

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General

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**GUIDANCE ON THE DEBT COLLECTION PROVISIONS OF THE COVID-19
RESPONSE SUPPLEMENTAL EMERGENCY AMENDMENT ACT OF 2020**

On April 10, 2020, the Council for the District of Columbia passed the emergency Act 23-286, the COVID-19 Response Supplemental Emergency Amendment Act of 2020 (“Emergency Act”) which aims to help DC residents deal with the fallout from the coronavirus pandemic. Section 207 of the Emergency Act amended D.C. Code § 28-3814 to add a number of temporary restrictions related to the collection of consumer debt during the coronavirus pandemic. The District of Columbia Office of the Attorney General (“OAG”) enforces the prohibitions in D.C. Code § 28-3814 though its enforcement authority under the Consumer Protection Procedures Act, D.C. Code § 28-3909. OAG issues the following guidance on how it interprets the Emergency Act for enforcement purposes to provide clarity regarding the law’s debt collection provisions.

The Emergency Act covers any debt that is 30 days past due and was made for the purchase of goods, services, or property for personal, family or household purposes. This includes motor vehicle loans but does not include home mortgages or other loans on real property.¹ For the duration of the declared coronavirus emergency, and for 60 days after its conclusion, the Emergency Act prohibits creditors and debt collectors from threatening or initiating any new legal action to collect a debt, visiting a debtor’s home or place of employment, or confronting the debtor about the debt in any public place. It also prohibits debt collectors, but not original creditors or entities who obtain the debt prior to its default, from communicating with debtors, including by phone call, email, or text message. However, communications relating to rescheduling court dates are exempted, and if a debtor initiates the communication, the debt collector may still respond to the request.

The answers provided here are general and advisory in nature. Any such enforcement decision will be based on the specific facts of each individual case and will be consistent with District law and regulations. This guidance is for informational purposes only and does not constitute legal advice nor create any rights or obligations. OAG may also issue further guidance to supplement these frequently asked questions as appropriate. For questions regarding the Superior Court’s operational status and the tolling of deadlines, please review the Court’s Orders at <https://www.dccourts.gov/coronavirus>.

¹ Section 202 of the Emergency Act includes separate mortgage relief measures.

Relevant Dates

Question: How long will the Emergency Act remain in place?

Answer: The Emergency Act's debt collection provisions will be in place during the period of the Mayor's emergency declaration and for 60 days after it ends.

Definition of Debt Collectors and Motor Vehicle Loans

Question: Does a collection agency, loan servicer, or law firm that collects on behalf of a "first-party" or "original creditor", i.e., a person or business who offers or extends credit creating a debt, qualify as a "debt collector" under the Emergency Act?

Answer: Yes. If a business is collecting on behalf of a first-party or original creditor, that business would qualify as a "debt collector" by engaging in the collection of a debt as defined by D.C. Code 28-3814(b)(2).

Question: What entities are considered "original creditors" under the Emergency Act?

Answer: For the purposes of the Emergency Act, an "original creditor" includes entities that acquire a debt or claim that was not in default at the time it was obtained. This interpretation includes third parties, such as loan servicers, that acquire and manage claim accounts on behalf of original creditors that are not in default at the time they are acquired.

Question: Are loans directly secured on motor vehicles or direct motor vehicle installment loans covered?

Answer: Yes. The Emergency Act states that during the Emergency period, the District's Debt Collection law (D.C. Code § 28-3814) applies to loans directly secured on motor vehicles or direct motor vehicle installment loans covered by D.C. Code § 28-3601 *et seq.*

Question: Are loans directly secured by a mortgage on real property, such as a home, covered?

Answer: No. The Emergency Act does not apply to collecting or attempting to collect a debt that is, or is alleged to be, owed on a loan secured by a mortgage on real property. D.C. Code § 28-3814(l)(3) and (m)(3).

Communications by Debt Collectors and Creditors

Question: Does the Emergency Act prohibit a creditor or debt collector from answering inbound calls initiated by a consumer?

Answer: No. The Emergency Act added D.C. Code § 28-3814(m)(1), which prohibits a debt collector from "initiat[ing] any communication with any debtor via any written or electronic communication, including email or text message, or telephone" during a public health emergency and for 60 days after its conclusion. The Emergency Act does not prohibit answering a communication that the consumer initiates. If a consumer communicates with a debt collector, the debt collector may respond to the consumer.

Question: Does the Emergency Act prohibit a creditor or debt collector from returning a telephone call initiated by a consumer?

Answer: No. Under the Emergency Act, D.C. Code § 28-3814(m)(1) does not prohibit a debt collector from “respon[ding] to a request made by [a] debtor for...communication.”

Question: Does the Emergency Act prohibit communication between a creditor or debt collector and a debtor when both parties are physically present in a courthouse in connection with judicial proceedings regarding a debt?

Answer: No. Communicating with a debtor while physically present in a courthouse in connection with judicial proceedings regarding a debt does not constitute “confront[ing] or communicat[ing] in person with a debtor regarding the collection of a debt in [a] public place” under D.C. Code § 28-3814(l)(2)(F), but such communications must otherwise comply with the prohibitions in the Emergency Act. Likewise, if a debtor initiates a communication in a public space, the debt collector may respond to that communication under D.C. Code § 28-3814(m)(1). This interpretation applies to telephonic or webcast court hearings to the extent such proceedings occur.

Question: Does the Emergency Act prohibit a debt collector from sending a debtor text messages or emails?

Answer: Yes. The Emergency Act, D.C. Code § 28-3814(m)(1), provides that “no debt collector shall initiate any communication with any debtor via any written or electronic communication, including email or text message, or telephone.” However, if the debtor initiates communication with the debt collector, the debt collector may respond to the communication under D.C. Code § 28-3814(m)(1).

Question: Does the Emergency Act prohibit a debt collector from sending monthly statements or receipts?

Answer: No. Debt collectors may send monthly statements and payment receipts to a debtor if the monthly statements and receipts relate to an existing payment plan.² D.C. Code § 28-3814(m)(1). Moreover, if a debtor has initiated a communication with a debt collector, the debt collector may communicate with the debtor and provide documents in connection with those communications, such as a statement or proof of payment, a written confirmation of payment in full or that an account has been closed, a response to a complaint or dispute submitted by the debtor, or a letter confirming the details of a negotiated payment plan. In addition, the Emergency Act does not prohibit communications from debt collectors that are required by law under the Fair Debt Collection Practices Act or any other federal law.

Initiating or Threatening Lawsuits, Attachments, and Other Actions

Question: Can a creditor initiate a new collection lawsuit?

Answer: No. The Emergency Act prohibits both creditors and debt collectors from “initiat[ing], fil[ing], or threaten[ing] to file” a new collection lawsuit under D.C. Code § 28-3814(l)(2)(A). However, this subsection does not apply to the collection of debt owed on a loan secured by a mortgage on real property. D.C. Code § 28-3814(l)(3).

² Amendments added to the Emergency Act passed by the Council on April 21, 2020 addressed this question.

Question: If a creditor or debt collector has obtained and served an order of attachment for a debtor’s wages or property, does a creditor’s or a debt collector’s continued acceptance of payments pursuant to such an order violate the Emergency Act?

Answer: No. D.C. Code § 28-3914(l)(2)(B) prohibits a creditor or debt collector from commencing any new action to attach wages or property of a debtor or serving an order of attachment for wages or property on a third-party trustee. If a creditor or debt collector previously obtained and served an order, and is receiving payments pursuant to that order, the acceptance of those payments does not violate the Emergency Act.

Question: Where a creditor or a debt collector has obtained and served an order of attachment of a debtor’s wages, does the Emergency Act prohibit a creditor or a debt collector from reducing the amount of a debtor’s wages attached for a debt or halting attachment altogether?

Answer: No. If a creditor or a debt collector reduces the amount of wages or earnings being attached for a debt, whether in response to a debtor’s request or otherwise, such conduct does not violate D.C. Code § 28-3914(l)(2)(B). Likewise, a creditor or debt collector does not violate D.C. Code § 28-3914(l)(2) or D.C. Code § 28-3914(m)(1) of the Emergency Act by filing and serving a notice of satisfaction of judgment, a motion dismissing a case, or motions to continue deadlines or hearings.

Question: Does the Emergency Act prohibit a trustee, such as an employer or a financial institution, from complying with an order of attachment?

Answer: No. A third-party trustee who is served with a court order of attachment to surrender money belonging to a debtor in settlement of a debt or claim, and who is not a “creditor” with respect to the debt or debtor at issue, is not regulated by D.C. Code § 28-3914(l)(B).

Question: Does the Emergency Act require creditors to halt all activity relative to the repossession of a vehicle?

Answer: Yes. Under D.C. Code § 28-3814(l)(2)(C), a creditor may not initiate, threaten to initiate or act upon the repossession of a vehicle. Calls, emails or letters stating an intention to repossess a vehicle would likely constitute a “[threat] to initiate or act upon any statutory remedy for the repossession of any vehicle” in violation of D.C. Code § 28-3814(l)(C).

Credit Unions

Question: Is a credit union a “debt collector” for the purposes of the Emergency Act?

Answer: No. If a credit union is collecting on its own debt, they are generally considered “creditors” under D.C. Code § 28-3814(b)(1A). However, if in the course of collecting on debts the credit union engages in debt collection on behalf of another seller, lender, or other creditor, it is considered a debt collector under D.C. Code § 28-3814(b)(3).

Question: Does the Emergency Act prohibit a credit union from making debt collections calls or from sending debt collection letters and emails?

Answer: No. If acting as an original creditor, and not a debt collector, a credit union may make collection calls per D.C. Code § 28-3814(m)(3). Debt collectors, though, are further limited by the prohibited conduct in D.C. Code § 28-3814(m).

Non-Consumer Debts

Question: Does the Emergency Act govern collections of commercial debts?

Answer: No. The Emergency Act governs only the collection of debts incurred “for personal, family or household purposes.” D.C. Code § 28-3814(b)(1C). The Emergency Act therefore does not apply to the collection of debts incurred for business or commercial purposes.

Question: Does the Emergency Act apply to a consumer who has obtained a legal judgment against a business and is seeking to enforce it?

Answer: No. A judgment against a business is not a “debt” as defined by D.C. Code § 28-3814(b)(1C).