STUDENT BORROWER PROTECTION CENTER

CO-OPTING CALIFORNIA COURTS

How Private Creditors Have Turned the Judiciary into a Predatory Student Debt Collection Machine

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About the Author

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The views expressed in this article are the author's alone.

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Executive Summary

- Californians carry a high burden of student loan debt, with an estimated 650,000 borrowers owing over $10 billion in private student loans in addition to, or in lieu of, federal student loans.[1] Unlike federal student loans, private student loans are not eligible for federal alternative repayment and debt relief options. Even many student borrowers who attended predatory, for-profit colleges or trade schools that later lost their accreditation remain liable to private student lenders that continue to collect on outstanding balances.[2]

- The following report offers a detailed analysis of newly compiled data revealing the punishing consequences for private student loan borrowers in California who fall behind on their debts. In California, as in other states, student loan companies sue borrowers in state court to collect on private student loans. The following analysis shows that these borrowers overwhelmingly end up with court default judgments entered against them and that more than 90 percent of borrowers do not have the means to resolve these judgments, leaving outstanding balances to grow through statutory interest and creating a massive barrier to financial stability.

- Although the Consumer Financial Protection Bureau has found widespread abuses in the prosecution of thousands of these student debt collection cases nationwide, in almost all of the cases filed in California, borrowers do not have access to an attorney to represent them in court. This pattern leads borrowers to forgo the opportunity to raise meritorious affirmative defenses. The debt collection judgments that arise out of this vacuum of legal representation remain collectible for ten years and are indefinitely renewable unless a borrower has a legal basis to affirmatively challenge the entry of default judgment or its renewal, which is rare.

- Private student loans have high interest rates, sometimes in the double digits, which means that by the time a borrower has defaulted, she may owe more than she originally borrowed.[3] This will certainly be true if a borrower has trouble finding a job that pays enough to make monthly payments on the private student loan before and/or in the lead up to default, as is often the case for graduates of for-profit schools.[4] If a borrower requests a forbearance on a private student loan, interest continues to accrue even while payments are delayed. Once a borrower runs of out forbearance options and defaults on the loan, debt collection processes using California state courts add to this debt burden, with judgments accruing interest at a rate of ten percent per year.[5]

- The consequences of default on a private student loan can be mitigated if a borrower has the knowledge and ability to assert meritorious defenses to a debt collection lawsuit. However, the data shows that few self-represented litigants even file an answer, the first paper to respond to the lawsuit, much less assert their rights and prevail in court.

- Based upon a first-of-its-kind analysis of newly compiled California court records conducted by Claire Johnson Raba of the Consumer Law Clinic at the University of California Irvine School of Law, this report makes the following key findings:

  - **Student loan debt collection lawsuits targeted nearly 12,500 California borrowers over the past decade.** The problem of private student loan borrowers being dragged into court by creditors is widespread. Over 12,500 private student loan borrowers have been sued in California from 2008 to 2020, and tens of thousands of additional borrowers are at risk of being sued in the future if they fall behind on payments.

  - **Most student loan debt collection lawsuits were brought by several large, out-of-state creditors including the National Collegiate Student Loan Trusts.** More than two-thirds of California collection cases were brought by one of the National Collegiate Student Loan Trusts (NCSLT), a set of Delaware statutory trusts that hold title to private student loans originated by big banks like Bank of America, US Bank, and JPMorgan Chase. This entity was alleged by the CFPB to have engaged in filing debt collection cases without proof— or while falsely attesting that it could prove— that it had good title to loans. It is estimated that NCSLT holds many of the outstanding private student loans in California and that the risk to borrowers of being sued remains. Due to ongoing litigation over the enforcement of the federal government's consent order against NCSLT, a court-ordered audit of all NCSLT judgments is currently on hold, despite findings that NCSLT has historically engaged in unfair and deceptive practices in bringing many of these cases in state courts.

  - **The effects of private student loan-related court actions are widely distributed and affect Californians throughout the state.** The impact of private student loan court actions is widely distributed and affects borrowers throughout California, with Butte, Merced, San Diego, and San Bernardino the leading counties with the most filings per capita. Court filings shows that borrowers in urban and rural counties alike were sued at a similar pace by creditors seeking to collect on defaulted private student loans.

  - **Borrowers lack legal counsel in 9-in-10 private student loan debt collection lawsuits.** Almost no student loan borrowers have an attorney to represent them in court in student loan debt collection matters. Over the period studied in this issue brief, an average of ten percent of defendants had an attorney. This number dropped to five percent during 2012, the year in which filings were highest.

Similar patterns hold true across all counties in the study, showing that access to an attorney for student loan debt collection cases is a problem for borrowers throughout the state.

- **After a judgment is entered, borrowers face wage garnishment and other forced collections in thousands of cases across California.** Default judgments are more common in student loan cases than in California debt collection cases overall, leaving borrowers at risk of wage garnishment and bank account levies. A default judgment was entered against borrower defendants in 65 percent of student loan debt collection cases, compared to about 55 percent in credit card debt collection cases. A settlement is one way to avoid entry of judgment, and student loan borrowers have less success than other debtors in obtaining a settlement and dismissal in their cases.

- **Court-ordered collections are rarely enough to pay off defaulted debts, leaving borrowers with debts that grow larger over time.** Once a judgment is entered, only 7.5 percent of borrowers were able to pay off the balance they owed, leaving a vast number of outstanding judgments to go unpaid. Outstanding judgments act as a barrier to home ownership, rental housing, and access to affordable credit while leaving borrowers under the constant threat of wage garnishment.

- California legislators can change this. Assembly Bill 424 (AB 424), currently pending in the California State Legislature, proposes solutions to many of the inequities and procedural hurdles in place within the collection of private student loans through the state court system. In particular, this bill will set specific evidentiary standards for creditors attempting to use the courts to collect on debt and will shift the burden away from borrowers to lenders with regard to initiating collections action. California's AB 424 can serve as a national model for states across the country aiming to protect the most vulnerable private student loan borrowers.

Introduction

Americans are drowning in student loan debt.[6] As the cost of college increases, borrowers are being deluged with options for making financial ends meet, helping private student loans become a sizeable and rapidly growing segment of the overall student loan market.[7] Private student loans are riskier than federal student loans, with significantly fewer protections for borrowers such as those working in public service, disabled borrowers, borrowers who attended predatory schools, and those with low and moderate incomes.[8] The private student loan market has nevertheless exploded in the past ten years, with borrowers now owing on loans adding up to more than $130 billion and annual origination volume expanding 42 percent in the past five years alone, outpacing the growth of new lending for auto loans, credit cards, and mortgages.[9] Still, borrowers remain at risk. The federal government's response to the COVID-19 pandemic and subsequent recession provided relief for current federal student loan borrowers by pausing the payments and reducing interest rates for most federal student loans, but no aid is in sight for the millions of Americans who owe on private student loans.[10] Additionally, during the Covid-19 pandemic, while the federal government halted all intercepts of tax refunds, garnishment of wages, and offset of federal benefits on defaulted federal student loans, private student loan borrowers have not seen any debt collection relief from the federal government.[11] This disparity in relief is in part because the Department of Education's role as the holder of federal student loans grants it much more expansive powers than it has in the private student loan space, where credit arises out of a contract between a private lender and a student. Indeed, compared to federal student loans and in the absence of an act of Congress, the Biden Administration has less clear-cut authority to force creditors to forgo collection of these debts.[12]

This lack of protections and the consequences of private student loan debt more generally are likely to have the largest negative effect on communities of color. The burden of student loan debt falls disproportionately on Black and Latino students, who take out more loans and borrow more money. [13] Almost 24 percent of Black borrowers with private student loans have fallen behind on payments, compared to less than 7 percent of white borrowers.[14] For students who attended for-profit colleges and trade schools, often low-income and first-generation college students, the degree conferred frequently lacks the earning potential to enable a borrower to repay these loans.[15]

Borrowers who fall into default on private student loans need help. However, instead of working with these borrowers, private student loan debt collectors generally file state court lawsuits to seek court judgments against struggling borrowers, and then use state court judicial processes to collect from borrower's wages and bank accounts.[16] These lawsuits can leave borrowers trapped under unaffordable debt for years, racking up interest and fees that they are often unlikely to ever repay.

The following report offers a detailed look at the scale, scope, and outcomes of these debt collection lawsuits in California, generating important new insights into how pervasive these lawsuits are and precisely how dangerous they can be. In particular, the data analyzed in this report indicates that more than 12,000 Californians have faced legal action from a private student loan company over the past decade, that they almost universally lack proper legal representation, and that outcomes for borrowers are overwhelmingly negative. Moreover, this reality is a policy choice, as California private student loan borrowers' heightened level of vulnerability to abuses by creditors can be traced to the rubber stamping of default judgments and the lack of legal protections California consumers are afforded.

Background and Context

The Origins of Private Student Loans

As the cost of tuition has risen over the last 40 years alongside the cost of living for those pursuing higher education, the debt burden that Americans have taken on to go to college has grown consistently higher and higher.[17] Over two-thirds of direct aid to students consists of federal benefits such as loans, grants, and tax credits.[18] However, private student loans offered by banks and other lenders nevertheless comprised approximately 15 percent of the total student debt in 2012.[19] In fact, the origination of private student loans is a booming business. From the 2010-11 academic year to the 2018-19 academic year, private student loan originations grew by 78 percent, while federal student loan originations dropped by 25 percent.[20]

Private student loans differ from federal student aid in that they are not backed by the Department of Education and are not subject to the laws and rules that govern federal student loans.[21] Private student loans are installment loans made by private sector financial institutions, and they are distinguishable from other types of private credit primarily in that they must be used for an educational purpose.[22] This requirement also makes them more difficult to discharge in a bankruptcy than other forms of unsecured debt.[23]

Prior to 2010, many private student loan lenders originated both federal and private student loans.[24] In 2010, the passage of the Student Aid and Fiscal Responsibility Act delegated exclusive responsibility to the Department of Education to originate and service federal student loans, leaving private lenders to offer only fully private student loans.[25] And offer them they did. The private student loan market grew during the 2000s from less than $5 billion in 2001 to over $20 billion in 2008.[26] This growth was driven in part by irresponsible lending practices that pervaded the market prior to the 2008 financial crisis, including the widespread use of securitization to offload the risk associated with lightly underwritten private student loans.[27] This business strategy created a secondary market for student debt, with a flood of investors entering the market eager to buy high-yield securities backed by poorly underwritten private student credit.[28] Just as in the context of mortgage-backed securities, however, the offloading of risk that this wave of securitization involved also led to misaligned incentives and a race to the bottom with regard to lending standards.[29]

Searching for new origination avenues to meet securitization demand, private student loan companies marketed credit to borrowers at traditional colleges who had maxed out their federal student aid packages, to graduate students who needed to borrow money for living expenses, and (as would prove crucial to subsequent rates of default on the product) to students who attended for-profit post-secondary schools.[30] In 2000, fewer than 400,000 students attended for-profit colleges, but by 2010, that number had increased to two million.[31] For-profit attendees now account for almost half of student loan defaults, with private student loan borrowers significantly more likely to fall in non-repayment due to economic hardship.[32]

Private student loan lenders have long since rebounded from the 2008 financial crisis. Annual private student loan originations grew 41.9 percent from 2014 to 2019, outpacing origination growth for other kinds of consumer credit including federal student loans.[33] But the legacy of creditors' risky practices at the start of the millennium lingers, and borrowers across the country are still paying the price. As discussed below, this is laid bare in the sheer number of borrowers being collected on each year for debt that their student loan company originated and sold off in the boom days of student loan securitization. Collections lawsuits related to securitized private student loans list the legal trust that the borrower's loan was sold into as the plaintiff,[34] and those plaintiffs overwhelm the data.

The Connection Between Predatory For-Profit Schools and Private Student Lending

The marriage of private, for-profit schools and private student loans has created a crisis of borrowers being unable to repay their debts.[35] Borrowers who fell prey to the advertisements of predatory, for-profit schools that misled them about educational attainment and job placement outcomes are much more likely than students at public and private non-profit colleges and universities to have relied on private student loans to meet the costs of education.[36] Moreover, in many cases, student borrowers at for-profit schools were affirmatively driven toward private student loans, as were students who had a need for additional cash to cover expenses not met by federal loans. [37]

Student loan borrowers who attended private, for-profit schools were also often encouraged to obtain co-signers for these debts. Because of the 90/10 rule, which requires schools to obtain 10 percent of funding from a source other than federal student loans, for-profit schools have traditionally tended to steer students into private student loans, including those offered by the school itself. Major student loan lenders and servicers also originated loans for schools such as ITT Technical College, the Corinthian Colleges, the Art Institutes, and the California Culinary Academy.[38] The students who graduated from these colleges proved less likely to obtain a job in a field that would allow them to pay off the loan.[39]

Many of the worst practices that for-profit colleges once used to bury students under risky private student loans are now more difficult for companies to execute. Private student loans are still available, but since 2008, schools have been prohibited from entering into co-branding and revenue-sharing arrangements with private student lenders, and they are bound by restrictions on marketing private student loans along with their federal student aid.[40] State and federal governments have also taken some steps to rein in private for-profit schools.[41] Despite these efforts, for borrowers with outstanding private student loan balances, the struggle to keep their loans from falling into default puts them deeper into debt. Placing private student loans in forbearance or deferment doesn't stop the accrual of interest, causing loan balances to grow. On private student loans with high interest rates, some servicers, such as Navient, offer "reduced-rate interest plans" in which a borrower makes interest-only payments for a period of time.[42] At the end of the plan period, however, the deferred interest is capitalized, and the balance of the loan grows by the amount of the deferred interest. Through "negatively amortizing" repayment plans such as this one, one borrower described in a court filing how a private student loan that started at $45,000 ballooned to $87,000 over ten years. [43]

Moreover, despite changes in federal law intended to protect borrowers from the private student loan trap, there are two decades' worth of private student loan borrowers who are still repaying on outstanding legacy debts.[44] For these borrowers as well as new ones, the problems associated with predatory private education credit are far from a relic of history. In particular, private student loan servicers engage in practices inside and out of the courtroom that ensure that these borrowers will continue to pay on these high-interest loans, negatively affecting borrowers' ability to obtain economic stability, including access to homeownership and other metrics of wealth.

Private Student Loans are a Crisis for Borrowers from Historically Disenfranchised Communities

The demographics of borrowers who struggle in repayment on private student loans diverge from those of the general body of student borrowers. Private student loan borrowers are often students who attended for-profit institutions, and the racial make-up of private student loan borrowers at these schools likely tracks the demographics of those who attend for-profit trade and technical schools in general, with a significantly higher percentage of Black and Latino students attending these institutions and taking on private student loans. For example, while 1-in-20 college students overall are enrolled in a for-profit college, 1-in-10 Black students is enrolled in a for-profit college.[45] This means that there is a substantial intersection between the two demographics already most likely to struggle on private student loan debt—Black and Latino borrowers, and borrowers at for-profit colleges.

Available evidence already illustrates the struggles that this dangerous mingling of debt and existing societal marginalization can produce. Student Borrower Protection Center report *Disparate Debts* found that the distribution of the burden of student debt falls disproportionately on borrowers of color. Moreover, white borrowers are more likely to be able to pay off their student loans by mid-career. This even holds true for high-balance student loan borrowers, such as those with graduate degrees.[46] For private student loan borrowers, who disproportionately attended for-profit schools that did not provide them with the skills to obtain jobs that would allow them to repay their loans, the debt burden is often inescapable.

The National Collegiate Student Loan Trusts Were a Conduit to Reward Predatory Subprime Lending by the Biggest Banks

As the next section of the report discusses in detail, the majority of lawsuits filed by student loan debt collectors in California were filed by one of the National Collegiate Student Loan Trusts (NCSLT), a set of Delaware statutory trusts. These trusts hold title to private student loans originated by a vast number of lenders, including US Bank, JPMorgan Chase, and Bank of America. Between 2001 and 2007, these lenders made more than 50,000 loans to California borrowers totaling nearly $800,000,000 that were ultimately bought by the Trusts.[47] In the decade that followed, as many as 4-in-10 of loans would end up in default nationwide.[48]

As has been reported in detail elsewhere, NCSLT and its collaborators have been accused of a wide range of abuses, including violations of federal debt collection law and the exploitation of state courts. These charges include those highlighted in a 2017 case brought by the Consumer Financial Protection Bureau, which took action against NCSLT for falsifying court documents and initiating lawsuits that were filed without sufficient proof that NCSLT owned the loans and had the right to collect.[49]

Unfortunately, a settlement entered into between NCSLT and the CFPB remains unenforced, as a set of investors sued to halt an audit that the settlement depends on. The CFPB is now suing the trusts for the violations alleged in its original complaint, but no recovery has taken place for the borrowers, who instead must now each individually show that NCSLT acted wrongfully in their specific case. As *CFPB v. NCSLT* moves through the relevant federal court in Delaware, it remains to be seen if there will be relief for borrowers whom NCSLT targeted in its aggressive and often illegal pursuit of default judgments. On the other hand, if the CFPB loses and the allegations in the consent order remain unresolved, there may soon be a flood of new NCSLT cases in the courts.

Private Student Loans Continue to Land Struggling Borrowers in California Courts

Private student loan debt collectors use the courts to collect on defaulted debt. Like other unsecured creditors, they must file a lawsuit and obtain a court judgment before they can engage in involuntary collection such as wage garnishment and bank account levies.[50] Private student loan debt collectors suing California residents to collect a debt must file a lawsuit within a four-year statute of limitations. This four-year time period generally runs from the date of breach according to the terms of the contract, which can be the last payment.[51] This means that the right to sue to pursue a debt expires after four years unless the consumer makes a new payment on the loan.

Private student loan debt collectors deploy a myriad of underhanded tactics to continuously reset the clock on this ostensible four-year limit. For example, collectors will entice long-defaulted borrowers to make small payments that make no dent in the balance the borrower owes, but which nevertheless extend the relevant statute of limitations another four years. Servicers will also require borrowers to make a $50 payment before placing their loans into forbearance or further extending an existing forbearance, renewing the four-year window.[52]

When a borrower ceases making payments entirely, the private student loan servicer turns over the debt to a debt collection law firm that files a case in state court. In California alone, 650,000 people are estimated to owe more than $10 billion in private student loans, and thousands of these borrowers are sued each year by student loan debt collectors that use the court system to collect on defaulted loans.[53] For those borrowers who have faced debt collection actions, the costs and consequences have been severe:

- Judgments in California accrue interest at a rate of ten percent per year, meaning that these debts keep growing, acting as a barrier to financial stability, and blocking upward mobility long after default.[54]
- Judgments can be renewed after ten years, and although a debtor has the right to move the court to vacate a renewal of judgment, borrowers rarely do so.

- Borrowers with judgments entered against them risk having their bank accounts frozen and emptied out or having their wages garnished, and borrowers who own a home are in danger of having a lien recorded against their property if they do not repay.[55]

- Compounding the problem, most borrowers do not realize that they have rights they can assert. The majority of these cases consequently end in judgment for the plaintiff creditor, often because the borrower was unaware of the lawsuit against them or otherwise failed to respond to the lawsuit. In some instances, the first time that a borrower learns about a student loan debt judgment is when she receives a notice of levy or wage garnishment.[56]

Taken together, these observations demonstrate how the student loan debt collection system can have devastating financial consequences for economically vulnerable borrowers. The findings discussed in this report demonstrate that private student lenders and other creditors routinely exploit this system, and that they do so to the detriment of thousands of California borrowers.

Co-opting California Courts

Overview: A Decade of Justice Denied to Private Student Loan Borrowers in California

The Consumer Law Clinic at the University of California Irvine School of Law (UCI Consumer Law Clinic) engaged in an empirical analysis of California court records over 12 years for a set of student loan debt collectors that utilized the court system to engage in debt collection practices. The results of this analysis show that, over this period, more than ten thousand Californians have been sued by a debt collector pursuing private student loan debt in courtrooms across the state. These borrowers are often unable to access an attorney and assert their rights in these state debt collection actions, resulting in thousands of default judgments being levied against consumer debtors who may have meritorious defenses to the claims brought against them. Further, the following analysis also shows that, over this period, few borrowers were able to pay off these judgments. As a result, the use of courts to collect defaulted private student loans remains a serious and under-regulated problem, with thousands of California borrowers still owing on unaffordable defaulted private student loans.

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Methodology

The UCI Consumer Law Clinic obtained 12,499 individual court records from 2008-2020 from 16 California counties, including the 15 most populous counties in California, from databases capturing approximately 87 percent of the filings in the state of California during the study period.[57] The data includes all information that the courts make publicly available through the portal view of the cases including docket information. Data was provided to researchers by data aggregator UniCourt for entities identified by the researchers as significant collectors of private student loan debt. The data set excludes lenders that originate non-student loans in addition to student loans, as it is not feasible to categorize student loan cases by information in the docket without a review of the complaints filed; accordingly, the lenders examined in this study are those who handle debts exclusively in the private student loan domain, and not banks or other lenders that originated student loans, except as those are captured in the National Collegiate Student Loan Trust and SLM Trust lawsuits.[58]

Researchers combined data sets concerning case information, docket-level information, and documents filed, and then analyzed the data to identify case outcomes. Data analysis was conducted using R and data visualization was prepared with Tableau and Excel. This analysis is based on the full set of all records for the selected creditors within the available counties, rather than a representative sample of each court's records.

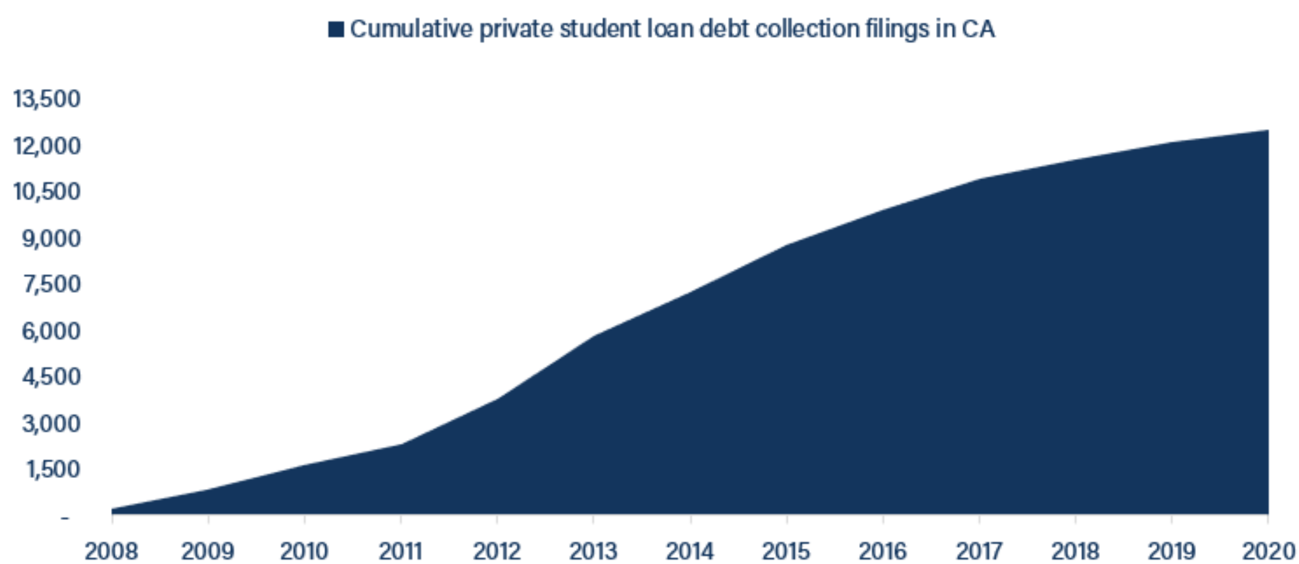
Findings and Analysis

The following analysis supports a series of findings that, when taken together, demonstrate the scale of the injustice imposed on California student loan borrowers who fall behind on private student loans. Specifically, the empirical analysis conducted by the UCI Consumer Law Clinic found the following:

1. Student Loan Debt Collection Lawsuits Targeted Nearly 12,500 California Borrowers Over the Past Decade

Over the last twelve years, at least 12,499 student loan debt collection cases were filed in California by creditors seeking to recover defaulted private student loans from former students and their families.

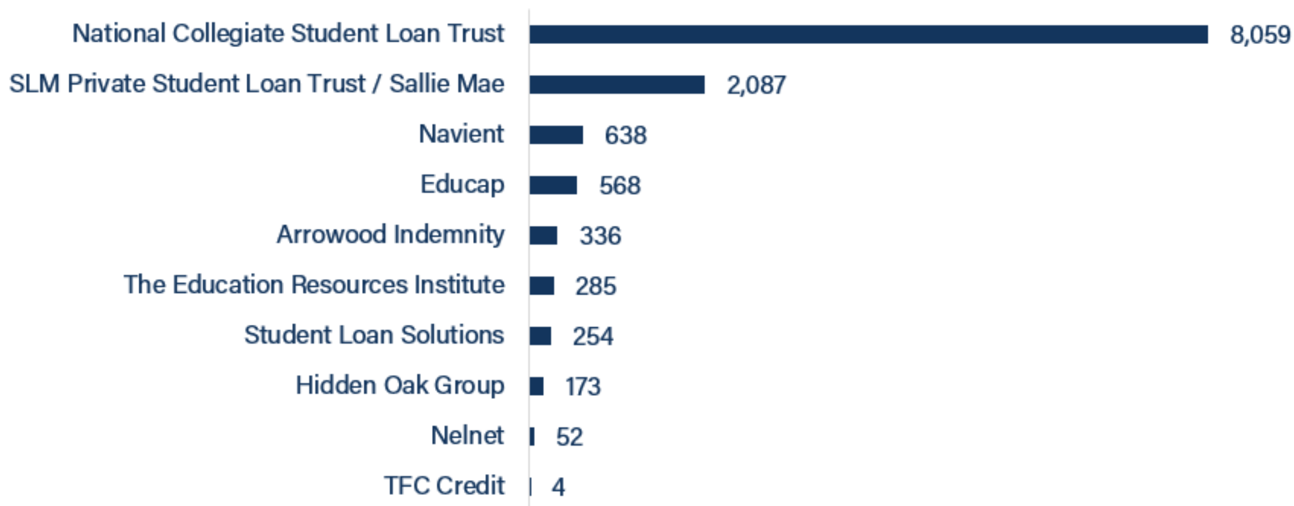
Figure 1. In only slightly more than a decade, creditors have filed tens of thousands of debt collection lawsuits against California private student loan borrowers



2. Most Student Loan Debt Collection Lawsuits Were Brought by Several Large, Out-of-State Creditors Including the National Collegiate Student Loan Trusts

The majority of these cases were brought by the one of the National Collegiate Student Loan Trust entities, which, as discussed above, are private student loan-backed securities trusts holding the notes to millions of dollars of value in private student loans. Following close behind are private student loan originators and servicers Sallie Mae and Navient.

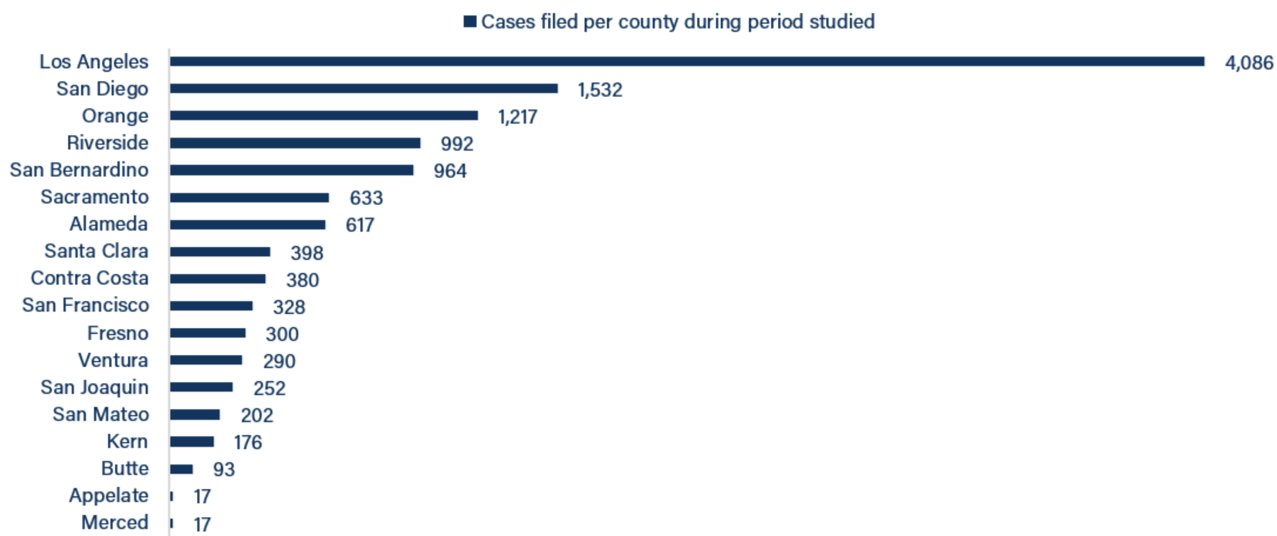
Figure 2. Most private student loan collection lawsuits were brought by large, out-of-state creditors, including NCSLT



3. The Effects of Private Student Loan Court Actions are Widely Distributed and Effect Californians throughout the State.

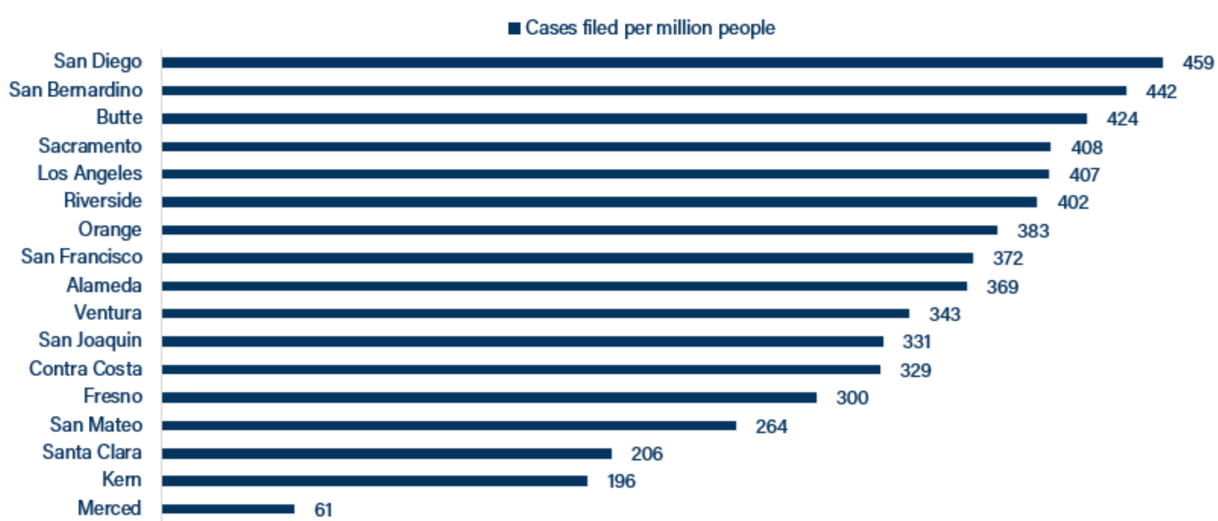
Collections cases filed over the past 12 years were spread throughout California, and while roughly a third were filed in Los Angeles County, thousands of people have also been sued in smaller, more rural counties such as San Joaquin, Fresno, Kern, and Butte Counties.

Figure 3. Thousands of private student loan debt collection cases have been filed in courtrooms spanning California



Indeed, analysis indicates that the nominally outsized prevalence of Los Angeles County in the data may mask deep private student loan borrower distress across more lightly populated areas of California. In particular, it appears that the distribution of private student loan debt collection cases in California is much more equal across urban and rural areas when the number of those cases is considered on a per-capita basis.

Figure 4. The California counties with the most private student loan debt collection cases per capita are not its most urban

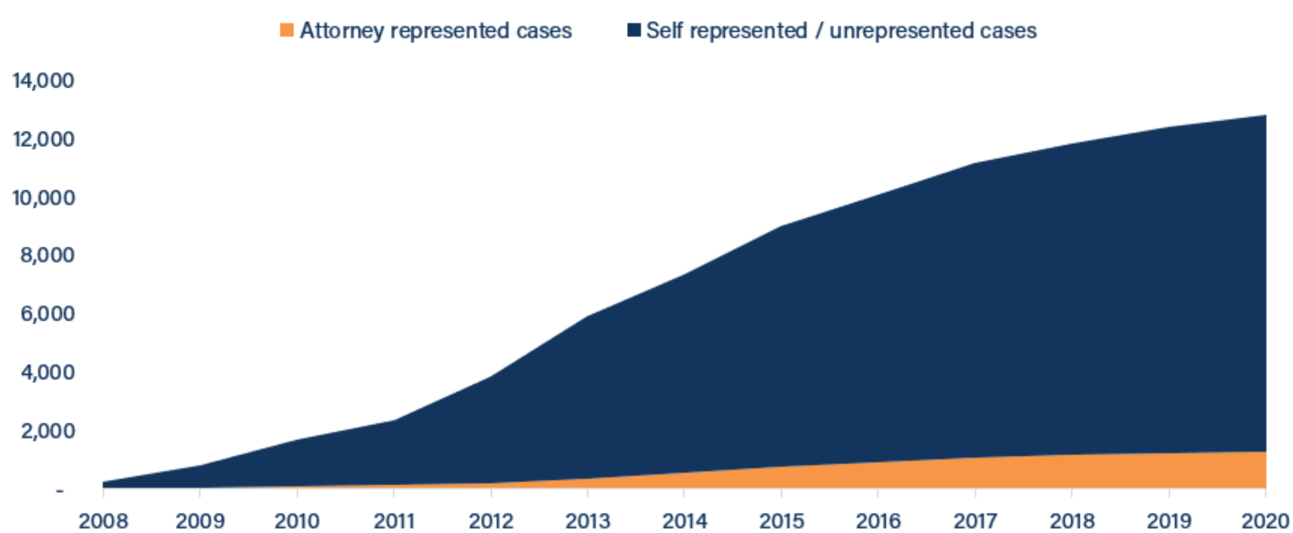


4. Borrowers Lack Legal Counsel in 9-in-10 Private Student Loan Debt Collection Lawsuits

In California, student loan debtors very rarely have an attorney to help them in court. Findings in the California data set indicate that borrowers of private student loans are unable to afford an attorney or do not know where to find help from legal aid. Borrowers may also feel overwhelmed when served with a debt collection lawsuit and not know where to look for help, and legal aid organizations lack sufficient resources to represent them.[59] Over the 12 years of cases examined, only *ten percent* of the total number of borrowers sued in California Superior Court had an attorney. In 2012, the year that student loan debt collection cases skyrocketed, the rate of attorney-represented borrowers was only five percent. In contrast, all creditors in superior court who brought cases against California consumers had a lawyer for the entirety of the study period.

This means that the court process in these cases moved forward without the defendant's participation, not as an adversary proceeding in which consumer debtors were able to raise meritorious defenses, but as a rubber stamp for the student loan debt collection industry.

Figure 5. Of the student loan borrowers sued over the last twelve years in California, only ten percent were represented by a lawyer



In rural counties, borrowers were slightly less likely to have an attorney than those in counties where more borrowers reside in large cities. Twelve percent of borrowers in Los Angeles County were able to retain an attorney, but only six percent had representation in Fresno County. In Alameda County, no student loan borrowers were represented by an attorney over the twelve-year study period. Few borrowers were represented by legal aid offices, showing that funding necessary for legal aid offices to represent borrowers is scarce and that most borrowers who cannot afford to pay their student loans must somehow find the money to retain private attorneys.

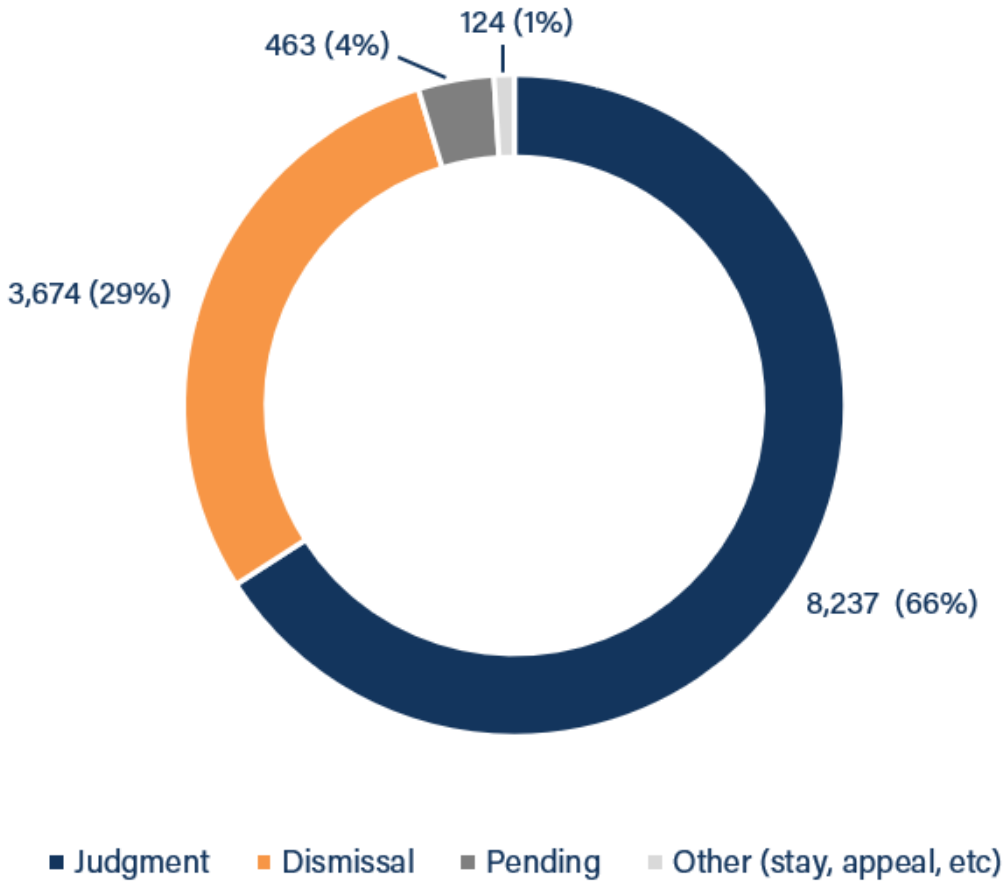
Figure 6. The lack of legal representation for borrowers in private student loan collections cases spans California counties*

***Totals may add up to more than 100% case counts because co-signers may be separately represented. Totals may not add up to 100% case counts because researchers excluded recently filed cases where attorney field was populated as "not yet classified by court."**

5. When Borrowers are Sued by Private Student Lenders, Courts Enter Judgments Against Borrowers in the Vast Majority of Cases

The rate at which judgment is entered in favor of the student loan creditor plaintiff is astronomically high, with 8,237 of 12,499 cases (66 percent of cases) resulting in a judgment against the consumer defendant. Of these cases, the majority of judgments entered were default judgments, which means that the consumer never responded to the lawsuit and the student loan debt collector automatically won the case, giving collectors the right to seek a wage garnishment or order to levy funds from a borrower's bank account. In these instances, as mentioned above, the court process functions as a rubber stamp for the student loan debt collection industry instead of as an adversary proceeding. Of the remaining 34 percent of cases, 29 percent were dismissed. Cases may be dismissed for a variety of reasons, including an inability to serve the defendant, or, more often in debt collection cases, because the creditor and debtor entered into a settlement agreement in which the consumer agrees to repay the debt over time.

Figure 7. Borrowers lose student loan debt collection lawsuits the vast majority of the time



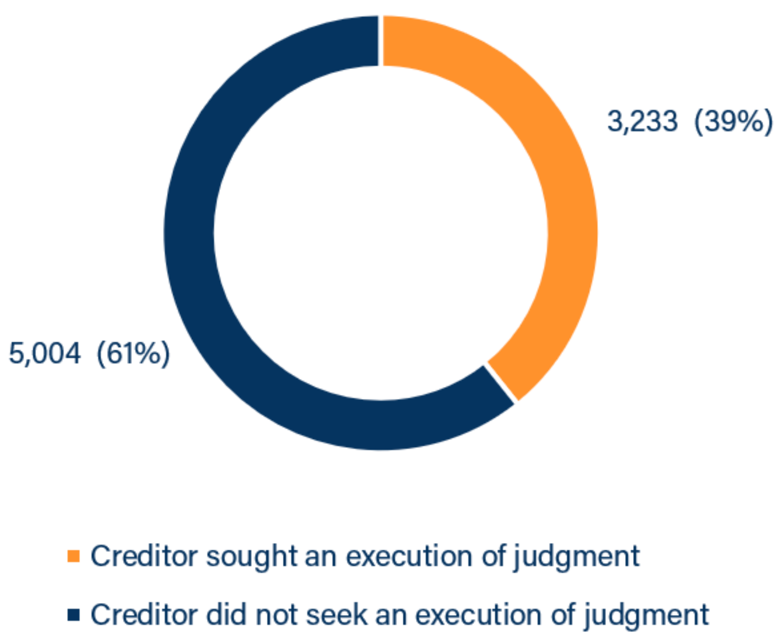
Because settlement agreements are not publicly filed, the disposition data does not show the consumers who entered into settlement agreements with the creditors, but anecdotal data from legal aid attorneys supports the theory that student loan creditors, like other debt collectors, call up consumers after filing a lawsuit and seek to enter into a settlement agreement. Empirical analysis of debt collection lawsuit settlements generally shows that such settlements are often not to the consumer's benefit.[60]

6. After a Judgment is Entered, Borrowers Face Wage Garnishment and other Forced Collections in Thousands of Cases Across California

Once a creditor obtains a judgment against a consumer, that creditor can then file an execution of judgment and engage in post-judgment collection activity. Analysis of the California data set shows that creditors sought an execution of judgment in 39 percent of the cases in which a judgment was entered. After a writ of execution is issued, a creditor can garnish the consumer's wages or levy her bank account, and through these actions, will be paid.

Once the judgment is paid in full, the creditor must legally file a satisfaction of judgment. Of the cases analyzed for this report, an incredibly low number of cases resulted in a satisfaction of judgment, meaning that the creditor was likely not able to recover the amount of the debt through wage garnishments, bank levies, and voluntary repayment.

Figure 8. Borrowers face wage garnishment and forced collections in thousands of cases

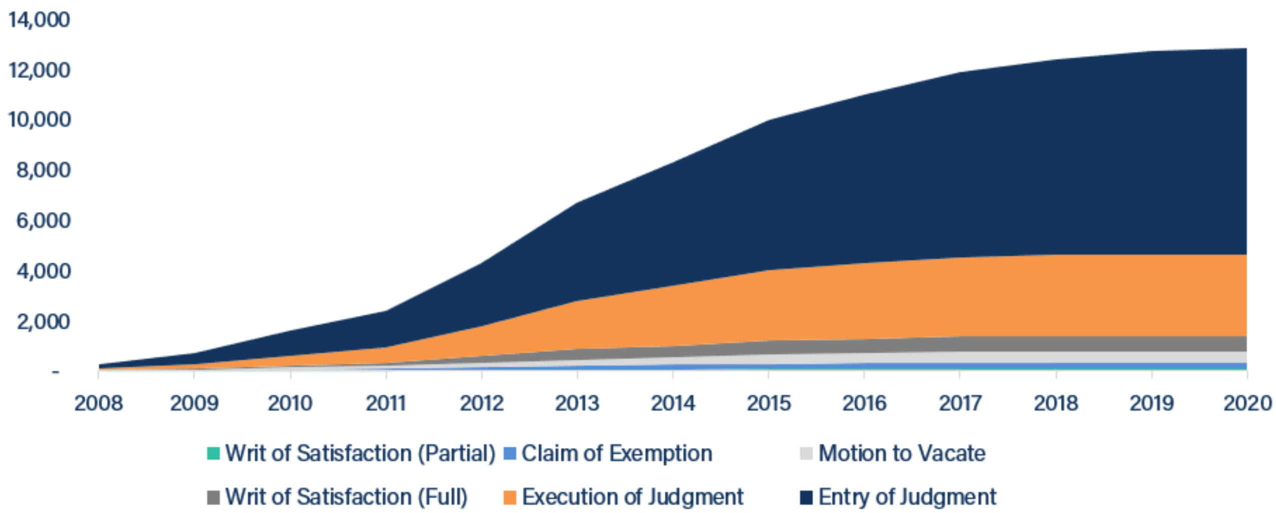


In the other 61 percent of judgments, the creditor chose not to execute on the judgment, allowing the judgment to sit and accrue Interest. The data does not show why, but creditors may "sit on" a judgment for a number of reasons, such as allowing the judgment to grow before being sold or assigned on the secondary debt collection market, or because a review of the consumer's credit report shows no assets. A creditor may also engage in non-judicial post-judgment collection activity, calling the consumer to persuade them to enter a payment plan to avoid wage garnishment.

7. Most Borrowers are Unable to Pay Off Judgments Against Them

The docket data shows that only 624 of these borrowers were able to satisfy (pay off) these judgments in full. This means that 7,613 of these judgments remain due and owing. In addition, many thousands of other borrowers are likely making payments on unaffordable settlement agreements. These settlement agreements are drafted by the creditor's attorney, and many of them include a provision for stipulated entry of judgment against the consumer if they stop making payments.[61]

Figure 9. The vast majority of private student loan debt collection judgments in California are not paid off, leaving thousands of borrowers owing on judgments



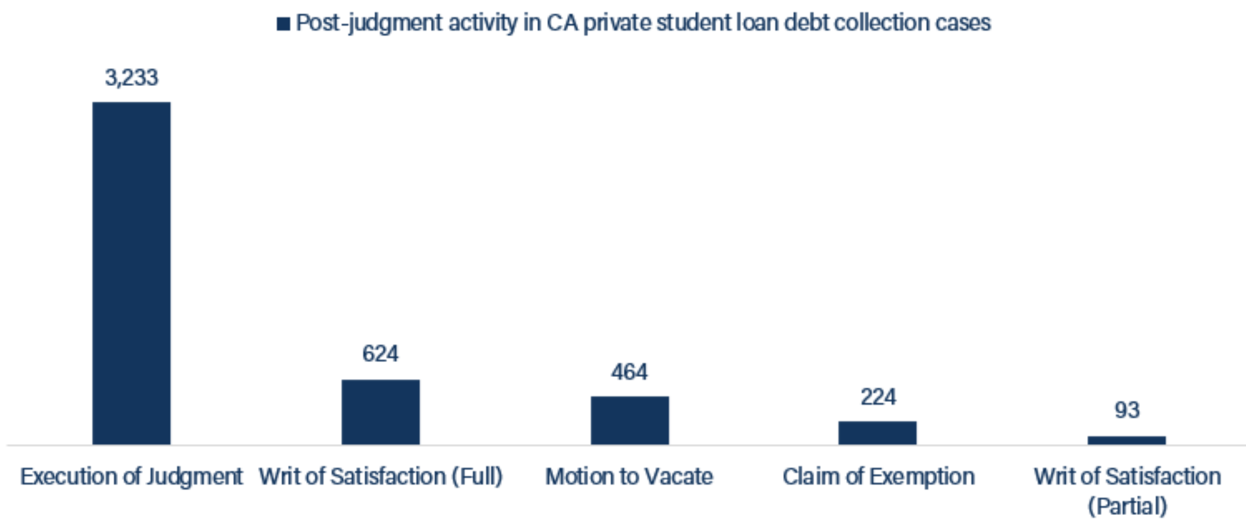
It is also noteworthy that despite the lack of progress made by the vast majority of borrowers with judgments in place, in only 224 cases was a claim of exemption filed by the consumer. The claim of exemption process is how a consumer tells the court that they are unable to afford a wage garnishment, or that the money in a bank account is exempt from levy, but many consumers do not know how to file this claim.

8. Thousands of Borrowers Tied to Judgments Will See Their Debts Grow Larger Over Time

As described above, the data analyzed from the court cases in this study shows that of the entries of judgment in California cases, thousands of judgments remain unpaid and subject to post-judgment collection activity, including wage garnishment, bank levy, and recording of a lien on real property. Although processes exist in California to set aside a judgment or seek an exemption to an execution of judgment, very few borrowers have availed themselves of these. Of the 8,237 judgments entered, only 464 borrowers, fewer than 6 percent, sought to have a default judgment set aside. This is likely because of the high rate of unrepresented litigants, a lack of knowledge that it is possible to set aside a judgment, or instances of when the consumer is unaware that they have been sued and where the judgment has not been enforced yet.[62]

Of the thousands of student loan borrowers with judgments in place, in at least 2,600 cases a writ of execution and levy or earnings withholding order returned no funds—in effect, borrowers facing forced collections following a judgment repaid no money at all. This would occur if a debtor had no assets to levy or sufficient wages to garnish.[63]

Figure 10. The vast majority of borrowers simply do not have the money needed to pay off their debts



Even for people who have no money to pay on a default judgment, such debts pose a barrier to access to housing, as they continue to be reported as an outstanding debt on a credit report for seven years after the borrower defaults. A judgment will also be a barrier to taking out a home loan, and will discourage potential homeowners from entering the housing market because the lender can place a lien on any real property owned by the judgment debtor, including property passed through inheritance.[64] In addition to the debt growing at a statutory rate of ten percent per year, the psychological burden of having a judgment debt outstanding places consumers in a position of feeling like they can never get ahead.[65]

As noted above, a judgment was entered in 66 percent of the cases filed by student loan debt collectors in the data set analyzed. Of the 8,237 entries of judgment, lenders sought to execute on these judgments less than half of the time, in 3,233 cases. This means that in the rest of the cases, the judgments are sitting on the books, accruing interest.[66]

The post-judgment activity analysis shows that 92.5 percent of judgments entered remain outstanding and collectible. The remaining executions of judgments were returned unpaid, either because the borrower earned too little money to garnish or because they were not receiving earned income at all.

A conclusion that may be drawn from these findings is that borrowers are not defaulting because they are choosing to stop paying on their private student loans. Among student loan debt collection defendants who are unable to pay their loans, borrowers overwhelmingly simply do not have the money to pay off their debts before or after the collection process proceeds through the courts.

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A Path Forward: Empowering Borrowers to Fight Back in State Court

The Burden is on California to Act

Early actions by the Biden Administration to address issues related to student loan debt focused exclusively on delivering assistance to borrowers with federal student loans. For example, the Biden administration has taken steps to protect and assist students who were defrauded by predatory for-profit schools by granting relief for borrowers who applied to have their federal student loan forgiven under the Borrower Defense to Repayment rule.[67] In particular, Education Secretary Miguel Cardona announced a reversal to the previous administration's policy that only provided partial relief for federal student loan borrowers whose applications had already been approved, paving the way for about $1 billion in new federal student loan relief.[68] Unfortunately for private student loan borrowers who were misled and defrauded, the federal government is currently unable to provide this kind of help, because the Department of Education did not originate and does not hold these borrowers' private student loans.[69] Purely private student loans cannot be consolidated into federal Direct Loans and cannot become eligible for any of the discharges that are available for federal student loans, such as the borrower's defense to repayment discharge, the total permanent disability discharge, or the Public Service Loan Forgiveness program. Although states have the authority to halt debt collection cases, and some did so during the height of the Covid-19 pandemic, this short delay in the filing of cases is an order of magnitude different from the kind of federal student loan forgiveness being considered by the Biden administration.[70]

However, at the state level, some states are moving to regulate the court debt collection process for private student loans—addressing many of the issues outlined in this report. In particular, these states are working to ensure that creditors meet specific evidentiary burdens to indicate that they have a right to use the courts as an arm of the collection process.[71]

Assembly Bill 424 (AB 424), currently pending in the California Legislature, is one such bill. Moreover, AB 424 proposes solutions to many of the inequities and procedural hurdles in place within the collection of private student loans through the state court system.[72]

Changes that AB 424 would make include the following:

- **The evidentiary burden will rest on the student loan debt collector to prove they have the right to collect the debt.** Unrepresented borrowers generally do not know when they have evidentiary defenses to student loan collection cases, which results in entry of judgment and in settlement agreements in which the borrower agrees to repay the entire balance of the loan, often on an unaffordable payment plan. AB 424 would ensure the more sophisticated litigant must prove their case.

- **Borrowers will have the legal tools to hold abusive creditors accountable.** Student borrowers who worry daily about being sued on old, defaulted private student loan debt will benefit significantly from the protections in AB 424 by ensuring that cases are not brought until the lender can prove it has the right to collect on a student loan debt and will provide remedies for cases brought without sufficient proof.

- **Even where a borrower does not have counsel, strengthened procedure will protect their rights.** In court, unrepresented borrower defendants will have their rights protected by the evidentiary requirements that must be met before a student loan debt collector is entitled to an entry of judgment under AB 424.

- **Borrowers who face default judgments will have procedural protections to reverse the consequences.** Under AB 424, borrowers with default judgments entered against them due to bad service will see the time period extended to move to set aside the default judgment. A successful motion to set aside will allow borrowers to have their day in court and assert meritorious defenses.

As state policymakers consider ways to address the student debt crisis and, specifically, actions to overhaul the rules governing private student loan debt collection litigation, California's AB 424 can serve as a national model to address many of the issues discussed in this report.

Conclusion

Private student loans first trended as a consumer product marketed directly to borrowers during the early 2000s, when they were advertised and sold alongside for-profit college certificates and degrees. The origination of private student loans is on the rise again, with the issuance of new private student loans increasing faster than that of any other consumer credit product. Meanwhile, without regard for the rules of evidence, the industry that originated millions of private student loans and packaged them as investment vehicles continues to sue borrowers who are unable to repay these high-cost debts.

Under current state law, the burden is placed on unrepresented consumer borrowers to understand and assert their rights. This means that the collection process is a one-way conversation for private student loan debt collectors with the borrowers who took out the loans. At the same time, borrowers are continually pressured by student loan servicers to enter repayment plans and forbearances in attempts to manage the growing balances of these private student loans, and they are sued when they cannot keep up on payments.

When consumers default, the collection process through the California courts is not the end of the line for borrowers who simply cannot keep up with the payments on private student loans—it is the beginning of a new nightmare. Court judgments, accruing interest annually and renewable indefinitely, are waiting in the wings whenever a borrower tries to save money or gets a better paying job. Private student loan borrowers throughout California, even those with good defenses, are at risk of entry of judgment and court-assisted collection practices when they face student loan creditor plaintiffs in the court system—something they are likely to do without representation.

State lawmakers can change this. Through bills like AB 424, California can flip the script on the current private student loan debt collection nightmare, empowering borrowers to assert their rights and placing the burden of proof before collection on creditors. After years of abuse at the hands of lenders, servicers, for-profit colleges, debt collectors, and more, private student loan borrowers deserve these protections.

Endnotes

[1] Proposed citation: Ben Kaufman, *California Has the Opportunity to Protect Private Student Loan Borrowers In Every Corner of the State*, Student Borrower Prot. Ctr. (July 6, 2021), https://protectborrowers.org/california-has-the-opportunity-to-protect-private-student-loan-borrowers-in-every-corner-of-the-state/.

[2] Student Assistance General Provisions, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program, 84 Fed. Reg. 49,788 (Sept. 23, 2019). See also NCLC's summary of the implementation of the rule available at Kyra Taylor, Nat'l Consumer L. Ctr., *New July Student Loan Rule Amendments: What Changes and What Does Not* (Aug. 27, 2020), https://library.nclc.org/new-july-student-loan-rule-amendments-what-changes-and-what-does-not.

[3] Consumer Fin. Prot. Bureau, Private Student Loans: Report to the Senate Committee on Banking, Housing, and Urban Affairs, the Senate Committee on Health, Education, Labor, and Pensions, the House of Representatives Committee on Financial Services, and the House of Representatives Committee on Education and the Workforce (Aug. 29, 2012), http://files.consumerfinance.gov/f/201207_cfpb_Reports_Private-Student-Loans.pdf [hereinafter CFPB PSL Report].

[4] Sephanie Riegg Cellini & Nicholar Turner, Nat'l Bureau of Econ. Research, Gainfully Employed? Assessing the Employment and Earnings of For-Profit College Students Using Administrative Data (2016, rev. 2018), https://www.nber.org/papers/w22287.

[5] Cal. Civ. Proc Code § 685.010(a).

[6] It is estimated that Americans owe 1.7 trillion dollars on student loans, up from $250 billion in 2004 and that one in eight Americans have student loan debt. *See* Fed. Res. Board, *Historical Data: Consumer Credit Outstanding (Levels)* (accessed Jul. 7, 2021), https://www.federalreserve.gov/releases/g19/HIST/cc_hist_memo_levels.html; Adam Looney, David Wessel & Kadija Yilla, *Who Owes All That Student Debt? And Who'd Benefit If It Were Forgiven?*, Brookings Inst. (Jan. 28, 2020), https://www.brookings.edu/policy2020/votervital/who-owes-all-that-student-debt-and-whod-benefit-if-it-were-forgiven/.

[7] Ben Kaufman, *Private Student Loans: New Report Sheds Light on the Need for Borrower Protection in an Opaque $130 Billion Market*, Student Borrower Prot. Ctr. (Apr. 30 2020), https://protectborrowers.org/130-billion-psl-market/.

[8] Federal student loan borrowers can apply for discharge of their loans under the Public Service Loan Forgiveness program, a Total Permanent Disability discharge, a Borrower's Defense to Repayment application, and are eligible to enroll in a variety of income-driven payment plans, in which the monthly payment is tied to the borrower's income and after a period of time, the remaining balance of the loan is eligible for discharge. Private student loan lenders sometimes offer disability discharge options, but these are at the discretion of the lender.

[9] Ben Kaufman, *Private Student Loans: New Report Sheds Light on the Need for Borrower Protection in an Opaque $130 Billion Market*, Student Borrower Prot. Ctr. (Apr. 30 2020), https://protectborrowers.org/130-billion-psl-market/.

[10] The CARES Act of 2020 placed federal student loans issued as direct federal loans and FFEL loans held by the federal government into administrative forbearance. The legislation also temporarily set the interest on these loans to zero, providing a reprieve for borrowers who owed on federal student loans from March 2020 through September 30, 2021. FFEL loans owned by private lenders, and some Perkins loans, are not eligible for federal relief. Nat'l Consumer L. Ctr., *What the CARES Act Means for Repayment of Federal Student Loans* (Mar. 28, 2020), https://www.studentloanborrowerassistance.org/what-the-cares-act-means-for-repayment-of-federal-student-loans/ [hereinafter NCLC: CARES Act].

[11] Nat'l Consumer L. Ctr., *Department of Education Takes Small, Common Sense Steps Towards Improving Covid-19 Relief* (Apr. 08, 2021), https://www.studentloanborrowerassistance.org/department-of-education-takes-small-common-sense-steps-towards-improving-covid-19-relief/. Some states implemented a temporary, opt-in forbearance for private student loan borrowers in March of 2020, including California, which negotiated a 90-day forbearance option. Cal. Dept. of Fin. Prot. & Innovation, *California Provides Expansion of Student Loan Relief: Most Private Loan Servicers Agree to Help* (Apr. 23, 2020), https://dfpi.ca.gov/2020/04/23/california-provides-expansion-of-student-loan-relief-most-private-loan-servicers-agree-to-help/. However, interest on private student loans continues to accrue when they are placed in forbearance, with interest capitalizing at the end of the forbearance period.

[12] The Department of Education under the Biden administration has also moved to grant relief to some federal student loan borrowers under the "Borrower's Defense to Repayment" rule, which allows borrowers who were misled by predatory schools about employment prospects and the ability to transfer credits. *See* Danielle Douglas-Gabriel, *Biden Administration Delivers Debt Relief to Some Former ITT Tech Students*, Wash. Post (June 16, 2021), https://www.washingtonpost.com/education/2021/06/16/itt-tech-debt-relief-biden/; Congress has also considered legislative avenues to provide debt relief to borrowers with private student loans, including a measure passed by the House of Representatives in 2020 that would cancel $10,000 in private student loan debt for all borrowers. Although the law that included this provision was enacted in December 2020, the debt relief provision itself was stripped out by a conference committee before the bill was sent to President Trump for signature. *See* Safeguarding Tomorrow Through Ongoing Risk Mitigation Act, Pub. L. 116-284 (Jan. 1, 2021).

[13] Black and Latino borrowers borrow more often and take out more in loans to attend private for-profit and non-profit colleges. Mark Huelsman, Demos, The Debt Divide: The Racial and Class Bias Behind the "New Normal" of Student Borrowing 9 (2015), https://www.demos.org/sites/default/files/publications/Mark-Debt%20divide%20Final%20%28SF%29.pdf.

[14] Ben Kaufman, *New Data Show Dramatic Disparities for Borrowers of Color with Private Student Loans*, Student Borrower Prot. Ctr. (Oct. 14, 2020), https://protectborrowers.org/new-data-show-dramatic-disparities-for-borrowers-of-color-with-private-student-loans/.

[15] Tressie McMillan Cottom, Lower Ed: The Troubling Rise of For-Profit Colleges in the New Economy 9, 197 (2017) [hereinafter Lower Ed].

[16] Roger Yu, *New York Attorney General Investigates Student Debt Creditors for Missing Paperwork*, USA Today (July 20, 2017), https://www.usatoday.com/story/money/2017/07/20/new-york-attorney-general-investigates-student-debt-collector-missing-paperwork/494971001/; Stacy Cowley & Jessica Silver-Greenberg, *As Paperwork Goes Missing, Private Student Loan Debts May be Wiped Away*, N.Y. Times: DealBook (July 17, 2017), https://www.nytimes.com/2017/07/17/business/dealbook/student-loan-debt-collection.html; Stacy Cowley, *Student Loan Creditor, Fined for 'False' Lawsuits, Must Halt Collections*, N.Y. Times: DealBook (Sept. 18, 2017), https://www.nytimes.com/2017/09/18/business/dealbook/student-loan-national-collegiate-trusts.html; Shahien Nasiripour, *Wall Street Is Fighting a CFPB Deal Over Billions in Defaulted Student Loans*, Bloomberg (Nov. 8, 2017), https://www.bloomberg.com/news/articles/2017-11-08/wall-street-is-fighting-a-cfpb-deal-over-billions-in-defaulted-student-loans?sref=QRPBHrH8; Stacy Cowley & Jessica Silver-Greenberg, *Behind the Lucrative Assembly Line of Student Debt Lawsuits*, N.Y. Times: DealBook (Nov. 13, 2017), https://www.nytimes.com/2017/11/13/business/dealbook/student-debt-lawsuits.html; Shahien Nasiripour, *Wall Street Halts Massive Student-Loan Relief Deal in Court*, Bloomberg (June 3, 2020), https://www.bloomberg.com/news/articles/2020-06-03/wall-street-thwarts-massive-student-loan-relief-deal-in-court?sref=QRPBHrH8; Danielle Douglas-Gabriel, *Student Loans Companies Return to Court to Collect on Private Education Debt*, Wash. Post (Jan. 21, 2021), https://www.washingtonpost.com/education/2021/01/21/private-student-debt-collection/.

[17] The Institute on College Access and Success, What College Costs for Low-Income Californians: 2020 (July 2020), https://ticas.org/wp-content/uploads/2020/08/what-college-costs-for-low-income-californians-2020.pdf.

[18] CFPB PSL Report, *supra* note 3.

[19] *Id.* at 9.

[20] *See generally* Student Borrower Prot. Ctr., Private Student Lending 6 (Apr. 2020), https://protectborrowers.org/wp-content/uploads/2020/04/PSL-Report_042020.pdf [hereinafter Private Student Lending] (showing that the private student market continues to grow and has bounced back from the 2008 financial crisis).

[21] CFPB PSL Report, *supra* note 3, at 58 (describing the federal consumer protection laws that apply to private student loans, as opposed to the federal regulations that govern federal student loans).

[22] 26 U.S.C. § 221.

[23] Prentiss Cox, Judith Fox, & Stacey Tutt, Forgotten Borrowers: Protecting Private Student Loan Borrowers Through State Law, 11 U.C. Irvine L. Rev. 43, 47 (2020) [hereinafter Forgotten Borrowers] (citing Xiaoling Ang & Dalié Jimenez, Private Student Loans and Bankruptcy: Did Four-Year Undergraduates Benefit from Increased Collectability of Student Loans?, Upjohn Press (forthcoming) (manuscript at 175-76), available at https://papers.ssrn.com/sol3/papers.cfm?abstractid=2332284). However, it is increasingly clear that not all products marketed as private student loans are actually exempt from discharge in bankruptcy, and that borrowers' ability to free themselves from debt may be more expansive than is conventionally thought. *See* Austin Smith, *Not All Student Loans Are Non-Dischargeable In Bankruptcy and Creditors Know This*, Student Borrower Prot. Ctr. (Mar. 18, 2019), https://protectborrowers.org/not-all-student-loans-are-non-dischargeable-in-bankruptcy-and-creditors-know-this/ [https://perma.cc/74LB-FZVW]. The 2005 Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) amended federal bankruptcy law to make private student loans much more difficult to discharge in bankruptcy. Following the passage of this legislation, the credit profiles of borrowers decreased slightly and the number of private student loans increased significantly.

[24] Forgotten Borrowers, *supra* note 23, at 47.

[25] Forgotten Borrowers, *supra* note 23, at 9. Readers should note that many of the private-sector firms that continue to make private student loans and once dominated the federally guaranteed student lending market are now the nation's largest student loan servicers, winning multi-billion-dollar contracts from the U.S. Department of Education between 2009 and 2012.

[26] Forgotten Borrowers, *supra* note 23, at 47 (citing CFPB PSL Report, *supra* note 3, at 17).

[27] Robyn C. Smith & Emily Green Caplan, Nat'l Consumer L. Ctr. & Student Loan Borrower Assistance, Going to School on Robo-signing: How to Help Borrowers and Stop the Abuses in Private Student Loan Collection Cases 1 (2014) [hereinafter "Robo-signing"]; *see also* Consumer Fin. Prot. Bureau, *CFPB and U.S. Department of Education Joint Report Finds a Cycle of Boom and Bust in Private Student Loan Market* (July 19, 2012), https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-and-u-s-department-of-education-joint-report-finds-a-cycle-of-boom-and-bust-in-private-student-loan-market/ ("Funded in large part by the asset-backed securities market, many lenders made money by originating and then selling private student loans with less regard for borrowers' creditworthiness. The market grew from less than $5 billion in 2001 to over $20 billion in 2008, and then rapidly contracted to less than $6 billion in 2011. After the financial crisis, underwriting standards tightened as investors pulled out of the market.").

[28] CFPB PSL Report, *supra* note 3.

[29] *Id.*

[30] *Id.* at 4 (finding that in 2008, 42 percent of undergraduates at for-profit colleges took out a private student loan, while only 14 percent of all undergraduates did so).

[31] Lower Ed, *supra* note 15, at 32.

[32] *Id.* at p. 30 (citing Mary Nguyen, Education Sector, Degreeless in Debt: What Happens to Borrowers Who Drop Out (2012)); Adam Looney & Constantine Yannelis, Brookings Papers on Econ. Activity, A Crisis in Student Loans?: How Changes in the Characteristics of Borrowers and in the Institutions They Attended Contributed to Rising Loan Defaults (2015); Private Student Lending, *supra* note 20, at 10 fig.4.

[33] Private Student Lending, *supra* note 20, at 8 fig.3.

[34] *See* Methodology Section, *infra*. Private student loan debt collectors were selected from the set of plaintiff names by searches for the creditor name and then normalized. Lenders that originate other kinds of loans, such as Wells Fargo, were excluded from this data set because it is not possible to deduce which debts are student loans at the docket level. However, many of the loans originated by major banks were securitized into the National Collegiate Student Loans Trusts, and are therefore captured in this data.

[35] Private Student Lending, *supra* note 20, at 3, 9 ("[F]or-profit attendees are disproportionately more likely to borrower private student loans and to face difficulties repaying them.").

[36] *Id.* See also the Department of Education's decisions to grant relief to federal student loan borrowers who attended the Corinthian Colleges, DeVry, ITT Technical, Marinello School of Beauty, Court Reporting Institute, Westwood College and others due to these schools misleading students about education outcomes and job placement. Fed. Student Aid, Dep't of Educ., *ED Announces Approval of Borrower Defense Claims for more than 1,800 Court Reporting Institute, Marinello Schools of Beauty, and Westwood College Students* (July 9, 2021), https://studentaid.gov/announcements-events/borrower-defense-update.

[37] Robo-signing, *supra* note 27, at 14 ("It is likely that many of the borrowers who are defendants in PSL collection lawsuits attended for-profit schools"); *see also* Mary Nguyen, Degreeless in Debt: What Happens to Borrowers Who Drop Out, Education Sector at 1 (Feb. 2012).

[38] On September 6, 2016, ITT Tech filed for Chapter 7 bankruptcy after failing to comply with accreditation standards. https://studentaid.gov/announcements-events/itt#history-of-oversight-and-compliance-actions-against-itt-educational-services-inc. On April 27, 2015 Corinthian closed Its locations after the California Attorney General and U.S. Department of Education found the school defrauded students from 2010 to 2014. Fed. Student Aid, Dep't of Educ., *Information for Debt Relief for Students of Corinthian Colleges (Everest, Heald, and WyoTech)*, https://studentaid.gov/announcements-events/corinthian#debt-relief (last visited August 17, 2021); Cal. Off. of the Att'y Gen., Rob Bonta, *Information for Former Corinthian Colleges Students* (Feb. 11, 2021), https://oag.ca.gov/corinthian. The parent company of the Art Institutes, Education Management Corp. was the subject of a U.S. Department of Justice investigation that found EDMC engaged In Illegal compensation practices for Its admissions recruiters. Most of the Art Institute campuses closed In 2015. Dep't of Just., *U.S. Files Complaint Against Education Management Corp. Alleging False Claims Act Violations* (Aug. 8, 2011), https://www.justice.gov/opa/pr/us-files-complaint-against-education-management-corp-alleging-false-claims-act-violations.

[39]See generally the Gainful Employment Rule, an Obama-era Department of Education rule requiring that career programs receiving federal student aid "prepare students for gainful employment." This rule was rescinded by the Trump Administration on July 1, 2019. The Inst. for Coll. Access & Success, *Fact Sheet: What You Need to Know About the Gainful Employment Rule* (Aug. 12, 2019), https://higherednotdebt.org/blog/fact-sheet-what-to-know-about-the-gainful-employment-rule.

[40] *See* Higher Education Opportunity Act, Pub. L. 110-315 (Aug. 14, 2018). Note that a growing body of evidence suggests that these restrictions have not been enforced by the U.S. Department of Education, and an emerging class of "fintech" private student lenders appear to be partnering with public and private not-for-profit colleges in open violation of these restrictions. *See* Student Borrower Prot. Ctr., Pushing Predatory Products: How Public Universities are Partnering with Unaccountable Contractors to Drive Students Toward Risky Private Debt and Credit (June 2021), https://protectborrowers.org/wp-content/uploads/2021/06/SBPC_OPM.pdf.

[41] The Department of Education issued findings against the Corinthian Colleges in June of 2015, stripping them of their accreditation, leading to the shuttering of the Everest, Heald, and WyoTech for-profit colleges. The California Attorney General's Office investigated and filed suit against Corinthian and contributed to the findings. Cal. Off. of the Att'y Gen., *supra* note 38.

[42] Brandon Duley v. Navient Corporation 2:17-ap-01513 (C.D. Cal. 2017) (adversary proceeding seeking to discharge private student loan and asserting that the balance of the loan grew due to the negatively amortizing "reduced interest-rate plan" under the Ninth Circuits In Re Neff factors for the Brunner bankruptcy discharge evaluation).

[43] *Id.*

[44] Private Student Lending, *supra* note 20, at 9 ("[L]ooking beyond top-line statistics on the private student loan market reveals that vulnerable borrowers frequently find themselves falling behind.").

[45] Lower Ed, *supra* note 15, at 32 ("1 in 20 of all students in higher education is enrolled in a for-profit college, 1 in 10 Black students, 1 in 14 Latino students, and 1 in 14 first-generation college students is enrolled at a for-profit college.").

[46] Even in the legal profession, Black attorneys graduate with a much higher debt burden and are much less likely to have paid off their law school debt by mid-career. ABA Profile of the Legal Profession 28 (2020), https://www.americanbar.org/content/dam/aba/administrative/news/2020/07/potlp2020.pdf.

[47] SBPC analysis of NCSLT filings, available at https://public.tableau.com/app/profile/ben.kaufman4147/viz/TableauNCSLTmap/Sheet1.

[48] Consumer Fin. Prot. Bureau, *CFPB Takes Action Against National Collegiate Student Loan Trusts, Transworld Systems for Illegal Student Loan Debt Collection Lawsuits* (Sep. 18, 2017), https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-national-collegiate-student-loan-trusts-transworld-systems-illegal-student-loan-debt-collection-lawsuits/.

[49] Consent Order, Transworld Systems, Inc., Consumer Fin. Prot. Bureau, 2017-CFPB (Sept. 18, 2017), https://files.consumerfinance.gov/f/documents/201709_cfpb_transworld-systems_consent-order.pdf.

[50] This differs from federal student loans, on which the Department of Education Default Resolution Group can engage in administrative wage garnishment, levy, offset of federal public benefits, and offset of federal tax returns without first obtaining a judgment in court.

[51] Cal. Code Civ. Proc. section 337.

[52] The author's experience as a legal aid attorney assisting private student loan borrowers from 2010-2019 affirmed this was a common practice for private student loan servicers. *See also* Consumer Fin. Prot. Bureau, Annual Report of the CFPB Student Loan Ombudsman (2012), https://files.consumerfinance.gov/f/documents/201709_cfpb_transworld-systems_consent-order.pdf.

[53] *Supra* note 1.

[54] Judgments are enforceable for 10 years and can be renewed, effectively making a judgment enforceable indefinitely unless a satisfaction of judgment is filed with the court. Cal. Civ. Proc. Code §§ 685.010, 683.120.

[55] California Code of Civil Procedure § 699.510 permits a judgment creditor to seek a writ of execution of judgment which allows the creditor to levy property, garnish wages, or place a lien on real property.

[56] In these circumstances, a borrower can file a motion to set aside default judgment, but the time in which she can do so is limited to two years. Cal. Civ. Proc. Code § 473. Current law that extends to six years the right to set aside default entered by debt buyer plaintiffs based on lack of service doesn't cover original creditors, like student loan lenders. Cal. Civ. Proc. Code § 1788.61.

[57] The 16 counties from which data was aggregated include the 15 most populous counties in California: Los Angeles, San Diego, Orange, Riverside, San Bernardino, Sacramento, Alameda, Santa Clara, Contra Costa, San Francisco, Fresno, Ventura, San Joaquin, San Mateo, Kern, Butte, and Merced. Analysis by the author on 2019 debt collection case filings found that these 16 counties captured approximately 87 percent of the total number of filings in California.

[58] As discussed *infra*, the business model of many private student loan lenders during the 2000s was structured around the securitization of private student loans. This means that some 800,000 loans nationally were packaged and assigned into trusts. These loans are captured in the data where the named creditor plaintiff is the trust.

[59] See generally Emily Taylor Poppe, Why Consumer Defendants Lump It, 14 NW. J. L. & Soc. Pol'y 149 (2019), describing the psychological reasons why consumer defendants are less likely to assert their rights in the court system than consumer plaintiffs and the barriers to self-represented litigants prevailing in civil litigation.

[60] Ing-Haw Cheng, Felipe Severino & Richard R. Townsend, How Do Consumers Fare When Dealing with Debt Collectors? Evidence from Out-of-Court Settlements, 34 Rev. Fin. Stud. 1617 (2021).

[61] Creditor attorneys often draft settlement agreements in which a consumer defendant agrees to have a judgment entered against them for the full amount of a debt if the breach the settlement agreement by missing even one payment. Unrepresented consumers do not know that they should negotiate to avoid such "gotcha" terms in a settlement agreement.

[62] California law permits the set aside of a judgment for "inadvertence, mistake, or excusable neglect" for 180 days after the entry of judgment, and for two years in cases of non-service. Cal. Civ. Proc. Code §§ 473(b), (d). Pending California Assembly Bill 424 would extend to six years the time period to move to set aside a default judgment for cases where the defendant was not properly served and did not have knowledge of the entry of judgment. Assemb. B. 424, 2021–2022 Leg., Reg. Sess. (Cal. 2021).

[63] Cal. Civ. Proc. Code § 706.050 exempts low-income employees from wage garnishment by setting a "floor" below which wages are exempt without the filing of a claim of exemption.

[64] An increased student loan debt balance is correlated with a reduction in likelihood of buying a home. Cliff A. Robb, Samantha L. Schreiber, & Stuart J. Heckman, The Role of Federal and Private Student Loans in Homeownership Decisions, 54 J. Consumer Affs. 43 (2020). For borrowers whose debts have been reduced to judgment, this acts as a barrier as lenders usually require that judgment be paid before originating a mortgage loan.

[65] California's wage garnishment "floor" is 40 time the state minimum wage per week. Cal. Civ. Proc. Code § 706.051. Beyond that exemption floor, a debtor must prove before a judge at a hearing that earned wages are needed for "necessaries of life," a procedural burden that is often unmanageable and intimidating to unrepresented debtors.

[66] Anecdotal evidence from legal aid offices supports the presumption that debt collectors may let a judgment sit and collect interest before moving to execute on a judgment in order to maximize the value of the judgment. The secondary market for judgments may also place greater value on a judgment which has had additional interest added through the filing of a memorandum of post-judgment costs and interest.

[67] The Borrower's Defense to Repayment rule was promulgated by the Obama Department of Education, and the incoming Trump administration backtracked, delaying relief for borrowers. Following a court order in *Calvillo Manriquez v. Cardona* holding Education Secretary Betsy DeVos in contempt of court, the Department moved to implement the rule on July 1, 2020. On March 18, 2021, the Department of Education announced full debt relief for all borrowers with partial relief decisions on their BTR applications. Student Assistance General Provisions, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program, *supra* note 2; Harvard Predatory Lending Project, *Calvillo Manriquez v. Cardona*, https://predatorystudentlending.org/cases/calvillo-manriquez-v-devos/. See also NCLC's summary of the implementation of the rule available at Kyra Taylor, *New July Student Loan Rule Amendments: What Changes and What Does Not*, Nat'l Consumer L. Ctr. (Aug. 27, 2020), https://library.nclc.org/new-july-student-loan-rule-amendments-what-changes-and-what-does-not.

[68] As a result, the Department of Education provided additional relief in 2021 for 18,000 federal student loan borrowers who attended ITT Technical Institute based on Borrower's Defense to Repayment claims asserting that ITT misled students about employment and earning potential and the ability to transfer credits, and also granted relief to attendees of a series of career colleges. Douglas-Gabriel, *supra* note 12.; Dep't of Educ., *Department of Education Approves Borrower Defense Claims Related to Three Additional Institutions* (Jul. 9, 2021), https://www.ed.gov/news/press-releases/department-education-approves-borrower-defense-claims-related-three-additional-institutions.

[69] Although some borrowers have brought cases against predatory for-profit schools seeking relief from private loans, it is difficult to show that the lender and the school acted in collusion, and most private student loan contracts have arbitration provisions, making widespread relief for borrowers difficult to obtain. *See, e.g.*, *Kilgore v. KeyBank*, 718 F.3d 1052 (9th Cir. 2013).

[70] Adam S. Minsky, *After Biden Cancels $1 Billion In Student Loans, 3 Potential Next Steps For Student Loan Forgiveness*, Forbes (Mar. 22, 2021), https://www.forbes.com/sites/adamminsky/2021/03/22/after-biden-cancels-1-billion-in-student-loans-3-potential-next-steps-for-student-loan-forgiveness/.

[71] *See* S. B. 21-057, 73rd Gen. Assemb., Reg. Sess. (Colo. 2021); Leg. Doc. 1645, 130th Leg., First Spec. Sess. (Me. 2021).

[72] Assemb. B. 424, 2021–2022 Leg., Reg. Sess. (Cal. 2021).