

# Strategies for Responding to Debt Collectors

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# Housekeeping

- All on mute. Use Questions function for substantive questions and for technical concerns.
- Problems getting on the webinar? Send an e-mail to [NCLER@acl.hhs.gov](mailto:NCLER@acl.hhs.gov).
- Written materials and a recording will be available at [NCLER.acl.gov](http://NCLER.acl.gov). See also the chat box for this web address.

# About NCLER

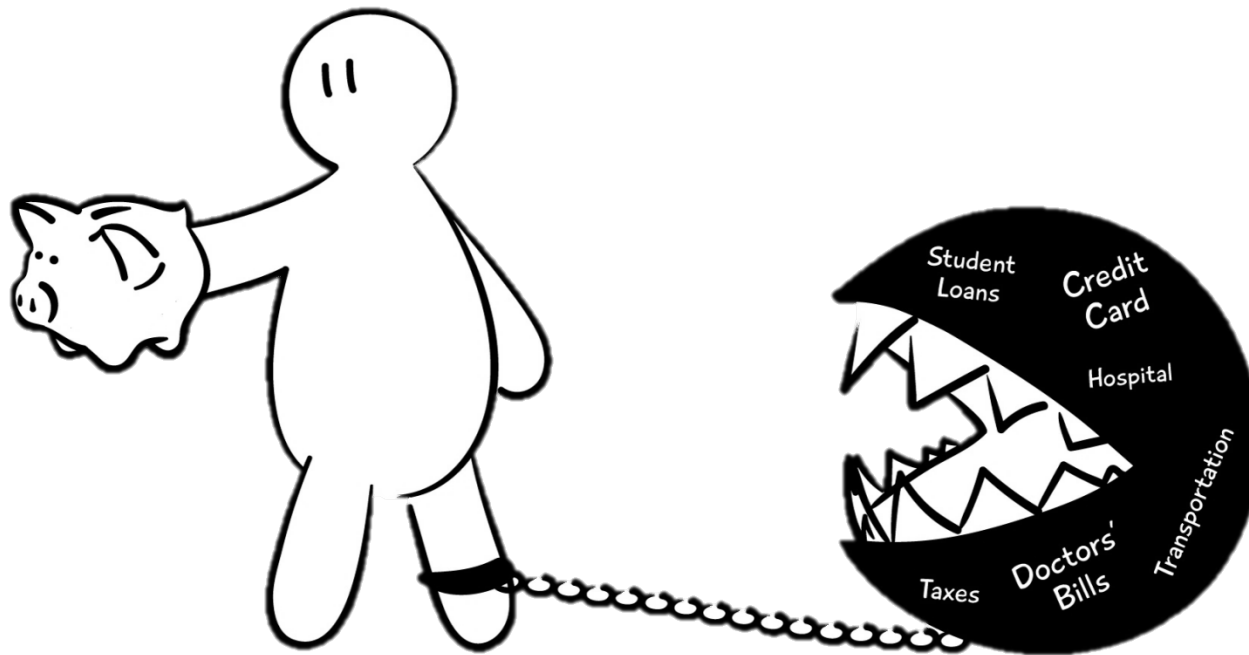
The National Center on Law and Elder Rights (NCLER) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLER provides Legal Training, Case Consultations, and Technical Assistance on Legal Systems Development. Justice in Aging administers the NCLER through a contract with the Administration for Community Living's Administration on Aging.

# About NCLC

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the U.S.

NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitative practices, help financially stressed families build and retain wealth, and advance economic fairness.

# Debt Collection Facts



# Debt in America

Before COVID-19, 68 Million US Adults Had Debt in Collections. What Policies Could Help?

The Number of Americans with Debt in Collections Fell during the Pandemic to 64 Million

Share with any debt in collections

26%

All

22%

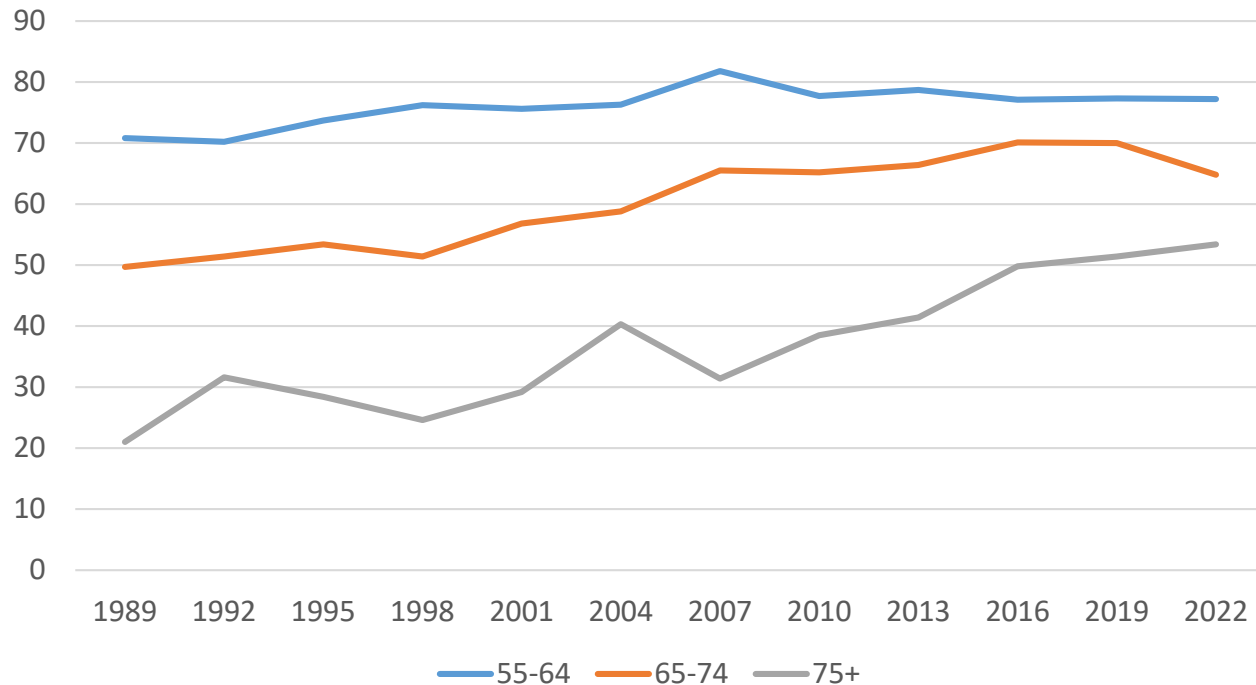
White communities

35%

Communities of color

# Increasing Percent of Older Adults In Debt

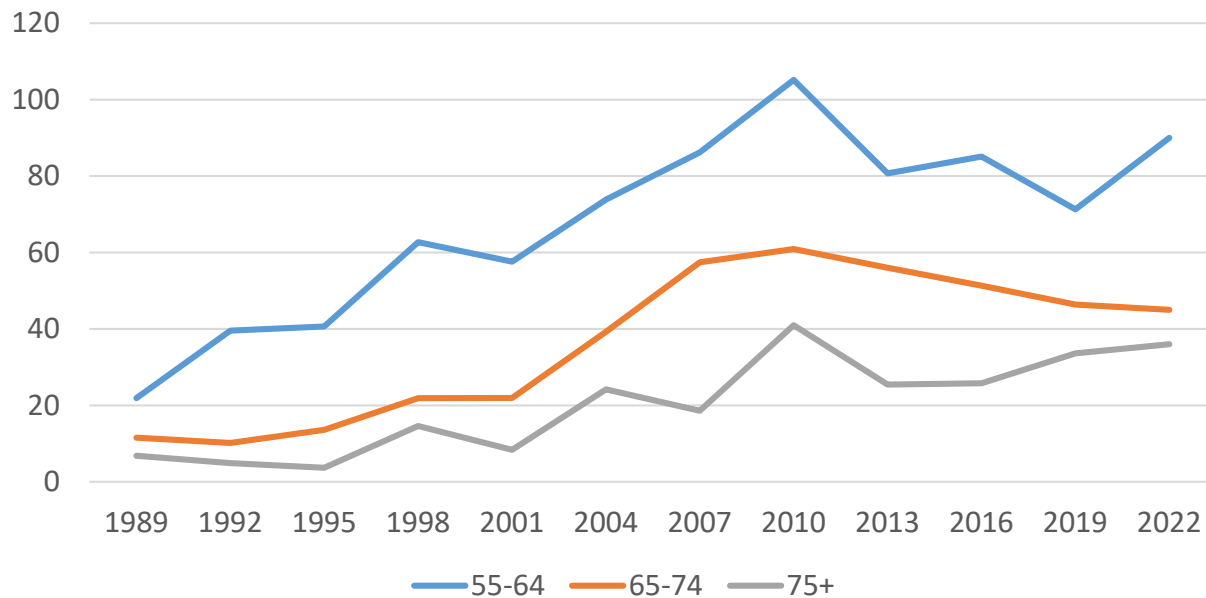
Percent Holding Household Debt by Age of Reference Person



**Source:** Board of Governors of the Federal Reserve System, Survey of Consumer Finances, 1989–2022: [Debt by age of reference person](#) (Nov. 2, 2023)

# Amount of Debt Held by Older Adults Increased

Median Household Debt by Age of Reference Person  
(US\$ Thousands)



**Source:** Board of Governors of the Federal Reserve System, Survey of Consumer Finances, 1989–2022: [Debt by age of reference person](#) (Nov. 2, 2023)

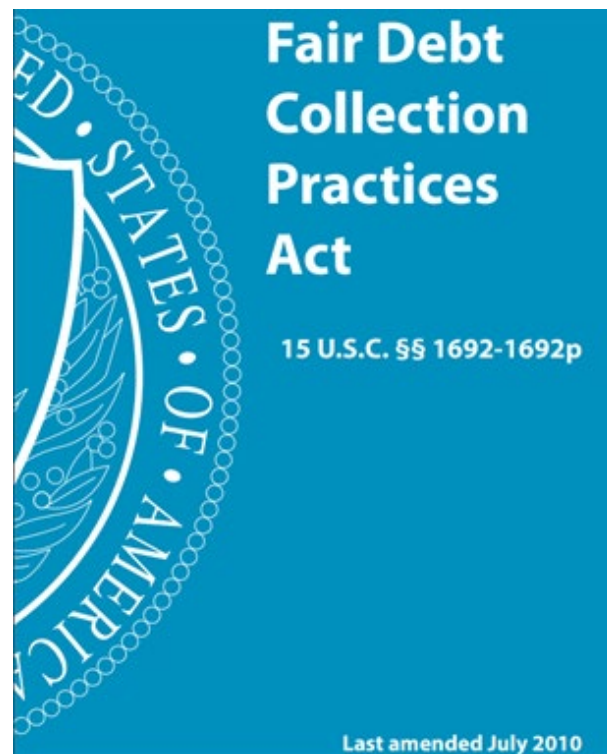


# Legal Rights



# Relevant Federal Law

- Fair Debt Collection Practices Act (FDCPA)
  - 15 USC §§ 1692-1692p
  - Applies to **debt collectors**
  - Collecting **consumer debts**
- Regulation F
  - 12 CFR Part 1006
  - Debt collection regulations



# Parties Involved in Debt Collection

- **Collection Attorney**
  - Works in private law firms or in house for other debt collectors and uses a variety of methods to collect debts, including filing lawsuits in state courts.
- **Debt Buyer**
  - Purchases portfolios of debt for pennies on the dollar, attempts to collect the debt in house or by hiring debt collection agencies, and may resell the debt if collection is unsuccessful.
- **Debt Collection Agency**
  - Collects debts for debt buyers and creditors and is typically paid a percentage of the amount collected.
- **Original Creditor**
  - Extends credit or provides goods or services on credit. If the consumer defaults on payment(s), original creditors may attempt to collect debts in house, place the debts with a debt collection agency, or sell the debts to a debt buyer.

# FDCPA Requirements for Debt Collectors

- Disclosing that they are debt collectors
- Providing consumer with basic information about the debt
- Attempting to communicate with the consumer before credit reporting

# Examples of Specific FDCPA Prohibitions for Debt Collectors

- Calling before 8:00 a.m. or after 9:00 p.m.
- Discussing debt with (most) others
- Threatening or using violence
- Using obscene language
- Threatening to take action that cannot legally be taken
- Collecting unauthorized amounts
- Communicating by postcard
- Suing consumers far away from where they live or entered into the contract

# FDCPA General Prohibitions for Debt Collectors

- Harassing, oppressing, or abusing consumers
- Using false, deceptive, or misleading representations
- Using unfair or unconscionable means to collect a debt

# Sample Debt Collection Notice (Top)

North South Group  
P.O. Box 123456  
Pasadena, CA 91111-2222  
(800) 123-4567 from 8am to 8pm EST, Monday to Saturday  
[www.example.com](http://www.example.com)

To: Person A  
2323 Park Street  
Apartment 342  
Bethesda, MD 20815

Reference: 584-345

**North South Group is a debt collector.** We are trying to collect a debt that you owe to Bank of Rockville. We will use any information you give us to help collect the debt.

## **Our information shows:**

You had a Main Street Department Store credit card from Bank of Rockville with account number 123-456-789.

As of January 2, 2017, you owed:	\$ 2,234.56
Between January 2, 2017 and today:	
You were charged this amount in interest:	+ \$ 75.00
You were charged this amount in fees:	+ \$ 25.00
You paid or were credited this amount toward the debt:	- \$ 50.00
<b>Total amount of the debt now:</b>	<b>\$ 2,284.56</b>

## **How can you dispute the debt?**

- **Call or write to us by August 28, 2020, to dispute all or part of the debt.** If you do not, we will assume that our information is correct.
- **If you write to us by August 28, 2020,** we must stop collection on any amount you dispute until we send you information that shows you owe the debt. You may use the form below or write to us without the form. You may also include supporting documents. We accept disputes electronically at [www.example.com/dispute](http://www.example.com/dispute).

## **What else can you do?**

- **Write to ask for the name and address of the original creditor, if different from the current creditor.** If you write by August 28, 2020, we must stop collection until we send you that information. You may use the form below or write to us without the form. We accept such requests electronically at [www.example.com/request](http://www.example.com/request).
- **Go to [www.cfpb.gov/debt-collection](http://www.cfpb.gov/debt-collection) to learn more about your rights under federal law.** For instance, you have the right to stop or limit how we contact you.
- Contact us about your payment options.
- Póngase en contacto con nosotros para solicitar una copia de este formulario en español.

**Notice:** See reverse side for important information.

# Sample Debt Collection Notice (Bottom)

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**Mail this form to:**

North South Group  
P.O. Box 123456  
Pasadena, CA 91111-2222

Person A  
2323 Park Street  
Apartment 342  
Bethesda, MD 20815

## **How do you want to respond?**

*Check all that apply:*

- I want to dispute the debt because I think:**
  - This is not my debt.
  - The amount is wrong.
  - Other (please describe on reverse or attach additional information).

- I want you to send me the name and address of the original creditor.**

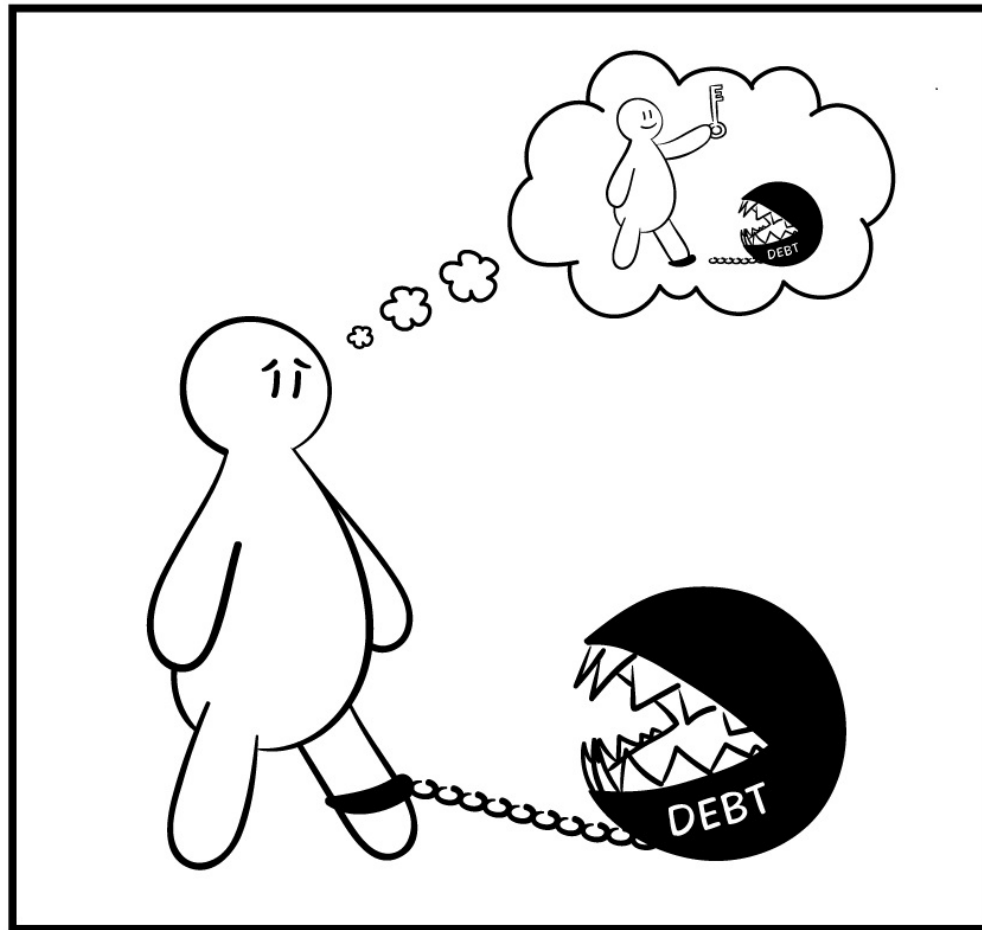
- I enclosed this amount:** \$

Make your check payable to *North South Group*.  
Include the reference number 584-345.

- Quiero este formulario en español.**



# Tactics for Responding to Debt Collectors



# Investigate the Debt Collector

- Confirm that the debt collector is legitimate.
  - Ask for the caller's name, company, phone number, and business address.
  - Check to see if your state licenses debt collectors and, if so, if this one is licensed.
  - Search the [Nationwide Multistate Licensing System](#)
- Look for warning signs of debt collection scams
  - CFPB Blog: [How to Tell the Difference Between a Legitimate Debt Collector and Scammers](#)

# Send a “Cease Communication” Letter

- Stop most debt collection communications
  - Sample letters available
    - NCLC [Sample Letter](#)
    - Consumer Financial Protection Bureau: [Sample Letter](#)
  - Limited types of communications still permitted
- **Important:** Ceasing collection communications will not change whether you owe the debt.
  - May still sue to collect alleged debt
- **How to send:** certified mail or email (if accepted by collector)—has to be in writing!

# Stop Some Communications

- Debt collectors must not communicate at times or places that it knows are inconvenient:
  - Example: Don't call me before noon. Morning calls are not convenient.
- Debt collectors must comply with consumer requests to stop using a particular type of communication.
  - Example: "Stop calling me." OR "Stop calling me at this number."
- Opt-out of electronic communications.
  - But be careful about clicking on links.
- **How to send:** Orally, certified mail, electronic (if accepted by collector)

# Send an “Exempt Income” Letter

- Some government benefits are “exempt” or protected from certain collection activity (e.g., garnishment)
  - Collector may voluntarily stop collection if notified that all income is from exempt benefits
  - NCLC: [Sample letter available](#)
- **BUT:** Some otherwise exempt benefits may be subject to garnishment for certain debts (e.g., taxes, student loans, and child/spousal support obligations)
- For more about exempt federal benefits:
  - Consumer Financial Protection Bureau: [Can a debt collector take my federal benefits, like Social Security or VA payments?](#)

# Dispute the Debt

- Reasons to dispute the debt:
  - Debt not yours,
  - Amount is incorrect,
  - Identity theft,
  - Debt discharged in bankruptcy, etc.
- NCLC [sample letter available](#)
  - Can also use tear-off portion of validation notice
- **How to send:** certified mail or email (if accepted by collector) – has to be in writing!

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**How do you want to respond?**

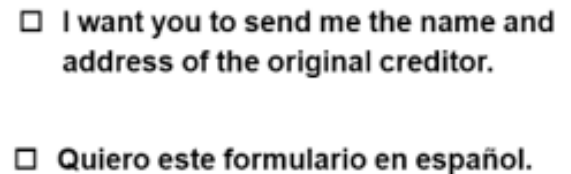
*Check all that apply:*

I want to dispute the debt because I think:

- This is not my debt.
- The amount is wrong.
- Other (please describe on reverse or attach additional information).

# Get More Information About the Debt

- Ask for a validation notice if not yet received (sample above)
- Ask debt collector for more information
  - [NCLC sample letter](#) available
  - Can also use tear-off portion of validation notice to:
    - Request name and address of the original creditor  
or
    - Request validation notice in Spanish
- Check credit report
  - Use [annualcreditreport.com](http://annualcreditreport.com)
- Contact the original creditor

- 
- I want you to send me the name and address of the original creditor.
  - Quiero este formulario en español.

# Negotiate a Repayment Agreement

- Collectors may be willing to settle for a fraction of the alleged amount due
- **BUT**
  - Don't prioritize this debt over other higher priority debts
  - Don't pay amounts you don't think that you owe
    - See strategies above for stopping some or all communications
  - Make sure that you can afford the payment amounts
  - Be careful when agreeing to a repayment agreement on a debt beyond the statute of limitations
    - Partial payment or acknowledgment can restart the statute of limitations on the debt in some states – allowing the creditor to sue



# File a Complaint

Where to file debt collection complaints:

- Federal
  - [CFPB](#) (debt collection, credit reporting, etc.)
  - [FTC](#) (credit repair, debt relief service, fraud)
- State
  - Attorney General's Office
    - Look for a consumer protection division
    - Some states offer consumer mediation services
  - State Licensing Agency

# Bankruptcy

- Filing papers for personal bankruptcy triggers an “automatic stay” that stops collection activity
- **BUT**
  - Consumers should consult an attorney to see if bankruptcy is the right tool
  - Collection harassment can be addressed by stopping some or all collection communications as discussed above
- Learn More: [Legal Basic: Bankruptcy](#)

# Responding to Debt Collection Lawsuits



# Court Notice

- Open court notices and pick up any certified mail
- Record the date and time for any hearings
  - You might not receive any reminders
- Research the party that sued you
  - See strategies discussed above
- Contact the clerk's office at the court to:
  - Ask questions about the notice
  - Ask about changing the date

# Respond to the Lawsuit

- File an answer (if required) by the deadline
  - Some jurisdictions charge a fee to file an answer
    - Ask the court clerk about how to get this fee waived
  - Some legal services programs help draft answers
    - Contact your local legal services office to ask
  - Some jurisdictions have form answers
    - Ask the court clerk if there is a form
- Respond to any discovery
  - Provide answers to questions by the deadline
  - Some legal services programs help draft discovery responses

# Appear in Court

- Appear in court on appropriate day and time
  - If no answer was required, this may be the first step
  - If you do not, you may lose by default
  - Some courts may allow remote appearance
- Be wary of hallway negotiations
  - You have a right to have your case heard in court
  - The person talking to you works for the creditor
  - If you settle make sure you can afford the payments
  - Don't agree to pay if all of your income is exempt
- Some legal services program provide lawyer-for-the day representation
  - Contact your local legal services office to ask

# Examples of Legal Defenses

- Lawsuit was filed in the wrong court
- Creditor has not proved that it owns the debt
- Creditor has not proved that you owe a debt or that you owe amount sought
- Debt is too old to be collected in court
- Debt was already paid, settled, or discharged in bankruptcy
- **You may also have counterclaims for violation of**
  - State debt collection laws
  - FDCPA
  - Etc.

# Post-Judgment

- It may be possible to set a default judgment aside
  - For example: if no notice was provided
- You may be able to appeal
  - Make sure to file on time and follow the required procedures
- The creditor typically has additional collection tools:
  - Garnishing wages or funds in a bank account, seizing personal property, liens on homes, etc.
  - Some income and assets are exempt (see above)
    - You may need to go to court to assert these protections
- Payment review or examination
  - You may have to return to court or provide additional information about your ability to pay
  - If you fail to appear in court or answer questions, you could be arrested for contempt of court



# Resources



# NCLC Debt Collection Resources

- [Webinars: Consumer Law Basics](#) (Mar. 5-26, 2024)
- [Debt Collection Issue Page](#)
- [Consumer Advice Dealing with Debt Collectors—Including the New Federal Rules](#)
  - Includes sample letters
- [Surviving Debt](#) (subscription required)
- [Collection Actions](#) (subscription required)
- [Fair Debt Collection](#) (subscription required)

# Federal Debt Collection Resources

- Consumer Financial Protection Bureau
  - [Debt Collection page](#)
  - [Medical Debt page](#)
  - [Sample letters](#)
- Federal Trade Commission
  - [Credit and Debt page](#)

# Additional Resources

- NCLER: [Trauma-Informed Lawyering](#)
- Aging Safely: [Law Help Interactive Consumer Law Forms for Older Adults](#)

# Resources to Find Legal Assistance

- Legal Services Corporation, [Get Legal Help](#)
  - States frequently have state-specific legal services tools and information
- [Eldercare Locator](#)
- American Bar Association: [Free Legal Help](#)
  - Local Bar Associations in your state are also good resources
- National Association of Consumer Advocates: [Find an Attorney](#)
- National Association of Consumer Bankruptcy Attorneys: [Find an Attorney](#)

# Thank You!



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ELDER  
RIGHTS**

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# Case Consultations

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at [ConsultNCLER@acl.hhs.gov](mailto:ConsultNCLER@acl.hhs.gov).