NCAJ National Center for Access to Justice

Consumer Debt Litigation Index

Top Recommendations for Reform in New Jersey

New Jersey's Score: 29/100

New Jersey's National Rank: 12th

Consumer debt lawsuits dominate civil court dockets across the country. In an overwhelming number of cases—more than 70% in many places—the people sued do not respond or defend themselves. As a result, courts often enter default judgments without determining whether the defendant even knows about it, it is timely, or has merit. In turn, people face high fees and interest, onerous payment plans, seizure of wages and possessions, and potential imprisonment. States across the country have established laws and practices aimed at reducing unjust lawsuits and producing fairer outcomes. To support states in their respective efforts, the National Center for Access to Justice in 2024 created the Consumer Debt Litigation Index in consultation with a panel of experts. The Index ranks the states on their progress in adopting 24 best policies ("benchmarks") for fairness. See our Top Recommendations and Complete Findings, below.

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1. Establish Pleading Requirements (Benchmark 6)

Why: People facing debt collection lawsuits often have difficulty understanding the claim against them. Lax pleading requirements also invite illegitimate lawsuits. Requiring complaints to name the original creditor, demonstrate ownership of the debt, and break out the specific amounts sought can deter meritless filings and enable defendants to assert legitimate defenses, promoting fairness. Delaware, New Mexico, New York, and Washington, D.C. all require complaints to include these key elements. Although New Jersey requires that complaints on assigned claims include the name of the original creditor and the basis of plaintiff's standing, it does not impose these requirements in suits brought by conventional creditors. Further, it does not require itemization of the amount sought with regard to any consumer debt complaint.

How: New Jersey should adopt a law or practice that requires all consumer debt complaints to allege the basis for plaintiff's standing and an itemization of the amount sought, including debt principal, interest, fees, costs, and other charges to date. If it does so, the state's score would increase 10 points.

2. Require Authenticated Business Records for A Default (Benchmark 7)

Why: Creditors too often bring legally insufficient cases, relying on the likelihood that many defendants will not respond (or "default") and that the merits of the creditors' claims will never be assessed by a court. Requiring creditors to establish — before a default judgment may be entered — (a) proof of service, (b) validity of the debt using authenticated business records, and (c) itemized amounts sought, also using authenticated business records, promotes fairness, as these required elements deter lawsuits that lack merit and lower the number of unwarranted default judgments. Alaska, Maine, New York, Washington, D.C., Washington State, and Wisconsin all require creditors to prove these essential elements before a court may enter a default judgment. Although New Jersey requires a party seeking entry of default in a consumer debt case to attach the credit contract and file an affidavit setting forth the items of the claim, the amounts and dates, the calculated amount of interest, the payments or credits, if any, the net amount due, and the name of the original creditor if the claim was acquired by assignment, New Jersey does not require authenticated business records to support the amounts due, and does not require proof of valid service for entry of a default judgment in a consumer credit action.

How: New Jersey should adopt a law or practice that requires plaintiffs in consumer debt cases to establish the following before a court may enter a default judgment: (a) proof of service; (b) validity of the debt through authenticated business records (e.g. contract, account statements, or other evidence of obligation); and (c) amount of the judgment through authenticated business records, itemizing damages, court fees, attorneys' fees, and interest. If it does so, the state's score would increase 10 points.

3. Ensure that Garnishment Exemptions for Bank Accounts Are Self-Executing (Benchmark 14) and Update Garnishment and Attachment Exemptions (Benchmark 15)

Why: Without sufficient protections, garnishment and attachment orders to seize money or assets from a debtor to pay a creditor can leave people unhoused, unable to keep a car to drive to work, and stuck in cycles of poverty. Federal law exempts some funds from garnishment and some property from attachment, but debtors often do not learn what funds and property are exempt or how to assert exemptions. Further, the federal exemptions are out of date and inadequate to preserve even a very basic standard of living. Many states—including California, Idaho, Maryland and Wyoming—make some exemptions "self-executing", meaning that a bank must protect exempt funds even when the debtor does not assert exemptions (Benchmark 14). Other states have increased garnishment and asset exemptions (Benchmark 15). For example, in consumer debt cases Texas has garnishment exemptions that protect 100% of a person's wages, and attachment exemptions that protect a home (of any value) and personal property (including a car) up to a value of $100,000 for a family or $50,000 for an individual. New Jersey, however, does not have self-executing bank account exemptions, and it has not increased garnishment and attachment exemptions sufficiently.

How: New Jersey should make bank account exemptions self-executing. Further, the state should update and expand on garnishment and attachment provisions so that they protect at minimum: (a) a home, regardless of value, or at least the median price of a home in the state; and (b) a car valued up to at least $15,000. If it does so, the state's score would increase 7 points.

What Would Happen if New Jersey were to Implement these Recommendations?

These three recommendations, if adopted by the state, would substantially increase New Jersey's score and ranking. For more on how New Jersey can do better, see the complete findings below and visit NCAJ's Consumer Debt Litigation Index at https://ncaj.org/state-rankings/consumer-debt or reach out to NCAJ at NCAJ@fordham.edu.

Complete Consumer Debt Litigation Index Findings for New Jersey

I. Issue Area: Help people know when they are being sued and where to find help.

1 - Government Notice of Lawsuits **Score: 0/5**

Does the state respond to the problem of ineffective or fraudulent ("sewer") service in consumer debt lawsuits by: a. Public Official Service - requiring that a public official (e.g. the court or the sheriff) handle service? or, b. Court Supplemental Notice - 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? **No**

New Jersey does not meet this benchmark because it does not meet sub-benchmarks 1a or 1b for cases filed pursuant to Section 4 of the Court Rules, which include consumer debt cases over $20,000. See Lawsuits Over $20,000 (Civil), N.J. Courts, https://www.njcourts.gov/self-help/civil-court. For cases in the Special Civil Part (cases under $20,000), the clerk of the court must mail service by certified and ordinary mail. Court rules provide that “mailing shall constitute effective service unless the mail is returned to the court by the postal service with a marking indicating it has not been delivered such as ‘Moved, Left No Address,’ ‘Attempted-Addressee Not Known,’ ‘No Such Number/Street,’ ‘Insufficient Address,’ ‘Not Deliverable as Addressed-Unable to Forward,’ or the court has other reason to believe that service was not effected. However, if the certified mail is returned to the court marked ‘unclaimed’ or ‘refused,’ service is effective provided that the ordinary mail has not been returned.” N.J. Ct. R. 6:2-3. The state did not receive credit, however, because for cases in the civil part (cases over $20,000), service can be made “by the sheriff, or by a person specially appointed by the court for that purpose, or by plaintiff's attorney or the attorney's agent, or by any other competent adult not having a direct interest in the litigation.” N.J. Ct. R. 4:4-3. See also Lawsuits Over $20,000 (Civil), N.J. Courts, https://www.njcourts.gov/self-help/civil-court. The court does not provide supplemental service in such cases. Id.

2 - Guidance on Finding Help **Score: 5/5**

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? **Yes**

New Jersey meets this benchmark because "if the defendant is an individual resident in this state, the summons shall advise that if he or she is unable to obtain an attorney, he or she may communicate with the Lawyer Referral Service of the county of his or her residence, or the county in which the action is pending, or, if there is none in either county, the Lawyer Referral Service of an adjacent county. The summons shall also advise defendant that if he or she cannot afford an attorney, he or she may communicate with the Legal Services Office of the county of his or her residence or the county in which the action is pending or the Legal Services of New Jersey statewide toll free hotline at 1-888-LSNJ-LAW (1-888-576- 5529)." See N.J. R. 4:4-2.

II. Issue Area: Make it easier to respond to a lawsuit.

3 - Simplified Answer — Score: 2/2

Does the state provide a simple Answer process by making available an Answer form for use by unrepresented persons in consumer debt lawsuits? **Yes**

New Jersey meets this benchmark because it provides a fillable Answer form that can be used by consumer debt defendants. See Civil Action - Answer Civil Action - Answer (Appendix XI-F) available at https://www.njcourts.gov/sites/default/files/attorneys/appndxxif.pdf.

4 - No Notarization Requirement to Answer — Score: 2/2

Does the state make it easier to respond to consumer debt lawsuits by never requiring defendants to have an Answer notarized before filing? **Yes**

New Jersey meets this benchmark because it does not require that a pleading be verified except when it seeks ex parte relief or when specifically required by rule or statute. See N.J. Ct. Rule 1:4-5. No such statute or rule applies to an Answer in a consumer debt litigation. Additionally, New Jersey's fillable form Answer available through the court website does not include space for verification or notarization. See https://www.njcourts.gov/sites/default/files/attorneys/appndxxif.pdf

5 - No Fee to Answer — Score: 0/5

Does the state permit the filing of an Answer in consumer debt lawsuits without charging a filing fee? **No**

New Jersey does not meet the benchmark because there is a filing fee to file an answer to a civil complaint. For a claim of less than $20,000 in Special Civil Court, a defendant must pay a filing fee of $30 to $75, depending on whether a counterclaim, cross-claim, or third-party claim is also included along with the answer. Special Civil Court, New Jersey Courts. For claims over $20,000, there is a fee of $175 to file an answer. Civil Court Self-Help, New Jersey Courts. https://www.njcourts.gov/sites/default/files/forms/10542_ans_cplt_spc.pdf https://www.njcourts.gov/self-help/civil-court

III. Issue Area: Require the creditor to provide evidence of a valid debt claim.

6 - Pleading Requirement

Score: 0/10

Does the state require consumer debt complaints to allege all of the following: a. Name of original creditor; b. Basis of plaintiff's standing (e.g. chain of ownership of debt); and c. Itemization of amount sought including debt principal, interest, fees, costs, and other charges to date?

No

New Jersey does not meet the benchmark because although it requires that complaints on assigned claims include (a) the name of the original creditor and (b) the basis of plaintiff's standing, see N.J. Ct. R. 6:3-2(c), it does not impose these requirements in suits brought by conventional creditors and does not require (c) itemization of the amount sought with regard to any consumer debt complaint.

7 - Authenticated Records for Default

Score: 0/10

Does the state require the following be established before a default judgment can be granted: a. Proof of Service b. Validity of debt through authenticated business records (e.g. contract, account statements, or other evidence of obligation); and c. Amount of judgment through authenticated business records, itemizing damages, court fees, attorneys' fees, and interest?

No

New Jersey does not meet this benchmark because it does not meet sub-benchmark (c). New Jersey meets sub-benchmarks (a) and (b) because it requires (a) that the applicant for default file an affidavit that "sets forth the source of the address used for service of the summons and complaint," and (b) it requires that "if the claim is founded on a note, contract, check, or bill of exchange or is evidenced by entries in the plaintiff's book of account, or other records, a copy thereof shall be attached to the affidavit." N.J. Ct. R. 6:6-3(a). It does not, however, meet sub-benchmark (c) because it requires the filing of an "affidavit setting forth a particular statement of the items of the claim, the amounts and dates, the calculated amount of interest, the payments or credits, if any, the net amount due, and the name of the original creditor if the claim was acquired by assignment," but it does not require corresponding authenticated business records for the claims in the affidavit. Id.

IV. Issue Area: Require consumer debt collection actions to be brought within a reasonable time of non-payment.

8 - Burden on Plaintiff to Allege Timeliness

Score: 0/2

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: a. applicable statute of limitations; b. date that claim accrued; and c. date that statute of limitations expires?

No

New Jersey does not meet this benchmark because the statutes and rules of New Jersey do not place the burden of pleading timeliness on the plaintiff and do not require that a debt collection complaint include (a)

the applicable statute of limitations, (b) the date the claim accrued, or (c) the date that the statute of limitations expires. See N.J. Ct. R. 4:5-4.

9 - Four Year Statute of Limitations

Score: 0/5

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, bad check?

No

New Jersey does not meet this Benchmark because it does not impose a 4-year (or shorter) statute of limitations for all consumer debt claims. In particular, New Jersey has the following limitations periods: • breach of written contract: 6-year limitations period (non-sales) (N.J. Rev. Stat. § 2A:14-1 (2022) and 4-year limitations period (sale of goods under the UCC (N.J. Rev. Stat. § 12A:2-725 (2022)); • breach of oral contract: 6-year limitations period (non-sales) (N.J. Rev. Stat. § 2A:14-1 (2022) and 4-year limitations period (sale of goods under the UCC (N.J. Rev. Stat. § 12A:2-725 (2022)); • open account: 6-year limitations period (N.J. Rev. Stat. § 2A:14-1 (2022)); • account stated: 6-year limitations period (N.J. Rev. Stat. § 2A:14-1 (2022); • unjust enrichment: 6-year limitations period (N.J. Rev. Stat. § 2A:14-1 (2022)) • conversion: 6-year limitations period (conversion of chattel) (N.J. Rev. Stat. § 12A:14-1 (2022) or 3-year limitations period (conversion of a negotiable instrument) (N.J. Rev. Stat. § 12A:3-118(g) (2022); and • passing a bad check: 3-years after dishonor of the draft or 10 years after the date of the draft, whichever occurs first (N.J. Rev. Stat. § 12A:3-118 (2022)).

10 - Prohibit Revival of Time-Barred Claims

Score: 0/2

Does the state prohibit revival of time-barred consumer debt claims, even where defendant makes subsequent payment toward a debt?

No

New Jersey does not meet this Benchmark because it makes consumer debt claims subject to revival even after the statute of limitations has run, including when a debtor makes a subsequent payment toward the debt, explicitly acknowledges the debt, or expresses a new promise to pay the full debt. See Burlington County Country Club v. Midlantic Nat. Bank South, 223 N.J.Super. 227, 538 A.2d 441, 445 (Ch.Div.1987) (stating that “a statute of limitations which applies to a presently existing contractual debt or obligation may be tolled by an acknowledgment or a promise to pay” and “if such acknowledgment or promise to pay is made after the statute has run, it will act to revive the debt for the statutory period”).

V. Issue Area: Prohibit attorneys' fee shifting, and cap interest.

11 - Prohibit Attorneys’ Fees Shifting

Score: 0/3

Does the state prohibit attorneys' fee shifting in consumer debt lawsuits regardless of contractual provision or reciprocity in fee shifting?

No

New Jersey does not meet the benchmark because it does not prohibit attorneys' fee shifting provisions (though it does strictly construe them), nor does it provide a reciprocal right to attorneys' fees where contractual rights to fees to exist. See Litton Industries, Inc. v. IMO Industries, Inc., 982 A.2d 420, 427-28 (N.J. 2009).

12 - Interest Caps

Score: 0/3

Does the state cap interest in consumer debt lawsuits (regardless of any contractual provision) as follows: a. Pre-judgment interest for debt buyers capped at an annual rate of 7% (or less); and b. Post-judgment interest for all creditors capped at 5% (or less) of the judgment?

No

New Jersey does not meet this benchmark because it does not satisfy the requirements of sub-benchmarks (a) or (b). Regarding prejudgment interest, New Jersey law states that the interest rate shall be 6% or less, but if there is a written contract specifying a rate of interest, the interest shall be 16% or less. NJ Rev Stat § 31:1-1 (2022). Further, the commissioner may establish a rate allowed by Federal law or regulations to be charged by national banking associations at any time when the rate so allowed by Federal law exceeds 8% per annum. NJ Rev Stat § 31:1-1.1 (2022). Thus, New Jersey does not limit prejudgment interest to 7% or less. Regarding post-judgment interest, although N.J. Rules of Ct. 4:42-11(a) provides for an interest rate on judgments in tort actions of 2.25% , there is no statutory rule in contract actions. Thus, New Jersey does not limit post-judgment interest to 5% or less of the judgment.

VI. Issue Area: Reduce the likelihood that consumer debt collection actions leave people homeless, or perpetuate a cycle of debt.

13 - Require Court Order to Garnish or Attach

Score: 5/5

Does the state in consumer debt lawsuits require a court order for garnishment and attachment?

Yes

New Jersey meets the benchmark because a judgment creditor must obtain a wage execution order or a writ of attachment before garnishment or attachment, respectively. N.J. Stat. § 2A:17-50; N.J. Ct. R. 4:60-5. In small claims court, judgment creditors must request in writing the issuance of a writ of execution from the court clerk. N.J. Ct. R. 6:7-1. Regarding attachment in small claims court, the procedures governing the general civil court apply. N.J. Ct. R. 6:8.

14 - Bank Account Garnishment Exemptions Are Self Executing

Score: 0/2

Does state law require in consumer debt lawsuits that garnishment exemptions for bank accounts are self-executing?

No

New Jersey does not meet the benchmark because it does not require financial institutions to protect money deposited in bank accounts unless a judgment debtor asserts an exemption. N.J. Stat. § 2A:17-19 exempts personal property up to $1,000.

15 - Essential Exemptions

Score: 0/5

Does the state prevent people from becoming impoverished, unhoused, or unable to work by exempting income and assets from attachment and garnishment, as follows: a. Income 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

No

Guidelines in 2023; b. Home, regardless of value, or at least the median price of a home in the state; and c. Car value, state exemption for, at least, the first $15,000 in value?

New Jersey does not meet the benchmark because sub-benchmarks (b) (home) and (c) (car) are not met. New Jersey law provides as follows: (a) Income: New Jersey meets sub-benchmark (a) because it exempts 90% of a person's weekly wages subject to a certain limited exception. N.J. Rev. Stat. § 2A:17-56(a) (exempting a lesser percentage of a person's weekly wages if the person's income exceeds 250% of the poverty level, taking into account the size of the person's family). (b) Home: New Jersey does not meet sub-benchmark (b) because it does not offer any exemptions for a person's home(s). (c) Car: New Jersey does not meet sub-benchmark (c) because it does not offer any exemptions for a person's car(s). N.J. Rev. Stat. § 2A:17-19 (although New Jersey offers a wildcard exemption for personal property up to a value of $1,000 that may be applied to a person's car(s)). For more information on garnishment exemptions see Michael Best and Carolyn Carter, No Fresh Start 2023, National Consumer Law Center (Dec. 2023), https://www.nclc.org/wp-content/uploads/2023/12/2023_Report_No-Fresh-Start-3.pdf.

16 - Require Prior Notice of Garnishment

Score: 5/5

Does the state require notice to debtor prior to actual garnishment that explains all of the following: a. potential exemptions? b. how to challenge the order? and c. how to assert exemptions?

Yes

New Jersey meets this benchmark. For wage garnishment, the state requires that the judgment debtor be notified in advance, with a form of notice that satisfies sub-benchmark (a) because it lists available exemptions; sub-benchmark (b) because it explains how to challenge the garnishment order; and sub-benchmark (c) because it explains how to assert exemptions. See N.J. Ct. R. 4:59(e); https://www.njcourts.gov/sites/default/files/forms/12322_obj_wage_garnish.pdf. For non-wage garnishment, the state requires that the court office mail notice to the judgment debtor on the day the levy is made, but provides that no assets may be turned over until 20 days following receipt by the court of a properly completed notice to the judgment debtor. See id. at 5:49(h). The notice satisfies sub-benchmark (a) because its contains a list of available exemptions; sub-benchmark (b) because it explains how to challenge the order; and sub-benchmark (c) because it explains how to assert exemptions. See https://www.njcourts.gov/sites/default/files/forms/12323_obj_bank_levy.pdf. Separately, New Jersey has a specific form that explains how to vacate a default judgment. See https://www.njcourts.gov/sites/default/files/forms/10543_motion_spccvl.pdf.

VII. Issue Area: Eliminate debtors' prison.

17 - Prohibit Incarceration for Failure to Obey a Court Order to Pay Consumer Debt

Score: 5/5

Does the state prohibit incarceration for contempt for failure to obey a court order to pay all or part of a consumer debt judgment?

Yes

New Jersey meets the benchmark because Article I, Section 13 of the New Jersey Constitution prohibits imprisonment for debt and New Jersey case law prohibits incarceration for contempt for failure to obey a court order to pay a debt judgment. In Waldron v. Olsen 81 N.J. L. 326 (N.J. 1911), the court held that, “It is beyond the power of the Legislature to provide for the imprisonment of a debtor by way of attachment for contempt, in aid of an execution issued on a judgment for a debt, in the absence of fraud, and a statute which authorizes

imprisonment, simply because the debtor is entitled to property or is in receipt of an income, without an unlawful or fraudulent refusal to apply it in payment of his debt appearing, or being required, is a statute permitting imprisonment for debt generally without regard to the question of fraud, and contravenes the Constitution in that particular."

18 - Prohibit Incarceration for Failure to Obey a Court Order to Appear at a Debtor's Examination, Unless Nonappearance Was Willful

Score: 0/5

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?

No

New Jersey does not meet the benchmark because it provides that if a judgment debtor fails to obey a discovery order, including an order to appear at a debtor's examination, they will be served with a notice of motion "directing that if the judgment-debtor fails to appear in court on the return date or to furnish the required answers, he or she shall be arrested and confined to the county jail until he or she has complied with the order for discovery or information subpoena." N.J. Stat. Ann. § 6:7-2.

19 - Provide Right to Counsel

Score: 5/5

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?

Yes

New Jersey meets the benchmark because the contempt statute in the state makes contempt for disobeying a court order a crime of the fourth degree and the public defender statute in the state provides for an attorney for any indigent person charged with an indictable offense. N.J. Stat. §§ 2C:29-9(a), 2C:29-9.

VIII. Issue Area: Prevent government from undue intervention on behalf of creditor.

20 - Prohibit Collaboration Between Creditors and Prosecutors

Score: 0/2

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)?

No

New Jersey does not meet this benchmark because there is no statutory or judicial prohibition on relationships or financial arrangements between prosecutors and debt collectors. See N.J. Stat. Ann. § 2C:21-5.

21 - Prohibit Paying Bail/Bond to Creditor

Score: 0/2

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?

No

New Jersey does not meet the benchmark because its laws do not include an express prohibition on the use of bail or bond to pay a creditor. See N.J. Stat. Ann. § 6:7-2.

22 - Limit Frequency of Examinations **Score: 0/5**

Does the state in consumer debt litigation schedule or otherwise limit financial examinations to no more than once per year? **No**

New Jersey does not meet this benchmark because the court rules provide that "in aid of the judgment or execution, the judgment creditor or successor in interest appearing of record, may examine any person, including the judgment debtor, by proceeding as provided by these rules for the taking of depositions." The law does not limit the frequency of such examinations. N.J. Ct. R. 4:59-1(f).

IX. Issue Area: Collect data to improve the system.

23 - Data Collection: Number of Lawsuits **Score: 0/3**

Do state courts at least annually collect and publish statewide data on number of consumer debt lawsuits? **No**

New Jersey does not meet the benchmark because New Jersey courts do not collect or publish statewide data on the number of consumer debt lawsuits or the types of dispositions of consumer debt lawsuits. Note: The New Jersey state courts offer a helpful primer for each of plaintiffs and defendants involved in small claims litigation. New Jersey Courts, Small Claims Court (last visited Apr.1, 2023). See https://www.njcourts.gov/self-help/small-claims-court.

24 - Data Collection: Disposition of Lawsuits **Score: 0/2**

Do state courts at least annually collect and publish statewide data on types of dispositions of consumer debt lawsuits? **No**

"New Jersey does not meet the benchmark because New Jersey courts do not collect or publish statewide data on the number of consumer debt lawsuits or the types of dispositions of consumer debt lawsuits. Note: The New Jersey state courts offer a helpful primer for each of plaintiffs and defendants involved in small claims litigation. New Jersey Courts, Small Claims Court (last visited Apr.1, 2023). See https://www.njcourts.gov/self-help/small-claims-court.

To learn more about the Consumer Debt Litigation Index, including how other states fared, visit https://ncaj.org/state-rankings/consumer-debt.

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