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 first quarter of 2021, the Federal Reserve Bank of New York reported that Americans owed $4.15 trillion in non-housing debt and $10.49 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 2019, the CFPB estimated that third-party debt collectors contact at least 49 million consumers each year about a debt in collection. A researcher at the Federal Reserve Bank of Philadelphia estimated that the third-party collections industry contacts Americans more than a billion times a year, and 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.

Millions of Americans have one or more debts in collection listed on their credit reports. In 2021, the CFPB reported that “26 percent of consumers have a third-party collection tradeline furnished to their credit report.” The Urban Institute reported that, in 2019, 68 million adult Americans with a credit report had one or more debts in collection reported in their credit files, down from 71 million in 2017 and 77 million in 2013. In contrast, TransUnion reported that the number of consumers with one or more collection trade lines increased from 66.8 million in 2009 to 79.1 million in 2018, with a high of 81.8 million in 2016 and a low of 63.2 million in 2015.

In a nationally-representative survey of consumer experiences with debt collection conducted in 2015, the CFPB 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. Debt is not evenly distributed around the country. 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 who originally enacted the Fair Debt Collection Practices Act 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. Income variability can also lead to difficulty paying bills or expenses. 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

52 [52] While this discussion focuses on consumer debts, individuals may struggle with other types of debts, including criminal justice debts. For more about unique issues that may arise when representing individuals with criminal justice debts see National Consumer Law Center, Collection Actions Ch. 11 [1] (5th ed. 2020), updated at www.nclc.org/library.

53 [53] Fed. Reserve Bank of N.Y., Household Debt and Credit Report: Q2 2020 [2] ($4.12 trillion for non-housing debt breaks down as: student loans ($1.54 trillion); auto loans ($1.34 trillion); credit card ($0.82 trillion) and other non-housing debt ($0.42 trillion)), available at https://www.newyorkfed.org.

54 [54] Id. (percentage of debt that is 90+ days delinquent: 6.2% for student loans, 10% for credit cards, 7.7% for other non-housing debt, and 4.8% for auto loans, 1.2% for home equity lines of credit, and 0.6% for mortgages).


58 {58} CFPB, Fair Debt Collection Practices Act: CFPB Annual Report 2021 (Mar. 2021) (analyzing data from the Bureau’s Consumer Credit Panel). See also Breno Braga, et al., Debt in America: An Interactive Map [3] (Urban Institute, last updated Mar. 31, 2021) (nationally 29% of American adults with a credit report have one or more debts in collection in their credit files), available at https://apps.urban.org; CFPB, Market Snapshot: Third-Party Debt Collections Tradeline Reporting [4] (July 2019) (“Between Q2 2004 and Q2 2018, the percentage of consumers in the sample with a third-party collections tradeline on their file never went below 27% or above 34.”), available at https://www.consumerfinance.gov; 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) (35% of adults with credit files have debts in collections reported in their credit files).


61 {61} 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).


63 {63} CFPB, 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.”).

64 {64} 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”).

65 {65} See Breno Braga et al., Debt in America: An Interactive Map [3] (Urban Institute, last updated Mar. 31, 2021) (visual representation of areas where debts in collection are more prevalent), available at https://apps.urban.org. See also 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).

67 [67] Breno Braga et al., Urban Institute, Local Conditions and Debt in Collections (June 2016).

68 [68] The Report of the Committee on Banking, Housing and Urban Affairs 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.


69 [69] See, e.g., CFPB, Insights from the Making Ends Meet Survey [12] 3 (July 2020) (“Households that suffered a period of unemployment, reduced work hours, or an inability to work because of illness were nearly twice as likely to report having difficulty paying a bill or expense than households that had not experienced these events.”), available at https://files.consumerfinance.gov; David U. Himmelstein, et al., Medical Bankruptcy: Still Common Despite the Affordable Care Act [13], American Journal of Public Health (Feb. 6, 2019) (respondents listed contributors to bankruptcy, including: income loss (77.8 %); medical expenses (58.5%); unaffordable mortgage or foreclosure (45%); student loans (25.4%); divorce/separation (24.4%) (multiple responses permitted)), available at https://ajph.aphapublications.org; 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)).

70 [70] CFPB, Insights from the Making Ends Meet Survey [12] 8 (July 2020) (56% of survey respondents whose income varies a lot reported difficulty paying a bill or expense in the past year compared to 37% of respondents whose income is about the same every month), available at https://files.consumerfinance.gov.

71 [71] See, e.g., David U. Himmelstein, et al., Medical Bankruptcy: Still Common Despite the Affordable Care Act [13], American Journal of Public Health (Feb. 6, 2019) (44.4% of survey respondents agreed that spending/living beyond means contributed to their bankruptcy), available at https://ajph.aphapublications.org; 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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Links
[6] https://www.urban.org/urban-wire/71-million-us-adults-have-debt-collections