As used in this treatise, consumers are individuals who borrow money or purchase goods or services on credit for personal, rather than business debts.

Americans owe large amounts of money for consumer debts. In the second quarter of 2017, the Federal Reserve Bank of New York reported that Americans owed $3.7 trillion in non-housing debt and $9.14 trillion for housing debt. However, only a portion of this outstanding debt is delinquent.

Contact with a debt collector is a common experience for Americans. In 2017, the Consumer Financial Protection Bureau (CFPB) released a nationally-representative survey of consumer experiences with debt collection, finding that more than seventy million Americans—about one third of consumers—were contacted by a creditor or debt collector about a debt in collection during the prior twelve months. The survey found that medical bills were the most common type of past-due debt and credit or charge cards were the most common types of loans for which consumers were contacted by debt collectors.

Further highlighting the pervasive nature of consumer debt collection, the collection industry estimates that debt collectors contact Americans more than a billion times a year. The debt buyer Encore Capital Group, Inc. claims that twenty percent of American consumers either owe it money currently or have owed it money in the past.

Debt is not evenly distributed around the country. People who live in the South and West are more likely to have debts in collection. Moreover, even within a city or state, significant differences about the prevalence of debts exist at the neighborhood level. A study by the Urban Institute concluded that, “people who live in neighborhoods with lower health insurance coverage, lower housing values and less homeownership, more delinquent mortgages and homes with negative equity, lower educational attainment, a higher share of African Americans and Hispanics, and higher unemployment rates are significantly more likely to have debt in collections.”

Lawmakers protecting consumers from debt collection abuse and harassment have recognized that most consumer delinquency is not voluntary, rejecting the myth that substantial numbers of consumers are deadbeats who refuse to pay their debts. Frequently, the reason that consumers do not pay what they owe is that they have fallen on hard times due to loss of a job, illness, injury, or loss of a breadwinner to illness, divorce, or death. A smaller portion of consumers overextend themselves financially so that their income and savings are only sufficient to keep up with some of their debts.

Footnotes

49 Fed. Reserve Bank of N.Y., Household Debt and Credit Report: Q2 2017 [1], available at https://www.newyorkfed.org ($3.7 trillion for non-housing debt breaks down as: student loans ($1.34 trillion); auto loans ($1.19 trillion); credit card ($0.78 trillion) and other non-housing debt ($0.38 trillion)).

50 Id. (percentage of debt that is 90+ days delinquent: 11.2% for student loans, 7.4% for credit cards, 6.9% for other non-housing debt, and 3.9% for auto loans, 1.9% for home equity lines of credit, and 1.5% for mortgages).

51 Consumer Fin. Protection Bur., CFPB Survey Finds Over One-In-Four Consumers Contacted By Debt Collectors Feel Threatened (Jan. 12, 2017) [2], available at https://www.consumerfinance.gov. See also Caroline Ratcliffe, et al., Urban Institute, Debt in America: An Interactive Dashboard (Dec. 2017) (nationally 33% of Americans have a debt in collection); FINRA Investor Education Foundation, Financial Capability in the United States 2016, p. 27 (July 2016) (18% of respondents to the 2015 National Financial Capability Study reported being contacted by a debt collection agency in the past year); Breno Braga et al., Urban Institute, Local Conditions and Debt in Collections (June 2016) (“Nationally, we find that nearly one-third of Americans have a debt in collections recorded in their credit report.”); Caroline Ratcliffe, Urban Institute, Delinquent Debt in America (July 2014) (77 million American consumers had non-mortgage debts in collections reported in their credit files).

52 Consumer Fin. Protection Bur., Consumer Experiences with Debt Collection: Findings from the CFPB’s Survey of Consumer Views on Debt, Fig. 2 (Jan. 2017) (reporting types of past-due debt in collection as: medical bills (59%),
telecommunications bills (37%); utility bills (28%); taxes (21%); legal judgment or expenses (14%); and rent (11%); noting that “Estimates are for consumers who were contacted about a debt in collection. Sums across columns may exceed 100 percent because consumers could report having been contacted about multiple types of debts.”).

53 Id. at Fig. 1 (reporting types of loans in collection as: credit or charge (44%), student loan (28%), auto-purchase loan (18%); mortgage or HELOC (12%); and payday loan (11%); noting that “estimates are for consumers who were contacted about a debt in collection. Sums across columns may exceed 100 percent because consumers could report having been contacted about multiple types of debts”).


56 Breno Braga, et al., Local Conditions and Debt in Collections, Table A.1 (Urban Institute, June 2016); Caroline Ratcliffe, Delinquent Debt in America, Table A.1 (Urban Institute, July 2014).

57 Breno Braga, et al., Local Conditions and Debt in Collections 1 (Urban Institute, June 2016).


59 Breno Braga, et al., Urban Institute, Local Conditions and Debt in Collections (June 2016).

60 For example, the Report of the Committee on Banking, Housing and Urban Affairs on the Fair Debt Collection Practices act stated:

One of the most frequent fallacies concerning debt collection legislation is the contention that the primary beneficiaries are “deadbeats.” In fact, however, there is universal agreement among scholars, law enforcement officials, and even debt collectors that the number of persons who willfully refuse to pay just debts is miniscule. Prof. David Caplovitz, the foremost authority on debtors in default, testified that after years of research he has found that only 4 percent of all defaulting debtors fit the description of “deadbeat.” This conclusion is supported by the National Commission on Consumer Finance which found that creditors list the willful refusal to pay as an extremely infrequent reason for default.

The Commission’s findings are echoed in all major studies: the vast majority of consumers who obtain credit fully intend to repay their debts. When default occurs, it is nearly always due to an unforeseen event such as unemployment, overextension, serious illness, or marital difficulties or divorce. S. Rep. No. 382, 95th Cong., 1st Sess. 1, reprinted in 1977 U.S.C.C.A.N. 1695 and reproduced at Appx. A.3 [3], infra, citing David Caplovitz, Consumers in Trouble: A Study of Debtors in Default 54 (The Free Press 1974) (“Of some interest is the frequency of the category we have labeled ‘debtor irresponsibility.’ This group is rather heterogeneous, including those who never intended to pay as well as those who forgot to pay, those who missed payments while they were temporarily out of town, and some who no longer felt obligated to pay after the item they had bought was stolen or destroyed in an accident. This category, with all its variations, comes closest to the credit industry’s image of the deadbeat; as can be seen from the table, it contains only 5 percent of the debtors. To use the term ‘deadbeat’ to refer generally to those who default, as the credit industry is prone to do, is certainly a misnomer.”).
61 See, e.g., Office of Pol’y Dev. & Res., U.S. Dept. of Housing & Urban Dev. Report to Congress on the Root Causes of the Foreclosure Crisis 15 (2010) (“It is generally understood that most borrowers become delinquent due to a change in their financial circumstances that make[s] them no longer able to meet their monthly mortgage obligations. These so called ‘trigger events’ commonly include job loss or other income curtailment, health problems, or divorce.”); J. Michael Collins, Exploring the Design of Financial Counseling for Mortgage Borrowers in Default, 28 J. Fam. Econ. Issues 207, 213 tbl. 2 (2007) (showing job loss as the most common self-reported cause of mortgage nonpayment, followed by medical problems (affecting 28% of borrowers in default), unfair loan terms (20%), income reduction (20%), injury/accident (19%), home repair/improvement (19%), death in family (18%), and credit card management (15%)); Elizabeth Warren and Amelia Warren Tyagi, The Two-Income Trap: Why Middle-Class Parents Are (Still) Going Broke 81 (Basic Books 2016 ed.), citing 2001 Consumer Bankruptcy Project (87% of families with children cite job loss, medical problems, or divorce or separation as the reason for their divorce while the remaining 13% cite bad investment, crime victim, credit card overspending, natural disaster, other explanation, or no explanation); Barry Adler, Ben Polak, & Alan Schwartz, Regulating Consumer Bankruptcy: A Theoretical Inquiry, 29 J. Legal Stud. 585, 589 (2000) (“Many scholars and reformers believe that the insolvency is exogenous: the consumer borrower becomes insolvent through no fault of his own, in consequence of job loss, illness, or the like.”); Theresa A. Sullivan, Elizabeth Warren, and Jay Lawrence Westbrook, The Fragile Middle Class: Americans in Debt (Yale University Press 2000), citing 1991 Consumer Bankruptcy Project (respondents’ reasons for filing for bankruptcy were: job (67.5%), family (22.1%), medical (19.3%), creditor problems (13.6%), other (13.6%), and housing (6.2%) (multiple responses permitted)).

62 See, e.g., J. Michael Collins, Exploring the Design of Financial Counseling for Mortgage Borrowers in Default, 28 J. Fam. Econ. Issues 207, 213 tbl. 2 (2007) (showing that credit card management was only a self-reported cause of mortgage nonpayment for 15% of borrowers in default); Darryl E. Getter, Contributing to the Delinquency of Borrowers, 37 J. Consumer Aff. 86, 98–99 (2003) (examining whether delinquency was more attributable “to the unanticipated negative shocks that alter economic circumstance or to the size of the payment burden which could indicate that households may be ‘overextended’ and concluding that ‘delinquency risk is more likely to increase as a result of unanticipated shocks to household wealth and unexpectedly low income’”).

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