

**Benchmarks Explained**  
Consumer Debt Litigation Index  
National Center for Access to Justice  
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## Introduction

In the Consumer Debt Litigation Index, NCAJ reports on progress made by the 50 states and the District of Columbia to adopt policies – laws and practices – that promote fairness in consumer debt litigation. The final product aims to provide an overview (as distinct from a comprehensive compilation) of key policies that together signal the degree to which the state has taken steps to address some of the more pernicious and intractable problems in consumer debt litigation. In all, the Consumer Debt Litigation Index contains 24 distinct “benchmark” policies sorted into nine categories.

In selecting, formulating and assigning weights to these representative benchmarks, NCAJ reviewed pertinent literature and consulted with a variety of experts in the field. NCAJ then worked closely with 70 law firm pro bono volunteers, applying the following principles, in carrying out a national research initiative to determine which states have established laws and practices that “meet the benchmarks”:

- 1. States’ policies must meet all of a benchmark’s criteria to receive credit.** A state received credit only where its policy meets all of the given benchmark’s criteria. NCAJ did not award partial credit for policies that meet some but not all of the criteria, or that would meet other, different, benchmarks even where benchmarking other, different, policies could be useful. The approach rests on the premise that the benchmark policies, in full, represent ideals worth striving for and also signal overall accomplishment.
- 2. States’ policies must apply to all categories of consumer debt.** A state received credit only where its policy applies to all categories of consumer debt. NCAJ did not award partial credit for policies that apply only within a single category of debt, for example, medical debt, or only where the plaintiff is a bulk debt buyer. As above, the Index encourages policies that match the benchmark criteria, rather than approaches that reflect partial adoption of the policy goal.
- 3. States’ policies must apply to all courts, across the state.** A state received credit only where its policy applies to all courts, across the state. NCAJ did not award partial credit where, for example, the policy applies only in small claims court, or in some but not all of a state’s jurisdictions. As above, the Index encourages adoption of the full policy goal.

For more on the [Consumer Debt Litigation Index](#), including its issue areas, benchmarks, weights, and findings, and more about the research initiative, see the [Index](#), NCAJ’s [Consumer Debt Litigation Index Report](#), and NCAJ’s memos, [About the Justice Index](#) and [Methodology](#). The following discussion is important to understanding the individual benchmarks:

## Individual Benchmarks Explained

Categories	Benchmark Number	Benchmarks	Origins & Meanings	Weight
I. Help people know when they are being sued and where to find help.	1	<p><b>Government Notice of Lawsuits.</b> Does the state respond to the problem of ineffective or fraudulent ("sewer") service in consumer debt lawsuits by:</p> <p><b>a. Public Official Service</b> - requiring that a public official (e.g., the court or the sheriff) handle service? or,</p> <p><b>b. Court Supplemental Notice</b> - requiring the court to send the defendant, by first class mail, supplemental notice of a new consumer debt lawsuit and deny default judgment if that notice is returned as undeliverable?</p>	Benchmark 1 is designed to protect against “sewer” service (the practice of a process server knowingly failing to serve the defendant but attesting in court that the person was served) or other ineffective service, by either requiring a public official (e.g., the court or the sheriff) to handle service, or requiring the court to mail a supplemental notice of the suit. In the first instance, where a public official handles service, the service will be incomplete if personal service cannot be effectuated, if mail service is returned as undeliverable, or if a return receipt is not provided. In the second instance, where a court mails supplemental notice, the service is technically complete, but return of the supplemental notice as undeliverable will prevent entry of a default. A state's adoption of either benchmarked policy will result in credit. States did not receive credit if they require a quasi-official such as a constable or marshal to handle service because, while these quasi-officials have the imprimatur of government, they often have financial incentives to collect debt, which can compromise the integrity of the process.	5
	2	<p><b>Guidance on Finding Help.</b> Does the state require that notice to the defendant in a consumer debt lawsuit include guidance on where to seek help, including free legal assistance?</p>	Benchmark 2 is designed to reduce the incidence of default by providing a consumer debt defendant with clear guidance on where to find free legal help (e.g., through self-help/pro se tools and information about free legal services providers).	5
II. Make it easier to respond to a lawsuit.	3	<p><b>Simplified Answer.</b> Does the state provide a simple Answer process by making available an Answer form for use by unrepresented persons in consumer debt lawsuits?</p>	Benchmark 3 is designed to facilitate the answer process (and reduce the incidence of default) by providing a form Answer that can be easily completed by a consumer debt defendant. NCAJ did not establish a benchmark that would eliminate the obligation to file a written answer. Arguments in support of such a “No Answer” model emphasized its advantages of simplicity, reducing the burden on those sued, and in substituting an appearance for a written answer, providing defendants a more familiar mode of interacting with the court system. Arguments against the “No Answer” model included: a) court forms can help people learn about available defenses, b) court forms invite the alleged debtor to provide information that may strengthen their litigation position, and that may not be sought out by judges, and c) court forms create opportunities for people to get help from others to complete the forms. Because most jurisdictions still require a written Answer, NCAJ opted in favor of benchmarks designed to facilitate submission of the required document.	2

	4	<p><b>No Notarization Requirement to Answer.</b> Does the state make it easier to respond to consumer debt lawsuits by never requiring defendants to have an Answer notarized before filing?</p>	Benchmark 4 is designed to remove the hurdle of requiring that Answers be notarized, which can be time-consuming, logistically difficult, and sometimes cost money.	2
	5	<p><b>No Fee to Answer.</b> Does the state permit the filing of an Answer in consumer debt lawsuits without charging a filing fee?</p>	Benchmark 5 eliminates filing fees, which burden defendants and can deter a consumer debt defendant from filing an Answer. A state did NOT receive credit for this benchmark where it has a process for seeking and granting fee waivers because, even though it would relieve some defendants of the burden of paying a fee, it is not always supported by court staff (so defendants don't always find out about it and don't always receive the favorable waiver decisions they may deserve), and it adds an unnecessary layer of complexity, which itself serves as a deterrent to answering.	5
III. Require the creditor to provide evidence of a valid debt claim.	6	<p><b>Pleading Requirement.</b> Does the state require consumer debt complaints to allege all of the following:</p> <p><b>a. Name of original creditor;</b></p> <p><b>b. Basis of plaintiff's standing</b> (e.g., chain of ownership of debt); and</p> <p><b>c. Itemization of amount sought</b> including debt principal, interest, fees, costs, and other charges to date?</p>	<p>Benchmark 6 is designed to ensure that debt litigation defendants have sufficient notice of the underlying facts to enable them to recognize and understand the claim against them and to formulate an Answer. A state will not receive credit unless all 3 of the required elements are met.</p> <p>a. Name of original creditor – addresses the concern that cases brought by debt buyers often don't identify the source of the original debt, making it difficult for the defendant to recognize what the suit is about and/or whether they actually owe the money;</p> <p>b. Basis of plaintiff's standing – provides information as to whether the plaintiff has the right to sue on the debt, which is particularly important in cases brought by debt buyers; and</p> <p>c. Itemization of amounts sought – allows the alleged debtor to understand what is at stake, how that amount was determined, and how best to respond.</p>	10

	7	<p><b>Authenticated Records for Default.</b> Does the state require the following be established before a default judgment can be granted:</p> <p><b>a. Proof of Service;</b></p> <p><b>b. Validity of debt</b> through authenticated business records (e.g., contract, account statements, or other evidence of obligation);and</p> <p><b>c. Amount of judgment</b> through authenticated business records, itemizing damages, court fees, attorneys’ fees, and interest?</p>	<p>Benchmark 7 is designed to prevent entry of default judgment in non-meritorious cases based solely on a defendant’s failure to answer or respond. Many creditors and debt buyers bring legally insufficient cases, or cases that they will not be able to prove, expecting that, because most defendants default, their claims for collection will never be tested. Benchmark 7 requires that the plaintiff present admissible evidence showing it is entitled to recover before obtaining a default, where the defendant has not responded.</p>	10
IV. Require consumer debt collection actions to be brought within a reasonable time of non-payment	8	<p><b>Burden on Plaintiff to Allege Timeliness.</b> Does the state place the pleading burden on the consumer debt plaintiff to allege in the Complaint the timeliness of each claim, including each of the following:</p> <p>a. applicable statute of limitations;</p> <p>b. date that claim accrued; and</p> <p>c. date that statute of limitations expires?</p>	<p>Benchmark 8 is designed to decrease the common problem of creditors or debt buyers bringing time-barred collection suits. Benchmark 8 shifts the usual burden for asserting the statute of limitations as an affirmative defense from the defendant to the plaintiff, who must plead that the action is timely and must provide a factual basis for that assertion, or face dismissal. Calculating the statute of limitations can be complex, and the plaintiff is — or should reasonably be — in possession of the information necessary for determining whether a suit is timely. Note: The Index does not award credit to states for policies that merely require the creditor to allege that the claim was timely filed, or to allege the charge-off date, which do not offer a robust level of protection against untimely lawsuits.</p>	2
	9	<p><b>Four Year Statute of Limitations.</b> Does the state require 4-year (or shorter) statute of limitations for the causes of action most commonly used to pursue consumer debt collection: breach of contract (written or oral), open account, account stated, unjust enrichment, conversion, and bad check?</p>	<p>Benchmark 9 is designed to standardize the applicable statute of limitations for debt claims, reduce or eliminate “creative pleading” through causes of action with longer statutes of limitation, and cut down on the practice of selling stale debt to debt buyers. Note: As with other benchmarks, the Index does not award credit where a 4-year statute of limitations applies only to some, but not all forms of debt or causes of action used to collect consumer debt.</p>	5
	10	<p><b>Prohibit Revival of Time-Barred Claims.</b> Does the state prohibit revival of time-barred consumer debt claims, even where defendant makes subsequent payment toward a debt?</p>	<p>Benchmark 10 is designed to eliminate the practice where a creditor or debt buyer induces a debtor to make a small payment on time-barred debt so as to revive an otherwise expired claim.</p>	2

V. Prohibit attorneys' fee shifting, and cap interest.	11	<p><b>Prohibit Attorneys' Fees Shifting.</b> Does the state prohibit attorneys' fee shifting in consumer debt lawsuits regardless of contractual provision or reciprocity in fee shifting?</p>	<p>Benchmark 11 recognizes that credit agreements often have one-sided attorneys' fees provisions that favor the creditor. This benchmark relieves debtors of the burden of paying creditors' attorneys' fees, which can sometimes exceed the amount of the debt and which can act as a disincentive to litigate and assert valid defenses. A state will NOT get credit for a law creating a reciprocal right to attorneys' fees because a prohibition on attorneys' fees writ large provides greater protection for debtors against high, contractually stipulated fees. Further, given that the vast majority of debtors are unrepresented, reciprocal fee shifting would not result in payments from creditors in most cases, even when the defendant wins.</p>	3
	12	<p><b>Interest Caps.</b> Does the state cap interest in consumer debt lawsuits (regardless of any contractual provision) as follows:</p> <p><b>a. Pre-judgment interest for debt buyers capped</b> at an annual rate of 7% (or less); and</p> <p><b>b. Post-judgment interest for all creditors capped</b> at 5% (or less) of the judgment?</p>	<p>Benchmark 12 is designed to limit punishing levels of pre-judgment interest for debt-buyers and of post-judgment interest for all creditors in consumer debt cases. Note that where the original creditor is the plaintiff, the benchmark does not alter the contractual interest rate (so as not to create an incentive for the defendant to default on the debt in order to get a lower interest rate). In selecting as a best policy for Benchmark 12 the interest rate caps of 7% for prejudgment interest and 5% for post judgment interest, NCAJ was mindful that model legislation published by the National Consumer Law Center had endorsed a lower set of caps as follows: "the rate of interest equal to the weekly average 1-year constant maturity treasury yield, but not less than 2 per cent per annum nor more than 5 percent per annum, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the date of the judgment." <a href="https://www.nclc.org/resources/model-family-financial-protection-act">https://www.nclc.org/resources/model-family-financial-protection-act</a>. This model legislation would have supported selection of a Benchmark that would cap all interest at 5% (or as low as 2%), but based on NCAJ's research findings which revealed that some states allowed interest rates at higher levels, we came to the view that a cap below 5% would possibly be too low to function as a realistic expectation of states at this time.</p>	3

VI. Reduce the likelihood that consumer debt collection actions leave people homeless, or perpetuate a cycle of debt.	13	<b>Require Court Order to Garnish or Attach.</b> Does the state in consumer debt lawsuits require a court order for garnishment and attachment?	Benchmark 13 imposes court supervision on the garnishment and attachment process by requiring that a judge or court clerk sign off on the requested garnishment or attachment. In so doing, it provides a check against plaintiffs issuing their own garnishment or attachment orders.	5
	14	<b>Garnishment Exemptions Are Self Executing.</b> Does state law require in consumer debt lawsuits that garnishment exemptions for bank accounts are self-executing?	Benchmark 14 protects a judgment debtor's exempt funds held in a bank account (such as social security and other public benefits) without requiring the judgment debtor to know that an exemption exists, to understand how to assert the exemption, and to go through a sometimes onerous process to do so.	2
	15	<b>Essential Exemptions.</b> Does the state prevent people from becoming impoverished, unhoused, or unable to work by exempting income and assets from attachment and garnishment, as follows: <b>a. Income</b> of at least \$576.92 per week, the minimum to keep a family of four above the federal poverty level, as defined by the U.S. Federal Poverty Guidelines in 2023; <b>b. Home</b> , regardless of value, or at least the median price of a home in the state; and <b>c. Car value</b> , state exemption for, at least, the first \$15,000 in value?	Benchmark 15 updates and expand decades' old federal exemptions designed to protect from garnishment and attachment income and assets needed for a debtor to maintain a very basic standard of living and ability to work.	5
	16	<b>Require Prior Notice of Garnishment.</b> Does the state require notice to debtor <b>prior to actual</b> garnishment that explains all of the following: a. potential exemptions? b. how to challenge the garnishment order? and c. how to assert exemptions?	Benchmark 16 requires that states ensure that debtors are given advance warning of a planned act of garnishment, which includes information explaining how to assert their rights and protect their assets before the assets are seized. Among other protections, the benchmark guards against people only learning of a garnishment order — or a lawsuit — after money has already been seized from their bank account or their paycheck.	5

VII. Eliminate debtors' prison.	17	<b>Prohibit Incarceration for Failure to Obey a Court Order to Pay Consumer Debt.</b> Does the state prohibit incarceration for contempt for failure to obey a court order to pay all or part of a consumer debt judgment?	Benchmark 17 responds to the fact that although the United States outlawed debtor's prisons in the 1800s, some states still incarcerate individuals for contempt when they fail to obey a court order to pay. Benchmark 17 is designed to eliminate the possibility that a state could incarcerate a judgment debtor for non-payment of a consumer debt, even in the circumstance in which the debtor's refusal to pay the debt is willful. Under such circumstances, the creditor may pursue other remedies at law (for example, garnishment and attachment) rather than using the power of the state to incarcerate in order to force a person to pay a private debt.	5
	18	<b>Prohibit Incarceration for Failure to Obey a Court Order to Appear at a Debtor's Examination, Unless Nonappearance was willful.</b> Does the state prohibit arrest and/or incarceration for contempt for failure to appear at a debtor's examination (i.e., a judgment enforcement proceeding), unless the person's failure to appear was willful?	Benchmark 18 recognizes that in some states, judgment debtors are incarcerated for contempt for failure to obey a court order to appear (as contrasted with a court order to pay, which is covered by Benchmark 17), especially orders to appear for debtor's examinations. Benchmark 18 requires that states prohibit incarceration for contempt for failure to appear, unless the court first finds that the failure to appear was willful. This benchmark recognizes the authority of the court to enforce an order requiring an appearance, but seeks to eliminate incarceration in cases in which a judgment debtor fails to appear inadvertently or for reasons out of their control.	5
	19	<b>Provide Right to Counsel.</b> Does the state provide a lawyer without charge in any contempt or other proceeding in which incarceration is a potential outcome in a consumer debt lawsuit?	Benchmark 19 is designed to ensure that any time a consumer debt defendant or judgment debtor faces possible incarceration, the court will appoint counsel without charge. (This will almost always be in the context of a contempt hearing, but the benchmark is written broadly to encompass any potential incarceration).	5
VIII. Prevent government from undue intervention on behalf of creditor.	20	<b>Prohibit Collaboration Between Creditors and Prosecutors.</b> Does the state prohibit relationships (including financial relationships) in which prosecutors lend the authority of their offices to facilitate the activities of debt collectors (e.g., payments by creditors to prosecutors who threaten or bring criminal prosecutions in bad check cases)?	Benchmark 20 is designed to prevent the practice in some states where prosecutors join forces with debt collectors, for example, by permitting debt collectors to use a prosecutor's letterhead to threaten prosecution if the debt is not paid, or accept payment from creditors when prosecutorial action results in payment of the debt. A state will not receive credit for the benchmark just because the practice is believed not to occur in that state. Rather, the state law must prohibit such arrangements to receive credit for the benchmark.	2
	21	<b>Prohibit Paying Bail/Bond to Creditor.</b> Does the state prohibit use of bail to pay the creditor in all contempt proceedings, or in other proceedings in a consumer debt lawsuit in which incarceration is a possible outcome?	Benchmark 21 is designed to prevent the practice in which a court uses its contempt power to obtain a bail payment from a debtor, and then transfers those funds to the creditor, thereby using the threat of jail to extract payment of a consumer debt. A state will not receive credit for this benchmark just because the practice is believed not to occur in that state. Rather, the state law must prohibit the practice to receive credit.	2

	22	<b>Limit Frequency of Examinations.</b> Does the state in consumer debt litigation schedule or otherwise limit financial examinations to no more than once per year?	Benchmark 22 recognizes that, often, creditors require defendants to come to court frequently (as often as monthly) to undergo financial examinations intended to establish whether and how much the person can pay. Not only is attendance at these hearings burdensome, requiring time off from work, child care arrangements, costly transportation, etc., but they also can result in undue pressure on the judgment debtor to settle or agree to make payments the debtor cannot afford, and in the possibility of incarceration if a defendant misses a court date. The Benchmark is designed to curtail the abusive practice of requiring the debtor to appear frequently at such examinations. A state received credit for this benchmark if it limits financial examinations to no more than once per year, absent a showing of good cause (i.e. that the person’s financial circumstances have changed since the last examination).	5
IX. Collect data to improve the system.	23	<b>Data Collection, Number of Lawsuits:</b> Do state courts at least annually collect and publish statewide data on number of consumer debt lawsuits?	Benchmarks 23 and 24 recognize that to solve or ameliorate problems in consumer debt claims litigation, it is important for court personnel, lawmakers, advocates and communities to understand the scope of those problems and the impact of potential solutions. Ideally, state courts would publish additional information beyond benchmark 23’s call for statewide data on the number of consumer debt lawsuits, and benchmark 24’s call for statewide data on the types of dispositions of consumer debt lawsuits – as these benchmarks provide the bare minimum required for a basic understanding of the consumer debt litigation landscape. NCAJ credited a state with meeting the benchmark where the state publishes data that meets the benchmark criteria, even if the state does not have a law requiring publication of such data. The Justice Index did not award credit to states that publish debt collection data without identifying the portion of such data that pertains to consumer debt.	3
	24	<b>Data Collection, Disposition of Lawsuits:</b> Do state courts at least annually collect and publish statewide data on types of dispositions of consumer debt lawsuits?	Benchmarks 23 and 24 recognize that to solve or ameliorate problems in consumer debt claims litigation, it is important for court personnel, lawmakers, advocates and communities to understand the scope of those problems and the impact of potential solutions. Ideally, state courts would publish additional information beyond benchmark 23’s call for statewide data on the number of consumer debt lawsuits, and benchmark 24’s call for statewide data on the types of dispositions of consumer debt lawsuits – as these benchmarks provide the bare minimum required for a basic understanding of the consumer debt litigation landscape. NCAJ credited a state with meeting the benchmark where the state publishes data that meets the benchmark criteria, even if the state does not have a law requiring publication of such data. The Justice Index did not award credit to states that publish debt collection data without identifying the portion of such data that pertains to consumer debt.	2
<b>Total Weight:</b>				<b>100</b>