

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

September 23, 2019

Memorandum

To: Members, Committee on Financial Services

From: FSC Majority Staff

Subject: September 26, 2019, “Examining Legislation to Protect Consumers and Small Business Owners from Abusive Debt Collection Practices”

The Committee on Financial Services will hold a hearing entitled, “Examining Legislation to Protect Consumers and Small Business Owners from Abusive Debt Collection Practices,” on Thursday, September 26, 2019, at 10:00 a.m. in room 2128 of the Rayburn House Office Building. This single-panel hearing will have the following witnesses:

- **The Honorable Rohit Chopra**, Commissioner, Federal Trade Commission
- **Rev. Dr. Cassandra Gould**, Pastor, Quinn Chapel A.M.E. Church (Jefferson City, MO) and Executive Director, Missouri Faith Voices
- **Ms. Bhairavi Desai**, Executive Director, New York Taxi Workers Alliance
- **Ms. April Kuehnhoff**, Staff Attorney, National Consumer Law Center
- **Professor Dalié Jiménez**, Professor of Law, University of California, Irvine School of Law
- **Ms. Sarah Auchterlonie**, Shareholder, Brownstein Hyatt Farber Schreck
- **Mr. John H. Bedard, Jr.**, Owner, Bedard Law Group, P.C.

Additional witnesses may be added.

Overview

Nearly one in three Americans with a credit record indicated in a Consumer Financial Protection Bureau (CFPB or Consumer Bureau) survey that they were contacted by at least one creditor or collector trying to collect one or more debts during the previous year.¹ Many lenders or institutions contract with third-party debt collectors, who will work with or pursue consumers to settle the debt. The third-party debt collectors either purchase the debt, or contract with the lender to receive a portion of the paid debt. When a consumer is not able to settle a debt, the owner of the debt may seize any collateral associated with the loan, such as a home for mortgage defaults, or a vehicle for auto-loan defaults. For non-collateral loans, a debt owner may garnish a consumer’s wages via a court order. Some consumers have even faced imprisonment.

Households struggling with debt – whether it be medical debt, debt from a student loan, or other debt – are forced to make difficult decisions on which debt they pay off. Predatory debt collectors may repeatedly contact consumers, and the Consumer Bureau has fined some for threatening and harassing

¹ Consumer Financial Protection Bureau, “Consumer Experiences with Debt Collection,” (2017) at 5, *available at* https://files.consumerfinance.gov/f/documents/201701_cfpb_Debt-Collection-Survey-Report.pdf#page=5. Also see Hanna Hassani and Signe-Mary McKernan, “71 Million US adults have debt in collections,” Urban Institute (2018), *available at* <https://www.urban.org/urban-wire/71-million-us-adults-have-debt-collections>.

them.² Some predatory debt collectors have not informed consumers of their rights and failed to include important disclosures that would help consumers address their debt.³ There is also strong concern over poor record-keeping and rapid debt sales that result in consumers getting contacted for debts that are either not theirs or no longer owed.⁴ Furthermore, predatory practices, such as confessions of judgment, which are clauses in small business loans making the debtor liable to an amount of the unpaid debt, have been used to limit the legal rights individuals have in seeking recourse through the court system.

Federal Policy

In 1977, Congress enacted Fair Debt Collection Practices Act (FDCPA) in order to help curb abusive debt collection practices.⁵ CFPB has authority to write regulations implementing FDCPA. They also enforce the law, along with the Federal Trade Commission (FTC).⁶ FDCPA defines a debt collector as a third-party entity whose primary business is in collection or pursuing debts owed to a creditor. However, entities pursuing business debts (including small business debts), the government, and a few other exceptions are not covered by FDCPA. A recent court case, *Obduskey v. McCarthy and Holthus LLP*⁷ appeared to narrow the law's protections, including regarding non-judicial foreclosure proceedings. While FDCPA does not cover debt collection practices of first-party creditors, the CFPB may prevent a creditor from committing or engaging in an unfair, deceptive, or abusive act or practice (UDAAP) relating to debt collection.⁸

In May 2019, the Consumer Bureau released a notice of proposed rulemaking⁹ to establish guidelines on how communication may take place between debt collectors and consumers. This proposal would prohibit debt collectors from providing information to credit score furnishers without informing the debtor first. The proposal also suggests a limit of up to 7 collection calls a week, per debt. Under this proposal, debt collectors would have to wait at least one week after making phone contact with the debtor consumer. The proposal would also allow debt collectors to use other methods of communication to contact consumers, including through unlimited email or text messages. Consumer groups have argued that the rule does not go far enough to protect consumers against predatory debt collection practices.¹⁰

Impact on Consumers and Communities of Color

Since the CFPB created and established the Consumer Complaint Database,¹¹ the agency has received the most complaints from consumers about debt collection practices compared to all other consumer financial services or products, receiving approximately 458,708 complaints from July 2011 through December 2018.¹² This represents more than one in four of all consumer complaints in the

² Consumer Financial Protection Bureau, CFPB and the New York Attorney General Settle with Debt Collection Group (2019), available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-and-new-york-attorney-general-settle-debt-collection-group/>.

³ April Kuehnhoff and Ana Girón Vives, Consumer Complaints about Debt Collection: Analysis of Unpublished Data from the FTC 4, National Consumer Law Center (2019), available at <https://www.nclc.org/images/pdf/pr-reports/report-analysis-debt-coll-ftc-data.pdf>.

⁴ Id.

⁵ 15 USC §1692. Also see Congressional Research Service (CRS), "The Fair Debt Collection Practices Act: Legal Framework," (June 10, 2019), <https://www.crs.gov/Reports/IF11247>.

⁶ CFPB and FTC, "Fair Debt Collection Practices Act – CFPB Annual Report 2019," (March 2019), https://files.consumerfinance.gov/f/documents/cfpb_fdcpa_annual-report-congress_03-2019.pdf.

⁷ *Obduskey v. McCarthy and Holthus LLP*, 586 US __ (2019).

⁸ For example, see Bradley, "Does the New Debt Collection Rule Apply to First-Party Creditors?" (June 13, 2019), <https://www.financialservicesperspectives.com/2019/06/does-the-new-debt-collection-rule-apply-to-first-party-creditors/>.

⁹ CFPB Proposed Rule available at https://files.consumerfinance.gov/f/documents/cfpb_debt-collection-NPRM.pdf.

¹⁰ See National Consumer Law Center, <https://www.nclc.org/media-center/consumer-watchdogs-proposed-debt-collection-rule-bites-consumers-authorizes-harassment-by-debt-collectors.html>. See also Center for Responsible Lending, <https://www.responsiblelending.org/media/cfpb-proposed-debt-collection-rule-shortchanges-consumers>.

¹¹ §1013(b)(3) of Dodd-Frank (12 USC §5493).

¹² From July 2011 through December 2018, the CFPB received approximately 1,733,645 consumer complaints. The top three category of consumer complaints during that period are debt collection (458,708 complaints, 26.4% of all complaints), credit or consumer reports (407,047 complaints, 23.4% of all complaints), and mortgages (331,698 complaints, 19.1% of all complaints). See CFPB, "Complaint Snapshot – Debt Collection" (May 2018), Appendix A, available at https://files.consumerfinance.gov/f/documents/bcfp_complaint-

database. In 2018, debt collection practices remained among the highest volume of complaints, with a top concern involving consumers reporting being contacted “too often.”¹³ In another report, the CFPB noted that the complaints involve contacts between 4-8 times a week, with many consumers asking to no longer be contacted. Two thirds of Consumers reported being contacted “too often.” This report also noted that consumers were more likely to report abusive treatment from debt collectors compared to creditors.¹⁴

Furthermore, communities of color are adversely impacted by debt collection. According to the Urban Institute, 45% of borrowers in predominantly non-White areas had a debt in collections, compared to 27% of borrowers in predominantly White areas.¹⁵ Individuals of color also experience adversity in discharging debt in bankruptcy. Data on national bankruptcy showed that “for debtors living in black areas, the odds of having a case dismissed were about twice as high as those of debtors living in white areas, controlling for the court district where the case was filed, income, and other financial characteristics of the debtor.”¹⁶

Different Forms of Debt Collection

Consumers often incur various kinds of debt, including through student loans, mortgage loans, shorter-term small dollar or installment loans, credit cards and other matters involving financial transactions like paying medical expenses.

“Zombie Debt”. In many instances, consumers have noted that the debt is inaccurately assigned to them or already have been paid,¹⁷ including what is referred to as “zombie debt.” Zombie debts often result when debt is sold between third-party collectors over the years. As debt is transferred from owner to owner, records become lost or less reliable, and some are timed out by statutes of limitations. However, the FTC has noted that consumers may be unaware of their legal rights or that their debt has been timed out.¹⁸ Some debt collectors may take advantage of this lack of knowledge when contacting consumers.

Student Debt. Young Americans are increasingly accumulating debt to pursue their education as the total amount of student owed debt surpassed \$1.6 trillion.¹⁹ In 2017, 65% of graduating students left their educational institutions with debt.²⁰ Many student borrowers are defaulting on loans due to pressures of managing their expenses and other types of debt. This is especially problematic for low-income graduates finishing school with more debt and more default vulnerability.²¹ Low-income students lacking family wealth are more obligated to accept loans to receive higher education degrees. Furthermore, for-profit colleges have significantly contributed to students borrowing more to pay for their tuition.²² In 2016, 83% of for-profit college graduates had student loans.²³ Students of color have also been linked to paying the most student debt. According to one report, “78% of black students take out federal loans to

[snapshot debt-collection_052018.pdf](https://files.consumerfinance.gov/f/documents/cfpb_consumer-response-annual-report_2018.pdf), and CFPB, “Consumer Response Annual Report” (March 2019), https://files.consumerfinance.gov/f/documents/cfpb_consumer-response-annual-report_2018.pdf.

¹³ CFPB and Federal Trade Commission, Fair Debt Collection Practices Act, Annual Report (2019), page 1, available at https://files.consumerfinance.gov/f/documents/cfpb_fdcpa_annual-report-congress_03-2019.pdf.

¹⁴ CFPB, “Consumer Experience with Debt Collection,” *supra* note 1, at 7.

¹⁵ Urban Institute, Debt in America: An Interactive Map (last updated, 2017) available at, https://apps.urban.org/features/debt-interactive-map/?type=medical&variable=perc_debt_collect. See also National Consumer Law Center, Racial Disparities in Consumer Debt Collection, available at https://www.nclc.org/images/pdf/debt_collection/fact-sheets/fact-sheet-racial-disparities-in-debt-collection.pdf.

¹⁶ National Consumer Law Center, “1.3.1.5 Race, Ethnicity, and Debt Collection,” available at <https://library.nclc.org/fdc/01030105>.

¹⁷ CFPB, “Consumer Experiences with Debt Collection,” *supra* note 1.

¹⁸ FTC, “[Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration](#)” (2010), at iii.

¹⁹ Teddy Nykiel, “[2019 Student Loan Debt Statistics](#),” Nerd Wallet (2019).

²⁰ The Institute for College Access and Success (TICAS), “[Student Debt and the Class of 2017](#)” (2018), at 1.

²¹ Kristin Blagg, Underwater on Student Debt 2018, available at <https://www.urban.org/research/publication/underwater-student-debt>.

²² Stephanie Riegg Cellini and Rajeev Darolia, “[The for-profit student debt dilemma](#)” (2016).

²³ TICAS, “[Student Debt and the Class of 2017](#),” *supra* note 17, at 10.

attend college, compared to just 57% of white students.”²⁴ Student debt has served as an additional obstacle to consumers looking to obtain home ownership or focus on retirement.²⁵ Student debt can follow individuals throughout their life and restrict the life choices and expenses people make as a result.²⁶

Medical Debt. Debt collectors increasingly contact individuals for their medical bills than other forms of debt. Fifty-nine percent of consumers received calls and letters related to collections of medical debt.²⁷ The costs of treating illnesses and other medical conditions can cause consumers to avoid healthcare services and rely on over-the-counter drugs rather than seeing a medical provider.²⁸ Medical bills can be expensive for households, and the delinquency of payments has led to individuals falling into bankruptcy and hurting their credit. The American Journal of Public Health conducted a survey of 2013-2016 bankruptcy filers and found that 59% of respondents agreed that medical debt played a role in their bankruptcy.²⁹

Debtor Prisons. Debtors’ prisons were first introduced in the 1600s to jail negligent borrowers. Individuals who could not pay off their debts as easily could be subjected to a life sentence. Debtors would remain imprisoned until they acquired funds to pay off their debt or performed years of labor to work off the debt. Despite debtors’ prisoners being banned in 1833, in *Bearden v. Georgia*,³⁰ the Supreme Court ruled in 1983 that judges must distinguish between debtors who are too poor to pay and those who “willfully” refuse to pay their debts.³¹ The decision’s open interpretation has led to what some call modern-day debtor prisons and the criminalization of low-income people who are unable to pay off their debts in time.³² Some state and local courts have even ordered individuals to be arrested and jailed for failing to pay without having a hearing.

Small Business Owners and Confessions of Judgement. As noted above, small business loan borrowers do not enjoy the same protections individual consumers have under federal law. Furthermore, some small business loan terms include a confession of judgement. As a result of these agreements, the debt holder may collect on such a contract, plus damages, immediately after the borrower falls behind in their payments. Confessions of judgement often force a borrower to relinquish defenses that could be used in court, allowing the debt holders to receive a court order to force the financial institution of the debtor to withdraw funds, access the debtor’s wages, or seize goods or property, all without the debtor’s knowledge or consent.³³

Recently, the *New York Times* investigated how this practice has harmed taxi drivers with over-valued taxi medallion loans that have now left thousands of drivers penniless.³⁴ Some consumers looking to earn a living as taxi medallion operators were offered and signed contracts amounting up to \$1 million dollars. These lenders loosened standards and encouraged borrowers to refinance and take out more money

²⁴ Ben Miller, “[New Federal Data Show a Student Loan Crisis for African American Borrowers](#), Center for American Progress” (2017).

²⁵ Jung Choi, Jun Zhu Laurie Goodman, Bhargavi Ganesh, Sarah Stroachak, “[Millennial Homeownership: Why Is It So Low, and How Can We Increase It?](#)” (2018, updated 2019).

²⁶ See House Financial Services Committee (FSC) hearing, “A \$1.5 Trillion Crisis: Protecting Student Borrowers and Holding Student Loan Servicers Accountable,” (Sep. 10, 2019), <https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=404230>.

²⁷ CFPB, “Consumer Experiences with Debt Collection,” supra note 1, at 21.

²⁸ National Consumer Law Center, Medical Debt Collection, available at <https://www.nclc.org/images/Medical-Debt-Collection.pdf>.

²⁹ *Id.*

³⁰ *Bearden v. Georgia*, 461 U.S. 660 (1983)

³¹ Eli Hager, Debtors’ Prisons, Then and Now: FAQ 3 (2015), available at <https://www.justice.gov/usao-sdal/page/file/918356/download>.

³² ACLU, Ending Modern-Day Debtors Prisons, available at <https://www.aclu.org/issues/smart-justice/sentencing-reform/ending-modern-day-debtors-prisons?redirect=feature/ending-modern-day-debtors-prisons>.

³³ House Small Business Committee hearing, “Crushed by Confessions of Judgement: The Small Business Story,” (June 26, 2019), <https://smallbusiness.house.gov/calendar/eventsingle.aspx?EventID=2681>.

³⁴ David M. Rosenthal, “They Were Conned’ -- How Reckless Devastated a Generation of Taxi Drivers” (2019), *New York Times*, available at <https://www.nytimes.com/2019/05/19/nyregion/nyc-taxis-medallions-suicides.html?module=inline>.

when medallion prices rose. Some lenders included confession of judgement provisions in the contracts. As taxi revenue fell, some lenders refinanced terms while others exercised confessions of judgments to garnish wages, seize medallions or other assets, and employed private debt collectors who reportedly harassed affected borrowers after they had defaulted.³⁵

Legislative Proposals

- **H.R. 4403, Stop Debt Collection Abuse Act** is a bipartisan bill sponsored by Reps. Emmanuel Cleaver and French Hill that extends FDCPA to collectors of debt owed to a federal agency, and limits the fees collectors can charge. The bill also clarifies that debt buyers are subject to FDCPA, and it requires a GAO study on the use of debt collectors by local, state and federal agencies. H.R. 4403 is similar to a bipartisan bill from the 115th Congress sponsored by former Reps. Mia Love and Keith Ellison and Reps. Cleaver and Hill.
- **H.R. 3490, Small Business Lending Fairness Act** is a bipartisan bill sponsored by Reps. Nydia Velasquez and Roger Marshall that restricts the use of predatory confessions of judgment for small business owners.
- **H.R. 3948, Debt Collection Practices Harmonization Act** is a bill sponsored by Rep. Gregory Meeks that extends FDCPA to cover debt owed to a state or local government and adds protections to consumers affected by national disasters.
- **Monitoring and Curbing Abusive Debt Collection Practices Act** is a discussion draft sponsored by Rep. Ayanna Pressley that requires CFPB to produce quarterly reports analyzing consumer complaints regarding debt collection. The bill also prohibits the CFPB from issuing a final rule on debt collection that allows unlimited email or texts from debt collectors to consumers.
- **Small Business Fair Debt Collection Protection Act** is a discussion draft that expands FDCPA's protections to cover small business loans, as determined by CFPB in consultation with the Small Business Administration.
- **Non-Judicial Foreclosure Debt Collection Clarification Act** is a discussion draft that reverses the Supreme Court decision in *Obduskey v. McCarthy and Holthus LLP*³⁶ by amending FDCPA to clarify that entities in non-judicial foreclosure proceedings are covered by the law.
- **Equal Protections for Debt Collection Practices Act** is a discussion draft to require that creditors who collect on debts to their own customers may not use more aggressive tactics as third-party debt collectors and must abide by the limitations under the FDCPA
- **Consumer Protections for Medical Debt Collections Act** is a discussion draft that would bar entities from collecting medical debt or reporting it to a consumer reporting agency without giving a consumer notice about their rights under FDCPA and FCRA related to that debt, including a minimum one-year delay before adverse information is reported to a consumer reporting agency. This draft is based, in part, on S. 1581, the Medical Debt Relief Act, sponsored by Sen. Merkley.
- **Fair Debt Collection Practices for Servicemembers Act** is a discussion draft that would prohibit debt collectors from communicating with the commanding officer or officer in charge of any servicemember regarding an outstanding debt, and it would strengthen related prohibitions about false or misleading representations to servicemembers. This is based on S. 3334, the Military Lending Improvement Act from the 115th Congress, sponsored by former Sen. Bill Nelson.
- **Strengthening Legal Protections on Debt Collections Act** is a discussion draft that would prohibit partial payments or any acknowledgment of the debt by a consumer from restarting any previously applicable statute of limitation that has expired.

³⁵ Policymakers have also called on government officials to take action to help struggling taxi drivers and stop these predatory practices. For example, see Rep. Velazquez Press Release, "[Velázquez Asks City Council to Aid Taxi Medallion Holders](#)," (July 26, 2019), and ABC News, "[Ocasio-Cortez calls for tougher oversight of New York City taxi medallion lending](#)," (Aug. 2, 2019).

³⁶*Obduskey v. McCarthy and Holthus LLP*, 586 US _ (2019).