

Debt Collection Protections for Older Consumers

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Housekeeping

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

About NCLER

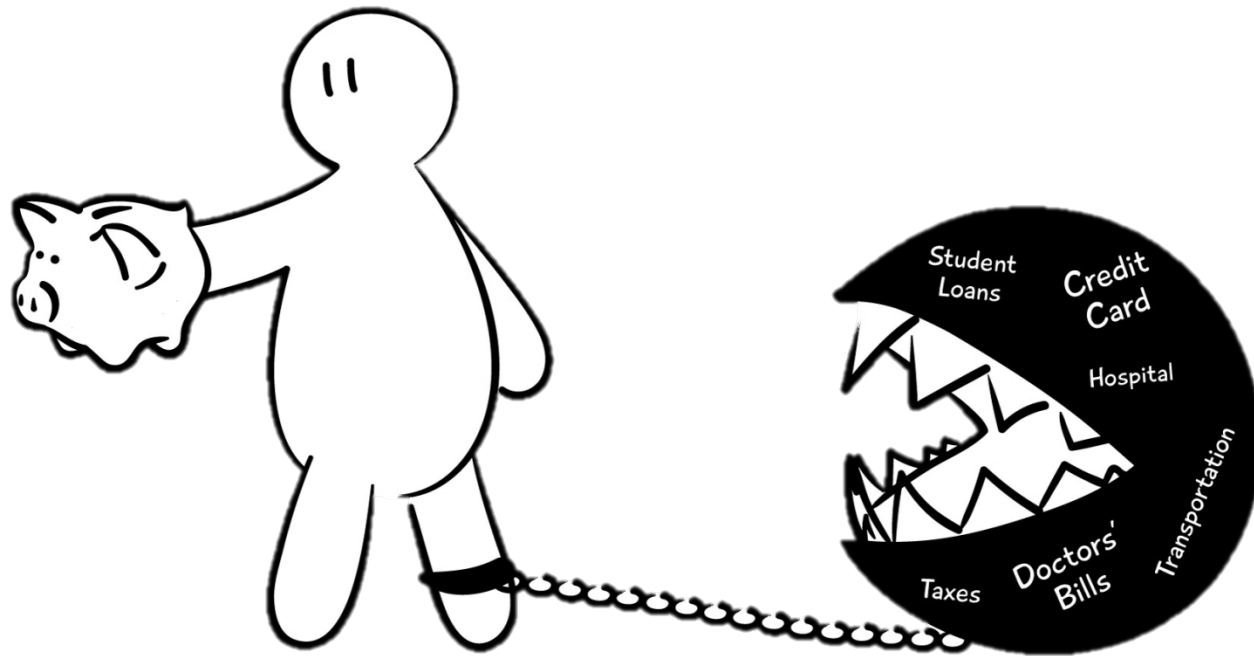
The National Center on Law and Elder Rights (NCLER) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLER provides Legal Training, 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

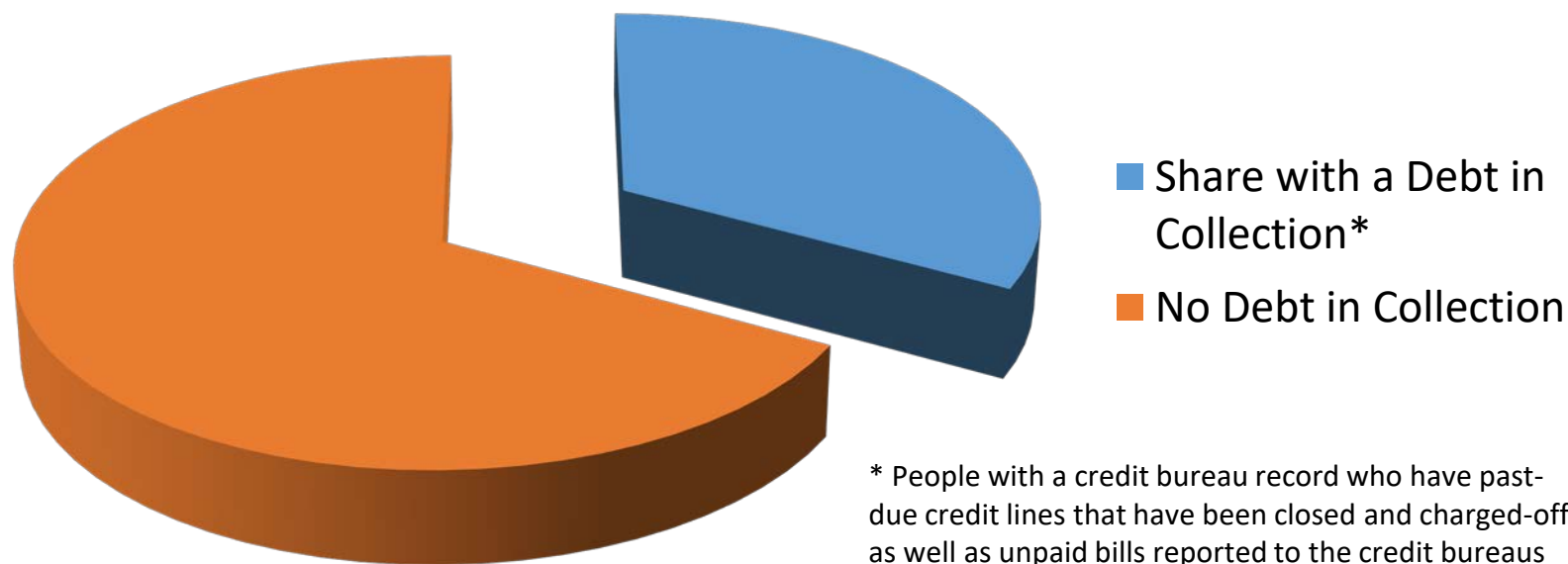
Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the U.S.

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.

What Does Debt Collection Look Like?



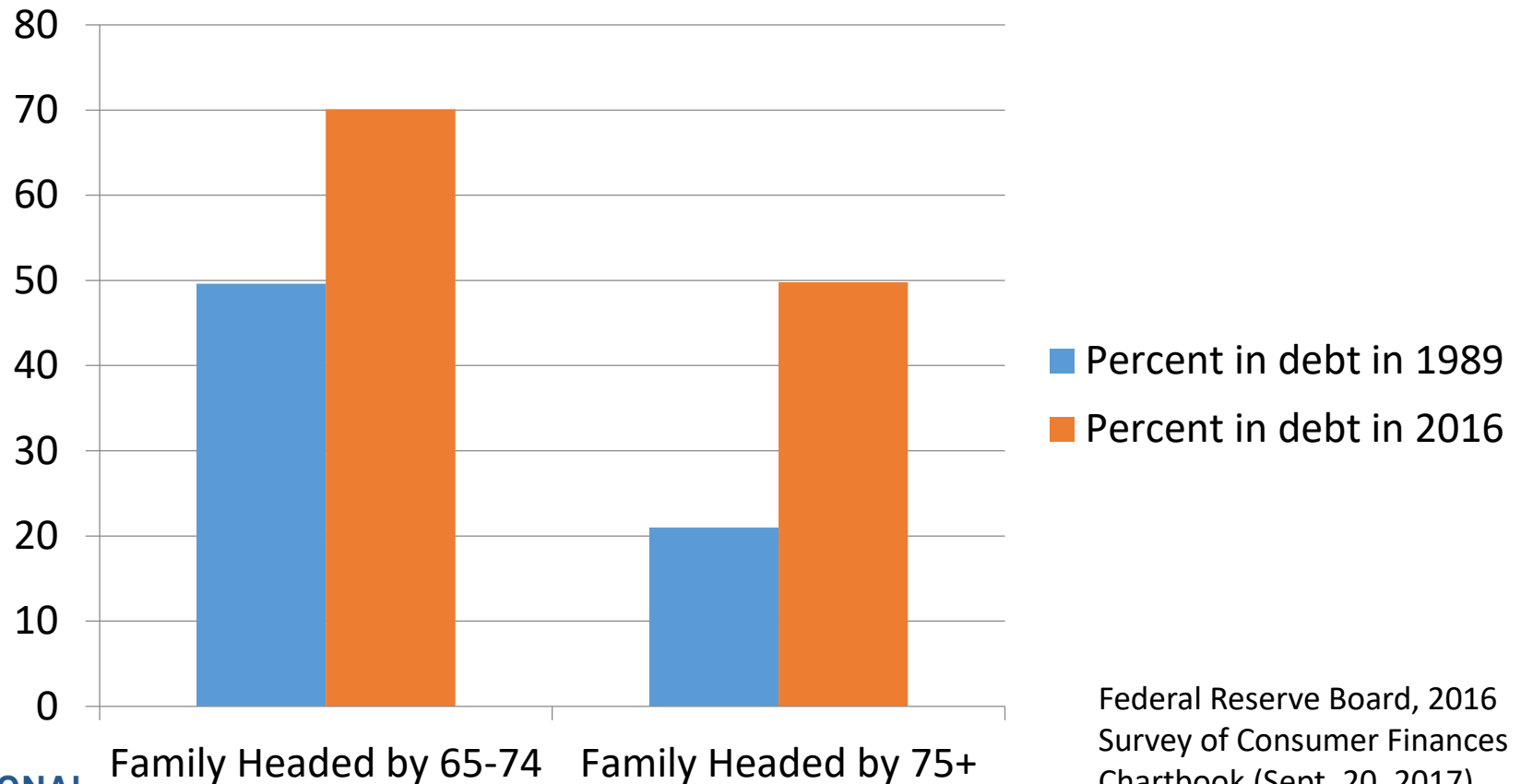
1 in 3 Americans with a Credit Report Has at Least One Debt in Collection



* People with a credit bureau record who have past-due credit lines that have been closed and charged-off as well as unpaid bills reported to the credit bureaus that the creditor is attempting to collect. (2016 credit bureau data)

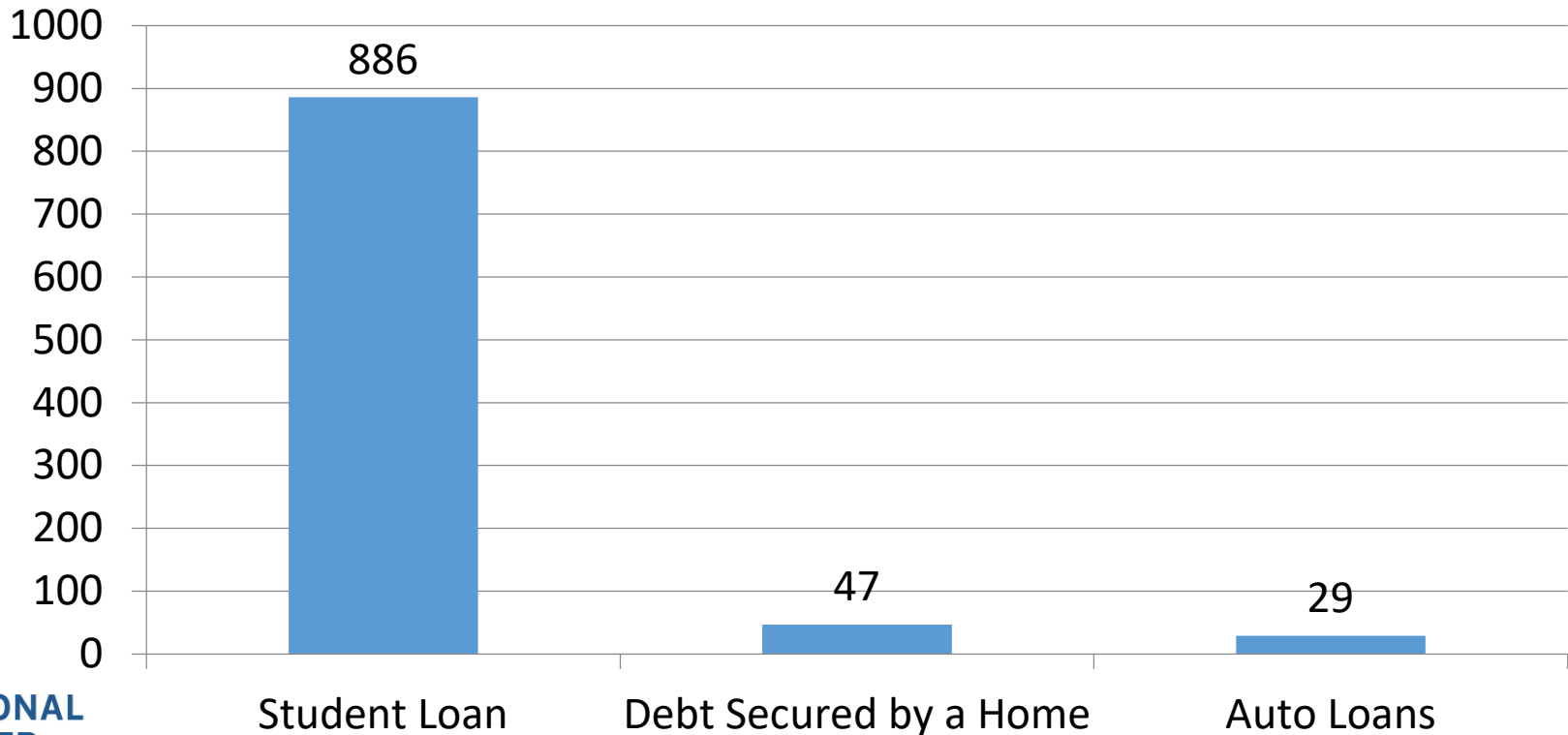
Source: Urban Institute, Debt in America: An Interactive Map (2017)

Increasing Percent of Older Adults In Debt



Increasing Amount of Debt Owed by Older Adults

Percent Increase in Real Per Capita Debt at 65 from 2003 to 2015



Survey of Experiences with Debt Collection

- Nearly 1 in 5 respondents age 62+ contacted by debt collector or creditor in prior year
 - Of this group:
 - 59% “cited an issue with a debt in collection”
 - 40% disputed the debt
 - 20% had been sued on a debt

Source: Consumer Financial Protection Bureau, Consumer Experiences with Debt Collection: Findings from the CFPB’s Survey of Consumer Views on Debt (Jan. 2017).

Special Considerations for Older Adults

- Different reasons for acquiring debt
- Different repayment strategies
- Debt collection for deceased family member's debt
 - See: <https://www.consumer.ftc.gov/articles/0081-debts-and-deceased-relatives>
- Targets of financial fraud or debt collection scams

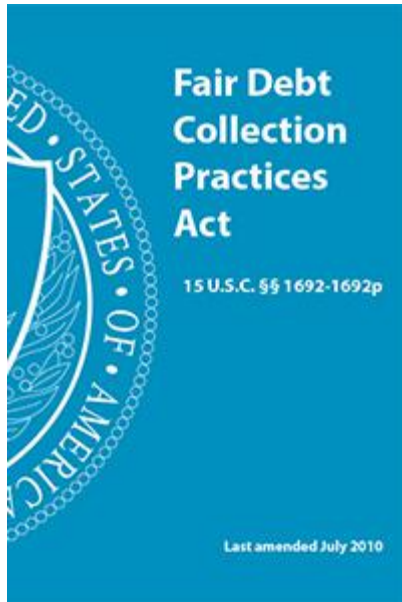
Legal Rights



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 original 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.

Fair Debt Collect Practices Act



Coverage

- Debt collectors:
 - ✓ Collection attorneys
 - ✓ Debt buyers (principal purpose)
 - ✓ Debt collection agencies
 - X Original creditors
- Consumer debts
 - ✓ Credit cards, medical, rent, etc.
 - X Business debts, child support, etc.

FDCPA Requirements for Debt Collectors

- Disclosing that they are debt collectors.
- Sending consumer a written notice containing basic information about the debt.

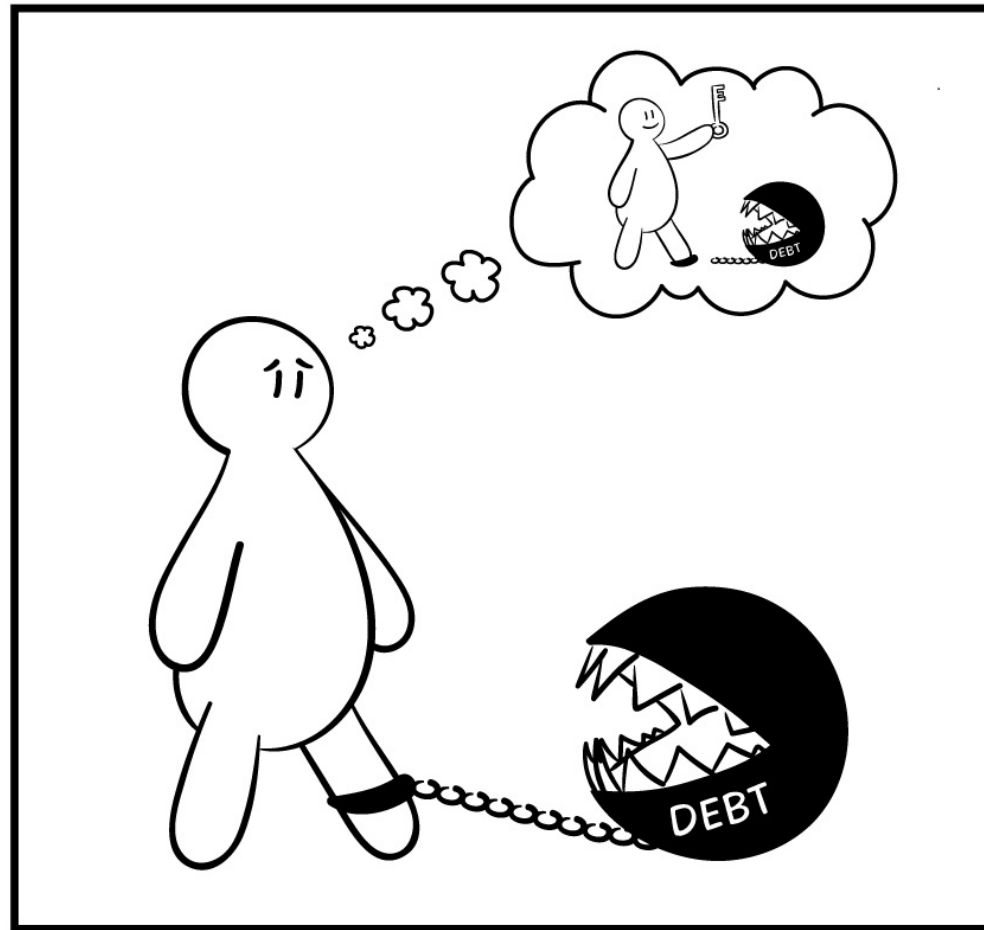
FDCPA Specific Prohibitions for Debt Collectors

- Communicating after written cease communication request.
- 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.
- Collecting before verification of disputed debt is provided.
- 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.

Strategies for Dealing with Debt



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 this one is licensed.
 - Search the Nationwide Multistate Licensing System (<http://www.nmlsconsumeraccess.org/>)

Learn More About Alleged Debt(s)

- Ask debt collector for more information.
 - Sample letter: <http://bit.ly/2BIT54Z>
 - Send certified mail and (ideally) within 30 days.
- Review credit reports.
 - annualcreditreport.com
 - Dispute errors with credit reporting agency and debt collector.
- Consider filing for bankruptcy.
 - If there are multiple debts, this may be the best option.

Dispute the Debt / File a Complaint

- Dispute the alleged debt.
 - Sample letter: <http://bit.ly/2GEXNoo>
 - Send certified mail and (ideally) within 30 days
- File a complaint.
 - Consumer Financial Protection Bureau - <https://www.consumerfinance.gov/complaint/>
 - Your state attorney general's office

Stop Collection Harassment

- Stop debt collection communications.
 - Sample letter: <http://bit.ly/2E6OY8a>
 - Limited types of communications still permitted.
 - May still sue to collect alleged debt.
- Sue the debt collector.
 - If collector violates the FDCPA or state laws, consumer can sue debt collector.
 - See Additional Resources for information about legal representation.

Communicate with the Debt Collector

- Tell collector if all income and property are exempt.
 - Send a “judgment proof” letter.
 - Some otherwise exempt benefits may be subject to garnishment for certain debts (e.g. taxes, student loans, and child/spousal support obligations).
 - See: <https://www.consumer.ftc.gov/articles/0114-garnishing-federal-benefits>
- Negotiate with the collector.

Respond to Any Collection Lawsuit

- File any necessary response in court by the deadline.
- Appear in court on appropriate day to avoid default judgment.
- Raise any defenses or counterclaims.
- If possible, consult with an attorney.
 - See [Additional Resources](#) for information about legal representation.
 - Civil legal aid programs considering starting or expanding your debt-related practices, see:
http://www.nclc.org/images/pdf/debt_collection/debt-defense-survey-2016.pdf

Key Lessons

1. Debt is a common challenge for older consumers.
2. Debt is a legal issue as well as a financial one.
3. Attorneys can employ several strategies to assist clients dealing with different debt situations.
4. Federal and state laws protect certain income and property against debt collection.

Additional Resources

- Federal Law
 - Fair Debt Collection Practices Act (15 U.S.C. §1692 et seq.)
- Federal Agencies
 - Consumer Financial Protection Bureau – <https://www.consumerfinance.gov/consumer-tools/debt-collection/>
 - Federal Trade Commission – <https://www.consumer.ftc.gov/topics/dealing-debt>
- State Agencies
 - State attorney general's office
 - State licensing agency

Additional Resources (1 of 3)

- Legal Assistance
 - American Bar Association, Free Legal Help: americanbar.org/groups/legal_services/flh-home/flh-free-legal-help.html
 - Legal Services Corporation, Find Legal Aid: lsc.gov/what-legal-aid/find-legal-aid
 - National Association of Consumer Advocates, Find an Attorney: consumeradvocates.org/find-an-attorney
 - National Association of Consumer Bankruptcy Attorneys, Find an Attorney: network.nacba.org/advanced-search

Additional Resources (2 of 3)

- Advocacy Organizations
 - Center for Responsible Lending, Debt Collection & Settlement: responsiblelending.org/issues/debt-collection-settlement
 - Consumer Action, Debt Collection Publications: consumer-action.org/publications/list/C428
 - National Association of Consumer Advocates, Debt Collection: consumeradvocates.org/for-consumers/debt-collection
 - National Consumer Law Center, Debt Collection: nclc.org/issues/debt-collection.html

Additional Resources (3 of 3)

- National Consumer Law Center Publications
 - Brochures for Older Consumers: nclc.org/for-consumers/brochures-for-older-consumers.html
 - Collection Actions: library.nclc.org/ca
 - Fair Debt Collection: library.nclc.org/FDC
 - Guide to Surviving Debt: library.nclc.org/node/184511

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.