
SEPTEMBER 2021

A FINANCIAL SECURITY THREAT IN THE COURTROOM

How Federal and State Policymakers
Can Make Debt Collection Litigation Safer
and Fairer for Everyone

| ACKNOWLEDGMENTS

The Aspen Institute Financial Security Program (Aspen FSP) would like to thank Karen Biddle Andres, Matthew Andres, Loren Berlin, Christopher Blythe, Dyvonne Body, Sohrab Kohli, and Tim Shaw for authoring this report; Joanna Smith-Ramani and Elizabeth Vivirito for comments and insights; and Erika Rickard and Darcy White for invaluable advice and feedback. Aspen FSP would especially like to thank those with whom we consulted and from whom we have learned: Don Baylor, Velvet Bryant, April Kuehnhoff, Ted Mermin, Karen Murrell, Fred Wherry, and Beadsie Woo. Finally, we thank the Annie E. Casey Foundation for its support of this paper but acknowledge that the findings and conclusions presented are those of the authors alone, and do not necessarily reflect the opinions of the funder.

| ABOUT THE ASPEN FINANCIAL SECURITY PROGRAM

The Aspen Institute Financial Security Program's mission is to illuminate and solve the most critical financial security challenges facing American households and to make financial security for all a top national priority. We aim for nothing less than a more inclusive economy with reduced wealth inequality and shared prosperity. We believe that transformational change requires innovation, trust, leadership, and entrepreneurial thinking. Aspen FSP galvanizes a diverse set of leaders across the public, private, and nonprofit sectors to solve the most critical challenges. We do this through deep, deliberate private and public dialogues and by elevating evidence-based research and solutions that will strengthen the financial health and security of financially vulnerable Americans.

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HOW TO USE THIS PAPER

Debt collection lawsuits present a significant threat to millions of Americans’ financial security, and data indicate that the odds are heavily stacked against alleged debtors in these cases. Despite the urgency of this issue—noted for years by committed legal aid lawyers and advocates—the legal system surrounding these lawsuits is complicated and potentially intimidating to people who are not attorneys or are unfamiliar with the subject. Aware of this relatively high barrier to entry—and recognizing the importance of widening the circle of people involved in repairing our broken debt collection system—in this paper we seek to achieve two goals. First, we aim to provide a basic overview of debt collection practices and lawsuits, including how they endanger people’s financial security, and the ways in which the current system is biased against individuals—particularly people with low incomes and people of color—so that readers new to the subject can familiarize themselves with the material. Second, we provide concrete state- and federal-level solutions to support a more just and equitable legal system and to move toward solutions that simultaneously allow for the fair resolution of legitimate debts while preserving people’s long-term financial security.

AUTHORS' NOTE

For definitions of frequently used legal terms throughout this paper, please see the Glossary on page 30.

In this paper, we refer to an individual who is facing a debt collection lawsuit sometimes as a “defendant” and sometimes as a “debtor.” Once a debt collection lawsuit has been filed, the person who allegedly owes money is a “defendant.” After the court has ruled against the defendant and in favor of a debt collector, we use the term “debtor.” This is because they still have to comply with the terms of the court ruling, even though, as we discuss throughout the paper, the defendant may not ever have owed the debt in the first place.

We also recognize that “debtor” often carries a negative connotation, as it has been used to imply that someone is bad at managing money or, worse, has attempted to defraud a creditor through nonpayment of a debt owed. For the sake of clarity on a complex topic, we have chosen to use “debtor” throughout this report but acknowledge its limitations.

There are also multiple common terms for the party attempting to collect a debt via litigation. In many instances, the terms “creditor,” “debt collector,” and “plaintiff” can be used interchangeably to refer to a company, organization, or individual seeking to collect money owed. Throughout this paper, for the sake of clarity, we use “creditor” as an umbrella term to refer generally to the entity seeking to recover money owed, with two exceptions. First, when we explain the legal steps in a debt collection lawsuit, we use “plaintiff.” A second exception is our use of “debt collector” in the final section about solutions, when we conform to the specific definition of “debt collector” from the Fair Debt Collection Practices Act.

Finally, we note for the reader the challenge in describing the details of both the problem and the potential solutions for rebalancing power in debt collections litigation, as states vary widely on both counts. We attempt in this paper to present a primer of the most common debt collection litigation practices in the United States, and we encourage leaders to seek state-specific information and experts in their quest to implement solutions.

I. Introduction

Today in America, debt collection lawsuits are simultaneously on the rise¹—wreaking havoc on the financial lives of millions of low-income households of color—and poorly understood by almost everyone outside the legal system, including the 68 million adults who have debt in collections.² It’s a dangerous combination, not only for individuals, but also for those of us working to strengthen Americans’ financial security, whether by boosting household income, reducing the racial wealth gap, building savings, or improving other critical components of financial health. While we are striving to strengthen the asset side of the household balance sheet, these lawsuits threaten those assets, and with it, the financial lives of vulnerable Americans, particularly low-income individuals and people of color who are disproportionately harmed by debt collection lawsuits.

Debt collection lawsuits, more commonly known as debt collection litigation, are a potential step in the collection process for an unpaid debt or bill. Separate from eviction cases, in which landlords seek a judgment to remove tenants from a property, debt collection lawsuits are meant to recover funds allegedly owed. Importantly, debt collection lawsuits are not an evil in and of themselves. Rather, they are critical to a well-functioning credit market, as they provide creditors with a fair process to recover some or all of their funds in the event that the debtor does not repay. However, research indicates that in American debt collection litigation, the balance of power is heavily weighted against individuals. To be clear, this is not simply due to bad actors in the debt collection industry, though there are those who abuse the system to their benefit. Multiple studies have shown that more than 70 percent of debt collection lawsuits end in rulings against the individual simply for failing to respond to the filing of the lawsuit (i.e., “default judgments”) in the studied jurisdictions.³ This is despite the fact that the individuals being sued may have legitimate defenses.⁴ It is these systemic biases against individuals that are the root of the uneven playing field that is our debt collection litigation system, and addressing them is the focus of this paper.

A debt collection lawsuit can be particularly harmful to individuals with low income and people of color. According to a 2015 study of debt cases in primarily Black communities in St. Louis, Chicago, and Newark, the rate of court filings against alleged debtors was twice as high as the rate of rulings against alleged debtors in mostly White communities, even when accounting for income.⁵ Realistically, the disparate impact on people with low income and people of color is likely even more severe, but it’s hard to know for certain because the court system neither tracks nor reports the data needed to accurately assess the scale and demographic impacts of debt collection litigation. However, the Consumer Financial Protection Bureau (CFPB) conducted a nationally representative survey between December 2014 and March 2015 and found that in 2014 about 1 in 3 Americans, or more than 70 million people, were contacted about a debt in collections.⁶ Additionally, 1 in 7 Americans, about 10 million people, were sued by a creditor in the same year.⁷ Based on these figures, an estimated 7 million people in 2014 received notice, often out of the blue, that they owed not only the original debt, but also fines, fees or interest on a debt or a bill that they may not even legally be obligated to pay.⁸ Once the court rules in favor of the creditor, the creditor may have the legal right to seize the individual’s bank account or withhold a portion of their paycheck, further threatening the person’s financial security at a moment when they are already unable to pay their debts.

Data Source to Watch

The Debt Collection Lab, led by Princeton University Professor Frederick Wherry, is an emergent effort to track real-time debt collection data across the country and to use various art forms to tell the human story of the debt industry and the lives it has impacted. As of the publication of this report, the Debt Collection Lab has published debt collection data in five states. To learn more about their work, visit <https://debtcollectionlab.org>.

The average amount of money at issue in a debt collection lawsuit is relatively small. In 2019, before the pandemic, the median amount of debt in collections was \$1,775,⁹ and in 2015, 75 percent of debt collection lawsuits were for \$5,200 or less.¹⁰ The vast majority of debt that ends up in collections is related to medical expenses and other daily needs.¹¹ There is reason to believe that the situation has only worsened in the face of the sudden and severe economic contraction that resulted from the pandemic and caused months of lost income for millions of workers. In a July 2020 poll, 46 percent of Americans reported that their household was experiencing “serious financial problems” as a result of the pandemic,¹² pushing many people that much closer to a debt collection lawsuit.¹³ Even in instances where a rent moratorium paused a household’s need to pay rent, the unpaid rent, known as “back rent,” has become an unpaid debt. There is concern among many housing and debt collection experts that the combination of pandemic-driven unpaid debts, like back rent, with the need for struggling businesses to collect more revenue will translate to a wave of potentially ruinous debt collection litigation in the months and years to come.¹⁴ Despite both the inextricable link between financial security and debt collection lawsuits—and the fact that the millions of people being sued each year in a debt collection lawsuit are the same people the asset-building field aims to serve—this problem is rarely a part of the discussions about policy options to improve Americans’ overall household financial security. Instead, **debt collection litigation is often assumed to be exclusively the purview of attorneys and legal advocates with the specialized knowledge necessary to navigate the legalese and complexities of the litigation process. This is a mistake. If we are serious about improving Americans’ financial well-being, we must account for both sides of the household balance sheet.**

Now is the time to expand the group of leaders who commit to improving the fairness of both the process and the outcomes of debt collection litigation, including those who, like

us, are not lawyers. But to do so, we must bring the significant risks of debt collection litigation more squarely into the dialogue about financial security. To that end, we have written this paper. For readers unfamiliar with the subject, we offer a simple, non-technical explanation of debt collection litigation, including a review of the process and of the impacts of debt and debt collection litigation in the lives of people in America. We also analyze the most harmful breakdowns in the litigation process and discuss their potential impacts on individuals. To further clarify the world of debt collection litigation, we have included throughout the text straightforward definitions of technical terms. For both readers new to the material and those already knowledgeable about debt collection litigation, we then present a framework of potential solutions—highlighting the most promising opportunities to rebalance power in debt collection litigation and improve outcomes for financially insecure Americans.

Given the scale of household debt in the United States and the potential increase in delinquent loans and unpaid bills, fees, and fines resulting from COVID-19-associated income loss, we may soon face a significant and rapid increase in the number of debt collection cases in our courts. Fortunately, there is a dedicated community of legal experts and advocates who have worked for decades to make these processes more just and equitable, representing clients being sued by creditors and advocating for policy change at both the state and federal levels. But they can’t do it alone. Nor should they have to. We can join them in supporting, designing, and implementing critical solutions to our broken debt collection litigation processes. And we should. Because it strengthens our work, and because people deserve a fair process for resolving unpaid debt and bills that protects them from financial ruin.

II. How Debt Impacts People in America

Debt can be a critical tool for building financial security over time. It can help households finance large purchases and make important investments that build wealth, like buying a car to get to work, paying for higher education, or purchasing a home. Yet, in recent years, household debt has become less a calculated investment and more a necessity for survival.¹⁵ In this section, we discuss Americans’ relationship with debt today—including who has it and how much, the most common forms of debt, how that debt has changed over time, and why. We then examine the potentially harmful impacts of debt on individuals’ financial security.

DEBT IN AMERICA TODAY

Debt is extremely commonplace in modern America. Today, 3 in 4 households carry some form of debt.¹⁶ There are two types of debt: loan debt and non-loan debt. The majority of the most commonly held types of debt are from loans: according to the Federal Reserve’s 2019 Survey of Consumer Finances, 45 percent of families in America have credit card debt, 42 percent have a mortgage, 37 percent have a vehicle loan, and 22 percent have education debt.¹⁷

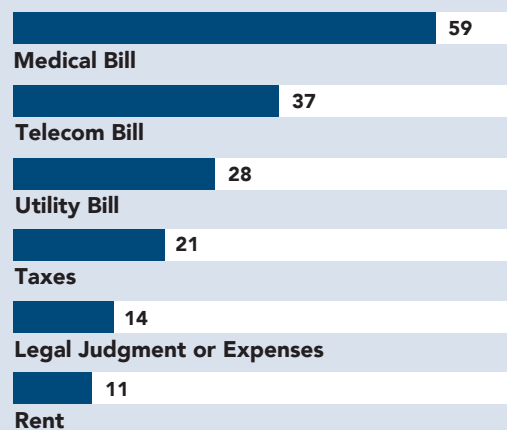
While borrowing for a home, a car, higher education, or carrying a credit card balance have been the most conventional paths to accumulating household debt, families facing emergencies, income shocks, or a persistent inability to make ends meet increasingly hold “non-loan debt.” Leading sources of non-loan debt include out-of-pocket medical costs, unpaid bills, and municipal fines and fees for everything from jaywalking to parking violations to court debt.¹⁸ Unlike loan debt, people may even be unaware that they owe some of these debts until negative information appears on a credit report or collection agencies call.

In the last 10 years, there has been a noticeable shift in the types of debt that Americans owe, with various forms of non-mortgage debt representing the greatest increase in total debt, reaching a

record high of \$4.2 trillion in early 2020.¹⁹ This increase is a direct result of the fact that the costs of numerous basic needs—including housing, healthcare, and childcare—are increasing at a faster rate than household incomes are rising, forcing many people to borrow money for essentials they can no longer afford to pay for out of pocket. For example, housing costs today consume more of Americans’ cash flow than in previous decades, with 1 in 3 households paying more than 30 percent of their income for housing.²⁰ Similarly, child and adult care have increased by 25 percent and 38 percent, respectively, in the past 10 years, putting further pressure on household cash flow.²¹

A key driver of non-loan debt is out-of-pocket spending on medical care. According to a recent analysis by the *Journal of the American Medical Association*, 18 percent of Americans now have medical debt.²² Medical debt is the primary reason people are contacted by creditors.²³ Other everyday non-loan expenses that are commonly pursued by creditors include unpaid phone and internet bills, utility bills, and taxes, as illustrated in figure 1, below.²⁴

Figure 1: Types of Past-due Bills, Payments and Other Debts for Which Consumers Were Contacted Regarding a Collection (Percent)



Note: Estimates are for consumers who were contacted about a debt in collection. The percentages sum to more than 100 percent because respondents could report multiple types of debt.

Household debt varies greatly by age, income, and race. When examined by age, adults age 40-59 tend to have the largest total debt load.²⁵ This is because they have the highest homeownership rate and thus, many have mortgages. Meanwhile, even with student loan debt soaring for adults 18-29, it is older adults age 70 and up who have seen the largest increase in total debt.²⁶ This is because older adults are carrying more mortgage and credit card debt than in decades past, and because they are increasingly holding student loan debt from their own education or for a family member.²⁷

When examined by income, it is middle-income households that borrow most heavily as a percentage of their income.²⁸ In comparison, low-income households have the lowest total debt balances, but their debt is disproportionately from the unpaid bills of daily life and high-cost debts like credit cards and payday loans. In a study of low-income households, the most common forms of debt were credit card debt (69 percent), followed by student loans (56 percent), medical debt (38 percent), auto loans (32 percent), and past-due bills (29 percent).²⁹

Additionally, there are stark differences in the composition of debt by race and ethnicity that are rooted in historical racism, including redlining and other structural barriers to building wealth, as well as documented predatory and discriminatory lending practices against communities of color.³⁰ For example, Black and Latinx households are less likely than White households to have debts that support the long-term development of wealth, such as a mortgage. Instead, they tend to carry more high-cost debt associated with the expenses of everyday life, including medical debt and debt from municipal fines and fees, the same types of debts that are more likely to end up in collections. The result is a widening of the already enormous racial wealth gap. Today, the median wealth gap between Black and White families is 12 cents per \$1 of White wealth and the median wealth gap between Hispanic and White families is 21 cents per \$1 of White

wealth.³¹ (There are comparatively fewer analyses of debt composition in Asian households, and even fewer address Indigenous and mixed-race households.)

DEBT CAN BE HARMFUL

While some types of debt, including mortgage or student loan debt, can be extremely helpful in building household financial security—when offered with terms that are safe, affordable, and transparent to the borrower—debt of all kinds can also undermine a person’s financial security, potentially leaving them much worse off than they were before assuming the debt. If a person falls behind on their payments, they are often penalized for their failure to pay with a variety of additional fees. As these fees mount, the person may become trapped in a self-sustaining cycle of debt; they fall behind on a payment and are penalized with additional fees that increase the total amount they owe. Faced with an even larger debt, they fail to make the next payment, which results in additional fees, further increasing the amount due and decreasing the likelihood that they can repay it. This cycle of snowballing debt often leads to debt collection litigation, in which creditors file a lawsuit. Frequently, these lawsuits end with the court ruling in favor of the creditor and granting the creditor the authority to seize the person’s bank account, withhold a portion of the individual’s paycheck, or place liens on their assets.

When discussing the potential harmful effects of debt on people’s financial security, there are two points to emphasize. The first is that not all people experience negative consequences of debt. Some people leverage debt to great success. But many more don’t. It’s those who experience the negative consequences of debt who are the focus of this paper. Equally important is the recognition that the harmful effects of debt may be different from the harmful effects of debt collection or debt collection litigation. Because lawsuits involve the court system, they can unlock a series of collection tools that are only available

through litigation and can inflict more enduring damage on people’s lives in multiple ways.

In the remainder of this section, we look in more detail at specific ways that debt and debt collection can weaken household well-being and financial security, as outlined below.

a. Debt can make it more difficult for families to meet their basic needs.

When a person has more debt than they can afford to repay, they may have to choose which bills they will pay and which they will leave overdue—even if they are choosing between critical needs of daily life. Such choices not only risk adding to the individual’s overall debt burden, but also jeopardize their short- and long-term financial security by potentially limiting their ability to build savings, reducing their access to financial products, and stripping their eligibility for certain means-tested public benefits. These choices may also endanger their everyday health and safety, whether by skipping needed medical care, risking eviction, or reducing access to nutritious food in favor of cheaper, processed products. According to the 2019 Survey of Household Economics and Decisionmaking, 57 percent of people with outstanding medical bills reported that they could not cover their monthly bills or would have difficulty doing so when faced with an unexpected \$400 expense.³²

b. Principal, interest, and fee payments on outstanding debt can drain families’ cash flow, making it difficult for families to pay off the amount owed.

The penalty fees and increased interest rates associated with late and/or missed payments only increase the individual’s debt load and are a growing burden on many people. This is especially true for low-income people who are more likely to rely on high-cost loans to make ends meet. According to research by The Pew Charitable Trusts, households that find themselves paying high interest rates on judgments can face even deeper cycles

of debt. For example, in 2014, a creditor in Washington state won a judgment for a \$9,861 medical debt. Although the individual had paid roughly \$8,500 by 2019, they still owed an additional \$8,500 because of interest and other costs.³³ These excessive fees limit households’ ability to reduce or eliminate debt.

c. Debt can make it more difficult for families to build long-term savings and accumulate wealth.

People can build savings when they have money left over after covering their basic needs and paying their debts. However, debt burdens can make it impossible for an individual to save in both the short- and long-term, particularly for retirement. In 2020, for example, the possession of medical debt was associated with a 69 percent lower emergency savings balance and a 26 percent lower retirement savings balance, controlling for all factors, including income.³⁴ Additionally, absent sufficient savings, households may be unable to purchase a home or invest in other assets that help to build wealth—which not only limits their long-term financial security, but also fuels America’s already-enormous racial and gender wealth gaps.

d. Debt can make it more difficult for families to manage financial emergencies.

All individuals experience financial “shocks,” irregular and unanticipated expenses that can derail a financially fragile individual, such as an unplanned medical bill or car repair. According to the JPMorgan Chase Institute, households need to save roughly six weeks’ worth of income in order to successfully weather such shocks. However, households struggling with unpaid debts are unlikely to be able to amass these savings.³⁵ Absent savings, they are less likely to be able to secure the funds to cover the financial shock, with potentially devastating consequences. For example, if a worker can’t afford a needed car repair, they may lose their transportation to their job and, with it, their job.

- e. Debt in collections can make it more difficult for a person to build credit.** Nearly 1 in 3 US adults who have a credit file also have a debt that is in collections.³⁶ When a debt goes to collections, the creditor or debt collector can report information to the credit bureaus, alerting future creditors to the fact that the individual has unpaid debts. This may discourage other creditors from extending credit to the person. Debt collection activity can affect an individual's ability to access credit for up to seven years and can lower a credit score by as much as 100 points.³⁷ As the individual's credit score drops, so too does their ability to access a mortgage, a small business loan, or other basic credit needs. This credit score decrease can also be costly, as research shows that a good, or high, credit rating will save the average borrower \$250,000 in interest over a lifetime.³⁸
- f. Debt collection efforts can make it more difficult for a person to plan for the future.** Debt collection can drag on for years. Creditors or their agents sometimes pursue debts for decades,³⁹ following debtors to new jobs and new savings accounts. Some creditors harass and threaten people, demand larger payments, and disclose debts to employers, co-workers, family members, and friends. These debt collection abuses may result in additional debts, invasion of privacy, job loss, and domestic instability.⁴⁰ Such actions can cause people to feel trapped under the weight of their debt, and make it hard for them to plan for the future.
- g. Debt can lead to anxiety, depression, and other health risks.** It is important to acknowledge that financial damage is not the only harm that debt can inflict on a household. Debt can also cause significant emotional and psychological challenges as well. Individuals with high debt-to-asset ratios report higher levels of perceived stress and depression, according to the National

Institutes of Health (NIH).⁴¹ Also, a 2010 meta-analysis of more than 60 research papers confirmed a significant relationship between debt and mental health, including links between debt and suicide completion, drug and alcohol abuse, and negative health outcomes such as obesity.⁴² Notably, debt not only impacts the household, but it can also impact worker productivity. Financial distress has been shown to reduce worker productivity, increase absenteeism, and undermine employees' health.⁴³

Households with high debt burdens, those owing a significant amount of money relative to income, are especially vulnerable to this vicious cycle of financial destabilization—in which it grows increasingly harder, and more expensive, for a person to catch up on unpaid debts, much less save for future needs and opportunities. Consequently, these households are more likely to have a court rule against them when faced with a debt collection lawsuit, or to find that money has been taken directly from their bank account or paycheck to repay the debt. These are just some of the debt collection tools available to creditors which can further damage an individual's financial well-being.

III. Understanding Debt Collection Litigation and Its Harmful Effects on People

HOW A DEBT OR UNPAID BILL BECOMES A LAWSUIT

If a person fails to make timely debt payments, their account can be deemed delinquent by the creditor. To collect on delinquent payments, creditors often reach out directly to people by mail or phone to request repayment. Alternatively, instead of trying to reach the person themselves, creditors can hire a debt collector whose first step is also to try to contact the person and, if possible, work out a repayment plan.

In the event that the creditor is unable to collect the debt, they may hire a collection attorney to file a lawsuit. The purpose of the lawsuit is to obtain a court order, called a judgment, requiring the person to pay the debt. Once this lawsuit has been filed, the creditor and the individual have entered “litigation,” which is simply the process of taking legal action.

As with other forms of litigation, in debt collection lawsuits there is a plaintiff, a party who brings a case against a defendant—the person, company or institution that is being sued for a debt that is no longer being paid or is in default. In debt collection lawsuits, the plaintiff is either a creditor or a debt buyer—a type of debt collector that purchases the debt from the creditor at a discount in order to profit by collecting more than they paid the original creditor. Debt collection lawsuits are filed in civil court. This is because the dispute is between two private parties, as opposed to criminal court, which is reserved for cases that involve some sort of action that is considered harmful not only to the private parties but also to the larger society.

In order to seek solutions that can make debt collection litigation fairer and less financially damaging for defendants, we must understand

the different ways a debt collection lawsuit can progress. As we discuss later, there are both process breakdowns and structural flaws in debt collection litigation that compound and contribute to the low rates of participation by defendants and the consequent high rates of default judgments already described.

Step 1: The plaintiff files a complaint.

To initiate a lawsuit, a plaintiff must file a complaint—a written document that provides the alleged facts surrounding the unpaid debt and the legal argument that the plaintiff believes supports their lawsuit.

Step 2: The defendant is informed of the lawsuit.

Once the court accepts the plaintiff’s filing, it issues a summons, the court paper that tells the defendant they are being sued and how and when to respond to the lawsuit. The plaintiff is then responsible for informing the defendant of the lawsuit by providing the defendant with the summons and complaint. This is called “service of process”—sometimes referred to as “being served.” The methods available to the plaintiff for serving process depend on the state, but they usually include some combination of handing the documents personally to the defendant, delivering the documents by certified or regular mail, or tacking the documents to the door of the defendant’s residence. Once service of process has been completed, the plaintiff is responsible for providing proof to the court, usually through a sworn statement, that the summons and complaint have been delivered to the defendant. Although the law says the plaintiff cannot move forward with the lawsuit without showing that the defendant has received notice of the lawsuit—as we discuss below—there are many instances where a debt collection case proceeds without the defendant knowing that a lawsuit has been filed against them.

Step 3: The defendant either responds or does not respond to the complaint. Whether or not the defendant responds to the complaint determines what happens going forward with the collection case. Specifically:

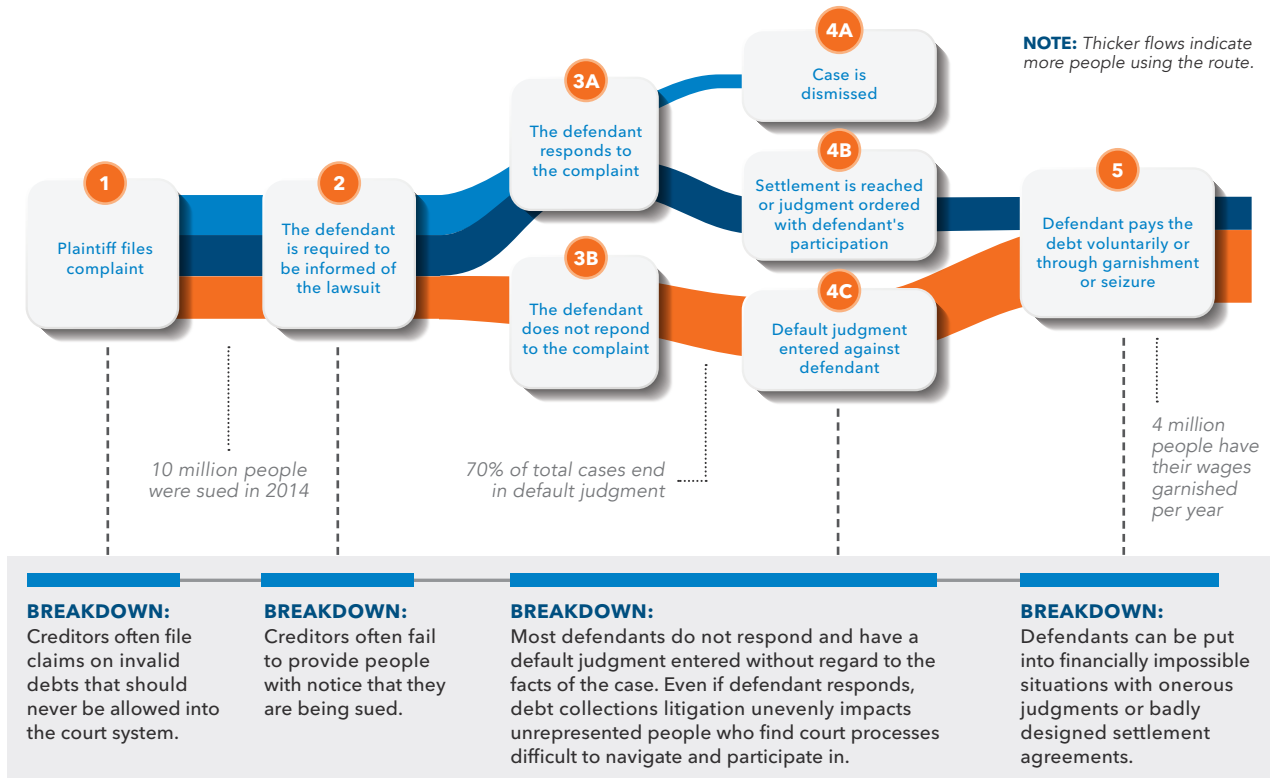
- a. If the defendant responds to the complaint, the court will schedule a hearing where the court might listen to the defendant's argument against the plaintiff's claims and/or offer the parties an opportunity to work out a settlement. If the parties do not reach a settlement, the court will schedule the case for further hearings or a trial. If the defendant has legitimate defenses to the allegations in the complaint, the defendant might be able to get the case dismissed prior to trial, either by the plaintiff or by the judge. If the parties can work out a settlement, then they will usually agree on a repayment schedule. And if the case goes to trial, the judge or a jury will decide whether the defendant owes the debt and will issue a verdict, finding that all or some of the claimed debt is owed, or that the plaintiff has not proven the allegations and the defendant does not have to pay anything.
- b. If the defendant does not respond to the complaint, the plaintiff will request a "default judgment." A default judgment is a final decision in the case that the court awards simply because one party has not participated in the proceedings. **When a defendant in a debt collection case does not respond to the complaint, the judge generally does not rule on the case based on its merits, but rather will rule in favor of the debt collector based solely on the defendant's lack of response.** Despite the lack of proof or scrutiny, a default judgment carries the same weight and enforcement power as a ruling granted after a trial.

Step 4: The case is resolved in one of three ways, as previously discussed.

- a. The case is dismissed, either by the plaintiff voluntarily or by the judge after considering the merits of the case. Dismissal generally only occurs if the defendant answers the complaint and shows up to all court hearings.
- b. A settlement is reached between the plaintiff and defendant, or the judge enters a judgment requiring the defendant to pay the plaintiff all or some of the claimed debt. These are resolutions reached only with the defendant's participation in court.
- c. A default judgment is entered against the defendant. In debt collection lawsuits, the alleged debtor rarely responds to the complaint or attends their court hearing.⁴⁴ Unsurprisingly, the low appearance rate corresponds with a high default judgment rate against the defendant. Multiple studies have shown that more than 70 percent of debt collection lawsuits end in default judgments in the studied jurisdictions.⁴⁵ This is despite the fact that the individuals being sued may have legitimate defenses.⁴⁶

Step 5: The debt is paid. If the parties reach a settlement or the judge issues a judgment—either through default or on the merits—ordering the defendant to pay the plaintiff, the plaintiff then has the right to be paid. The defendant can pay the debt voluntarily and can work out a payment plan with the plaintiff. However, if the defendant does not pay the debt willingly, the plaintiff can extract payment from the defendant through wage garnishment or seizure of bank accounts or property.

Figure 2: The Most Common Pathway for a Debt Collection Lawsuit is the Most Harmful to Financial Security – and is Driven by Process Breakdowns



PEOPLE FACE MANY BARRIERS IN RESPONDING TO A DEBT COLLECTION LAWSUIT

There are many reasons that people do not respond or appear in court to defend themselves in a debt collection lawsuit.⁴⁷ The practical realities of the defendant's life may cause them to not respond. They may lack the ability to take unpaid time off of work, have complex and multiple demands in their lives, or have transportation challenges.⁴⁸ Defendants may lack information about how to contest an invalid debt or negotiate a settlement.⁴⁹ They may feel intimidated by the legal process, fear deportation if they appear in court, lack access to legal advice and/or representation, or believe that appearing in court will not make any difference.⁵⁰ Importantly, people are frequently confused about who is suing them, since the company that is suing to collect on the debt may not be the same company with which the person did business.⁵¹

In many instances, people do not respond to a complaint because they were never notified of the existence of the lawsuit. Defendants may never have received notice of the case, sometimes because the plaintiff attempted to notify them at the wrong address due to inaccurate or outdated records, and sometimes because the court allowed methods of serving the defendant that did not provide actual notice. In other cases, defendants don't receive notice because creditors or their agents file a knowingly false proof of service with the court.⁵² An additional reason a defendant might not respond is because of the cost. In some states, the fee to file an answer to a lawsuit can be hundreds of dollars, and it can be unclear how to get the fee waived.

In response to low response rates from defendants, courts issue default judgments with "alarming automaticity and speed, without asking for evidence in support of the claims or scrutinizing the allegations in any way."⁵³ Many individual courts issue thousands or even tens

of thousands of “no questions asked” default judgments in favor of debt buyers every year.⁵⁴ High default rates make life easier for courts, enabling them to dispose of the high volume of collection lawsuits quickly,⁵⁵ but default judgments expose defendants to significant harm in the form of garnished wages and seized bank accounts.

COMMON POST-JUDGMENT DEBT COLLECTION TOOLS AND THEIR IMPACTS ON INDIVIDUALS’ FINANCIAL SECURITY

Winning a debt lawsuit gives creditors access to powerful tools to acquire money from the people they sue, such as wage garnishment, in which creditors can deduct funds directly from the individual’s paycheck, bank account seizures, in which creditors can extract money from the individual’s bank account, and/or the seizure of other property. And although it is illegal to jail an individual for not paying a debt, in 44 states, people can be put in jail for failing to appear in court for post-judgment hearings or for failing to produce requested financial information in the plaintiff’s efforts to collect on a court judgment.⁵⁶

Three Most Common Debt Collection Tools

- Wage garnishment
- Bank account seizure
- Threat of imprisonment

In 2013, about 4 million Americans’ wages were garnished due to unpaid debts, with garnishments most prevalent among workers earning between \$15,000 and \$40,000 annually.⁵⁷ Federal law currently protects a minimal amount of income from wage garnishment, and states have the option of protecting more.⁵⁸ The federal income protections allow creditors to garnish wages

in an amount that puts many people below the federal poverty line—leaving them with as little as \$217 per week in their accounts—and numerous states fail to protect any more than the federal minimum.⁵⁹

Bank account balances have even less protection. They are not safeguarded by federal law, though specific sources of federal benefits (e.g., Veterans Administration benefits and Supplemental Security Income) cannot be seized. States offer varying levels of protection to bank account balances and other forms of personal property; many states leave debtors vulnerable to losing to seizure emergency savings, vehicles they might need to get to work, important personal property, and even their homes. While some states set limits on the amount of money a creditor can seize from either a paycheck or a bank account, not a single state has laws sufficient to completely protect a defendant from destitution, according to a 2020 study by the National Consumer Law Center.⁶⁰

In addition to reducing people’s income, wage garnishments and seizures can deal an even more severe blow to a person’s financial security by restricting access to critical financial tools and resources, including credit, banking, and long-term planning. Bank account levies and seizures are commonly cited barriers to participating in banking.⁶¹ Additionally, a debt collection lawsuit can also ultimately result in a loss of access to banking services, as financial institutions frequently freeze an individual’s account upon receiving notice of a judgment against the account holder.⁶² Once the account is frozen, depending on a given state’s laws, the individual may not be able to access their money, which can lead to a variety of significant financial problems. For example, their rent or mortgage checks may bounce, and their debit card withdrawal requests may be rejected, among other things. Absent access to their account, the individual may unintentionally accrue additional debts as payments fail to clear, further threatening their financial security.

THE DISPARATE IMPACT OF DEBT COLLECTION LITIGATION ON PEOPLE WITH LOW-TO-MODERATE INCOMES AND PEOPLE OF COLOR

Debt collection lawsuits do not affect all people equally. Rather, borrowers of color experience the most acute impacts, in part because they are disproportionately pursued by creditors. Creditors call borrowers of color nearly twice as frequently as they call White borrowers, despite similar rates of default and late payments.⁶³ Similarly, members of Black and Latinx communities are more likely to have debt in collections, with 42 percent of borrowers in majority non-White areas having a debt in collections as compared to 26 percent of borrowers in areas that are majority White, according to the Urban Institute.⁶⁴ A ProPublica analysis of debt collection in three major cities—Chicago, Newark, and St. Louis—found that the risk of judgment is twice as high in majority Black census tracts.⁶⁵ A similar study of national bankruptcy data found that people in majority Black areas were twice as likely to have their bankruptcy case dismissed, preventing them from receiving needed legal relief from debt obligations, as compared with people in majority White areas, even when controlling for income, assets, and other factors.⁶⁶ These disparities are no coincidence—generations of discrimination have resulted in fewer resources for households of color to draw on when facing financial pressure.

The struggles with debt compound other hardships common in Black communities, including conflicts and tension with police and court systems. The collection of court-imposed fines and fees is a prime example of this. The debt people owe from those fines and fees has increased in recent years and disproportionately impacts low-income communities and communities of color—especially Black communities. Studies show that cities with large Black populations levy larger amounts of such

fines, fees, and debts onto their residents.⁶⁷ The consequences of unpaid court debt include both driver's license suspension and wage garnishment, which can create a vicious cycle of financial distress for those who already face tenuous employment or insufficient income. The harshest consequence of these debts is jail time, which further involves communities of color in a criminal justice system that already overcharges and over-incarcerates them.

IV. The System for Collecting Unpaid Debts is Broken

The idea that our civil court system operates on a level playing field is an illusion. The power asymmetry between plaintiffs and defendants in debt collection lawsuits leads most defendants to not even participate in the lawsuit. As discussed previously, multiple studies have shown that more than 70 percent of debt cases end in default judgment in the studied jurisdictions.⁶⁸ In instances where the defendant does participate, collection lawyers are able to manipulate or short-circuit the rules against unrepresented and generally unsophisticated low-income defendants.⁶⁹ Against this backdrop, it is perhaps not surprising that 10 years ago, the Federal Trade Commission declared that the system that resolves consumer debts is “broken.”⁷⁰ In this section, we detail the four key process breakdowns in debt collection litigation:

1. Plaintiffs file claims on invalid debts that should never have been allowed into the court system;
2. Plaintiffs fail to provide people with notice that they are being sued;
3. Debt collection litigation unevenly impacts unrepresented people who find court processes difficult to navigate and participate in; and
4. Onerous judgments and badly designed settlement agreements can force debtors into financially impossible situations.



BREAKDOWN #1

Plaintiffs file claims on invalid debts that should never have been allowed into the court system.

In our current debt collection system, a plaintiff can file a claim that should never have been allowed into the court system. For example, a plaintiff can sue the wrong person, for the wrong amount of money.⁷¹ They can file a lawsuit

without proving that they are entitled to the debt, or to collect on a debt that is too old to be sued upon. They can sue over a debt that may already have been collected by someone else, or has already been discharged in bankruptcy, or that has already been paid off.

There are three ways this can happen:

a. **Insufficient evidence in the complaint.**

When filing a complaint with the court to initiate a lawsuit, the plaintiff may fail to provide sufficient evidence with the complaint to show that they are seeking to recover the correct amount of money from the right person. In most states, such failings do not mean that the court will reject the complaint or dismiss the case unless the defendant actively challenges the sufficiency of the complaint. Insufficient filings may seek an amount that includes questionable fees, penalties, and interest to inflate the debt sought.


b. **Incomplete information provided to the defendant.**

When notifying the defendant of the lawsuit, the plaintiff may fail to provide the defendant with the information necessary to assess the validity of their claims, and often the defendant does not know how to discover or otherwise access needed information. According to the Federal Trade Commission (FTC), many debt collection complaints do not provide people with sufficient information to allow them in their answers to admit or deny the allegations and defend themselves.⁷²

c. **Expired debt.** Plaintiffs sometimes sue for debts that have expired (“time-barred” debt). The collection of time-barred debt is particularly damaging to people who do not know that they have a defense to the legal action, do not understand that the statute of

limitations on the debt has expired, or are not aware that paying on the debt in some states can revive the statute of limitations.⁷³ Defendants may believe the plaintiff has a valid claim against them and might make payments on debts they would not otherwise have to pay. In those circumstances, not only are the defendants unnecessarily forfeiting cash they may need to pay for necessities, but they also are inadvertently making it possible for the plaintiff to obtain a judgment on that debt if the defendants fail to continue making payments. In 2020, the CFPB issued a rule prohibiting debt collectors from suing or threatening to sue to collect on a debt that is older than the applicable statute of limitations, consistent with the federal Fair Debt Collection Practices Act (FDCPA).⁷⁴ Nevertheless, the practice continues.

Unfortunately, a plaintiff filing an improper lawsuit does not mean that that lawsuit will not proceed. Rather, generally a case will be dismissed only if the defendant successfully argues that the plaintiff's case is invalid. Yet, defendants are unrepresented by attorneys in the vast majority of cases and are therefore unlikely to know the legal defenses they may have, much less have an understanding of how and when to raise them.⁷⁵



BREAKDOWN #2
Plaintiffs fail to provide people with notice that they are being sued.

Some people don't even know they have been sued until their wages are garnished or their bank accounts or property are seized, which are their first indicators that a default judgment was reached without their knowledge or involvement. There are two ways in which a default judgment can be reached without the defendant's knowledge:

a. Ineffective notification method. Almost all jurisdictions require that the notification of the lawsuit be delivered in person to

the defendant or someone of suitable age who lives with them. While the preferred method of service is "personal service," in which a sheriff or a third party hand-delivers the notice to the defendant, in many jurisdictions other methods are allowed. The notice can be delivered by "nail-and-mail" service, in which it is affixed to the door of the defendant's residence and a second copy is mailed to the same address, by publishing it in a newspaper, or—in some cases—by simply mailing it via the US Mail or another authorized service. While the courts require proof of delivery of the notification, they frequently fail to adequately review whether service was proper and whether the plaintiff verified the identity and address of the defendant.⁷⁶ This is a problem because notices are often served at addresses where the defendant no longer resides, and therefore notice is never received by the defendant. According to a study by the National Center for State Courts (NCSC), **our courts' current methods for service are "functionally obsolete."**⁷⁷ **The typical methods of serving process are "riddled with inaccuracies and inadequacies."**⁷⁸

b. Lack of notification. In some instances, plaintiffs engage in fraudulent methods of service, often called "sewer service" by lawyers. Sewer service is the practice of intentionally filing false affidavits of service of process in court to obtain a default judgment. Recent prosecutions by state attorneys general against debt collectors have revealed massive instances of fraud, where hundreds of thousands of people were not served with complaints against them.⁷⁹ This sort of "sewer service," or intentional failure to provide process of service, is systemic in debt collection lawsuits because process servers are largely unregulated, collection attorneys may benefit from and rely on the high number of default judgments to maintain profits, and defendants largely do not have legal counsel to help them overturn judgments granted without notice.⁸⁰

BREAKDOWN #3

Debt collection litigation unevenly impacts unrepresented people who find court processes difficult to navigate and participate in.

The modern debt collection litigation system is often unnavigable for the few people who do appear in court to defend their cases. In part this is because creditors usually have attorneys present to represent them, and the people being sued usually do not. As a result, plaintiffs have a distinct advantage over defendants. Another challenge facing people without representation is that collection attorneys frequently try to convince them to settle on terms that the defendant may not understand or be able to afford. Finally, a defendant may appear to contest the debt, only to find the collector unprepared and the hearing postponed, protracting the litigation and the imposition on the defendant's time. Below we review each of these challenges in more detail.

- a. Asymmetry in legal representation.** Debt collection lawsuits often impact people who do not know their rights or are unlikely to have legal representation. A CFPB survey found those in the lowest income bracket are three times as likely as those in the highest income group to have been contacted about a debt in collections, and that people with lower incomes are also more likely to have been sued for a debt.⁸¹ People with low and moderate incomes are unable to afford legal representation, which is why only 1 percent to 10 percent of defendants have legal representation in debt collection cases.⁸² Without representation, individuals are unlikely to know their full range of options for resolving their case or to recognize potential defenses to the claims against them.⁸³
- b. Pressure on individuals to settle.** When unrepresented defendants do appear in court for their collection suit, collection attorneys typically try to convince these

individuals to settle rather than appear before the court.⁸⁴ Court officials often direct people to speak to these attorneys via informal negotiations. These conversations may produce settlements on terms people do not understand and cannot afford,⁸⁵ and may leave them no better off than those who received default judgments.⁸⁶ Even worse, in pursuit of settlements and to avoid having to scrutinize cases, some courts will set up “judgeless courtrooms” or “rocket dockets” run by the collection attorneys and without judicial oversight.⁸⁷ Defendants may be summoned to a courtroom, where collection attorneys run the proceedings, escorting individuals into private meeting rooms to pressure them into entering repayment agreements. The defendant does not get an opportunity to be heard by a judge before these meetings, and will never see a judge if the defendant enters into a repayment agreement in that meeting.

- c. Postponements burden defendants.** If the defendant does appear in court to contest the debt, collection attorneys may request a postponement, either because they are unprepared to prove the defendant's debt or because they understand that the defendant may not be able to attend a subsequent hearing, thereby increasing the probability of a default judgment.⁸⁸ The collection attorney may also dismiss the case if the defendant shows up to court, with the idea that they might refile later, again in hopes of the defendant not showing up to a subsequent hearing.⁸⁹ Either a postponement or a refiling means that defendants who have had to take time off work or have had to navigate transportation or child care challenges to appear in court have to decide whether they are willing or able to do all of that again.

With high default rates in debt collection cases being the norm, collection attorneys rarely need to show up with more than the name, address, and alleged balance of the individual.⁹⁰ As one

collection attorney said, “90 percent of our cases are default judgments. We show the judge our math and if no one disputes we get our judgment.”⁹¹ Debt collectors often do not have proof of the legitimacy of the debt—e.g., a copy of the contract that led to the debt, verification of ownership of the debt by the creditor, or proof that the defendant incurred the debt.⁹² Nonetheless, courts routinely grant default judgments in such cases if the defendant does not answer the complaint and appear in court, leaving the defendant with a legal obligation to repay money that, by rights, they may not owe. Additionally, the practice creates strong incentives for unscrupulous creditors to abuse the system.

BREAKDOWN #4



Onerous judgments and badly designed settlement agreements can force debtors into financially impossible situations.

After the court has ruled in favor of the plaintiff, the imbalance of power between the plaintiff and the defendant—now officially considered a “debtor”—continues. Plaintiffs may exploit the rules and processes of judgment enforcement as well as the inadequate levels of protection for debtors. Armed with a judgment saying the defendant owes the debt, a plaintiff can garnish the debtor’s wages, freeze their bank accounts, seize or place liens on their assets, and may be able to obtain a civil arrest warrant if the debtor fails to appear at or participate in certain post-judgment proceedings.⁹³ Common examples of ways in which the rules can be—and are—exploited by plaintiffs to the disadvantage of defendants include:

a. Increased costs to the debtor. Court judgments inflate the amounts debtors owe by adding amounts such as court costs, interest, and attorneys’ fees. Together these costs and fees can exceed the original amount of the debt⁹⁴ and can push people deeper into a cycle of debt.⁹⁵ In some states,

interest rates charged on the unpaid debt can be set in the original consumer contract, which can allow creditors to charge double- or triple-digit interest rates.⁹⁶

- b. Inadequate limits on wage garnishments and seizures of bank accounts and other assets.** When a plaintiff obtains a court judgment against an individual, the plaintiff will ask the court to seize property, to order the person’s employer to withhold part of their wages, or to require a bank to pay the funds in the debtor’s bank account to the plaintiff.⁹⁷ Each state has its own rules specifying how much of the debtor’s wages and property the creditor can seize, with the goal of protecting defendants from poverty. Unfortunately, these laws have become inadequate and are often insufficient to protect families from being thrust into poverty by enforcement of debt judgments.
- c. Indefinite collection efforts.** Plaintiffs are allowed to enforce judgments for up to 20 years in most states, and can file to renew judgments for additional periods beyond that.⁹⁸ As a result, creditors may try to collect for years or even decades on judgments that defendants may not be able to pay, making it difficult for defendants to keep up with their current bills or regain financial security.⁹⁹ Some creditors may deliberately delay pursuing enforcement actions, especially on smaller judgment amounts, as they wait for interest to accrue.¹⁰⁰
- d. Use of arrest warrants to force defendants to make payments.** Although it is illegal to jail someone for not paying a debt, in 44 states debtors can be put in jail for not cooperating in post-judgment proceedings where a creditor is seeking to garnish the debtor’s wages or seize the debtor’s property.¹⁰¹ Debtors can be jailed if they fail to appear in court for post-judgment hearings or fail to produce to the creditor and the court the debtor’s financial information.¹⁰² Tens of thousands

of individuals each year have civil arrest warrants issued for them by judges.¹⁰³ There have been many instances where debtors were arrested and jailed in debt collection cases, even though they were never notified of the post-judgment hearing.¹⁰⁴ And unlike criminal arrests, defendants under civil arrest may be incarcerated without access to an attorney.¹⁰⁵ Creditors use civil arrest warrants and the threat of arrest to frighten people into making payments.¹⁰⁶ Civil arrest can compound debtors' financial stress by causing them to lose wages or their jobs, and by forcing them to pay bail to be released from jail.¹⁰⁷

Each of these flaws in the current debt collection litigation system is problematic on its own. When taken together, they create a process that is both biased against defendants and fails to satisfy the commitment of the United States to provide a fair judicial system to all individuals—regardless of who they are, where they come from, how much or how little money they have, or their capacity to navigate the judicial system. Clearly, something needs to change to level the playing field for defendants. In the next section, we recommend solutions.

V. Recommendations for Federal and State Governments to Improve Debt Collection Litigation

Many different kinds of leaders and policymakers at both the federal and state levels have authority over debt collection litigation processes. Federal agencies, members of the US Congress, gubernatorial administrations, state supreme courts, and state legislators are well-positioned to act to improve the fairness of the debt collection litigation process. Federal law and federal agencies set baseline protections for defendants and have rulemaking and enforcement authority over these laws. State authorities can supplement federal protections with their own policies and regulations. Finally, state courts play an essential role in the way debt collection litigation impacts the daily lives of defendants, as their rules and procedures set the standards for creditors in filing claims and thus can dictate how complex the system is for defendants. We encourage leaders at the federal and state levels to leverage their authority to improve the country's debt collection litigation system in order to more justly serve individuals. Specifically, we seek a system that ensures that:

- Debt entering the litigation system is legitimate;
- Defendants know that they are being sued;
- Defendants understand their rights and are able to fully participate in their case;
- Judgments do not permanently damage debtors' financial security; and
- Case data is consistently and accurately tracked for all debt collection lawsuits in each state, and publicly reported.

To that end, in this section we provide recommendations—first to federal leaders and then to those operating at the state level—to help achieve these goals.

Federal Solutions to Repair Our Broken System

Congress establishes the laws that regulate debt sale and collection—including the Fair Debt Collection Practices Act (FDCPA) and the Consumer Financial Protection Act (CFPA)—and federal agencies enforce these laws. As such, the federal government has extensive authority over the debt collection litigation system and should leverage these powers to ensure that the process is fair for households that are sued on a debt. We have specific recommendations around three goals:

1. Ensure that all debt entering the litigation system is legitimate;
2. Ensure that defendants know that they are being sued; and
3. Ensure that judgments do not permanently damage debtors’ financial security.

GOAL: ENSURE THAT ALL DEBT ENTERING THE LITIGATION SYSTEM IS LEGITIMATE.

Federal law and regulations are powerful tools for establishing legal protections nationwide to ensure that consumers are not sued on debts they do not owe, which, according to the CFPB, is the most common debt collection complaint by individuals.¹⁰⁸ Ensuring there are sufficient federal protections against collection of illegitimate debt and sufficient resources to enforce these protections is key to ensuring debt entering the debt collection litigation system nationwide is legitimate.

Federal Solutions to Ensure that All Debt Entering the Litigation System is Legitimate

RECOMMENDATIONS
Ban litigation on all debt that has passed the statute of limitations
Increase the enforcement mandate and capability of federal agencies
Require that creditors document that they own the debt before a lawsuit can begin
Mandate that creditors prove that the debt is not time-barred when initiating a lawsuit

- **Solution: Ban litigation on all debt that has passed the statute of limitations.** CFPB regulations prohibit debt collectors from suing debtors on debt that has passed the statute of limitations, otherwise known as time-barred debt. However, if a debtor makes a payment on time-barred debt the statute of limitations is revived, making the debtor liable again for that debt. These regulations should be changed to prohibit litigation on all debt that has passed the statute of limitations, regardless of whether a debtor has made a payment on it.
- **Solution: Increase the enforcement mandate and capability of federal agencies.** Congress sets the rules governing the range of enforcement actions that federal agencies, primarily the CFPB and the FTC, can take on behalf of consumers wronged by creditors. Congress should ensure these powers are clear and sufficient to deter and rectify fraudulent or predatory debt collection practices, and that these agencies are sufficiently funded to effectively enforce relevant regulations. For example, Congress should allow the FTC to seek compensation for victims of consumer fraud, which the Supreme Court recently ruled the FTC does not have the authority to do.¹⁰⁹

- **Solution: Require that creditors document that they have the legal right to collect on the debt before a lawsuit can begin.** Federal lawmakers and regulators can mandate that creditors sufficiently plead and attach additional documentation to ensure their debt claims are accurate and valid.
- **Solution: Mandate that creditors prove that the debt is not time-barred when initiating a lawsuit.** Federal law could be reformed to mandate that creditors provide proof in their complaints initiating a debt collection lawsuit that the debt is not time-barred and require them to attach the necessary evidence to prove it. While federal law and regulation prohibit creditors from bringing a legal action to collect a time-barred debt, these laws and regulations do not currently require that creditors provide documentation proving that debt is not time barred when bringing a debt collection lawsuit.¹¹⁰

GOAL: ENSURE THAT DEFENDANTS KNOW THAT THEY ARE BEING SUED.

As discussed previously, federal law and regulations set rules that creditors must follow when notifying defendants of their intent to sue, but the notice they are required to provide too frequently does not reach defendants. Defendants often do not find out that they have been sued until the lawsuit appears on their credit report, their wages are garnished, their bank accounts have been drained, or their house has been foreclosed on. Federal lawmakers and regulators should increase federal protections to ensure defendants receive notice that they are being sued and can respond accordingly.

Federal Solution to Ensure that Defendants Know that They Are Being Sued

RECOMMENDATION

Establish requirements to ensure the defendant receives adequate notice of the lawsuit

- **Solution: Establish requirements ensuring that the defendant receives notice that they are being sued.** Federal lawmakers can legislate, or regulators can promulgate, new requirements for creditors that notice must be effectively delivered to ensure all consumers are aware of debt collection lawsuits against them. For example, new rules can ensure that notices use communication methods that the defendant will receive and understand, and use language that makes clear they are being sued.

GOAL: ENSURE THAT JUDGMENTS DO NOT PERMANENTLY DAMAGE DEBTORS' FINANCIAL SECURITY.

Creditors have powerful tools available to them to compel debtors to pay their debts once the court grants the creditors a judgment. These tools include garnishing a debtor's wages, withdrawing money directly from the debtor's bank account, and seizing the debtor's personal property or real estate. These tools, particularly when used against people with low- and moderate-incomes, can severely impact the financial lives of debtors and trap them in long-term financial precarity and a cycle of debt. Federal policy provides debtors a base level of protection from oppressive orders to pay, but current federal protections are insufficient to prevent creditors from being able to thrust families into poverty.

Federal Solutions to Ensure that Judgments Do Not Permanently Damage Debtors' Financial Security

RECOMMENDATIONS

Increase the floor for federal wage garnishment

Address the bank account loophole

Limit pre- and post-judgment interest rates

- **Solution: Increase the federal wage garnishment floor.** Currently, Federal law protects 75 percent of workers' wages or 30 times the minimum wage, whichever is greater, from garnishment for consumer debts. As of 2020, 30 times the minimum wage was lower than the poverty rate for a single earner with no dependents, and less than half of the federal poverty level for a family of four.¹¹¹ Increased protection of wages would limit the impact of wage garnishment on financial security and should at minimum prevent wage garnishment from pushing a household into poverty.
- **Solution: Address the bank account loophole.** While federal law protects some wages from garnishment, it does not protect those wages after they are deposited in a bank account. Consequently, in many states once a debtor's income is deposited in a bank account the entire amount, including the portion of an individual's wages that were not garnished, can be taken by a creditor. While states offer some protections, they can be difficult to access and insufficient to protect financial security, and only a few apply automatically. Uniform federal protections are necessary to provide a baseline of protection across the country. Disallowing or severely limiting seizure of bank account funds would better protect debtors from the significant financial security impacts of this debt collection tool.
- **Solution: Limit pre- and post-judgment interest rates.** The federal government can limit the rate of interest creditors can collect before and after a judgment is granted by the court to keep debts from ballooning to amounts debtors will never be able to repay. Reducing pre-judgment interest also could disincentivize creditors from delaying enforcement actions to maximize accrued interest prior to filing a lawsuit.

State Solutions to Repair Our Broken System

Debt collection lawsuits are heard in state courts, and debt collection litigation has traditionally been governed by state law. Specifically, the states have been left most of the laws and rules that determine when a court case can be filed to collect a debt, what must be filed with the court and sent to the defendant to initiate that action, how the case is conducted by the court, and what happens after the judge renders a judgment. State legislatures are vested with the power to pass laws dictating any aspects of debt collection litigation left to the states, and certain instruments governing debt collection litigation, like the statute of limitations for a debt, are necessarily legislative determinations. But legislatures tend to leave it to their state courts to determine the procedural rules governing how cases are initiated and move through the courts.

Our recommendations are below for reforms that can meet our stated goals of making sure that 1) debt entering the court system is legitimate; 2) defendants are aware they are being sued; 3) defendants are aware of their rights and are able to participate in the court process; 4) judgments do not permanently damage debtors’ financial security; and 5) state courts collect data on debt collection cases so policy reforms can address the actual problems experienced by defendants in that state’s courts. Any of our recommendations can be addressed by state legislatures, and many of them can also be put into effect by the state courts through court rule changes. When our recommendations have already been enacted by some states, we have noted in the chart for each goal the states that have the most effective versions of these solutions, and under the state solutions we think are most important to achieving our stated goals we have highlighted state solutions aimed at those reforms.

GOAL: ENSURE THAT ALL DEBT ENTERING THE LITIGATION SYSTEM IS LEGITIMATE.

The first step to establishing the integrity of the nation’s debt collection litigation system is to ensure that people cannot be sued on debts they do not owe, for amounts that are incorrect, or for debts that are too old or have already been paid, settled, or discharged. However, requirements that would help verify the validity of debts being sued upon do not exist in most states. And where they do exist, requirements are often not enforced in a way that keeps invalid lawsuits from being filed. According to the CFPB, the most common debt collection complaints it receives are related to attempts by creditors and debt buyers to collect on a debt that the individual does not owe.¹¹²

State Solutions to Ensure that All Debt Entering the Litigation System is Legitimate

RECOMMENDATIONS	EXAMPLES
Require creditors to attest to facts in the complaint necessary to establish the validity of the debt	IN, MA, OR, ME, NM
Require creditors to attach documents to the complaint to establish the validity of the debt	NC, MA, CO, WA, MD
Require creditors to offer proof that the debt is not time-barred	NM, NY, MA
Empower court clerks to screen out pleadings if the creditor has not provided the proper information and documents with the complaint	MD
Define a process that judges must follow for reviewing debt collection lawsuits to determine if cases are provable before entering default judgments	IA, MN, MD, NY, WA
Make illegal or impossible the filing of a collection suit after the statute of limitations has expired	WI, MS, CT, TX, ME, MD
Eliminate the rule that a payment or acknowledgment of the debt restarts or revives the statute of limitations	TX, ME, WA, MN
Shorten the statute of limitations to three years or less	AK, NH, NC, SC

- **Solution: Institute new pleadings requirements that:**
 - » **Require creditors to attest to facts in the complaint sufficient to show that the debt is owed and not time-barred, and that the defendant is the person who owes the debt.** Lax pleading requirements in some states or in unchallenged cases allow creditors to sue on debts that may not be owed, against people who may not owe the debt, and after the debt is supposed to have expired. Creditors should have to attest that they are suing the right person on a legitimate debt that is still owed.
 - » **Require creditors to attach documentation establishing that the debt is owed and not time-barred, and that the defendant is the person who owes the debt.** When forced to prove their cases, creditors must be able to produce documentation that the debt they are suing on is legitimate and owed by the defendant. However, since most collection cases end in default judgments, creditors rarely have to produce this information. Documents—like the most recent statements from the debtor’s account showing the debtor’s name, the account number, and the final balance owed—should have to be attached to the complaint to ensure that creditors are not bringing suits on bad debts, including debts that are no longer owed, are too old, or are unsubstantiated.
 - » **Require proof that the debt being sued upon is within the statute of limitations rather than requiring the defendant to raise the defense that it is not.** Although statutes of limitations prohibit suing beyond a set number of years after a debt is incurred or defaulted on, that does not prevent a creditor from filing a case for a debt that is too old. Instead, in most states, the defendant in a debt collection lawsuit

must challenge a case they believe has been filed after the statute of limitations, placing the burden on the defendant to understand the statute of limitations and to participate in the case to litigate that issue. The creditor should bear the burden to prove that the debt is not too old, and the judge in the case should review the case to determine if the debt is time-barred, even if the defendant does not participate in the court case or raise a statute of limitations defense.

- » **Empower court clerks to reject a complaint if the creditor has not provided the proper information and documentation.** The clerk should be charged with performing a basic check of the documents the creditor has filed to initiate the case to ensure that unprovable allegations do not end up in court and cannot lead to illegitimate judgments. Clerks could charge creditors a screening fee to compensate the court for any added expense caused by this review of the documents.
- » **Define a process that judges must follow to verify debt before entering judgments.** The vast majority of debt collection cases end in default judgments because defendants do not show up to court or do not know how to defend themselves in their cases. Even if the defendant does not put up a defense, courts should not rubber stamp illegitimate complaints, but should verify that the debts can be proven before entering judgments.

Example of state pleadings reform: *Colorado law requires that debt collectors or collection agencies suing a consumer must file with the complaint a copy of the contract between the creditor and the defendant, other evidence of the defendant’s agreement with the original creditor, or a copy of a document that shows that the account was active and the debt was incurred by the defendant. If the debt has been sold, the debt collector also must attach proof of each transfer of that debt. All of this must be proved by attaching actual documents as evidence, not just by writing an affidavit promising that the debt is legitimate.*¹¹³

- Solution: Eliminate the rule that a payment or acknowledgment of the debt restarts or revives the statute of limitations.** In some states, the time period in which a creditor can bring a lawsuit can be extended—or even revived after it expires—by even the smallest payment on the debt or by some acknowledgment by the debtor that they owe the debt. Creditors know this, but most debtors do not, and they can be easily convinced to make small payments toward the debt, thus restarting the time in which the debtors can be sued. This makes it more likely that debtors will be sued on unprovable debts and much more difficult for debtors to get out from under old debts.
- Solution: Shorten the statute of limitations to three years or less.** The longer the time between when the debt was incurred and when a lawsuit is filed, the more likely the debt is to have been placed with multiple debt collectors or sold to debt buyers multiple times, and the less likely it is that there is proper documentation of the debt. Shortening the time period in which a lawsuit can be filed will reduce the number of illegitimate debt collection lawsuits. Because of this, many states have set the statute of limitations for many or all debt collection cases at three years.

GOAL: ENSURE THAT DEFENDANTS KNOW THAT THEY ARE BEING SUED.

For the various reasons discussed above, defendants in debt collection cases often do not find out that they have been sued until a court judgment affects their ability to access credit, their wages are garnished, their bank accounts have been drained, or a lien has been placed on their house. Inadequate notice is one of the main factors leading to a default judgment in favor of the creditor. Once a judgment is issued by the court, it may be impossible for the defendant to get the court to vacate the judgment, even if the defendant never had notice of the lawsuit. Therefore, it is essential that laws and court rules be changed to ensure that defendants know about collection lawsuits and have the chance to participate in the court proceedings before a judgment is granted to the plaintiffs.

State Solutions to Ensure that Defendants Know that They Are Being Sued

RECOMMENDATIONS	EXAMPLES
Establish a system where courts handle service to ensure it is properly completed	IL, NYC
Require that the defendant receives actual notice of a lawsuit	
Require GPS or photo verification of service	NYC

- Solution: Establish a system that allows courts to handle service to ensure it is properly completed.** Many states have documented problems with “sewer service,” in which process servers or creditors claim to have served defendants when they have made no legitimate effort to do so. Rather than trusting the plaintiff in the case to serve the documents, courts can take charge of service using court-approved parcel services, court-affiliated process servers, or even sheriff’s deputies. This would greatly reduce the incidence of fraudulent proofs of service.

Example of state service reform: *Illinois requires that complaints in civil cases be served by a sheriff, employee of the sheriff, a licensed private detective, or someone explicitly approved by the court.¹¹⁴ This helps prevent the signing of fraudulent affidavits of service and gives the court more direct access to the person who served the complaint in case there is any question about the validity of service.*

- Solution: Require that the defendant receives actual notice of a lawsuit.** Currently there are numerous ways to serve a lawsuit on a defendant, but not all of those ways do, or even intend to, provide actual notice to a defendant of the lawsuit’s existence. When service cannot be achieved immediately or easily through the regular means allowed by court rules, courts will often allow plaintiffs to fulfill their service obligations through alternate service. This can merely require attaching the documents to the door of the defendant’s last known address (where the defendant often no longer lives), publishing a notice in a newspaper, or posting the complaint at the courthouse. States can and should require that a defendant receive actual notice of the filing of a lawsuit before the court proceeds with court hearings or entry of a default judgment against the defendant. This would involve eliminating means of alternate service that are not likely to provide notice to the defendant.
- Solution: Require GPS or photo verification of service.** With the ubiquity of cell phones, there are ways to verify service of a defendant beyond just a sworn statement by the process server that they handed the documents to the defendant. States should leverage the technology that nearly everyone already has on their smartphones to help ensure that service was properly made.

GOAL: ENSURE THAT DEFENDANTS UNDERSTAND THEIR RIGHTS AND ARE ABLE TO FULLY PARTICIPATE IN THE CASE.

A driving factor for high default rates is that unrepresented defendants do not participate in collection lawsuits against them because they do not understand that they have defenses, and/or they are unfamiliar with, and intimidated by, the process. One study found that of 457,322 lawsuits filed by 26 debt buyers, 95 percent of the cases ending in default judgments were filed against people residing in low- or moderate-income neighborhoods, and not a single person in the study was represented by an attorney.¹¹⁵ **Another study found if consumer debtors receive clear, accessible information about court procedures, then they participate at twice the rate of people who do not receive any information.**¹¹⁶

State Solutions to Ensure that Defendants Understand Their Rights and Are Able to Fully Participate in the Case

RECOMMENDATIONS	EXAMPLES
Require courts to advise defendants of their legal rights	AK, NY
Provide defendants the tools necessary to participate in the case	AK, MI, NY
Do not require defendants to file a written answer to the complaint	Small claims courts in most states
Require that judges allow online or telephone hearings	Most states during pandemic
Make it easier to set aside a default judgment	SC, AL, ME, CA
Disallow awards of creditors’ attorney fees for work beyond filing of the complaint	IA, SD, ND, NE
Provide for attorney fee shifting if creditors lose	FL, HI, MT, UT, ID, OK, MS, AZ, VA
Cap the amount of attorney fees that can be collected as a percentage of the debt	AL, GA, KS, NC

- Solution: Require courts to advise defendants of their legal rights at various phases of the case.** Many defendants do not realize that they have rights in debt collection cases, and, even when they owe money, they do not have to agree to all the creditor’s demands. When defendants appear in court, courts usually encourage defendants to meet with creditors to work out a settlement. Defendants often do not understand that they do not have to come to an agreement with the creditor in that meeting, and may in fact not have to pay the creditor at all, sometimes because they have a valid defense and sometimes because they do not have income or assets that the creditor can seize. At various phases in a debt collection case, courts should give defendants the information they need to understand their rights in the case, both in an easy-to-understand written document and orally in plain language in court. Courts should also tell defendants how to find a free or paid attorney to represent them if one might be available.
- Solution: Provide defendants the tools necessary to participate in the case.** Many defendants in debt collection cases do not participate in the case because they are intimidated by the process and do not know how to answer a complaint or defend themselves in court. Courts can eliminate many of the barriers to self-representation by providing standardized court forms that defendants representing themselves can use to answer a complaint, present defenses, file counterclaims against the plaintiff, and put forth any motions the defendant might be able to bring in the case. The best standardized court forms are easy to understand, simple to fill out, and applicable to most defendants’ cases. States should make these court forms easily accessible on the internet or, better yet, should make sure copies of the forms accompany the complaint when it is served on the defendant.

Example of state reform to improve court access: Alaska’s court system has a website covering all kinds of court cases—including debt collection cases—that describes the court process specific to the type of case the reader has and offers instructions on what is required to start a case, answer a complaint, file various motions, and even conduct a trial. The website also includes fillable court forms for the documents a party to a case might need to file. These court forms are easy to fill in, allowing defendants in debt collection cases to check boxes to designate their answers to the allegations in the complaint, their defenses to the case brought against them, and even their counterclaims against the creditor¹¹⁷

- Solution: Do not require defendants to file a written answer to the complaint.** Most states require a defendant to file a written answer to a debt collection case or the defendant forfeits their right to participate in the court proceedings. Some states even require a defendant to pay a fee to the court to file an answer. This means that, even if the defendant shows up in court to orally object to the creditor’s claim, the court can still find that the defendant defaulted and can enter a judgment against the defendant simply for failing to file a written answer. Allowing defendants to answer a complaint orally by appearing in court—as is done in other types of cases like small claims court and eviction proceedings—or to have a hearing scheduled by simply calling the court to arrange one, would eliminate a procedural barrier that prevents defendants from participating in the cases brought against them.
- Solution: Require that judges allow online or telephone hearings.** Many defendants do not show up to court for civil cases because of challenges that make it difficult to be physically present in court during the work week on a date and time set by the court. This is especially true for low-income defendants, who may have transportation limitations, might have child care challenges, or, for reasons of job security or income, may not

be able to miss a day of work. Most courts in the country have gone to remote hearings during the Covid-19 pandemic. By continuing to make remote hearings available after the pandemic (though not required if it causes problems for the particular defendant), the courts could make it much easier for defendants in debt collection cases and other court cases to participate in the legal process.

- **Solution: Make it easier for a defendant to get the court to set aside (i.e., throw out) a default judgment and reopen the case.**

For the reasons previously described, most collection lawsuits end in a default judgment for the creditor. It can be procedurally difficult for defendants to reopen cases once a default judgment is entered, even if they never received notice of the original lawsuit or they have a legitimate defense to the lawsuit. Lowering the procedural hurdles to defendants being able to reopen cases once a default judgment is entered can give the court a mechanism to overturn unjust judgments. This can be done in a variety of ways, including relaxing the requirements for what a defendant must show to get the court to set aside a default judgment, giving the defendant more time to request that a default judgment be set aside, or giving the defendant more time to answer before a default judgment is entered.

- **Solution: Reform how attorney fees are awarded in debt collection cases by doing one or more of the following:**

- » **Disallow awards of creditors' attorney fees for work beyond filing of the complaint.** Creditors are often allowed, by way of the law or their contracts with debtors, to add to the judgment against the defendant the amount they paid their attorney for the attorney's work on the collection case. While some states prohibit or invalidate attorney fee provisions in consumer contracts, many more do not. States should at the very least prohibit creditors from collecting attorney fees for

work done by the attorney beyond the filing of the complaint in a collection case. Otherwise, the defendant is discouraged from fully participating in a case for fear of extending the litigation and having to pay the creditor more for its attorney fees at the end of the case.

- » **Provide for attorney fee shifting if creditors lose.** Attorney fee provisions in consumer contracts are normally not reciprocal, so if the defendant wins the case, the defendant cannot, by way of contract, recover their attorney fees. Several states have laws that allow defendants who win a collection case to recover attorney fees, even if not specifically allowed in the consumer contract. In some states, a defendant who wins a collection case can recover their attorney fees in any instance in which attorney fees would have been recoverable by the creditor had the creditor won. In other states, the party that wins—whether the plaintiff or defendant—can recover attorney fees, even if there is no attorney fee provision in the contract. Allowing defendants to recover attorney fees makes it more possible for those who have legitimate defenses to a collection lawsuit against them to retain attorneys because those attorneys might be able to recover their costs from the creditors if the defendant wins.

- » **Cap the amount of attorney fees that can be collected as a percentage of the debt.** In some cases, the attorney fees added to a collection judgment can double the amount of the judgment, making it even more unlikely that the debtor will ever pay off the debt. A cap on the amount of attorney fees a creditor could recover in a debt collection case would still compensate the creditor for the expense of having to undertake a lawsuit while ensuring that attorney fees do not themselves make it impossible for the debtor to pay off a judgment.

GOAL: ENSURE THAT JUDGMENTS DO NOT PERMANENTLY DAMAGE DEBTORS’ FINANCIAL SECURITY.

After the court issues a judgment against a defendant, creditors have powerful tools to enforce the judgment they have obtained from the court. Being subject to garnishment or property seizure can make debtors vulnerable to poverty and keep them in a cycle of debt. Ultimately, if debtors do not comply with court orders to produce documents or appear for hearings about their income and assets to facilitate garnishment or property seizure, creditors can ask that the debtors be jailed for contempt of court. In fact, state courts in the US order defendants in collection cases to be jailed for contempt thousands of times each year.¹¹⁸ Current protections at the state and federal level are insufficient to keep debt collection cases from forcing defendants into poverty and destitution.

State Solutions to Ensure that Judgments Do Not Permanently Damage Debtors’ Financial Security

RECOMMENDATIONS	EXAMPLES
Increase exemptions on income that can be garnished and property that can be seized	Overall: NV, TX, MA, CA Wage Garnishment: SC, PA, NC, TX Home: AR, FL, IA, SD, KS, OK, TX Car: KS, NV, NH Household Goods: OK, KS, HI, NM, CT, CA
Exempt from seizure a minimum amount in bank accounts and make the protection automatic	DE, NY, NV, ND, SC, WI
Eliminate or cap pre-judgment interest and cap post-judgment interest rates	IA, WI, DE, IL
Eliminate the possibility of jail for failure to pay judgments	WV, WY, AL, NM, ND, SD
Disallow renewal of a judgment and shorten the statute of limitations on judgments	

- Solution: Increase exemptions on income that can be garnished and property that can be seized.** Federal laws protect a minimal amount of wages from garnishment, and states have the option of protecting more. The federal income protections allow creditors to garnish wages in an amount that leaves many people below the federal poverty line, and numerous states fail to protect any more than the federal minimum. States also tend to protect certain assets of a debtor from seizure in a consumer collection case, but the level of these protections varies widely from state to state. Many states leave debtors vulnerable to losing to seizure emergency savings, vehicles they might need to get to work, important personal property, and even their homes. States should increase these exemptions to ensure that debtors can avoid destitution and being thrust into a cycle of debt and poverty.
- Solution: Exempt from seizure a minimum amount in bank accounts and make the protection automatic.** While federal law prohibits garnishing a certain minimum amount of a debtor’s wages, once that money is deposited into a bank account, the creditor can seize those funds—in many states up to the full amount in the account. Funds from federal sources such as Veterans Affairs benefits and Supplemental Security Income cannot be seized from a bank account, but in most states, it is up to the debtor to dispute the seizure of funds from their bank account in court—typically without an attorney. States should protect a minimum amount of money in a person’s bank account above and beyond any already-protected exempt money. Such a protection should be automatic, so that the bank can stop a seizure of protected funds without the debtor having to first assert their right to keep that money. This also prevents the debtor from bouncing checks and incurring account maintenance fees while the legitimacy of the bank account freeze or seizure is sorted out.

Examples of state garnishment and seizure reforms: Four states, including South Carolina, prohibit wage garnishment for consumer debts. Nine states, including Oklahoma, protect the full value of a primary residence from creditors. Kansas protects a car valued at up to \$20,000, and Delaware does not allow creditors to seize money from a bank account to collect on a debt. Six states, including New Mexico, protect all of a debtor's necessary household goods from seizure by creditors.¹¹⁹

- Solution: Eliminate or cap pre-judgment interest and cap post-judgment interest rates.** Interest on a defaulted loan or a late bill can force a debtor to pay significantly more than the original amount owed, particularly if the creditor waits to initiate a collection suit until the statute of limitations has almost expired. In the case of loans, these rates are often determined in the contract between the creditor and the debtor, and the interest rates can be exceedingly high. Interest continues to accrue after a judgment is entered, further increasing the amount a debtor owes. Capping the amount of interest that a debtor can be charged at a reasonable rate, like 2 to 5 percent, makes it more likely the debtor will be able to pay off the debt, and still adequately compensates the creditor for their risk. This is especially true in cases brought by debt buyers, who incur hardly any risk at all when buying debt for pennies on the dollar.
- Solution: Eliminate the possibility of jail for failure to pay judgments.** Although it has been illegal for 200 years in the US to jail people for being unable to pay their debts—and doing so is widely considered a human rights violation—most states still allow judges to jail debtors for not providing information or not showing up in court for post-judgment hearings to determine the amount and whereabouts of the debtor's assets. While the number of people actually jailed varies significantly from state to state, the threat of jail gives creditors undue power to persuade

debtors to make payments they cannot afford or should not have to pay because all of their income and assets are exempt. The very possibility that a debtor could be jailed in a collection case undermines the principles of justice that are supposed to undergird the American court system.

- Solution: Disallow renewal of a judgment and shorten the statute of limitations on judgments.** The judgments creditors receive in collection cases are good for a certain period of time, but most states allow judgments to be renewed—in some states once and in other states over and over again. Disallowing a renewal of a judgment after it expires and reducing the period in which a creditor can collect on a judgment to five years would make it possible for debtors to get out from under their debts, much of which was written off or sold by the original creditor years before.

GOAL: CASE DATA IS CONSISTENTLY AND ACCURATELY TRACKED FOR ALL DEBT COLLECTION LAWSUITS IN EACH STATE, AND PUBLICLY REPORTED.

Only a few states designate a case-type code or other identifier for consumer debt collection cases within the courts' case tracking system, separating them out from other contract cases and civil actions. The data from these states have allowed researchers to study trends in debt collection litigation and determine things like: what types of consumer transactions give rise to the most debt collection cases; what companies and types of companies are bringing collection lawsuits; who the people are who are most often sued in these cases; how much money is at stake in the average collection case; and what is the outcome of these cases. Since this information is available only in a few states, and sometimes in just a handful of courts within these states, the evidence used in studies is extremely

limited, leading to difficulties drawing general conclusions or identifying national or statewide trends regarding collection cases.

State Solution to Ensure Case Data is Consistently and Accurately Tracked for All Debt Collection Lawsuits in Each State, and Public Reported

Recommendation	Examples
Assign debt collection cases their own unique case code to facilitate better collecting of data and tracking of debt collection cases	TX

- Solution: Across levels of government, we need better data on debt collection cases.**

States should give consumer debt cases their own case code or other designation, which would make it much easier to craft policy solutions specifically targeted at the problems that are actually occurring with debt collection litigation nationally, or in a particular state.

Example of state data collection reform:
Texas is the only state that identifies debt claims as a separate category of cases and makes public the outcome of all debt cases. Texas publishes not just raw numbers on debt collection cases, but also trends across the state and across various courts.¹²⁰

Glossary

Alternate service - Taking some action to notify a defendant of the lawsuit other than giving the complaint directly to the defendant.

Bank account seizure - A creditor takes money from an individual's bank account to collect a debt. (Consumer Financial Protection Bureau)

Collateral - something pledged as security for repayment of a loan, to be forfeited in the event of a default. (Oxford Languages)

Collateralize - To provide something as collateral for a loan. (Oxford Languages)

Collection agency - A company used by lenders or creditors to recover funds that are past due, or from accounts that are in default. (Investopedia)

Complaint - The first formal action taken to officially begin a lawsuit. It is any formal legal document that sets out the facts and legal reasons for the lawsuit.

Consumer debt - Personal debts that are owed as a result of purchasing goods that are used for individual or household consumption. (Investopedia)

Creditor - a person or company to whom money is owed. (Oxford Languages). In many instances, the creditor may be the same entity as the debt collector and/or the plaintiff.

Debt burden - The amount of money a person owes relative to their income.

Debt buyer - A type of debt collector who purchases a creditor's debt at a discount in order to collect on it with the hope of collecting more money than they paid for the debt.

Debt collector - A company or agency that is in the business of recovering money owed on delinquent accounts. (Investopedia)

Debtor - A person that owes a sum of money.

Debt-to-asset ratio - Also known as the debt ratio, is defined as the ratio of total debt to total assets, expressed as a decimal or percentage. It can be interpreted as the proportion of a company's or individual's assets that are financed by debt. (Investopedia)

Default - Failure to fulfill an obligation, especially to repay a loan or appear in a court of law. (Oxford Languages)

Default judgment - A ruling by a judge in favor of a plaintiff in the event that the defendant fails to show up in court. (Investopedia)

Defendant - An individual, company, or institution sued or accused in a court of law. (Oxford Languages)

Delinquent - A debt becomes delinquent when payment is not made by the due date.

Past due - A payment that has not been made by its due date. A payment that is past due will usually incur some penalties and/or late fees.

Plaintiff - An individual, company, or institution who brings a case against another in a court of law. (Oxford Languages). Depending on the stage of the debt collection process, the plaintiff may be the same entity as the creditor or the debt collector.

Pleading - A formal statement of the allegations brought by the plaintiff, or the defenses raised by the defendant in a court case. (Oxford Languages)

Repayment plan - A structured repaying of funds that have been loaned to an individual, business, or government over either a standard or extended period of time, typically accompanied by a payment of interest. (Wikipedia)

Service of process - The legal process for notifying an individual, company, or institution that legal action has been taken against them.

Small claims court - A local court in which claims for small sums of money can be heard and decided quickly and cheaply, usually without legal representation for the parties. (Oxford Languages)

Statute of limitations - A law that sets the maximum amount of time that parties involved in a dispute have to initiate legal proceedings from the date of the alleged offense. (Investopedia)

Summons - An order to appear before a judge or magistrate. (Oxford Languages)

Time-barred debt - Money an individual owed but did not repay and is no longer legally collectible because a certain number of years have passed. This is also known as debt that is beyond the statute of limitations. (Investopedia)

Unsecured loan - A loan that does not require any type of collateral. (Investopedia)

Wage garnishment - A creditor takes a portion of an individual's paycheck to collect a debt. (Consumer Financial Protection Bureau)

Endnotes

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