Student Debt: Legal Topics

What to know about the regulations applicable to campus-based credit and debt

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COHEAO
Coalition of Higher Education Assistance Organizations
More Education For More People

This presentation is not legal advice regarding any specific situation, product, or service. Consult an attorney for specific legal guidance.

But first, a note

1. Nothing I say today is intended to be legal advice or to describe how any specific legal requirement may apply to any specific situation.

2. I am *an* attorney, but nothing I say today will be said *as your* attorney (even if I happen to be your attorney).

3. Consult *your* attorney for legal advice.

About me

- Founder of Joshua Law Firm LLC to provide cost-effective regulatory compliance guidance to schools, student loan servicers, lenders, and other consumer financial services companies.
- Council of Higher Education Assistance Organizations ("COHEAO"). www.coheao.org.
  - Legislative Chair, COHEAO Board of Directors.
  - I also lead COHEAO's grass-roots committee, which tracks pending federal and state legislative and regulatory developments that may impact campus receivables.
- 25+ years of experience, including regulatory counsel at Sallie Mae and Citizens Bank for their private student loan origination, servicing and collection functions.
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Topics

1. Definitions! Because all laws need definitions.
2. It's not just a debt, it's a _____.
3. And this matters because . . . ?
4. Some examples
5. Recent Developments

Everything I'm going to discuss has exceptions

- Every state is different.
  - Different states use different definitions for similar terms
  - Individual states use different definitions, sometimes even within the same law.
  - Many state definitions are different from Federal definitions
- I'll be generalizing. A lot.
- I'll try to point out some of the more significant examples where these differences might matter, but I can't describe all of them.

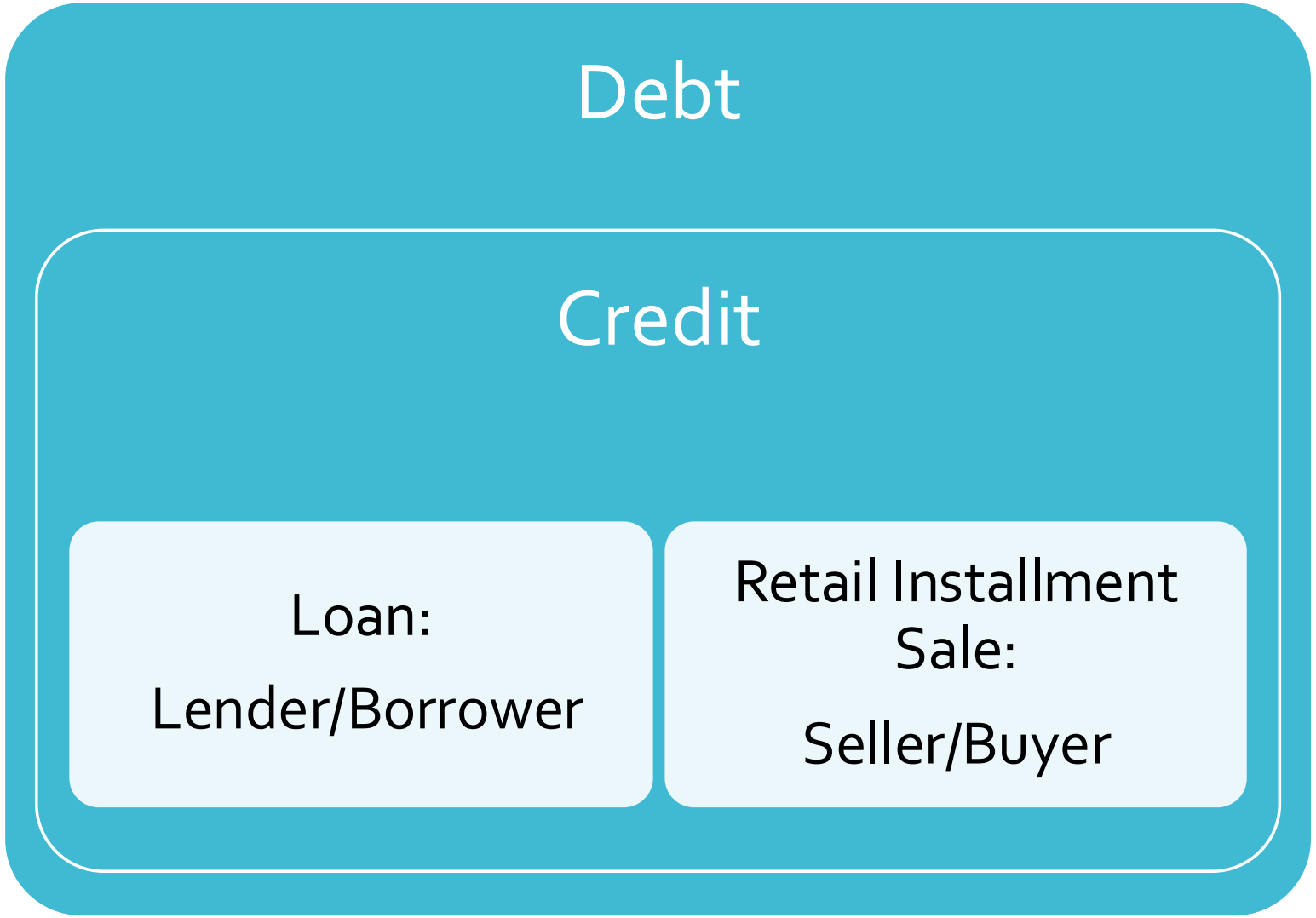
Definitions

- Debt
  - An obligation or alleged obligation to pay money.
  - Debts can be incurred from loans, but also from other legal obligations, such as fines, a returned payment, a contract that requires a payment, etc.
- Credit
  - When the person to whom a debt is owed gives a consumer the legal right to defer payment of a debt.
  - Not every debt is an extension of credit. Every extension of credit creates a debt.

Types of Credit: Loans v Retail Installment Sales

- Loan
  - A kind of credit where funds are provided to a borrower or to a third-party on the borrower's behalf.
  - Examples: credit cards, mortgages, bank-provided student loans, or even school-affiliate provided loans.
  - Interest may be charged as a percentage of the balance.
  - Finance charges may be charged, such as origination and other fees.
- Retail Installment Sale
  - When a seller of goods or services allows the buyer to pay for a purchase in periodic installments instead of requiring up-front payment.
  - Typically governed by a Retail Installment Contract (a "RIC"), often exempt from state lending laws.
  - **NOTE: Many state student loan laws expressly apply to 'loans' made by schools to their students.**
  - Most states' retail installment laws provide that the cost of credit is not "interest" and not subject to states laws regulating interest. Rather, the cost is called a "time-price differential."
  - Finance charges may be charged, such as origination and other fees.

Making the pieces fit



Definitions

- Creditor
  - The generic definition is the person to whom a debt is owed.
  - **There are very precise legal definitions of who is or isn't a "creditor"**
  - **Under the Federal Truth In Lending Act:**
    - **a creditor is someone who makes more than 25 extensions of credit in a calendar year, where the extensions of credit either have a finance charge or are payable in more than 4 installments.**
    - **While not applicable to student loans or mortgages, certain types of loans of more than $73,400 (inflation adjusted) are exempt as well.**
  - **Some states define a creditor as including anyone who extends credit payable in more than 1, 2 or 3 installment payment or if a finance charge is imposed, they make even a single credit extension. States may have their own dollar-thresholds as well.**
- Debt Collector
  - Definitions vary by state, but, most broadly, anyone attempting to collect a debt.
  - Some states' definitions include that, to be a debt collector, the person must be collecting the debt "for another." In other words, that they aren't collecting debts owed directly to them.
  - Other states expressly include creditors in their definition of a debt collector.

Types of Credit: "Open End" and "Closed End"

- 'Open End' Credit
  - Credit extended by a creditor
  - Pursuant to a "plan" in which the creditor "reasonably contemplates repeated transactions"
  - Where a finance charge may be imposed from time to time on an outstanding unpaid balance; and
  - There is a credit limit, i.e., a maximum credit amount that is generally made available to the extent that any outstanding balance is repaid.
  - Again, state definitions may vary.
  - Credit cards are a typical example, but not every open-end plan is a credit card. A line of credit, for example, is open-end but not a credit card.
- 'Closed End' Credit
  - Any extension of credit that is not open-end credit.

Types of Credit: "Private Education Loans" and "Student Loans"

- Private Education Loan is defined in the Truth In Lending Act as
  - an extension of credit
  - to a consumer
  - expressly,
  - in whole or in part,
  - for postsecondary educational expenses,
  - regardless of whether the loan is provided by the educational institution that the student attends - this definition includes Retail Installment Sales.
- Excludes real-estate secured and open-end loans, and loans that either:
  - Have a term of 90-days or less, or
  - Have a term of less than 1 year and if "an interest rate will not be applied to the balance."
- An extension of credit that is not a PEL may still be "credit" under TILA.
- CFPB guidance that a refinance of a PEL is also an PEL.
  - Note that a 'refinance' is an extension of credit that is used to pay an existing debt.

Types of Credit: "Private Education Loans" and "Student Loans"

- A "student loan" is typically defined by state laws.
- There's no uniform definition, but:
  - They typically include loans or RICs incurred for postsecondary education expenses.
  - Typically excludes open-end and real estate-secured loans, and short-term loans of less than 90-days or less than 1-year if no interest is charged.
  - State laws differ about whether the loan must be solely or merely "in-part" for post-secondary education expenses.
  - California for some reason includes loans for continuing professional education.
- Again, just because a loan isn't a student loan doesn't mean it isn't otherwise regulated.

Types of Credit: "Written Contract" or "Unwritten Contract"

- Different laws may apply based on whether a debt or extension of credit derives from a written contract. Some states require that extensions of credit must be made by a written contract.
- "Written" can sometimes have a very specific legal definition.
  - An Illinois court found, for example, that a credit card agreement was not a "written" contract because it was not true that "all essential terms including the identity of the parties can be ascertained from the written instrument itself"
  - An Ohio court held that if a credit card agreement is signed by the borrower, it is a written agreement and a 15 years limitations period applied, but if not signed, it is an oral contract subject to a 6-year limitations period.
- Some laws require that all parties to the agreement must sign it.
- Some law restrict the rate of interest that can be charged in the absence of a written agreement.

Quick Review

- Debt & Credit
- Loan or RIC
- Open or closed end credit
- PEL, Student loan, both, or neither

This matters because . . .

Federal law

- Different laws apply to different types of credit in different jurisdictions.
- Federal laws generally regulate all credit, with special requirements for PELs.
  - The TILA disclosures are different for loans, RICs, and PELs
  - Remember that the definition of creditor is quite specific. A campus-based extension of credit payable in 3 or fewer installments may be "credit," but the provider may not be a "creditor" under TILA.
  - Other federal requirements specific to extensions of credit include:
    - Equal Credit Opportunity Act – non-discrimination/Adverse Action notices for declined applications. Applies to "any aspect" of a credit transaction, including servicing and collection activities.
    - FCRA – permissible purpose to obtain a credit report/Identity Theft Prevention/Address Discrepancies
    - MLA – limits interest rates, fees, and charges that can be charged to servicemembers *and their dependents*. Prohibits arbitration clauses in loan agreements.
    - SCRA – requires reduction of periodic payments and interest rate to not more than 6% for borrowers who start active military service after the loan is originated

This matters because . . .

Federal law

- TILA requires private education loan creditors to provide 3 TILA disclosures, acceptance and cancellation periods
- Other TILA requirements include:
  - Self certification of the amount of the loan is required
  - No prepayment penalties
  - Preferred lender list requirements
  - No cobranding between school/lender

This matters because . . .

State law

- Most states have separate regulatory frameworks for loans and for RICs. But **not all states**.
- Lenders are typically highly regulated.
  - Many states require lenders to have a lending license, restrict rates and fees, and impose various disclosure requirements.
  - Loan servicers are typically not regulated by the states, but some states do regulate them.
  - Interest rates and fees are highly regulated.
  - The amount and term of the loan may matter. Short-term loans are often regulated differently from other loan types.
- Retail Installment Sellers are relatively lightly regulated.
  - Some states require retail sellers to notify a state consumer credit regulator that they are engaging in retail installment sales
  - Buyers of RICs typically require a "sales finance company" license.
  - Many states have very specific requirements relating to the content and language used in a Retail Installment Contract, and impose various caps and fees, charges, and servicing practices.
- Debt collection laws typically don't distinguish between RICs and Loans.

This matters because . . .

State Student Loan Laws

- Note: Which states' laws apply can be a complicated question, especially for online programs.
- More recently, many states have adopted student-loan specific laws. They didn't get rid of any of their already-existing laws which likely also apply.
- Note that these laws use the term "loan" but typically expressly apply to Retail Installment Contracts
  - Often have a similar carve as as in TILA, that a loan isn't a student loan if it is for less than 90-days, or less than 1-year and no interest is charged.
  - Also typically exclude open-end credit and real-estate secured loans.
- Laws regulating student loan servicers are the most common, but some states regulate student loan creditors' conduct, too.

This matters because . . .

State Student Loan Laws

- Student loan servicing is defined in various ways in various states, typically some combination of:
  - Receiving any scheduled periodic payments from a borrower
  - Receiving notification that a borrower made a scheduled periodic payment and/or applying payments to a borrower's account.
  - During periods when no payment is due, maintaining account records and/or communicating with borrowers regarding the loans
  - Interacting with a borrower related to that borrower's student loan, with the goal of helping the borrower avoid default on the borrower's student loan
  - "Facilitating" the above activities.
- Some states exempt debt collectors from their definition of student loan servicing, while others provide that a licensed debt collector doesn't also need a student loan servicing license if they are collecting only on defaulted student loan debts.

This matters because . . .

State Student Loan Laws

- Many states have adopted a so-called "student loan borrower bill of rights" that imposes significant requirements on student loan servicers.
  - abusive acts or practices prohibited
  - specific notices to borrowers and cosigners relating to cosigner release and other borrower benefits are required
  - dispute resolution timeframes, escalation requirements, and borrower responses
  - notice requirements if the servicing of a student loan is transferred to a different servicer.
  - Some states prohibit defaulting a borrower for any reason other than non-payment.
  - Some states require that a a student loan be forgiven if the student loan borrower dies or becomes totally and permanently disabled
    - *they prohibit a servicer from investigating if a claim for relief is valid*.
    - *"Total and permanent disability" is sometimes defined as any disability that is expected to last for longer than one year.*

This matters because . . .

State Student Loan Laws for Creditors

- Perhaps recognizing how lightly regulated the student loan industry is, some states have started imposing requirements on student loan creditors, too.
  - California, Colorado, Connecticut, Louisiana, Maine, Maryland, Minnesota, New York all require registration of schools that extend credit to their students, with annual reports typically required.
- As mentioned earlier, retail sellers may be required to file a notification to act as a retail installment seller.
  - At least one school has been sued for allegedly failing to file the notification
  - As also mentioned, assignees of retail installment contracts typically require a sales finance company license

This matters because . . .

State Student Loan Laws for Debt Collectors

- Many states are also imposing additional debt collection requirements for student loan debts.
  - Debt collectors may be required to have certain documentation relating to a student loan before they can engage in any debt collection activities.
  - May be required to provide specific information or copies of loan documents to student loan borrowers.

Minnesota and Other Examples

- Since we're in Minnesota, I'll briefly show how all of this works.
  - Student loan servicers must be licensed
  - Student loan creditors must register

See: https://www.revisor.mn.gov/statutes/cite/58B.02

Minnesota

- "Borrower" is "a resident of this state who has received or agreed to pay a student loan or a person who shares responsibility with a resident for repaying a student loan."
- "Student loan" is an "extension of credit for actual costs paid for tuition and reasonable education and living expenses."
- "Servicing" means:

  (1) receiving any scheduled periodic payments from a borrower or notification of payments, and applying payments to the borrower's account pursuant to the terms of the student loan or of the contract governing servicing;

  (2) during a period when no payment is required on a student loan, maintaining account records for the loan and communicating with the borrower regarding the loan, on behalf of the loan's holder; and

  (3) interacting with a borrower, including activities to help prevent default on obligations arising from student loans, conducted to facilitate the requirements in clauses (1) and (2).

- "Student loan servicer" is "any person, wherever located, responsible for the servicing of any student loan to any borrower . . ."

Minnesota

- "Lender" means an entity engaged in the business of securing, making, or extending student loans. Lender does not include

  ***

  (5) an agency, instrumentality, or political subdivision of Minnesota;

  (6) a regulated lender . . .; or

  (7) a person who is not in the business of making student loans and who makes no more than three student loans, with the person's own funds, during any 12-month period.

Minnesota

- MN Retail Installment Law
  - Minnesota's retail installment laws are generally less restrictive than many other states.
- Consumer credit sale" means a sale of goods or services in which:

  (a) credit is granted by a seller who regularly engages as a seller in credit transactions of the same kind;

  (b) the buyer is a natural person; and

  (c) the goods or services are purchased primarily for a personal, family or household purpose, and not for commercial, agricultural, or business purpose.

See: Minn. Stat. Ann. § 325G.15

Minnesota

- Debt collection laws
- "Collection agency" or "licensee" means

  (1) a person engaged in the business of collection for others any account, bill, or other indebtedness . . . ; or

  (2) a debt buyer.

California's "Private Student Loan Collections Reform Act"

- "Creditor" means any of the following:

  (1) The original creditor, where ownership of a private education loan has not been sold, assigned, or transferred.

  (2) The person or entity that owned the private education loan at the time the private education loan defaulted, even if that person or entity did not originate the private education loan, and where such a private education loan has not subsequently been sold, transferred, or assigned.

  (3) A person or entity that purchased a defaulted private education loan, whether it collects the private education loan itself or hires a third party for collection, or hires an attorney for collection litigation.

California's "Private Student Loan Collections Reform Act"

- "Private education lender" means either of the following:
  (1) Any person or entity engaged in the business of securing, making, or extending private education loans.
  (2) Any holder of a private education loan.
- "Private education loan" means an extension of credit that meets all of the following conditions:
  (1) Is not made, insured, or guaranteed under Title IV of the Higher Education Act of 1965 (20 U.S.C. Sec. 1070 et seq.).
  (2) Is extended to a consumer expressly, in whole or in part, for postsecondary educational expenses, regardless of whether the loan is provided by the educational institution that the student attends.
  (3) Does not include open-end credit or any loan that is secured by real property or a dwelling.
  (4) Does not include an extension of credit in which the covered educational institution is the original creditor if either:
    (A) The term of the extension of credit is 90 days or less.
    (B) An interest rate will not be applied to the credit balance and the term of the extension of credit is one year or less, even if the credit is payable in more than four installments.

California's "Private Student Loan Collections Reform Act"

- (k) "Private education loan collector" means a person, other than a private education lender, collecting or attempting to collect on a defaulted private education loan.

California's "Private Student Loan Collections Reform Act"

- California prohibits a student loan lender or debt collector from communicating with a debtor to collect a debt unless they "posses" the following information:
  - The name of the owner of the loan
  - The creditor's name at the time of default (if not the current creditor)
  - The creditor's account number for the loan at the time of default.
  - The amount due at default
  - An itemization of any interest that has accrued on the account
  - An itemization of any fees that are owed on the student loan, and whether those fees were imposed by the original creditor or a subsequent owner of the loan
  - The date that the loan was incurred
  - The date of the first partial payment or that a payment was missed, whichever was earlier, that "precipitated the default"
  - The date and amount of the last payment

California's "Private Student Loan Collections Reform Act"

- There's more . . .
  - Any payments, settlement, or financial remuneration of any kind paid to the creditor by a guarantor, surety, or other party not obligated on the loan as compensation under a separate contract that provides coverage for financial losses incurred as a result of default
  - The names of every entity that owned the loan after the time of default, and the date of each sale or transfer
  - A copy of the self-certification form and any other "needs analysis" conducted by the original creditor prior to the origination of the loan.
  - Documentation "establishing" that the creditor owns the specific loan at issue. If the loan was assigned more than once, the creditor must possess each assignment or other written evidence of each transfer. Each document must include the original creditor's account number for the debt, the date of the transaction, and the borrower's "correct name"
  - A copy of all pages of the contract, application or other documents evidencing the debtor's liability for the loan, stating all terms and conditions applicable to the loan.
  - A list of all collection attempts in the prior 12 months, including the date and time of all calls and written communication.
  - A statement as to whether the creditor is willing to renegotiate the terms of the loan
  - Copies of all written settlement communications made in the prior 12 months, or if none exist, a statement to that effect
  - A statement as to whether the private education loan is eligible for an income-based repayment plan.

California's "Private Student Loan Collections Reform Act"

- All of this information must also be included in the first written collection communication with a debtor after the earlier of:
  - Default and acceleration
  - A period of 12 consecutive months of default
- Penalties can be significant
  - The value of any actual damages, plus
  - statutory damages of not less than $500 per violation, plus
  - Punitive damages if the violations were from "oppression, fraud, or malice"
  - In a class action, the court may also include "additional damages" of not more than the lesser of $500,000 or 1% of the defendant's net worth.

Recent Developments

- AI and automated decision-making technology
- Transcript withholding
- Statutes of limitation
- Coerced debt
- ECOA/Disparate Impact
- TCPA
- NYC debt collection law for creditors

Recent Developments

- Automated decision-making technology and AI use
  - Colorado enacted a law regulating the use of "automated decision-making technology," to make "consequential" decisions. Effective on Jan 1st.
    - Requires "adverse action" type notices describing the outcome of the decision, what factors contributed to the decision, and that the decision was automated.
    - Impacted consumers can request copies of personal data used to make the decision and that incorrect information be corrected.
    - Consumers can also request human review of the automated decision.
    - Proposed regulations include examples that trigger this requirement, including a decision to refer a debt to a debt collector and schools' financial aid award determinations.
- NY passed a law prohibiting "surveillance pricing."
  - Again, not tied specifically to AI use – it applies to anyone who uses an algorithm to set the price of goods or services using a potential consumer's personal information.
  - An "algorithm" is defined as a "computational process or system that applies one or more sets of rules . . . to generate outputs based on inputs and/or to define a sequence of operations."
  - "Surveillance pricing" is "pricing set completely or in part by an algorithm that uses personal data to offer different prices to different customers for the same goods or services . .."
  - Limits offering discounts to prevent evasion.
- Laws relating to AI and "chatbots"
- According to the National Conference of State Legislators, so far, in 2026, 43 states have enacted 257 laws relating in some way to AI. See: https://www.ncsl.org/financial-services/artificial-intelligence-legislation-database

Recent Developments

- Transcript withholding laws.
- California's law starts out with the following legislative finding"

  Schools and colleges have threatened to withhold transcripts from students as a debt collection tactic. The practice can cause severe hardship by preventing students from pursuing educational and career opportunities, and it is therefore unfair and contrary to public policy. Moreover, the practice is counterproductive as it may further delay the payment of the debt by creating obstacles to student employment.

- Many states have banned transcript withholding

Recent Developments

- States are limiting the time within which debts and/or consumer credit can be enforce or collected.
- Specifics vary by state
  - California specifically bans collecting on student loans after the end of the statute of limitations.
  - Other states have adopted shorter limitations periods for consumer debt or for consumer credit.
    - For example, in NY: "[a]n action arising out of a consumer credit transaction where a purchaser, borrower or debtor is a defendant must be commenced within three years"
    - The general statute of limitations period in NY for oral or written contracts is 6 yrs.
  - Some states are now also providing that the limitations period isn't restarted by a payment.

Recent Developments

- Coerced Debts
- Several states have adopted laws prohibiting creditors from enforcing debts that were entered into due to "coercion."
  - California, Connecticut, Delaware, Illinois, Maine, Minnesota, New York, Nevada, and Texas.
- The laws generally require the victim to submit documentation supporting their claim of coercion.

Recent Developments

- ECOA/Disparate Impact
  - Uses a broader definition of "credit" and of a "creditor" than TILA
    - Credit means the right granted by a creditor to an applicant to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment therefor.
    - Creditor means a person who, in the ordinary course of business, regularly participates in a credit decision, including setting the terms of the credit . . .
  - Regulations imposed liability under a "disparate impact" standard, meaning that a creditor could be liable for unintentional discrimination from seemingly neutral practices that had a discriminatory effect.
    - The theory allowed the use of statistical evidence
    - For example, a school in Florida was sued under this theory because it allegedly marketed itself to minorities and, allegedly, offered retail installment contracts with worse terms than other possible loans that students could have taken.
  - The CFPB recently amended the its regulations to remove disparate impact liability.
  - It's unclear if the courts will abide by this change.
  - Several states have reaffirmed that their own anti-discrimination laws still use a disparate impact standard.

Recent Developments

- Telephone Consumer Protection Act ("TCPA")
  - Regulates "robocalls," which is "any call made or text message sent using an automatic telephone dialing system (autodialer) or any call made using an artificial or prerecorded voice message."
  - TCPA prohibits making a robocall to a cellular telephone without the callers "prior express consent." Marketing robocalls require "prior express written consent."
  - FCC had previously issued regulations stating that a consumer can revoke consent using "any reasonable method."
  - Newly proposed regulation will allow callers to require that consent be revoked only by a specific method: a reply to a text message; a designated website; or a designated telephone number
  - The FCC also allows callers to apply a revocation of consent to only the type of call that the revocation was responding to, and not more broadly (applies only to informational calls, not to marketing calls).
  - Opt-outs must be honored within a "reasonable time" (not more than 10 business days)
  - Goes into effect 30 days after publication in the Federal Register. Unclear why it hasn't yet been published.

Recent Developments

- NYC has adopted strict new debt collection requirements for debt collectors and creditors. Effective on Jan. 1st.
- Applicability to creditors is primarily depends on the type of credit.
  - Open-end credit – when the creditor stops sending periodic billing statements or has accelerated the debt
  - Other debts – when the creditor has accelerated the debt
- Requirements for creditors include:
  - Debt verification and validation:
  - Itemization of debt.
  - Call frequency limits.
  - Electronic communications.
  - Statute of limitations.



DCWP Announces the Nation's Strongest Consumer Protection Rules Against Predatory Debt Collection

February 26, 2026

New York City's New SHIELD Rule Institutes a Strong Communications Restriction, Expands Consumers' Dispute and Verification Rights, and Offers First-of-its-kind Protections for Collection of Medical Debt