsection shall not apply to:

"(A) Communications initiated solely for the purpose of informing a debtor of a rescheduled court appearance date or discussing a mutually convenient date for a rescheduled court appearance;

"(B) Original creditors collecting or attempting to collect their own debt;

"(C) Collecting or attempting to collect a debt which is, or is alleged to be, owed on a loan secured by a mortgage on real property or owed for common expenses pursuant to § 42-1903.12;

"(D) Receiving and depositing payments the debtor chooses to make during a public health emergency;

"(E) Collecting or attempting to collect delinquent debt pursuant to [subchapter XVII of Chapter 3 of Title 1].

"(cc) Subsections (aa) and (bb) of this section shall not be construed to:

"(1) Exempt any person from complying with existing laws or rules of professional conduct with respect to debt collection practices;

"(2) Supersede or in any way limit the rights and protections available to consumers under applicable local, state, or federal foreclosure laws; or

"(3) Supersede any obligation under the District of Columbia Rules of Professional Conduct, to the extent of any inconsistency.".

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973, (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE
NOTICE OF PUBLIC HEARING
1350 Pennsylvania Avenue, NW, Washington, DC 20004 **REVISED**

CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE
ANNOUNCES A PUBLIC HEARING

on

Bill 24-126, Seasonal Pricing Price Gouging Amendment Act of 2021

Bill 24-357, Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2021

on

Monday, November 29, 2021, 12:00 p.m.

Live via Zoom Video Conference Broadcast
DC Council Website (www.dccouncil.us)
Council Channel 13 (Cable Television Providers)
Office of Cable Television Website (entertainment.dc.gov)
Chairman's Website (www.ChairmanMendelson.com/live)

Council Chairman Phil Mendelson announces a public hearing before the Committee of the Whole on **Bill 24-126**, the "Seasonal Pricing Price Gouging Amendment Act of 2021" and **Bill 24-357**, the "Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2021." The hearing will be held on Monday, November 29, 2021 at 12:00 p.m. via Zoom videoconference. **This notice has been revised to reflect the fact that the correct date is November 29, 2021.**

The stated purpose of **Bill 24-126** is to modify current consumer protections regarding price gouging in order to allow for the seasonal pricing of vehicle rentals, and to make a public health emergency a triggering event for the prohibition against price gouging of any kind. The stated purpose of **Bill 24-357** is to ensure that all consumer debt falls under the consumer protection law; to prohibit debt collectors from engaging in deceptive behavior and harassment, including threatening to disclose consumer debt information, and limiting the number of phone calls a debt collector can make to a consumer in any given week; to implement specific requirements for a debt collector when initiating a cause of action against a consumer for consumer debt; to allow for the awarding of damages and other fees to a consumer when a debt collector violates the law; to prohibit the imprisonment or jailing of any consumer for failure to pay consumer debt; and to codify consumer protections related to debt collection during a public health emergency declared by the Mayor.

Those who wish to testify must register at http://www.ChairmanMendelson.com/testify by 5:00 p.m. on Friday, November 26, 2021. **Testimony is limited to four minutes**. Witnesses who anticipate needing spoken language interpretation, or require sign language interpretation, are requested to inform the Committee office of the need as soon as possible but no later than five business days before the proceeding. We will make every effort to fulfill timely requests, although alternatives may be offered. Requests received in less than five business days may not be fulfilled. If you have additional questions, please contact Destiny Riley, Committee Assistant, at (202) 724-8196.

The roundtable will be conducted virtually on the Internet utilizing Zoom video conference technology. Because of this, written or transcribed testimony from the public is highly encouraged and will be taken by email or voicemail. Testimony may be submitted in writing to cow@dccouncil.us or may be left by voicemail (up to 3 minutes – which will be transcribed – by calling (202) 430-6948). Testimony received by close of business on November 26, 2021 will be posted publicly to http://www.chairmanmendelson.com/testimony prior to the roundtable. If you are unable to testify at the roundtable, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to cow@dccouncil.us. The record will close at 5:00pm on December 14, 2021.

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE
WITNESS LIST
1350 Pennsylvania Avenue, NW, Washington, DC 20004

CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE
ANNOUNCES A PUBLIC HEARING

on

Bill 24-126, Seasonal Pricing Price Gouging Amendment Act of 2021
Bill 24-357, Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2021

on

Monday November 29, 2021, 12:00 p.m.
DC Council Website (www.dccouncil.us)
Council Channel 13 (Cable Television Providers)
Office of Cable Television Website (entertainment.dc.gov)

PUBLIC WITNESSES

1. David Reid	General Counsel, Receivables Management Association International
2. Tamar Yudenfreund	Senior Director of Public Policy, Encore Capital
3. Andrew Madden	Vice President of Government and State Affairs, ACA International
4. Orjanel Lewis	Policy Advisor, PRA Group
5. David Schlee	MD/DC Creditor's Bar Association
6. Jan Stieger	Executive Director, Receivables Management Association International
7. Donald Maurice	Outside Counsel, Receivables Management Association International
8. Matt Kownacki	Director of State Research and Policy, American Financial Services Association
9. Deborah Hill	Senior Staff Attorney, Legal Counsel for the Elderly

10. Jonathan Grossman	Cozen O'Connor
11. Cary Devorsetz	Attorney with Alderman, Devorsetz & Hora
12. Scott Peters	MD/DC Creditor's Bar Association
13. Karen Dale	AmeriHealth Caritas DC
14. Lillian Moy	Public Witness
15. Molly Peacock	Rees Broome
16. La'Wann White	Public Witness
17. Cecilia Wimbish	Public Witness
18. Yaida Ford	Community Associations Institute National
19. Paul Horton	CEO, Quality 1 Property Management
20. Lee Kincaid	President, Village at Dakota Crossing Homeowners Association
21. Ellen Valentino	On Behalf of Mid-Atlantic Petroleum Distributors Association
22. Kirk McCauley	Government Affairs, WMDA
23. Rob Garagiola	Compass Government Relations (on Behalf of Enterprise Rent-A-Car)
24. Gladys Carter	Public Witness
25. Ruhi Mirza	Rees Broome, P.C.
26. Rory Murray	Vice President of Advocacy, MD|DC Credit Union Association
27. Anne Thomas	Calvary Portfolio Services, LLC
28. Eugene Wilkerson	Walter E. Washington Estates

29. Jennifer Lavallee	Supervising Attorney, Legal Aid Society of DC
30. Ariel Levinson-Waldman	Founding President and Director-Counsel, Tzedek DC
31. Erika Rickard	Project Director, Pew Charitable Trusts
32. Jeremiah Montague	Public Witness

GOVERNMENT WITNESSES

1. Wendy Weinberg	Senior Assistant Attorney General, Office of the Attorney General

Testimony of David Reid
on B24-357
Receivables Management Association International (RMAI)

before the

Committee of the Whole
Chairman Phil Mendelson

Good afternoon Chairman Mendelson and members of the Council of the District of Columbia (the "Council"). My name is David Reid and I am General Counsel at the Receivables Management Association International ("RMAI").

RMAI is the is the nonprofit trade association that represents more than 575 companies that support the purchase, sale, and collection of performing and nonperforming receivables on the secondary market. Our members include banks, credit unions, debt buying companies, collection agencies and collection law firms. Thank you for considering our testimony on Bill 24-357, the "Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2021".

Today, you will hear from a range of voices from the receivables management industry. We applaud the Council in its work to ensure that consumers and business are able to engage in fair and transparent financial activity based on regulatory clarity.

To be sure the global pandemic has had significant implications for District residents, their households, and their overall wellbeing. As we all recover from the unprecedented health, emotional, and financial impact of COVID-19, the receivables industry has an important role to play in making credit available to the widest variety of individuals at the lowest costs.

I would like to thank you, Mr. Chairman, your staff, and the staff of other council members in working with our coalition during the Council's consideration of the companion emergency and temporary versions of this preeminent bill. Through that process we were able to make important improvements to those bills, preventing a number of unintended consequences. We look forward to continuing in that spirit on this, the permanent version of the bill.

Our community has substantial concerns with the bill as drafted. If unaddressed, these provisions would, again, have unintended consequences for consumer wellbeing, the health of the District's financial markets, and broader economic activity.

For unsecured credit to be widely available, there must be fair and predictable ways for debts to be repaid. In the absence of that, the availability of unsecured credit will be reduced, and the

costs associated with it will increase. Consumers and small businesses, already reeling from the pandemic, will face a more restricted and expensive lending environment as a result.

Already today, the District faces unique challenges with respect to consumer credit. While it boasts the highest average credit score for homebuyers of any state in the country[1], its average consumer credit rating overall is low—just 30th out of 51[2]. This is evidence of the fact that while higher-income consumers with access to secured lending instruments like traditional mortgages are doing quite well, a large percentage of District residents without that same access are not.

This disparity means that reducing access to unsecured credit will be particularly painful for large numbers of District consumers. Lower-income consumers will still need credit to pay for things like transportation, household, and emergency expenses, but will only be able to access it on less favorable terms through more expensive loan products that put them at greater financial risk.[3]

We applaud the Council's efforts to improve the District's collection statute. The receivables industry recognizes that the prior law was dated, and enhanced consumer protections were needed. What the industry seeks in the permanent District law is consistency – consistency with the uniform and robust consumer protections that have been adopted in the past eight years in states like California, Oregon, Washington, Colorado, Illinois, Maine, and Maryland and consistency with the new federal consumer protections that will launch tomorrow, November 30th. This is a very complex and highly regulated industry and what we want to avoid at all costs is a scenario where we have 52 different sets of laws covering the nation.

We hope our testimony will help you navigate the potential unintended consequences of the introduced version of the bill. Our goal is to provide the Council with detailed and actionable proposals that will align the legislation with the latest state and federal standards of best practice. To that end and to aid the Council in its work, we have attached a redlined version of the bill [See, Appendix A] that provides suggested revisions and improvements to the text with detailed explanations in the margin notes.

Following my testimony today, a diverse coalition of concerned participants within the receivables industry will provide a brief overview of our top concerns with the bill as drafted. In order to reduce repetition, we will be attempting to address separate elements of the legislation in our testimony but we all equally share the concerns raised by each presenter.

Thank you for your time today. The receivables industry looks forward to working with the Council and other stakeholders in the adoption of amended legislation for the protection of the District's residents.

[1] Source: *Lending Tree, January 2021.*

[2] Source: *Experian, January 2021.*

[3] Source: Zywicki and Sarvis, The Mercatus Center at George Mason University, 2013.

November 29, 2021

Council of the District of Columbia
Committee of the Whole
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Submitted via email at: cow@dccouncil.us

Re: Written Testimony on B34-357 (Unjust Debt Collection Practices Amendment Act of 2021)

Dear Chairman Mendelson and Members of the Council:

On behalf of Encore Capital Group, Inc. and its subsidiaries, including Midland Credit Management, Inc. ("MCM") (collectively, "Encore" or the "company"), we appreciate the opportunity to submit comments to the Council on B24-357, or the "Unjust Debt Collection Practices Amendment Act of 2021." We support raised standards for our industry and the consumers we partner with, so that those standards create consistency for our industry and real benefits for our consumers. Now is a pivotal time for our industry, as the federal Consumer Financial Protection Bureau ("CFPB") recently completed a comprehensive seven-year overhaul of regulations enforcing the Fair Debt Collection Practices Act ("FDCPA")[1]. As such, our industry is implementing a sea change of new rules – which take effect tomorrow, on November 30 – that create raised operating and compliance standards. The CFPB's goal in this rulemaking, which started in 2013 under the Obama Administration, has been to update the 43-year-old FDCPA to ensure that consumers in debt collection benefit from a fair, transparent, and uniform experience.

B24-357 seeks to create District-specific standards, but some important parts of the legislation conflict with the new federal standards and will have the unintended consequence of pushing consumers into litigating rather than resolving their obligations. Our primary concern in B24-357 is the extremely restrictive proposed call cap, and we are also seeking a host of technical, less substantive amendments.

[1] 15 U.S.C §1692, *et seq.*

Background on Encore and our Consumer-Centric Approach

Encore is a publicly-traded company with more than 60 years of experience helping consumers toward a better life. Through its subsidiaries, including MCM, our company purchases portfolios of consumer receivables from major banks and retailers, and partners with individuals as they repay their obligations and work toward financial recovery. The accounts we purchase are mostly charged-off credit card receivables.

Our company has evolved over the past two decades from a small, West Coast-based debt purchaser to a publicly traded, global company with sophisticated analytics and an intense focus on our consumers. We have robust and well-staffed professional departments (including Compliance, Enterprise Risk Management, Quality Assurance, Information Technology, and Legal and Regulatory Affairs), as well as a Board of Directors that provides close oversight of the company. These business functions and our Board are focused on ensuring compliance with laws, consumer protection, and an unwavering commitment to treating our consumers fairly and ethically.

Through our approximately 8,000 employees, we take a consumer-centric approach to helping consumers resolve their obligations. In 2011 we created the industry's first Consumer Bill of Rights, after meeting with four consumer advocacy groups in New York.[2] Per our Consumer Bill of Rights, we do not collect fees or pre-judgment interest from consumers, often offer consumers deep discounts off of the face value of their debt, cease collections on active-duty servicemembers, and forgive or suspend debt where consumers demonstrate a hardship.[3] In 2020 alone, we forgave over $216 million in debt to consumers across the country and $213,506 to District residents, which includes hardship forgiveness as well as the discounts we often provide to our consumers when helping them resolve their debt obligations.

As we typically offer consumers steep discounts off of the face value of their debt, and a key priority for us is to try to communicate with our consumers to resolve their obligations. Still, for a small segment of consumers who are able, but unwilling, to pay their accounts, we may file litigation. Filing suit against a consumer is a last resort for us, but one we must take to preserve our rights if we have made multiple attempts to communicate with a consumer to no avail, and the statute of limitations on the account is about to expire.

To support this consumer-centric approach, communicating with our consumers is key. We strive to build a partnership with our consumers, based on trust and respect. Often, we work with our consumers over a span of several years to help them create and fulfill a workable repayment plan. As mentioned above, our Consumer Bill of Rights is

[2] *See* Encore's Consumer Bill of Rights, located at https://www.midlandcreditonline.com/wp-content/uploads/2015/08/Consumer-Bill-of-Rights.pdf.
[3] *See id.*

an integral part of our company's culture and approach towards collections. For example, if a consumer is in a temporary hardship situation (*e.g.*, job loss or medical issue), we will often tell the consumer that we will pause collections and reach out again in several months, to see if the consumer's situation has improved. We believe that type of flexibility to be greatly beneficial to our consumers.

The Collections Industry Role in the Economic Eco-system

The credit and collections industry is an important part of the overall credit economy, and the consequences of a lack of communication between collectors and consumers are significant. Professor Todd Zywicki of the Mercatus Center at George Mason University is one of the leading researchers on our industry, and he has noted that "[t]he ability to effectively and efficiently collect consumer debts is a crucial underpinning of the American economy. Without the ability to enforce contracts, consumer lending would be scarce and expensive. Everyone would be worse off."[4]

A host of academic research over the past several years looking at regulation of the collections industry, and collectors' ability to connect with consumers, has revealed that legislation creating barriers to the valid collection of delinquent debt results in a restriction of the flow of affordable credit offered to consumers. As research by Professor Zywicki and others has consistently found, a reduced ability of creditors and collectors to make contact with consumers means less delinquent debt recovered. This, in turn, means that creditors will tighten the flow of credit, which in turn will result in less access to mainstream credit. With higher losses on delinquent debt that cannot be recovered through selling the debt, banks will be less willing to offer credit and will likely charge higher interest rates, especially to consumers with poor credit scores and low incomes. Those are the consumers who need access to affordable credit the most, often times in order to pay for basics such as food, clothing, child care and housing.

As demonstrated by Philadelphia Federal Reserve Bank research, placing more restrictions on the collection of validly owed debt only causes the availability of credit to decrease while increasing the cost of credit.[5] That study found that each additional restriction on debt collection activity decreases credit card recovery rates by nine percent. This lower recovery rate, in turn, results in a reduction in new extensions of credit and more expensive credit products. Professor Zywicki's research has demonstrated similar unintended consequences for consumers. Due to increased costs and decreased

[4] Todd Zywicki. September 2015. *The Law and Economics of Consumer Debt Collection and Its Regulation*. Mercatus Center, George Mason University. Available at http://mercatus.org/publication/law-and-economics-consumer-debt-collection-and-its-regulation

[5] *See* Fedaseyeu, Viktar, Debt Collection Agencies and the Supply of Consumer Credit (Working Paper No. 13-38). Federal Reserve Bank of Philadelphia, May 20, 2013.

availability of credit, low income consumers will be forced to turn to alternative lending products – such as payday loans, title loans or short term installment loans – at a much higher cost.[6] Similarly, a report from researchers at the Harvard Kennedy School of Government found that a 250% surge in credit-card related restrictions by regulators since 2007 contributed to a 50% drop in annual credit originations to lower-risk-score Americans.[7] More recently, a New York Federal Reserve Bank Staff Report concluded, "We find consistent evidence that restricting collection activities leads to a decrease in access to credit and a deterioration in indicators of financial health…with effects concentrated primarily among borrowers with the lowest credit scores."[8]

In addition to the fairly clear link between reduced ability for legitimate debt collection, and reduced access to credit to consumers, there is another serious unintended consequence when collectors and consumers are unable to effectively communicate: an increase in debt collection litigation filed against consumers. For us and many other creditors and debt buyers, filing collections litigation is a last resort. We make many attempts – typically at least 17 tries (and often more times) to communicate with a consumer before resorting to litigation – and we offer our consumers discounts off of the face value of the debt, and/or long-term repayment plans, with no interest or fees added. It is usually only after we have attempted to communicate with our consumer many times that we will take the next step of filing a lawsuit against a consumer for the outstanding debt he or she has failed to repay. We file collection litigation against a small fraction of our consumers and filing collection litigation is both a poor outcome for our consumers and very costly to us. Ultimately, however, our pursuing litigation is driven by an inability to make contact with our consumers. Indeed, for every two-month delay in not being able to make contact with our consumers, a typical consumer's account is 15% more likely to be referred to our legal collections channel.

For the reasons above, we believe that the proposal in B24-357 to create a call cap standard that is in some ways more restrictive (and in other ways less restrictive) than the CFPB's national standard will result in real harm to the consumers the legislation is trying to protect. Ultimately, a different standard for District residents will hamper their ability to connect with a collector by phone to resolve their debt, and ultimately will result in more needless lawsuits filed against consumers residing in the District.

---

[6] *See supra*, Todd Zywicki. September 2015. *The Law and Economics of Consumer Debt Collection and Its Regulation*.

[7] Marshall Lux and Robert Green, *Out of Reach: Regressive Trends in Credit Card Access*, Harvard Kennedy School of Government (April 2016).

[8] Julia Fonseca, Katherine Strair, and Basit Zafar, *Access to Credit and Financial Health: Evaluating the Impact of Debt Collection*, Federal Reserve Bank of New York Staff Reports, no. 814 (May 2017).

A Call Cap Standard in Some Ways More Restrictive, and in Other Ways Less Restrictive, Than the National Standard Will Create Unintended Harms to Consumers

In trying to determine what the "right" call cap limit is for our industry, which until now has never had a set number of permitted calls allowed, the CFPB reviewed over 25,000 comments from consumer advocates, industry groups, state and federal regulators and lawmakers, and individual consumers. It also reviewed the vast arena of case law across the country that largely found seven call attempts per week, or one call per day on average, is a reasonable limit that will protect consumers from too many calls, while ensuring that consumers and collectors are able to connect. **The final limit the CFPB decided on was *one telephone conversation per week*, and up to *seven call attempts per week*. Once a conversation takes place, the collector may not call the consumer again for seven more days, unless a consumer requests a call back soon. The call caps are on the per-account, not per-consumer, basis, reflecting that every account has a different balance and a different statute of limitations.**

Unlike the new national standard, B24-357 does not limit actual telephone contacts to one per week, and opens up the possibility of up to three contacts per week. ***In this regard, the DC proposal is significantly less protective of consumers than the national standard.***

The national standard is more nuanced in that it allows for up to seven call *attempts*, per account, until a collector and consumer make contact with each other. Once contact is made, however, no more calls may be attempted for another seven days (with the exception if the consumer requests for an earlier call back).

The reason the CFPB reached seven call attempts per week as the final standard is largely based on the case law on topic throughout the country, and in recognition that it is very difficult for a collector and consumer to connect by phone. It is not uncommon for it to take many weeks or even months of call attempts to reach the right consumer and connect by phone. We may not have the correct number, and under the FDCPA (as well as the new CFPB rules), there are a host of time and place restrictions on calling consumers.

Layered onto this dynamic is that the relatively recent intense national focus on eliminating illegal robocalls has created an increasingly difficult environment for legitimate debt collectors to connect with their consumers. Legitimate debt collection calls are of course not illegal robocalls, but they are unfortunately routinely captured as such by voice service providers. The end result is that legitimate debt collection calls are being misidentified as illegal robocalls, so that either (1) the collection call does not even get through to the consumer, as it is blocked by the voice service provider as a robocall, or (2) the collection call does get to the consumer's phone, but it is mislabeled by the

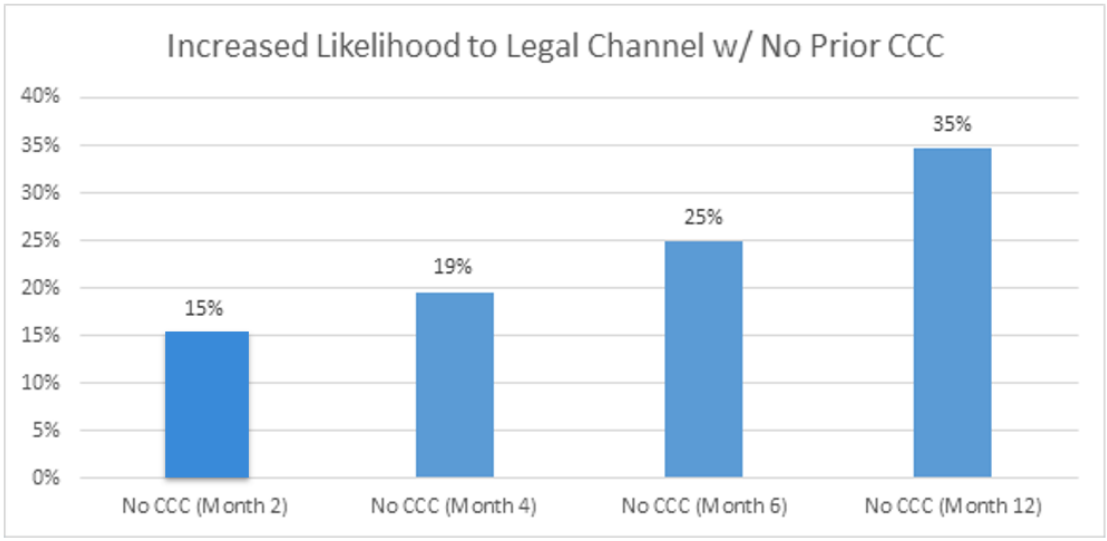
voice service provider as "SPAM." As a result, while the collection call may reach the consumer's phone, the consumer never picks up the phone because the call is mislabeled as SPAM.

Fewer phone call connections isn't just bad for our industry; it's a poor outcome for the consumers we work with. Fewer phone conversations – or, worse, the inability to ever reach a consumer by phone – means that the consumer will miss out on the opportunity to resolve his or her debt. When we connect with a consumer by phone, we're able to offer them different payment plan options that meet their budget, and the consumer is able to notify us if there is a hardship situation (*e.g.*, job loss, hurricane, medical issue) that would prompt us to stop collections temporarily or even permanently. When consumers do start on a repayment plan that works for their budget, they are able to repay their valid debt obligations on terms they have agreed to, and are potentially rebuilding their credit, avoiding negative credit reporting and avoiding debt collection litigation.

No or lesser phone communications mean that the consumer may not even realize that the collector is able to provide discounts and flexible payment plans that the consumer can use to repay an obligation, and avoid the unintended consequences of negative credit reporting, the further accrual of interest and fees that some collectors charge,[9] and potential debt collection litigation.

The consequence of being unable to connect with a consumer by phone is not just theoretical, but is demonstrated by our internal data. Our research shows that for just two months delay in making contact with a consumer, there is a 15% increased likelihood of the account being sent to a legal channel. The percentage goes up to 19% after four months of no contact, and progresses up to 35% after 12 months of no consumer contact. Again, while sending accounts to our legal channel is a last resort, the inability to connect with our consumers is a key driver of accounts being sent to the litigation channel.

[9] Encore does not charge fees or pre-judgment interest.



Unfortunately, the proposed three call attempt cap will have the effect of preventing or delaying thousands of important phone connections between consumers and collectors. It should also be noted that this proposal likewise applies to creditor communications, and fewer phone connections mean that consumers will miss out on important account fraud alerts. By adhering to the new national standard of one call contact allowed per week, with up to seven attempts attempts per week, per account, the District will support the new national bright line rule that provides significant protections to consumers, clear rules for the credit and collections industry, and enables consumers, creditors and collectors to effectively communicate by phone.

In addition to asking the District to align with the new national standard of one call contact allowed per week, and up to seven per week allowed, we also ask the District to align with the national standard's application of the call caps on the account, not consumer, basis. Restricting call caps by consumer, as opposed to per account, would make any contact attempt cap two, three or four times more onerous for collectors with a consumer who has two, three or four accounts being serviced.

There are important reasons why most of our servicing and dialing strategies are done at the account level, and we typically target our communications to our consumers to resolve one account at a time. For any one consumer, each delinquent account almost always relates to a completely different credit card the consumer had previously opened, with a different balance, payment history, and statute of limitation. Existing laws and regulations regarding how we credit report on a consumer debt and how we calculate the statute of limitations are done on the account level. Our account strategy is often significantly different for one account that was recently charged-off, than for another

account that is approaching the statute of limitations, and our account strategy often varies by different types of accounts and balances. Ultimately, we do need flexibility to reach out to consumers, using an account-specific approach.

Importantly, the national call caps standard ensures that the FDCPA's restrictions on harassing and abusive behavior will remain intact. A bright line standard of one call contact, and seven call attempts, per week per account is not abusive or harassing. Further, for consumers who don't want to speak with a collector by phone, there is always the "opt-out" provision set forth under the FDCPA – that is, a consumer can ask the consumer to cease and desist communications.[10]

Fundamentally, however, being able to connect with a collector by phone is likely to produce the best outcome for the consumer. We urge the Council to adopt the national standard that takes effect tomorrow, which is listed below as follows:

§ 1006.14 Harassing, oppressive, or abusive conduct.

(a) In general. A debt collector must not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt, including, but not limited to, the conduct described in paragraphs (b) through (h) of this section.

(b) Repeated or continuous telephone calls or telephone conversations.

(1) In general. In connection with the collection of a debt, a debt collector must not place telephone calls or engage any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.

(2) Telephone call frequencies; presumptions of compliance and violation.

(i) Subject to the exclusions in paragraph (b)(3) of this section, a debt collector is presumed to comply with paragraph (b)(1) of this section and FDCPA section 806(5) (15 U.S.C. 1692d(5)) if the debt collector places a telephone call to a particular person in connection with the collection of a particular debt neither:

(A) More than seven times within seven consecutive days; nor

(B) Within a period of seven consecutive days after having had a telephone conversation with the person in connection with the collection of such debt. The date of the telephone conversation is the first day of the seven-consecutive-day period.

(ii) Subject to the exclusions in paragraph (b)(3) of this section, a debt collector is presumed to violate paragraph (b)(1) of this section and FDCPA section 806(5) if the

[10] 15 U.S. Code § 1692c(c).

debt collector places a telephone call to a particular person in connection with the collection of a particular debt in excess of either of the telephone call frequencies described in paragraph (b)(2)(i) of this section.

(3) Certain telephone calls excluded from the telephone call frequencies. Telephone calls placed to a person do not count toward the telephone call frequencies described in paragraph (b)(2)(i) of this section if they are:

(i) Placed with such person's prior consent given directly to the debt collector and within a period no longer than seven consecutive days after receiving the prior consent, with the date the debt collector receives prior consent counting as the first day of the seven-consecutive-day period;

(ii) Not connected to the dialed number; or

(iii) Placed to the persons described in § 1006.6(d)(1)(ii) through (vi). [11]

Technical Amendments We Are Requesting to Reduce Ambiguity and Ensure Consistency in Terminology Throughout the Legislation

In addition to the critical call caps issue, we seek technical amendments as outlined in the industry redline, attached as Exhibit A.

- ***Redline Edit #15.*** In the required communication with consumers, we request that language is added that "For credit cards, the itemized accounting is measured from the charge-off balance." This provides consistency with the bill's requirements in paragraph (1)(F) that credit card debt is to be itemized from the balance at the time the account is charged-off. Without this clarification, consumers may incorrectly expect a full itemization of their credit card debt dating back to account opening, which is an impossibility for revolving lines of credit (credit cards).
- ***Redline Edit #18.*** We ask for removal of the requirement that validation notice is sent before collection can take place, to ensure consistency with the FDCPA standard that validation notice is sent within 5 days of initial communication (*15 U.S. Code § 1692g(a)*), and to avoid confusion with the 15-day language in this section regarding when documents must be mailed to consumers.

[11] The entire CFPB debt collection rule can be found at https://files.consumerfinance.gov/f/documents/cfpb_debt-collection_final-rule_2020-10.pdf.

- ***Redline Edit #19.*** We ask for clarifying language that "a consumer may make a down payment or a one-time payment on a payment schedule or settlement agreement before the written agreement has been provided by the debt collector if all material terms of the payment schedule or settlement agreement have been clearly disclosed to the consumer by telephone or on a website." With this proposed addition, we must still send the required written agreement of the payment plan to the consumer but can accommodate a consumer seeking to make a first payment at the time of scheduling a single- or multi-part payment arrangement (once all the terms have been clearly disclosed to them).

- ***Redline Edit #3.*** We request that the legislation define the "Original Creditor" to mean the entity that owned a consumer credit account at the date of default giving rise to a cause of action or for accounts subject to charge-off, the creditor at the time of charge-off. This clarification is important, as the original creditor at the time of default or charge-off is the creditor that is most recognized by the consumer, and is the creditor associated with the last letter or statement the consumer received from the creditor.

- ***Redline Edit #24.*** We ask that a cap on class actions is added, to be the lesser of $500,000 or 1% net worth of the collector, consistent with the FDCPA's class action cap. *15 U.S.C. § 1692k.* Our industry faces a cottage industry of trial attorneys who often look to sue us for technical statutory violations that cause no consumer damages (*e.g.*, the Third Circuit Court of Appeals recently dismissed a plaintiff's claim that a letter that stated that there were "$0.00 in interest and fees" on a static debt was misleading, and described plaintiff as "a litigious claim-seeker who hunts, Lagotto-like, for truffles in dunning letters"[12]; the Ninth Circuit recently affirmed a district court's dismissal of a consumer's claim that defendant violated the FDCPA because a person said she was an "agent" of the debt collector, rather than an employee of the creditor[13]). Without this cap, a debt collector could be forced to shut down entirely or exit the D.C. market due to a mere technical violation when a word was misspelled in a consumer notice that resulted in a class action.

- ***Redline Edit #14.*** We ask that for a revolving credit account, we ask that the date that the consumer debt was incurred be redefined as "the date of the most recent purchase, payment, balance transfer, or last extension of credit," instead of just the "the last extension of credit." This is the existing industry standard that has been adopted in multiple other states that have considered, and enacted, debt buyer

[12] *Hopkins v. Collecto, Inc.*, No. 20-1955, 2021 U.S. App. LEXIS 10359 at *1 (3d Cir. Jan. 19, 2021).
[13] *Frank v. Autovest, LLC*, 2020 U.S. App. LEXIS 18082 (9th Cir. June 9, 2020).

legislation over the past years, including Maine, California, Oregon, Colorado, and New York.[14] In the normal course of business, the last transaction or activity on the debt which shows the consumer's agreement to the debt is not necessarily the last extension of credit, but is instead the last purchase, payment, balance transfer, or extension of credit. This date field redefinition we are requesting in paragraph (D) would then align to the dates visible on the "other documents" we are requesting be specified in paragraph (C). This standard ensures that the most recognizable parts of the debt are included for the consumer to verify the validity of the debt.

- ***Redline Edit #13.*** We ask to clarify that for revolving credit accounts, "other documents" in the requirement for a "copy of the signed contract, signed application, or other documents" can include "the most recent monthly statement recording a purchase transaction, last payment, balance transfer, or extension of credit" as evidence for the consumer's liability. The clarifying language mirrors the California Fair Debt Buying Practices Act. *Cal. Civ. Code §1788.52.* This clarification is important as many revolving credit accounts may have been opened online or over the phone, and a signed contract or application may not exist.

* * *

With the above concerns in mind, we urge the Council to amend B24-357 to make these technical corrections and align with the new national standard on call caps. Should you have questions or require additional information, please don't hesitate to contact me at tamar.yudenfreund@encorecapital.com.

Sincerely,

Tamar Yudenfreund
Senior Director, Public Policy

[14] *See* Maine Public Law 216 (enacted 2017), California's Fair Debt Buying Practices Act (CA Civ. Code Section 1788.50, et seq.), Oregon House Bill 2356 (enacted 2017), NY City Office of Court Administration Rules for Default Judgment Applications (enacted 2014), and Colorado Senate Bill 17-216 (enacted 2017).

EXHIBIT A

[Industry Redline; Please See Separate Document Titled "Exhibit A"]

November 29, 2021

Council of the District of Columbia
Committee of the Whole
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Electronically submitted via email at: cow@dccouncil.us

Re: Written Comments on B24-357 (Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2021)

Dear Chairman Mendelson and Members of the Council:

On behalf of ACA International, the Association of Credit and Collection Professionals (ACA), I respectfully submit these written comments on Bill 24-357, the "Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2021."

ACA International would like to thank the Committee of the Whole for providing an opportunity for our industry to provide comments on the proposed legislation.

About ACA

Founded in 1939, ACA International is the largest trade association for the accounts receivable industry representing approximately 2,100 members nationwide. These members include credit grantors, third-party collection agencies, asset buyers, attorneys, and vendor affiliates in an industry that employs more than 125,000 worldwide.

ACA members are required to comply with applicable federal and state laws and regulations governing the collection of consumer debt, along with the ethical standards and guidelines established by ACA. Specifically, the collection activities of ACA members are regulated primarily by the Federal Trade Commission (FTC) and Consumer Financial Protection Bureau (CFPB) and fall

under the purview of the Fair Debt Collection Practices Act (FDCPA),[1] the Fair Credit Reporting Act (as amended by the Fair and Accurate Credit Transactions Act),[2] Telephone Consumer Protection Act (TCPA) and the Gramm-Leach-Bliley Act (GLBA),[3] in addition to other federal, state and local laws and numerous federal and state regulators and law enforcement agencies.

The majority of our member companies are small businesses. According to a recent survey, 44% of members have fewer than nine employees. Additionally, 85% of members have 49 or fewer employees and 93% of members have 99 or fewer employees. Primarily our membership is comprised of third-party collection agencies which assist creditors such as hospitals, community doctors, dentists, landscapers, and other small businesses with the collection of delinquent consumer debt. It is our job to contact those responsible for delinquent accounts and work with them to arrange a way for a debt to be repaid which is reasonable for both the consumer and the creditor.

Our industry is also diverse. Women comprise nearly 70% of the total debt collection workforce, which is itself ethnically diverse. Racial and ethnic minorities account for 31% of the total U.S. workforce, but nearly 42% of debt collection employees. This is something the industry feels strengthens our ability to connect with, and serve, consumers of all backgrounds.

As businesses, community lenders, hospitals, and other providers throughout the country continue to face unprecedented challenges because of COVID-19, the work of ACA's members is more important than ever. As part of the process of attempting to recover outstanding payments, ACA members are an extension of every community's business. ACA members work with these businesses, large and small, to obtain payment for the goods and services already received by consumers.

Significant research has confirmed the basic economic reality that losses from uncollected debts result in higher prices and restricted access to credit.

"Fair and reliable collection of consumer debts is essential for a well-functioning consumer economy. If creditors are unable to collect debts at reasonable cost and with reasonable certainty, then they will be less likely to lend in the first place, especially to riskier borrowers."
– CFPB Taskforce on Federal Consumer Financial Law Report, January 2021

The collections process plays a critical role in a healthy credit ecosystem. Lenders rely on the ability to collect to be able to lend to consumers of all means with diverse financial backgrounds. In a world without a collections process, consumers' ability to obtain credit cards or other unsecured credit would be greatly limited and, in many instances, consumers would only have the option to pay cash. This would be a disadvantage to many consumers, particularly to those who are low-income, and significantly limit options for credit and services. The work of ACA members allows lenders to continue to lend while keeping the cost of credit down, particularly for the riskiest borrowers.

---

[1] 15 U.S.C. § 1692 *et seq.*
[2] 15 U.S.C. § 1681 *et seq.*
[3] 15 U.S.C. § 6801 *et seq.*

ACA International supports the proposed legislation underlying goals of protecting consumers and providing clarity throughout the debt collection process. However, the legislation as written would raise some serious compliance concerns as well as unintended consequences that would ultimately harm consumers in the District of Columbia.

ACA respectfully requests the Committee of the Whole consider several changes detailed below to the proposed legislation as well as the requested edits included in the attached industry redline.

Section 2 Subsection D (4) – Redline – Edits #5 and #6

The following amendments are requested to this section:

"(4) communicating with the consumer or any member of the consumer's family or household in such a manner that can reasonably be expected to abuse or harass the consumer, including communications at an unreasonable hour or with unreasonable frequency, or by making in excess of ~~3~~ 7 phone calls per account, inclusive of all phone numbers ~~and accounts~~ the creditor or debt collector has for the consumer, in any 7-day period. The limit of ~~3~~ 7 calls in any 7-day period shall not apply to calls made to a debt collector by a consumer; ~~or~~ to a single completed call made by a debt collector in response to the consumer's request for a returned phone call; to calls with a busy signal; or to calls made to a wrong number.".

An open line of communication is a key factor in helping consumers resolve their accounts. If a consumer does not hear, or have the opportunity to hear, about a debt, the issue will likely escalate resulting in credit reporting and potentially legal action. ACA supports efforts to protect consumers from harassing phone calls but overly restrictive limitations on communications have the unintended consequence of harming the consumer.

ACA member companies are well-versed in setting up alternative payment arrangements for consumers experiencing unexpected hardships. Respectful, two-way communication between the debt collector and consumer is necessary for reaching mutually agreeable resolution of the debt, and any related disputes.

ACA respectfully requests the Committee of the Whole modify the call cap provisions in the proposed legislation to align with the new national standards going into effect tomorrow, November 30, 2021, when the Consumer Financial Protection Bureau's Regulation F takes effect. This new regulation, the most comprehensive set of changes to the country's debt collection laws in over 40 years, sets a new national call cap standard of one call contact allowed per week, and up to seven calls per week allowed. Under the new standard, collectors are only allowed one conversation per seven-day period unless additional conversations are requested by the consumer. The consumer also has the right to request a collector cease any future communications in connection with the collection of a debt. The CFPB reached this new standard after an exhaustive rule writing process spanning seven years of research and receiving comments from thousands of interested parties. Aligning the District regulations with the new national call caps standard will create consistency while protecting consumers from harassing and abusive behavior.

ACA also respectfully requests that the Committee of the Whole change the proposed call cap

restriction to be applied on a "per account" basis. This change would align the proposal with standard collection agency operations and would mirror the approach taken by the CFPB's Regulation F call cap limitations. If the call cap provision is applied on a per individual basis rather than a per account basis, consumers may be denied the opportunity to have specialized service from an expert on a unique account which may result in unnecessary confusion.

If a collection agency services multiple accounts for the same consumer, these separate accounts will typically be serviced separately by collectors with specialized training and expertise. Medical debt for example requires different legal and privacy considerations that would not apply to most other types of debt.

Our collectors work to ensure that customers clearly understand their debt and their payment options. It may be confusing to the consumer to discuss vastly different types of debt on the same call. On a medical debt related call for example, a collector and consumer would examine and discuss expenses covered by insurance, next steps with the insurance company as well as any opportunities for financial aid or reduced care cost options. It would be inappropriate and confusing to then discuss a utility debt, credit card debt or additional completely unrelated accounts.

Combining unrelated accounts on a single call also raise third party disclosure concerns. This issue is very important. Collectors would not be able to freely discuss multiple accounts if any were joint accounts due to privacy and disclosure concerns. Collectors might inadvertently call a consumer over the call cap limit if the collector did not know that two unrelated accounts are affiliated with the same consumer. For example, the consumer opens the account with a nick name or shortened name (Jim, James or Jamie) or intermittently uses a suffix (Jr, Sr, II, III). To avoid these issues, agencies service each account separately. Modifying the proposal to apply on a "per account" bases would protect consumers and businesses trying to comply with the law.

Section 2 New Subsection m (F)(2)(6) – Redline Edit #15

The following amendments are requested to this section:

(6) An itemized accounting of the amount claimed to be owed including the amount of the principal, the amount of any interest, fees, or charges, and whether the charges were imposed by the original creditor, a debt collector, or a subsequent owner of the consumer debt. For credit cards, the itemized accounting is measured from the charge-off balance.

ACA requests the above technical amendment be added to ensure the required consumer notice remains consistent with the text contained in paragraph (l) (F) of the proposal. As written the proposal contains two conflicting sections regarding needed documentation for an itemized accounting that a debt collector must possess and what the collector must disclose to the consumer upon their request. The amendment would bring these sections into and clarify that credit card debt is to be itemized from the balance at the time the account is charged-off. If this section is not aligned with the paragraph (l) (F), consumers could unintentionally be expecting to receive an unfeasible and impractical full itemized accounting of a rolling credit card bill dating back many years and covering statements that had already been paid.

Section 2 New Subsection m (l) Redline Edit # 12

The following amendments are requested to this section:

"(m)(1) No debt collector shall collect or attempt to collect a consumer debt, unless the debt collector has a copy of the judgment or a ~~complete and authenticated~~ documentation that the person attempting collection is the owner of the consumer debt, and the debt collector ~~is in~~ has possession ~~of~~ or access to the following information or documents:

ACA requests the above amendment to permit agencies with access to all of the required documentation and data to continue operations. As written, the proposal requires "possession" of the data. Allowing third party collections agencies to service accounts for their creditor clients as long as they have access to all of the required data but not outright possession of the data would accomplish the intent of the proposal while protecting consumers' sensitive data.

For example, while most of the account data is transmitted to a third party from the original creditor, that is not always true for the contract for security reasons. The contract contains highly sensitive data such as the consumer's social security number, date of birth, signature, and address. If this data were intercepted or compromised, the third party agency and original creditor would be exposed to extreme liability. Due to these concerns, the original contract is almost never transferred to a third party collection agency which is only a temporary agent of the creditor. This process helps secure highly confidential consumer documents from theft or compromise. While third party debt collectors might not "possess" the documents in the literal sense of the word, they have "access" to them when needed.

Section 2 New Subsection n (2) Redline #19

The following amendments are requested to this section:

"(2) A consumer shall not be required to make a payment on a payment schedule or settlement agreement until the written agreement required by paragraph (1) of this subsection has been provided by the debt collector. Without limiting the foregoing, a consumer may make a down payment or a one-time payment on a payment schedule or settlement agreement before the written agreement has been provided by the debt collector if all material terms of the payment schedule or settlement agreement have been clearly disclosed to the consumer by telephone or on a website."

ACA requests the above clarifying language be added. Adding this language would keep the protections proposed in this section in place for consumers while adding flexibility to allow a consumer that wants to make a one-time payment to do so while still on the phone or website.

Under the proposed edit, a collector would still be required to provide the written agreement in paragraph (1) but the collector would be able to accept an initial payment after all the terms of any settlement or payment plan have been clearly disclosed to the consumer. Without this amendment a consumer wanting to begin the payment process would be forced to delay making a payment. The edit would not require a consumer to provide an initial payment, so it retains the protections the

proposed legislation is aiming to accomplish but it provides flexibility for consumers wanting to accelerate the resolution process.

Conclusion

Thank you for the opportunity to provide these comments. I urge the Committee of the Whole to consider these requested amendments and the additional edits included in the attached industry redline. These requested edits will provide clarity and protections to consumers while helping avoid unintended consequences that could harm both consumers and businesses. Please do not hesitate to contact me with questions.

Submitted by:

Andrew Madden
Vice President Government and State Affairs
ACA International
madden@acainternational.org

Testimony of Orjanel Lewis
(Policy Advisor, PRA Group)

before the

Committee of the Whole
Chairman Phil Mendelson

Good afternoon Chairman Mendelson and members of the Council of the District of Columbia (the "Council"). My name is Orjanel Lewis and I am the Policy Advisor at PRA Group. Thank you for considering our testimony on Bill 24-357, the "Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2021".

PRA Group, Inc. is a publicly-traded company that has been in business for over 25 years. Through our subsidiaries, PRA purchases portfolios of consumer receivables from major banks. PRA is customer focused and we collaborate with customers to help them resolve their debt and move down the road to financial recovery. We take our leadership obligations within our industry seriously and strongly oppose any and all unethical consumer practices. That is why I am appearing before you today to discuss DC Bill 24-0357.

We appreciate the Council's efforts to ensure the appropriate guardrails for responsible lending and we hope our testimony will help you navigate the potential unintended consequences of the introduced version of the bill. I would like to associate myself with the remarks of my fellow coalition members. Today, I will focus my oral remarks on two issues: The definition of "original creditor" and the "post-charge off itemization requirement".

Original Creditor Definition:

First, PRA respectfully requests that the Council clarify the definition of the "Original Creditor" to reflect the entity that owned the account at the time of charge-off or date of default, and thus the entity most recognized by the consumer.

Over the years, bank mergers and acquisitions have become a common. As a result, it is not uncommon for a consumer to have opened an account with Bank A in 1997, have Bank A merge with Bank B in 1998 and see Bank B acquired by Bank C in 2012 before the consumer defaulted on the account in 2020. While consumers may have forgotten the bank they opened the account with, they generally know the name of the bank that was most recently sending them statements regarding the account, up to and including at charge-off. The bill, as drafted, could have the unintended consequence of causing consumer confusion and uncertainty about the basis for the contact from the debt collector.

We would respectfully suggest that the original creditor be the last original creditor, which is the banking institution which held the account when it went into default and which has all the relevant data and documents – in this case Bank C.

Doing so would align the proposed bill with recent actions by other states. Specifically, the state of New York, in its newly enacted Consumer Credit Fairness Act, considered this very issue and opted to define the term as "the entity that owned a consumer credit account at the date of default giving rise to the cause of action." The rationale there was that the creditor at the date of default is the creditor that is most recognized by the consumer and the creditor associated with the last letter or statement they received from the creditor on the account.

Mirror Post-Charge Off Itemization Requirements:

Second, we respectfully request that the disclosure requirements to consumers at the time of initiating a collection mirror the possession requirements of the debt collector as stipulated in subsection (m) of the bill.

As currently written, the bill essentially has two sections governing what documentation a debt collector must possess in order to collect and what documents it must disclose to the consumer upon their request. These sections are interrelated and refer to one another specifically. The language in the introduced version of the permanent bill requiring pre-charge off itemization would create a new threshold for measuring interest on revolving lines of credit (i.e. credit cards) that is in conflict with federal banking laws and foster consumer confusion.

Chairman Mendelson, you and your staff, understood the confusion and unintended consequences this language would bring if codified and amended the language in this section in both the emergency and temporary to require itemization from the point of charge-off forward. Section (2) of the introduced permanent bill still retains the old pre-amended language that requires the credit card debt collector to provide a statement that a pre-charge off itemized accounting is available to be requested.

To reduce confusion and ensure clarity in implementation, we ask that you align the permanent version of the bill with the changes that our coalition worked with you and your staff to include in the emergency and temporary versions of the bill regarding the itemization of pre-charge-off balance requirement.

Thank you for your time today and we hope you will take these changes into consideration.

Memorandum in Opposition
District of Columbia

October 28, 2021

Honorable Phil Mendelson
Council Committee of the Whole
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Dear Chairman Mendelson:

On behalf of PRA Group, Inc. and its wholly-owned subsidiaries (collectively, "PRA"), I am writing in **opposition** to DC Bill 24-0357: Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2021. While we support the efforts to ensure responsible and fair practices in the collection of consumer debt, as written, this bill may have an unintended negative impact to consumers and businesses.

PRA is a publicly-traded company that, through its subsidiaries, purchases portfolios of consumer receivables from major banks, and then partners with individuals as they repay their obligations, working toward financial recovery. We are a leader in the nonperforming loan industry and take our leadership obligations within our industry seriously. We work with consumers to resolve their obligations and typically offer a discount on the face value of the debt. In addition, we typically charge no interest or fees on debt we purchase domestically. PRA is also a willing participant to any action that combats predatory debt collection practices as those actions harm both consumers and legitimate businesses.

Prior to the permanent bill's hearing, the Council worked with our office and coalition to make impactful changes to the emergency and temporary bills, DC Bill 24-0347: Protecting Consumers from Unjust Debt Collection Practices Emergency Amendment Act of 2021 and DC Bill 24-0348: Protecting Consumers from Unjust Debt Collection Practices Temporary Amendment Act of 2021, respectively. The changes to those bills, which are not found in this permanent bill, are extremely important and should be incorporated in this permanent bill. Among the changes included in the emergency and temporary bills that should be included in the permanent bill are provisions ensuring that revolving credit accounts are only required to provide a post charge-off itemization, charge off statement and last activity statement; ensuring that proof of ownership and amount claimed are produced to the consumer upon their request; removing call cap limits from return call requests, and more. Additionally, we worked with the Council to develop language for post-charge

off itemization for credit card debt. This post-charge off language should be mirrored in the disclosure portion of the permanent bill (See Subsection (m)(1)(f) and (m)(2)(6) of the temporary bill).

Although these previously adopted amendments are critical and should be adopted into the permanent version of the bill, additional changes are needed to ensure that this bill is not harmful to both consumers and businesses. Specifically, we request the following additional changes:

1. **Mirror Post-Charge Off Itemization Requirements.** We also respectfully request that the disclosure requirements mirror the possession requirements of subsection (m) of the bill. The bill essentially has two sections governing what documentation a debt collector must possess in order to collect and what documents it must disclose that, upon request of the consumer, it will provide to the consumer. These sections are interrelated and the section that prescribes the disclosures a debt collector must provide to a consumer references the possession section of the bill. In discussing provisions of the related emergency and temporary measures, our coalition raised a number of concerns with the language of those bills, chief among them being the language that required an itemization of pre-charge-off balance. The original language requiring itemization of pre-charge-off balance would create a new threshold for measuring interest on revolving lines of credit (i.e. credit cards) that is unsupported under federal banking laws.

   Chairman Mendelson and his staff, to their great credit, understood the confusion and unintended consequences this language would bring if codified in the District and amended the language in this section to require itemization from the point of charge-off forward. The emergency and temporary bills now require that a credit card debt collector be in possession of an itemized accounting measuring from the post charge-off balance, including copies of the post charge-off statement and the most recent monthly statement recording a purchase transaction, last payment, or balance transfer. However, Section (2), which is the corresponding section, still retains the old pre-amended language that requires the credit card debt collector to provide a statement that a pre-charge off itemized accounting is available to be requested. Our belief is that this was an oversight and that the requirements are inconsistent and should mirror each other to ensure that the disclosure provided to consumers aligns with the requirements of the bill as amended in the emergency and temporary measures.

   Accordingly, we respectfully request that the disclosure requirement mirror the possession requirement of the bill, allowing credit card debt collectors to provide notice that post charge-off statements may be made available to the consumer.

2. **Create a Consistent Definition of Original Creditor.** PRA respectfully requests that the Council clarify the definition of the "Original Creditor" to reflect the entity that owned the account at the time of charge-off or the `date of default giving rise to the cause of action

and thus the entity most recognized by the consumer. Over the years, bank mergers and acquisitions have become a common occurrence as banks expand their geographic footprints. As a result, it is not uncommon for a consumer to have opened an account with Bank A in 1997 when they were in college, have Bank A merge with Bank B in 1998 and see Bank B acquired by Bank C in 2012 before the consumer defaulted on the account in 2020. Very often consumers may have forgotten entirely the entity with which they opened the account many years ago. They do, however, know the name of the entity that was most recently sending them statements regarding the account, up to and including at charge-off.

If the purpose is to allow the consumer to identify the card, then it would be Bank C. We would respectfully suggest that the original creditor be the last original creditor, which is the banking institution which held the account when it went into default and which has all the relevant data and documents – in this case Bank C. In this scenario, it would be impossible to obtain information from an institution that has not existed for 23 years. It is also common practice for banks, at the point of sale of a portfolio of consumer receivables, to send the consumer a "Goodbye Letter" alerting them to the sale of the account to the purchaser. Similarly, this letter will also be sent from the entity that owned the account at the date of default giving rise to the cause of action.

Recently the state of New York, in its newly enacted Consumer Credit Fairness Act, considered this very issue and opted to define the term as "the entity that owned a consumer credit account at the date of default giving rise to the cause of action." The rationale there was that the creditor at the date of default is the creditor that is most recognized by the consumer and the creditor associated with the last letter or statement they received from the creditor on the account.

3. **Call Caps Should Reflect Federal Law and Be Applied to Each Account, not the Consumer or Missed Calls.** The bill currently limits to no more than three phone calls to consumers from the debt collector in any seven day period. The FDCPA and its implementing regulations under Regulation F allow for more flexible call limits of seven calls in a seven day period. The language in this bill is in direct conflict with what the FDCPA allows. Further, the language in DC B 24-0357 does not take into account that many consumers have multiple accounts that have been placed in collections. Regulation F's call caps are at the account level, not the consumer level. The overly restrictive standard of the permanent risks constraining communication to the point that consumers do not have a full understanding of their financial liability if there are multiple accounts. While guardrails are important, if it stops the flow of information, the consumer is not well served and will not fully know what actions to take. Limiting calls to the consumers, without basing that limit on each account, reduces the likelihood that the account is able to be settled without resorting to litigation. For PRA, litigation is a last resort, and only used when we are unable to settle accounts with consumers.

Additionally, this language also does not take into account that some calls are to wrong numbers or are faced with busy signals. Since there is no opportunity for consumer harm where a call receives a busy signal or is to the wrong number, these calls should not be counted as a call attempt. If this language remains, it will resort in additional litigation against DC residents. Impeding the ability to communicate with consumers will drastically raise the cost of credit for all consumers, as uncollected debts are passed onto other consumers in the form of higher prices for everyone -- to the extent that high risk borrowers can obtain credit at all.

4. **Remove Prohibition on Debt Collection While Consumer Awaits Disclosure Notice.** In the temporary legislation, the debt collector is required to cease all collection of the consumer debt until the disclosure notice is provided to the consumer in writing. This requirement directly contradicts: (a) the 15-day requirement in this paragraph and (b) the consumer notice language in paragraph (2). This appears to be an inadvertent mistake while editing this provision in the emergency and temporary versions of the bill.

5. **Clarification Regarding the Exemption of Auto Loans from the Requirements of this Bill.** Clarification should be provided throughout the legislation that the consumer debt referred to in the bill, does not apply to a direct motor vehicle installment loan covered by Chapter 36 of this title. We respectfully request that in addition to direct motor vehicle installment loans covered by Chapter 36 of this title, the legislation also include any secured transaction under Article 9 of Title 28. This addition will provide further clarification regarding the bill's exemptions.

6. **Correct the Conflict with Federal Regulation.** As written, Subsection d, paragraph (3) prohibits the causing of expense to any person through the use of any medium of communication with no exceptions. Regulation F issued by the CFPB permits the use of text messaging. If a DC consumer asks for a text message to be sent to them, a debt collector would violate this provision if the consumer has a text plan that charges 5 cents per text. Where the consumer provides consent regarding medium of communication, we request that an exemption be provided.

In closing, PRA and its subsidiaries absolutely support The District's efforts to address the practice of debt collection and ensure the enhancement of consumer protections. As drafted, we believe this legislation will bring unintended harm to consumers and unnecessary burdens placed on the business community. For all the reasons mentioned above, we respectfully oppose passage of this legislation as it is currently drafted. However, should the amendments we have suggested been provided, we will be able to support this legislation.

Thank you very much for your attention in this important matter. Please feel free to contact me directly for any further information.

Best regards,

Orjanel K. Lewis, Esq.
Policy Advisor, Government Relations and Public Policy
PRA Group
150 Corporate Boulevard
Norfolk, VA 23502
Orjanel.Lewis@PRAGroup.com
(281) 229-3229 (mobile)

Testimony of Jan Stieger
on B24-357
Receivables Management Association International (RMAI)

before the

Committee of the Whole
Chairman Phil Mendelson

Good afternoon Chairman Mendelson and members of the Council of the District of Columbia (the "Council"). My name is Jan Stieger and I am Executive Director at the Receivables Management Association International (RMAI). Thank you for considering our testimony on Bill 24-357, the "Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2021".

First, I would like to associate myself with the remarks of our coalition partners. In an effort to avoid repetitive remarks, we each covered different areas of concern. As was stated earlier, the industry wants to work with the Council in the development of a modern and robust collection law that incorporates all of the best practices that have been developed by state and federal statutory and regulatory enactments since the District's Act was adopted 50 years ago in 1971.

In 1977, six years after the District's law took effect, the federal government adopted the preeminent law in the nation in the area of collections, the Fair Debt Collection Practices Act (FDCPA). The FDCPA became the basis from which all other state and local collection laws were modeled since its adoption. And starting tomorrow, November 30th, the industry is being subject to the single most comprehensive regulatory update to this law since its adoption, which has required thousands of businesses throughout this nation to adjust their business practices to adopt new robust consumer protections.

In addition to the FDCPA and its progeny, we also have 10 uniform state laws that were adopted to address the debt buying industry that were modeled after the 2013 California Fair Debt Buying Practices Act. While the FDCPA focused on collection practices, the debt buying laws focused primarily on data and document requirements.

Other laws and regulations that have been adopted since 1971 that impact the collection industry include the Telephone Consumer Protection Act (TCPA), the Fair Credit Reporting Act (FCRA), the Dodd–Frank Wall Street Reform and Consumer Protection Act, and regulations adopted by the United States Office of Comptroller of the Currency (OCC) and the Federal Communications Commission (FCC).

When analyzing all of these laws and regulations, the one thing that is clear, is a genuine attempt to align terminology and definitions within the laws and regulations so as to assist with clarity for both the consumer and business community. We would respectfully ask that the District strive to achieve the same clarity with this act.

Please aim to adopt a robust and uniform law that aligns with the FDCPA, the California Fair Debt Buying Practices Act, the TCPA, the regulations issued by the CFPB, OCC, and the by a majority of states. My colleagues have already addressed much of the operational concerns in this regard.

I would however like to raise the same concern but with the definitional section of the law which appears in subsection (a). When the District adopted their law in 1971, there was no uniform template of definitions to follow. However, now that there is, the industry would respectfully request that the District take this opportunity to adopt uniform definitions that align with the vast majority of other laws and regulations.

A few examples:

(1) The District used the word "claim" to describe consumer debts in the 1971 law. This act introduces a new defined term called "consumer debt" while keeping the old terminology centered around a "claim" in place. There appears to be no distinguishable difference between "claim" and "consumer debt" which is now causing confusion because of the use of both terms. We respectfully recommend using the term "consumer debt" as it aligns better with state and federal laws.

(2) The definition of "creditor" creates some problems given that the bill proposes to add data and document requirements, something that was not contained in the original law. When you require the production of data and documents associated with a creditor, questions often arise as to which creditor or at what point in time. The data and document requirements contained in this legislation are similar to the California Fair Debt Buying Practices at and its progeny. All of these laws identify the "creditor" as the creditor at default or charge-off. We would respectfully ask that you do the same in this law so as to avoid confusion.

In closing, I'd like to thank the Council for working productively with our coalition to ensure this bill reflects a modern and robust collection law that is consistent with the best practices that have been developed by state and federal statutory and regulatory enactments over the past 50 years. We are here to be a partner in this effort.

TESTIMONY OF DON MAURICE
OUTSIDE COUNSEL TO RMAI
IN OPPOSITION TO
Bill 24-357

"Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2021"

(November 29, 2021)

My name is Don Maurice, and I am Outside Counsel to Receivables Management Association International. RMAI is a national nonprofit trade association representing over 575 businesses that purchase or support the purchase, sale, and collection of performing and nonperforming receivables on the secondary market. Our membership includes banks, nonbank lenders, debt buying companies, collection agencies, and collection law firms. RMAI respectfully opposes Bill 24-357 as currently drafted because it contains material ambiguities that do not provide consumers and their creditors with certainty when collecting consumer debt and can foster abusive behavior by bad actors.

The Ambiguities Created by References to "Consumer Debt," "Claims," "Money," or "Indebtedness"

The bill defines two types of obligations which it will regulate – one type is a "Claim" and the second is "Consumer Debt." RMAI sees no discernable difference between the two, but the bill does because there are numerous instances when it applies certain conduct regulating provisions or disclosures to one or the other obligation type.

To be clear, some provisions apply when collecting only "Claims." Other provisions become applicable only when collecting "Consumer Debt" and yet other provisions are triggered when collecting "money or indebtedness."

For example, newly added subsection (m) (data and documents), and along with it the (m)(2) disclosure notice, apply to "consumer debt." The same is true for new subsection (n), which applies to settlement or payment agreements. New subsections (o) through (t), which apply to legal actions, also only apply to "consumer debt."

But subsection (d), which prohibits certain conduct by creditors, debt collectors and debt buyers, is applicable to activities "in connection with the collection of or attempt to collect any **claim** . . ." (emphasis added). Similarly, subsection (g) prohibits "unfair or unconscionable means to collect or attempt to collect any **claim** . . ." (emphasis added). Likewise, subsection (f)(2) states that creditors and debt collectors must make a certain disclosure "in all written communications made to collect or attempt to collect a **claim** or to obtain or attempt to obtain information about a consumer, that the

creditor or debt collector is attempting to collect a **claim** and that any information obtained will be used for that purpose." There is no reference that this disclosure is to be used when collecting the newly defined "consumer debt." Thus, a regulated entity that believes it is collecting a "consumer debt" can look to the text to support its decision to not make the disclosure when collecting a consumer debt. Similarly, subsection (f)(4) provides that creditors, debt collectors and debt buyers must disclose "name, phone number, email address, and full business address of the person to whom the **claim** has been assigned for collection, or to whom the **claim** is owed, at the time of making any demand for money." (emphasis added). Again, the express reference to only claims would exclude this subsection from activities related to the collection of "consumer debt." Again, the same issue arises in subsection (f)(5) which prohibits "any false representation or implication of the character, extent, or amount of a **claim** against a consumer, or of its status in any legal proceeding." (emphasis added).

More confusing are those subsections that neither reference "claims" or "consumer debt" but introduce new concepts of "money" or "indebtedness." For example, subsection (c), which contains conduct prohibitions but provides that it applies to activities to "collect or attempt to collect any money alleged to be due and owing . . ." without making any reference to "claims" or "consumer debt." Arguably, this provision would also apply to debt which is neither a "claim" or a "consumer debt," like commercial debt, government debt, fines, penalties or criminal restitution because it is, after all, seeking "money alleged to be due and owing." Likewise, subsection (e) prohibits debt collectors, debt buyers or creditors from engaging in activities which "unreasonably publicize information relating to any alleged indebtedness or debtor . . ." but makes no reference to "claims" or "consumer debt." Subsection (k) prohibits a "creditor, debt collector, or collection agency, or their representatives or agents" from contacting consumers by telephone before 8 a.m. or after 9 p.m." but does not limit the contact to telephone calls in connection with the collection of "claims" or "consumer debts."

Reference to the introductory paragraph of the bill only adds to the confusion as subsection (a) amended existing law to read "[t]his section only applies to conduct and practices in connection with collection of obligations arising from any **consumer debt** . . ." (emphasis added). Oddly, the phrase used here "obligation[] arising from a consumer debt," is word for word the proposed definition of a "claim," which under the proposed structure is not the same as a "consumer debt."

An Example of How the Ambiguity of "Claims" and "Consumer Debt" Can Impact Judgment Collections

As you know, the federal Fair Debt Collection Practices Act (15 U.S.C. § 1692, *et seq.*) regulates the activities of debt collectors. Under the FDCPA, the definition of "debt" (§ 1692a(5)) includes the phrase "whether or not such obligation has been reduced to judgment," and so it expressly covers the collection of judgments arising from consumer debt. There is no equivalent in the proposed bill's definition of "consumer debt" nor in its definition of "claim." This has caused confusion in efforts to bring practices into compliance.

There is good reason to believe a judgment would not fall within the definition of a "consumer debt," after all, the definition of consumer debt references obligations being 30 days or more past due. Judgments are not "past due." They are different from unpaid, delinquent bills as the federal Consumer

Financial Protection Bureau explains in FAQs provided to consumers. It describes judgments as "a court order that is the decision in a lawsuit."[1]

But judgments could certainly be encompassed in the definition of "claims" because "claims" means "any obligation or alleged obligation, arising from a consumer debt." Certainly, a judgment can arise from a consumer debt. The odd result is that the bill would impose different requirements for collecting claims as opposed to consumer debt. It is another reason why RMAI's redline deletes the proposed definition of "claim." In addition, Council can add to the end of the definition of "consumer debt," the phrase "whether or not such obligation has been reduced to judgment," which appears in the FDCPA, to eliminate the uncertainty surrounding judgment collections.

RMAI Supports Efforts to Enhance the Accuracy and Integrity of Debt Collection

RMAI applauds the bill's objective to strengthen consumer protections. Yet the ambiguities surrounding the text's references to "Claims" and "Consumer Debt" create confusion when determining which sections to apply in any particular matter. To be sure, this confusion creates an opportunity for bad actors to plausibly argue that the bill's provisions in some instances is limited to claims and in others to consumer debt. The result is that certain protections will likely not apply to intended consumer debt collection activities. As a result, consumers will not be provided the rights and protections that they might have expected to receive from this legislation.

RMAI is prepared to work with the sponsor and all stakeholders to close these loopholes and provide consumers and the credit and collections industry with certainty and integrity when collecting consumer debt.

Thank you for your time. I would be happy to answer any questions.

# # #

For further information, contact David Reid, RMAI General Counsel, at dreid@rmaintl.org or (916) 482-2462 or Don Maurice, RMAI's outside counsel, at dmaurice@mauricewutscher.com or 908-237-4570.

ABOUT DON MAURICE

Don Maurice is a partner at Maurice Wutscher LLP, a law firm with offices throughout the United States. Don has practiced in consumer financial services law for over four decades. He is a fellow of the American College of Consumer Financial Services Lawyers, a fellow of the American Bar Foundation and serves on the Governing Committee of the Conference on Consumer Finance Law. He formerly chaired the Debt Collection Practices and Bankruptcy Subcommittee of the American Bar Association. He is admitted to the Bars of Massachusetts, New York, New Jersey, and the District of Columbia. He is editor of the Consumer Financial Services Blog (cfsblog.com).

[1] https://www.consumerfinance.gov/ask-cfpb/what-is-a-judgment-en-1381/

Receivables Industry Proposed Redlines to Bill 24-357 (*working from temporary bill 24-348*)

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Protecting Consumers from Unjust Debt Collection Practices Temporary Amendment Act of 2021".

Sec. 2. Section 28-3814 of the District of Columbia Official Code is amended as follows:

(a) Subsection (a) is amended to read as follows:

"(a) This section applies to conduct and practices in connection with collection of obligations arising from any consumer debt (other than a loan directly secured on real estate or a direct motor vehicle installment loan covered by Chapter 36 of this title).".

(b) Subsection (b) is amended to read as follows:

"(b) As used in this section, the term:

~~"(1) "Claim" means any obligation or alleged obligation, arising from a consumer debt;~~

"(2) "Consumer debt" means money or its equivalent, or a loan or advance of money, which is, or is alleged to be, more than 30 days past due and owing, unless a different period is agreed to by the debtor, as a result of a purchase, lease, or loan of goods, services, or real or personal property for personal, family, medical, or household purposes.

"(3) "Creditor" means a ~~claimant or other~~ person that owned a consumer credit account at the date of default giving rise to a cause of action or for accounts subject to charge-off, the creditor at the time of charge-off ~~holding or alleging to hold a claim~~.

Commented [DR1]: EDIT # 1 (DEF. CLAIM) – The original act used the word "claim" to describe consumer debts. The new act uses the term "consumer debt" in place of the term "claim." There appears to be no distinguishable difference between "claim" and "consumer debt" which is now causing confusion because of the use of both terms. We respectfully recommend using one term or the other. Given that there are more references to "consumer debt" than "claim" we changed the remaining references from "claim" to "consumer debt."

Commented [DR2]: EDIT # 2 (DEF. DEBT) – The act defines the term "consumer debt" however then uses the word "debt" in a number of places without the word "consumer" being used prior to it. For consistency, we have added the word "consumer" prior to the word "debt" in all instances where it was missing.

Commented [DR3]: EDIT # 3 (DEF. CREDITOR) – This is the definition for creditor contained in the New York Consumer Credit Fairness Act" that was adopted by the NY Legislature in 2021. This bill was supported by New York consumer advocates and the collection industry.

The data and document requirements contained in similar laws across the nation, generally have either a reference to "charge-off" for the data and documents or defines "creditor" as the creditor at default or charge-off. The reason for this can best be explained in an example: A credit card account that was opened in 1997 with Marine Midland Bank would have been rebranded as HSBC Bank in 1998 and then subsequently sold and rebranded to First Niagara Bank in 2012. If the consumer defaults on the account in 2020, who would be the creditor? If the purpose is to allow the consumer to identify the card, then it should be First Niagara Bank that needs to be the creditor (i.e. the bank which held the account when it went into default; the bank which sent the consumer monthly statements; and the bank which has all the relevant data and documents). In this scenario, it would be impossible to obtain information from an institution that has not existed for 23 years.

To summarize, the creditor at the time of default or charge-off would also be the creditor that is most recognized by the consumer and the creditor associated with the last letter or statement they received from the creditor.

"(4) "Debt buyer" means a person or entity that is engaged in the business of purchasing charged-off consumer debt or other delinquent consumer debt for collection purposes, whether it collects the consumer debt itself or hires a third party for collection, including an attorney, in order to collect such consumer debt. A debt buyer is considered a debt collector for all purposes.

"(5) "Debt collection" means any action, conduct or practice in connection with the collection of consumer debt.

"(6) "Debt collector" means a person engaging directly or indirectly in debt collection. The term includes any person who sells or offers to sell forms represented to be a collection system, device, scheme, or method intended or calculated to be used to collect ~~claims~~consumer debt.

"(7) "Person" means an individual, corporation, business trust, estate, trust partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

"(8) "Public health emergency" means a period of time for which the Mayor has declared a public health emergency pursuant to § 7-2304.01, or a state of emergency pursuant to § 28-4102.".

(c) Subsection (c) is amended as follows:

(1) The lead-in language is amended by striking the phrase "of the following ways:" and inserting the phrase "way, including:" in its place.

(2) Paragraph (2) is amended to read as follows:

"(2) the accusation or threat to falsely accuse any person of fraud or any crime, or any conduct which, if true, would tend to disgrace such other person or in any way subject the person to ridicule, contempt, disgrace, or shame;"

(3) Paragraph (4) is amended to read as follows:

"(4) the threat to sell or assign to another the consumer debt with a representation or implication that the result of such sale or assignment would be that the consumer would lose any claim or defense to the ~~claim~~consumer debt or would be subjected to collection attempts in violation of this section;"

(4) Paragraph (5) is amended by striking the period and inserting a semicolon in its place.

(5) New paragraphs (6), (7), and (8) are added to read as follows:

"(6) the threat of any action which the creditor or debt collector cannot legally take or any action which the creditor or debt collector in the usual course of business does not in fact take;

"(7) disclosing or threatening to disclose information concerning the existence of a consumer debt known to be disputed by the consumer without disclosing the fact that the consumer debt is disputed by the consumer; and

"(8) disclosing or threatening to disclose information affecting the consumer's reputation for creditworthiness with knowledge or reason to know that the information is false.".

(d) Subsection (d) is amended as follows:

(1) The lead-in language is amended by striking the phrase "of the following ways:" and inserting the phrase "way, including:" in its place.

(2) Paragraph (2) is amended by striking the phrase "; and" and inserting a semicolon in its place.

(3) Paragraph (3) is amended to read as follows:

"(3) absent the consumer's express consent, causing expense to any person incurred by a medium of communication or by concealment of the true purpose of the notice, letter, message, or communication; and"."

[INTENTIONALLY BLANK BELOW TO ALLOW FOR MARGIN COMMENTS TO BE READ IN THEIR ENTIRETY]

Commented [DR4]: EDIT # 4 (EXPENSE) – **TECHNICAL CLARIFICATION** This provision prohibits the causing of an expense to any person through the use of any medium of communication with no exceptions. Regulation F issued by the CFPB permits the use of text messaging. So, if a DC consumer asks for a text message to be sent, a debt collector will violate this provision if the consumer has a text plan that charges 5 cents per text.

We don't believe this was the intent of this legislation and therefore would request that this clarifying language be provided to address consumer consent.

(4) A new paragraph (4) is added to read as follows:

"(4) communicating with the consumer or any member of the consumer's family or household in such a manner that can reasonably be expected to abuse or harass the consumer, including communications at an unreasonable hour or with unreasonable frequency, or by making in excess of ~~3~~ 7 phone calls per account, inclusive of all phone numbers ~~and~~

[INTENTIONALLY BLANK BELOW TO ALLOW FOR MARGIN COMMENTS TO BE READ IN THEIR ENTIRETY]

Commented [DR5]: EDIT # 5 (CALL CAP) – This call cap is inconsistent with the FDCPA rules adopted by the CFPB that take effect on November 30, 2021. The CFPB instituted a seven-call cap. As an industry, we are always seeking consistency in state and federal laws and regulations. Having 51 different standards is very challenging to work with. We would suggest tying the DC law to the criteria adopted by the federal government.

While we understand the need to have call limits to consumers during a state of emergency, this legislation sets a permanent standard in DC that would significantly conflict with the new federal regulations. It is imperative that the permanent law allow for reasonable communication opportunities intended to inform consumers of their debt, offer them discounts, and offer payment plan options that the original creditor may not have offered, all of which allows them to repair their credit. By placing overly restrictive calling limits, this law would delay the time in which collectors can make contact consumers, increase the time that consumers are in a delinquent status, and increase the possibility of litigation.

Commented [DR6]: EDIT # 6 (PER ACCOUNT) – The proposed edit changes the call cap to "per account," which is the same methodology that the CFPB measures their call cap limit in the comprehensive federal debt collection rules that take effect on November 30, 2021. In the normal course of business, most companies and their systems of record maintain information on a "per account" basis, not by each consumer. Logging and tracking of phone calls is done for each account, not for each consumer, as one consumer can have more than one account – and each account is unrelated to the other. Since there are different creditors for each account, the account information that needs to be conveyed to the consumer will be different and unique. Procedurally, it is no different than if there were two debt collectors calling about each account separately.

In other words, if Bank A and B send their accounts to two different collection agencies, there would be no question that each account would be treated separately for call cap limitations. So why would the accounts be lumped together if Bank A and B happen to do business with the same collection agency?

~~accounts~~ the creditor or debt collector has for the consumer, in any 7-day period. The limit of ~~3~~ 7 calls in any 7-day period shall not apply to calls made to a debt collector by a consumer; ~~or~~ to a single completed call made by a debt collector in response to the consumer's request for a returned phone call; to calls with a busy signal; or to calls made to a wrong number.".

(e) Subsection (e) is amended as follows:

(1) The lead-in language is amended by striking the phrase "any of the following ways:" and inserting the phrase "such a manner as to harass or embarrass the alleged debtor in any way, including:" in its place.

(2) Paragraph (1) is amended to read as follows:

"(1) the communication of any information relating to a consumer's indebtedness to any employer or employer's agent, except when the indebtedness had been guaranteed by the employer or the employer has requested the loan giving rise to the indebtedness and except when such communication is in connection with an attachment or execution after judgment as authorized by law;"

(3) Paragraph (2) is amended to read as follows:

"(2) the disclosure, publication, or communication of information relating to a consumer's indebtedness to any relative, family member, friend or neighbor of the consumer, except through proper legal action or process, or related to a deceased consumer's estate, or at the express and unsolicited request of the relative or family member;"

(f) Subsection (f) is amended as follows:

(1) The lead-in language is amended to read as follows:

"(f) No creditor or debt collector shall use any unfair, fraudulent, deceptive, or misleading representation, device, or practice to collect a consumer debt or to obtain information in conjunction with the collection of ~~claims~~ a consumer debt in any way, including:"

(2) Paragraph (4) is amended by striking the phrase "name and full business address" and inserting the phrase "name, phone number, email address, and full business address" in its place.

(3) Paragraph (8) is amended by striking the phrase "; and" and inserting a semicolon in its place.

(4) Paragraph (9) is amended by striking the period and inserting a semicolon in its place.

Commented [DR7]: EDIT # 7 (NO KNOWLEDGE OF AN ATTEMPT) – The existing text provides several exemptions from the call limitation for when the consumer calls the collector, or when the consumer requests a call. We would request two additional exceptions be added for when an attempted call receives a busy signal and when a call was placed to a wrong number. In both cases, it would be impossible for a consumer to have any knowledge of a prior attempt. There will be no impact to the consumer if an exception is added for busy signals and calls placed to a wrong number – other than an increased ability to settle the issue in a timely fashion.

This is consistent with how the new federal regulations treat busy and wrong calls that go into effect on November 30, 2021.

Commented [DR8]: EDIT # 8 (DECEASED CONSUMER) – **TECHNICAL CLARIFICATION** Family members typically are the people who resolve the debts of a deceased person's estate and it is impossible to do this without "disclosing" the debts of the deceased person to someone other than the consumer. Consequently, we would ask for an exception for this scenario.

(5) New paragraphs (10) and (11) are added to read as follows:

"(10) initiating a cause of action to collect a consumer debt when the debt collector knows or reasonably should know that the applicable statute of limitations period has expired; and

"(11) seeking to collect funds from a consumer that the debt collector knows or has reason to know are exempt from attachment or garnishment under federal or District law.".

(g) Subsection (g) is amended as follows:

(1) The lead-in language is amended by striking the phrase "of the following ways:" and inserting the phrase "way, including:" in its place.

(2) Paragraph (4) is amended by striking the phrase "; and" and inserting a semicolon in its place.

(3) Paragraph (5) is amended by striking the period and inserting the phrase "; and" in its place.

(4) A new paragraph (6) is added to read as follows:

"(6) stating that a relative of a deceased consumer is personally liable for the debts of that consumer's estate~~attempting to collect debts owed by a deceased consumer from a person with no legal obligation to pay the amounts alleged to be owed~~.".

Commented [DR9]: EDIT # 9 (DECEASED DEBT) – For convenience, family members often pay debts that are subsequently reimbursed out of the proceeds of the estate. We do not believe that this practice was intended to be prohibited. The real issue of concern is the one highlighted by the FTC and CFPB, which is that debt collectors should be prohibited from telling family members that they are personally liable for the debts of the estate. This proposed edit would be consistent with federal law.

This is consistent with how the new federal regulations treat busy and wrong calls that go into effect on November 30, 2021.

(h) Subsection (j) is amended as follows:

(1) Paragraph (1) is amended by striking the phrase "has willfully violated any provision of the foregoing subsections of this section" and inserting the phrase "has violated any provision of this section" in its place.

(2) Paragraph (2) is amended to read as follows:

"(2) Punitive damages may be awarded to any person affected by a willful violation of any provision of this section when and in such amount as is deemed appropriate by the court or trier of fact.".

(i) Subsection (k) is amended by striking the phrase "before 8 a.m. and after 9 p.m." and inserting the phrase "before 8 a.m. or after 9 p.m." in its place.

(j) New subsections (l) through (cc) are added to read follows:

"(l) Notwithstanding any other provision of law, when the applicable statute of limitations period has expired, any subsequent payment toward or written or oral affirmation of such a consumer debt shall not extend the limitations period.

"(m)(1) No debt collector shall collect or attempt to collect a consumer debt, unless the debt collector has a copy of the judgment or a complete ~~and authenticated~~ documentation that the person attempting collection is the owner of the consumer debt, and the debt collector ~~is in~~ has possession ~~of~~ or access to the following information or documents:

"(A) Documentation of the name of the original creditor as well as the name of the current creditor or owner of the consumer debt;

"(B) The debtor's last account number with the original creditor;

[INTENTIONALLY BLANK BELOW TO ALLOW FOR MARGIN COMMENTS TO BE READ IN THEIR ENTIRETY]

Commented [DR10]: EDIT # 10 (COPY OF JUDGMENT) – This paragraph as currently drafted requires extensive data and documents be provided to the consumer upon request, which makes sense, EXCEPT if the account has been reduced to a judgment. If a court has awarded a judgment on a debt after a full examination of the facts of the case, the judgment becomes the operative document moving forward. Judgments can last for 20 years. Finding the data and documents on the foundational accounts that have been supplanted by a judgment that could be upwards of 20 years old will be difficult to impossible. When the judgments were granted by a court, there was no expectation that the judgment holder would have needed to maintain these documents.

Commented [DR11]: EDIT # 11 (AUTHENTICATED) – Authentication is an evidentiary standard involving a witness statement or the deposing of a witness. How would a debt collector who is not an attorney "authenticate" a document? Non-attorneys cannot engage in the practice of law. Most states just require authentication at the point of litigation when attorneys are involved.

Commented [DR12]: EDIT # 12 (POSSESSION) – This text requires "possession" of the data. Almost universally, most states permit possession or "access" to the documents.

While it is a legitimate expectation that the data elements contained in paragraph (l) are transmitted to the debt collector by the original creditor as required data to collect a debt, the same is not true for the contract. The contract has a number of highly sensitive consumer data elements contained within it, including social security number, date of birth, signature, name, and address. All things which could expose the consumer and holder to extreme liability if it is intercepted or compromised.

For this reason, the original contract is almost never transmitted to a collection agency (which is only a temporary agent of the creditor). This helps secure highly confidential consumer documents from theft or compromise. So, while debt collectors might not "possess" documents in the literal sense of the word, they can certainly "access" them when needed.

"(C) A copy of the signed contract, signed application, or other documents that provide evidence of the consumer's liability and the terms thereof. For a revolving credit account, the most recent monthly statement recording a purchase transaction, last payment, balance transfer, or extension of credit shall be deemed sufficient to satisfy this requirement;

"(D) The date that the consumer debt was incurred; provided, that in the case of a revolving credit account the date that the consumer debt was incurred shall be the date of the most recent purchase, payment, balance transfer, or last extension of credit ~~made for the purchase of goods or services, for the lease of goods, or as a loan of money~~;

"(E) The date and amount of the last payment by the consumer, if applicable; and

"(F) An itemized accounting of the amount claimed to be owed, including the amount of the principal; the amount of any interest, fees or charges; and whether the charges were imposed by the original creditor, a debt collector, or a subsequent owner of the consumer debt. If the consumer debt arises from a credit card, the itemized accounting shall be measured from the charge-off balance and shall include copies of the charge-off statement and the most recent monthly statement recording a purchase transaction, last payment, or balance transfer.

"(2) In the first written communication with the consumer, a debt collector shall provide written notice to the consumer that the consumer may request that the debt collector provide a copy of the judgment or the information or documents identified in paragraph (1) of this subsection to the consumer. The notice shall state, in boldface type which is a minimum of 12-point type, the following statement:

"You have the right to request a copy of the judgment or if the consumer debt has not been reduced to a judgment you have the right to request all of the following concerning your debt:

(1) Documentation of the name of the original creditor as well as the name of the current creditor or owner of your debt;

(2) Your last account number with the original creditor;

(3) A copy of the signed contract, signed application, or other documents providing evidence of your liability and its terms;

(4) The date that your consumer debt was incurred;

(5) The date of your last payment, if applicable; and

Commented [DR13]: EDIT # 13 (OTHER DOCUMENTS) – It is not clear what courts would consider as "other documents" without clarifying language. Since many revolving credit accounts may have been opened online or over the phone, a signed contract or application may not exist. Consequently, we request adding specific examples of what is acceptable to meet the "other documents" standard.

We would ask that the language that is contained in the California Fair Debt Buying Practices Act (which is soon to be codified in the California Fair Debt Collection Practices Act) be included here which provides specific examples in the case of credit cards of what is acceptable to meet the "other documents" standard.

Commented [DR14]: EDIT # 14 (DATE DEBT WAS INCURRED) – We respectfully request adopting an already existing industry standards that have been adopted in states like CA, MD, and NY. These standards ensure that the most recognizable parts of the debt are included for the consumer to verify the validity of the debt. In the normal course of business, the last transaction or activity on the debt is not necessarily the last extension of credit but rather the last purchase, payment, balance transfer, or extension of credit. In the case of credit cards, the date field in paragraph (D) would then align to the "other documents" we are requesting be specified in paragraph (C).

(6) An itemized accounting of the amount claimed to be owed including the amount of the principal, the amount of any interest, fees, or charges, and whether the charges were imposed by the original creditor, a debt collector, or a subsequent owner of the consumer debt. For credit cards, the itemized accounting is measured from the charge-off balance.

You may request the above information by contacting us ~~by phone, mail, or email,~~ at the following:"

The debt collector may use various communication methods to receive a customer's request for the information and documents identified in this paragraph, including, but not limited to, phone, mail, email, or any other appropriate communication method.

If the person to whom the communication is made is the Executor or Administrator of an estate, or a person informally performing similar functions, the word "your" may be replaced in the notice with another appropriate word or words.

The notice shall list the debt collector's phone number, mailing address, and email address for receipt of such requests for information immediately following the above statement, in the same typeface as the statement. ~~The debt collector shall cease all collection of the consumer debt until the above notice is provided to the consumer in writing.~~ Upon receipt of ~~a~~ the first request by a consumer for any of the information identified in paragraph (1) of this subsection, the debt collector shall ~~provide~~ send all of the information listed in paragraph (1) of this subsection to the consumer in writing within 15 days of receipt of the request. If the debt collector cannot ~~provide~~ send the information listed in paragraph (1) within 15 days, the debt collector shall cease all collection of the consumer debt until such information is provided.

"(n)(1) A debt collector who enters into a payment schedule or settlement agreement regarding a consumer debt shall ~~provide~~ send a written copy of the payment schedule or settlement agreement to the consumer within 7 days.

[INTENTIONALLY BLANK BELOW TO ALLOW FOR MARGIN COMMENTS TO BE READ IN THEIR ENTIRETY]

Commented [DR15]: EDIT # 15 (ITEMIZED ACCOUNTING) – **TECHNICAL CLARIFICATION** This technical amendment is needed to make this consumer notice consistent with the text contained in paragraph (l) (F) above.

Commented [DR16]: EDIT # 16 (DECEASED DEBT) – **TECHNICAL CLARIFICATION** This addition is needed to ensure that this required consumer notice can be altered to change the pronoun "your" when communicating with the individual responsible for a decedent's estate. Without this change, it would be inconsistent with the principle that family members are NOT personally responsible for the debts of the estate. An alternative would be to delete the word "your" in paragraphs (1) through (5) of the consumer notice.

Commented [DR17]: EDIT # 17 (CEASE COLLECTION) – This requirement directly contradicts: (i) the 15-day requirement in this paragraph and (ii) the consumer notice language in paragraph (2). We believe this was an inadvertent mistake when editing this provision in the emergency and temporary versions of the bill.

Commented [DR18]: EDIT # 18 (FIRST REQUEST) – The way this sentence is written, a consumer could send an unlimited number of requests for the same data and documents. We believe that this could be used in an abusive way to prevent collection on contractual obligations. Worse, if a debt collector were to provide the same information 10 times but on the 11th request made a mistake and failed to send the information, it would open the debt collector to significant penalties provided in paragraphs (t) and (u) even though the consumer was given the same information 10 times already.

"(2) A consumer shall not be required to make a payment on a payment schedule or settlement agreement until the written agreement required by paragraph (1) of this subsection has been provided by the debt collector. Without limiting the foregoing, a consumer may make a payment on a payment schedule or settlement agreement before the written agreement has been provided by the debt collector if all material terms of the payment schedule or settlement agreement have been disclosed to the consumer by telephone or on a website."

Commented [DR19]: EDIT # 19 (VOLUNTARY PAYMENT) – We understand that the intention here is to make sure the consumer is clear on the terms of the payment plan before they make a payment, but we are requesting to add some flexibility to accommodate the fact that there are many avenues we currently use to explain payment plan terms to consumers. With this proposed addition, we must still send the written agreement in paragraph (1) but are allowed to take an initial payment over the phone or on a website without having to disengage the consumer and wait 7 days. The end result is the same in that the consumer is still receiving disclosure of all the pertinent information about their payment plan before they act. Additionally, such a restriction does not exist anywhere else in the country as other states have laws that allow for an initial payment while the written agreement is being mailed to the consumer.

"(o) Any action for the collection of a consumer debt shall only be commenced within 3 years of accrual. This period shall apply whether the legal basis of the claim sounds in contract, account stated, open account, or other cause, and notwithstanding the provisions of any other statute of limitations unless that statute provides for a shorter limitations period. This time period also applies to contracts under seal. This subsection shall apply to all claims brought after the effective date of the Protecting Consumers from Unjust Debt Collection Practices Emergency Amendment Act of 2021, passed on emergency basis on August 3, 2021 (Enrolled version of Bill 24-347).

"(p) Immediately prior to commencing a legal action to collect a consumer debt, the plaintiff shall undertake a reasonable investigation to verify the defendant's current address for service of process.

"(q) In a cause of action initiated by a debt collector to collect a consumer debt, the debt collector shall attach to the complaint or statement of claim a copy of the signed contract, signed application, or other documents that provide evidence of the consumer's liability, and shall allege the following information in the complaint or statement of claim:

"(1) A short and plain statement of the type of consumer debt;

"(2) The information enumerated in subsection (m)(1) of this section, except that the debt collector shall only include the last 4 digits of the debtor's last account number with the original creditor;

"(3) The basis for any interest and fees charged as enumerated in subsection (m)(1) of this section;

Commented [DR20]: EDIT # 20 (CLARIFICATION) – This edit is self-explanatory for purposes of consistency.

"(4) The basis for the request of attorney's fees, if applicable;

"(5) ~~That the debt collector is t~~The current owner of the consumer debt and a chronological listing of the names of all prior owners of the consumer debt and the date of each transfer of ownership, beginning with the original creditor; and

Commented [DR21]: EDIT # 21 (CURRENT OWNER) – In cases involving third-party debt collectors, this would be an impossibility as the "debt collector" is not the owner. They would be acting as an agent of the owner.

"(6) That the suit is filed within the applicable statute of limitations period.

"(r) In a cause of action initiated by a debt collector to collect a consumer debt, prior to entry of a default judgment or summary judgment against a consumer, the plaintiff shall file evidence with the court to establish the amount and nature of the consumer debt. The only evidence
sufficient to establish the amount and nature of the consumer debt shall be ~~authenticated~~ business records
that shall include the information enumerated in subsection (m)(1) of this section, except that the debt collector shall only include the last 4 digits of the debtor's last account number with the original creditor.

Commented [DR22]: EDIT # 22 (AUTHENTICATED) – Similar to Note 8 above, authentication is an evidentiary standard involving a witness statement or the deposing of a witness. How would a debt collector who is not an attorney "authenticate" a document? Non-attorneys cannot engage in the practice of law. Most states just require authentication at the point of litigation when attorneys are involved.

"(s) In a cause of action initiated by a debt collector to collect a consumer debt, prior to entry of a default judgment or summary judgment against a consumer, the plaintiff shall file a copy of the assignment or other writing establishing that the plaintiff is the owner of the consumer debt. If the consumer debt has been assigned more than once, then each assignment or other writing evidencing transfer of ownership must be attached to establish an unbroken chain of ownership. The plaintiff shall state:

(1) The date on which the consumer debt was should or assigned to the plaintiff;

(2) the name of each previous owner of the account from the original creditor to the plaintiff and the date on which the consumer debt was assigned to that owner by the original creditor or subsequent owner; and

(3) the amount due at the time of the sale or assignment of the consumer debt by the original creditor.

"(t) In a cause of action initiated by a debt buyer or debt collector to collect a consumer debt, if a debt buyer or debt collector seeks a judgment or order against the defendant and has not complied with the requirements of this section, the court shall not enter a judgment for the plaintiff and may, in its discretion, dismiss the action ~~with prejudice~~.

Commented [DR23]: EDIT # 23 (PREJUDICE) – This language was taken from the California Fair Debt Buying Practices Act, except that it was changed to be "with prejudice." We are not aware of any state that dismisses an action, including actions for small technicalities, with prejudice. With this language, a simple typographical error in a required notice, among other things, could expunge the debt.

The redlines bring this provision in line with the California Fair Debt Buying Practices Act.

"(u) A debt buyer or debt collector that violates any provision of this section with respect to a consumer may be liable to the consumer for the following:

"(1) Actual damages;

"(2) Costs and reasonable attorney's fees;

"(3) Punitive damages;

"(4)(A) If the consumer is an individual, the court may award an additional penalty in an amount not less than $500 and not to exceed $4,000; or

"(B) In the case of a class action, the amount for each named plaintiff as could be recovered under subparagraph (A) of this paragraph and an amount as the court may determine for each class member, not exceeding the amount per person that could be recovered under subparagraph (A) of this paragraph ~~times the number of class members;~~ and such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of $500,000 or 1 per centum of the net worth of the debt collector;

Commented [DR24]: EDIT # 24 (CLASS ACTION) – The proposed edits are taken verbatim from the federal Fair Debt Collection Practices Act. Without this cap, a debt collector could be forced to close due to a mere technical violation where a word was misspelled in a consumer notice that resulted in a class action. As a strict liability statute, the federal government was aware of the necessity for such a cap.

"(5) Any other relief which the court determines proper.

"(v) If the plaintiff is the prevailing party in any action to collect a consumer debt, the plaintiff shall be entitled to collect attorneys' fees only if the contract or other document evidencing the indebtedness sets forth an obligation of the consumer to pay such attorneys' fees, and subject to the following provisions:

"(1) If the contract or other document evidencing indebtedness provides for attorneys' fees in some specific percentage, such provision and obligation shall be valid and enforceable up to, but not in excess of, 15% of the amount of the consumer debt excluding attorneys' fees and collection costs.

"(2) If a contract or other document evidencing indebtedness provides for the payment of reasonable attorneys' fees by the debtor, without specifying any specific percentage, such provision shall be construed to mean the lesser of 15% of the amount of the debt, excluding attorneys' fees and collection costs, or the amount of attorneys' fees calculated by multiplying a reasonable rate for such cases by the amount of time reasonably expended to obtain the judgment.

"(3) The documentation setting forth a party's obligation to pay attorneys' fees shall be provided to the court before a court may enforce those provisions. The documentation must include all of the materials specified in subsection (m)(1) of this section.

"(w) Before a court may issue a bench warrant for civil arrest for failing to appear in a debt collection case under this section, the following conditions must be met:

"(1) The plaintiff must have personally served its motion for contempt, or other related motion or filing, on the defendant; and

"(2) The defendant must have failed to appear at 2 contempt hearings.

"(x) Notwithstanding any other law or court rule, a consumer who is compelled to attend pursuant to a civil arrest warrant shall be brought before the court the same day.

"(y) Notwithstanding any other law or court rule, no person shall be imprisoned or

jailed for failure to pay a consumer debt or imprisoned or jailed for contempt of court or otherwise for failure to comply with a court order to pay a consumer debt in part or in full.

"(z) A violation of the Fair Debt Collection Practices Act, approved September 20, 1977 (91 Stat. 874; 15 U.S.C. § 1692 et seq.), as amended, shall constitute a violation of this section.

"(aa)(1) Notwithstanding subsection (a) of this section, this subsection and subsection (bb) of this section shall apply to any debt, including loans directly secured on motor vehicles or direct motor vehicle installment loans covered by Chapter 36 of this title.

"(2) During a public health emergency and for 60 days after its conclusion, no creditor or debt collector shall, with respect to any debt:

"(A) Initiate, file, or threaten to file any new collection lawsuit;

"(B) Initiate, threaten to initiate, or act upon any statutory remedy for the garnishment, seizure, attachment, or withholding of wages, earnings, property, or funds for the payment of a consumer debt to a creditor;

"(C) Initiate, threaten to initiate, or act upon any statutory remedy for the repossession of any vehicle; except, that creditors or debt collectors may accept collateral that is voluntarily surrendered;

"(D) Visit or threaten to visit the household of a debtor at any time for the purpose of collecting a debt;

"(E) Visit or threaten to visit the place of employment of a debtor at any time; or

"(F) Confront or communicate in person with a debtor regarding the collection of a consumer debt in any public place at any time, unless initiated by the debtor.

"(3) This subsection shall not apply to:

"(A) Collecting or attempting to collect a consumer debt that is, or is alleged to be, owed on a loan secured by a mortgage on real property or owed for common expenses pursuant to § 42-1903.12; or

"(B) Collecting or attempting to collect delinquent consumer debt pursuant to subchapter XVII of Chapter 3 of Title 1.

"(4) Any statute of limitations on any collection lawsuit is tolled during the duration of the public health emergency and for 60 days thereafter.

"(bb)(1) During a public health emergency and for 60 days after its conclusion, no debt collector shall initiate any communication with a debtor via any written or electronic communication, including email, text message, or telephone. A debt collector shall not be deemed to have initiated a communication with a debtor if the communication by the debt collector is in response to a request made by the debtor for the communication or is the mailing of monthly statements related to an existing payment plan or payment receipts related to an existing payment plan.

"(2) This subsection shall not apply to:

"(A) Communications initiated solely for the purpose of informing a debtor of a rescheduled court appearance date or discussing a mutually convenient date for a rescheduled court appearance;

"(B) Original creditors collecting or attempting to collect their own debt;

"(C) Collecting or attempting to collect a consumer debt which is, or is alleged to be, owed on a loan secured by a mortgage on real property or owed for common expenses pursuant to § 42-1903.12;

"(D) Receiving and depositing payments the debtor chooses to make during a public health emergency; or

"(E) Collecting or attempting to collect delinquent consumer debt pursuant to

subchapter XVII of Chapter 3 of Title 1.

"(cc) Subsections (aa) and (bb) of this section shall not be construed to:

"(1) Exempt any person from complying with existing laws or rules of professional conduct with respect to debt collection practices;

"(2) Supersede or in any way limit the rights and protections available to consumers under applicable local, state, or federal foreclosure laws; or

"(3) Supersede any obligation under the District of Columbia Rules of Professional Conduct, to the extent of any inconsistency.".

Sec. 3. Applicability.
This act shall apply as of September 23, 2021.

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 5. Effective date.

(a) This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

(b) This act shall expire after 225 days of its having taken effect.

Testimony of Matt Kownacki Regarding B24 0357
November 29, 2021

Good afternoon and thank you for the opportunity to provide comments today. My name is Matt Kownacki. I am the Director of State Research and Policy at the American Financial Services Association, known as AFSA. Our members provide District consumers with credit cards, vehicle loans and leases, and mortgages, among other types of credit, and include national banks and sales finance companies. Importantly, our members are not seeking a carve out from the law. Our members are committed to working with their customers to provide assistance to the greatest extent possible. We share your goal of protecting consumers from abusive collection practices.

Today I will highlight specific areas of the proposed dramatic expansion of existing law that could result in immediate confusion for borrowers and their lenders, make it difficult to communicate with consumers, harm those whose accounts are delinquent, and likely limit the availability of credit for borrowers in the District. Because of time constraints, I will focus on the most concerning aspects of the bill and refer you to our written comments, which expand on these issues and identify several other points of clarification.

With few exceptions, the bill's restrictions apply to debt collectors, debt buyers and also creditors alike. Original creditors, however, do not operate like debt buyers or third-party debt collectors. For this reason, it is inappropriate and unnecessarily burdensome to lump in creditors equally across the board, as this legislation would do, and we urge clarity to unambiguously reflect the fundamental differences between the different actors covered under the law

919 18th Street NW, Washington, DC, 20006 ▲ 202.296.5544 ▲ www.afsaonline.org ▲ @AFSA_DC

To be clear, when I say creditors, I mean entities who either originate their own accounts or acquire accounts shortly after origination but well before default. Most of these entities go on to service and collect on these accounts, but debt collection is not their principal business. Creditors usually collect from consumers with whom they have a long-term and continuous relationship and who may have other accounts with the creditor. In contrast, third-party debt collectors or debt buyers typically collect static balances from consumers with whom they have no prior or ongoing relationship. Creditors continue to service an account when the borrower is past due, while debt buyers and debt collectors solely engage in collection activities and are more likely to collect much older charged-off or time-barred debts.

I'd like to also focus briefly on the bill's calls restrictions. In emergency situations, like the current pandemic, customers want assistance. When creditors can communicate openly with customers in a timely manner, they help many customers avoid negative outcomes and protect their credit. Creditors are often able to offer assistance or hardship programs that restore accounts to good standing, particularly in the early stages of delinquency. Engaging with customers commonly results in short periods of frequent communications. These creditor-driven solutions include deferred payments, changes in due dates, and interest rate reductions. Direct phone calls to borrowers are a crucial tool for this relief, but it can be extremely difficult to reach a borrower in three attempted phone calls over seven days, as the bill requires. Limiting communication will make customers unaware of options for relief and more likely to default— resulting in negative impact to credit reports and credit scores.

The CFPB recently implemented Regulation F, which generally prohibits a debt collector from placing more than seven calls within a seven-day period. Importantly, the CFPB recognized the crucial role that phone calls play for account servicing and declined to apply the call frequency restrictions to creditors.

Reg. F applies the seven-call limit *per debt*, rather than per consumer. The bill's three-call limit is inconsistent with the CFPB's approach, and particularly onerous, in that it applies across all of a consumer's accounts, so creditors who have customers with multiple accounts—a credit card and a vehicle loan, for example—would be limited to fewer than three calls per account, making it even more difficult to reach them with possible relief to prevent late fees, repossession, account closure and/or charge-off. For these reasons, we propose that the bill be amended to adopt Reg. F's approach to call frequency limitations.

When Congress passed the federal Fair Debt Collection Practices Act, it recognized that creditors "generally are restrained by the desire to protect their good will when collecting past due accounts," which distinguishes them from debt collectors who are "likely to have no future contact with the consumer and often are unconcerned with the consumer's opinion of them." Similarly, we request that the Council carefully consider the unique role creditors play when assessing whether the bill's proposed restrictions on debt collectors and debt buyers should also apply to creditors.

We welcome the opportunity to discuss these issues and others we did not have time to address today with the Council. We will be sharing proposed amendments with the Council to address our concerns, and I also again refer you to our more detailed written comments. Thank you again for your consideration of our comments.

Testimony of Deborah Cuevas Hill
Senior Staff Attorney, Consumer Advocacy and Home Preservation Practice
AARP Legal Counsel for the Elderly

Before the Committee of the Whole
Council of the District of Columbia

Bill 24-357

"Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2021"

November 29, 2021

Legal Counsel for the Elderly ("LCE") champions the dignity and rights of the District of Columbia's low-income elderly, helping our city's vulnerable seniors resolve problems concerning their basic legal needs each and every day. Each year, LCE volunteers and staff assist nearly 5,000 vulnerable seniors in D.C., providing an array of intersecting and complementary services (legal, psychosocial, financial, and educational).

On average 15% of LCE's cases are housing advocacy: preserving affordable housing for low-income seniors and preventing tax, condominium, and mortgage foreclosures and evictions. For over four decades, LCE has assisted District residents in foreclosure matters, securing more favorable outcomes than would otherwise be possible for homeowners without legal counsel. LCE attorneys also assist seniors with debt collection matters and other consumer issues. Drawing upon LCE's background and extensive experience representing senior consumers, we submit our testimony today to express our strong support for Bill 24-357, the Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2021.

* * *

The Protecting Consumers from Unjust Debt Collection Practices Amendment Act modernizes the District's 50-year-old permanent debt collection law by broadening the types of debts that are covered, requiring substantiation of the debt and by capping the cost associated with collecting the debt. The District's current permanent debt collection law is outdated and does not cover common forms of debt such as credit cards and medical debt. In addition, the debt collection law should be updated to require debt collectors to substantiate their claim of debt before they can attempt to collect.

LCE's testimony for this hearing will focus on one key aspect of the Protecting Consumers from Unjust Debt Collection Practices Amendment Act: limiting the excessive legal fees often charged by attorneys hired to collect a debt owed to condominium or homeowners' association. Often, low-income condominium or HOA unit owners behind on their monthly assessments can find a solution and attempt to reach a repayment plan with their association to avoid foreclosure. However, it is not uncommon for a struggling senior working to find a

solution to retain their condominium to learn that the amount owed is impossible to pay because in addition to what they thought they owed in condominium dues, they owe at least as much—and sometimes more—in legal fees. Indeed, LCE has seen cases where the amount owed in attorneys' fees is even higher than the unpaid assessments.

From LCE's experience working with condominium owners facing financial hardship, once the owner falls behind, the association often hires a lawyer to collect the delinquency. Each month, the attorneys often tack on collection costs and attorneys' fees plus the new monthly HOA charge. The attorneys' fees are not just charged for actual legal work, such as when a lawsuit is filed against the delinquent condominium owner or a letter is sent attempting to collect the debt. Rather, some firms habitually charge fees even for functions that are not legal work, such as generating a new monthly bill. LCE has seen the attorneys' fees charged routinely for condominium fee cases when all that has been done by the law firm hired by the condominium association was merely accounting work checking to see if a payment was made or not. These collection fee churning practices are simply abusive and do not justify passing on outsized "legal" bills to the struggling homeowner.

LCE has had clients who believe they paid the amount owed in full only to realize that to avoid a condominium foreclosure they also needed to pay the attorneys' fees. At this stage when the client has already paid the delinquency, often the only recourse for the homeowner is for their lender or servicer to step in to pay the entire amount owed including attorneys' fees to avoid the property being sold at auction. This helps the homeowner remain housed in the short term, but the risk of foreclosure remains. The additional property expense of paying the attorneys' fees to avoid condominium foreclosure is added to the mortgage payment, which then becomes unaffordable.

We at LCE know from our home ownership preservation practice that Black and Brown D.C. residents were already more likely to be facing foreclosure than their white counterparts prior to the onset of the pandemic. At a time when the District should be taking every measure to preserve affordable housing particularly for Black and Brown communities, the District should not allow these excessive attorneys' fees to go unchecked. The Protecting Consumers from Unjust Debt Collection Amendment Act would limit attorneys' fees in the collection of any consumer debt to 15% of the actual debt. This cap would help stem displacement of vulnerable homeowners who might otherwise have been able to afford payment plans covering past due condominium fees.

The District has been committed to ensuring that homeowners are provided an opportunity to save their homes during the COVID-19 pandemic by enacting and extending the current foreclosure moratorium. The foreclosure moratorium is set to lift on February 4, 2022. Those most at risk of immediate foreclosure are condominium owners, because association fee foreclosures take place outside the court system with only 31 days' notice to the homeowner.

The common practice of charging excessive attorneys' fees can make the difference between the homeowner being able to save their home from foreclosure or not. We hope the

Council will step in to halt abusive and excessive attorney's fees and stem displacement of low-income vulnerable homeowners.

* * *

We thank the Committee of the Whole for the opportunity to provide this testimony and stand ready to provide any further information that may aid the Council in its work.

Deborah Cuevas Hill
Senior Staff Attorney
Consumer Advocacy and Home Preservation Practice
Legal Counsel for the Elderly
601 E Street, NW
Washington, DC 20049
202-434-6783/ dcuevashill@aarp.org

Testimony of Jonathan Grossman
Estate Debt Coalition (EDC)

before the

Committee of the Whole
Chairman Phil Mendelson

Good afternoon Chairman Mendelson and members of the Council of the District of Columbia. My name is Jonathan Grossman and I am here today representing the Estate Debt Coalition ("EDC"), which is comprised of a number of the largest companies that focus on representing creditors in the estate resolution process. We appreciate the opportunity to testify on Bill 24-357, the Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2021 ("24-357" or the "Bill")

When a DC resident dies, his or her assets become part of an estate. In most circumstances, District law requires that the debts of the decedent be paid out of the assets of the estate prior to distributions being made to beneficiaries. As a result, whomever is responsible for handling the estate has the obligation to identify and pay the debts of the estate. When the decedent has substantial assets, or owns real property, estates are usually resolved through a formal probate process in which a court oversees and approves the distribution of assets to both creditors and beneficiaries. In such cases, EDC members submit claims through the formal probate process.

The majority of estates, however, are not formally resolved through probate courts, but rather informally by family members. In such instances, EDC members play an important role in working with family members to resolve the estate's obligation, thereby assisting family members in their administration of the estate. Indeed, these communications are often welcomed by family members because they cannot close out the estate and distribute net assets to beneficiaries until all debts are identified and resolved.

As a result, this unique form of "debt collection" raises very different regulatory issues than most other debt collection. And unfortunately, the plain language of the Fair Debt Collection Practices Act ("FDCPA"), did not squarely address many of these issues.

In 2011, the Federal Trade Commission ("FTC") sought to address some of these issues in its Statement of Policy Regarding Communications in Connection With the Collection of Decedents' Debts ("FTC Statement").[1] Two of the key points in the FTC Statement are relevant to 24-357:

1. Section 805(b) of the FDCPA generally prohibits disclosure of a consumer's debt to third parties. Section 805(d) defines "consumer" for these purposes to include consumer's "executor" and "administrator" but does not define those terms and does not address the situations in which jurisdictions do not use those terms (like DC, which uses the term "personal representative") or the situation in which family members were seeking to resolve the estate outside of the formal probate process. The FTC addressed this issue by taking the position that they would not enforce against estate debt collectors who communicated with the person "who is authorized to pay debts from the estate of the deceased."

2. In communicating with such persons, the FTC stated that "it would violate Section 5 of the FTC Act and Section 807 of the FDCPA to mislead those persons about whether they are personally liable for those debts …" The FTC went on to express the concern that even in the absence of any specific misrepresentations, an estate collector's communications "might convey the misimpression that the individual is personally liable for the decedent's debts." The FTC concluded that it may therefore be necessary for the collector to make affirmative disclosures that it was seeking payment from the assets in the decedent's estate and not from the individual. EDC strongly supports this principle and all of our members specifically tell family members in every communication that they are not personally liable for the debts of the estate. We do not believe that any estate collectors are making such statements, but to the extent that any collector in our industry makes such a statement, we support strong enforcement by the CFPB, FTC and/or the state or district attorneys general.

[1] See https://www.ftc.gov/news-events/press-releases/2011/07/ftc-issues-final-policy-statement-collecting-debts-deceased for links to the proposed and final FTC Statements and associated documents.

The Dodd-Frank Act, provided the Consumer Financial Protection Bureau ("CFPB") with the authority to promulgate debt collection rules. In 2020, it revised Regulation F, which implements the FDCPA. Regulation F addressed a number of issues related to estate debt, was largely consistent with the FTC Statement, and addressed two points relevant to the current version of 24-357.

1. The CFPB defined, as used in the FDCPA, "[t]he terms executor or administrator [to] include the personal representative of the consumer's estate. A personal representative is any person who is authorized to act on behalf of the deceased consumer's estate. Persons with such authority may include personal representatives under the informal probate and summary administration procedures of many States, persons appointed as universal successors, persons who sign declarations or affidavits to effectuate the transfer of estate assets, and persons who dispose of the deceased consumer's financial assets or other assets of monetary value extrajudicially."

2. The CFPB published a model validation notice for debt collectors and stated that use of [that form or a "substantially similar" form] would entitle the collector to a safe harbor under the FDCPA. In Comment 34(d)(2)(iii)-1(i), the CFPB clarified that, in the estate debt context, permissible changes to the model notice include "[m]odifications to remove language that could suggest liability for the debt if such language is not applicable. For example, if a debt collector sends a validation notice to a person who is authorized to act on behalf of the deceased consumer's estate … and that person is not liable for the debt, the debt collector may use the name of the deceased consumer instead of "you".

With this background as context, EDC is concerned that 24-357 in its current form would result in unintended consequences that would actually be counter to the interests of families seeking to resolve the estates of their loved ones. We are therefore proposing three changes that we believe are consistent with both the intent of the legislation and the positions of the FTC and CFPB, but avoid these adverse consequences.

1. The Bill amends Subsection (e), Paragraph 2 of the existing law to prohibit disclosure of a debt to any family member of the consumer. As discussed above, in the estate

context, however, family members of the decedent are typically the people tasked with resolving the estate, so we are proposing an exception for communications "related to a deceased consumer's estate".

2. The Bill includes a new subsection (g)(6) that includes a prohibition on "attempting to collect debts owed by a deceased consumer from a person with no legal obligation to pay the amounts alleged to be owed." We support the purpose of this provision, but are concerned that this language may actually prevent family members from paying the debts in the first instance and then getting reimbursed by the estate, which is often done to avoid having to open a bank account for a small estate. We would therefore recommend that the goal of this provision could be better accomplished by codifying the FTC's position that it violates the law for a debt collector to state that a relative of a deceased consumer is personally liable for the debts of the estate.

3. Finally, the new mandatory disclosures set forth in the Bill repeatedly use the pronoun "your" as in "your debt" and "your account." We are concerned that this undermines the message that family members are not personally liable for the debts of the estate. So, consistent with the CFPB's position on their model validation notice, we are requesting that, in the estate context, the word "your" can be replaced with another appropriate word or words (for example "the estate's debt" or "Ms. Smith's account").

In closing, I'd like to again thank the Council for considering our testimony today and also for working productively with all stakeholders on this Bill. I would be glad to respond to any questions that you may have.

My name is Cary Devorsetz. The purpose of my testimony is to discuss Bill 24-357, Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2021, and the upcoming expected vote by the Council to make some or all of this currently temporary legislation, permanent. By way of background, my law practice is based in DC, and I also serve as a volunteer member of the DC Legislative Action Committee of the Community Associations Institute, among other volunteer activities. My practice involves the representation of condominium associations, homeowners associations and cooperatives. Many of my clients are in Wards 7 and 8.

Assessments paid by association owners generally cover the costs of water provided to an owner, other utilities and services used directly by the owner, as well as insurance that covers every owner in the building – it's the insurance of first resort for homeowners, benefiting any damage to their personal residence and building(s) they share with others in their community. Association fees also cover common area and amenity maintenance, security cameras and private security, repair and replacement, trash removal, landscaping, painting, trash and recycling, snow removal, improvements, management company fees, accounting/bookkeeping costs, cleaning, as well as savings for future needs, known as reserves. The associations are managed by an all-volunteer group of residents, called a Board of Directors.

Community associations are legally required to collect debts, and they can't represent themselves in court in pursuing those debts. Under this legislation, which caps the ability of associations to pass on actually incurred legal fees to 15%, these organizations – which are already unable to successfully pass on all or all legal fees due to payment plan and debt reduction negotiations, owner bankruptcies and debtors being judgment proof – generally won't be able to pass on *anything close* to their actual legal fees. The legal fees charged won't change, but the associations' abilities to pass on much of their out-of-pocket payments for those fees, will.

Indeed, this legislation as drafted punishes homeowners who pay their assessments. After paying their own dues, these homeowners must pay more to make up the shortfall due for non-payors. This is an existing and pervasive problem already, and to require paying owners to pay significant additional legal fees to pursue what are often owners who haven't paid anything in years is a nonsensical and counterproductive result of this legislation.

The victims of the legislation will be nonprofit associates led by volunteers, and owners, and these additional fees they will need to cover may make them fall behind as their fees will invariably and inevitably go up, possibly by quite a bit. It will likely also cause many struggling DC associations – already on the cusp of receivership or bankruptcy (and especially in Wards 7 and 8) – to fail.

This is the opposite of fair – and seemingly the opposite of the intended public policy behind this legislation. This legislation will force who keep up on their assessments, many of whom are already struggling, to further and in fact significantly subsidize their non-paying neighbors. I therefore implore the Council to carve out community associations from at least the portion of this legislation that prohibits them from simply passing on their actual costs associated with collecting unpaid assessments.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Public Roundtable on the

Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2021

Written Testimony of

Karen M. Dale
Market President/CEO of AmeriHealth Caritas District of Columbia
And
Chief Diversity, Equity and Inclusion Officer
of the AmeriHealth Caritas Family of Companies

For the
Committee of the Whole
Council of the District of Columbia
The Honorable Phil Mendelson, Chairman

Monday, November 29, 2021

Chairman Mendelson and members of the Committee of the Whole, on behalf of AmeriHealth Caritas District of Columbia, thank you for the opportunity to provide written testimony in support of the Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2021.

My name is Karen Dale, and I am the Market President and Chief Executive Officer for AmeriHealth Caritas DC, a Medicaid managed care plan that has served over 100,000 District residents for the past eight years. I am also the Chief Diversity, Equity and Inclusion Officer for the AmeriHealth Caritas Family of Companies. In this role, I am responsible for ensuring that all of the AmeriHealth Medicaid, Medicare and Dual Special Needs health plans operating in various states across the country are acting with intention and leveraging proven practices to achieve our diversity, equity and inclusion goals – both internally with our associates and externally with the communities we serve.

We believe that managing the health care of our enrollees includes working toward greater social equity by address social determinants of health. To put it plainly, wrongful debt collection practices undermine social equity, making that "level playing field" that we hear so much about harder to achieve. At present, predatory practices in our city add to the stress many low-income residents already face, hinder their ability to invest in their futures, and include unjust penalties for those in debt.

This Bill is necessary to limit the unfair power of debt collectors and to protect some of the District's most vulnerable residents from harmful collection practices.

First, in order to properly address consumer debt, we must acknowledge it as a race issue. District residents of color have debt in collections at five times the rate of white residents.[1] As a result, the consequences of unjust debt collection practices disproportionately affect our communities of color. The proposals of the Bill will help protect these communities, who already experience higher levels of psychological distress compared to their white counterparts.[2]

Furthermore, the proposed Bill protects residents from being imprisoned for failing to pay or appear in debt collection cases. As the leader of a health care organization and former behavioral health therapist, I can tell you that imprisonment as a punishment for having unpayable consumer debt significantly diminishes the mental health and ultimately the physical health of an individual and their family. The psychological toll imprisonment takes is not at all proportional to the offense. It is, in fact, an extreme consequence for debt-related offenses, which are more often than not the product of institutional racism and systemic poverty. This is a social issue in and of itself related to consumer debt.

To invest in their future, a person often must take on debt, whether it be to pay for higher education, essential transportation, or housing. This investment, however, can lead to the unjust penalties of debt collection if an unexpected event occurs, e.g. a family member falls ill, one must move, a pandemic hits, etc.

There is perhaps no better reminder than the COVID-19 pandemic that life is unpredictable. Not that long ago, we saw food lines increase exponentially and the unemployment rate skyrocket. Now we're experiencing staggering rates of inflation. All of these things and more contribute to debt that a person and their family—here in our city—carries. And with it, the constant worry of, "How are we going to dig out of this?" Consumer debt can affect multiple generations by making it difficult for families to break the cycle of poverty.

We cannot say that we live in a just society and then stand by while unjust practices run rampant. Our community needs and deserves our help.

For these reasons, I encourage you to vote in favor of the Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2021. Let's use the COVID-19 pandemic as a catalyst to enable the District of Columbia to amend and improve upon consumer debt protections for our residents.

1. Debt in America: An interactive map - Urban Institute. https://apps.urban.org/features/debtinteractivemap/?type=overall&variable=pct_debt_collections. Published March 31, 2021.
2. Williams DR. Stress and the mental health of populations of color: Advancing our understanding of race-related stressors. *Journal of Health and Social Behavior*. 2018 Dec;59(4):466-85.Accessed November 14, 2021.
3. Sweet E, Nandi A, Adam E, McDade T. The High Price of Debt: Household Financial Debt and its impact on mental and physical health. *Social Science & Medicine.* 2013; 91: 94-100.

Testimony to the Consumer Protection Committee of the Council of the District of Columbia by DC Resident L Moy In Support of "Protecting Consumers from Unjust Debt Collection Practices Emergency Amendment Act" (the Act). 2021."

My name is Lillian Moy, a Resident of Ward 8 since 2003, and a survivor of the 9/11 Incident in New York City, when I was a Statistican at the U.S. Department of Commerce U.S. Census Bureau. Currently, I am a Tax Analyst.

I support **"Protecting Consumers from Unjust Debt Collection Practices Emergency Amendment Act" (the Act**), because Corporations take extraordinary measures against ordinary people to administer Debt Collection practices which have an immeasurable impact on household credit scores and credit access.

In April of 2018, I requested AT&T Mobility to discontinue mobile phone service which I subscribed to since 2014. The account "was not discontinued properly", according to an AT&T Representative in 2018, and I was billed monthly service fees beyond $70 per month through April 2019. I registered for an AT&T pre-paid cellular account due to the economical features and had contacted AT&T from a retail location in Falls Church, VA to discontinue the prior cellular contract. Despite discontinuing the cellular and following-up, AT&T continued to bill me . I continued to remit monthly cellular fees unknowing that I should have contacted the Credit Card Company in which I enrolled in an "autopay" feature, which automatically charged the credit card each month for the cellular service. As A result, I contacted AT&T and spoke with them for hours on numerous occasions from 2018 to 2019.

In 2020 during the Covid-19 pandemic, I contacted AT&T to request a refund of the year of incorrectly charged cellular fees which were remitted to them. I discovered the account was transferred to AT&T's Collections Department, which was actually a third-party Debt Collector located in Texas. AT&T finally discontinued the account and claimed there was a balance due, although I didn't utilize the

prior contract cellular service from 2018 through 2019. I spoke with the AT&T Representative who mentioned they were not able to refund the year of unused cellular service, and the account was in Collections. They provided me the phone number of the Debt Collector located in Texas. After numerous phone calls, the Account was released from Debt status.

After the account was discontinued, I continued to receive emails about the cellular usage was beyond the limit set, which signifies that individual employees were manipulating accounts, and it is a reason the AT&T cellular account was not discontinued correctly, and continued to generate monthly invoices for amounts which were beyond the original monthly contract fees

The entire process reveals the lack of training of the cellular phone company employees, the disregard of the department responsible for discontinuing service, and the unethical and unscrupulous behavior and actions of corporations with the ability to financially impact and to virtually destroy customer's Credit – a consumer's ability to obtain Credit and the long-term detrimental effects of poor actions on the part of bad actors who market their organizations as affordable cellular communications providers.

I support the **Protecting Consumers from Unjust Debt Collection Practices Emergency Amendment Act" (the Act),** which i) expands protection to included personal and household debt; ii) strengthens anti-harassment measures; iii) limits punitive actions against District of Columbia Residents; iv) **addresses the underlying causes of default judgments**; and v) **narrows the statute of limitations** as I have experienced and witnessed firsthand the irresponsible actions of Corporate employees in their handling consumer credit accounts. The amount of resources, the energy to correctly close the account, and to request a refund for a year of AT&T cellular fees is beyond what an ordinary consumer is capable of.

Corporations are cognizant that consumers have limited resources, and do not have the luxury to employ and army of attorneys. Therefore, on behalf of the many District of Columbia Residents who

have experienced similar consumer issues, whether through a cellular provider, or the purchase of products and services requiring the provision of consumer credit, I implore the Council to vigorously pursue these corporations, organizations, and individuals who have for too long not been on the radar, and to be dealt with in a proper and legal manner. District Residents need high quality products and services which will assist them to carry on their work, school, and daily life, and not be burdened from unethical, irresponsible corporations, who have no disregard for consumer laws, and seem to be solely concerned with fulfilling monthly and annual financial goals.

I thank Tzedek DC for their support of the issue and thank the DC Council.

Thank You,

LILLIAN MOY

Testimony from Molly Peacock, Esq.
For hearing November 29, 2021, 12:00pm
Bill 24-357, Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2021

Good Afternoon, Council Members.

My name is Molly Peacock, I am here to share my thoughts and information relevant to Bill 24-357, Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2021.

I am practicing lawyer who volunteers time to serve on the DC Legislative Action Committee of the Community Association Institute. CAI is a trade association comprising members who are business providers, homeowners, managers and boards of directors for community associations. CAI's DC chapter is its largest. Community associations are homeowners associations, cooperatives, and condominium associations. I'll refer to these associations in this testimony as "HOA's"

My private legal practice, serving members of the public, focuses on assisting HOA's in DC and northern Va. Been doing this since 2006. Thus, I, along with my colleagues in this industry, some of whom are here today to testify, are boots on the ground, serving non-profit residential HOA's and the volunteer homeowners who lead them.

Turning to the proposed law, Bill 24-357, Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2021. I believe the purpose of this law is to provide relief to people who cannot pay all their bills. I believe the purpose is also to prevent predatory bill-collecting practices, thus, saving consumers from fraud, and acts that should be illegal. Those are noble goals which promote fairness and equity.

This bill, as applicable to residential, non-profit HOA's, achieves the opposite of what I believe it intends to achieve, which fundamentally is fairness and equity.

Let's start with the law's title. Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2021. As currently written, this bill appears to apply to homeowners who own property within an HOA in DC, and characterizing these homeowners within HOA's as "consumers".

There is no carve-out for homeowners who have an obligation to pay HOA dues. Thus, the prudent debt collector would comply with this bill in connection with assisting a non-profit HOA collect unpaid HOA dues. So what are homeowners in an HOA are "consuming"? They are consuming by paying HOA assessments or "dues". HOA dues are statutorily or contractually required of homeowners based on their ownership of real property within the HOA. The law and/or recorded covenants require HOAs, as non-profit entities, to pay for the maintenance and proper operations of their communities. If homeowners in an HOA don't "consume" by paying their dues, their common areas

and/or amenities will become unsafe due to lack of maintenance of structural components of common structures, trash pile up, no landscaping. Further, homes become less marketable due to poor aesthetics, no ability to pay to defend themselves from lawsuits, failure to comply with legal duties of the community. Example a legal duties of an HOA is the HOA's legal obligation to collect dues, consistently enforce their covenants, and maintain the common area.

Bill 24-357 caps attorneys fees at 15% of the amount of debt. This cap means that HOAs would need to seek pro bono legal assistance in order to collect debt, or write off the debt.

Turning to the reference to "unfair" in the title of the bill. HOAs are legally required to collect debts. HOAs cannot represent themselves in court, and are not allowed to practice law without a license. The proposed bill requires HOAs to conduct debt collection without meaningful reimbursement for their legal fees, supposedly in the name of increased fairness to the consumer.

Good public policy supports allowing a non-profit, dues-funded residential organization imbued with legal duties, aka an HOA, to pass the costs of collection to the non-paying entity as part of protecting the paying members of the HOA. This public policy has been codified in the Condominium Act, and recorded covenants which allow the HOA to pass costs of collections to the non-paying party.

Going against this public policy by preventing an HOA from being able to pass the cost of collecting unpaid HOA dues would result in at least 4 unfair situations. These situations illustrate the unfairness that Bill 24-357 would foist upon DC residents who live in HOAs. This unfairness is something the DC Council probably seeks to avoid regardless of good intentions. Preventing an HOA from being able to meaningfully collect debt would result in:

1. significantly higher dues for everyone,
2. the HOA being forced to write off significant amounts of debt due to not being able to pay to seek to collect it,
3. paying homeowners having to pay their own dues plus the dues that are not being paid by the non-paying homeowners,
4. the HOA selectively enforcing its covenants which exposes the HOA to discrimination, fair housing claims, and general unfairness. Why should some people feel they have to pay to otherwise legally mandated HOA dues while other people get away with not paying them?

These results unfairly discriminate against homeowners who care about their communities enough to pay legally required sums needed for the community's maintenance and operations. It is unfair to punish homeowners who pay their dues by making them pay their own increased dues, plus other people's dues to make up the shortfall due to non-payors, plus and the legal fees necessary to chase debts of legally mandated HOA dues.

For the sake of fairness, please exempt community associations, including HOAs, Cooperatives, and Condominiums, from this bill.

Thank you,
Molly Peacock

Testimony of Cecelia Wimbish

Public Hearing Regarding: Bill 24-357, Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2021

Monday, November 29, 2021 at 12pm

Good afternoon, Chairman Mendelson. Thank you for the opportunity to testify today. My name is Cecelia Wimbish. I'm a DC native and Ward 7 resident. I've lived in DC all my life and I've been living in my home for over 40 years. I am retired, disabled, and living on a social security income.

My home is paid off. However, I fell behind on my homeowner association payments and other debts because of ongoing health issues and an abusive relationship that left me with financial problems. I made an agreement with my homeowner association to pay the arrears. When my case went to a law firm, the late fees and attorney's fees seemed to get higher and higher, and it was hard to pay down. Then I had a stroke and had issues paying my bills and got behind again. I had health issues and the HOA agreed to not charge anymore late fees, but the attorney's fees continued to pile up. I got upset. How can I ever keep up if I have all these fees? Every time I would turn around there would be more fees.

I'm disabled and made a lot of modifications to my home because I use a wheelchair to get around. I can't walk very much. It is important for me to stay in my home because I need a place to live, and my home has been modified for me. I worked so hard to pay my mortgage off for so many years.

In addition to my HOA debts, I also received many calls from bill collectors. When bill collectors harass me, it affects my health. I try to stay calm because I have anxiety and I don't want to have another stroke. It feels like everyone is coming after me and I can't keep up.

I support this bill because it would help seniors like me stay in their home by allowing us to fight our case without worrying about attorney's fees adding up so much that we can't pay our HOA fees. This bill would also help people avoid health problems related to harassment.

DC should make laws that protect seniors. Once you reach a certain age, the debt collectors shouldn't be able to harass you and should forgive debts from a long time ago. For example, I was charged $1000 for a $300 credit card. It is hard to pay these unaffordable debts on a fixed income. We need to protect older residents with fixed income.

Thank you for the opportunity to testify on the Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2021.

Community Associations Institute (CAI)

Position Statement and Recommendations Regarding Bill 24-357, Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2021

The Council's articulated purpose behind this Act is to "amend, on an emergency basis, section 28-3814 of the District of Columbia Official Code to include all consumer debt under the District's collection law" and to generally, "prohibit deceptive behavior from debt collectors."

CAI agrees with the Council's goals and supports them but we believe that the Act should include clarifying language that it does not consider unpaid condominium and HOA assessments as "consumer debt" as defined by law.

Here is why:

Consumer debt is typically debt that is incurred in purchase of a service or a product.

Condominium/HOA assessments pay for common expenses shared by owners that are absolutely necessary for the communities to function, and in some cases, to be habitable.

Assessment income is critical to pay for the maintenance, repair and replacement of building structures and other physical components of an association. If an association's members fail to pay such assessments, it often results in deferred maintenance, which we now know, from the Surfside tragedy, can have catastrophic consequences. What is more, assessments are used to pay for direct benefits for owners, such as trash pick-up, water, electricity in dark parking lots and lobbies, security gates and doors, gas service to homeowners, snow removal, master insurance policies that protect owners from being individually liable from lawsuits against the condominium, and other routine maintenance obligations.

These expenses are in direct contrast to typical consumer debt.

Consumer debt, when unpaid, is often borne by large credit card companies, debt buyers or other service providers whose businesses rely on a volume of customers so large that delinquent accounts do not threaten their viability. Moreover, consumer debt is often purchased by debt buyers who typically tack on additional costs so that consumers pay more than the additional debt. These companies are created for the purpose of generating profits. By contrast, condominium associations are non-profit entities created to provide basic housing services of a community and municipal nature.

Unpaid condominium/HOA assessments are borne by other homeowners who pay their assessments on time. Because associations have a limited income stream, they generally cannot afford to pay substantial fees to lawyers to collect unpaid assessments without any mechanism for them to recoup those funds from non-paying homeowners. Consequently, the DC Condo Act and the governing documents of most, if not all, condominium associations and HOAs allow them to pass on the cost of attorney's fees to the non-paying owners so that compliant homeowners do not have to shoulder a burden that they cannot afford on behalf of owners who do not pay their fair share.

DISTRICT OF COLUMBIA
LEGISLATIVE ACTION COMMITTEE
community
ASSOCIATIONS INSTITUTE

Additional points

CAI is concerned that the statutory positions of the Bill 24-357 and the Condo Act are conflicting. The Condo Act is designed to ensure the effective and efficient operations of condo associations. If Bill 24-357 is interpreted to cover unpaid assessments, this bill would, in effect, nullify the long-standing statutory regime of our Condo Act which is designed to protect entire communities, who rely solely on assessments from owners to pay common expenses, from financial collapse.

In addition, the provisions in this Act are, in many cases, duplicative of those in the Federal Fair Debt Collections Practices Act, but with some conflicts that will cause debt collectors to have to choose which Act to follow and which Act to violate. Condo lawyers will be required to include language from both laws in their notices although that language is repetitive, at best, and conflicting at worst. This will, undoubtedly and unintentionally, confuse owners about what their rights are and how to protect themselves. It will also subject every debt collector in the District of Columbia to liability, which, under the Federal Statute, will subject them to possible punitive damages.

The FDCPA has imposed additional regulatory requirements, some of which take effect on December 1st of this year and others are set to take effect on January 29, 2022, which will require additional disclosures to be added to collection notices among other things. These changes to the FDCPA requirements are not consistent with this Act, and will leave community association attorneys, who are already bound to comply with federal and local requirements on our collections practices, wondering if they will have to comply with yet another statutory regime that will not only cripple condo associations abilities to responsibly govern their communities, but runs a high risk of confusing the very people that it is designed to protect. And, given that debt collectors are expressly prohibited from sending collections communications to debtors that are likely to confuse them, the very existence of these conflicting requirements will make it nearly impossible for community associations to safely collect assessments from those owners who have not paid.

Bill 24-357 requires a debtor to request verification within 15 days of receipt of a request to pay a debt, which is about half of the time the same owner would be given under the already existing Condo Act. Additionally, debt collectors in DC will not only have to grapple with the implementation of this bill but will also have to make changes to their process in order to comply with amendments to the federal law under the FDCPA.

With respect to the Condo Act, as recently as seven years ago, the Condo Act's collection provisions were amended to create additional clarity for the assessment collection process and to ensure that associations have an ability to collect their direct costs and fees from delinquent owners. This was done as a matter of policy to ensure that a delinquent person's neighbors do not have to absorb the costs of such person's failure to pay their assessments. More recently, in 2017, the Condo Act was amended to add protections to unit owners who were behind on assessments. Some of this additional protections included enclosures detailing free legal services to assist owners in protecting their rights during the collections process, providing additional language in collection notices in large 14-point font about those protections, and

providing owners with 30 days from the date of receipt of a notice to request a verification of the debt notice, in addition to other protections.

CAI does not support Bill 24-357 as written and asks that the Council include clarifying provisions that exclude unpaid condominium and HOA assessments from the statute.

We welcome the opportunity to provide additional information and/or answer questions you may have. Please contact Scott Burka, CMCA, AMS, PCAM, Chair CAI District of Columbia Legislative Action Committee at scott.burka@ejfrealestate.com or 202.735.3781.

Community Associations District of Columbia Legislative Action Committee

Mr. Scott Burka, CMCA, AMS, PCAM
EJF Real Estate Services, Inc.
Washington, DC

Mr. David H. Cox, Esq.
Jackson & Campbell, P.C.
Washington, DC

Mr. T. Cary Devorsetz, Esq.
Alderman, Devorsetz & Hora, PLLC
Washington, DC

Ms. Chelsey Kelly, CMCA, AMS, PCAM
Roost DC
Washington, DC

Ms. Yaida O. Ford, Esq.
Ford Law Pros, P.C
Washington, DC

Dr. Perry Klein, Ph.D.
Town Square Towers Condominium Association
Washington, DC

Mr. Nicholas J. Mazzarella, CMCA, LSM, PCAM, MBA
Community Management Corporation
Chantilly, VA

Mr. Aaron Mindel, CMCA
EJF Real Estate Services, Inc.
Washington, DC

Ms. Karla Perkins
Potomac Place Condominium
Washington, DC

Mr. Don Plank, AMS, PCAM
National Cooperative Bank
Arlington, VA

Ms. Jane Saindon Rogers, Esq.
Whiteford, Taylor & Preston, LLP
Washington, DC

Mr. Todd A. Sinkins, Esq.
Rees Broome, P.C.
Tysons Corner, VA

Ms. Ekoke J. Tambe, AMS, PCAM
Potomac Place Condominium
Washington, DC

Mr. John Tsitos, CMCA, AMS, PCAM
Community Management Corporation
Chantilly, VA

Ms. Jaime Barnhart, CMP, CAE
Washington Metropolitan Chapter
Falls Church, VA

Good afternoon. My name is Paul Horton, and I am the founder and CEO of Quality 1 Property Management, which manages D.C. homeowner's associations and condominium associations, primarily in Wards 7 and 8. We have been managing associations for about 11 years now. The purpose of my testimony is to voice concerns about Bill 24-357, Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2021, and the expected vote to make this temporary legislation, permanent legislation.

Many of the communities we manage, originally came to us with negative cash flow, had limited operating funds, had no or little reserves, extremely high delinquency rates – often due to their inability to afford lawyers, even though – on paper – they can recover legal fees they expend to collect assessments from non-paying owners. Due to the cost of paying an attorney, many only engage in collection efforts from some of the worst offenders – those who may have never paid an assessment or have haven't paid in years. Despite our management company's assistance, lawyers are needed in DC to be able to formally collect – that is, do something more than send a reminder notice to those who are behind. And lawyers cost money.

None of the communities we manage are able to collect all or nearly all the legal fees they incur from owners, and most it not all wait to use a lawyer until an owner has not paid in at least several months if not years. The law being considered here would make things significantly worse for these communities, especially the most vulnerable. And it would add additional financial burdens to the owners who do pay their fees. This law would not only force these paying owners to absorb non-paying owners' portion of their financial obligations for utilities, repair, maintenance, security, landscaping, insurance and so many other services and amenities, it would force them to cover the cost of the legal fees incurred to force non-paying owners to pay their assessments.

Artificially cutting off what the law or governing documents already provide to the associations, which is full reimbursement for their out-of-pocket expenditures on legal fees, makes zero sense. Maybe it makes sense with regard to large, national corporations or for-profit entities. But it does not for organizations that must use all their income to keep up, keep safe and keep beautiful their proud communities.

One primary result of this law, if it retains the cap of legal fees Associations can recover, will not only be to lessen the incentive for non-paying owners to pay their assessments, but will drive some of the communities that were struggling into bankruptcy. Many Associations are only now starting to emerge out the pandemic, after having to refrain from increasing their assessments due to the financial impact to owners caused by the pandemic and their inability to collect from nonpaying owners due to pandemic debt collection laws. By continuing to limit the Association's ability to collect the full cost of legal expenses will cause responsible owners, many of whom live paycheck-to-paycheck, to have to pay even more – likely a lot more – than the already extra amounts they have had to pay because not even close to all legal fees are recovered, even if technically allowed until recently. This law – severely limiting the reimbursement of actual, out-of-pocket expenses of legal fees, forcing paying owners to further financially support their

neighbors who do not pay – is misguided, at least as it relates to non-profit community associations, led by volunteers and which rely exclusively on assessments to function.

Statement of Lee A. Kincaid – President of the Village at Dakota Crossing Homeowners' Association

Bill 24-0357 Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2021

29 November 2021

Good afternoon Chairman Mendelson and DC Council Members. Thank you for the opportunity to address the council concerning Bill 24-0357.

My name is Lee Kincaid and I am the president of the Village at Dakota Crossing Homeowners' Association in Northeast.

Like all other HOA board members in my community, I am a homeowner volunteer and receive absolutely no compensation in my capacity as HOA board president.

I represent 322 housing units comprised of 300 single family townhouses and 22 single family condo units.

HOA monthly assessment fees on our homeowners is the single source of operating income for our non-profit homeowners' association.

Our HOA provides trash and recycling services, lawn care and mowing, snow removal, street lighting, and overall care and maintenance of our private streets, private sidewalks, and private common areas and green spaces. These associated costs are in addition to other costs such as: professional property management, record keeping, and insurance.

Our HOA has recorded covenants regarding the rights and responsibilities of homeowners in paying their HOA assessments including passing along the actual cost of collection and legal fees incurred in the collection of delinquent homeowner accounts.

A homeowner not paying their fair share of assessment fees places an undue burden on those homeowners, especially those on a fixed income, who faithfully pay their required monthly assessments.

I applaud the council for protecting consumer rights concerning abusive debt collection practices however, I respectfully request that nonprofit homeowner associations such as mine are not faced with any unintended consequences as a result of bill 24-0357 which would place limits on the amount of legal fees that our association could recoup.

I thank you and the council for your efforts and dedication to the residents of the District.

Sincerely,

Lee A. Kincaid
President
Village at Dakota Crossing Homeowners' Association

Chairman Mendelson, members of the Committee of the whole,

I am present here today to speak on behalf of the adoption of Bill 24-126.

My story is as follows:

I was able to acquire my condo in 1982 with the help of the Government of the District of Columbia.

Let's fast forward, all the old owners have sold their units on the open markets at hugh profits. Needly to say the fees started to go up and I ran in to trouble with monthly condo fees. The association filed suit.

Once a collection law firm is hired you no longer work with the condo association. You speak only with someone at the law firm. This was my experience.

The fees added each month by the law firm end up being more than what was owed to the condo association.

I was not able to pay the total amount I was forced into foreclosure. My mortgage co stepped in and paid the entire amount claimed by law firm to the law firm.

My mortgage co will not refinance my mortgage.

Now I am carrying a past due amount of over $25,000 plus interest that grows every month. I am at 11.25% no one will touch my mortgage.

So Yes, I am in favor of passing this bill.

I hope it will help someone avoid the stress of foreclosure that I have experienced.

I believe that both sides of a collection suit (association and debtor) are made aware of collection firms billing practices

My being here today is to tell you my story in hope that you understand the important of enacting this bill.

Thank you Chairman Mendelson and the Committee for allowing me this opportunity to testify with regards to proposed bill 24-357. I am an attorney who represents community associations which comprise of homeowners association, condominium associations, and cooperatives. I will refer to them collectively as Community Associations. The purpose of my testimony is to request that the committee revise the section which creates a cap as to the attorney's fees that a community association can recover when it institutes a debt collection action against an owner within the community association.

While I recognize that protections should be extended to owner from unjust debt collection, those protections should not be extended to community associations. I would like to echo the testimony of my counterparts, Mr. Devorsetz, Ms. Peacock, and Ms. Ford, that community associations are a unique entity which relies exclusively on the assessments paid by its owners to afford the day-to-day operations of the community association. These associations are not large national debt collectors whose debt collection actions are to recover debts from a consumer. These community associations are not large corporations who have additional profit and streams of revenue to pay their debts. These community associations only have the monthly, quarterly, bi-annually, annual assessments which are paid by the owners within the community. When an owner fails to pay their assessments, that is an additional burden that the other owners ultimately must bear. When viewing the effects of the proposed law, it actually has the opposite effect of protecting against unjust debt collection by forcing paying owners to carry the burden of a non-paying owner.

Often times, the governing documents of a community association will apprise owners of their obligation to pay assessments due to the Association. These documents also apprise an owner that they may or will be responsible for legal fees/costs that are incurred by an Association in the event that it must initiate an action to collect against a delinquent owner. When the developer created these documents, the purpose is to ensure that any costs and fees that an Association incurs can be recuperated from an owner whose failure to pay caused the Association to incur those fees.

Additionally, the cap of 15% in legal fees is very subjective. The legal fees incurred on one account may fall squarely within the 15% but other accounts which have been delinquent for several years and require extensive work by the community associations attorney, which may require significant negotiation between the parties and ultimately a waiver some of the legal fees, the 15% cap would not be considered reasonable at all.

Based on the foregoing reasons, I request that the 15% cap be removed from the proposed legislation and/or community associations, including HOAs, Cooperatives, and Condominiums, from this bill.

MD|DC
Credit Union Association

Chairman Mendelson
1350 Pennsylvania Avenue NW,
Suite 504,
Washington, DC 20004

Re: B24-0357 - Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2021
Position: Opposed

Dear Chairman Mendelson and members of the Council:

The MD|DC Credit Union Association is a trade association representing over 125 Credit Unions in Maryland and the District of Columbia and their 2.2 million members. The District of Columbia is home to 33 credit unions with almost 300,000 members, and many District residents are also members of Maryland-based credit unions.

The Association is opposed to this bill for two main reasons.

1. The application is too broad:

Original creditors, like credit unions, have not previously been defined as debt-collectors or included in debt collection statutes or regulations because they have a completely different relationship with consumers than debt collectors. As Congress found in 1977, and dozens of courts, including the Supreme Court, have upheld since:

> "unlike creditors, 'who generally are restrained by the desire to protect their good will when collecting past due accounts,' independent collectors are likely to have 'no future contact with the consumer and often are unconcerned with the consumer's opinion of them."[1]

The dynamic between these entities is entirely different. Grouping financial institutions with debt collectors under this law is inappropriate and undermines the vast differences between the industries.

The goal of a credit union, when working through debt issues with a member, is to find the most reasonable solution for both parties. Our members often communicate multiple times in short periods with members to meet this goal. Credit unions are not simply calling a member to remind them of a debt but are working towards a solution.

To put credit unions in the same category as debt collectors, especially relating to how they communicate with members who have outstanding debts, would do a great disservice to the member. Credit union members expect that their credit union will work hand in hand to help with any issues. Creating regulatory pressure by putting credit unions in the same category as a debt-collector could hurt a credit union's ability to help the member.

If a credit union is regulated like a debt collector, it may be more costly to collect debts. As a result, a credit union may be forced to mitigate the risk and costs by tightening lending guidelines. From a

[1] *Henson v. Santander Consumer USA Inc.*, 582 U.S. ___ (2017)(Quoting S. Rep. No. 95-382, at 2, 1997 U.S.C.C.A.N. at 1697).

MD|DC
Credit Union Association

consumer standpoint, credit unions are often looked at as the "go-to" financial resource for those with modest means. Unlike other financial institutions, credit unions have broad lending discretion since they are member-owned, not for profits, and because there is a safe mechanism in place to recover debts when all other methods have not worked. Adding a compliance burden to the debt-recovery process may force credit unions to restrict their lending to reduce risk.

We appreciate that this law does not apply to loans directly secured on real estate or direct motor vehicle installment loans since these are both highly regulated products with appropriate safeguards. However, credit unions are often the safest choice for many "other" loans that people would not qualify for at other financial institutions. These "other" loans, like any other loan from a credit union, are also highly regulated products with appropriate safeguards. Creating an increased class of regulations for these loans is unnecessarily burdensome.

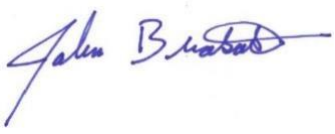
2. This law conflicts with CFPB's Regulation F:

In the last year, the CFPB made several changes to Regulation F. One of these changes prohibits a debt collector from placing more than seven calls within a seven-day period. This bill being proposed here has a three-call in a seven-day period limit. The merits of which limit is appropriate aside, asking companies to make system-level policy changes in such a short period is overly burdensome and potentially costly. These costs, which third-party debt collectors will mainly incur, are ultimately passed on to the credit union or whoever is contracting with a debt-collection company for services. Increasing compliance costs, especially in such a difficult time, hurts the credit unions' ability to give back to the membership in services and lower fees.

As always, we appreciate the ability to have our voices heard and look forward to a continued partnership. Please feel free to reach out with comments or questions.

Thank you!

Sincerely,



John Bratsakis
President/CEO
MD|DC Credit Union Association

Cavalry Portfolio Services, LLC
500 Summit Lake Drive, Suite 400
Valhalla, NY 10595
(914) 742-4382

To: Committee of the Whole

From: Anne Thomas, Chief Compliance Officer, Cavalry Portfolio Services, LLC

Re: In Opposition to Bill 24-357

Written Testimony of Anne Thomas, Chief Compliance Officer
Cavalry Portfolio Services, LLC

before the

Committee of the Whole
Chairman Phil Mendelson

Good afternoon Chairman Mendelson and members of the Council of the District of Columbia (the "Council"). My name is Anne Thomas and I am the Chief Compliance Officer and Senior Compliance Counsel of Cavalry Portfolio Services, LLC. Thank you for allowing me this opportunity to offer Comments concerning House Bill 24-357. I would like to thank you, Mr. Chairman, your staff, and the staff of other council members in working with the industry coalition during the Council's consideration of the companion emergency and temporary versions of this preeminent bill.

Cavalry Portfolio Services, LLC ("Cavalry") is a debt collection company located in Westchester County, New York. Cavalry is a RMA International Certified Professional Receivables Company. Cavalry does not support bad actors in the collection of consumer debt, and in the development of its own policies and procedures encourages open and honest dealing with consumers. Cavalry works with business partners located in the District of Columbia. Cavalry strongly opposes any and all unethical consumer practices. That is why I am appearing before you today to discuss DC Bill 24-0357.

Cavalry applauds the Council in its work to ensure that consumers and businesses are able to engage in fair and transparent financial activity based on regulatory clarity. We also support the work of our colleagues in the industry coalition on this bill.

<u>Original Creditor Definition</u>
Cavalry respectfully requests that the Council clarify the definition of the "Original Creditor" to reflect the entity most recognized by the consumer which would be creditor that owned the account at the time of charge-off or date of default.

Cavalry Portfolio Services, LLC
500 Summit Lake Drive, Suite 400
Valhalla, NY 10595
(914) 742-4382

While consumers may have forgotten the creditor with whom they opened the account with, they most often know the name of the bank that most recently sent them statements regarding the account, up to and including at the time of charge-off. The bill, as drafted, could have the unintended consequence of causing confusion by consumers about the basis for the contact by the debt collector if the creditor's name may have changed since opening the account.

We would respectfully suggest that the original creditor be the last original creditor, meaning the creditor which is the banking institution that has all the relevant data and documents and held the account when it went into default.

Other states gave recently addressed this issue. Specifically, New York, where in the newly enacted Consumer Credit Fairness Act. The bill defines the term as "the entity that owned a consumer credit account at the date of default giving rise to the cause of action." The reasoning was that the creditor at the date of default is the creditor that is most recognized by the consumer and the creditor associated with the last letter or statement they received from the creditor on the account.

Mirror Post-Charge Off Itemization Requirements

Second, we respectfully request that the bill align the two sections governing what documentation a debt collector must possess in order to collect and what documents it must disclose to the consumer upon the consumer's request. The disclosure requirements to consumers at the time of initiating a collection should mirror the possession requirements of the debt collector as stipulated in subsection (m) of the bill.

The sections are interrelated and refer to one another. The language in the introduced version of the permanent bill requiring pre-charge off itemization would create a new threshold for measuring interest on revolving lines of credit (i.e. credit cards) that is in conflict with federal banking laws. It will also create confusion for consumers.

Section (2) of the introduced permanent bill retains the former pre-amended language, requiring the credit card debt collector to provide a statement that a pre-charge off itemized accounting is available to be requested.

To reduce confusion and ensure clarity in implementation, we ask that you align the permanent version of the bill with the changes that the industry coalition worked with you and your staff to include in the emergency and temporary versions of the bill regarding the itemization of pre-charge-off balance requirement.

Cavalry appreciates your time in reviewing our concerns and recommendations.

Good afternoon. This is my first time in my 40+ years as a DC resident, testifying before the Council. I'm doing so because I felt I needed to, given of what would be a disastrous consequence for our community related to proposed legislation that could severely limit the amount of out-of-pocket legal fees we can recover from owners who do not pay assessments required to maintain our community's property. I am testifying in my capacity as a volunteer on the Board of Directors of Walter E. Washington Estates Homeowners Association, a 141 townhome homeowner's association that's been in existence for approximately 25 years, and is located in Ward 8. I have served as its President for over 10 years.

More specifically, I'm here today to testify concerning Bill 24-357, Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2021.

Although there are other parts of the legislation that should be re-examined as they apply to a nonprofit, led-by-all-volunteer HOAs, I'm focusing my testimony on the most concerning piece: the inability of an HOA to pass on the actual, pass-through costs it incurs to collect debts owed to it, even though our governing documents – which owners bought their homes agreeing to abide by and to be subject to – give us that right.

Within the last 2 years, our association had no choice but to increase our assessments – which are spent on the community for maintenance, insurance, landscaping, snow removal, management fees, and many other shared costs – by 50%. This legislation will almost certainly require us to again increase our assessments by perhaps that much or even more, because a large number of owners simply don't pay assessments, and we have been prohibited by DC law from pursuing their unpaid assessments for the bulk of the last 1-1/2 years due to Covid legislation.

Our association has struggled to be able to afford lawyers, and we're already only able to recover a portion of the legal fees we expend, even if we may technically have the right to recover more. That's partly because we can't pass on certain fees, but mostly because we can't collect them – owners file bankruptcy, negotiate reduced amounts, threaten to and do countersue, and have sued our lawyers when debts are pursued. We simply could never find and have never found a law firm willing to formally chase after assessments – often where nothing has been paid by an owner in years! – for only 15% of the amount owed. Or even anywhere in the universe of that percentage.

We are not asking to make a profit. We're not even asking to break even. We're not asking for Directors or Officers to be compensated. Instead, we're asking to be able to continue doing what our governing documents permit – provided to owners before they buy their home in our community – to be able to pass on our hard legal fee costs, which, again, we don't even come close to fully collecting already. This legislation would cause us to further increase our fees, punishes owners who do pay, and makes it less likely that owners would want to volunteer to serve on the Board of Directors – and we already have very few interested in fulfilling that role, as we would be in a financial mess, with legal fees being paid for by owners who already keep up on their assessments, rather than by the ones who don't. It simply doesn't make sense.

Legal Aid Society
OF THE DISTRICT OF COLUMBIA
MAKING JUSTICE REAL

Testimony of Jennifer Ngai Lavallee
Supervising Attorney, Consumer Law Unit
Legal Aid Society of the District of Columbia

Before the Committee of the Whole
Council of the District of Columbia

Public Hearing Regarding:
Bill 24-357
"Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2021"

November 29, 2021

The Legal Aid Society of the District of Columbia[1] submits this testimony to express our strong support for Bill 24-357, the Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2021.

The District's permanent debt collection law is outdated, does not apply to even the most common types of consumer debt, and fails to address common issues that Washingtonians encounter when interacting with debt collectors. These issues include but are not limited to harassing calls, confusion when being contacted by debt buyers demanding payment on old accounts, not recognizing or being able to meaningfully assess the alleged debt based on the meager information provided, and being charged excessive attorneys' fees.

The Council addressed these and other issues on an emergency basis in August 2021 by passing the Protecting Consumers from Unjust Debt Collection Practices Emergency Amendment Act, A24-0165.[2] That Act expanded the scope and modernized the protections of the District's obsolete debt collection law to broadly prohibit unfairness and harassment in the debt collection

[1] The Legal Aid Society of the District of Columbia was formed in 1932 to "provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs." Legal Aid is the oldest and largest general civil legal services program in the District of Columbia. Over the last 89 years, Legal Aid staff and volunteers have been making justice real – in individual and systemic ways – for tens of thousands of persons living in poverty in the District. The largest part of our work is comprised of individual representation in housing, domestic violence/family, public benefits, and consumer law. We also work on immigration law matters and help individuals with the collateral consequences of their involvement with the criminal justice system. From the experiences of our clients, we identify opportunities for court and law reform, public policy advocacy, and systemic litigation. More information about Legal Aid can be obtained from our website, www.LegalAidDC.org, and our blog, www.MakingJusticeReal.org.

[2] *See* https://lims.dccouncil.us/Legislation/B24-0347. The Council also passed identical temporary legislation, the "Protecting Consumers from Unjust Debt Collection Practices Temporary Amendment Act," available at https://lims.dccouncil.us/Legislation/B24-0348.

process and to require all debt collectors to have adequate substantiation of the debts they collect. This emergency legislation came just in time, providing urgently-needed protections to District consumers at the end of the debt collection moratorium, which had temporarily staved off the spiraling impacts of debt collection for thousands of consumers during the District's public health emergency. Now is the time for the District to make those protections permanent.

The need for permanent debt collection reform is a pandemic recovery issue and a racial justice issue

Before the public health emergency, District consumers were already experiencing a dramatic increase in debt collection activities and lawsuits. Legal Aid's Consumer Law Unit, which provides representation to low-income consumers in debt collection cases on the D.C. Superior Court's high-volume debt collection calendar, saw this clear increase in the form of longer court dockets, court scheduling changes to accommodate the increase in case filings and hearings, and overall greater requests for assistance from low-income defendants sued in debt collection cases. According to Superior Court data, in 2017, there were 4,558 cases filed on the debt collection and insurance subrogation calendar in D.C. Superior Court, most of them filed in the Court's Small Claims Branch. By 2019, there were over 7,202 such cases, an increase of 58% in just three years. As a recent *Washington City Paper* headline aptly put it, "More and More D.C. Residents Are Being Sued Over Debt."[3]

Most debt collection activity was temporarily halted during the District's debt collection moratorium. But now that those temporary protections have ended, the District will likely experience an even sharper rise in new debt collection activity as a direct result of the pandemic. The health and economic impacts of the pandemic have exacerbated the financial challenges faced by many DC residents. According to Census Bureau survey data reported in October 2021, more than 27% of DC residents reported using credit cards or loans to meet their spending needs during the pandemic.[4] In the last major recession in 2009, the credit card delinquency rate spiked

[3] Gomez, Amanda Michelle, "More and More D.C. Residents Are Being Sued Over Debt," *Washington City Paper* (Feb. 6, 2020), available at https://washingtoncitypaper.com/article/176580/increasing-number-of-dc-residents-are-being-sued-over-debt/.

[4] U.S. Census Bureau, Week 39 Household Pulse Survey, Spending Tables, Table 3. Methods Used to Meet Spending Needs and Changes in Household's Use of Cash in the Last 7 Days, by Select Characteristics: District of Columbia", available at https://www.census.gov/data/tables/2021/demo/hhp/hhp39.html.

by 84 percent.[5] With over 159,000 new unemployment claims filed in DC in FY2020 alone[6] (more than four times the number for FY2019),[7] and with bills and unpaid debts stacking up, the District should expect a deluge of debt collection activity directed at DC residents in the months and years to come. When that activity comes, it is critical that consumers be protected against unfair and abusive debt collection practices. The permanent debt collection reform in the pending bill would do exactly that.

Even more concerning than debt collection increasing generally is the grossly disparate impact of debt collection on communities of color. Generations of discrimination have created an extreme wealth gap between Black and White households across the nation and especially in the District,[8] leaving Black families with grossly fewer resources to draw on when facing financial pressure. According to geographical debt data reported by the Urban Institute, 36% of people in communities of color in the District have debt in collection, more than five times the rate in DC's White communities.[9] Moreover, a Pro Publica investigation found that Black communities were hit substantially harder by debt collection lawsuits and court-ordered judgments than White communities, even when controlling for income.[10]

---

[5] *See* Board of Governors of the Federal Reserve System, Charge-Off and Delinquency Rates on Loans and Leases at Commercial Banks, https://www.federalreserve.gov/releases/chargeoff/delallsa.htm (last updated Feb. 18, 2020).

[6] *See* D.C. Department of Employment Services Responses to FY 2020 Public Oversight Questions, p. 32, https://dccouncil.us/wp-content/uploads/2021/02/DOES-POH-2021-PreHearing-Question-Narrative-Responses-FINAL.pdf

[7] *See* D.C. Department of Employment Services Responses to FY 2019-2020 Public Oversight Questions, p. 69, https://dccouncil.us/wp-content/uploads/2020/02/DOES-PO-Questions-2020_Final-Response.pdf)

[8] *See* Kijakazi, Kilolo, Rachel Marie Brooks Atkins, Mark Paul, Anne E. Price, Darrick Hamilton, and William A. Darity Jr. 2016, The Color of Wealth in the Nation's Capital (Joint Publication of the Urban Institute, Duke University, The New School, and Insight Center for Community Economic Development, Nov. 2016), available at http://www.urban.org/sites/default/files/publication/85341/2000986-the-color-of-wealth-in-the-nations-capital_1.pdf

[9] *See* Urban Institute, Debt in America: An Interactive Map, Debt Delinquency (as of Mar. 21, 2021), https://apps.urban.org/features/debt-interactive-map/?type=overall&variable=pct_debt_collections&state=11

[10] Paul Kiel and Annie Waldman, *The Color of Debt: How Collection Suits Squeeze Black Neighborhoods* (Pro Publica October 8, 2015), available online at https://www.propublica.org/article/debt-collection-lawsuits-squeeze-black-neighborhoods.

The racially disparate impact of the pandemic on communities of color only compounds these problems and underscores the intensity of harm that consumers will experience in the form of unfair and abusive practices in debt collection lawsuits, judgments, and garnishments as collection activity resumes. The District must seize this moment to institute meaningful reform of its debt collection law in support of a more equitable pandemic recovery.

The District's debt collection law must reflect the modern reality of consumer debt so that its protections apply to the types of debt collection that consumers actually face

The District's permanent debt collection law is obsolete and has been for decades. It was enacted fifty years ago, at a time when most credit was extended directly by retail sellers. While a debt collection law that covers only retail installment contracts, consumer leases, and direct installment loans may have made sense in 1971, it does not provide any meaningful protection to District consumers in 2021. Today, most consumer debt collection in the District (and the nation as a whole) involves credit card debt and other forms of third party-financed purchases of goods and services, none of which are covered by the permanent D.C. Debt Collection Act. In the wake of the pandemic, medical debt and other debt caused by health issues (leading to work loss, for example) has emerged as a significant issue across the nation but remains outside the scope of the District's permanent law.

Since 2008, Legal Aid's Consumer Law Unit has represented or advised hundreds of defendants with cases on D.C. Superior Court's high-volume debt collection calendar. Before the pandemic and the moratorium on consumer debt collection, that calendar would at times have up to 100 cases scheduled for a single day. But because of the narrow scope of the District's debt collection statute, that law rarely has been available to provide any protection or recourse to consumers facing harassment, abuse, or other unfairness in the debt collection process. The law simply does not apply to the forms of consumer debt that are the subject of the thousands of consumer debt collection actions filed in the Superior Court each year.

Thankfully, the D.C. Council provided an emergency fix for this scope issue when it enacted the District's debt collection moratorium legislation early in the public health emergency, and, more recently, when it passed the Protecting Consumers from Unjust Debt Collection Emergency Amendment Act. Each of these emergency acts temporarily amended the District's permanent debt collection law to apply broadly to "consumer debt" – including, importantly, credit card debt and medical debt – for the first time. Those critical scope expansions should now be made permanent.

District law should require debt collectors to have adequate evidence that they are entitled to the debts they are collecting – whether they are the original creditor, a third-party debt collection agency, or a debt buyer

The District's debt collection law must also be modernized to require debt collectors to have substantiation, i.e., adequate information and documentation, before they can attempt to collect a consumer debt, sue a consumer in court, or get a judgment. In Legal Aid's experience, many consumers who have been sued in debt collection actions struggle to meaningfully assess and

challenge the claims being brought against them. For example, the consumer may not recognize either the name of the plaintiff filing suit or the account at issue from the meager information provided in the court complaint. Or a consumer may recognize that they had the credit card at issue and fell behind on payments, but question or disagree with the amount claimed due, including whether various fees and charges were authorized. These problems are particularly acute in cases brought by debt buyers. Consumers are often confused to have been sued by a company that they do not recognize and with whom they had no prior dealings, usually a debt buyer providing conclusory and often cryptic information purporting to show that it purchased the debt from the original creditor or another debt buyer in a chain of assignment.

Issues involving debt buyer abuses have drawn national attention and have been the subject of multiple enforcement actions in recent years, including in the District. For example, the abusive debt collection practices of global, publicly-traded Encore Capital, along with its subsidiary debt buyer Midland Funding, LLC and its affiliates, were the subject of an investigation by D.C. Attorney General Karl Racine and 42 states. In response to the District's claims alone, Encore agreed to pay $6 million as part of a settlement arising out of claims involving Midland's failure to properly verify and document the debts it collected against consumers.[11]

But the need for debt collectors to have adequate substantiation of the debts they collect from consumers is not limited to debt buyers. Original creditors must also be held to basic substantiation requirements regarding the amount and nature of the debt. Issues of identity theft, deception during the original extension of credit, and charges for deceptively marketed add-on products, for example, can plague consumers facing debt collection by original creditors just as they do in collections by debt buyers.

Although the plaintiff debt collector has the burden of proving its case, the reality is that the pressures and fear associated with having been taken to court and a lack of understanding of legal requirements often lead consumers to agree to payment plans and other settlements long before a judge ever looks at the case. Consumers and their advocates face an uphill battle in the absence of specific pleading and substantiation requirements in the law. And if a defendant does not appear in court for a debt collection case – whether due to lack of notice caused by improper service of process, work or childcare issues, fear, or other barriers – the likely result is the entry of a default judgment, which can lead to garnishment of a consumer's wages or bank account funds and wreak havoc on the financial stability of individuals and families for years to come. Indeed, based on statistical data provided by D.C. Superior Court, Legal Aid estimates that default judgments accounted for more than 40% of all the case dispositions in small claims consumer debt collection actions from 2017-2019. Importantly, the bill's requirements for pleading and substantiation of the alleged liability of the consumer defendant will require the court to conduct a careful review of the documents tendered to support the claim, even where a defendant is in default.

[11] *See* Press Release, *AG Racine Announces Midland to Pay $6 Million for Illegal Debt Collection Practices* (Dec. 4, 2018), available at https://oag.dc.gov/release/ag-racine-announces-midland-pay-6-million-illegal

Debt collectors should not be allowed to collect or sue unless and until they have sufficient information and supporting documents to back up their claims. The Protecting Consumers from Unjust Debt Collection Amendment Act includes sensible, concrete documentation and information requirements that will empower consumers to better assess the legitimacy and accuracy of both pre-litigation demands for payment and the court claims brought against them. Critically, it would also hold debt collectors accountable by building in enforcement mechanisms, including a private right of action, and subjecting debt collectors' lawsuits to dismissal for failure to comply with the requirements of the Debt Collection Act.

The law must address the broad range of unfair and abusive conduct in debt collection that harms consumers

Protecting against unfairness and abuse in the debt collection process, both in and out of court, is a hallmark of the proposed legislation. The Protecting Consumers from Unjust Debt Collection Amendment Act is crafted to address the many types of unfair and abusive debt collection conduct that impact consumers, often destabilizing families and perpetuating poverty. Three important examples of unfair or abusive conduct that the permanent debt collection law would cover are (1) harassing calls, (2) excessive and disproportionate attorneys' fees, and (3) the collection of exempt income.

1. *Harassing calls*

One core problem is debt collection harassment in the form of frequent and abusive collection calls. Such harassment has been a longtime problem for District residents. Based on an extensive survey of D.C. residents published in 2016, almost half of low-income residents reported problems with debt—and of the survey participants with debt-related problems, the most common problem cited (31%) involved calls from debt collectors.[12] A 2018 report published by the Consumer Financial Protection Bureau showed that the District of Columbia has the largest number of per-capita debt collection complaints in the entire nation.[13]

The economic impacts of the pandemic will only exacerbate this well-known problem. The proposed bill would place concrete limits on the number of calls that debt collectors can make to consumers within a given period, with sensible carveouts to ensure that companies are not prevented from responding to ordinary consumer inquiries and requests for information.

[12] *See* DC Consortium of Legal Service Providers, *The Community Listening Project* (2016) available online at www.lawhelp.org/dc/resource/community-listening-project.

[13] Consumer Financial Protection Bureau, *Complaint Snapshot: Debt Collection*, Table 3, Complaint volume by state, available at https://files.consumerfinance.gov/f/documents/bcfp_complaint-snapshot_debt-collection_052018.pdf

2. *Excessive and disproportionate attorneys' fees*

Not all debt collection unfairness is as direct and obvious as harassment. To take one pernicious example, low-income consumers are plagued by excessive attorneys' fees charged when debt collectors are hired to collect debt owed to condominium or homeowners' associations. Often, low-income condominium or HOA unit owners struggling to catch up on their monthly assessments and stay in their homes will ask the association for a payment plan, only to be shocked to learn that the amount of the debt is astronomically higher than the unpaid assessments they expected to pay because attorneys' fees charged by a debt collection law firm have eclipsed the underlying balance. Indeed, Legal Aid has seen cases where the amount of legal fees assessed is almost double or even triple the amount of unpaid assessments. Such attorneys' fees often create insurmountable barriers for homeowners who would otherwise have enough money for payment plans covering fees owed to their condominium or HOA associations. The charging of excessive attorneys' fees can make the difference between a homeowner saving or losing their home. In these situations, associations and communities also lose because unaffordable attorneys' fees balances prevent unit owners from being able to reach settlements that would have resulted in a stream of funds flowing back to the association.

With the anticipated rollout of the District's Homeowner Assistance Fund, which is awaiting U.S. Treasury Department approval, the District also will have an interest in ensuring that low-income homeowners are able to access the federal funds to save their homes and pay their condominium and homeowners' associations, without excessive amounts of limited funding sources being used to pay law firm fees that are wholly disproportionate to the underlying debts. To that end, the Protecting Consumers from Unjust Debt Collection Amendment Act would limit attorneys' fees in the collection of any consumer debt to 15% of the actual debt. That sensible limitation will protect consumers in the cases where unfair and excessive attorneys' fees create insurmountable barriers to consumers who would otherwise be able to resolve their debts.

3. *Exempt income*

Another example of unfair debt collection conduct that the law would regulate is the collection of exempt income – such as Social Security or disability benefits – to pay a consumer debt. In Legal Aid's experience, many of the most economically vulnerable consumers sued in D.C. Superior Court for the collection of consumer debt are recipients of public benefits that are protected by federal or local law from garnishment or attachment in the event the plaintiff obtains a judgment. Yet those protections are not always self-executing. For example, a consumer who does not know that their fixed income from public benefits is protected by law from forced garnishment or attachment can enter into a payment plan agreement to make monthly payments on a consumer debt, enabling a debt collector to obtain funds that it never would have been able to collect under applicable law.

Consumers receiving exempt income and who have legal representation can often obtain a voluntary dismissal of a debt collection case, commonly referred to as a "hardship dismissal." In granting a hardship dismissal, a debt collector makes a business decision not to continue pursuing judgment against an individual based on various hardship factors, and often considering the protected status of the individual's income or funds. But not all consumers have the benefit

of counsel when talking with a debt collector, and not all debt collection happens in the context of a court case. Faced with the strain of debt collection activity and the fear of having to go to court or judgment being entered, consumers who receive exempt income and who need every dollar of their benefits to help pay for necessities like food and housing can be pressured by debt collectors to agree to payment plans requiring them to pay money they simply cannot afford. Or they may suddenly find that funds in their bank account have been frozen or garnished, setting off a downward spiral of related impacts. Pressing forward with certain debt collection activities without regard for the protected status of a consumer's income or funds can be an unfair and harmful practice and is an issue that the proposed bill would directly address.

Conclusion

The Protecting Consumers from Unjust Debt Collection Practices Amendment Act provides exactly the types of reforms needed to make District's debt collection law more relevant and effective for residents struggling with debt as the District works toward a more equitable pandemic recovery and into the future. The law would enhance fairness in the debt collection process and play a critical role in beginning to counteract the multi-faceted harms of unfair and abusive debt collection that have oppressed Black and Brown communities in the District for generations.

We thank the Committee for the opportunity to submit this testimony. We look forward to working with the Council and the Committee during the mark-up process, and we urge the Council to move the bill forward to passage with the urgency and support that it deserves.

TZEDEK DC
Legal Help for People in Debt

Before the Committee of the Whole
Council of the District of Columbia
Public Hearing Regarding Bill 24-357:
The Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2021
November 29, 2021
Testimony of Ariel Levinson-Waldman, Sarah Hollender, and A.J. Huber of Tzedek DC

Chairman Mendelson, Members of the Council of the District of Columbia, and Committee staff:

Thank you for your leadership and for the opportunity to provide testimony on the proposed bill, The Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2021. Thanks as well to Councilmember Cheh for co-sponsoring this bill with Chairman Mendelson, and to all of the members of the Council for unanimously passing the emergency and temporary versions of this legislation.

Drawing from the Jewish teachings of "*Tzedek, tzedek tirdof*," or "Justice, justice you shall pursue," and proudly headquartered at the UDC David A. Clarke School of Law, Tzedek DC's mission is to safeguard the legal rights of DC residents with lower incomes facing debt-related legal crises. Of Tzedek DC's clients, 90% are African American, 25% have a disability, a majority are women, and all are DC residents with low incomes. This testimony on behalf of Tzedek DC is submitted by team members Ariel Levinson-Waldman, President and Director-Counsel, Sarah Hollender, Associate Director, and A.J. Huber, Staff Attorney.[1]

Our submission —in strong support of this bill — has three parts. First, and as our comments at the November 29 hearing focus on, the bill, if enacted, will represent a critical step forward. The legislation promotes important access to justice and racial equity principles, as well as promoting the goal of a well-functioning civil justice system for DC residents facing debt collection.

Second, we provide for the record and assistance to the Committee a more detailed section-by-section recap of the as-introduced version of the legislation, and why its provisions are necessary to protect District residents.

[1] Tzedek DC's 2021-22 Ronald R. Glancz Avodah Jewish Service Corps Member Raphy Gendler also provided invaluable assistance in the preparation of the document.

Finally, we are available to assist the Committee during its upcoming markup-stage work, and to answer any questions.

I. The Bill's Reforms to DC's Debt Collection Rules Are a Critical Step Forward

Thank you for your support and passage of the various temporary laws that prevented creditors and debt collectors from filing new consumer debt collection lawsuits during the public health emergency and for 60 days after its conclusion and that limited certain communications related to debt collection. The debt collection moratorium provided District residents with much-needed breathing room during the financial crisis that accompanied the public health crisis resulting from the pandemic. Although it provided a helpful respite, it now means that a flood of debt collection lawsuits and other activity that was not permitted during the public health emergency is coming for District residents. The Act will protect consumers from unjust practices as debt collection activities resume in force in the District.

Notably, even if the pandemic had not happened, these reforms would be necessary and beneficial. In the years before the pandemic, debt collection lawsuits in the District spiked dramatically. For example, in 2017, there were 4,558 such cases, most of them filed in the Small Claims and Conciliation Branch of the DC Superior Court. By 2019, there were over 7,202 new debt collection case filings, an increase of 58%. Many defendants are in court for debts that, even when relatively small, nonetheless can have serious long-term impacts for the stability and access to credit for DC residents. This trend will only be amplified by the recent expiration of the debt collection moratorium.

The pandemic further exacerbated and laid bare what was already a massive racial gap in wealth in DC. Due to centuries of structural racism and unequal access to opportunities, as of the most recently available data from The Urban Institute, the statistically typical white DC household had more than 8,000% the amount wealth (net assets) of the statistically typical African American DC household.[2] The pandemic then caused mass unemployment for periods of time for many District residents, for many families increasing the risk of being further behind on bills and therefore more likely to face debt collection activities. Recent data shows that the average person with a debt in collections in DC has $1,592 of debt subject to collection, and over 36% of DC residents from communities of color have a debt in collections, more than five times the rate for white DC residents.[3]

[2] Urban Institute, *Debt in America: An Interactive Map*, Debt Delinquency (as of Nov. 10, 2021), available at https://apps.urban.org/features/debtinteractive-map/?type=overall&variable=pct_debt_collections&state=11.
[3] Id.

The harms are further compounded for disabled residents of color. According to a study conducted before the pandemic, 58% of disabled African Americans confirmed that they "probably or certainly" could not come up with emergency funds for an unexpected debt as compared to 28% of white able-bodied residents who did not have emergency funds.[4] This same study reports that disabled individuals are more likely to experience unexpected drops in income and are more than twice as likely to find it "very difficult" to cover life expenses. Disabled individuals are also more likely to carry medical debt and experience increased medical costs.

The end of the moratorium, the prior trends of increased lawsuit activity, and the economic hardships caused by the pandemic all point toward a significant increase of debt collection lawsuits and other activities coming for District residents.

And the human toll of debt collection stress must be centered in the Council's consideration. Take, for example, Tzedek DC client Cheryl Gregory. Contacted by a debt collector who was "very persistent that she was going to lose everything," Ms. Gregory feared she would become homeless.[5] Ms. Gregory, a DC resident and single mother, was threatened by a debt collector that demanded she sign an agreement to pay old debts (including amounts above what she owed) and threatened to have a federal marshal come to her house and evict her from her public housing unit. "I was at work when I was talking to [the collector]," Ms. Gregory said. "I do home care, and the family member realized that something was wrong. I cried at work. I cried on the way home and almost got into an accident. I was scared I was going to lose everything."

In light of these debt collection harms and risks, we are particularly grateful for the protections that Attorney General Racine, Chairman Mendelson, Councilmember Cheh, and colleagues have championed, and that the Council has adopted in the emergency and temporary versions of the legislation. These temporary laws have provided key consumer protections for District residents, and it is critical that in core substance they be reflected in our DC code going forward. Among the many important things the bill will do to improve DC's debt collection laws, it:

- Expands the scope of the District's debt collection laws to cover the most common types of debts in collection, like medical debt and credit card debt.

[4] Nanette Goodman, Bonnie O'Day and Michael Morris, *Financial Capability of Adults with Disabilities*, National Disability Institute (2017), available at https://www.nationaldisabilityinstitute.org/wp-content/uploads/2019/01/ndi-finra-report-2017.pdf
[5] Nick Minock, *D.C. Attorney General's office protects residents against aggressive debt collectors*, WJLA News (July 14, 2021), available at https://wjla.com/news/local/dc-attorney-generals-office-protects-residents-against-aggressive-debt-collectors.

- Strengthens anti-harassment provisions, for example by stopping debt collectors from making calls to residents at unreasonable hours and with unreasonable frequency.

- Requires debt collectors to have basic proof backing up of their claims of debts owed by District residents before they engage in debt collection and debt collection lawsuits; and

- Provides key limits to punitive actions that can be taken against DC residents, for example by capping attorneys' fees and by placing important limits on when District residents sued in a debt collection case can ever be subjected to arrest.

The U.S. Department of Justice and the U.S. National Science Foundation have noted that "the greatest threat to the consumer protection system is debt collection. Every day, court dockets are filled with debt collection cases that end in default judgements. This reality affects people's belief in the fairness of the justice system."[6]

Through this bill, the Council has the opportunity to enhance the reality and the perception concerning the fairness of the dispute resolution system for DC residents struggling with debt. Thank you for the opportunity to share our views, and we are available to answer your questions and assist the Committee in this important work.

[6] U.S. Department of Justice and Office for Access to Justice with the National Science Foundation: *White House Legal Aid Interagency Roundtable: Civil Legal Aid Research Workshop Report* (Feb. 2016) at 23 (citing testimony of Ira Rheingold, Executive Director of the National Association of Consumer Advocates,) available at https://www.justice.gov/lair/file/828316/download

II. Section-by-Section Analysis

Table of Contents for Section-by-Section Analysis

Subsections (a) and (b): Definitional and Scope Changes

Subsections (a) and (b) of the District's debt collection law, D.C. Code § 28-3814 (the "Debt Collection Law"), address the scope of the law and the definitions of key terms contained in the law. The Act amends those provisions in important ways.

Most significantly, the Act expands the scope of the Debt Collection Law from only applying to certain "consumer credit sales, consumer leases, and direct installment loans" to now include any "consumer debt," broadly defined as "money or its equivalent, or a loan or advance of money, which is, or is alleged to be, more than 30 days past due and owing, unless a different period is agreed to by the debtor, as a result of a purchase, lease, or loan of goods, services, or real or personal property for personal, family, medical, or household purposes."

The District's current Debt Collection Law is obsolete and has been for decades. It was enacted almost 50 years ago, at a time when most credit was extended directly by sellers in what are generally referred to as retail installment sales. In addition to those sales, the law also applies to consumer leases and direct installment loans. Those credit transactions – each involving direct financing by the seller, lessor, or lender – are the only types of debt to which the current law applies. *See* D.C. Code § 28-3802 (definition of "consumer credit sale" and limiting § 3814 to sales in which "credit is granted by a person who regularly engages as a seller in credit transactions of the same kind"). Today, however, the vast majority of debt collection in the District involves credit card debt and other forms of third-party-financed purchases of goods and services, none of which is covered by the current Debt Collection Law. The currently pending Act would modernize the scope of the Debt Collection Law by applying its protections more broadly to "any consumer debt," including, importantly, medical debt for the first time.

Especially given the effects of the pandemic, it is important for the Act to specifically cover medical debt. "In 2016, 26% of U.S. adults ages 18-64 said they or someone in their household had problems paying or an inability to pay medical bills in the past 12 months."[7] Moreover, 37% of people with incomes under $50,000 reported problems paying medical bills.[8] In 2019, one in six Americans had medical debt in collections.[9] This broadening of the scope of Debt Collection Law brings the law into the 21st Century and helps protect consumers facing medical debt collection. Medical debt collection, like other forms of debt collection, especially targets communities of color: 4.4% of all households and 6.2% of Black households carry unaffordable medical debt. Furthermore, people without insurance — a disproportionate number of whom are

[7] The Henry J. Kaiser Family Foundation, *The Burden of Medical Debt: Results from the Kaiser Family Foundation/New York Times Medical Bills Survey*, at 1 (Jan. 2016), available at https://www.kff.org/wp-content/uploads/2016/01/8806-the-burden-of-medical-debt-results-from-the-kaiser-family-foundation-new-york-times-medical-bills-survey.pdf
[8] Id.
[9] Marshall Allen, *Never Pay the First Bill: And Other Ways to Fight the Healthcare System and Win*, Penguin Random House (2021) at 60

people of color — are more likely to owe medical debt.[10] "Medical debt is the primary reason people are contacted by creditors," and rising healthcare costs over the last several decades have subjected more people to go into unavoidable consumer debt.[11]

Medical debt also disproportionately impacts disabled people, and especially disabled people of color. According to a 2017 study by the National Disability Institute individuals with disabilities are "twice as likely to have past due medical bills...and much more likely to forgo medical care because of costs."[12] In general, those with disabilities have a more frequent use of medical care and often an increased need for a range of services or equipment that may not be covered or fully covered by insurance which results in higher health care expenditures and higher out-of-pocket costs.

Ascension Health, one of the largest private health systems in the country, presents a clear example of the devastating effects of medical debt collection. The company was the subject of a 2018 lawsuit for efforts to shut down its DC operations and contribute to continued unequal access to health care. More recently, an investigation found that Ascension is operating like a private equity fund, and previously engaged in illegal debt collection practices. "Their first joint investment poured $200 million into an embattled debt collection and billing company. Prior to the Ascension and TowerBrook investment, the company had been accused of illegally trying to collect money from patients, including when they were still in the emergency room. Ascension signed a long-term contract with the company, too, which buoyed the company's finances. In April [2021], minority shareholders in the company, R1 RCM, filed a lawsuit accusing Ascension and TowerBrook of teaming up to extract $105 million years before they were supposed to."[13] This makes it clear that large medical facilities like Ascension are contributing to a system in which people are targeted by debt collectors and made vulnerable by both the health care and debt collection industries. Stories of patients being illegally targeted for money that they do not owe, or for funds protected from collection prove the need for an updated and stronger law that specifically includes medical debt in the definition of consumer debt subject to collection regulations.

[10] Andre M. Perry, Carl Romer and Nana Adjeiwaa-Manu, *The racial implications of medical debt: How moving toward universal health care and other reforms can address them*, Brookings (Oct. 5, 2021), available at https://www.brookings.edu/research/the-racial-implications-of-medical-debt-how-moving-toward-universal-health-care-and-other-reforms-can-address-them/

[11] *A Financial Security Threat in the Courtroom: How Federal and State Policymakers Can Make Debt Collection Litigation Safer and Fairer for Everyone*, Aspen Institute (Sept. 2021), available at https://www.aspeninstitute.org/wp-content/uploads/2021/09/ASP-FSP_DebtCollectionsPaper_092221.pdf

[12] Nanette Goodman, Bonnie O'Day and Michael Morris, *Financial Capability of Adults with Disabilities*, National Disability Institute (2017), available at https://www.nationaldisabilityinstitute.org/wp-content/uploads/2019/01/ndi-finra-report-2017.pdf

[13] Rachel Cohrs, *The Catholic hospital system Ascension is running a Wall Street-style private equity fund*, STAT+ (Nov. 2021), available at https://www.statnews.com/2021/11/16/ascension-running-wall-street-style-private-equity-fund/.

In addition to medical debt, credit card debt falls into the updated definition of consumer debt. Especially for families forced into borrowing by the financial crisis brought upon by COVID-19, credit card debt is a major source of consumer debt.[14]

The other changes in subsections (a) and (b) of the Debt Collection Law are relatively minor. For example, new definitions for "debt buyer," "person," and "public health emergency" have been introduced because those terms are used in the other amendments described below. Another edit is that the definition of "creditor" has been expanded to include not only people who hold valid claims but also people who allege to hold valid claims so that debt collectors cannot avoid application of the Debt Collection Law when they try to collect invalid debt that they allege is valid.

Subsections (c) through (g): Anti-Harassment Changes

Subsections (c) through (g) of the Debt Collection Law prohibit various actions in connection with debt collection: threats, coercion, attempts to coerce, oppression, harassment, abuse, unreasonable publication of indebtedness in such a way as to harass or embarrass, use of unfair, fraudulent, deceptive, or misleading representations, and other unfair or unconscionable means to collect a debt. Debt collection lawsuits and associated unfair practices disproportionately target communities of color.[15] Creditors call borrowers of color nearly twice as often as white borrowers, despite similar default and late payment rates.[16]

The Act clarifies that the examples of insidious actions that the Debt Collection Law provides are not exhaustive. That change will protect consumers, for example, from debt collectors who make fraudulent representations to convince them to pay but whose actions would not otherwise fall under one of the examples provided in the statute.

The Act also edits the existing examples and provides additional examples of actions that are not permissible.

Subsection (c)

In subsection (c), the Act adds three new examples.

[14] See, e.g. Paul Kiel and Jeff Ernsthausen, *Capital One and Other Debt Collectors Are Still Coming for Millions of Americans*, ProPublica (June 8, 2020), available at https://www.propublica.org/article/capital-one-and-other-debt-collectors-are-still-coming-for-millions-of-americans

[15] Paul Kiel and Annie Waldman, *The Color of Debt: How Collection Suits Squeeze Black Neighborhoods*, ProPublica (Oct. 2015), available at: https://www.propublica.org/article/debt-collection-lawsuits-squeeze-black-neighborhoods.

[16] *Financial Capability in the United States, 2016*, Finra (July 2016), available at: https://gflec.org/wp-content/uploads/2016/07/NFCS_2015_Report_Natl_Findings.pdf

First, it states that debt collectors may not threaten to take actions that they cannot legally take or that they do not in the usual course of business in fact take. Such actions are extortionate, and debt collectors should not be able to use such extortion to collect debts.

Second, it states that debt collectors may not disclose information about a debt that has been disputed by the consumer without also disclosing the fact that it is disputed. This protection is important for consumers because debt collectors generally control the flow of information about these debts, for example when it comes to credit reporting, and when consumers dispute a debt, that fact is relevant to users of such information and may serve to protect the consumer from adverse inferences by those users.

Lastly, the Act states that a debt collector may not disclose information affecting the consumer's reputation for credit worthiness with knowledge or reason to know that the information is false. Again, it should be self-evident that the law should not allow debt collectors to lie to collect a debt. Credit reports play an important role in access to housing, employment, and transportation. Because credit information affects daily life and the ability to have an income, lying about credit reports or making threats about false creditworthiness should not be allowed.

The provision preventing collectors from sharing false information is important from a racial justice standpoint. The CFPB has shown that Black and Hispanic people are more likely to have credit report disputes: "Families living in majority Black and Hispanic neighborhoods are far more likely to have disputes of inaccurate information appear on their credit reports," said CFPB Director Rohit Chopra. "Error-ridden credit reports are far too prevalent and may be undermining an equitable recovery."[17]

Subsection (d)

In subsection (d), the Act adds one new example in that it prohibits debt collectors from communicating with the consumer or any member of the consumer's family or household in such a manner that can reasonably be expected to abuse or harass the consumer, such as by calling more than three times per week.

Based on an extensive survey of DC residents published in 2016, almost half of the residents with lower incomes surveyed reported problems with debt—and of the survey participants with debt-related problems, the most common problem cited (31%) was receiving calls from debt collectors.[18] Receiving constant phone calls from debt collectors can put significant emotional

[17] *CFPB Finds Credit Report Disputes Far More Common in Majority Black and Hispanic Neighborhoods*, CFPB (Nov. 22, 2021), available at https://www.consumerfinance.gov/about-us/newsroom/cfpb-finds-credit-report-disputes-far-more-common-in-majority-black-and-hispanic-neighborhoods/

[18] DC Consortium of Legal Service Providers, The Community Listening Project (2016), available at www.lawhelp.org/dc/resource/community-listening-project.

strain on alleged debtors, especially individuals dealing with the devastating impact of medical debt.

For example, Tzedek DC client Virginia Woodfin, is a Ward 5 retiree. As Ms. Woodfin recalls, following a difficult chapter for her family: "I began to fall behind on my credit card debt, even with my best efforts to make the payments. It was never a matter of not wanting to pay off my debt. I just did not have the means to do so. Despite my best efforts the debts continued to build, and my husband refused to be of any assistance. I am now facing two separate court cases in which my lender is demanding a total of over $13,000. Before the pandemic, on numerous occasions I received threatening calls and voicemails from unidentified debt collectors who demanded that I pay my debt. These calls all left me overwhelmed, fearful, and dismayed."

Ms. Woodfin's testimony to this Council incudes her urging: "I believe this bill will be beneficial to all people being negatively impacted by the harassment of debt collectors, and I support it fully. I hope that you will do everything in your power to make this happen."

The amendment to subsection (d) takes important steps to address harassment concerns, while still affording debt collectors ample opportunities to call residents and thus striking a healthy balance.[19]

Subsection (e)

Subsection (e) makes two important amendments.

First, the Debt Collection Law previously prohibited the communication of "false" information about a debt to a debtor's employer unless such indebtedness was guaranteed by the employer, the employer requested the loan giving rise to the indebtedness, or such communication was in connection with an attachment. The Act makes clear that even where those exceptions apply, debt collectors may not communicate "false" information.

Second, the Debt Collection Law previously could be read to arguably allow a debt collector to share false information about a debt with a debtors' friends, neighbors, and household members. The Act now prohibits debt collectors from sharing false information with those people.

[19] One national bank expressed the concern to Tzedek DC that this new rule only allowing them to call debtors three times per week would be difficult to implement because their bank is made up of numerous entities, and their car loan subsidiary, for example, might not know how many times their credit card subsidiary has called the consumer that week. To the extent that the debts are held by different corporate entities, then each entity would be a separate "debt collector" under this law, which means each entity would be permitted three calls per week. Meanwhile, if they are not separate entities, then there is no reason why they could not share information about calls made per week. If the Council nonetheless finds those arguments persuasive, the proper remedy would be to amend the subsection to allow three calls per week per debt, as opposed to exempting certain debt collectors from this requirement or deleting it entirely.

Subsection (f)

The Act provides one substantive edit and two new examples to subsection (f).

The substantive edit is that the Act requires a debt collector to provide the phone number and email address of the person to whom a claim has been assigned for collection. Email addresses did not exist at the time the Debt Collection Law was passed, and formal correspondence in that era was typically by mail. This important change modernizes the law to require debt collectors to provide other forms of communication with debtors so that debtors may communicate quickly and efficiently with debt collectors. This is especially important given debt collectors' relatively new practice of contacting alleged debtors by text message and social media. "Among some of the updates made by the [2020 updated] rules, the CFPB explicitly says debt collectors can send text messages, emails, and direct messages on social media platforms to consumers."[20] Many consumers might be concerned that such informal forms of communication are scams, so it is important that they have other means to contact those debt collectors to confirm that they are not victimized.

The first new example concerns the statute of limitations. The Act prohibits debt collectors from filing lawsuits to collect a consumer debt when they know or should know that the statute of limitations has expired. The provision elevates the statute of limitations from an affirmative defense for a consumer to a potential counterclaim that includes a statutory penalty and attorneys' fee shifting. This will deter debt collectors from filing lawsuits in which they know their claims are invalid but hope that the defendants – particularly unrepresented ones – will inadvertently fail to raise and thereby waive a defense under the statute of limitations.

The second new example concerns exempt funds. The Act prohibits debt collectors from seeking to collect funds from a consumer that it knows or has reason to know are exempt from attachment or garnishment. Many people who rely on government benefits like Social Security Retirement or Disability Insurance are unaware that those benefits are protected from garnishment. This provision prevents debt collectors from tricking alleged debtors into giving over those exempt funds and allows individuals to keep the money they need for necessities. Wage garnishments can have devastating effects, including causing people to leave their job altogether, and garnishments affect a large chunk of the population.[21] When the pandemic paused evictions and student loan collections, creditors turned to wage garnishment. "One of the most aggressive and common forms of debt collection has generally been allowed to continue: seizure of wages for old consumer debts."[22]

[20] Megan Leonhardt, *Here's why your next text or DM may soon be from a debt collector*, CNBC (Nov. 2020), available at: https://www.cnbc.com/2020/10/30/why-your-next-text-or-dm-may-soon-be-from-a-debt-collector.html.
[21] Paul Kiel, *Unseen Toll: Wages of Millions Seized to Pay Past Debts*, ProPublica (Sept. 15, 2014), available at at https://www.propublica.org/article/unseen-toll-wages-of-millions-seized-to-pay-past-debts .
[22] Kiel and Ernsthausen, *Capital One and Other Debt Collectors Are Still Coming for Millions of Americans*

Subsection (g)

The Act's amendment to subsection (g) prevents debt collectors from attempting to collect debts owed by a deceased consumer from a person with no legal obligation to pay the amounts alleged to be owed.

As with the protection for exempt income, many people who have recently lost a loved one do not know whether or not they are legally obligated to pay their loved one's debts. The amendment puts the burden on the debt collector to make that determination before attempting to collect, for example, by checking to see if the person it is attempting to collect from was a cosigner on the original debt. Family members should not have to deal with abuse from debt collectors on top of mourning the loss of a loved one, and creditors' rights to seek compensation from a decedent's estate will be preserved.

Subsections (j), (t), and (u): Enforcement Changes

The Act's amendments to subsections (j), (t), and (u) all relate to the enforcement mechanisms for the statute.

Subsection (j)

Prior to the Act, the only enforcement provision in the Debt Collection Law was subsection (j), and its language only applied to the "foregoing subsections of this section," thereby – seemingly inadvertently – not explicitly covering the subsequent subsections of the section, like (k), which prohibits debt collection communications made before 8 a.m. or after 9 p.m. and the prior debt collection moratorium. The Act eliminates this gap in subsection (j) and also allows debtors to recover proximate damages for violations regardless of whether violations are willful.

Subsection (t)

More significantly, subsection (t) provides that if a debt collector seeks to obtain a judgment or order against a debtor in a debt collection action and has not complied with the requirements of the Debt Collection Law, the court shall dismiss the action with prejudice. This puts debt collectors on notice that they must comply with the Debt Collection Act. Before, they only had to pay damages for "willful" violations, so long as they put forth some level of effort toward compliance and could therefore argue that any violations were merely negligent, they did not need to worry about complying with all of the Debt Collection Law's requirements. However, the Act would make clear that violations can lead to their case being dismissed, with prejudice. By providing a consequence for non-compliance, the Act incentivizes debt collectors to ensure that they are in substantial compliance.

Subsection (u)

Relatedly, subsection (u) says that if a debt collector violates the Debt Collection Law, the debt collector may be liable to the consumer for actual damages, costs and reasonable attorneys' fees, punitive damages, and statutory damages of $500 to $4,000. These damages and fee shifting are necessary to incentivize consumers and consumers' lawyers to enforce the statute. Without statutory damages, most consumers would not hire a consumer lawyer to pursue a claim because their damages – for example from a debt collector calling them an excessive number of times – can otherwise be difficult to calculate and could lead to awards of nominal damages that does not compensate them for their time in enforcing the violation. Similarly, without fee shifting, most consumer lawyers would not bring these claims because most consumers cannot afford to pay attorneys' fees to pursue a claim. Together, however, they create a private right of action that can be meaningfully used to enforce the Debt Collection Law and, also importantly, can help encourage productive resolution of disputes by counsel without resort to litigation.

Subsections (l) and (o): Statute of Limitations Changes

The Act creates new subsection (*l*) and (o) to make the operation of the statute of limitations for debt collections claims fairer for consumers.

Subsection (*l*)

Subsection (*l*) addresses the issue of "zombie" debts: cases where debt collectors trick consumers into making small payments that have the effect of restarting the statute of limitations on a debt that otherwise would have been past the three-year cutoff. Creditors know that a payment can revive a debt, but most debtors do not, allowing debt collectors to convince debtors to make a small payment and restart the three-year clock. Texas and Washington have adopted similar laws to address the issue of zombie debts.[23] New York very recently adopted a similar measure to ban zombie debts.[24] Although debt collectors can still try to collect debt that is past the statute of limitations under the Debt Collection Law as amended by the Act, subsection (*l*) makes clear that such payments or other statements by the debtor will not bring the debt collector's legal claim back to life.

Subsection (o)

The Act also creates a new subsection (o) that says that any action to collect a consumer debt must be filed within 3 years of accrual, regardless of the legal theory on which the claim is

[23] Renae Merle, *Zombie debt: How collectors trick consumers into reviving dead debts*, Wash. Post, (Aug. 7, 2019), available at https://www.washingtonpost.com/business/2019/08/07/zombie-debt-how-collectors-trick-consumers-into-reviving-dead-debts/
[24] Kevin Thomas, *Governor Hochul Signs Consumer Credit Fairness Act Into Law*, The New York State Senate, (Nov. 9, 2021), available at https://www.nysenate.gov/newsroom/press-releases/kevin-thomas/governor-hochul-signs-consumer-credit-fairness-act-law and https://legislation.nysenate.gov/pdf/bills/2021/S153 at 2

based and regardless of whether the contract was labeled "under seal." Previously, the statute of limitations for a consumer debt varied based on this theory. While most consumer debt already had a statute of limitations of three years, others had limitations periods of four years or six years. *Compare* D.C. Code §§ 12-301(a)(7)-(8) (three years for contracts and any claims for which a statute of limitations is not provided), *with* D.C. Code §§ 28:2-725 (four years for contracts for sale), *and* 28:3-118 (six years for promissory notes). The most extreme example relates to contracts that are "under seal." Under a DC law that has not been amended since it was first passed in 1963, if the words "under seal" are placed near the signature line on a contract, the statute of limitations for a breach of contract claim is 12 years instead of three years. In our experience, few consumers understand this archaic distinction, which leads them unknowingly into agreeing to a nine-year extension of the statute of limitations. The Act simplifies and clarifies the rules and takes that artifice out of creditors' playbooks, and says, simply, that for consumer debts, the statute of limitations is three years. It also helps DC sync up with peer state jurisdictions in this positive respect. Alaska, New Hampshire, North Carolina and South Carolina all have shortened the statute of limitations on debt collection cases to three years, and six states have made it illegal or impossible to file a collection suit after the statute of limitations has expired.[25]

Subsection (m): Pre-litigation Substantiation Changes

The Act creates new subsection (m), which requires debt collectors to verify the details of the debt before trying to collect it and to offer to share those details with the debtor before attempting to collect the debt. In particular, the Act states that debt collectors must have the following five basic documents or pieces of information:

1. Debt collectors must know who the debt was originally owed to and who owns the debt now. Consumers have a right to know who they are dealing with and how they allegedly incurred the debt that is being collected, and the Act requires that the debt collector do that basic due diligence prior to collecting or suing.
2. Debt collectors must know the last account number with the original creditor. Many consumers have multiple accounts with a single creditor, so if a debt collector cannot tell the debtor what the account number is, such a consumer would have no way of knowing which account is being collected.
3. Debt collectors must have a copy of the signed contract, signed application, or other documents showing the consumer's liability and the terms thereof. Debt collection disputes typically boil down to an issue of breach of contract in that the debtor allegedly

[25] *A Financial Security Threat in the Courtroom* at 21

failed to pay an amount owed under the contract. If the debt collector does not know the terms of that contract, it should not be able to enforce that contract.

4. Debt collectors must know the date and amount of the last payment by the consumer, if any. This is important because it can impact when the three-year statute of limitations begins to run, and therefore how long the debt collector has to file a lawsuit. It is also important in identifying how long it can be reported to credit reporting agencies because the Fair Credit Reporting Act allows debts to reported for seven years after default.
5. Debt collectors must know how the debt is broken down between principal, interest, fees, and other charges and who imposed any interest, fees, or charges. This is important because it allows the consumer to verify that all of the interest, fees, or charges are appropriate and that none of them violate the District's usury laws.

The debt collector's first written communication with the debtor must inform the debtor of their right to request the above information and provide the debt collector's contact information. If the debtor requests the information, the debt collector must provide it within 15 days. These requirements are particularly important for debts that are no longer owned by the original creditor because debt buyers often do not have documentation for the debt (e.g., contract, payment records) and therefore sometimes try to collect debts from the wrong consumer or seek the wrong amount. This should curb the common occurrence of consumers being contacted to pay debts that are not theirs.[26]

This provision shifting the burden of documenting to debt collectors also protects consumers by requiring debt collectors to have information about the debt before taking steps to collect.[27] Consumers deserve to know why a debt collector is contacting them and the details of the debt in question, especially since the most common debt collection-related disputes are cases in which debt buyers try to collect a debt from an individual that the individual does not owe.[28]

Subsection (n): Settlement Agreement Changes

The Act also includes important protections regarding settlement agreements and payment plans. It is common for debt collectors to negotiate payment plans or settlements with debtors by phone. There is nothing wrong with that practice, which tends to be more efficient for both the debt collector and the debtor than mailing letters back and forth. However, a common

[26] Office of the Minnesota Attorney General, *When Debt Collectors Come Calling and You Don't Owe the Money*, available at https://www.ag.state.mn.us/consumer/publications/WhenDebtCollectorsComeCalling.asp.
[27] Robert J. Hobbs, April Kuehnhoff and Chi Chi Wu, *Model Family Financial Protection Act*, National Consumer Law Center (Oct. 2020), at 15, available at https://www.nclc.org/images/pdf/debt_collection/model_family_financial_protection_act.pdf
[28] *A Financial Security Threat in the Courtroom* at 21

problem that arises is that those payment plans or settlements are never reduced to writing, which often leaves the parties with conflicting beliefs about the terms of their agreement.

To resolve that issue, the Act requires debt collectors to provide written copies of payment schedules or settlement agreements within seven days of when they are agreed to by the consumer. Moreover, debtors are not required to make payments under those payment schedules or settlement agreements until they are provided a copy. Together, these provisions will provide clarity to consumers and help prevent misunderstandings or mischaracterizations of the terms of agreements.

Subsections (p) through (s): Litigation Substantiation Changes

The Act creates new subsections (p) through (s), each of which includes provisions to make debt collection lawsuits fairer. The Act is important for fairness because it includes evidentiary requirements that must be met for a debt collector to file a case, win a judgment against a consumer, or collect on a debt. This is especially significant for unrepresented defendants, as it means that the burden is on the debt collector, not the individual without a lawyer, when it comes to the issue of whether the complaint is properly substantiated.

Subsection (p)

A common problem in debt collection lawsuits is that the plaintiff assumes that the defendant has not moved since allegedly defaulting on the debt. The court rules then allow the plaintiff to serve the defendant by "leaving a copy of [the court papers] at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there." D.C. Super. Ct. Civ. R. 4(e)(2)(B); D.C. Super. Ct. Sm. Cl. R. 4(e)(2)(B). Using that rule, the plaintiff's process server then serves whoever happens to be living at the address that the defendant previously lived at. The defendant then never learns about the lawsuit, and the Court enters a default judgment against the defendant. The first time the defendant then learns about the lawsuit is when the plaintiff files a bank account or wage attachment. The defendant then must convince the Court that they were never served in order to vacate the default judgment and stop the attachment.

This burden on defendants requires individuals to navigate a complex legal system, usually without an attorney. "Research indicates that in American debt collection litigation, the balance of power is heavily weighted against individuals. To be clear, this is not simply due to bad actors in the debt collection industry, though there are those who abuse the system to their benefit. Multiple studies have shown that more than 70 percent of debt collection lawsuits end in rulings against the individual simply for failing to respond to the filing of the lawsuit (i.e., "default judgments") in the studied jurisdictions. This is despite the fact that the individuals being sued may have legitimate defenses. It is these systemic biases against individuals that are

the root of the uneven playing field that is our debt collection litigation system." Default judgments often occur because "practical realities of the defendant's life may cause them to not respond. Lack of information, intimidation, childcare needs, and inability to take off work all help explain why many defendants do not show up to defend themselves in debt collection lawsuits. These situations lead to judgments based not on the case's merits but based on the defendant's lack of response. "Despite the lack of proof or scrutiny, a default judgment carries the same weight and enforcement power as a ruling granted after a trial."[29]

The new subsection (p) seeks to prevent this problem by requiring plaintiffs in debt collection cases to conduct a reasonable investigation to verify the defendant's current address for service of process before filing a lawsuit. Hopefully this will result in fewer default judgments and greater participation in cases by District residents so that cases can be resolved on their merits or the parties can reach mutually agreeable resolutions, rather than continuing with a process that issues default judgments "with alarming automaticity and speed, without asking for evidence in support of the claims or scrutinizing the allegations in any way."[30]

Subsection (q)

The Act creates a new subsection (q) that requires plaintiffs in debt collection lawsuits to provide the Court and the defendant with adequate information about the debt so that their claims can be meaningfully reviewed. In particular, it requires the following:

1. The plaintiff must include a copy of the signed contract, signed application, or other documents that provide evidence of the consumer's liability. It should be uncontroversial that the terms of the contract must be included in a breach of contract lawsuit about a consumer debt, yet in many cases, plaintiffs simply attach credit card statements. If the parties signed a contract, the terms of that contract govern their dispute, and plaintiffs should not be allowed to sue on breach of contract claims without producing the contracts at issue.
2. The plaintiff must include a short and plain statement of the type of consumer debt. This simply conforms the Code to what is already required by the Small Claims and Conciliation Branch Court Rules, which state, "The statement of claim must contain a

[29] "A Financial Security Threat in the Courtroom," Aspen Institute, Sept. 2021, accessible at https://www.aspeninstitute.org/wp-content/uploads/2021/09/ASP-FSP_DebtCollectionsPaper_092221.pdf

[30] *Rubber Stamp Justice: US Courts, Debt Buying Corporations, and the Poor*, Human Rights Watch (Jan. 20, 2016), available at https://www.hrw.org/report/2016/01/20/rubber-stamp-justice/us-courts-debt-buying-corporations-and-poor (noting that default judgments are unjust and punish defendants for what are often failures on the part of plaintiffs); *see also* Joyce Rice and Kevin Moore, *How debt can lead to prison*, Vox (March 26, 2021), available at https://www.vox.com/the-highlight/22327700/debt-prison-debtors-unpaid-bills (95% of default judgments work in favor of debt collectors).

simple but complete statement of the plaintiff's claim . . .” D.C. Super. Ct. Sm. Cl. R. 3(a)(2).

3. The plaintiff must include the information enumerated in subsection (m)(1) that debt collectors are required to have before attempting to collect debts and must offer to provide to debtors, like the identities of the original creditor and current owner, the date the debt was incurred, and the date of last payment. That information will allow the Court and the defendant to determine if the proper plaintiff is suing and whether the lawsuit is within the statute of limitations.
4. The plaintiff must explain the basis for any interest or fees charged. Often the amount of interest and fees exceeds the underlying principal, which leaves consumers frustratedly guessing at why the alleged debt is so much larger than they remember. This would require plaintiffs to explain that to consumer up front.
5. The plaintiff must explain the basis for a request for attorneys' fees. This change also simply codifies what is already required by the Small Claims and Conciliation Branch court rules, which require that the plaintiff's attorney "provides to the court the instrument or agreement on which the claim for attorney's fees is based" before an award can be made. D.C. Super. Ct. Sm. Cl. R. 18(a)(1).
6. The plaintiff must state that it currently owns the debt and provide a list of all prior owners of the debt and the date the debt transferred ownership. Consumer debt is often sold and resold in bulk. This requires plaintiffs to show that there is an unbroken chain of ownership from the original creditor to the plaintiff such that the plaintiff has legal standing to sue for the debt.
7. Last, the plaintiff must state that the lawsuit is filed within the applicable statute of limitations. In general, the statute of limitations is an affirmative defense that a defendant waives if the defendant does not timely raise it. The Act, however, shifts the burden to the plaintiff in a consumer debt collection case to state that the debt is within the statute of limitations. This will protect *pro se* parties – of which there are many in consumer debt collection cases – who might not have otherwise known that they could raise the statute of limitations as a complete defense.

Since so many cases end in default judgments, creditors do not usually have to prove that the documentation of the debt they are suing on is legitimate. These documentation requirements will help ensure that creditors do not bring suits on debts that are not owed or that are past the

statute of limitations and will support informed decision-making by DC residents faced with uncertainties about how to address debt collection actions taken against them.

Subsection (r)

Research has shown "repeated patterns of error and lack of legal compliance in [debt collectors'] lawsuits. These problems are often discovered long after the debt buyers have already won court judgments against alleged debtors, a situation that arises because of the inability of alleged debtors to mount an effective defense even when they are on the right side of the law. … The predictable result of all this is that debt buyer lawsuits are sometimes riddled with fundamental errors. Debt buyers have sued the wrong people, sued debtors for the wrong amounts, or sued to collect debts that had already been paid."[31]

Moreover, in many default judgment cases, the debt collector or buyer is not required to prove that it is entitled to the judgment and instead gets a judgment simply because the defendant failed to appear. This issue is significant because of how many cases are decided by default judgment. A national report concluded that "the most common outcome of a debt collection lawsuit … is a judgment by default," i.e., with no participation in the case by the defendant.[32] The default rate for debt collection actions in D.C is likewise significant: in 2016, based on an informal analysis of collections calendar dockets, almost 42% of DC Superior Court defendants with cases on the small claims debt collection calendar had a defaulted appearance or default judgment entered against them at their initial hearing. Thus, even if a case has been filed or pursued illegally, there remains a good chance that the default will result in the debt collector obtaining judgment anyway—rewarding, rather than deterring, the improper collection activity. This legislation will ensure basic standards are met before a default judgment occurs.

Parties seeking a judgment related to consumer debt should be required to provide evidence that they are entitled to the judgment: that the consumer owes the debt, that the plaintiff owns the debt, and what the correct amount is.[33] The Act creates new subsection (r) to do just that.

Under subsection (r), before the Court can grant judgment against the individual in a debt collection lawsuit, the plaintiff must file with the Court authenticated business records to establish the amount and nature of the debt and include the information enumerated in subsection (m)(1) (i.e., the identities of the original creditor and current owner, the debtor's account number with the original creditor, the signed contract or other documents, the date the debt was incurred, the date of last payment, and an accounting of principal, interest, fees, and charges).

---

[31] *Rubber Stamp Justice: US Courts, Debt Buying Corporations, and the Poor*, Human Rights Watch (Jan. 20, 2016), available at https://www.hrw.org/report/2016/01/20/rubber-stamp-justice/us-courts-debt-buying-corporations-and-poor.
[32] Chris Arnold and Paul Kiel, *Millions Of Americans' Wages Seized Over Credit Card And Medical Debt*, NPR (Sept. 15, 2014), available at http://www.npr.org/2014/09/15/347957729/when-consumer-debts-go-unpaid-paychecks-can-take-a-big-hit.
[33] *Model Family Financial Protection Act* at 23

This requirement is important because plaintiffs in debt collection cases often do not provide any testimony to authenticate that the information that they have presented is accurate, and when they do, that evidence is often inadmissible hearsay that does not fall under the business records exception. This requires plaintiffs to provide a base level of admissible evidence before the Court grants judgment in their favor.

Subsection (s)

The new subsection (s) also relates to requirements before the Court can grant a default or summary judgment. Here, subsection (s) requires plaintiffs who are not original creditors to provide copies of any assignments of the debt or other writings establishing transfer of ownership. Plaintiffs must also state every date on which the debt was assigned or sold, the names of the prior owners, and the amount due at the time of sale or assignment. This is important because if the plaintiff cannot establish an unbroken chain of transfers, then the plaintiff lacks standing to sue on the debt.

Subsection (v): Attorneys' fee shifting changes

The Act includes important consumer protections to keep debt collectors' attorneys' fees from overshadowing the underlying controversy. It does so by creating the new subsection (v), which caps attorneys' fees at 15% of the amount of the debt and requires plaintiffs to provide the Court with the contract or other document that entitles the plaintiff to attorneys' fees. These provisions largely track Rule 18 of the Small Claims and Conciliation Branch but would also apply to consumer debt cases filed in the Civil Actions Branch, which does not have a comparable rule.

This rule is important because the cost of attorneys' fees can often quickly overshadow the amount of a consumer debt if there is no limit on the attorneys' fees. The gap in the law as it stood pre-pandemic gave plaintiffs significant and concerning degrees of leverage over debtors because if the debtors seek discovery or even just ask informal questions about the specific amount claimed, they will have to pay even more money in attorneys' fees if the plaintiff wins the case. In our experiences, the implied threat to DC residents that any resistance will only make things worse for the defendant because they will have to pay all of the attorneys' fees racked up by the plaintiff often forces defendants to capitulate even if they had a defense that may have been likely to ultimately succeed. Subsection (v) will help put plaintiffs and defendants on equal footing and ensure that debt collection cases are not about punishing low-income DC residents.

Subsections (w) through (y): Civil arrest changes

Although debtors' prisons were abolished centuries ago, some debt collectors in the District still seek civil arrest warrants against people who have not paid off their debt collection judgments.[34] Their actions, while extremely concerning as a matter of justice, are arguably constitutional because they seek the warrants for failure to appear in court rather than failure to pay. This practice is particularly egregious and should be fixed by legislation for at least five reasons:

1. In our observed experiences, many people fail to appear in court because they were never served and did not know about their case, which means they are being arrested through no fault of their own.
2. Many people mistakenly think that they are being threatened with arrest for failure to pay, which causes them to use otherwise exempt funds to the pay the debt or divert resources from necessities like rent and food.
3. It allows private debt collectors to use and leverage government coercion to collect private debts. This gives those debt collectors an unfair amount of leverage over debtors.
4. It wastes law enforcement resources that should instead be used to protect the District from public safety risks.
5. The arrest warrant may appear on background checks for the debtor and potentially prevent them from obtaining employment or cause them to lose their job.

The Act addresses these issues by creating three subsections to reduce the likelihood and impact of a debtor being arrested for failure to appear in a debt collection case.

Subsection (w)

The Act creates a new subsection (w) that states that before a court may issue a bench warrant for failure to appear in a debt collection case, the plaintiff must have personally served its motion for contempt on the defendant and the defendant must have failed to appear at two contempt hearings.

The requirement of personal service is important because the debtor is less likely to see the motion asking for the debtor to be arrested if it is mailed to the debtor (assuming the debt collector even has the right address for the debtor) or if it is handed to someone else in the

[34] Under Supreme Court precedent interpreting the Constitution's Equal Protection Clause, a State may not imprison persons with unpaid debts solely because they lacked the resources to pay the amount of the outstanding debt. *See Bearden v. Georgia*, 461 U.S. 660, (1983)

debtor's household. Before exercising the extreme remedy of arrest, the court should make sure that the debtor knows what is going on.

The requirement that the defendant have failed to appear at two contempt hearings is equally important because it gives the defendant a second chance before issuing an arrest warrant. The court has no way of knowing why the debtor failed to appear at the first hearing. It is possible that the debtor had a medical or family emergency that made attendance impossible. It is possible that the debtor did not receive the court's notice of hearing in the mail and therefore did not know to attend. Requiring a second hearing gives the defendant time to inform the Court why they failed to appear at the first hearing or another chance for the mail alerting them of their hearing to arrive.

Subsection (x)

The Act creates a new subsection (x), which states that a consumer who is arrested for failing to appear at a debt collection hearing must be brought before the court the same day they are arrested. Arrest in these cases is pursuant to the court's contempt power, and the debtor is being held in contempt for failing to appear in court. As soon as they appear in court, they are no longer in contempt. Therefore, this new subsection seeks to cure the contempt as soon as possible and avoid a situation, for example, where a debtor is arrested on a Saturday morning and then not seen by the judge presiding over their debt collection case until Monday. This ensures that the debtor is held in custody for no longer than is necessary so that they hopefully do not lose their jobs and are able to care for their families.

This is already, as we understand it, the informal policy of the DC Superior Court, which has instructed the U.S. Marshals to bring people directly to Court after they are arrested for civil arrest warrants. The Act takes the important step of codifying that important policy.

Subsection (y)

The Act also creates new subsection (y) that says no person may be jailed or imprisoned for failure to pay a consumer debt or for failure to comply with a court order to pay a consumer debt. Across the country, this has emerged as a major issue.[35] While, thankfully, the DC Superior Court's practices have disfavored this approach, this subsection will codify the protection against incarceration in DC as punishment for unpaid consumer debts.

[35] See, e.g., ACLU, *Criminalization of Private Debt*, available at https://www.aclu.org/issues/smart-justice/mass-incarceration/criminalization-private-debt ("An estimated 77 million Americans have a debt that has been turned over to a private collection agency. Thousands of these debtors are arrested and jailed each year because they owe money. Millions more are threatened with jail.").

Debt collectors will still have other tools at their disposal to collect debts (such as wage garnishments), but they will not be permitted to ask the Court to have the debtor jailed or imprisoned for failure to pay.

Subsection (z): Incorporation of the Fair Debt Collection Practices Act

The Act creates a new subsection (z), which states that a violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq., (the "FDCPA") is a violation of the Debt Collection Law. This will allow debtors to file claims for violation of the FDCPA under DC law in DC Superior Court and eliminate the possibility that the debt collector will remove the case to federal court. DC residents can also still file claims for violations of the FDCPA in federal court by not invoking this DC law. This gives those residents greater flexibility to proceed in whichever court will be most efficient in resolving their cases.

Subsections (aa) through (cc): Debt Collection Moratorium for Future Public Health Emergencies

Finally, the Act makes permanent the provisions from the debt collection moratorium that was enacted multiple times throughout the pandemic. Although the protections in new subsections (aa) through (cc) are not currently active because more than 60 days have passed since the Mayor's public health emergency order expired, it is important to codify these provisions so that if and when the District faces a new public health emergency in the future, these protections can spring automatically and immediately into place. That will allow the Council to focus on other aspects of future emergencies, save the Council from having to repeatedly pass the same law, and provide greater predictability for debt collectors and debtors.

As the pandemic put families in precarious financial positions, debt collection companies took advantage. Pausing collections during the height of the public health emergency prevented debt collectors from extracting money from debtors with low incomes. This permanent bill will curb collectors' huge profits brought on by a flood of cases after protections ended.[36]

The prior debt collection moratorium was important from a public health perspective because the debt collection calendar at the DC Superior Court typically had nearly 200 cases scheduled over two mornings each week, which required lots of people to congregate together indoors for long periods of time. If the District is hit with a new public health emergency, it will again be important to prevent those sorts of mass indoor gatherings. Moreover, as we saw in the early days of the pandemic, public health emergencies can have a significant impact on employment, which means people are strapped for cash to pay rent and utilities and buy food. In those

[36] Paul Kiel and Jeff Ernsthausen, *Debt Collectors Have Made a Fortune This Year. Now They're Coming for More,* ProPublica, Oct. 5, 2020, available at https://www.propublica.org/article/debt-collectors-have-made-a-fortune-this-year-now-theyre-coming-for-more

difficult times, DC residents should not have to also experience the economic and emotional harms of defending themselves against debt collectors.

Debt collectors are not prejudiced by these delays because the Act provides that any statute of limitations on any collection lawsuit is tolled for the period of time in which they are prohibited from filing lawsuits.

The debt collection moratorium was a crucial lifeline for many DC residents.

Although we all hope that another public health emergency is not in the District's future, it is better for the law to allow the system to be prepared and for DC to use the lessons learned from the COVID-19 pandemic, and retain this protection for future emergencies.

III. Technical and Other Clarifications for the Mark Up Phase

For all the above reasons, the as-introduced version of the bill, which tracks the emergency and temporary laws passed during the public health emergency, is strong, and we support it.

In addition, we have some clarifying suggestions for the mark-up phase of the bill, including, for example, provisions allowing residents to pay debts with exempt income if they elect to after receiving notice of their rights, provisions clarifying the bill's authenticated records requirements, provisions requiring plaintiffs to provide basic information showing how defendants' addresses were verified, and making permanent the sensible rule that the Council adopted for the emergency period prohibiting debt collectors making visits to residents' homes or places of employment (other than to provide service of process).

We are happy to discuss the particulars of the bill's language with Councilmembers and of course with Committee staff as may be helpful.

THE PEW CHARITABLE TRUSTS

2005 Market Street, Suite 2800
Philadelphia, PA 19103-7077
P 215.575.9050
F 215.575.4939

901 E Street NW, 10th Floor
Washington, DC 20004
P 202.552.2000
F 202.552.2299

pewtrusts.org

Chairman Phil Mendelson
DC Council
1350 Pennsylvania Avenue NW # 504
Washington, DC 20004

Testimony for Committee of the Whole Hearing on B24-0357 - Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2021
11/29/2021

Chairman Mendelson, and members of the committee, we appreciate the opportunity provided by the Committee of the Whole to submit public testimony on B24-0357 - Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2021.

My name is Erika Rickard; I direct a project at The Pew Charitable Trusts focused on modernizing our nation's civil legal system. My team works to support efforts to deliver more efficient, equitable, and open civil courts. Our particular focus is on the recent rise of debt collection litigation, and how it has transformed the business of state courts,[1] while also posing serious implications for the financial security[2] of millions of Americans.

Over the past 5 years, more than 30,000 small claims lawsuits have been filed in DC Superior Court's Civil Division, the majority of which are collections cases. Our testimony today serves to help inform your deliberations on the bill by (1) breaking it down according to our debt claims policy framework and (2) providing examples of practices from other states to use as benchmarks.

The rise of debt collection in courts

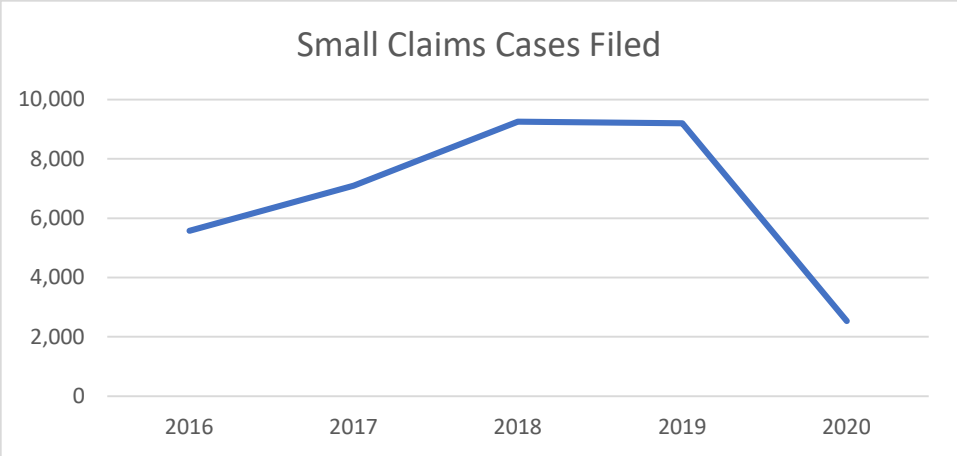
Debt collection lawsuits are governed by a patchwork of state or district laws and civil court rules, which often lack provisions tailored to the domination of local civil court dockets by debt collectors. Debt collection lawsuits have grown as a share of civil dockets over the past 30 years and have become the single most common type of civil court case in the nation.[3] In DC, debt claims have been on the rise, as evidenced by the 65% spike in small claims lawsuits filed from 2016 to 2019.

[1] The Pew Charitable Trusts, "How Debt Collectors Are Transforming the Business of State Courts" (2020), https://www.pewtrusts.org/en/research-and-analysis/reports/2020/05/how-debt-collectors-are-transforming-the-business-of-state-courts.

[2] The Aspen Institute, "A Financial Security Threat in the Courtroom: How Federal and State Policymakers Can Make Debt Collection Litigation Safer and Fairer for Everyone" (2021), https://www.aspeninstitute.org/publications/how-unpaid-bills-end-up-in-court/.

[3] P. Hannaford-Agor, S.E. Graves, and S.S. Miller, "The Landscape of Civil Litigation in State Courts" (National Center for State Courts, 2015), https://www.ncsc.org/~/media/Files/PDF/Research/CivilJusticeReport-2015.ashx.

However, the policies that govern debt claims today were designed for a context where it was assumed that both sides of a lawsuit would be represented by attorneys that would appear in court to argue the case in front of a judge, who would then make a decision based on those legal and factual arguments.



Source: District of Columbia Courts – Annual Reports

This is no longer the case. From 1993 to 2013, the number of debt collection suits more than doubled nationwide, from less than 1.7 million to about 4 million, and consumed a growing share of civil dockets, rising from an estimated 1 in 9 civil cases to 1 in 4.[4] Over 90% of the defendants in these cases are not represented by attorneys, compared to the only 1% of plaintiffs, an estimated 40% of which are just a handful of large national debt buying corporations. Additionally, studies across the country point to an alarming trend where most of these cases end in a default judgment, which means that the courts found in favor of the plaintiff without the defendant ever engaging with the lawsuit or a reasoned, neutral decision based on the merits of the case. These default judgments can exact heavy tolls on consumers, as they are routinely ordered to pay attorney's fees and post-judgment interest, which together can exceed the original amount owed. A judgment also gives debt collectors the ability to use extraordinary collection measures such as wage garnishment, bank account seizures, and even arrest warrants, to compel the consumer to pay with the court's blessing.[5]

How will B24-0357 affect debt claims policy in DC?

The DC Council has undertaken standout efforts to reform debt collection litigation through temporary and emergency amendments during the pandemic, which B24-0357 would make permanent. These amendments help to ensure that both defendants and plaintiffs can meaningfully engage in their collections lawsuit and destabilizing financial consequences to the consumer are curtailed. In absence of the emergency amendments, debt collection litigation in DC is primarily governed by Superior Court rules for the small claims division. In 2019, the Superior Court enacted a rule that outlined particular pleading and service requirements for consumer collection lawsuits that ensure consumers receive and understand notice of their lawsuits.[6]

The temporary measures served to modernize DC's debt collection policy landscape. Without them, gaps exist surrounding a lack of clear requirements for proof of debt documentation to be provided to both the court and the consumer. These requirements would increase the ability for consumers to understand and identify the debt claim and for courts to ensure the debt is valid before issuing a

[4] The Pew Charitable Trusts, "How Debt Collectors Are Transforming the Business of State Courts."
[5] Ibid.
[6] D.C. SCR-SC Rule 19.

judgment for the plaintiff. Following our debt claims policy analysis framework, we've broken down some of the District's court rules and statutes by stage of a debt collection lawsuit to show how B24-0357 would affect the pre-pandemic policy landscape:

Debt Collection Lawsuit Stage	Pre-pandemic DC Policy	B24-0357 Additions
1. Plaintiff files a lawsuit	• The statute of limitations to file a contact claims is 3 years	• Codifies the statute of limitations for debt claims specifically at 3 years and explicitly prohibits expired claims for being brought where the debt collector should reasonably know they are expired
2. Consumer is notified of the lawsuit	• As of 2019, court rule requires plaintiffs to obtain proof of service within 90 days and indicate the original owner of a debt on the notice	• Requires that the debt collector disclose documentation proving the amount and ownership of the debt to the consumer when notice of the lawsuit is served
3. Consumer takes action on the lawsuit	• Consumers are not required to respond to a lawsuit in DC, just appear at a scheduled hearing or mediation	*Not addressed*
4. Case is resolved (most commonly by default judgment)	• Default judgment is entered if the defendant does not appear at the hearing- no specific proof of debt or review requirements for consumer debts. • Post-judgment interest can be set up to 2%	• Provides that a consumer default judgment must be entered on the basis of authenticated business records proving the defendant used the account, the debt collector owns the account, and the amount of debt claimed • Sets reasonable plaintiff attorney's fees at a maximum of 15% of the amount in dispute
5. Plaintiff can take action to enforce the judgment by wage garnishment, execution, etc.	• Plaintiff can apply for a writ of attachment and must serve the defendant with a notice explaining exemptions • $1,000 in property and u to 25% in excess of 40x the minimum wage may be garnished • Bench warrants may be issued if the defendant fails to respond to interrogatories about their property and assets	• Limits ability of court to issue bench warrants for consumer debts • Prohibits imprisonment for a consumer debt

We have previously documented the concerning lack of available court data[7] and robust research that describe the prevalence and impact of debt claims lawsuits on courts, collectors/creditors, and consumers. As we strive to learn more, here's a deeper dive into what we know about each debt collection lawsuit element within our policy framework. We provide benchmarks from other states based on our analysis of the debt collection policy landscape in 25 states, including states that have recently reformed how debt claims are adjudicated.

1. Plaintiff files a lawsuit

The first stage of a consumer debt collection lawsuit is initiated when a plaintiff (creditor or collector) files a lawsuit claiming an amount owed by a consumer. Turning to the courts is considered a last resort method to collect a debt but national trends show it is an increasingly used for large companies, particularly debt buyers, to collect small household debts from individuals. B24-0357 limits protections and proposed filing requirements to third party debt buyers. Other leading reform states including New York, Maryland, Massachusetts, and Texas have extended their tailored debt collection litigation reforms to cover original creditors as well.

The national average statute of limitations for debt collection lawsuits is 6 years from the charge-off date. DC is currently on par with New York and Maryland in establishing a 3-year limitations period. B24-0357 also follows suit with Massachusetts, New York, Illinois, Washington, and Connecticut in requiring debt buyers to submit a sworn statement when initiating the lawsuit that the claim is within the statute of limitations. These actions limit the prevalence of "zombie debts" going to court.

2. Consumer is notified of the lawsuit

For the lawsuit to proceed, the plaintiff is responsible for ensuring the consumer is notified that a lawsuit has been filed against them by serving court papers. States vary on how this is handled– some require a sheriff to conduct service while others permit service by mail. DC requires that notice of the lawsuit be personally served by a competent adult or served by the court clerk via registered mail. Additionally, in 2019, the Superior Court enacted special requirements for pleadings for consumer debt claims, where a debt buyer plaintiff must include the name of the original owner on the lawsuit notice, so that a consumer can identify where the debt may be from.

B24-0357 addresses this lawsuit stage by requiring that documentation supporting the debt, such as account statement or an original contract, be provided to the defendant with notice of the lawsuit. This allows consumers to meaningfully engage and understand the nature of the claim against them. in B24-0357 also requires that plaintiff "undertake a reasonable investigation to verify the defendant's current address." DC Courts could look to states such as Massachusetts, where court rules spell out address verification requirements based on returned mail and municipal records.

3. Consumer responds to the lawsuit

People sued for debts rarely have representation, which means that most consumers have to figure out how to take action in response to a lawsuit on their own. DC is similar to states including Illinois,

[7] E. Rickard and Q. Naqui, "Effects of Debt Lawsuits on Civil Courts—and Consumers—Obscured by Lack of Data" (The Pew Charitable Trusts, 2020), https://www.pewtrusts.org/en/research-and-analysis/articles/2020/06/05/effects-of-debt-lawsuits-on-civil-courts-and-consumers-obscured-by-lack-of-data.

Pennsylvania, and Maryland, where the consumer is not required to files and serve and answer form in order to respond to the lawsuit. Additionally, DC Superior Court's small claims statement of claim and notice form include a plain language notice to the defendant outlining next steps, explaining implications of a lawsuit, and providing contact information for legal assistance.

B24-0357 does not further address this lawsuit stage but could be addressed by increased access to legal help or technology tools that simplify the court process for defendants without lawyers.

4. Case is resolved

Most debt collection lawsuits end in a default judgment, which means the defendant did not respond to the lawsuit or show up to their court date. In this situation, the case is often resolved not based on the merits of the case but based on who is in the room. Over the past decade, courts have resolved more than 70 percent of debt collection lawsuits with default judgments for the plaintiff nationwide.[8] A 2015 study in Boston Municipal Court, for example, found that only 7.5% of debt claims defendants showed up to court.[9] From 2013- 2018 in Philadelphia Municipal Court, plaintiffs won 98% of all small claims cases, 46% of which were by default.[10] Amounts claimed by plaintiffs are often further inflated after going to court due to additions of court fees, attorney's fees, and post-judgment interest. This is on top of any fees or interest that were owed on the original debt before charge-off.

B24-0357 fills policy gaps at this stage by limiting the attorney's fees a plaintiff can be awarded to 15% of the amount claimed. This prevents judgments where attorney's fees exceed the debt itself. Additionally, the Act would require authenticated documentation of the debt exists and be reviewed by the court before a default judgment can be entered. This documentation would ensure that the amount is correct, that the plaintiff is the owner of the debt, and that the defendant used the account in question. If passed, B24-0357's proof of debt provisions would be the strongest nationally by requiring the last 24 periodic statements for credit card debt.

5. Plaintiff can take action to enforce the judgment

Once a debt buyer or original creditor has judgment against a consumer, they have the ability to pursue what are often called extraordinary collection measures. In DC this entails filing for a writ of attachment resulting in a court-ordered garnishment or seizure of a consumer's wages and property, including funds in a bank account. As part of this process, the plaintiff may request information, known as interrogatories, from the defendant about their assets and employment status. If the defendant does not respond to requests for this information or show up to scheduled hearings, the court can issue a bench warrant to permit the defendant to be arrested and brought to court to answer interrogatories. While used sparingly, current policies relating to arrest and imprisonment for civil lawsuits do not account for the particulars of modern debt collection.

---

[8] Ibid.

[9] D.J. Greiner and A. Matthews, "The Problem of Default, Part I" (Harvard University, 2015).

[10] "How Philadelphia Municipal Court's Civil Division Works" (The Pew Charitable Trusts, 2021), https://www.pewtrusts.org/en/research-and-analysis/reports/2021/02/how-philadelphia-municipal-courts-civil-division-works.

B24-0357 modernizes current laws by setting specific requirements on when and how bench warrants can be issued for consumer debts.

Next Steps in DC

The District of Columbia is continuing to take critical steps forward in their effort to address how both debt collectors and corporate landlords have transformed court dockets and grapple with the civil justice implications of the COVID-19 pandemic. Household debt has already surpassed $15 trillion nationwide,[11] and in DC specifically, 26% of all residents and 36% of communities of color have some household debt in collections, with the median amount being $1,592.[12] As these debts wind up in DC Superior Court, it is incumbent on policymakers to modernize the court-user experience, particularly for the majority of litigants who navigate their financial, housing, and family issues without the help of a lawyer. Our research has noted how the pandemic has increased state legislative interest in civil legal issues though a focus on updating eviction laws,[13] but policymaker attention towards debt collection lawsuits, despite their prevalence, remains scarce. If B24-0357 passes, DC would join ranks with New York[14] and California,[15] as one of the few jurisdictions this year to substantially modernize debt collection litigation laws and legislate to make state civil courts more equitable, efficient, and open.

In making permanent the emergency unjust debt collection prevention provisions, our analysis demonstrates that DC is positioned to address gaps in its current debt claims policy landscape and establish itself as a national leader in using targeted policy to minimize the destabilizing consequences of a debt going to court.

Once again, we appreciate the opportunity to submit testimony and offer our continued assistance to further explore any of the recommendations covered in this analysis.

Sincerely,

Erika J. Rickard, Esq.
Project Director, Civil Legal System Modernization
The Pew Charitable Trusts
901 E Street, NW, Washington, DC 20004
p: 202-302-8205 | *e:* erickard@pewtrusts.org | www.pewtrusts.org/modernlegal

[11] Center for Microeconomic Data, "Household Debt and Credit Report (Q3 2021): New Extensions of Credit Help Drive Total Debt to over $15 Trillion," Federal Reserve Bank of New York, accessed November 24, 2021, https://www.newyorkfed.org/microeconomics/hhdc.html.

[12] The Urban Institute, "Debt in America: An Interactive Map" (March 2021), https://apps.urban.org/features/debt-interactive-map/?type=overall&variable=pct_debt_collections&state=25.

[13] E. Rickard and N. Khwaja, "State Policymakers Are Working to Change How Courts Handle Eviction Cases" (The Pew Charitable Trusts, 2021), https://www.pewtrusts.org/en/research-and-analysis/articles/2021/08/26/state-policymakers-are-working-to-change-how-courts-handle-eviction-cases.

[14] New York Department of Financial Services, "Governor Hochul Signs Consumer Protection Legislative Package," news release, November 8, 2021, https://www.dfs.ny.gov/reports_and_publications/press_releases/pr20211108.

[15] Office of Governor Gavin Newsom, "Governor Newsom Signs Consumer Financial Protection Legislation to Combat Predatory Practices and Increase Transparency," news release, October 4, 2021, https://www.gov.ca.gov/2021/10/04/governor-newsom-signs-consumer-financial-protection-legislation-to-combat-predatory-practices-and-increase-transparency/.

Jeremiah J Montague Jr
2914 25th Street NE
Washington, DC 20018-2510

November 25, 2021

To: Council of the District of Columbia
Committee of the Whole
1350 Pennsylvania Avenue NW
Washington, DC 20004

Re: B24-357, Protecting Consumers from Unjust Debt Collection Practices Act of 2021

Testimony

Occurring before Committee Chair Mendelson, members of the committee, members of the Council, and those coming before to testify on the matter of bill B24-357, Protecting Consumers from Unjust Debt Collection Practices Act of 2021. Thank you for this opportunity to provide my input on the pending legislation before you.

My name is Jeremiah Montague, Jr.; I am a resident and senior resident/property owner of Woodridge within Ward 5. I am also and Advisory Neighborhood Commissioner, Single Member District 5C07.

I come before you to offer support of this legislation proposed, as I possess considerable experience with such unjust debt collection practices this bill seeks to address and the protections it offers.

They used to say that two things are certain, they being death and taxes. Unfortunately, there is another industry propagating certainty, debt. Most lack the financial awareness of the consequences carrying debt. This is not to say that they are unaware of debt, and to some extent experience as far back as early childhood the consequences of not paying a debt. We are not here to debate those issues. We are here to speak to practices occurring when consumers default on a debt incurred.

There are several mechanisms, which activate upon nonpayment of a consumer debt. They first appear on a statement, displaying days past due, amount of interest accruing and the applicable rate. The reporting occurs with lightning pace to the credit rating agencies, including medical debt reporting.

The initial contact of consumers with lender based debt collectors often starts innocuously, but too often antagonistically and rapidly escalates. The result to the debtor is considerable physical stress, unbearable anxiety, and manifesting in physical maladies.

I note that, even when a debt is paid, or made current, there is a lag in the timely reporting to credit reporting agencies of improved circumstanced. Unfortunately, the considerable damage is undoable and a matter of record (credit reported). Further, if an arrears repeats, the consequences escalate, to the point internal referral to lender collections. In response, consumers panic, most unaware of their rights and protections, left decidedly hopeless. At some point. the debt is “charged off” and/or sold off to a third party.

The legislation, I believe appropriately extends protections against, Debt collection and collectors who are a well-established industry within themselves often separate from but in collaboration with the original lender. Collecting debt is the business. It appears that inflicting emotional pain to collect debt is, to them, simply a right of doing their business. You quickly learn that they are fully aware their statutory limits. They may haul you into court to collect what’s due. Again, another ding on you.

Incredibly, with the evolving technologies, they design practices to circumvent such constraints subverting legality of action. Remember, the negative credit bureau notifications continue in the background using a variety of tags camouflaging the collection activity, while the shenanigans proceed. The lenders sell bad debt, to collection agencies who will often receive pennies on the dollar. Their negative credit reporting will continue for a minimum of seven years, accumulating negative credit rating points, directed towards future credit denials. They will also monitor debtors watching debtor credit activity using “soft credit

inquiries". I will note that one particular creditor, will continually report to credit bureau, the debt using new start dates on a monthly basis, having sold the debt and ceased its own collections activity. The infliction of harm often goes unnoticed by the debtor. I recently learned that a bank was carrying and reporting a negative balance on its books on a closed account and had been doing so for more than seven years. The institution has zeroed the balance, and reported a paid in full, but only occurring as a result of a class action suit which it lost. It had quietly continued it unlawful behavior out of sight, but not without consequence for the unaware former account holder.

Nevertheless, the volume and forcefulness of collections and their agent's activities escalates with the newly purchased debt. The old debt now has new life, sometimes portrayed as separate and distinct from the originator debt. This comes an onslaught of multiple contacts. Often coming with sabre rattling accompanied by dubious financial threats, numerous phone calls (using a variety of different telephone numbers. The calls are usually identifiable by area code, eluding being blocked). Then there is the avalanche of written notices, reminders, and threats with innuendo, and such, to entice debtors to engage in re-payment plans, which reset and extend the start date of the debt now transferred.

In the same vein are mortgage lenders are even more egregious in their behavior as their debt is "secured by real property". They are no interested in bringing the debtor current, as the asset had greater value than any refinance of repayment plan could provide. This is especially true if there is mortgage insurance in place. The collection activity is tenacious and unforgiving. The sad matter is that agencies/contractors with the D.C. government to assist homeowners are more interested in counts of clients processed, than counts resolved in favor of the homeowner.

Through all of this, I learned never to accept "no" as a final answer. I stayed fast, pushing back as hard as I could, against the ill wind of bad collection activity. Unfortunately, this took a dangerous toll on my health and mental wellbeing. I lived for a considerable time in fear of living on the streets, and developed

a contingency plan when all failed. However, there were those who did help championing my cause, such as the Legal Aid Society of Washington.

These are just a few examples, but we need better financial education for the consumer. Consumers need to overcome their reluctance to seek help. They too often resign themselves believing that these situations are resolvable on their own, without full awareness they could inadvertently open the door for continual injurious actions by collectors. Consumers need the proposed protections against an industry whose purpose is to collect the debt at any cost. More distressing is the people working for the collection agencies who just see it as "business as usual".

Most importantly, the legislation B24-357 may not go far enough but it does provide protections against harassment, cleverness of collectors who find ways to disguise their collection activities and practices, and other activity injurious to debtors who have simply lost hope. The bill will the beneficial and offers some relief, as the city and our nation emerges from the recent public health emergency.

Thank you.

Respectfully,

Jeremiah Montague, Jr.
2914 25th Street NE
Washington, DC 20018-2510

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General

Statement of Wendy J. Weinberg
Senior Assistant Attorney General
Office of the Attorney General for the District of Columbia

Before the
Committee of the Whole
Phil Mendelson, Chairman

Public Hearing
Bill 24-357, Protecting Consumers from Unjust Debt Collection
Practices Amendment Act of 2021
November 29, 2021

Introduction

Good afternoon Chairman Mendelson, Councilmembers, staff and residents of the District. My name is Wendy Weinberg, and I am a Senior Assistant Attorney General in the District of Columbia's Office of the Attorney General (OAG). I am here to express Attorney General Karl Racine's strong support for Bill 24-357.

Debt Collection in the District

A surprisingly high percentage of District residents are dealing with debt in collections.[1] Forty-five perfect of District residents of color are facing calls and other debt collection activities. District-wide, 33% of residents contend with these activities. Meanwhile, consumers are facing increasing debts. More than a quarter of District residents reported using credit cards or loans to meet their spending needs during the pandemic,[2] and the median amount of debt in collections in the District is nearly a thousand dollars—$955.

---

[1] See National Consumer Law Center District of Columbia Debt Collection Fact Sheet ("Fact Sheet") at https://www.nclc.org/images/pdf/debt_collection/fact-sheets/D.C.pdf and at Appendix A.

[2] See U.S. Census Bureau, *Methods Used to Meet Spending Needs and Changes in Household's Use of Cash in the Last 7 Days, by Select Characteristics* https://www2.census.gov/programs-surveys/demo/tables/hhp/2021/wk39/spending3_week39.xlsx ("U.S. Census Bureau").

District residents report a variety of problems and harassing conduct in their contacts with debt collectors; I'll now touch on the three most frequently reported problems.[3] The most frequent complaint is collectors calling after consumers have asserted their federal rights to stop debt collectors from communicating with them. The second is repeated harassing calls from collectors. For example, the Consumer Financial Protection Bureau has reported that credit card companies authorize their collectors to make three to 15 calls per account per day. In other words, if a consumer has two accounts, she could receive as many as 30 collection calls per day. The third most frequent complaint, reported by fully 24% of complainants, involves debt collectors making false representations about debt.

My Office has taken action against debt collectors that have failed to follow current law. For example, in 2017 OAG reached a settlement with a debt collection company named Cashcall that made misleading statements to consumers. We returned nearly $2 million to District consumers and secured forgiveness of more than $1 million in debt. And in 2018, OAG joined 42 states in a settlement with Encore Capital Group, Inc., a debt buyer that was collecting on debts using unverified and potentially inaccurate information. That settlement returned over $500,000 in debt relief to District residents.

But despite these victories, updates to the District's debt collection law are sorely needed to protect consumers from a variety of unfair debt practices.

Current District Law

The current permanent statute governing debt collection in the District was enacted in 1971, and much of its language remains frozen in time, (it still refers to telegram fees), even though debt collection practices have evolved significantly over the last fifty years. It is outdated and provides inferior protections than many other state laws. For instance:

1. Most significantly, current law is limited to debt incurred through "consumer credit sales, consumer leases, and direct installment loans." It therefore does not apply to credit card or medical debt. This is particularly concerning given that credit card and medical debt are two major forms of debt exacerbated by the COVID-19 pandemic.[4]

2. Unlike the federal Fair Debt Collection Practices Act, it does not limit a debt collector's ability to communicate a consumer's indebtedness to an employer, instead only narrowly prohibiting the communication of *false information* to an employer. Allowing a debt collector to call an employer can have serious adverse consequences, and it is hard to imagine why most of these communications would be necessary, except to unfairly pressure an employee.

---

[3] See Fact Sheet.

[4] See U.S. Census Bureau, *supra* note 2; see also Steven Reinberg, *U.S. News & World Report* "Many Hit Hard by Pandemic Now Swamped by Medical Debt" (July 19, 2021) https://redirect.is/kbtb30k ("More than 50% of those who were infected with COVID-19 or who lost income due to the pandemic are now struggling with medical debt.").

3. It does not explicitly cover third-party debt buyer activity. Debt buyers are third-party businesses that buy debts from other creditors and attempt to collect on it. Although they purchase debt for pennies on the dollar, debt buyers seek to recover the full balance from consumers and often take consumers to court to do so. Over half of collection cases filed in the District are filed by third-party debt buyers, and we have seen evidence of such debt buyers attempting to collect on debt that is barred by the statute of limitations or relying on incomplete and inaccurate debt information to file suits against consumers.

OAG Supports the Reforms in Bill 24-357

This bill would solve those problems by expanding our debt law protections to cover medical and credit card debt, by prohibiting harassment including communicating with employers about a consumer's debt, and by explicitly covering the activity of third-party debt buyers. It would also clarify that a person cannot be jailed for failing to pay a debt.

Recognizing the pandemic's unique economic impact, the Council protected consumers against almost all debt collection activities under its COVID-19 public health emergency legislation. Those protections have now lapsed. As a result, we can expect a quick pick up in collection activities as debt collectors process their backlog of cases. This makes it more important than ever to permanently update our laws against unfair or deceptive collection activities.

Many residents are still clawing their way out of the pandemic recession, and as they work to pay down their debts, it is essential that they not face unfair collection practices. We can protect our residents from further harm by enacting the basic reforms in this bill. Thank you.

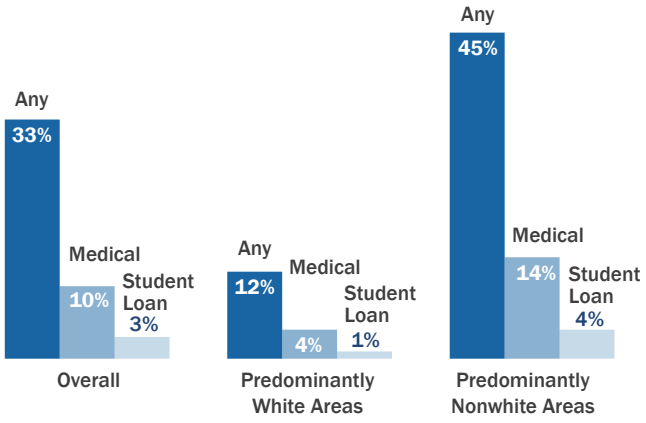
Appendix A

NCLC NATIONAL CONSUMER LAW CENTER

District of Columbia

DEBT COLLECTION FACT SHEET

Percentage of D.C. Residents with Debt in Collections



Median Amount of Debt in Collections in D.C.

Any Debt $955

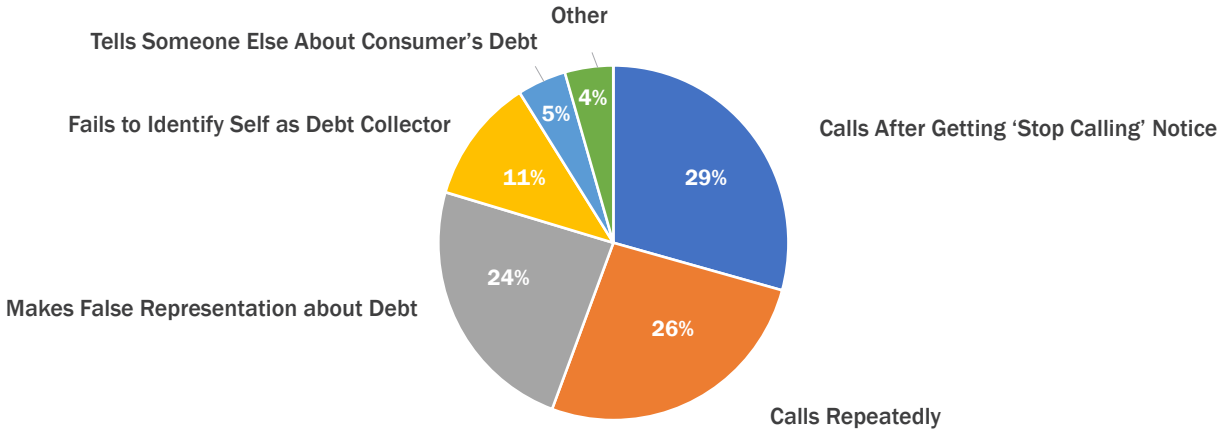
Medical Debt $454

Student Loans $10,154

Debt Collection Complaints by D.C. Residents

2,837

Debt Collection Law Violations Reported by D.C. Residents



Top Companies Reported by D.C. Residents as Compiled by the Federal Trade Commission

1. I.C. Systems, Inc.	2. Credit One Bank	3. Trans World Systems
80	**79**	**58**

General Regional Garnishment Rate in the Northeast*

2.0%

*State specific data is unavailable

Sources: Percentage with debt in collections and median amounts are 2016 figures from Caroline Ratcliffe et al., Debt in America: An Interactive Map, Urban Institute (May 16, 2018), available at http://apps.urban.org/features/debt-interactive-map/. Data about debt collection complaint totals, law violations breakdown, and companies reported are 2017 figures from the Consumer Sentinel Network Data Book 2017 (available at http://www.ftc.gov/policy/reports/policy-reports/commission-staff-reports/consumer-sentinel-network-data-book-2017/main) (data produced to the National Consumer Law Center by the Federal Trade Commission on May 29, 2018 in response to a Freedom of Information Act request). The general regional garnishment rate is aggregated 2013 payroll data that includes primarily student and consumer debt from the ADP Research Institute, Garnishment: The Untold Story (2014), available at https://www.adp.com/tools-and-resources/adp-research-institute/insights/~/media/RI/pdf/Garnishment-whitepaper.ashx. Image credits: District of Columbia by Marvdrock, graduation hat by Rama, and dollar stacks by Farias from the Noun Project; Hospital made by Freepik from www.flaticon.com

TRIAL LAWYERS ASSOCIATION
OF METROPOLITAN WASHINGTON D.C.
WORKING FOR JUSTICE

1919 M STREET NW | SUITE 350
WASHINGTON, DC 20036

PHONE (202) 659-3532
FAX (202) 775-9040
DCTRIALLAWYERS@TLA-DC.ORG
WWW.TLA-DC.ORG

December 14, 2021

Chairman Phil Mendelson
District of Columbia Council
1350 Pennsylvania Avenue, NW, Suite 504
Washington, DC 20004

RE: Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2021

Dear Chairman Mendelson:

Our Association supports bill 24-357 Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2021 as an important tool to help consumers fight the unacceptable practices of debt collectors. The current health emergency brought attention to the vast number of residents who lack the financial security of a personal emergency fund. The ongoing months of the health emergency have forced many more residents into the same precarious situation. Incurring debt is not uncommon for those living and working in the District; however, late payments should not trigger harassment and deception to become an acceptable common practice.

This bill provides limits on the activities of debt collectors and provides a legal recourse for consumers when these activities cross the lines of acceptability. Expanding the District consumer protection laws to include all consumer debt provides necessary protections for consumers in their interactions with debt collectors.

Thank you for your leadership on this legislation.

Respectfully yours,
Trial Lawyers Association of Metropolitan Washington, DC

/s/ W. Charles Meltmar
W. Charles Meltmar
President

/s/ Christopher T. Nace
Christopher T. Nace
Chair, Legislative Committee

Center for Responsible Lending

Before the Committee of the Whole
Council of the District of Columbia
Public Hearing Regarding Bill 24-357:
The Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2021
November 29, 2021
Statement of Yasmin Farahi of the Center for Responsible Lending

Chairman Mendelson, Members of the Council of the District of Columbia, and Committee staff:

Thank you for the opportunity to provide a statement on the proposed bill, The Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2021. We are submitting this statement to express our strong support for the proposed bill. We commend the Council for passing the emergency and temporary versions of this important legislation.

CRL is a nonprofit, non-partisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. CRL is an affiliate of Self-Help, one of the nation's largest nonprofit community development financial institutions. For 40 years, Self-Help has created asset-building opportunities for low-income individuals, rural communities, women, and families of color. In total, Self-Help has provided over $9 billion in financing to 172,000 homebuyers, small businesses, and nonprofit organizations and serves more than 160,000 mostly low income families through 72 credit union branches in North Carolina, California, Florida, Illinois, South Carolina, Virginia, Washington, and Wisconsin.

The proposed legislation promotes best practices for state debt collection laws in a number of ways, including going beyond the floor set by the Consumer Financial Protection Bureau by providing additional anti-harassment protections and covering both first and third party debt collectors. States such as Washington, Colorado, California, New York, and North Carolina have passed similar measures, and these changes have been to the benefit of consumers. Importantly, the proposed bill improves upon the California law, with heightened documentation requirements to establish proof of debt. Our research in California found that the law there was not strong enough to protect against the wrong consumer being sued for the wrong amount. Heightened legal requirements such as providing original, account level documentation for every step in the chain of title, as required in New York, are recommended to ensure that consumers are sufficiently protected.

For more on the experience in California, please see *Court System Overload: The State of Debt Collection in California after the Fair Debt Buyer Protection Act*, which can be found at

https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-california-debt-oct2020.pdf.

We once again commend the Council for putting the emergency and temporary versions of this legislation in place, and we strongly support passage of the proposed bill. Thank you for this opportunity to provide input on this important piece of legislation.

TrueAccord
16011 College Blvd, Suite 130 - Lenexa, KS 66219
www.TrueAccord.com

December 14, 2021

Council of the District of Columbia
Committee of the Whole
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Submitted via email to: cow@dccouncil.us.

RE: TrueAccord Corp.'s Written Testimony on B34-357 - Unjust Debt Collection Practices Amendment Act of 2021

Dear Chairman Mendleson and Members of the Council:

My name is Kelly Knepper-Stephens and I am General Counsel and Chief Compliance Office for TrueAccord Corp. (TrueAccord). On behalf of TrueAccord, I appreciate the opportunity to submit comments to the Council on the Unjust Debt Collection Practices Amendment Act of 2021, B24-357. B24-357 seeks to ensure debt collectors are collecting on valid debts through District-specific standards, however, as currently proposed, one provision of the amendment has the unintended consequence of putting hundreds of thousands of consumer records and sensitive consumer data at risk. We have proposed alternative language that will both avoid this unnecessary exposure and protect consumers.

Digital Debt Collection
TrueAccord is a digital-first debt collection company, founded eight years ago to improve the experience of consumers in debt collection. We aim to change the debt collection process using technology, so consumers can take care of their debt at their convenience and at a pace that works for them, while giving them the time they need to get back on their feet. We enter into contracts with eCommerce companies, lenders, debt buyers, and service providers to provide collection services on their past due accounts.

Almost all TrueAccord communications with consumers (96%) happen electronically with no agent interaction—as consumers prefer and demand—providing immediate access to information, answers, and documentation. The remaining 4% of consumers interact by inbound email or phone call with any of our over 60 customer care agents located in our Lenexa, Kansas headquarters.

We have reached out to over 26 million consumers since our founding and many of these consumers take the time to provide positive feedback about their TrueAccord debt collection experience. TrueAccord earned an A with the Better Business

Bureau and has a 4.7 out of 5 stars on Google Reviews. For example, as Jason B. publicly commented in October of this year:

> This company has a terrific approach and after Covid I fell behind on one of my accounts which caused me to take a hit on my credit report and the last thing I needed was some abusive collection agency barking at me. True Accord was just the opposite... They treated me like I was one of them and asked me if I wanted to set up a payment plan without any pressure so I was actually kinda excited about taking care of my obligation. I'm all caught up and back on track and I can't Thank them enough for the way they treated me.. very family like.

As one of the only companies leveraging electronic communication and machine learning in virtually all aspects of our customer interaction, TrueAccord is happy to provide data and information to assist lawmakers and regulators. In fact, our Founder, Ohad Samet, served on the Consumer Advisory Committee to the Consumer Financial Protection Bureau (CFPB) and currently sits on the Consumer Advisory Committee to California's Department of Financial Protection and Innovation. TrueAccord also provided significant feedback to the CFPB concerning Regulation F, a comprehensive overall of the Fair Debt Collection Practices Act (FDCPA) that took effect, November 30, 2021, both as a Small Entity Representative to the Small Business Review Panel for the Debt Collection Rulemaking and directly to the Bureau.

B24-257 Conflicts with the FDCPA

The proposed new subsection (m) to Section 28-3814 in B24-357 requires that the current creditor provide the debt collector all required underlying account documentation *before* beginning collection. This is different from the requirements in the FDCPA, where a debt collector need not obtain validation documentation unless and until a consumer disputes their account. *See* 15 USC 1692g. Under this federal law, debt collectors do not obtain all the underlying account documents for each account prior to collection. Instead, debt collectors cease all communications following a dispute, request the account documentation from the current creditor, and only resume collection activity after providing the validation information to the consumer. The federal dispute provision protects consumers in two important ways (1) it protects consumers against debt collection of invalid accounts and (2) it protects consumers personal data by limiting the unnecessary transfer of documentation with sensitive personal information.

Collection of Valid Debts

If a consumer believes the debt a collector is attempting to collect is invalid, perhaps the balance is too high, the debt is a result of identity theft, or the consumer does not recognize the current creditor; the consumer can dispute the debt and all debt collection must stop until the consumer has been provided with the documentation to validate the account. TrueAccord allows consumers to dispute in a variety of fashions: by a "dispute this debt" link contained in our emails, by a form on our

consumer facing portal, by email to support@trueaccord.com, by calling us, or by sending in a letter. Once we receive a dispute, we cease collection activity until we validate the debt by providing the consumer with the validation documentation.

Over the past eight years working with millions of consumers, only a very small percentage have disputed their debt: exactly 1.9% of consumers. Debt collectors want to provide a disputing consumer with the proof of their account so that the debt collector can resolve the account - sometimes in the consumer's favor. Of those disputed accounts, 12.9 percent resolve in the consumer's favor.

Data Security Risk

The proposed change in B24-357 would require a debt collector to obtain the underlying account documents for *all* DC residents, even when almost all consumers do not dispute their account (98% do not dispute their account). This proposal creates an undo data security risk of transferring and storing hundreds of thousands of underlying account documents with sensitive consumer personal information from the current creditor to the debt collector when, in reality, only a tiny portion of consumers dispute their debts and debt collectors can easily obtain these documents per their existing processes once a consumer disputes.

Proposed Change to B24-257

In order to protect consumers' sensitive information, we recommend that proposed new subsection (m) be revised as follows (as also suggested by the industry coalition):

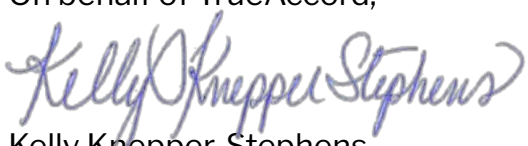
> (m)(1) No debt collector shall collect or attempt to collect a consumer debt, unless the debt collector has a copy of the judgment or a complete ~~and authenticated~~ documentation that the person attempting collection is the owner of the consumer debt, and the debt collector ~~is in~~ has possession of or access to the following information or documents:

As an RMAI Certified Collection Agency, these proposed changes to subsection (m) are in line with the Certification Program requirements on data and documentation required to be in possession of the debt buyer that can be easily obtained by the debt collection company when and if the consumer disputes to validate the account.

These changes reduce the risk inherent in both data transfer and storage by only requiring transfer upon a dispute as long as the agency has access to this documentation prior to beginning collection efforts. This reduced risk benefits consumers, by continuing to safeguard their personal data through minimizing data transfer, and businesses, by reducing the numbers of documents that need to be transferred and stored in a manner consistent with best information security practices.

We very much appreciate the opportunity to provide commentary and the Council's efforts to reform the DC debt collection law. We request that the Council act expeditiously to modify B24-357 as recommended. I welcome any questions that you may have, please send me an email at legal@trueaccord.com.

On behalf of TrueAccord,



Kelly Knepper-Stephens
Chief Compliance Officer and General Counsel
kknepperstephens@trueaccord.com
415-850-9585

cc: legal@trueaccord.com

BARRON & NEWBURGER, P.C.
Mitchell L. Williamson
Of Counsel, Licensed in New Jersey & New York
Phone: (732) 328–9480 | mwilliamson@bn-lawyers.com

November 29, 2021

Submitted via email at: cow@dccouncil.us

Council of the District of Columbia
Committee of the Whole
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Re: Written Testimony on B34-357
(Unjust Debt Collection Practices Amendment Act of 2021)

Dear Chairman Mendelson and Members of the Council:

I am writing with regard to B24-357, or the "Unjust Debt Collection Practices Amendment Act of 2021." I have been a practicing attorney for the past Twenty-Two (22) years, the last Fourteen (14) of which have been devoted to creditors rights, representing both creditors and collectors (debt buyers, agencies and law firms). On a more personal notes, prior to practicing creditors rights law, I was a consumer with debts of my own and found myself the subject of collections on several occasions which gave me a certain perspective when I found myself on the other side of the table.

Based on my experience with both sides of collections I came to understand that the ability for collectors and consumers to communicate is essential. By engaging in communications with collectors, consumers can take control over how they can resolve their debt obligations, improve their credit, and equally avoid the prospect of litigation. I have heard consumers' sighs of relief when they realize that that a collector is offering them both a large discount and flexible payment plan to pay off the debt that has been weighing on them for months or years. As any creditor, original or subsequent owner of an account, will tell you, pre-litigation is the opportune time to resolve a defaulted account. Once an account goes to litigation additional costs are incurred in the collection effort and it is harder for a collector to justify a discount. It is also true that the collector early on in the cycle has an economic incentive to settle a debt prior to engaging in extensive collection efforts and/or sending it to litigation. This incentive works to the consumers' advantage since it gives them leverage in crafting a repayment plan on mutually beneficial terms. That leverage often times allows a consumer to dictate both the timing and the amount of payments, as well as a discount on the amount due. BUT, the benefits just discussed are predicated on the ability of a collector to communicate with a consumer.

At this time, the credit and collections industry is facing a sea change in the way it does business. On November 30, 2021, the Consumer Financial Protection Bureau's ("CFPB") long-awaited debt collection rules will take effect. These rules represent the first extensive review and amendment of the Fair Debt Collection Practices Act ("FDCPA") since its inception in 1997.

Included in the rules is a first-time national call cap standard, allowing for one call contact per week between a consumer and a debt collector. That one conversation, as discussed above, is typically enough for a consumer to hear and consider offers of discounted debt and flexible repayment options. Importantly, that conversation puts the consumer in control of how he or she will resolve the debt obligation. The new rule makes a distinction however, between attempts and consummated calls.

The CFPB rule allows for only one communication per week, but the rule allows for seven call attempts per week, recognizing that it is often extremely difficult to reach a consumer by phone. There are many reasons why a collector may not reach a consumer with just a few phone call attempts, These include limits on the hours when calls make be placed or where a consumer can be reached. Legitimate debt collection calls are increasingly incorrectly blocked by carriers or mislabeled as SPAM, and it is not always easy to locate the most current phone number for a consumer. Allowing for seven attempts per week – rather than the proposed three call attempt per week standard – is critical, because allowing for more call attempts greatly increases the likelihood that the collector will actually connect with the consumer. That one connection is critical to informing the consumer about discounts and repayment plan options, and to putting the consumer in control of how to resolve his or her debt obligation without resort to litigation. It cannot be stressed enough that when an account goes into litigation, the consumers options as to the resolution of the account are greatly diminished if not totally extinguished. More often than not, litigation results in judgments being entered against consumers which is antithetical to the stated goal of this legislation which is to provide relief to consumers dealing with debt.

While the District's proposal contemplates up to three contacts per week, I support the CFPB's standard of one call contact per week, with up to seven permissible attempts until the crucial contact is made. There is a secondary concern, no less important, that in the case of some consumers they may have two separate accounts with a collector. The call attempt cap limits should be on a per account, not per consumer, basis. As each account will have a difference balance, statute of limitations period, and often times creditor, discussions should almost always be on the per-account basis. By way of example, if one account has a significantly shorter statute of limitations, the consumer would likely want to resolve that first to forestall litigation since the impending limitation would force the collector to file suit sooner rather than later least it lose its ability to do so.

Without sufficient opportunity to attempt to connect with consumers, the unintended consequences will be severe. Litigation is typically a last resort for creditors and collectors, but if they are unable to communicate with a consumer, litigation often ensues. Filing a lawsuit against a consumer is the only remedy a creditor or collector has left if the consumer is unreachable.

Flooding the courts with new debt collection litigation couldn't come at a worse time. Just as we are starting to exit the pandemic, it is more important now than ever that consumers with defaulted accounts are able to avoid debt collection lawsuits and negotiate equitable payment plans as part of their individual recovery. Additionally, our nations Courts will be inundated with litigation such as eviction hearings and COVID-related employment claims: to cause an influx of debt collection litigation at the same time would create significant harm both to the court system and to consumers caught up in it.

Based on my 14 years' experience as an attorney involved in collections, I can tell this panel, that in the majority of those case where I had contact with a consumer I was able to resolve the account without the need for further court intervention and to the satisfaction of the consumer. What is unfortunate, and why I submit my comments here, is the fact that I only got involved after a lawsuit had been filed and I had less flexibility as to resolving those accounts. I was always aware that but for that fact, had there been the same conversation prior to suit, the consumer would have fared even better. Based on those experiences and my own prior personal experiences as a debtor in collections, I believe it is critical that the District of Columbia mirror the new national standard for call attempt caps. A standard of three call attempts per week simply shortchanges consumers ability to receive the benefits of connecting with a collector by phone. Once connection is finally made, the consumer will be in control of the process and how to proceed on his or her account, and no more calls for a week will be necessary.

Thank you for the opportunity to submit my testimony.

Respectfully submitted,
BARRON & NEWBURGER, P.C.
Mitch Williamson
Mitchell L Williamson

Before the Committee of the Whole Council of the District of Columbia
Public Hearing Regarding Bill 24-357: The Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2021
November 29, 2021
Testimony of Marceline White

Chairman Mendelson, Councilmembers, and staff:

My name is Marceline White and I'm the Executive Director of the Maryland Consumer Rights Coalition (MCRC). MCRC unites individuals and organizations to form a people-powered movement for economic rights and equity through research, education, advocacy, and direct service. Our 8,500 supporters across the state work to address systemic issues including predatory lending and debt collection practices which deepen poverty and exacerbate the racial wealth gap in Maryland. Nearly 3000 of our supporters reside in Montgomery County and Prince George's County, Maryland.

We are here today in strong support of Bil 24-357 because it will improve the lives of District residents, particularly residents in low income communities and communities of color, which are disproportionately affected by debt and debt collection practices.

First, I commend the Council on its passage of a debt collection moratorium during the pandemic. Those urgent and necessary measures provided critical relief to struggling District residents. Now, I urge you to continue those protections by passing Bill 24-357.

The COVID-19 pandemic created a health and wealth crisis across the country as well as in the District. A recent study[1] found that 8 percent of District residents reported their household didn't have enough to eat in the past 7 days, 13% of households are behind in rent, 24% are having difficulty covering usual household expenses, and 6. 7% of households are unemployed.

Job losses were disproportionately concentrated in low-wage industries where Black and Latinx workers are over-represented. When employees were laid off or let go, many also lost their employer-sponsored health insurance. At the same time, nationally, people of color have experienced a disproportionate share of COVID-19 cases and deaths[2].

Medical Debt

The loss of employer-sponsored health coverage and the disparate impact of COVID cases and deaths in communities of color, underscore the importance of expanding the District's debt collection protections to include medical debt. Medical debt is the leading cause of personal bankruptcies. Unlike traditional

[1] Center on Budget and Policy Priorities, November 10, 2021
[2] KFF, October 2021

consumer products, individuals do not choose medical debt, they are simply seeking care, often in an emergency situation. Even if an individual has insurance and goes to an in-network hospital, one of their caregivers may still be out of network, leading to unaffordable bills.

Although many individuals have recovered from COVID-19, doctors estimate at least 33% may experience one or more symptoms of "long-Covid[3]", while others grapple with long-term heart and lung damage. For these reasons alone, it is critical to include medical debt in the law. In Maryland, a survey[4] that MCRC commissioned found that 12% of Marylander polled had medical debt they were unable to pay; 17% of African-Americans would be unable to pay a $500 medical debt, compared to 7% of white Marylanders, and 17% of Marylanders have delayed or avoided medical care in the past year because of concerns about the costs.

In addition to the healthcare and policy concerns of families delaying care because of financial concerns, Maryland families face draconian consequences should they fall behind on hospital medical debt. A 2020 report, *Preying on Patients*[5], we found that between 2009 and 2018, Maryland hospitals filed 145,746 lawsuits against former patients. In 37, 370 cases, patients had their wages garnished, their bank account wiped out, or a lien put on their home to pay off their hospital debt. In 3,278 cases, the hospital debt drove the patient to declare bankruptcy. The median debt owed: $944. Research further found that these lawsuits were three times more likely to be found in Black and Brown communities in Baltimore.

While this medical debt under $1000 is unaffordable for the former patient, the medical debts owed are less than 5% net income for hospitals. Although the majority of hospitals in Maryland do sue former patients (including Johns Hopkins Hospital which is the parent company of Sibley Hospital), several do not sue their patients to collect medical debts at all.
No one should lose their wages, savings, home or car because they sought treatment at a hospital.

Recognizing this as a health and equity issue, in 2021, the Maryland General Assembly passed HB565/SB514 The Medical Debt Protection Act which expands the timeline to apply for charity care, requires an annual report of each hospitals debt collections and lawsuits, establishes an income-based repayment system, and prohibits liens on a primary home, wage garnishment, and body attachments for medical debt. Currently there is a moratorium on debt collection and lawsuits for medical debt while the income-based repayment system is established.

Substantiation of Debt

In 2016, Maryland, led by AG Brian Frosh, passed legislation requiring stronger substantiation of debt and limiting the practice of 'zombie' debt. Maryland families were experiencing financial hardship for

[3] Medical News Today, October 2021
[4] Gonzales poll, October 2020
[5] Preying on Patients

years following the foreclosure crisis which began in 2008. As a result of some deceptive and toxic mortgage loans, many families struggled to stay in their homes and fell behind on mortgage or other payments. Middle-class Black families in Prince George's County were particularly hard-hit.

Following the foreclosure crisis, debt collection actions increased across the state. In 2018, MCRC released our report *No Exit*, which looked at debt collection practices across the state.
In the report we found that in 2011, there were more than 130,000 debt collection judgements rendered while in 2016, there were 46,719 debt collection judgements in Prince George's, Baltimore County, and Baltimore City alone[6]. Among a number of findings, one important fact to bear in mind: in small claims cases, 2% of consumers had legal representation compared to 98% of plaintiffs.

Several issues became apparent; as debt buyers proliferated, individuals often did not recognize the debt they allegedly owed, and in a number of cases, debt buyers were unable to prove chain of ownership of the debt. In order to provide greater transparency for consumers and ensure accuracy for creditors, Maryland passed legislation[7] which required greater substantiation of debt. Specifically, the legislation requires proof of the existence of the debt, evidence of the terms and conditions of the debt, documentation that the debt buyer or debt collector owns the debt, information about the balance and charge-off balance as well as any fees or other charges.

The Maryland statute appropriately places the onus of proof on the debt collector rather than on unrepresented low-income residents.

Body Attachments

Maryland's Constitution says that "no person shall be imprisoned for debt" and 80 years of state case law makes clear that a person cannot be jailed for disobeying an order to pay money based on a simple contract or debt.

Yet with the growth of the debt collection industry, there has been an increase in abusive debt collection practices, including the issuance of body attachments. Debt collectors request that judges issue body attachments – a " lien on an individual's body" – post-judgement in order to discover what assets defendants have that plaintiffs can garnish or seize.

From 2010 to 2014, the Maryland District Courts issued **1,615 body attachments** (arrest warrants) in civil cases in FY 2014 – about 134 per month. About **77 individuals** were arrested on a body attachment in 2014. Although not commonplace, arrests in debt collection cases are not anomalies nor mistakes. When arrested, defendants may be required to pay bail or a bond, which was found to range from $200 to $3,000. If a defendant cannot pay this bail, he or she can end up languishing in prison for days or weeks

[6] No Exit: how Maryland's Debt Collection Practices Deepen Poverty
[7] https://mgaleg.maryland.gov/mgawebsite/laws/StatuteText?article=gcj&section=5-1203&enactments=true

until he or she can arrange to pay the bail bond set in the case. While this is not a frequent occurrence, it continues to happen in Maryland – resulting in de facto debtors' prisons. A defendant may also be held in jail if they are picked up on a body attachment and the district court or court commissioner is not in session, in which case the individual may be held in jail 24 to 72 hours until they can see a commissioner – for a debt.

There are a number of problems with these modern-day debtors' prisons. First, the practice reifies a two-tier-system of justice. Those who can afford to pay a bail or bond do not go to jail, while those who can't afford to pay remain in jail. Secondly, it criminalizes poverty**.** Creates a vicious cycle of poverty where debt collection attorneys use the court system to help them collect debts – including debts that may legally not be able to be collected upon. Finally, it serves no constructive purpose. Jailing someone for a debt serves no constructive purpose: the individual is not violent, nor are they a danger to the community. The individual could however experience real harm due to a body attachment, including losing their job if they are incarcerated. Job loss, of course, makes it far more difficult to repay a debt.

While Maryland has yet to ban the practice outright, in 2021, the Medical Debt Protection Act did ban the use of body attachments for medical debt-an important first step in eliminating this Dickensian practice.

Conclusion

The District of Columbia rightfully recognized the economic and racial equity concerns of aggressive debt collection during the pandemic. With passage of Bill 24-357, the District has an opportunity to update the current statute, expand protections, and center the needs of working families and communities of color in the District. We support the legislation and urge a favorable report.

Best,

Marceline White, Executive Director

TZEDEK DC
Legal Help for People in Debt

Supplemental Record Testimony of Ariel Levinson-Waldman, Sarah Hollender, and A.J. Huber of Tzedek DC Regarding B24-0357, the Protecting Consumers from Unfair Debt Collection Practices Amendment Act of 2021 (November 29, 2021 Hearing; December 14, 2021 Submission)

Dear Chairman Mendelson and Members of the Council,

At the November 29, 2021, Committee of the Whole Hearing, several witnesses representing debt collectors suggested that Bill 24-0357's limit, in subsection (d)(4), to three phone calls per seven-day period would interfere with the Consumer Financial Protection Bureau's Regulation F, which limits debt collectors to seven calls per seven-day period. 12 CFR Part § 1006.14(b)(2). As discussed at the hearing, we disagree. The Council has full authority to proceed with the three-call limit, and it should do so as a matter of consumer protection policy, for three main reasons.

First, federal rules are clear that the federal regulation is a floor, not a ceiling, and that states can do more to protect their residents. *See* 12 CFR Part § 1006.104 ("Neither the Act nor the corresponding provisions of this part annul, alter, affect, or exempt any person subject to the provisions of the Act or the corresponding provisions of this part from complying with the laws of any State with respect to debt collection practices, except to the extent that those laws are inconsistent with any provision of the Act or the corresponding provisions of this part, and then only to the extent of the inconsistency. For purposes of this section, *a State law is not inconsistent with the Act or the corresponding provisions of this part if the protection such law affords any consumer is greater than the protection provided by the Act or the corresponding provisions of this part.*") (emphasis added).

Second, other state-level governments *already* limit debt collection calls to an extent greater than the CFPB's Reg. F. For example, Massachusetts prohibits more than two calls per week to someone's home or more than two calls per month at some place other than someone's home.[1] Similarly, Washington state prohibits more than three calls per week, only one of which can be at work.[2] Thus, DC would not be branching out into uncharted territory; creditors have already found ways to comply with those other jurisdictions' laws and continue to fully operate. And this also helps highlight that there is no merit to the argument raised at the hearing by debt collector representatives that the Council should do nothing to build on the regulatory floor so that it gives

[1] Office of Attorney General Maura Healey, *Fair Debt Collection*, available at https://www.mass.gov/service-details/fair-debt-collection.
[2] Washington State Office of the Attorney General, *Collection Agencies*, available at https://www.atg.wa.gov/collection-agencies.

Regulation F "time to work". Whether or not the Council acts, there will be states with anti-harassment rules that are more protective than the Trump era CFPB Regulation F rule.

And, third, the record strongly supports the notion that the Council should act and maintain the three-call limit in current DC law and in the bill as introduced by Chairman Mendelson. The record for this hearing includes evidence that debt collection harassment in the form of frequent and abusive collection calls is a serious problem for DC residents. As the testimonies of the Legal Aid Society of the District of Columbia, Tzedek DC, and other organizational and individual witnesses have noted, such harassment has been a longtime problem for District residents.[3] This concern is in both aggregate data and in the stories this Council has heard from individual residents.

As to data, in an extensive survey of DC residents published in 2016, almost half of low-income DC residents reported problems with debt—and of the survey participants with debt-related problems, the most common problem cited (31%) involved calls from debt collectors.[4] Similarly, Consumer Financial Protection Bureau data shows that DC residents have submitted more per-capita debt collection complaints than any state in the entire country except Florida, which had barely more than the District.[5]

This data is powerfully reinforced by individual life stories shared by DC residents and those serving them every day. For example, DC resident Virginia Woodfin similarly testified that "on numerous occasions I received threatening calls and voicemails from unidentified debt collectors who demanded that I pay my debt. The callers were often rude and disrespectful in their language and tone. These calls all left me overwhelmed, fearful, and dismayed."[6]

Similarly, the record and local ABC WJLA accounts include the experience of DC resident Cheryl Gregory. Ms. Gregory, a DC resident and single mother, was threatened by a debt collector that demanded she sign an agreement to pay old debts (including amounts above what she owed) and threatened to have a federal marshal come to her house and evict her from her public housing unit. "I was at work when I was talking to [the collector]," Ms. Gregory said. "I do home care,

[3] *See, e.g.*, Oral testimony of Ariel Levinson-Waldman of Tzedek DC, available at https://dc.granicus.com/MediaPlayer.php?view_id=2&clip_id=6907 at 2:19:18 to 2:20:44; Oral testimony of Jennifer Lavallee of Legal Aid Society of the District of Columbia, available at https://dc.granicus.com/MediaPlayer.php?view_id=2&clip_id=6907 at 2:10:51 to 2:12:08.

[4] *See* DC Consortium of Legal Service Providers, The Community Listening Project (2016), available at www.lawhelp.org/dc/resource/community-listening-project.

[5] Consumer Financial Protection Bureau, *Consumer Response Annual Report, January 1 – December 31, 2020*, at 10 (2021), available at https://files.consumerfinance.gov/f/documents/cfpb_2020-consumer-response-annual-report_03-2021.pdf (307 complaints per 100,000 residents in DC surpassed only by 309 per 100,000 in Florida).

[6] Testimony of Virginia Woodfin at 1, available at https://www.dropbox.com/sh/a9c91dqy6nmas9t/AAALJLnTsM5cbgvr3VhM1Wo7a/11.29.21%20Price%20Gouging%20and%20Debt%20Collection?dl=0&preview=Virginia+Woodfin+Testimony.pdf&subfolder_nav_tracking=1.

and the family member realized that something was wrong. I cried at work. I cried on the way home and almost got into an accident. I was scared I was going to lose everything."[7]

Moreover, as Karen Dale of DC Amerihealth aptly put it in her hearing testimony: "At present, predatory practices in our city add to the stress many low-income residents already face . . . ."[8]

For these reasons, and those supported by the full record, the Council has complete authority to proceed with the three-call limit, and it should reject industry arguments that seek to water down the protections for DC residents.

[7] Oral testimony of Ariel Levinson-Waldman of Tzedek DC, available at https://dc.granicus.com/MediaPlayer.php?view_id=2&clip_id=6907 at 2:18:00 to 2:19:08 (quoting Ms. Gregory); Nick Minock, *D.C. Attorney General's office protects residents against aggressive debt collectors*, WJLA News (July 14, 2021), available at https://wjla.com/news/local/dc-attorney-generals-office-protects-residents-against-aggressive-debt-collectors.

[8] Written Testimony of Karen Dale at 2, available https://www.dropbox.com/sh/a9c91dqy6nmas9t/AAALJLnTsM5cbgvr3VhM1Wo7a/11.29.21%20Price%20Gouging%20and%20Debt%20Collection?dl=0&preview=Karen+Dale+Testimony.pdf&subfolder_nav_tracking=1.

My name is Virginia Woodfin, and I am a lifelong D.C. resident currently residing in Ward 5, where I have lived for 31+ years. I am a 69-year-old woman who had a long career as a social service provider, a profession from which I retired in 2012. Immediately before my retirement I worked for the Coalition for the Homeless for 13 years, in three positions, as an employment development specialist, social services representative, and additions counselor. Before that I worked as a secretary with the Neighborhood Legal Services program for 18 years.

I am honored to appear before the Council to describe how overwhelming debt can be even when one is diligent about financial management. I also want to describe why the changes being proposed in the new debt collection bill are so important to District residents like myself.

In 2015, I began to have marital issues with my former spouse, and in 2017, that marriage came to an end. My husband at that time had a good paying job with the federal government, and for many years he typically reimbursed me for charges on my credit card. This practice continued without any problem for most of our marriage, but it abruptly stopped when we separated, causing a significant impact in my financial situation that I could never have seen coming.

As a result, I began to fall behind on my credit card debt, even with my best efforts to make the payments. It was never a matter of not wanting to pay off my debt. I just did not have the means to do so because of the large reduction in income. Despite my best efforts the debts continued to build, and my husband refused to be of any assistance. I am now facing two separate court cases in which my lender is demanding payment of the debt. Before the pandemic, on numerous occasions I received threatening calls and voicemails from unidentified debt collectors who demanded that I pay my debt. The callers were often rude and disrespectful in their language and tone. These calls all left me overwhelmed, fearful, and dismayed.

I support a permanent change in the law so that debt collectors are unable to contact someone's workplace. I also support any change that keeps debt collectors from being able to call

consumers more than once a week. These kinds of calls only harass. They do nothing to motivate or help a consumer to pay what is owed.

On top of this, I do not think that debt collectors should be allowed to suggest or imply that people commit harmful acts, like selling off their vehicle or finding a wealthy man who can help give them money to pay their debts. This never happened to me, but it did happen to a close friend who is now deceased, and it left her extremely upset. Debt collectors should also be required to identify themselves both with their name and with the name of the company that they work for. Finally, I think that debt collectors should be required to provide information regarding how and where people can access local resources for legal guidance, such as Tzedek DC, the non-profit organization that has been helping me.

I believe this bill will be beneficial to all people being negatively impacted by the harassment of debt collectors, and I support it fully. I hope that you will do everything in your power to make this happen. Thank you.

COMMITTEE OF THE WHOLE
DRAFT COMPARATIVE PRINT
BILL 24-357

D.C. OFFICIAL CODE § 28-3814. DEBT COLLECTION.

(a) This section only applies to conduct and practices in connection with collection of obligations arising from **any consumer debt** ~~**consumer credit sales, consumer leases, and direct installment loans**~~ (other than a loan directly secured on real estate or a direct motor vehicle installment loan covered by Chapter 36 ~~**of Title 28**~~).

(b) As used in this section, the term —

~~**(1) "claim" means any obligation or alleged obligation, arising from a consumer credit sale, consumer lease, or direct installment loan;**~~

~~**(1A) "creditor" means a claimant or other person holding a claim;**~~

(1) "Consumer" means any individual obligated or allegedly obligated to pay any consumer debt.

(2) "Consumer debt" means money or its equivalent, or a loan or advance of money, which is, or is alleged to be, more than 30 days past due and owing, unless a different period is agreed to by the consumer, as a result of a purchase, lease, or loan of goods, services, or real or personal property for personal, family, medical, or household purposes. **Consumer debt shall not include an extension of credit secured by a mortgage.**

(3) "Debt buyer" means a person that is engaged in the business of purchasing charged-off consumer debt or other delinquent consumer debt for collection purposes, whether it collects the consumer debt itself or hires a third party, including an attorney, in order to collect such consumer debt. The term debt buyer does not include a person or entity that acquires delinquent or changed-off debt as an incidental part of acquiring a portfolio of debt that is predominantly not delinquent or charged-off debt.

(4) "~~**d**~~**D**ebt collection" means any action, conduct or practice **undertaken for the purpose of collecting consumer debt.** ~~**in connection with the solicitation of claims for collection or in connection with the collection of claims, that are owed or due, or are alleged to be owed or due, a seller or lender by a consumer; and**~~

(**5**~~**3**~~) "~~**d**~~**D**ebt collector" means **a person, including an original creditor or debt buyer engaging directly or indirectly in debt collection, and any person who sells or offers to sell forms represented to be a collection system, device, or a scheme or method intended or calculated to be used to collect consumer debt.** ~~**any person engaging directly or indirectly in debt collection, and includes any person who sells or offers to sell forms**~~

~~represented to be a collection system, device, or scheme intended or calculated to be used to collect claims~~.

(6) "Original creditor" means the person that owned a consumer debt at the date of default, or the date of charge-off for credit cards, giving rise to a cause of action for its collection.

(7) "Person" means an individual, corporation, business trust, estate, trust partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(8) "Public health emergency" means a period of time for which the Mayor has declared a public health emergency pursuant to § 7-2304.01, or a state of emergency pursuant to § 28-4102.

(c) No ~~creditor or~~ debt collector shall collect or attempt to collect any money alleged to be due and owing by means of any threat, coercion, or attempt to coerce in any **way, including:** ~~of the following ways:~~

(1) the use, or express or implicit threat of use, of violence or other criminal means, to cause harm to the person, reputation, or property of any person;

(2) the **false** accusation or threat to falsely accuse any person of fraud or any crime, or **of** any conduct which, if true, would tend to disgrace such other person or in any way subject **the person to ridicule, contempt, disgrace, or shame;** ~~him to ridicule, or any conduct which, if true, would tend to disgrace such other person or in any way subject him to ridicule or contempt of society;~~

(3) false accusations made to another person, including any credit reporting agency, that a consumer has not paid a just debt, or threat to so make such false accusations;

(4) the threat to sell or assign to another the ~~obligation of~~ the consumer **debt** with ~~an attending~~ **a** representation or implication that the result of such sale or assignment would be that the consumer would lose any defense **in an action seeking to collect such consumer debt or would be subjected to collection attempts in violation of this section** ~~to the claim or would be subjected to harsh, vindictive, or abusive collection attempts~~; and

(5) the threat that nonpayment of an alleged **consumer debt** ~~claim~~ will result in the arrest of any person**;**~~.~~

(6) the threat of any action which the debt collector cannot legally take or which the debt collector does not in fact intend to take;

(7) disclosing or threatening to disclose information concerning the existence of a debt known to be disputed by the consumer without disclosing the fact that the debt is disputed by the consumer;

(8) disclosing or threatening to disclose information affecting the consumer's reputation for credit worthiness with knowledge or reason to know that the information is false; and

(9) disclosing or threatening to disclose the consumer's citizenship status to any individual, organization, or entity.

(d) No **~~creditor or~~** debt collector shall unreasonably oppress, harass, or abuse any person in connection with the collection of or attempt to collect any **consumer debt** **~~claim~~** alleged to be due and owing by that person or another in any **way, including:** **~~of the following ways:~~**

(1) the use of profane or obscene language or language that is intended to unreasonably abuse the hearer or reader;

(2) the placement of telephone calls without disclosure of the caller's identity or with the intent to harass or threaten any person at the called number; **~~and~~**

(3) **absent the person's express written consent, knowingly causing expense to any person incurred by use of a medium of communication, or by concealment of the true purpose of a notice, letter, message, or communication; and** **~~causing expense to any person in the form of long-distance telephone tolls, telegram fees, or other charges incurred by a medium of communication, by concealment of the true purpose of the notice, letter, message, or communication~~**.

(4) communicating with the consumer or any member of the consumer's family or household in such a manner that can reasonably be expected to abuse or harass the consumer or communicating with the consumer or any member of the consumer's family or household at an unreasonable hour or with unreasonable frequency, including;

(A) Making in excess of 4 phone calls per account, inclusive of all phone numbers the debt collector has for the consumer, in any 7-day period. The limit of 4 calls per account in any 7-day period shall not apply to calls made to a debt collector by a consumer, to a single completed phone call made by a debt collector in response to a consumer's request for a returned phone call, to calls where there is no connection or ability to leave a message, or to calls made to a wrong number that is not affiliated with the consumer or the consumer's family. After a completed call between the debt collector and consumer takes place, the debt collector shall not call the consumer back for 7 days unless otherwise requested by the consumer. The consumer may opt-out of receiving phone calls in writing at any time. For purposes of this section, a completed phone call is one in which the debt collector engages in a telephone conversation with the consumer; and

(B) Sending text messages, emails, and private messages through social media platforms prior to obtaining a consumer's express consent to communicate via one or more of these methods; provided, that a debt collector may send an email, text message, or private message to a consumer for purposes of obtaining consent to communicate via the method the debt collector is using to communicate. After obtaining a consumer's consent, sending more than 5 text messages, emails, and private messages per account in any 7-day period unless otherwise agreed to by the consumer. The limit of 5 text

messages, emails, and private messages per account in any 7-day period shall not apply to messages or emails sent to a debt collector by a consumer, to messages or emails sent by a debt collector in response to a consumer's request for a response, or to messages or emails sent to a wrong number or email address that is not affiliated with the consumer or the consumer's family. Debt collectors must include opt-out language in all emails, text messages, and private messages, and consumers shall be able to opt-out of receiving communications from debt collectors via text message, email, or private message at any time;

(5) visiting or threatening to visit the household of a consumer at any time for the purpose of collecting a debt, other than for the purpose of serving process in a lawsuit; and

(6) visiting or threatening to visit the place of employment of a consumer at any time, other than for the purpose of serving process in a lawsuit.

(e) No ~~**creditor or**~~ debt collector shall unreasonably publicize information relating to any alleged indebtedness or ~~**debtor**~~ **consumer** in **such a manner as to harass or embarrass the consumer in any way, including:** ~~**any of the following ways**~~:

(1) the communication of any ~~**false**~~ information relating to a consumer's indebtedness to any employer **or employer's agent**, ~~**or his agent**~~ except**:**

(A) ~~**where**~~ **when** such indebtedness had been guaranteed by the employer or the employer has requested the loan giving rise to the indebtedness**; or** ~~**and except**~~

(B) ~~**where**~~ **when** such communication is in connection with an attachment or execution after judgments as authorized by law;

(2) the disclosure, publication, or communication of ~~**false**~~ information relating to a consumer's indebtedness to any relative**,** ~~**or**~~ family member**, friend or neighbor of the consumer, except:** ~~**of the consumer unless such person is known to the creditor or debt collector to be a member of the same household as the consumer, except**~~

(A) through proper legal action or process**;**

(B) in connection with a matter related to a deceased consumer's estate; or

(C) at the express and unsolicited request of the relative or family member;

(3) the disclosure, publication, or communications of any information relating to a consumer's indebtedness by publishing or posting any list of consumers, except for the publication and distribution of "stop lists" to point-of-sale locations where credit is extended, or by advertising for sale any **consumer debt** ~~**claim to enforce payment thereof**~~ or in any other manner other than through proper legal action, process, or proceeding; and

(4) the use of any form of communication to the consumer, which ordinarily may be seen by any other persons, that displays or conveys any information about the alleged **consumer debt** ~~**claim**~~ other than the name, address, and phone number of the ~~**creditor or**~~ debt collector.

(f) No ~~**creditor or**~~ debt collector shall use any **unfair,** fraudulent, deceptive, or misleading representation**, device,** or **practice** ~~**means**~~ to collect **a consumer debt** ~~**or attempt to collect claims**~~ or to obtain **information in conjunction with their collection of consumer debts in any way, including:** ~~**information concerning consumers in any of the following ways**~~:

(1) the use of any company name, while engaged in debt collection, other than the **original** creditor or debt collector's true company name;

(2) the failure to clearly disclose in all written communications made to collect or attempt to collect **consumer debt** ~~**a claim**~~ or to obtain or attempt to obtain information about a consumer, that the ~~**creditor or**~~ debt collector is attempting to collect **consumer debt** ~~**a claim**~~ and that any information obtained will be used for that purpose;

(3) any false representation that the ~~**creditor or**~~ debt collector has in his possession information or something of value for the consumer, that is made to solicit or discover information about the consumer;

(4) the failure to clearly disclose the name**, phone number, email address, if used for receipt of communications in connection with collection with a consumer debt,** and full business address of the person to whom the **consumer debt** ~~**claim**~~ has been assigned ~~**for collection**~~, or to whom the **consumer debt** ~~**claim**~~ is owed, at the time of making any demand for money;

(5) any false representation or implication of the character, extent, or amount of a **consumer debt** ~~**claim against a consumer**~~, or of its status in any legal proceeding;

(6) any false representation or false implication that any ~~**creditor or**~~ debt collector is vouched for, bonded by, affiliated with or an instrumentality, agent, or official of the District of Columbia or any agency of the Federal or District government;

(7) the use or distribution or sale of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by a court, an official, or any other legally constituted or authorized authority, or which creates a false impression about its source, authorization, or approval;

(8) any representation that an existing obligation of the consumer may be increased by the addition of attorney's fees, investigation fees, service fees, or any other fees or charges when in fact such fees or charges may not legally be added to the existing obligation; and

(9) any false representation or false impression about the status or true nature of or the services rendered by the ~~**creditor or**~~ debt collector or his business**;**~~**.**~~

(10) initiating a cause of action to collect a consumer debt when the debt collector knows or reasonably should know that the applicable statute of limitations period has expired; or

(11) attaching or garnishing a consumer's funds, or negotiating a settlement agreement on a consumer where the debt collector knows or has reason to know are exempt from attachment or garnishment under federal or state law without letting the consumer know in writing that the funds may be exempt. The notice provided in subsection (m)(2)(A) of this section shall satisfy this requirement

(g) No ~~**creditor or**~~ debt collector shall use unfair or unconscionable means to collect or attempt to collect any **consumer debt** ~~**claim**~~ in any **way, including** ~~**of the following ways:**~~

(1) the seeking or obtaining of any written statement or acknowledgment in any form that specifies that a consumer's obligation is one incurred for necessaries of life where the original obligation was not in fact incurred for such necessaries;

(2) the seeking or obtaining of any written statement or acknowledgment in any form containing an affirmation of any obligation by a consumer who has been declared bankrupt without clearly disclosing the nature and consequences of such affirmation and the fact that the consumer is not legally obligated to make such affirmation;

(3) the collection or the attempt to collect from the consumer all or any part of the ~~**creditor or**~~ debt collector's fee or charge for services rendered;

(4) the collection of or the attempt to collect any interest or other charge, fee, or expense incidental to the principal obligation unless such interest or incidental fee, charge, or expense is expressly authorized by the agreement creating the obligation and legally chargeable to the consumer or unless such interest or incidental fee, charge, or expense is expressly authorized by law; ~~**and**~~

(5) any communication with a consumer whenever it appears that the consumer has notified the creditor that he is represented by an attorney and the attorney's name and address are known**; and**~~.~~

(6) attempting to collect debts owed by a deceased consumer from a person with no legal obligation to pay the amounts alleged to be owed, except to contact the executor of an estate or a person informally performing such functions. When contacting the executor of an estate, or a person informally performing such functions, the debt collector must state in writing that the person being contacted is not personally liable for the debts of the estate.

(h) No ~~**creditor or**~~ debt collector shall use, or distribute, sell, or prepare for use, any written communication that violates or fails to conform to United States postal laws and regulations.

(i) No ~~**creditor or**~~ debt collector shall take or accept for assignment any of the following:

(1) an assignment of any claim for attorney's fees which have not been lawfully provided for in the writing evidencing the obligation; or

(2) an assignment **~~for collection~~** of any **consumer debt** **~~claim upon which suit has been filed or judgment obtained,~~** without **evidence that written notice from the assigning debt collector was first provided to the consumer** **~~the creditor or debt collector first making a reasonable effort to contact the attorney representing the consumer~~**.

(j) **Repealed.** **~~(1) Proof, by substantial evidence, that a creditor or debt collector has willfully violated any provision of the foregoing subsections of this section shall subject such creditor or debt collector to liability to any person affected by such violation for all damages proximately caused by the violation.~~**

~~(2) Punitive damages may be awarded to any person affected by a willful violation of the foregoing subsections of this section, when and in such amount as is deemed appropriate by the court and trier of fact.~~

(k) No **~~creditor,~~** debt collector**~~, or collection agency,~~** or **~~their~~** **its** representatives or agents shall contact consumers by telephone **or text message** before 8 a.m. or after 9 p.m. EST or EDT, whichever time zone is in effect.

(1) Notwithstanding any other provision of law, when the applicable statute of limitations period for an action to collect consumer debt has expired, any subsequent payment toward or written or oral affirmation of such consumer debt shall not extend the limitations period.

(m)(1) Except as provided in paragraph (3) of this subsection, no debt collector shall collect or attempt to collect a consumer debt unless the debt collector has complete documentation that the debt collector is the owner of the consumer debt, and the debt collector is in possession of or has immediate access to the following information or documents:

(A) Documentation of the name of the original creditor as well as the name of the current creditor or owner of the consumer debt;

(B) The consumer's last account number with the original creditor;

(C) A copy of the signed contract, signed application, or other documents that provide evidence of the consumer's contractual or other liability and the terms thereof. For a revolving credit account, the most recent monthly statement recording a purchase transaction, last payment, balance transfer, or extension of credit shall be deemed sufficient to satisfy this requirement;

(D) The date that the consumer debt was incurred; provided, that in the case of a revolving credit account, the date that the consumer debt was incurred shall be the date of the most recent purchase, payment, balance transfer, or last extension of credit;

(E) The date and amount of the last payment by the consumer, if applicable; and

(F) An itemized accounting of the amount claimed to be owed, including the amount of the principal; the amount of any interest, fees or charges; and whether the charges were imposed by the original creditor, a debt collector, or a subsequent owner of the debt. If the consumer debt arises from a credit card account that has been charged off, the itemized accounting shall be measured from the charge-off balance and shall include copies of the charge-off statement and the most recent monthly statement recording a purchase transaction, last payment, or balance transfer.

(G) If the consumer debt has been reduced to a judgment, a copy of the judgment as originally issued, complete documentation establishing that the debt collector is the owner of the judgment, and an itemized accounting of the balance due on the judgment.

(2)(A) In the first written communication with the consumer regarding charged-off debt, a debt collector shall provide written notice to the consumer that the consumer may request that the debt collector provide the information or documents identified in paragraph (1) of this subsection to the consumer, or if the consumer debt has been reduced to a judgment, the documents and information identified in paragraph (1)(G) of this subsection. The notice shall set forth, in boldface type, which is a minimum of 12-point type, the following statement:

"If your debt has not been reduced to a judgment by a court, you have the right to request the following information concerning your debt:

(1) The name of the original creditor, and the name of any other owners of your debt, including the current owner;

(2) Your last account number with the original creditor;

(3) A copy of the signed contract, application, or other documents which show your obligations;

(4) The date your debt was incurred;

(5) The date of your last payment, if applicable; and

(6) An itemized accounting of the alleged debt, including the amount of any principal interest, fees, or charges, and whether the charges were imposed by the original creditor, a debt collector, or other owner of the debt. For credit cards, the itemized accounting is measured from the charge-off balance.

If your debt has been reduced to a judgment by a court, you have a right to a copy of the judgment, documentation establishing that the debt collector is the owner of the judgment, and an itemized accounting of the current balance due on the judgment.

You may request the above information by contacting us by phone, mail, or email at the following:

Address:

Phone:

E-mail Address:

You might have income or resources that are protected from being taken by debt collectors. These might include certain sources of income, funds, or property, including, but not limited to, Social Security, Supplemental Security Income (SSI), disability or unemployment benefits, veteran's benefits, or child support payments. If you believe your property or income may be protected, you may wish to seek legal advice, including at a legal services provider or legal aid office, before paying this debt."

(B) If the person to whom the notice is sent is the Executor or Administrator of an estate, or a person informally performing such functions, the word "your" may be replaced in the notice with another appropriate word or words.

(C) The written notice required pursuant to subparagraph (A) of this paragraph shall be provided to the consumer in English and Spanish; provided, that if a language other than Spanish is principally used in the original contract with the consumer or by the debt collector in the initial oral communication with the consumer, notice required by subparagraph (A) of this paragraph shall be provided to the consumer in that language and English.

(D) Upon receipt of the first request by a consumer for any of the information identified in paragraph (1) of this subsection, the debt collector shall send all of the information listed in paragraph (1) of this subsection to the consumer in writing within 15 days of the receipt of the request and shall cease all collection of the consumer debt until such information is provided.

(3) The provisions of this subsection shall not apply to original creditors collecting or attempting to collect their own debt.

(n)(1) A debt collector who enters into a payment schedule or an agreement on terms to resolve consumer debt shall send a written copy of the payment schedule or settlement agreement to the consumer within 7 days.

(2) A consumer shall not be required to make a payment on a payment schedule or agreement on terms to resolve a consumer debt until the written agreement required by paragraph (1) of this subsection has been provided by the debt collector. Without limiting the foregoing, a debt collector may accept a payment on a payment schedule or settlement agreement before the complete, written agreement has been provided by the debt collector if all material terms of the payment schedule or settlement agreement have been disclosed to the consumer in writing or by phone; provided, that the debt collector must send the information discussed on the phone in writing after the call.

When providing this information to the consumer in writing, the debt collector shall include a statement in boldface, which is a minimum of 12-point type, that reads:

"You might have income or resources that are protected from being taken by debt collectors. These might include certain sources of income, funds, or property, including, but not limited to, Social Security, Supplemental Security Income (SSI), disability or unemployment benefits, veteran's benefits, or child support payments. If you believe your property or income may be protected, you may wish to seek legal advice, including at a legal services provider or legal aid office, before paying this debt."

(o) Any action for the collection of a consumer debt that is commenced on or after September 1, 2021, shall only be commenced within 3 years of accrual. This period shall apply whether the legal basis of the claim sounds in contract, account stated, open account, or other cause, and notwithstanding the provisions of any other statute of limitations unless that statute provides for a shorter limitations period. This time period also applies to contracts under seal.

(p) Immediately prior to commencing a legal action to collect a consumer debt, the plaintiff shall undertake a reasonable investigation to verify the defendant's current address for service of process. At the time of filing the initial pleading, the plaintiff must submit proof of address verification. At the time of filing the proof of service, the plaintiff must include with the proof of service a photograph with a readable time stamp indicating the date and time of service and readable global positioning system (GPS) coordinates indicating the location of service.

(q) In a cause of action initiated by a debt collector to collect a consumer debt, the debt collector shall attach to the complaint or statement of claim a copy of the signed contract, signed application, or other documents that provide evidence of the consumer's liability and the terms thereof, and shall allege or state the following information in the complaint or statement of claim:

(1) A short and plain statement of the type of consumer debt;

(2) The information enumerated in § 28-3814(m)(1), except that the debt collector shall only include the last four digits of the consumer's last account number with the original creditor;

(3) The basis for any interest and fees charged;

(4) The basis for the request of attorney's fees, if applicable;

(5) The current owner of the consumer debt and a chronological listing of the names of all prior owners of the consumer debt and the date of each transfer of ownership, beginning with the original creditor;

(6) That the suit is filed within the applicable statute of limitations period; and

(7)(A) The following statement in boldface, which is a minimum of 12-point type:

"You might have income or resources that are protected from being taken by debt collectors. These might include certain sources of income, funds, or property, including, but not limited to, Social Security, Supplemental Security Income (SSI), disability or unemployment benefits, veteran's benefits, or child support payments. If you believe your property or income may be protected, you may wish to seek legal advice, including at a legal services provider or legal aid office, before paying this debt."

(B) The statement in subparagraph (A) of this paragraph shall also include the current phone number or numbers for civil legal services in debt collection cases as published by the Superior Court of the District of Columbia.

(r) In a cause of action initiated by a debt collector to collect a consumer debt, prior to entry of a default or summary judgment, or judgment on the pleadings or at trial against a consumer, the plaintiff shall file evidence with the court to establish the amount and nature of the consumer debt. The only evidence sufficient to establish the amount and nature of the debt shall be business records, authenticated by an affiant or affiants with knowledge of how the records were created and kept by the original creditor and any subsequent debt buyer, that shall include the information in § 28-3814(m)(1), except that the debt collector shall only include the last four digits of the consumer's account numbers with the original creditor.

(s)(1) In a cause of action initiated by a debt buyer to collect a consumer debt, prior to entry of a default or summary judgment, or judgment on pleadings or at trial against a consumer, the plaintiff shall file:

(A) an account-specific affidavit by the original creditor setting forth the facts establishing the existence of the debt, and the amount due at the time of sale or assignment;

(B) for each assignment or sale of debt to another debt collector, an account-specific affidavit of sale by the debt seller, completed by the seller or assigner;

(C) an account-specific affidavit that includes the chain of title of the debt, completed by the plaintiff or the plaintiff's witness.

(2) Affidavits required in subparagraphs (A)-(C) of subparagraph (1) of this subsection shall include, as an attachment, business records which verify the information required in the affidavit; provided, that the plaintiff is only required to attach said business records if the information required in the affidavits is not verified within the documents attached to the complaint or statement of claim in subsection (q) of this section.

(3) The Superior Court of the District of Columbia shall issue form affidavits to satisfy the requirements of this subsection.

(t)(1) In a cause of action initiated by a debt collector to collect a consumer debt, the court shall, on its own, prior to entering a judgment, review whether the plaintiff has complied with the requirements of subsections (o)-(s) of this section, and if the plaintiff has not complied, it may dismiss the case; provided, that the court shall dismiss the case with prejudice for substantial or willful noncompliance.

(2) A defendant may raise any violation of this section as a defense. If the court finds that the plaintiff has failed to comply, it may dismiss the case; provided, that the court shall dismiss the case with prejudice for substantial or willful noncompliance.

(u) A debt collector that violates any provision of this section with respect to a consumer may be liable to the consumer for the following:

(1) Actual damages;

(2) Costs and reasonable attorney's fees;

(3) Punitive damages;

(4)(A) If the consumer is an individual, the court may award an additional penalty in an amount not less than $500 per violation and not to exceed $4,000 per violation; or

(B) In the case of a class action, the amount for each named plaintiff as could be recovered under paragraph (4) of this subsection and an amount as the court may determine for each class member, not exceeding the amount per person that could recovered under paragraph (4) of this subsection times the number of class members; and

(5) Any other relief which the court determines proper.

(v) If the plaintiff is the prevailing party in any action to collect a consumer debt, the plaintiff shall be entitled to collect attorney's fees only if the contract or other document evidencing the indebtedness sets forth an obligation of the consumer to pay such attorney's fees, or if otherwise authorized by District law, and subject to the following provisions:

(1) If the contract or other document evidencing indebtedness provides for attorney's fees in some specific percentage, such provision and obligation shall be valid and enforceable up to but not in excess of fifteen percent (15%) of the amount of the consumer debt, excluding attorney's fees and collection costs.

(2) If a contract or other document evidencing indebtedness or District law provides for the payment of reasonable attorney's fees by the consumer, without specifying any specific percentage, such provision shall be presumed to mean the lesser of 15% of the amount of the debt, excluding attorney's fees and collection costs, or the amount of attorney's fees calculated by a reasonable rate for such cases multiplied by the amount of time reasonably expended to obtain the judgment.

(3) The documentation setting forth a party's obligation to pay attorney's fees shall be provided to the court before a court may enforce those provisions. Such documentation must include the agreement for any attorney's fees and documents establishing the basis for the attorney's fees.

(4) Notwithstanding paragraphs (1)-(3) of this subsection, in a case other than one filed in the Small Claims and Conciliation Branch of the Superior Court of the District of Columbia, a prevailing plaintiff may seek to recover attorneys' fees in an amount greater than 15% of the amount of the consumer debt by submitting an application to the court demonstrating why such fees were reasonably necessary to obtain the judgment and providing a detailed breakdown of the fees that identifies the date, time spent, the rate charged, identity and position of the person performing the work, and a description of the work performed for each entry. The Court shall grant recovery of any such fees over the 15% of the amount of the consumer debt only for those fees it makes a finding were reasonably necessary to obtain the judgment.

(w) Before a court may issue a bench warrant for civil arrest for failing to appear in a debt collection case under this section, the following conditions must be met:

(1) The plaintiff must have personally served its motion for contempt, or other related motion or filing, on the defendant; and

(2) The defendant must have failed to appear at two contempt hearings.

(x) Notwithstanding any other law or court rule, a consumer who is compelled to attend pursuant to a civil arrest warrant shall be brought before the court the same day.

(y) Notwithstanding any other law or court rule, no person shall be imprisoned or jailed for failure to pay a consumer debt, nor shall any person be imprisoned or jailed for contempt of court or otherwise for failure to comply with a court order to pay a consumer debt in part or in full.

(z) A violation of the Fair Debt Collection Practices Act, approved September 20, 1977 (91 Stat. 874; 15 U.S.C. § 1692 et seq.), as amended, shall constitute a violation of this section.

(aa)(1) Notwithstanding subsection (a) of this section, subsections (aa) and (bb) of this section shall apply to any consumer debt.

(2) During a public health emergency and for 60 days after its conclusion, no debt collector shall, with respect to any consumer debt:

(A) Initiate, file, or threaten to file any new collection lawsuit;

(B) Initiate, threaten to initiate, or act upon any statutory remedy for the garnishment, seizure, attachment, or withholding of wages, earnings, property, or funds for the payment of a consumer debt to a debt collector; or

(C) Initiate, threaten to initiate, or act upon any statutory remedy for the repossession of any vehicle; except, that debt collectors may accept collateral that is voluntarily surrendered;

(D) Confront or communicate in person with a consumer debt regarding the collection of a debt in any public place at any time, unless initiated by the consumer.

(3) This subsection shall not apply to:

(A) Collecting or attempting to collect a consumer debt that is, or is alleged to be, owed on a loan secured by a mortgage on real property or owed for common expenses pursuant to § 42-1903.12; or

(B) Collecting or attempting to collect delinquent consumer debt pursuant to subchapter XVII of Chapter 3 of Title 1.

(4) Any statute of limitations on any collection lawsuit is tolled during the duration of the public health emergency and for 60 days thereafter.

(bb)(1) During a public health emergency and for 60 days after its conclusion, no debt collector shall initiate any communication with a consumer via any written or electronic communication, including email, text message, or telephone. A debt collector shall not be deemed to have initiated a communication with a consumer if the communication by the debt collector is in response to a request made by the consumer for the communication or is the mailing of monthly statements related to an existing payment plan or payment receipts related to an existing payment plan.

(2) This subsection shall not apply to:

(A) Communications initiated solely for the purpose of informing a consumer of a rescheduled court appearance date or discussing a mutually convenient date for a rescheduled court appearance;

(B) Original creditors collecting or attempting to collect their own consumer debt;

(C) Collecting or attempting to collect a debt which is, or is alleged to be, owed on a loan secured by a mortgage on real property or owed for common expenses pursuant to § 42-1903.12;

(D) Receiving and depositing payments the consumer chooses to make during a public health emergency;

(E) Collecting or attempting to collect delinquent consumer debt pursuant to subchapter XVII of Chapter 3 of Title 1.

(cc) Subsections (aa) and (bb) of this section shall not be construed to:

(1) Exempt any person from complying with existing laws or rules of professional conduct with respect to debt collection practices;

(2) Supersede or in any way limit the rights and protections available to consumers under applicable local, state, or federal foreclosure laws; or

(3) Supersede any obligation under the District of Columbia Rules of Professional Conduct, to the extent of any inconsistency.

DRAFT COMMITTEE PRINT
Committee of the Whole
March 15, 2022

A BILL

24-357

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

_____

To amend DC Code Section 28-3814 to define the terms consumer, consumer debt, original creditor, person, and public health emergency; to include all consumer debt other than a loan directly secured on real estate or a direct motor vehicle installment loan under the District's debt collection law; to prohibit deceptive behavior from debt collectors including threatening to accuse people of fraud, threatening to sell or assign consumer debt such that the consumer would lose defense to a claim or disclosing or threatening to disclose consumer debt information without acknowledging such debt is in dispute or in a way that would harm the consumers reputation for credit worthiness; to prohibit debt collectors from making more than four phone calls per account in any 7-day period; to prohibit debt collectors from sending more than five e-mails, text messages, and private messages per account to a consumer in any 7-day period after obtaining consent from the consumer; to prohibit the communication of consumer indebtedness to employer's, except when such indebtedness is guaranteed by the employer, the employer requests the loan, or the information is an attachment to an execution or judgment allowed by law; to prohibit debt collectors from communicating an individual's indebtedness to family, friends or neighbors except through proper legal processes; to require debt collectors to have complete documentation related to the consumer debt being collected; to require debt collectors who enter into a payment schedule or settlement to provide a written copy of said schedule or agreement; to implement specific requirements for a debt collector when initiating a cause of action against a consumer for consumer debt; to allow for the awarding of damages and other fees to a consumer where a debt buyer or debt collector violates this section; to establish specific requirements for the awarding of attorney's fees where the plaintiff is the prevailing party, the case is not in small claims court, and the attorney is requesting a fee of greater than 15% of the amount of the debt; to establish specific requirements for courts to issue a bench warrant for civil arrest for failure to appear in a debt collection case; to prohibit the imprisonment or jailing or any consumer

for failure to pay consumer debt; and to establish debt collection protections during a public health emergency declared by the Mayor.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2022".

Sec. 2. Section 28-3814 of the District of Columbia Official Code is amended as follows:

(a) Subsection (a) is amended to read as follows:

"(a) This section applies to conduct and practices in connection with the collection of obligations arising from any consumer debt (other than a loan directly secured on real estate or a direct motor vehicle installment loan covered by Chapter 36 of this title).".

(b) Subsection (b) is amended to read as follows:

"(b) As used in this section, the term:

"(1) "Consumer" means any individual obligated or allegedly obligated to pay any consumer debt.

"(2) "Consumer debt" means money or its equivalent, or a loan or advance of money, which is, or is alleged to be, more than 30 days past due and owing, unless a different period is agreed to by the consumer, as a result of a purchase, lease, or loan of goods, services, or real or personal property for personal, family, medical, or household purposes. Consumer debt shall not include an extension of credit secured by a mortgage.

"(3) "Debt buyer" means a person that is engaged in the business of purchasing charged-off consumer debt or other delinquent consumer debt for collection purposes, whether it collects the consumer debt itself or hires a third party, including an attorney, in order to collect such consumer debt. The term debt buyer does not include a person or entity that acquires

delinquent or changed-off debt as an incidental part of acquiring a portfolio of debt that is predominantly not delinquent or charged-off debt.

"(4) "Debt collection" means any action, conduct, or practice undertaken for the purpose of collecting consumer debt.

"(5) "Debt collector" means a person, including an original creditor or debt buyer engaging directly or indirectly in debt collection, and any person who sells or offers to sell forms represented to be a collection system, device, or a scheme or method intended or calculated to be used to collect consumer debt.

"(6) "Original creditor" means the person that owned a consumer debt at the date of default, or the date of charge-off for credit cards, giving rise to a cause of action for its collection.

"(7) "Person" means an individual, corporation, business trust, estate, trust partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

"(8) "Public health emergency" means a period of time for which the Mayor has declared a public health emergency pursuant to § 7-2304.01, or a state of emergency pursuant to § 28-4102.".

(c) Subsection (c) is amended as follows:

(1) The lead-in language is amended as follows:

(A) Strike the phrase "creditor or debt collector" and insert the phrase "debt collector" in its place.

(B) Strike the phrase “of the following ways:” and insert the phrase “way, including:” in its place.

(2) Paragraph (2) is amended to read as follows:

“(2) the false accusation or threat to falsely accuse any person of fraud or any crime, or of any conduct which, if true, would tend to disgrace such other person or in any way subject the person to ridicule, contempt, disgrace, or shame;”.

(3) Paragraph (4) is amended to read as follows:

“(4) the threat to sell or assign to another the consumer debt with a representation or implication that the result of such sale or assignment would be that the consumer would lose any defense in an action seeking to collect such consumer debt or would be subjected to collection attempts in violation of this section;”.

(4) Paragraph (5) is amended as follows:

(A) Strike the phrase “alleged claim” and insert the phrase “alleged consumer debt” in its place.

(B) Strike the period and insert a semicolon in its place.

(5) New paragraphs (6), (7), (8), and (9) are added to read as follows:

“(6) the threat of any action which the debt collector cannot legally take or which the debt collector does not in fact intend to take;

“(7) disclosing or threatening to disclose information concerning the existence of a consumer debt known to be disputed by the consumer without disclosing the fact that the consumer debt is disputed by the consumer;

"(8) disclosing or threatening to disclose information affecting the consumer's reputation for creditworthiness with knowledge or reason to know that the information is false; and

"(9) disclosing or threatening to disclose the consumer's citizenship status to any individual, organization, or entity.".

(d) Subsection (d) is amended as follows:

(1) The lead-in language is amended as follows:

(A) Strike the phrase "creditor or debt collector" and insert the phrase "debt collector" in its place.

(B) Strike the phrase "claim alleged to be due" and insert the phrase "consumer debt alleged to be due" in its place.

(C) Strike the phrase "of the following ways:" and insert the phrase "way, including:" in its place.

(2) Paragraph (2) is amended by striking the phrase "; and" and inserting a semicolon in its place.

(3) Paragraph (3) is amended to read as follows:

"(3) absent the person's express written consent, knowingly causing expense to any person incurred by use of a medium of communication, or by concealment of the true purpose of a notice, letter, message, or communication; and".

(4) New paragraphs (4), (5), and (6) are added to read as follows:

"(4) communicating with a consumer or any member of a consumer's family or household in such a manner that can reasonably be expected to abuse or harass the consumer or any member of the consumer's family or household or communicating with the consumer or any

member of the consumer's family or household at an unreasonable hour or with unreasonable frequency, including;

"(A) Making in excess of 4 phone calls per account, inclusive of all phone numbers the debt collector has for the consumer, in any 7-day period. The limit of 4 calls per account in any 7-day period shall not apply to calls made to a debt collector by a consumer, to a single completed phone call made by a debt collector in response to a consumer's request for a returned phone call, to calls where there is no connection or ability to leave a message, or to calls made to a wrong number that is not affiliated with the consumer or the consumer's family. After a completed call between the debt collector and consumer takes place, the debt collector shall not call the consumer back for 7 days unless otherwise requested by the consumer. The consumer may opt-out of receiving phone calls in writing at any time. For purposes of this section, a completed phone call is one in which the debt collector engages in a telephone conversation with the consumer; and

"(B) Sending text messages, emails, and private messages through social media platforms prior to obtaining a consumer's express consent to communicate via one or more of these methods; provided, that a debt collector may send an email, text message, or private message to a consumer for purposes of obtaining consent to communicate via the method the debt collector is using to communicate. After obtaining a consumer's consent, sending more than 5 text messages, emails, and private messages per account in any 7-day period unless otherwise agreed to by the consumer. The limit of 5 text messages, emails, and private messages per account in any 7-day period shall not apply to messages or emails sent to a debt collector by a consumer, to messages or emails sent by a debt collector in response to a consumer's request for a response, or to messages or emails sent to a wrong number or email address that is not

affiliated with the consumer or the consumer's family. Debt collectors must include opt-out language in all emails, text messages, and private messages, and consumers shall be able to opt-out of receiving communications from debt collectors via text message, email, or private message at any time;

"(5) visiting or threatening to visit the household of a consumer at any time for the purpose of collecting a debt, other than for the purpose of serving process in a lawsuit; and

"(6) visiting or threatening to visit the place of employment of a consumer at any time, other than for the purpose of serving process in a lawsuit.".

(e) Subsection (e) is amended as follows:

(1) The lead-in language is amended to read as follows:

"(e) No debt collector shall unreasonably publicize information relating to any alleged indebtedness or consumer in such a manner as to harass or embarrass the consumer in any way, including:".

(2) Paragraph (1) is amended to read as follows:

"(1) the communication of any information relating to a consumer's indebtedness to any employer or employer's agent, except:

"(A) when such indebtedness had been guaranteed by the employer or the employer has requested the loan giving rise to the indebtedness; or

"(B) when such communication is in connection with an attachment or execution after judgments as authorized by law;".

(3) Paragraph (2) is amended to read as follows:

"(2) the disclosure, publication, or communication of information relating to a consumer's indebtedness to any relative, family member, friend, or neighbor of the consumer, except:

"(A) through proper legal action or process;

"(B) in connection with a matter related to a deceased consumer's estate; or

"(C) at the express and unsolicited request of the relative or family member;"

(4) Paragraph (3) is amended by striking the phrase "claim to enforce payment thereof" and inserting the phrase "consumer debt" in its place.

(5) Paragraph (4) is amended as follows:

(A) Strike the phrase "the alleged claim" and insert the phrase "the alleged consumer debt" in its place.

(B) Strike the phrase "creditor or debt collector" and insert the phrase "debt collector" in its place.

(f) Subsection (f) is amended as follows:

(1) The lead-in language is amended to read as follows:

"(f) No debt collector shall use any unfair, fraudulent, deceptive, or misleading representation, device, or practice to collect a consumer debt or to obtain information in conjunction with the collection of consumer debts in any way, including:".

(1) Paragraph (1) is amended by striking the phrase "creditor or debt collector's" and inserting the phrase "original creditor or debt collector's" in its place.

(2) Paragraph (2) is amended to read as follows:

"(2) the failure to clearly disclose in all written communications made to collect or attempt to collect consumer debt or to obtain or attempt to obtain information about a consumer, that the debt collector is attempting to collect consumer debt and that any information obtained will be used for that purpose;".

(3) Paragraph (3) is amended by striking the phrase "creditor or debt collector" and inserting the phrase "debt collector" in its place.

(4) Paragraph (4) is amended to read as follows:

"(4) the failure to clearly disclose the name, phone number, email address, if used for receipt of communications in connection with collection with a consumer debt, and full business address of the person to whom the consumer debt has been assigned, or to whom the consumer debt is owed, at the time of making any demand for money;".

(5) Paragraph (5) is amended by striking the phrase "claim against a consumer" and inserting the phrase "consumer debt" in its place.

(6) Paragraph (6) is amended by striking the phrase "creditor or debt collector" and inserting the phrase "debt collector" in its place.

(7) Paragraph (8) is amended by striking the phrase "; and" and inserting a semicolon in its place.

(8) Paragraph (9) is amended as follows:

(A) Strike the phrase "creditor or debt collector" and insert the phrase "debt collector" in its place.

(B) Strike the period and insert a semicolon.

(8) New paragraphs (10) and (11) are added to read as follows:

"(10) initiating a cause of action to collect a consumer debt when the debt collector knows or reasonably should know that the applicable statute of limitations period has expired; and

"(11) attaching or garnishing a consumer's funds, or negotiating a settlement agreement on a consumer where the debt collector knows or has reason to know are exempt from attachment or garnishment under federal or state law without letting the consumer know in writing that the funds may be exempt. The notice provided in subsection (m)(2)(A) of this section shall satisfy this requirement.".

(g) Subsection (g) is amended as follows:

(1) The lead-in language is amended to read as follows:

"(g) No debt collector shall use unfair or unconscionable means to collect or attempt to collect any consumer debt in any way, including:".

(2) Paragraph (3) is amended by striking the phrase "creditor or debt collector's fee or charge for services rendered" and inserting the phrase "debt collector's fee or charge for services rendered, unless otherwise provided for by law or contract with the consumer" in its place.

(3) Paragraph (4) is amended by striking the phrase "; and" and inserting a semicolon in its place.

(4) Paragraph (5) is amended by striking the period and inserting the phrase "; and" in its place.

(5) A new paragraph (6) is added to read as follows:

"(6) attempting to collect debts owed by a deceased consumer from a person with no legal obligation to pay the amounts alleged to be owed, except from the executor of an estate

or a person informally performing such functions. When contacting the executor of an estate, or a person informally performing such functions, the debt collector must state that the person being contacted is not personally liable for the debts of the estate.".

(h) Subsection (h) is amended by striking the phrase "creditor or debt collector" and inserting the phrase "debt collector" in its place.

(i) Subsection (i) is amended as follows:

(1) The lead-in language is amended by striking the phrase "creditor or debt collector" and inserting the phrase "debt collector" in its place.

(2) Paragraph (2) is amended to read as follows:

"(2) an assignment of any consumer debt without evidence that written notice from the assigning debt collector was first provided to the consumer."

(j) Subsection (j) is repealed.

(k) Subsection (k) is amended to read as follows:

"(k) No debt collector or its representatives or agents shall contact consumers by telephone or text message before 8 a.m. or after 9 p.m. EST or EDT, whichever time zone is in effect."

(l) New subsections (l)-(cc) are added to read follows:

"(1) Notwithstanding any other provision of law, when the applicable statute of limitations period for an action to collect consumer debt has expired, any subsequent payment toward or written or oral affirmation of such consumer debt shall not extend the limitations period.

"(m)(1) Except as provided in paragraph (3) of this subsection, no debt collector shall collect or attempt to collect a consumer debt unless the debt collector has complete

documentation that the debt collector is the owner of the consumer debt, and the debt collector is in possession of or has immediate access to the following information or documents:

"(A) Documentation of the name of the original creditor as well as the name of the current creditor or owner of the consumer debt;

"(B) The consumer's last account number with the original creditor;

"(C) A copy of the signed contract, signed application, or other documents that provide evidence of the consumer's contractual or other liability and the terms thereof. For a revolving credit account, the most recent monthly statement recording a purchase transaction, last payment, balance transfer, or extension of credit shall be deemed sufficient to satisfy this requirement;

"(D) The date that the consumer debt was incurred; provided, that in the case of a revolving credit account, the date that the consumer debt was incurred shall be the date of the most recent purchase, payment, balance transfer, or last extension of credit;

"(E) The date and amount of the last payment by the consumer, if applicable; and

"(F) An itemized accounting of the amount claimed to be owed, including the amount of the principal; the amount of any interest, fees or charges; and whether the charges were imposed by the original creditor, a debt collector, or a subsequent owner of the debt. If the consumer debt arises from a credit card account that has been charged off, the itemized accounting shall be measured from the charge-off balance and shall include copies of the charge-off statement and the most recent monthly statement recording a purchase transaction, last payment, or balance transfer.

"(G) If the consumer debt has been reduced to a judgment, a copy of the judgment as originally issued, complete documentation establishing that the debt collector is the owner of the judgment, and an itemized accounting of the balance due on the judgment.

"(2)(A) In the first written communication with the consumer regarding charged-off debt, a debt collector shall provide written notice to the consumer that the consumer may request that the debt collector provide the information or documents identified in paragraph (1) of this subsection to the consumer, or if the consumer debt has been reduced to a judgment, the documents and information identified in paragraph (1)(G) of this subsection. The notice shall set forth, in boldface type, which is a minimum of 12-point type, the following statement:

"If your debt has not been reduced to a judgment by a court, you have the right to request the following information concerning your debt:

"(1) The name of the original creditor, and the name of any other owners of your debt, including the current owner;

"(2) Your last account number with the original creditor;

"(3) A copy of the signed contract, application, or other documents which show your obligations;

"(4) The date your debt was incurred;

"(5) The date of your last payment, if applicable; and

"(6) An itemized accounting of the alleged debt, including the amount of any principal interest, fees, or charges, and whether the charges were imposed by the original creditor, a debt collector, or other owner of the debt. For credit cards, the itemized accounting is measured from the charge-off balance.

"If your debt has been reduced to a judgment by a court, you have a right to a copy of the judgment, documentation establishing that the debt collector is the owner of the judgment, and an itemized accounting of the current balance due on the judgment.

"You may request the above information by contacting us by phone, mail, or email at the following:

Address:

Phone:

E-mail Address:

"You might have income or resources that are protected from being taken by debt collectors. These might include certain sources of income, funds, or property, including, but not limited to, Social Security, Supplemental Security Income (SSI), disability or unemployment benefits, veteran's benefits, or child support payments. If you believe your property or income may be protected, you may wish to seek legal advice, including at a legal services provider or legal aid office, before paying this debt."

"(B) If the person to whom the notice is sent is the Executor or Administrator of an estate, or a person informally performing such functions, the word "your" may be replaced in the notice with another appropriate word or words.

"(C) The written notice required pursuant to subparagraph (A) of this paragraph shall be provided to the consumer in English and Spanish; provided, that if a language other than Spanish is principally used in the original contract with the consumer or by the debt collector in the initial oral communication with the consumer, notice required by subparagraph (A) of this paragraph shall be provided to the consumer in that language and English.

"(D) Upon receipt of the first request by a consumer for any of the information identified in paragraph (1) of this subsection, the debt collector shall send all of the information listed in paragraph (1) of this subsection to the consumer in writing within 15 days of the receipt of the request and shall cease all collection of the consumer debt until such information is provided.

"(3) The provisions of this subsection shall not apply to original creditors collecting or attempting to collect their own debt.

"(n)(1) A debt collector who enters into a payment schedule or an agreement on terms to resolve consumer debt shall send a written copy of the payment schedule or settlement agreement to the consumer within 7 days.

"(2) A consumer shall not be required to make a payment on a payment schedule or agreement on terms to resolve a consumer debt until the written agreement required by paragraph (1) of this subsection has been provided by the debt collector. Without limiting the foregoing, a debt collector may accept a payment on a payment schedule or settlement agreement before the complete, written agreement has been provided by the debt collector if all material terms of the payment schedule or settlement agreement have been disclosed to the consumer in writing or by phone; provided, that the debt collector send the information discussed on the phone in writing after the call. When providing this information to the consumer in writing, the debt collector shall include a statement in boldface, which is a minimum of 12-point type, that reads:

"You might have income or resources that are protected from being taken by debt collectors. These might include certain sources of income, funds, or property, including, but not limited to, Social Security, Supplemental Security Income (SSI), disability or

unemployment benefits, veteran's benefits, or child support payments. If you believe your property or income may be protected, you may wish to seek legal advice, including at a legal services provider or legal aid office, before paying this debt."

"(o) Any action for the collection of a consumer debt that is commenced on or after September 1, 2021, shall only be commenced within 3 years of accrual. This period shall apply whether the legal basis of the claim sounds in contract, account stated, open account, or other cause, and notwithstanding the provisions of any other statute of limitations unless that statute provides for a shorter limitations period. This time period also applies to contracts under seal.

"(p) Immediately prior to commencing a legal action to collect a consumer debt, the plaintiff shall undertake a reasonable investigation to verify the defendant's current address for service of process. At the time of filing the initial pleading, the plaintiff must submit proof of address verification. At the time of filing the proof of service, the plaintiff must include with the proof of service a photograph with a readable time stamp indicating the date and time of service and readable global positioning system (GPS) coordinates indicating the location of service.

"(q) In a cause of action initiated by a debt collector to collect a consumer debt, the debt collector shall attach to the complaint or statement of claim a copy of the signed contract, signed application, or other documents that provide evidence of the consumer's liability and the terms thereof, and shall allege or state the following information in the complaint or statement of claim:

"(1) A short and plain statement of the type of consumer debt;

"(2) The information enumerated in § 28-3814(m)(1), except that the debt collector shall only include the last four digits of the consumer's last account number with the original creditor;

"(3) The basis for any interest and fees charged;

"(4) The basis for the request of attorney's fees, if applicable;

"(5) The current owner of the consumer debt and a chronological listing of the names of all prior owners of the consumer debt and the date of each transfer of ownership, beginning with the original creditor;

"(6) That the suit is filed within the applicable statute of limitations period; and

"(7)(A) The following statement in boldface, which is a minimum of 12-point type:

"You might have income or resources that are protected from being taken by debt collectors. These might include certain sources of income, funds, or property, including, but not limited to, Social Security, Supplemental Security Income (SSI), disability or unemployment benefits, veteran's benefits, or child support payments. If you believe your property or income may be protected, you may wish to seek legal advice, including at a legal services provider or legal aid office, before paying this debt."

"(B) The statement in subparagraph (A) of this paragraph shall also include the current phone number or numbers for civil legal service providers in debt collection cases as published by the Superior Court of the District of Columbia.

"(r) In a cause of action initiated by a debt collector to collect a consumer debt, prior to entry of a default or summary judgment, or judgment on the pleadings or at trial against a consumer, the plaintiff shall file evidence with the court to establish the amount and nature of the consumer debt. The only evidence sufficient to establish the amount and nature of the debt shall be business records, authenticated by an affiant or affiants with knowledge of how the records were created and kept by the original creditor and any subsequent debt buyer, that shall include

the information in § 28-3814(m)(1), except that the debt collector shall only include the last four digits of the consumer's account numbers with the original creditor.

"(s)(1) In a cause of action initiated by a debt buyer to collect a consumer debt, prior to entry of a default or summary judgment, or judgment on pleadings or at trial against a consumer, the plaintiff shall file:

"(A) an account-specific affidavit by the original creditor setting forth the facts establishing the existence of the debt, and the amount due at the time of sale or assignment;

"(B) for each assignment or sale of debt to another debt collector, an account-specific affidavit of sale by the debt seller, completed by the seller or assigner;

"(C) an account-specific affidavit that includes the chain of title of the debt, completed by the plaintiff or the plaintiff's witness.

"(2) Affidavits required in subparagraphs (A)-(C) of paragraph (1) of this subsection shall include, as an attachment, business records which verify the information required in the affidavit; provided, that the plaintiff is only required to attach said business records if the information required in the affidavits is not verified within the documents attached to the complaint or statement of claim in subsection (q) of this section.

"(3) The Superior Court of the District of Columbia shall issue form affidavits to satisfy the requirements of this subsection.

"(t)(1) In a cause of action initiated by a debt collector to collect a consumer debt, the court shall, on its own, prior to entering a judgment, review whether the plaintiff has complied with the requirements of subsections (o)-(s) of this section, and if the plaintiff has not complied, it may dismiss the case; provided, that the court shall dismiss the case with prejudice for substantial or willful noncompliance.

"(2) A defendant may raise any violation of this section as a defense. If the court finds that the plaintiff has failed to comply, it may dismiss the case; provided, that the court shall dismiss the case with prejudice for substantial or willful noncompliance.

"(u) A debt collector that violates any provision of this section with respect to a consumer may be liable to the consumer for the following:

"(1) Actual damages;

"(2) Costs and reasonable attorney's fees;

"(3) Punitive damages;

"(4)(A) If the consumer is an individual, the court may award an additional penalty in an amount not less than $500 per violation and not to exceed $4,000 per violation; or

"(B) In the case of a class action, the amount for each named plaintiff as could be recovered under paragraph (4) of this subsection and an amount as the court may determine for each class member, not exceeding the amount per person that could recovered under paragraph (4) of this subsection times the number of class members; and

"(5) Any other relief which the court determines proper.

"(v) If the plaintiff is the prevailing party in any action to collect a consumer debt, the plaintiff shall be entitled to collect attorney's fees only if the contract or other document evidencing the indebtedness sets forth an obligation of the consumer to pay such attorney's fees, or if otherwise authorized by District law, and subject to the following provisions:

"(1) If the contract or other document evidencing indebtedness provides for attorney's fees in some specific percentage, such provision and obligation shall be valid and enforceable up to but not in excess of fifteen percent (15%) of the amount of the consumer debt, excluding attorney's fees and collection costs.

"(2) If a contract or other document evidencing indebtedness or District law provides for the payment of reasonable attorney's fees by the consumer, without specifying any specific percentage, such provision shall be presumed to mean the lesser of 15% of the amount of the debt, excluding attorney's fees and collection costs, or the amount of attorney's fees calculated by a reasonable rate for such cases multiplied by the amount of time reasonably expended to obtain the judgment.

"(3) The documentation setting forth a party's obligation to pay attorney's fees shall be provided to the court before a court may enforce those provisions. Such documentation must include the agreement for any attorney's fees and documents establishing the basis for the attorney's fees.

"(4) Notwithstanding paragraphs (1)-(3) of this subsection, in a case other than one filed in the Small Claims and Conciliation Branch of the Superior Court of the District of Columbia, a prevailing plaintiff may seek to recover attorneys' fees in an amount greater than 15% of the amount of the consumer debt by submitting an application to the court demonstrating why such fees were reasonably necessary to obtain the judgment and providing a detailed breakdown of the fees that identifies the date, time spent, the rate charged, identity and position of the person performing the work, and a description of the work performed for each entry. The Court shall grant recovery of any such fees over the 15% of the amount of the consumer debt only for those fees it makes a finding were reasonably necessary to obtain the judgment.

"(w) Before a court may issue a bench warrant for civil arrest for failing to appear in a debt collection case under this section, the following conditions must be met:

"(1) The plaintiff must have personally served its motion for contempt, or other related motion or filing, on the defendant; and

"(2) The defendant must have failed to appear at two contempt hearings.

"(x) Notwithstanding any other law or court rule, a consumer who is compelled to attend pursuant to a civil arrest warrant shall be brought before the court the same day.

"(y) Notwithstanding any other law or court rule, no person shall be imprisoned or jailed for failure to pay a consumer debt, nor shall any person be imprisoned or jailed for contempt of court or otherwise for failure to comply with a court order to pay a consumer debt in part or in full.

"(z) A violation of the Fair Debt Collection Practices Act, approved September 20, 1977 (91 Stat. 874; 15 U.S.C. § 1692 *et seq*.), as amended, shall constitute a violation of this section.

"(aa)(1) Notwithstanding subsection (a) of this section, subsections (aa) and (bb) of this section shall apply to any consumer debt.

"(2) During a public health emergency and for 60 days after its conclusion, no debt collector shall, with respect to any consumer debt:

"(A) Initiate, file, or threaten to file any new collection lawsuit;

"(B) Initiate, threaten to initiate, or act upon any statutory remedy for the garnishment, seizure, attachment, or withholding of wages, earnings, property, or funds for the payment of a consumer debt to a debt collector; or

"(C) Initiate, threaten to initiate, or act upon any statutory remedy for the repossession of any vehicle; except, that debt collectors may accept collateral that is voluntarily surrendered;

"(D) Confront or communicate in person with a consumer debt regarding the collection of a debt in any public place at any time, unless initiated by the consumer.

"(3) This subsection shall not apply to:

"(A) Collecting or attempting to collect a consumer debt that is, or is alleged to be, owed on a loan secured by a mortgage on real property or owed for common expenses pursuant to § 42-1903.12; or

"(B) Collecting or attempting to collect delinquent consumer debt pursuant to subchapter XVII of Chapter 3 of Title 1.

"(4) Any statute of limitations on any collection lawsuit is tolled during the duration of the public health emergency and for 60 days thereafter.

"(bb)(1) During a public health emergency and for 60 days after its conclusion, no debt collector shall initiate any communication with a consumer via any written or electronic communication, including email, text message, or telephone. A debt collector shall not be deemed to have initiated a communication with a consumer if the communication by the debt collector is in response to a request made by the consumer for the communication or is the mailing of monthly statements related to an existing payment plan or payment receipts related to an existing payment plan.

"(2) This subsection shall not apply to:

"(A) Communications initiated solely for the purpose of informing a consumer of a rescheduled court appearance date or discussing a mutually convenient date for a rescheduled court appearance;

"(B) Original creditors collecting or attempting to collect their own consumer debt;

"(C) Collecting or attempting to collect a debt which is, or is alleged to be, owed on a loan secured by a mortgage on real property or owed for common expenses pursuant to § 42-1903.12;

"(D) Receiving and depositing payments the consumer chooses to make during a public health emergency;

"(E) Collecting or attempting to collect delinquent consumer debt pursuant to subchapter XVII of Chapter 3 of Title 1.

"(cc) Subsections (aa) and (bb) of this section shall not be construed to:

"(1) Exempt any person from complying with existing laws or rules of professional conduct with respect to debt collection practices;

"(2) Supersede or in any way limit the rights and protections available to consumers under applicable local, state, or federal foreclosure laws; or

"(3) Supersede any obligation under the District of Columbia Rules of Professional Conduct, to the extent of any inconsistency.".

Sec. 3. Applicability.

This act shall apply as of November 1, 2022.

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as

provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973, (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.