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U.S. HOUSE OF REPRESENTATIVES FINANCIAL SERVICES SUBCOMMITTEE ON
CONSUMER PROTECTION AND FINANCIAL INSTITUTIONS

Regarding

“Slipping through the Cracks: Policy Options to Help America’s Consumers during the Pandemic”

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Testimony of Carla Sanchez-Adams, Texas RioGrande Legal Aid, Inc.
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Introduction and Summary

Chairman Perlmutter, Ranking Member Luetkemeyer, and Members of the Subcommittee, thank you for inviting me to testify today on behalf of Texas RioGrande Legal Aid, Inc. (TRLA) and low-income Texans.

As the leading provider of free legal aid in Texas and the second largest in the country, TRLA serves nearly 25,000 people yearly. TRLA's 20 branch offices provide legal services organized around broad groups: Labor and Employment, Economic and Social Justice, Community Preservation and Empowerment, Public Benefits, Housing, Family, Victim Rights, and Individual Rights. They encompass over 45 practice areas, including immigration, farm worker rights, disaster benefits, disability rights, domestic violence, mental health law, and veteran's benefits. TRLA serves the largest geographic area of any legal aid office in the U.S. It includes the Coastal Bend from Port Lavaca and the Victoria area south to Brownsville, extends along the length of the Rio Grande to El Paso and includes Southwest and South-Central Texas, covering some of the poorest counties in the nation. More than 2.7 million residents of Southwest Texas are considered eligible for TRLA services.

As others have noted, the COVID-19 pandemic triggered a health crisis and a simultaneous economic crisis. Prior to the pandemic, systemic inequalities and disenfranchisement already existed among various socioeconomic¹, racial², and gender³ groups, and COVID-19 exacerbated

¹ Annie Waldman & Paul Kiel, ProPublica, *Racial Disparity in Debt Collection Lawsuits: A Study of Three Metro Areas* (Oct. 8, 2015); Peter A. Holland, *Junk Justice: A Statistical Analysis of 4,400 Lawsuits Filed by Debt Buyers*, 26 Loyola Cons. Law Rev. 179, 218 (Mar. 2014) (“Debt buyers sued disproportionately in jurisdictions with larger concentrations of poor people and racial minorities. For example, Prince George’s County has only 15% of [Maryland’s] population, yet 23% of all debt buyer complaints were filed against Prince George’s County residents.”); Richard M. Hynes, “*Broke but Not Bankrupt: Consumer Debt Collection in State Courts*,” 60 Fla. L. Rev. 1, 3 (2008) (concluding that “civil litigation [in Virginia] is disproportionately concentrated in cities and counties with lower median income and homeownership rates; higher incidences of poverty and crime; and higher concentrations of relatively young and minority residents”). See also Mary Spector and Ann Baddour, “*Collection Texas-Style: An Analysis of Consumer Collection Practices in and out of the Courts*,” 67 Hastings Law Journal 1427, 1458 (June 2016) (Texas study; finding “a somewhat higher likelihood of default judgments in precincts with a higher non-White population”). See generally National Consumer Law Center, Fair Debt Collection § 1.3.1.5 (9th ed. 2018), updated at www.nclc.org/library.

² Bhutta, Neil, Andrew C. Chang, Lisa J. Detting, and Joanne W. Hsu (2020). “*Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances*,” FEDS Notes. Washington: Board of Governors of the Federal Reserve System, September 28, 2020, (documenting that, in 2019, white families, on average, had eight times more wealth than Black families, and five times more wealth than Hispanic families).

³ According to U.S. Census Bureau data, of the 38.1 million people living in poverty in 2018, 56 percent—or 21.4 million—were women. Robin Bleiweis, Diana Boesh, and Alexandra Cawthore Gaines, “*The Basic Facts About Women in Poverty*,” (August 3, 2020), available at

these pre-existing inequalities. In Texas, as in most of the country, a vast majority of individuals live from paycheck to paycheck, without the many safety nets of their wealthier counterparts. Without additional assistance and protection, the continued ripple effects of the pandemic will lead to further financial insecurity.

I. The Rise of Debt Collection Activity During the COVID-19 Pandemic

A. Debt collection lawsuits and post-judgment collection

Amid job cuts and reduced income due to the COVID-19 pandemic, debt collectors have profited.⁴ During 2020, the total number of default judgments in debt collection lawsuits increased in Texas, despite a moratorium on issuing default judgments between April 9 and May 18 and a 21% decrease in new cases filed.⁵ Post-judgment collection activity intensified as well. TRLA observed debt collectors more aggressively seek orders to garnish bank accounts or court appointments of receivers who can collect money from bank accounts. Collectors attempted, and in some cases successfully seized, economic impact payments and unemployment benefits deposited into bank accounts. These opportunistic collection acts diminish the important work of Congress in providing relief and take advantage of the desperate circumstances of many.

1. Client story: Ms. N

Ms. N⁶ is a single mother struggling to support her five minor children, the oldest of which has special needs. After leaving an abusive relationship in the fall of 2018, Ms. N experienced further victimization. A “friend” attempted to traffic Ms. N’s oldest son and simultaneously allowed her debit card to be used to make unauthorized deposits and withdrawals leading to an overdraft of over \$6,600. Because law enforcement found Ms. N’s oldest son abandoned at a park, child protective services removed her children from her care and placed them in the custody of another family member. Ms. N faced depression, but with a lot of effort and determination, worked for all of 2019 to get her children back, go to school, get a job, and become economically and emotionally stable for her family.

https://cdn.americanprogress.org/content/uploads/2020/08/07060425/Women-In-Poverty-UPDATE.pdf?_ga=2.8819511.363012631.1615331060-692144665.1615331060

Women are particularly prone to economic hardship as a result of the prevalence of domestic violence. Women remain in or return to abusive relationships because they lack the financial resources to live independently from their abuser. Adrienne Adams, *The Frequency, Nature, and Effects of Coerced Debt Among a National Sample of Women Seeking Help for Intimate Partner Violence*, *Violence Against Women* 22:1077801219841445 (2019); Ryan Matlow, et. al. *The Impact of Appraisals and Context on Readiness to Leave a Relationship Following Intimate Partner Abuse*, 21 *Violence Against Women* (2015). Abusers foster victims’ economic dependence by interfering with employment, restricting access to or stealing money, hiding financial information, and generating debt in their partner’s name, among other strategies. See Adrienne Adams et al., *Development of the Scale of Economic Abuse*, 14 *Violence Against Women* 563, 563-88 (2008); Angela Littwin, *Coerced Debt: The Role of Consumer Credit in Domestic Violence*, 100 *Calif. Law Rev.* 1 (2012). The consequences for victims include less money to meet basic needs, greater material hardship, and reduced financial self-sufficiency. Adrienne Adams, et al., *Evidence of the Construct Validity of the Scale of Economic Abuse*, 30(3) *Violence Vict.* (2015); Judy Postmus, et al. *Measuring Economic Abuse in the Lives of Survivors: Revising the Scale of Economic Abuse*, 22(6) *Violence Against Wom.* (2015).

⁴ “Debt Collectors Have Made a Fortune This Year. Now They’re Coming for More,” ProPublica (Oct. 5, 2020).

⁵ Ann Baddour and Dr. Ellen Stone, Texas Appleseed analysis of Texas justice court data January 2, 2018 to December 31, 2020, [Forthcoming Publication].

⁶ Throughout this testimony, pseudonyms are used for clients to protect their privacy and protection.

When the pandemic hit Texas and the stay-at-home orders were announced in March 2020, Ms. N's life was thrust into chaos. Her five children could no longer be at school or daycare, and she had to work from home. Working from home was not tenable; her job required her to have a stable internet connection, but her employer received complaints from customers that she had poor internet connection. Ms. N was required to go into her office to work or she would lose her job. Without childcare, she could not leave her children unattended at home, so in April 2020, she lost her job. To make matters worse, Ms. N and her entire family contracted COVID-19 and were ill at home for the entire month of July.

On March 27, 2020, right after the stay-at-home orders went into effect, the bank that had not investigated the unauthorized use of Ms. N's debit card filed suit against her for over \$6,600. The bank filed its lawsuit at the beginning of the pandemic, without any consideration of the difficult circumstances endured by many. Though the bank waited two months to serve Ms. N after filing its lawsuit, it sought a default judgment in July 2020.

2. What about other consumers?

Ms. N is fortunate in that she was able to get legal help to fight the default judgment, but most consumers being sued on a debt do not have attorneys to represent them.⁷ In fact, default judgments make up 61% of all debt collection judgments in Texas.⁸ Once a consumer has a judgment against them, they are susceptible to increased financial instability.

With a minimum of ten years to collect on a judgment, Texan consumers who strive to recover from catastrophic events such as the COVID-19 pandemic or Winter storm Uri, may suddenly (in some cases many years later) lose access to all funds in their bank accounts. Even when consumers have defenses to seizures of exempt funds in bank accounts, such as child support, FEMA assistance, or public benefits, the burden is on the impacted consumer to seek the help of a court to return the funds that should have been protected. Many people are not able to navigate the legal process, so they end up in a financial crisis with no access to money to pay rent or buy food.

3. How do we help?

Current legislative proposals can help provide relief to consumers during this unprecedented time. For example, Congresswoman Beatty's "Relief for Consumers During COVID-19 Act of 2021" prohibits, among other acts: filing of new debt collection lawsuits; the continuation of litigation on existing debt collection suits; obtaining judgments on existing debt collection suits; and levying funds from bank accounts or seizing any other assets to satisfy a debt during the pandemic and within the 120-day period following the end of the COVID-19 emergency. These

⁷ In 92% of all debt collection lawsuits in Texas, the defendants did not have a lawyer. However, the plaintiffs had a lawyer in 81% of all cases. Ann Baddour and Dr. Ellen Stone, Texas Appleseed analysis of Texas justice court data January 2, 2018 to December 31, 2020, [Forthcoming Publication].

⁸ Ann Baddour and Dr. Ellen Stone, Texas Appleseed analysis of Texas justice court data January 2, 2018 to December 31, 2020, [Forthcoming Publication]; data obtained from the Texas Office of Court Administration, Court Reporting Directory System, Ad Hoc Search for statewide debt claim data in justice court for January 1, 2018-December 31, 2020, downloaded February 14, 2021.

measures will protect the economic impact payments Congress authorizes and it will bring penalties for engaging in these unlawful debt collection practices up to date.

B. Auto repossessions

TRLA has observed an increase in auto repossessions. Without access to reliable public transportation, Texans need cars to move around, even during the COVID-19 pandemic. Our state has many rural areas where a car is necessary for obtaining basic items such as groceries. Additionally, many low-income Texans are considered essential workers who must work outside of their homes. When these cars are repossessed because lenders are unwilling to work with consumers who have been unable to make payments because of job loss or income reduction due to the pandemic, consumers suffer. To make matters worse, these consumers have difficulty getting new transportation because their credit has been damaged by the repossession and reporting of non-payment. Many TRLA clients find themselves in this situation and are then forced to purchase a vehicle that may not be reliable (because that is all they can afford) or agree to a high-cost loan with worse credit terms than their previous auto loan to purchase a vehicle.

1. Client Story: Ms. C

Ms. C sought help from TRLA because her vehicle was repossessed. Her income was reduced due to a reduction in hours at her work because of Covid-19. Ms. C needed her vehicle and feared losing it. She had to choose between paying for her car insurance or making payments on her car loan. Ms. C thought that if she continued to make payments on her car loan, the lender would not take her vehicle away. However, she learned the hard way that not having insurance was a “breach of her contract” as she was told. The lender repossessed her vehicle and would not return it until she could provide proof of insurance. Ms. C could not afford insurance and therefore never had her car returned to her.

2. How do we help?

Proposals such as Congresswoman Beatty’s “Relief for Consumers During COVID-19 Act of 2021” which prohibit repossession during the pandemic will help consumers. However, Congress should also consider how non-payment of auto loans and other debt will impact a consumer’s credit report and by extension their future financial security.

II. The Impact of Credit Reporting on Debt and Poverty

Credit reporting is pervasive and permeates almost every aspect of a consumer’s financial life. Consumer reports and/or credit scores are used by potential creditors, landlords, employers, telecommunication companies, utility companies, and even governments. Having bad credit (and in some cases, no credit) can mean a consumer obtains credit at a very high interest rate, resulting in thousands of dollars in higher-priced credit, or denial of credit and therefore the inability to get much needed consumer goods like automobiles. In other cases, bad credit or no credit can result in the denial of an apartment rental, the inability to buy a house, the denial of a job, or the denial of insurance coverage.

Aside from the many problems plaguing the credit reporting industry due to inaccurate reporting⁹, the type of debt reported and how it is reported can unfairly prejudice a consumer. These different types of debts, analyzed in more detail below, have increased or are likely to increase as a result of the Covid-19 pandemic.

A. Coerced debt

1. The Origin of Coerced Debt and Credit Damage as a Method of Economic Abuse

Each year in the U.S., approximately 800,000 women are physically assaulted by an intimate partner.¹⁰ Abusive partners utilize different methods to control their victims¹¹ including physical, emotional, psychological and economic abuse. Economic abuse involves behaviors that control a person's ability to acquire, use, or maintain economic resources, therefore destabilizing that person's financial security.¹² Economic abuse surfaces most in the context of intimate partner violence, though it can occur in other coercive and abusive familial relationships. Researchers estimate that between 94 and 99% of women seeking services for intimate partner violence have experienced economic abuse.¹³

While economic abuse spans a wide array of abusive behavior, damage to credit is one predominant tactic abusers use to exert control over survivors. This phenomenon has become increasingly prevalent, as consumer lending has permeated American life.¹⁴ This dynamic, as Professor Littwin succinctly notes, "makes the consumer credit system an unknowing party to domestic violence."¹⁵

Abusive partners destroy credit by fraudulently opening accounts in a survivor's name, lying about paying bills in a survivor's name, overcharging credit accounts, or coercing survivors to sign for loans, credit lines, or other expenses. This type of activity is known as "coerced debt,"

⁹ For example, The Federal Trade Commission (FTC) found that 1 in 5 consumers have verified errors in their credit reports, and 1 in 20 consumers have errors so serious that they would be denied credit or need to pay more for it. Federal Trade Comm'n Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003 (Dec. 2012). Furthermore, credit reporting complaints to the Consumer Financial Protection Bureau (CFPB) have been the top category of complaints. See Consumer Financial Protection Bureau, Consumer Response Annual Report January 1 – December 31, 2017 (March 2018), at 9, available at <http://bit.ly/2TiROLR> and Consumer Financial Protection Bureau, Complaint snapshot: Mortgage (January 2019), at 5, available at https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_complaint-snapshot-mortgage_2019-01_liwsYNV.pdf

¹⁰ Shannan Catalano, *Intimate Partner Violence: Attributes of Victimization, 1993–2011*, Department of Justice, Bureau of Justice Statistics (2013).

¹¹ Advocates interchangeably use the terms "victim" and "survivor" depending on the preference of the person who experienced the abuse. If a person continues to be victimized by the abuse, or the abuse is ongoing, the person most often identifies with the term "victim." If a person has escaped an abusive relationship and is free from ongoing abuse, the term "survivor" is more often preferred. For clarity, in this testimony the term "survivor" will be used in the context of intimate partner violence, and the term "victim" will be used in the context of coerced debt.

¹² A.E. Adams et al., *Development of the Scale of Economic Abuse*, 14 VIOLENCE AGAINST WOMEN 563 (2008).

¹³ See *id.*; J.L. Postmus et al., *Understanding Economic Abuse in the Lives of Survivors*, 27 J. OF INTERPERSONAL VIOLENCE 411 (2011).

¹⁴ A. Littwin, *Coerced Debt: The Role of Consumer Credit in Domestic Violence*, 100 CALIF. L. REV. 954 (2012).

¹⁵ *Id.*

defined as “all non-consensual credit related transactions that occur in a violent relationship.”¹⁶ Abusive partners utilize the consumer credit system to leave many survivors of domestic violence with hundreds or thousands of dollars of coerced debt.

Coerced debt has a long-lasting impact on whether a survivor will have access to credit, employment, or housing. Consumer reports are routinely used by creditors, potential employers, and landlords to make determinations about an applicant. The appearance of coerced debt and other detrimental information resulting from economic abuse negatively impacts a survivor’s ability to obtain the credit, job, or housing. Additionally, survivors are often unable to obtain credit from traditional lenders and may be driven to borrowing from predatory sources such as payday lenders. These high-cost loans aggravate an already desperate financial situation, trapping survivors in insurmountable debt.

2. Client Story: Ms. Q

Ms. Q is a mother of two. She is industrious and resourceful but was in an abusive relationship. Her then husband exhibited all the textbook signs of an abuser committing financial abuse and exploitation: he prevented Ms. Q from accessing the mail; prevented her from accessing her wages by having her paycheck directly deposited into a “joint” bank account that only he had access to; prevented her from accessing the joint bank account by physically holding onto the debit card and only allowing her to use it to purchase food and then return it along with receipts; told her she was stupid and didn’t understand financial matters so she had to do everything he told her to do and sign anything he wanted her to sign; always included his email address and phone number as contact information for any type of consumer credit or financial account; and purposefully concealed the truth about financial matters when confronted or retaliated with bursts of anger and violence.

Ms. Q tried leaving her abusive husband. She went to work in the Midwest as a farm worker where she lived with her husband’s relatives and rented from them. However, she was also paying the mortgage on the marital home and could not afford to continue making two housing payments. She returned to her home in Texas hoping her ex-husband would leave her alone. Unfortunately, the abuse continued. Yet every time Ms. Q attempted to get the police to file a report against him or arrest him for family violence, they would minimize her suffering, tell her that family disputes were a civil matter, and do nothing else. She did her best to self-advocate in Spanish, once telling the police “do I need to be killed for you all to be heroes and do something?” Nevertheless, the police provided no help for Ms. Q. Ms. Q and her husband continued to live in the same residence, but he had his own room that Ms. Q was prohibited from entering.

In 2018, Ms. Q’s daughter revealed to her that she had been sexually abused by Ms. Q’s husband. Fearing criminal prosecution, Ms. Q’s husband fled the home. When her husband left the home, Ms. Q discovered multiple credit cards in his drawer in the room he was living in; all these credit cards had her name on them, but she had no knowledge of their existence. She felt helpless and angry. Back in 2016, Ms. Q had learned about two credit card accounts her husband had opened without her knowledge or permission because she received phone calls from the

¹⁶ *Id.* at 954.

creditors. She had told them when they called her that the accounts were not hers and she wanted the accounts closed, but the creditors refused to investigate the fraud and instead told her she would have to pay any money owed before the accounts could be closed. Based on this experience, she had no hope that the creditors for all these cards would help her.

3. What about other victims of coerced debt?

Ms. Q was “fortunate”; all the accounts were opened without her knowledge or permission allowing her to receive the same exact protections as other traditional identity theft victims.¹⁷ However, many like Ms. Q, including past TRLA clients, are not as fortunate.

Coerced debt falls into two buckets: fraud or coercion. Fraud is better understood as “traditional identity theft” where the victim doesn’t know about the fraudulent account or charges, didn’t authorize the opening of the account or the use of an existing account, and didn’t benefit from the debt. Coercion is better understood as debt incurred by force or threat (of continued violence or other forms of abuse). Where debt is obtained by coercion, the victim doesn’t actually provide effective consent, but nevertheless opens a new account or allows the use of an existing account to be used for fear of repercussions of saying no to the abuser.

When a coerced debt victim has coerced debt that fits neatly into the first bucket of fraud, the victim has protections afforded under consumer protection statutes for identity theft victims. However, in all states except Texas¹⁸, coerced debt victims cannot avail themselves of these legal remedies when the debt is obtained by force or threat.

Evidence of coerced debt has emerged in several existing studies. In a qualitative study of 187 women stalked by former intimate partners, 22.5% had abusive partners who exerted financial control over them, including opening credit cards in their names.¹⁹ In their research to develop the Scale of Economic Abuse (SEA), Adams and colleagues found that 39% of the 103 women who were interviewed and were seeking services for domestic violence had debt built under their name by their partners putting a car, apartment/house, or credit card in their name; 53% reported that their partner had used their checkbook, ATM card, or credit card without their permission and/or knowledge; and 68% reported that their partner had forced them to give him money or let him use their checkbook, ATM card, or credit card.²⁰ The connection between abuse and debt is substantiated by findings from the 2007 Consumer Bankruptcy Project (CBP) showing that 17.8% of the 258 married and cohabitating female participants experienced intimate partner

¹⁷ Some of these protections include a block under 15 U.S.C. § 1681c-2 of the Fair Credit Reporting Act and unauthorized use protections under 15 U.S.C. § 1643 of the Truth in Lending Act.

¹⁸ In Texas, the definition of identity theft encompasses both types of coerced debt (fraudulent and coercive). Texas changed its definition of identity theft effective September 1, 2019, in order to address coerced debt. Section 32.51(b)(1) of the Texas Penal Code states the updated definition of identity theft:

[https://legiscan.com/TX/text/HB2697/id/2010292/Texas-2019-HB2697-Comm_Sub.html] A person commits an offense if the person, with the intent to harm or defraud another, obtains, possesses, transfers, or uses an item of: identifying information of another person without the other person’s consent or effective consent. “Effective consent” is defined in Section 1.07(a)(19)(A) of the Texas Penal Code: “Effective consent” includes consent by a person legally authorized to act for the owner. **Consent is not effective if induced by force, threat, or fraud.**

¹⁹ M.P. Brewster, *Power and Control Dynamics in Prestalking and Stalking Situations*, 18 J. OF FAM. VIOLENCE 207 (2003).

²⁰ A.E. Adams et al., *Development of the Scale of Economic Abuse*, 14 VIOLENCE AGAINST WOMEN 563 (2008)

abuse in the year they filed for bankruptcy. This rate is much higher than the rates of abuse found in studies of the general population of women, which range from 1.5% to 9.8% in samples of women most comparable with that of the CBP, suggesting a strong connection between abuse and financial distress.²¹

Survivors of domestic violence are apt to stay in abusive relationships if ending the relationship would result in poverty or homelessness, and if children are involved, survivors are even more prone to stay in an abusive relationship in order to shield their children from economic instability. The threat of homelessness²² is not an idle threat; approximately 22%-55% of women experience homelessness as a result of domestic violence, with approximately 38% of all domestic violence survivors becoming homeless at some point in their lives.²³

When coerced debt appears on victims' credit reports, it negatively impacts the victim's ability to achieve financial security and economic independence. As a result, perpetrators use the damage to credit they inflict to gain further financial control over survivors' current and future economic choices.²⁴ Some states have sought to address the collection and reporting of coerced debt.²⁵ For example, Maine passed two laws in 2019 addressing coerced debt.²⁶ Texas changed its definition of identity theft to encompass both types of coerced debt. However, federal response is needed to address the negative impacts of coerced debt.

4. Coerced debt and the COVID-19 pandemic

The Covid-19 pandemic has caused an increased risk of violence and decreased sense of safety. According to a recent Texas-based research study, 80.9% of domestic violence survivors

²¹ A. Littwin, *Coerced Debt: The Role of Consumer Credit in Domestic Violence*, 100 CALIF. L. REV. 954 (2012).

²² Among mothers with children experiencing homelessness, more than 80% had previously experienced domestic violence. Y. Aratani, *Homeless Children and Youth, Causes and Consequences*, NAT'L CTR. FOR CHILD. IN POVERTY (2009).

²³ *Domestic Violence and Homelessness Statistics*, FAM. & YOUTH SERVICES BUREAU (2016), available at <https://www.acf.hhs.gov/fysb/resource/dv-homelessness-stats-2016>

²⁴ A. Littwin, *Coerced Debt: The role of consumer credit in domestic violence*, 100 CALIF. L. REV. 954 (2012).

²⁵ As part of its report to the Maine Commission on Domestic and Sexual Abuse, the Maine Coalition to End Domestic Violence (MCEDV) asked survivors of domestic violence a series of questions related to economic abuse, including coerced debt. MCEDV found that 40% of the respondents indicated their partners falsely used their identity without their knowledge; 36% reported their identities were used to access credit or set up utilities; and 72% of the respondents said their partners often claimed they were paying bills when they were not. *A Report on the Impact of Economic Abuse on Survivors of Domestic Violence in Maine*, Presented to the Joint Standing Committee on Judiciary, February 7, 2019, p. 14. In fact, 57% of those surveyed reported that their abusive partners incurred debt using their name. *Id.*

²⁶ Specifically, a survivor can dispute coerced debt and other debt resulting from economic abuse directly to the consumer reporting agencies (CRAs) and have these debts removed from their reports. 10 MRSA §1310-H (2-A). The statute provides guidance on what documents a survivor can include in their dispute to the CRAs to prove economic abuse. *See* 14 MRSA §6001(6)(H). Additionally, Maine's debt collection statute was amended to prevent any collection of debts caused by economic abuse by debt collectors. *See* 32 MRSA §11014(2-A). If a survivor provides a debt collector the same type of documentation it provided to the CRAs under 14 MRSA §6001(6)(H), the debt collector must cease collection of the debt or any disputed portion of the debt- including reporting the debt to any CRA. 32 MRSA §11014(2-A); 32 MRSA §11013 (2)(H). The Consumer Data Industry Association filed a lawsuit to invalidate Maine's statute regarding credit reporting based on FCRA preemption. The case is up on appeal in the First Circuit Court of Appeals. Maine's debt collection statute has not been challenged.

reported that relationship difficulty increased and 40% said their safety decreased.²⁷ In Texas, 91% of domestic violence survivors report facing health and safety challenges due to the COVID-19 pandemic, including not being able to socially distance and risking their health for their job²⁸; 92% of domestic violence survivors report facing money and resource challenges due to the pandemic which includes trouble getting food, inability to pay their bills, experiencing lost income, and lack of transportation²⁹; and 33% of domestic violence survivors report facing issues with inflexible landlords and creditors due to the pandemic.³⁰

5. How do we help?

We can expect survivors of domestic violence will feel the aftermath of the pandemic long after emergency orders end.³¹ It is imperative to address the problem of coerced debt before the negative impact of coerced debt compounds with the negative impact of other Covid-19 related factors such as job loss, reduced income, increased healthcare expenses and medical debt. While there are many approaches to the problem of economic abuse³², coerced debt is predominantly a

²⁷ Wood, L., Temple J. (2020). *COVID-19 and Family Violence: What's New in Texas-Based Research*. The University of Texas Medical Branch at Galveston.

²⁸ Adams, A.E. & Wee, S. (2020, December 17). *Economic Effects of the COVID-19 Pandemic on Domestic Violence and Sexual Assault Survivors: A Survey of Service Providers*. Center for Survivor Agency and Justice, unpublished report. Retrieved March 3, 2021 from

https://public.tableau.com/profile/sara.wee#!/vizhome/DVSA_COVID19_061520_PUB1/Story1

²⁹ *Id.*

³⁰ *Id.*

³¹ See <http://stories.texasappleseed.org/abuse-by-credit-the-problem-of-coerced-debt-in-texas-> for more examples of the prevalence of domestic violence, coerced debt, and economic abuse from before the COVID-19 pandemic. See also Sara Shoener and Erika Sussman, *Economic Ripple Effect of IPV: Building Partnerships for Systemic Change*, (2013) available at https://csaj.org/document-library/Shoener_and_Sussman_2013_-_Economic_Ripple_Effect_of_IPV.pdf (understanding the long term economic ripple effect of economic abuse).

³² SEC. 406 of the Comprehensive Credit Act provides:

(a) In general.—The Fair Credit Reporting Act ([15 U.S.C. 1681](#) et seq.), as amended by section 301, is further amended by inserting after section 605E the following new section:

§ 605F. Financial abuse prevention

For a consumer who is the victim of intentionally abusive or harmful financial behavior, as determined by a court of competent jurisdiction including a family court, juvenile court, or other court with personal jurisdiction, that was conducted by a spouse, family or household member, caregiver, or person with whom such consumer had a dating relationship in a manner which resulted in the inclusion of an adverse item of information on the consumer report of the consumer, and the consumer did not participate in or consent to such behavior, the consumer may apply to a court of competent jurisdiction, including a family court, juvenile court, or other court with personal jurisdiction, for an order to require the removal of such adverse information from the consumer's file maintained by any consumer reporting agency.

This proposal poses many challenges:

1. Many victims don't have access to lawyers to be able to get a court order. If they are in family court seeking relief and representing themselves, they likely won't know how to ask for this relief.
2. Many courts, including family courts, won't order this relief because they don't feel it's in their purview. For example, even when state statutes permit orders on economic justice judges are still wary to do include this type of relief in an order.
3. If there was no marriage, there is no way to get this relief from a family court (for example, through a divorce decree). If the victim and abuser were dating and there was physical violence, a victim could try to obtain a civil

consumer credit problem which requires a consumer credit solution. The change in the definition of identity theft in Texas is instructive; this measure offered avenues of relief previously not available to coerced debt victims.³³

B. Medical debt

1. The problem of medical debt reporting

Medical debt is very different from other types of consumer debt. Medical bills result from services that are frequently involuntary, unplanned, and unpredictable, and for which price quotes are rarely provided, and which can be a matter of life or death. However, medical debt still factors into credit scores and credit decisions. In fact, medical debt represents an enormous portion of the debt collection entries that appear on credit reports. The CFPB found that medical debt collection entries account for over half (52.1%) of all entries by debt collectors on credit reports.³⁴ Additionally, nearly one in five credit reports contain a medical debt item.³⁵

The accuracy of medical debt accounts on consumer reports is also questionable. Medical debt accounts are often riddled with problems such as billing errors and disputes with insurers over liability for accounts.³⁶ Over 99% of medical debts are reported by debt collectors, not healthcare providers.³⁷

2. Client Stories: Mr. G and Ms. M

Mr. G was stabbed while working at his job, a clerk at a convenience store. He was rushed to the hospital and treated for his wounds. Months later, the hospital filed a debt collection suit against him to recover the cost of the life-saving medical procedures he needed.

protection order, but many District Attorneys don't prosecute on civil protective orders when there isn't enough evidence of physical violence, so a victim may be deprived of this relief. If the victim and her abuser were dating and there was no physical violence, or the violence was not recent enough to be entitled to a protective order, then there is no way for a victim to get any relief in family court.

4. If there is no availability in family court (including to the elderly or foster youth when the coercion is not an intimate partner relationship), what type of suit would a victim of coerced debt have to/be able to file to get the court order? A state would have to have a declaratory action remedy available, but who would be the opposing party? Would the victim have to sue the abuser? Many may not choose to do this because of fear of retaliation or facing the abuser in person again (retraumatization). If the abuser is not the defendant, would the consumer reporting agencies be the defendant? Would the creditors?

³³Mechanisms to help victim or identity theft and/or unauthorized use exist in federal consumer protection statutes such as the Fair Credit Reporting Act, the Truth in Lending Act, the Electronic Funds Transfer Act, and the Fair Debt Collection Practices Act to name a few. These definitions could be expanded to include the different types of coerced debt and thus protect all coerced debt victims.

³⁴ *Consumer Credit Reports: A Study of Medical and Non-Medical Collections*, CONSUMER FIN. PROTECTION BUREAU (2014), www.consumerfinance.gov.

³⁵ *Id.*

³⁶ Mark Rukavina, *Medical Debt and its Relevance When Assessing Creditworthiness*, 46 SUFFOLK U. L. R. 967 (2014).

³⁷ *Data Point: Medical Debt and Credit Scores*, CONSUMER FIN. PROTECTION BUREAU (2014), www.consumerfinance.gov

Although Mr. G qualified for crime victims' compensation which would pay any costs associated with medical treatment needed from the stabbing, the hospital delayed in providing the documents needed to process the claim. Specifically, the hospital initially submitted an incomplete bill for \$11,120. The processing of the claim for that bill was, therefore, delayed, but was paid. Nevertheless, the hospital obtained a default judgment against Mr. G, even though he had filed an answer with the court explaining he didn't owe anything.

Ms. M had a medical debt account appear on her credit report for treatment her grandson received. She was also contacted by debt collectors regarding the same medical debt. Ms. M's grandson was covered by Medicaid, and under Texas law³⁸, neither Ms. M nor her grandson were responsible for costs of any medical services provided to him. However, the debt collectors continued to collect on the debt and report the debt.

3. Medical debt is not predictive of a consumer's credit worthiness

These two client stories represent just part of the problem with medical debt. Although medical debt is one of the most prevalent types of consumer debt, with one in five Americans contacted by a debt collector over an unpaid healthcare bill³⁹, the impact medical debt has on credit reporting and future financial security is staggering.

According to the CFPB, the presence of medical debt on a credit report unfairly penalizes a consumer's credit score, resulting in a credit score that is typically lower by ten points than it should be.⁴⁰ For consumers who have a paid-off medical collection item, their scores are up to twenty-two points lower than they should be.⁴¹ This can set families on a path to financial hardship that can last for years. The CFPB further noted that "[c]redit scoring models which differentiate medical collections from other collections are likely to more accurately reflect the actual creditworthiness of consumers."⁴²

In response, FICO modified its latest scoring model, FICO 9, so it does not consider paid collection items (both medical and non-medical).⁴³ Consumers whose only negative item is unpaid medical debt can expect their score to increase up to twenty-five points.⁴⁴ VantageScore had already made a similar change to its scoring system in March 2013.⁴⁵ However, not all creditors use these scoring models. Mortgage industry giants Fannie Mae and Freddie Mac currently do not use these models. They currently use an older FICO model, which leave consumers with lower credit scores.⁴⁶

³⁸ See Texas Administrative Code Title I, §354.2321(h), and Title I, §354.1131(c).

³⁹ Sara R. Collins et al., The Commonwealth Fund, *Insuring the Future: Current Trends in Health Coverage and the Effects of Implementing the Affordable Care Act* (Apr. 2013).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Consumer Credit Reports: A Study of Medical and Non-Medical Collections* 51-52, CONSUMER FIN. PROTECTION BUREAU (2014), www.consumerfinance.gov.

⁴³ *Understanding FICO Scores*, FICO 8 (2016).

⁴⁴ Tara Seigel Bernard, *Credit Scores Could Rise with FICO's New Model*, N.Y. Times, Aug. 7, 2014, at B3.

⁴⁵ Kevin Wack, *Credit Scoring Model Bucks the Industry Line on Paid Debts*, Am. Banker, Mar. 11, 2013. (VantageScore removing paid collection accounts from its latest scoring model).

⁴⁶ Tara Seigel Bernard, *Credit Scores Could Rise with FICO's New Model*, N.Y. Times, Aug. 7, 2014, at B3.

4. Medical debt and the Covid-19 pandemic

By virtue of being a health care crisis, the Covid-19 pandemic will leave many Americans with new medical debt. TRLA has seen first-hand how Texans have been impacted by the coronavirus.⁴⁷ Many of our clients who have been treated for the virus have expressed concern over medical debt collection and insurance coverage.

Low-income consumers fortunate enough to have Medicaid coverage should be able to obtain health care without the burden of medical debt, though as demonstrated in Ms. M's story, debt collectors continue to collect and report medical debt that should not exist. Insured consumers also face unmanageable medical debts as a result of high cost-sharing responsibilities (i.e., copays and deductibles) under some plans, "surprise" out-of-network bills, or denied insurance claims.

5. How do we help?

Proposals such as Congresswoman Tlaib's Consumer Protection for Medical Debt Collections Act would address some of the problems identified above and help clients like Mr. G and Ms. M. Specifically, by preventing the reporting of any information related to a debt arising from a medically necessary procedure (such as Mr. G), the Consumer Protection for Medical Debt Collections Act would alleviate much of the stress and fear consumers face in choosing to undergo health treatment. By preventing the reporting of medical debt generally for 365 days, the Act would allow consumers who have disputes (such as billing error disputes in the case of Ms. M) to be protected from premature and incorrect reporting. This too will be helped by prohibiting debt collectors from collecting or attempting to collect medical debt for two years from when the medical debt was first due.

C. Debt Caused by Pandemics and Natural Disasters

Credit reports and credit scores can be misleading. Credit reports are snapshots in time; they contain information about a consumer without providing context for changes in a consumer's credit history. Because credit scores are based on algorithms that "interpret" data in credit reports, this dynamic penalizes consumers who have fallen on hard times through no fault of their own, especially during the COVID-19 pandemic where consumers suffer from illness or job loss, or when consumers are victims of fraud or dealing with the consequences of natural disasters such as Winter Storm Uri. Consumers end up with impaired credit histories due to the financial trauma caused by these extraordinary life events⁴⁸, which in turn can lead to the denial of housing, jobs, or higher cost credit and insurance premiums.

⁴⁷ It is not without exaggeration to say that almost every one of my current clients has disclosed that they contracted COVID-19 at some point during the time period of April 2020 until the present.

⁴⁸ Lananh Nguyen, *How the Last Shutdown Affected Federal Workers' Household Finances*, Bloomberg News, Feb. 12, 2019, available at www.bloomberg.com/news/articles/2019-02-12/workers-missed-bills-burned-savings-during-government-shutdown (finding that 27% of federal employees, contractors, or their spouses missed a mortgage or rent payment during the shutdown, 13% missed a student loan payment, and nearly half fell behind on bills in general).

Communities of color are particularly affected by these traumatic life events; they not only have less income than white Americans⁴⁹, but Black and Latino households also see less of a return than white households on the income they earn.⁵⁰ Without a safety net or a cushion to fall back on, people of color are far less able to weather financial calamities. With fewer assets to draw on, people of color find are more prone to poverty traps.⁵¹ Damaged credit histories in turn impede access to employment, housing (both rental and homeownership), insurance, and of course, affordable credit, which in turn make it more difficult for communities of color to move ahead.

TRLA has seen multitudes of clients who find themselves amid collection actions, credit denials (such as housing denials), and poverty traps from high-cost lending, all because of a life event that derailed their finances.

1. Client story: Ms. R

Back in 2009, in the wake of the financial recession and housing crash, TRLA represented Ms. R who was being harassed by her creditors. Ms. R had a son who had suddenly become ill and needed full time care. Ms. R had to quit her job to provide full time care for her son. The household who had once boasted two incomes was now forced to survive off one income. As finances became tight, Ms. R found she could no longer make payments on one of her credit cards. The employees for this bank called Ms. R incessantly demanding payment. Ms. R informed them that she needed time to be able to recover financially and pay back the debt. She mentioned that this bank (Citigroup) had themselves received help from the federal government when they were hit by the credit crisis. Instead of being met with understanding, Ms. R was accused of being a bad mother, a derelict, and the reason why Citi had to request help from the government.

2. How do we help?

Although current proposals address the collection of debt during the Covid-19 pandemic, very few address the wholistic reporting of debt during the Covid-19 pandemic. Congresswoman Garcia's Covid-19 Mortgage Relief Act does address how mortgage debt is reported during forbearance periods and the subsequent twelve month period after the forbearance ends, and Congresswoman Tlaib's Consumer Protection for Medical Debt Collections Act addresses reporting of medical data, but no current proposal should be prohibit consumer reporting

⁴⁹ "In 2011, the median white household had an income of \$50,400 a year compared to just \$32,028 for Blacks and \$36,840 for Latinos." Amy Traub, et al., Demos and Institute for Assets & Social Policy, Brandeis University, *The Racial Wealth Gap: Why Policy Matters*, Mar. 10, 2015, at 1, <https://www.demos.org/research/racial-wealth-gap-why-policy-matters>

⁵⁰ "For every \$1 in wealth that accrues to median Black households associated with a higher income, median white households accrue \$4.06. Meanwhile, for every \$1 in wealth that accrues to median Latino households associated with higher income, median white households accrue \$5.37." *Id.*

⁵¹ "Low-income individuals bear the brunt of the shift toward algorithms. They are the people most vulnerable to temporary economic hardships that get codified into consumer reports, and the ones who need and seek public benefits. Over the years, Gilman has seen more and more cases where clients risk entering a vicious cycle. 'One person walks through so many systems on a day-to-day basis,' she says. 'I mean, we all do. But the consequences of it are much more harsh for poor people and minorities'." Karen Hao, *The Coming War on the Hidden Algorithms that Trap People in Poverty*, MIT Technology Review Dec. 4, 2020, available at <https://www.technologyreview.com/2020/12/04/1013068/algorithms-create-a-poverty-trap-lawyers-fight-back/>

agencies from reporting any adverse information caused when the consumer is affected by economic dislocation on a mass scale, such as the Covid-19 pandemic or a federal or state declared natural disaster.

III. Failure to Protect Consumers from Fraud

The Covid-19 pandemic brought along with it many actors seeking to profit from consumers' desperate situations. Scams targeting economic stimulus payments and unemployment benefits proliferated among TRLA's clients. Many low-income Texans sought help for payments made to

A. Client story: Ms. Y

Ms. Y lost her job due to Covid-19. She qualified for unemployment benefits through the Texas Workforce Commission (TWC). Ms. Y does not have a bank account, so her only option to receive her unemployment benefits was to have the funds deposited on a prepaid card (reliacard).

TWC disbursed \$6,000 in unemployment benefits through the reliacard. Soon after receiving her card, Ms. Y got Covid-19 and had to be hospitalized. When she was released, she tried to access the funds on her reliacard and discovered there was no money on the card. When she called reliacard to inquire about the problem, she was told that someone had called, requested a new card be issued to an address in Michigan, and that someone in Michigan had used all the funds.

Although Ms. Y has rights under the Electronic Funds Transfer Act's unauthorized use provision, the bank has failed to return the \$6000 to Ms. Y or conduct a reasonable investigation of the fraud. In fact, they continue to send correspondence to the Michigan address even after Ms. Y requested on multiple occasions to send everything to her Texas address. Recently, TWC issued additional unemployment benefits to Ms. Y through reliacard; Ms. Y found when she tried to access these funds from her reliacard that it was again depleted.

Although Ms. Y did not willingly participate in a scam or fraudulent scheme, she has been the victim of fraud committed by either a hacker or someone who had access to her personal identifying information.

B. Client story: Ms. Z

Ms. Z is a victim of sex trafficking. After receiving help from TRLA in leaving her traffickers and obtaining a T-Visa, Ms. Z fell prey to additional scams.

Ms. Z was contacted by individuals who lived in her native country of Colombia on Facebook messenger and later through Whatsapp. They said they were part of a "Templo" a religious organization and she disclosed personal identifying information to this Templo, such as her address, her telephone number, and photos of her and her family. She even told them she had a visa.

The Templo began to extort Ms. Z claiming that if she didn't pay them money, she and her family members would all get cancer or another illness. They threatened to physically harm her and her son if she did not pay them since they knew where she lived. The Templo also told her

she could be arrested and her visa could be taken away if she did not pay them. Ms. Z sent money to these scammers through Western Union. At first, Ms. Z sent the Templo money from her wages, foregoing food to pay them. When this wasn't enough, she borrowed money from friends and took out loans to pay the Templo.

Ms. Z believed a lawyer in her native country was helping her get her money back. She was contacted by this lawyer who asked for \$3,000 for medical costs because he was denying; he said the Templo had put a curse on him. This same lawyer told her that he needed her to pay him so she could get her money back. He instructed her to open a bank account at Bank of America and deposit money for this payment, and then 24 hours later he would deposit all the money she had previously paid the scammers. Of course, the money never materialized.

Ms. Z paid a total of \$50,000 to these scammers and never recovered one cent. She has been sued for nonpayment of one of the loans she took out to pay the Templo.

C. How do we help?

Congresswoman Axne's Covid-19 Fraud Prevention Act provides, among other things, grants to States to hire staff to identify, investigate, and prosecute cases involving fraud; to fund technology, equipment, and training to combat, investigate, identify, and prosecute these cases; and to develop and provide educational materials. While these are all beneficial and necessary, none of these provide direct relief to consumers affected by these scams. Consumers would benefit from restitution funds that should be established by States when enforcement actions are taken against bad actors perpetuating fraudulent schemes and scams.

IV. Conclusion

The COVID-19 pandemic has exacerbated problems consumers already faced before the health care crisis. Minorities, women, and low-income consumers are among those hardest hit by the pandemic. Debt collection activities increased in 2020, as did profits for debt collectors. Auto repossessions were prevalent, and consumers were left at the mercy of their lenders. Consumers would benefit if all debt activity ceased during the pandemic.

The problems with our credit reporting system continued and revealed the need for reform around what consumer information is reported and how it is reported during a pandemic. Consumers would benefit from a moratorium on the negative reporting of unpaid debt during the pandemic.

Scams and fraud also surged. Consumers would benefit from some form of monetary relief.