

CFPB Bites of the Month - 2023 Annual Review - Debt Collection

January 30, 2024 | Anastasia V. Caton, Charles F. Dodge, Jr., Eric L. Johnson, Justin B. Hosie, and Laura J. Bacon

In this article, we share a timeline of our monthly "bites" for 2023 applicable to debt collection. If debt collection in 2023 had a theme it would be *medical debt*. Medical debt woes transcend political parties and affect nearly all demographic groups. As the CFPB has pointed out, and as almost every American knows, medical bills are confusing and insurance disputes are common. The CFPB took aggressive action in 2023 to curb medical debt collection practices and to ensure that medical debt collectors are collecting on accurate, undisputed amounts.

While it was active and aggressive, the Bureau clearly sensed an existential threat to its authority. The U.S. Supreme Court's decision about its funding structure loomed in the background for most of the year. And the Bureau's public statements throughout 2023 took pains to highlight the authority of states and the Federal Trade Commission to enforce the Fair Debt Collection Practices Act and the Consumer Financial Protection Act's prohibition on unfair, deceptive, and abusive acts and practices.

Bite 10: CFPB Finds 33% Decline in Collections Items on Consumer Credit Reports

On February 14, 2023, the CFPB released a report showing a one-third drop in collection tradelines on credit reports, from 261 million tradelines in 2018 to 175 million in 2022. The share of consumers with collection tradelines on their credit report also dropped by 20%. The CFPB indicated that reductions may be due to a strong labor market and emergency pandemic-related programs, but that the decline was also driven by fewer reports related to medical bills. The CFPB's market monitoring found that medical debt collectors are moving away from furnishing information to credit reporting agencies. According to the CFPB, medical debt may be more difficult to verify, and the CFPB's data integrity concerns may have made these collectors unsure of their ability to comply with the Fair Credit Reporting Act. Nonetheless, the CFPB found that medical collections tradelines remain a majority (57%) of all collections items on consumer credit reports. However, the nationwide consumer reporting agencies announced upcoming changes to medical collections reporting that will remove amounts less than \$500 and paid medical collection tradelines from consumer reports. While this will reduce the total number of medical collections tradelines, the CFPB estimates that half of all consumers with medical

collections tradelines will still have such tradelines on their reports.

Bite 9: CFPB Issues Fair Debt Collection Practices Act Report Focused on Medical Debt Collection

On November 16, 2023, the CFPB issued its annual FDCPA report. The report noted that servicemembers, older adults, and other consumers submitted 8,500 complaints related to medical debt collections in 2022 (15% of all debt collection complaints sent to collection agencies for review and response in 2022). The report noted that the most common type of complaint across all types of debts was that the debt collector was attempting to collect debt that the consumer does not owe. The report also outlined CFPB and state agency efforts to stop inaccurate medical collection and highlighted state efforts to combat deceptive medical debt collection practices as well as the authority of states to enforce the federal FDCPA and FCRA and the Consumer Financial Protection Act's prohibition on unfair, deceptive, or abusive acts or practices. The report also included updates on the debt collection market more broadly, noting the rapid rise in consumer debt in 2022 and attributing it to, among other factors, higher inflation, interest rates, and consumer demand. Finally, the report summarized the CFPB's debt collection supervisory, rulemaking, and enforcement activity, the FTC's debt collection enforcement activity, including in connection with small business debt collection, and CFPB education and outreach initiatives, such as providing sample letters for use with debt collectors.

Bite 8: Supervisory Highlights Report finds Violations Across Array of Financial Products Including Servicing and Debt Collection

On July 26, 2023, the CFPB released its latest Supervisory Highlights, addressing concerns, particularly UDAAP concerns, across various financial services. The CFPB found, during examinations, that debt collectors continued collection attempts on work-related medical debts after receiving sufficient information that debts were uncollectible under state workers compensation laws, that auto finance servicers engaged in the practice of blanket cross-collateralization by accelerating and requiring payments from all consumers on unrelated debts, such as credit cards, before consumers could reclaim their repossessed vehicles, and that payday lenders engaged in certain unfair, deceptive, or abusive collection activity, such as having language in their credit agreements that prohibited consumers from revoking their consent to certain methods of communication and falsely threatening to garnish wages.

Bite 7: CFPB Addresses Collections on Discharged Student Loans

On March 16, 2023, the CFPB released a bulletin addressing unlawful collection of discharged student loans. The CFPB alleged that certain loan servicers illegally returned loans to collections after bankruptcy courts had discharged those loans. The CFPB directed those servicers to return the payments and to immediately stop unlawful collection tactics. Certain student loans are eligible for discharge in bankruptcy, including loans made to attend unaccredited schools, loans to students attending less than half-time, loans made in amounts in excess of the cost of attendance, and loans made to cover fees and living expenses incurred while studying for the bar exam or other

professional exams. CFPB examiners claim that certain student loan servicers are failing to distinguish between these discharged loans and others, and as a result, are collecting discharged debt. The CFPB announced that it expects servicers to proactively identify discharged student loans, permanently cease collections, and refund consumers affected by unlawful collections in the past. The CFPB put student loan servicers on notice that it intends to examine their handling of discharged student loans.

Bite 6: CFPB Issues Advisory Opinion on Zombie Mortgages

On April 26, 2023, the CFPB issued an advisory opinion on what it calls "zombie" mortgages. These are mortgages for which the statute of limitations has expired, sometimes called "time-barred debt." According to the CFPB, debt collectors were attempting to collect on second lien mortgages over a decade after the homeowners defaulted. In prepared remarks, Director Chopra stated that many of these "zombie mortgages" date back to the leadup to the 2008 financial crisis, when lenders offered 80/20 mortgages, which was a first lien loan for 80% of the value of the home and a second lien loan for the remaining 20% of the value of the home. Most lenders did not collect on those second mortgages, and instead sold them to debt buyers. The CFPB's advisory opinion explains that a covered debt collector who brings, or threatens to bring, a foreclosure action to collect a time-barred mortgage debt violates the Fair Debt Collection Practices Act and Regulation F. Director Chopra said that the CFPB is looking for covered debt collectors who are breaking the law, and that the CFPB will be working closely with state agencies to pursue offenders. FDCPA actions can be brought by private plaintiffs, the CFPB, and state attorneys general.

Bite 5: CFPB Kicks off Medical Bill Rulemaking

On September 21, 2023, the CFPB announced that it is beginning a rulemaking process to remove medical bills from credit reports. The CFPB says these efforts will help families financially recover from medical crises, stop collectors from collecting on bills that consumers may not owe, and ensure that creditors are not relying on inaccurate data. The CFPB cited to a 2022 report indicating that approximately 20% of Americans have medical debt. The CFPB also noted research indicating that medical billing data is less predictive of future repayment than reporting on traditional credit obligations, and that inaccuracies in billing are common due to insurance disputes and medical billing practices. The CFPB outlined proposals under consideration, which include prohibitions on: (1) the inclusion of medical debt and collection information on consumer reports; (2) a creditor's use of medical collections information when evaluating credit applications; and (3) "coercive" debt collection practices, including the use of the credit reporting system to leverage payments on medical debts. The CFPB is currently reviewing information and public responses to recent hearings and inquiries as part of the rulemaking process.

Bite 4: The CFPB Takes Action to Halt Debt Collection Law Firm Activities

On January 11, 2023, the CFPB announced a settlement with a debt collection law firm that the CFPB claims bombarded consumers with "junk" lawsuits—lawsuits not supported by adequate documentation. The CFPB claims that fewer than a dozen attorneys filed

more than 99,000 debt-collection lawsuits, many of which without supporting documentation. The CFPB further alleged that the law firm falsely represented that attorneys were meaningfully involved in preparing and filing the lawsuits, violating the FDCPA and CFPA. The proposed settlement prohibits the law firm from filing any new lawsuit against a consumer unless it has certain specified documents supporting the debt (including the name of the original creditor, evidence that the consumer authorized the debt, the chain of title supporting any sale, and an itemization of the debt) and certifies that the attorney whose name will appear on the complaint has reviewed those documents for consistency with the complaint. The order also requires the company to dismiss any pending lawsuit where it cannot satisfy these requirements. The order also required payment of a \$100,000 penalty, deposited into the CFPB's civil penalty fund. Director Chopra also warned that "[t]he CFPB will be scrutinizing large financial companies that enlist debt collection outfits operating lawsuit mills."

Bite 3: CFPB Shuts Down Medical Debt Collector

On December 15, 2023, the CFPB announced an action against a medical debt collector, alleging that the collector illegally attempted to collect unverified medical debts after consumers disputed their validity. The CFPB claims the collector violated the Fair Debt Collection Practices Act and the Fair Credit Reporting Act. The CFPB noted that the FDCPA requires debt collectors to stop collecting disputed debts without substantiating documentation. The CFPB also noted that the FCRA requires furnishers to conduct a reasonable investigation and notify consumer reporting agencies when a consumer disputes a debt. The CFPB alleged that the medical debt collector failed to follow these provisions of the FDCPA and FCRA. The CFPB permanently shut down the collector, and banned it from engaging in any collection activities, debt buying, debt selling, and consumer reporting. The collector must also instruct consumer reporting agencies to delete all collection accounts for all consumers and pay a \$95,000 penalty to the CFPB's civil penalty fund.

Bite 2: CFPB Orders Medical Debt Collector to Pay Redress and Penalties

On June 8, 2023, the CFPB ordered a medical debt collector to pay \$1.675 million to the civil penalty fund as well as an unspecified amount in consumer redress for alleged debt collection and credit reporting violations. The CFPB claims that in thousands of cases, the debt collector continued to attempt to collect unsubstantiated debts after consumers disputed their validity, risking consumer harm (the CFPB claimed consumers may have been pressured or induced to pay debts they did not owe). The CFPB also accused the debt collector of sharing the disputed information with consumer reporting agencies, which, the Bureau claimed, "likely" resulted in inaccuracies on consumers' credit reports. Under the order, the debt collector must pay the penalties, provide redress to consumers, cease unlawful activity, and cooperate with CFPB examinations for the duration of the order.

Bite 1: CFPB Orders Payment of More Than \$24 Million Related to Debt Collection and Consumer Reporting

On March 23, 2023, the CFPB ordered a debt collector to pay more than \$24 million for

allegedly violating a 2015 CFPB order, divided evenly between consumer restitution and a civil penalty to be deposited into the CFPB's victims relief fund. The CFPB claims the collector collected unsubstantiated debt, failed to provide required documentation and disclosures, sued or threatened to sue without the required documentation, and sued consumers after the statute of limitations had passed. In addition, the CFPB claimed the collector violated the Fair Credit Reporting Act by failing to inform consumers about investigation outcomes, failing to timely resolve disputes, and conducting unreasonable investigations. The 2015 order required the debt collector to pay more than \$27 million in consumer refunds and penalties for allegedly unlawful debt collection activities. The CFPB's new proposed order will require the debt collector to pay \$12 million to consumers and an additional \$12 million to the CFPB's civil penalty fund, improve operations, and fix alleged failures to respond to consumers.

We predict 2024 will continue to be a year full of CFPB activity in medical debt collection. However, with household debt ballooning—thanks to the double whammy of inflation and higher interest rates—expect the Bureau to continue scrutinizing traditional credit collection, personal property repossessions, and foreclosures. And we won't be surprised if the Bureau's (and entire Executive Branch's) scrutiny of "junk fees" seeps into debt collection oversight and enforcement.

Still hungry? Please join for our next CFPB Bites of the Month. Here is our [lineup](#) for 2024. If you missed any of our prior Bites, [request a replay](#) on our website.

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