

**Testimony of Jennifer Ngai Lavallee
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**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 Columbia¹ 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The District’s permanent debt collection law is outdated, does not apply to even the most common types of consumer debt, and fails to address common issues that Washingtonians encounter when interacting with debt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 alone⁶ (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.