

August 17, 2020

Via Electronic Mail

The Hon. Phil Mendelson
The Hon. Kenyan McDuffie
The Hon. Charles Allen (co-sponsor)
The Hon. Anita Bonds (co-sponsor)
The Hon. Mary M. Cheh (introducer)
The Hon. Vincent C. Gray
The Hon. David Grosso (co-sponsor)
The Hon. Brianne K. Nadeau
The Hon. Brooke Pinto
The Hon. Elissa Silverman (co-sponsor)
The Hon. Brandon T. Todd
The Hon. Robert White, Jr.
The Hon. Trayon White, Sr. (co-sponsor)

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

Re: Debt Buying Limitation Amendment Act of 2019 – B23-0118

Dear Chairman Mendelson, Councilmember McDuffie, and other Members of the Council of the District of Columbia:

As nonprofit organizations and advocates for the interests of DC residents with lower incomes, we urge you to make the civil rights and equity imperatives of the Debt Buying Limitation Amendment Act of 2019 (B23-0118) – which has been referred to the Committee on Business and Economic Development as well as the Committee of the Whole – a legislative priority during the current Council period. We do so with particular urgency during this public health emergency, as District residents will desperately need the long overdue consumer protections of this bill after the debt collection relief provided by recent emergency legislation expires.

1. The Council should consider the impact of abusive debt collection on its residents after emergency protections expire and take action to mitigate the harm.

We thank and commend you and your fellow leaders on the Council for your support and passage of the Coronavirus Support Congressional Review Emergency Act of 2020 (A23-328) and corresponding temporary legislation, Section 303 of which prohibits creditors and debt collectors from filing new consumer debt collection lawsuits during the public health emergency and for 60 days after its conclusion, among other restrictions. During the same period, debt collectors cannot initiate certain forms of communication with consumers. In response to the legislation, the D.C. Superior Court has effectively suspended hearings in consumer debt collection cases for the same time period.

Just as District leaders working together with the Mayor on the city's reopening have recognized that the dislocations caused by the public health emergency offer a "once in a lifetime opportunity to build a more equitable DC," we ask that the Council also carefully consider what the aftermath of the emergency legislative relief period will look like.

As to debt collection, when the emergency legislation expires, we expect a tsunami of new debt collection lawsuits, new attempts to garnish wages and attach bank accounts, and new debt collection communications with debtors. These will come from two sources. First, they will stem from the cases debt collectors have been holding during the period in which Section 303 restricts filings. Second, we also project a sharp rise in new debt collection activity in the fall of 2020 and into 2021. For example, in the last major recession in 2009, the credit card delinquency rate spiked by 84 percent. *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). With over 109,000 DC residents having filed for unemployment already in 2020 (nearly triple the number for all of 2019), and with their bills and unpaid debts stacking up, we should expect a deluge of past due accounts and debt collection against DC residents.

Unfortunately, as explained below, the District's permanent debt collection law is obsolete and provides no meaningful protection against abusive debt collection practices as to most consumer debt. The Debt Buying Limitation Amendment Act would provide such protection at a time when vulnerable District residents are continuing to experience the destabilizing impacts of the pandemic and long before the District's eventual economic recovery. This is especially important now as the federal Consumer Financial Protection Bureau continues to retreat from enforcement against abusive debt collection practices. *See* Christopher L. Peterson, Consumer Federation of America, *Dormant: The Consumer Financial Protection Bureau's Law Enforcement Program in Decline* (Mar. 12, 2019), <https://consumerfed.org/wp-content/uploads/2019/03/CFPB-Enforcement-in-Decline.pdf>.

Taking action to mitigate the impacts of the post-emergency rush of debt collection by ensuring basic fairness to consumers and preventing abusive debt collection practices is critical to building a more equitable DC. The sharp recent increases in debt collection lawsuits in DC and the projected tsunami of new suits this fall and into 2021 are pressing issues of racial and economic justice, areas where the Council's leadership is particularly critical. The average person with a debt in collections in DC - even pre-emergency - had over \$1,200 of debt subject to collection, and over 43% of people in communities of color have a debt in collections, more than quadruple the rate in white communities. *See* Urban Institute, *Debt in America: An Interactive Map, Debt Delinquency* (as of Dec. 17, 2019), https://apps.urban.org/features/debt-interactive-map/?type=overall&variable=pct_debt_collections&state=11.

2. The Debt Buying Limitation Amendment Act would modernize the District’s obsolete debt collection law at a critical time.

The District’s current (permanent) Debt Collection Act, D.C. Code § 28-3814,¹ 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. And 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 Act. The currently pending Debt Buying Limitation Amendment Act would if adopted modernize the scope of the Debt Collection Act by applying its protections more broadly to “any consumer debt,” including, importantly, medical debt for the first time.² *See* B23-0118 sec. 2(a)(amending D.C. Code § 28-3814(a)).

Another major development in the world of consumer credit not yet accounted for in permanent amendments to the District’s debt collection laws is the rise of the debt buyer – a company that purchases charged-off debts from banks and other creditors for pennies on the dollar. Debt buyers often attempt to collect on the purchased accounts using incomplete, defective, and inaccurate information about the debt; file lawsuits on time-barred debt; and obtain default judgments in local courts using “sewer service” and “robo-signed” affidavits, just to name a few of the issues that have grabbed headlines in recent years.³ Federal regulators and state attorneys general have brought enforcement action after enforcement action to stop debt buyers from using these unfair and abusive debt collection practices. For example, the global, publicly traded debt company Encore Capital, which has well over a billion dollars in annual revenue, along with its subsidiary debt buyer Midland Funding, LLC and its affiliates, were investigated and agreed to pay \$6 million as part of a settlement with the D.C. Office of the Attorney General and 42 states arising out of claims involving Midland filing “robo-signed” affidavits “containing unverified and potentially inaccurate information to support debt-collection lawsuits against

¹ The debt collection provisions in Section 28-3814 of Chapter 28 of the D.C. Code originally were enacted by Congress pre-DC Home Rule Act as part of the District of Columbia Consumer Credit Protection Act of 1971, Pub. L. No. 92-200. Section 3814 (titled “Debt Collection”) is often referred to informally as the D.C. Debt Collection Act or Law.

² The full Council recently recognized the extremely narrow applicability of the current law in enacting the recent emergency legislation. To make the emergency law generally applicable to consumer debt, the Council had to revamp the applicability subsection of the current Debt Collection Act. *See* Act No. 23-328, sec. 303(a)-(b)(amending D.C. Code § 3814(b) to add definitions of “collection lawsuit” and “debt” and excepting the emergency provisions from the scope limitations of § 3814(a)).

³ The debt buyer problem is compounded under the current credit reporting system, where debt buyers often report the debt as a collections account after the same account was previously reported as a charged-off debt, exponentially worsening the economic impact that consumer inability to pay has on poor District residents.

consumers.” [D.C. OAG Newsroom Article](#) (Dec. 4, 2018).

Many state legislatures – such as those in Maryland, North Carolina, California, Colorado, New York, and Idaho – have responded to these and other documented debt collection abuses by reforming their consumer debt collection laws.⁴ Yet in DC, nothing has been done to strengthen or improve on or clarify the permanent provisions of the District’s Debt Collection Act to address unfair, abusive, or deceptive debt collection practices. As we emerge from the emergency legislative period, the Committees with the pending bill have a terrific opportunity to address these issues, conduct a hearing, and move the bill forward.

The pending bill would introduce exactly the sort of reforms needed to protect D.C. consumers from debt collection abuses. And the urgency of that need will peak when the public health emergency legislation expires and consumers are hit in coming months with a flood of new debt collection activity.

In addition to expanding the scope of the current Debt Collection Act to make it broadly applicable to all forms of consumer debt, the bill would introduce important substantiation requirements to protect consumers from baseless or unsubstantiated claims. In particular, the bill would:

- Strengthen provisions in the current law designed to protect consumers from unfair, deceptive, and abusive debt collection practices;
- Require all debt collectors to have in their possession and provide to the consumer certain information concerning the debt before attempting to collect, including such basic items as the name of the current creditor or owner of the debt and an itemization of the principal, interest and fees alleged to be owed;
- Require debt buyers to have additional documentation, including a copy of the credit agreement and documents showing that the debt buyer actually owns the debt;
- Require debt buyers to have and set forth in any court complaint certain information about the debt and to attach documentation of the debt and the debt buyer’s ownership of the debt; and
- Ban all debt collectors from suing on a debt when the collector knows or should know that the statute of limitations has expired.

⁴ For example, the Maryland Consumer Debt Collection Act is broadly applicable to all consumer debt and to debt collection activities of both original creditors and debt collectors, including debt buyers. *See* Maryland Code, Commercial Law, §§ 14-201 to 204. Further, the Maryland Consumer Protection Act expressly prohibits unfair, abusive, or deceptive trade practices in the collection of any consumer debt. *Id.* §13-303(5). There are no comparable provisions in the District’s Debt Collection Act or its Consumer Protection Procedures Act. Similarly, Idaho’s reforms, enacted in March of this year, specifically addressed medical debt collection. *See* Sally Greenberg, Idaho Patient Act a model for other states for protecting consumers from medical debt, NATIONAL CONSUMER LEAGUE, https://www.nclnet.org/idaho_patient_act (last visited July 2, 2020); Idaho Code Ann. § 48-301 (effective Jan. 1, 2021). Under DC’s pending bill 23-0118, DC’s debt collection rules would for the first time apply to protections in medical debt collection lawsuits.

3. Debt collection data trends show that the District cannot afford to wait any longer for these protections.

Even before the emergency, as a recent Washington City Paper headline aptly put it, “More and More D.C. Residents Are Being Sued Over Debt.” [Washington City Paper Debt Article](#) (Feb. 6, 2020). The number of consumer debt collection cases filed in the D.C. Superior Court has increased substantially in recent years. In 2017, there were 4,558 such cases, most of them filed in the Small Claims Branch of the court. By 2019, there were over 7,202 new debt collection case filings, an increase of 58% in just three years. And well over half of those cases were filed by debt buyers. Debt collectors filing these cases often fail to provide the defendant with actual notice of the lawsuit, and, largely as a result of that, more than a third of all debt collection cases filed in the District result in default judgments. Too often, District residents learn of a debt buyer lawsuit and judgment against them for the first time as part of the stress-inducing news that their bank accounts have been attached or their wages are about to be garnished.

This important bill has been introduced in four successive Council periods but has never had a hearing. The Council must act before the tsunami of debt collection activity that will follow the expiration of the special protections currently in place. The Office of the Attorney General for the District of Columbia has informed us that it is supportive of the proposed reforms, and that it will work with the Council and relevant stakeholders throughout the legislative process. We urge you to schedule a hearing on the Debt Buying Limitation Amendment Act and to move the bill through markup and to a legislative session of the Council with all due speed.

Sincerely,

Bread for the City
Catholic Charities Legal Network
Center for Responsible Lending
Color of Change
Columbus Community Legal Services
DC Fiscal Policy Institute
DC KinCare Alliance
DC Volunteer Lawyers Project
Jewish Community Relations Council of Greater Washington
Legal Aid Society of the District of Columbia
Legal Counsel for the Elderly
National Association of Consumer Advocates
National Consumers League
RIP Medical Debt
Tzedek DC

cc: Evan Cash, Committee and Legislative Director, Committee of the Whole
Justin Roberts, Committee Director, Committee on Business and Economic Development
Ogochukwu Agwai, Committee Legislative Counsel, Committee on Business and Economic Development