

Engaging Financially Distressed Consumers

D. James Greiner, Dalié Jiménez, and Lois R. Lupica

Research on low-cost ways to engage consumers holds promise for tackling the high default rates in debt-collection lawsuits.

Over a third of American adults are behind on one or more debts.¹ A staggering number of lawsuits seeking to collect those debts are filed annually. An individual sued on a credit card debt may have several legal defenses available in a court proceeding, but few consumers engage with the court process.² Such inaction may have grave consequences. A default judgment will almost certainly be entered against the consumer. This means that her assets or wages may be seized by the creditor, and the judgment could follow her for decades, hurting her ability to get credit, rent an apartment, or find a job.

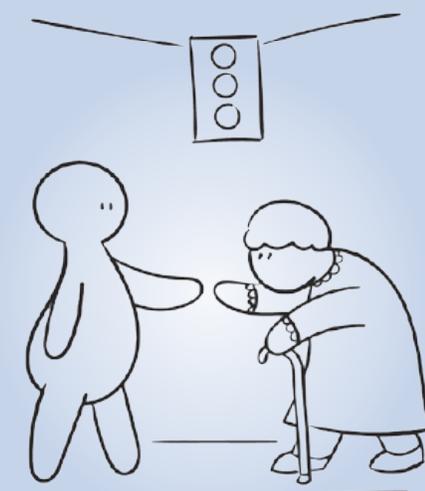
Going to Court

A consumer may not show up in court because he was never notified of the lawsuit. The complaint may have been sent to an incorrect address, or the individual tasked with serving the lawsuit notification may not have done so properly.³ More often, however, consumers have received the summons but have not appeared in court. Reforms to help consumers have been suggested, and the Consumer Financial Protection Bureau is expected to propose new regulations.⁴ But there will always be financially distressed consumers who need help to engage in the legal process.

One way to protect consumers is to provide them with lawyers before debt collection becomes a lawsuit. With a lawyer as agent, individuals might negotiate resolutions to their debts, participate more in the court proceeding (albeit through the lawyer), and assert their defenses in court. But lawyers are costly, and debt-collection defendants may be unable to afford legal fees. Unsurprisingly, studies find that upwards of 80 percent of the civil legal needs of low- to moderate-income (LMI) individuals go unmet.⁵

A second option is to provide financially distressed LMI individuals with a combination of self-help materials and limited guidance from a professional—say, a lawyer or paralegal. Indeed, this combination is *the* dominant form of assistance to LMI individuals today.⁶ Self-help legal materials are actively distributed by courts, legal aid organizations, public libraries, bar associations, neighborhood advocacy centers, Internet-based networks, law schools, pro bono groups, and even for-profit companies. Sometimes materials are coupled with guidance through a “Lawyer for a Day” program

Example of a Self-Affirmation Exercise



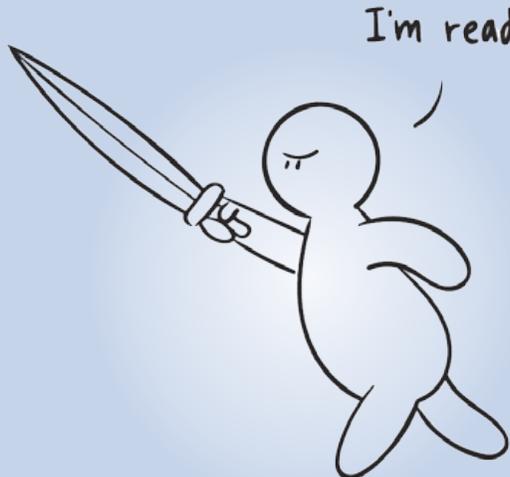
Think of a time you did someone a favor. For example:

- Maybe your coworker couldn't come to work, so you took her shift.
- Maybe you watched your nephew so your sister could run some errands.
- Maybe you gave a lost person directions.

Now fill this out: I did a favor for someone when I _____

or a telephone hotline. The focus of these currently available materials is on readability, completeness, and access. But are such materials useful? And are unrepresented individuals able to use them successfully in court?

Plan-Making and Plan-Implementation Strategies



Step #5: Make the Call.

Now you are ready to call the loan company. Fill out this sheet. You will be prepared to talk to the loan company representative.

My account loan number: _____

Current monthly payment: _____

Total balance due: _____

New option I want: _____

What I can afford to pay: _____

The Quest for Evidence

Little empirical evidence exists to answer such questions. Court observations have long suggested that unrepresented individuals have trouble making use of self-help materials. Two decades ago, one author related the story of a tenant who received limited advice from a legal aid lawyer and fully accessible self-help legal materials before her eviction hearing. She came to the proceeding armed with damning photographic evidence of problems in her apartment and with knowledge of favorable law. During a hallway negotiation, she failed to produce the evidence she had in hand or to raise the legal defenses she knew about. Her explanation: “It didn’t come up.”⁷

That tenant had no issues with access. Her problem was deployment, particularly a lack of knowledge about how to negotiate. She also may have struggled with debilitating emotions—fear, shame, guilt, or hopelessness.

Our hypothesis is that similar cognitive, psychological, and emotional challenges prevent individuals in a debt-collection pro-

ceeding from putting the information found in self-help materials into action. Unfortunately, currently available materials do not address such deployment barriers. We’re investigating whether reimagining self-help materials to address those challenges could significantly affect the number of consumers who respond to lawsuits and assert defenses in court.

As part of a research study, dozens of undergraduate students from Harvard and the law schools of Harvard, the University of Maine, and the University of Connecticut have been working to develop self-help materials tailored to individuals in financial distress. The reimagined materials cover topics including defending a debt-collection lawsuit, negotiating with creditors, and filing a simple liquidation bankruptcy. Under our direction, the students have also developed original content using insights from, for example, psychology, sociology, public health, education, and product marketing to address the barriers. They also have conducted field interviews and focus groups in the target population.

Addressing Feelings of Shame

Our first hypothesis is that notification of a debt-collection suit produces feelings of shame, guilt, and anxiety, along with uncertainty about sources of help. Even if the individual overcomes any emotional challenges and takes action such as accessing helpful information, feelings of threat and impending disaster may trigger performance-minimizing and solution-inhibiting mental states.⁸ Such debilitating emotions might explain why such a high percentage of consumer debt-collection defendants do nothing in response to lawsuits and simply default.⁹

To counteract such feelings, our materials borrow the power of self-affirmation theory from psychology. Self-affirmation theory suggests that individuals may respond more constructively to a challenging message (such as, “You should go to court”) if, for example, they are first prompted to recall one of their own past acts of kindness, generosity, or forgiveness.¹⁰ Our materials incorporate self-affirmation techniques by asking readers to, for example, recall a time they acted with kindness before engaging them in more difficult material, such as calling a debt collector to negotiate. (See “Example of a Self-Affirmation Exercise.”)

Setting a Goal

Second, we hypothesize that many of the tasks that financially distressed individuals need to perform to respond to a lawsuit require goal identification, goal pursuit, persistence, and plan-making and plan-implementation strategies. In a debt-collection case, that may involve responding to the lawsuit with an answer. It may also involve juggling one’s schedule and arranging transportation to appear in court on the hearing date. Our materials include Post-it notes to be placed on a calendar and blank lines for recipients to write down the dates, times, and locations of court hearings.¹¹ (See “Plan-Making and Plan-Implementation Strategies.”)

Knowledge in Advance

We also hypothesize that knowledge of what to expect in court will help individuals feel more confident, thus increasing participation. We believe that how such knowledge is communicated matters.

Preparing for What to Expect

Option 1: Going to Mediation



From the public-health literature, we learned that stick-figure illustrations are superior to photographs in explaining complex topics.¹² Novices in a field, presented with photographs or detailed drawings, are generally unable to distinguish important features from irrelevant details.¹³ Thus, our materials explain basic debt-collection court procedure using simple cartoons, including drawings of the courtroom that indicate where the judge, plaintiff, and consumer defendant sit. (See “Preparing for What to Expect.”)

One of the goals of our project is to understand whether these reimagined self-help materials work. More broadly, we are interested in the effect the materials have on the outcome of debt-collection cases and the credit scores of individuals in financial distress. Our larger research project uses a randomized, controlled trial design—as is used to test new drugs and medical devices—to compare the effectiveness of the new self-help materials with representation by an attorney.¹⁴ We hope that our research will have a real-world impact on the ways in which we help individuals in financial distress and design self-help materials.

D. James Greiner is a professor of law at Harvard Law School. **Dalié Jiménez** is an associate professor of law and the Jeremy Bentham Scholar at the University of Connecticut School of Law. **Lois R. Lupica** is the Maine Law Foundation Professor of Law at the University of Maine School of Law. Contact the authors at jgreiner@law.harvard.edu, dalie.jimenez@uconn.edu, or lupica@maine.edu.

Endnotes

¹ Caroline Ratcliffe et. al., “Delinquent Debt in America” (report, July 2014, Urban Institute, Washington, DC), <http://www.urban.org/publications/413191.html>.

- ² Peter A. Holland, “Debt-Buyer Lawsuits and Inaccurate Data,” *Communities & Banking* 25, no. 2 (spring 2014): <http://www.bostonfed.org/commdev/c&b/2014/spring/index.htm>; and Dalié Jiménez, “Dirty Debts Sold Dirt Cheap,” *Harvard Journal on Legislation* 52 (2015).
- ³ See, for example, Ray Rivera, “Suit Claims Fraud by New York Debt Collectors,” *New York Times*, December 30, 2009.
- ⁴ Peter A. Holland, “The One Hundred Billion Dollar Problem in Small Claims Court,” *Journal of Business and Technology* 6 (2011): 259; Mary Spector, “Debts, Defaults, and Details,” *Virginia Law and Business Review* 6 (2011): 257; and Rachel Witkowski, “The Trickiest Part of the CFPB’s Pending Debt Collection Proposal,” *American Banker*, December 23, 2014.
- ⁵ Henry J. Scudder, “Hearings Shed Light on Unmet Needs,” *New York Law Journal*, January 24, 2011, <http://www.nycourts.gov/courts/ad4/clerk/Notice-PR/PJ-hearing.pdf>.
- ⁶ Herbert M. Kritzer, “The Professions Are Dead, Long Live the Professions,” *Law and Society Review* 33 (1999): 713.
- ⁷ Erica L. Fox, “Alone in the Hallway,” *Harvard Negotiation Law Review* 85 (1996).
- ⁸ See Sendhil Mullainathan and Eldar Shafir, *Scarcity: Why Having Too Little Means So Much* (New York: Macmillan, 2013).
- ⁹ See Rebecca L. Sandefur, “The Importance of Doing Nothing: Everyday Problems and Responses of Inaction” in *Transforming Lives: Law and Social Process*, eds. Pascoe Pleasence et al. (Norwich, England: Stationery Office Books: 2007).
- ¹⁰ See, for example, Geoffrey Cohen et. al., “Recursive Processes in Self-Affirmation,” *Science* 324 (2009): 400; Brandon J. Schmeichel and Kathleen Vohs, “Self-Affirmation and Self-Control,” *Journal of Personality and Social Psychology* 96 (2009): 770; and Mary E. Charlson et al., “Randomized Controlled Trials of Positive Affect and Self-Affirmation to Facilitate Healthy Behaviours in Patients with Cardiopulmonary Diseases,” *Clinical Trials* 28 (2007): 748.
- ¹¹ John Beshears et al., “A Nudge to Help Employees Follow through on Their Best-Laid Plans,” http://www.law.northwestern.edu/research-faculty/colloquium/law-economics/documents/2014_Greiner_Fin_Distress_Court_Combined.pdf; Katherine L. Milkman et al., “Using Implementation Intentions Prompts to Enhance Influenza Vaccination Rates” (National Bureau of Economic Research, working paper no. 17183, 2011); and David W. Nickerson and Todd Rogers, “Do You Have a Voting Plan?” *Psychological Science* 21 (2010): 194.
- ¹² See J.M.H. Moll, “Doctor-Patient Communication in Rheumatology,” *Annals of Rheumatic Diseases* 45 (1986): 198; Chris Delp and Jeffrey Jones, “Communicating Information to Patients,” *Academic Emergency Medicine* 3 (1996): 264.
- ¹³ Moreover, various studies suggest that picture placement on the page is as important as content. See Peter C. Whalley and Richard W. Fleming, “An Experiment with a Simple Recorder of Reading Behavior,” *Programmed Learning and Educational Technology* 12 (1975): 120; and Wolfgang Schnotz, “An Integrated Model of Text and Picture Comprehension” in *Cambridge Handbook of Multimedia Learning*, ed. Richard E. Mayer (New York: Cambridge University Press, 2005): 49.
- ¹⁴ See Dalié Jiménez, D. James Greiner, Lois Lupica, and Rebecca Sandefur, “Improving the Lives of Individuals in Financial Distress Using a Randomized Control Trial,” *Georgetown Journal on Poverty Law and Policy* 20 (2013): 449.

This *Communities & Banking* article is copyrighted by the Federal Reserve Bank of Boston. The views expressed are not necessarily those of the Bank or the Federal Reserve System. Copies of articles may be downloaded without cost at www.bostonfed.org/commdev/c&b.