STUDENT BORROWER PROTECTION CENTER

ISSUE BRIEF

THE LONG LEGACY OF PREDATORY PRIVATE STUDENT LOANS:

Defrauding Borrowers and Lying to Courts

Maryland Spotlight
March 2020

Hundreds of thousands of student loan borrowers who have defaulted on these loans, including those who have been the target of lawsuits, are being forced to hand over money they may not owe.

Today, borrowers in courtrooms across the country are being sued for faulty or unsubstantiated private student loan debt. This is because predatory creditors are abusing the court system and intimidating people to pay debts they do not owe.[1]

In fact, private student loan creditors have sued more than 100,000 student loan borrowers in courtrooms across the country over allegedly unpaid student loan debts.[2] However, these lawsuits often lack evidence or documentation that the creditors have a legal right to collect on these debts. Instead, creditors rely on mass-produced documents, deceptive court claims, and intimidation tactics to scare borrowers into paying or simply not showing up to court. Hundreds of thousands of student loan borrowers who have defaulted on these loans, including those who have been the target of lawsuits, are being forced to hand over money they may not owe.[3] These borrowers may be unaware that debt collectors do not have proper documentation and overwhelmed at the prospect of being dragged into court. In many cases, this happens because creditors are currently not required to provide loan ownership documentation to the courts when they bring a collection lawsuit. This loophole allows predatory student loan creditors to continue to profit off vulnerable borrowers.

Origins of the Subprime Student Loan Boom

Just over a decade ago, the rampant predatory practices driving the mortgage crisis were also occurring in the private student loan market.[4] Prominent lenders like Sallie Mae and some of the nation's largest banks pushed high-rate loans onto vulnerable borrowers, piling on billions of dollars in debt while knowing that borrowers were ill-equipped to repay. At the peak of the subprime student lending boom, the then-CEO of Sallie Mae, Thomas Fitzpatrick, boasted about his firm's predatory lending, telling an internal meeting of executives: "If the borrower can create condensation on a mirror, they need to get a loan this year."[5]

"If the borrower can create condensation on a mirror, they need to get a loan this year."

-Sallie Mae CEO, 2007

As lenders pushed risky subprime loans to borrowers, they packaged these loans into trusts, sold stakes in the trusts to investors, and walked away before borrowers defaulted on their debts.[6] This allowed lenders to offload the risk to investors from predatory loans, even as borrowers remained saddled with debts that the original creditors knew would never be repaid. The effects of this subprime student lending boom still plague the hundreds of thousands of borrowers today who are saddled with this toxic debt: now in the form of predatory collection practices.

Nefarious Players in the Market

While numerous creditors and debt collectors have engaged in these predatory practices, the largest and most notorious owner of private student loan debt is known as the National Collegiate Student Loan Trusts,[7] or NCSLT, which packaged $12 billion of unaffordable loans made by banks, including US Bank, Bank of America, JPMorgan Chase, and Citizens Bank, to borrowers across the country.[8] Many of these risky loans were made to students at predatory for-profit colleges.[9] Loans were sold to investors through NCSLT and would come to be known as the "worst-performing student loan investment vehicles ever created by Wall Street,"[10] ultimately driving hundreds of thousands of student loan borrowers into financial distress.

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But it gets worse. The companies managing NCSLT were grossly incompetent and lost many of the documents proving ownership of the loans in the trusts.[11] This includes embattled student loan giant the Pennsylvania Higher Education Assistance Agency, which remains responsible for maintaining loan documents and account records for NCSLT.[12] In order to continue collecting on the debt, NCSLT lied to courts across the country in thousands of lawsuits[13] and used mass-produced documentation, also known as robo-signing,[14] in tens of thousands of other cases to drag borrowers into court for debts they could not prove they owed.[15] NCSLT investors were so worried about this brewing scandal that they conducted—and then suppressed—a shocking audit finding that 100 percent of a random sample of NCSLT's portfolio lacked proper ownership documentation.[16] One federal regulator explained this scheme in 2017 court filings:

> *To collect on defaulted private student loans, [NCSLT] filed collections lawsuits . . . in state courts across the country . . . [executing and filing] affidavits that falsely claimed personal knowledge of the account records and the consumer's debt and, in many cases, personal knowledge of the chain of assignments establishing ownership of the loans. In addition, [NCSLT] filed at least 2,000 collections lawsuits without the documentation necessary to prove Trust ownership of the loans or on debt that was time-barred. Finally, notaries for [NCSLT] notarized more than 25,000 affidavits even though they did not witness the affiants' signatures.*[17]

The federal government ordered NCSLT to pay over $20 million for its deceptive acts up to 2017.[18] Despite this, court filings reveal that various parties purporting to speak on behalf of NCSLT have filed lawsuits to block the settlement between the government and the trusts.[19] As litigation related to this and other public enforcement actions continue, NCSLT's problems persist to this day.[20]

Abuses are not limited to one bad actor or set of trusts.[21] Many more borrowers beyond those pursued by NCSLT are subject to or at risk of predatory actions by investors, creditors, and debt collectors who profited off the subprime private student loan boom and continue to pursue these debts. Some of these players include Navient,[22] Jefferson Capital,[23] Arrowood Indemnity,[24] and Turnstile Capital Management.[25]

Today, state lawmakers have an opportunity to step in to protect borrowers from what has been described as "systemic malfeasance, gross negligence and willful misconduct" by creditors and collectors pursuing consumers in default on private student loans.[26]

Case Study: Maryland

Student Loan Lawsuit Machine Targets Borrowers Across the State

Court filings show that predatory collection tactics, including abuse of the courts, are widespread in the private student loan industry.[27] The following case study examines the practices of NCSLT across the state of Maryland, documenting how, as the largest owner of private student loan debt,[28] NCSLT's practices have hit Maryland borrowers particularly hard.

More than half of all NCSLT lawsuits filed in Maryland are against borrowers in majority-minority zip codes.

To examine the scope of the issue, the SBPC reviewed SEC filings and court filings from 2015 through 2019. Public filings show that over the past two decades, NCSLT owned more than 15,000 separate loans totaling more than $190 million made to borrowers in Maryland. When Marylanders defaulted on these loans, NCSLT was relentless in its use of the state's court system to pursue these defaulted debts. NCSLT filed over 1,250 cases against Maryland borrowers in the past five years alone. These lawsuits disproportionately target communities of color in the state. More than half of all NCSLT lawsuits filed in Maryland are against borrowers in majority-minority zip codes. Additionally, more than 25 percent of all NCSLT lawsuits filed in Maryland were filed in Prince George's County, a majority-Black county.

KEY FINDINGS:

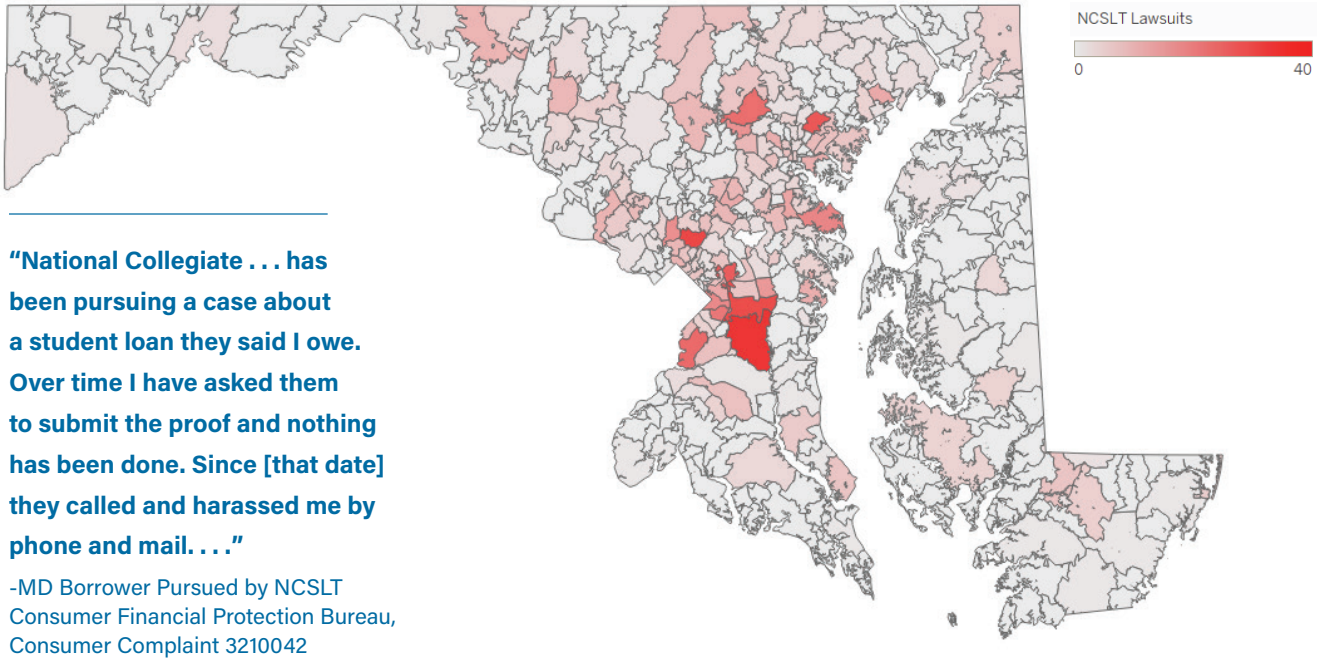
15,000
separate loans totaling more than **$190 million** made to borrowers in Maryland

50+ percent
of the lawsuits filed are against borrowers in majority-minority zip codes

Over 1,250
lawsuits filed against Maryland borrowers in the past five years

25+ percent
of the lawsuits were filed in Prince George's County

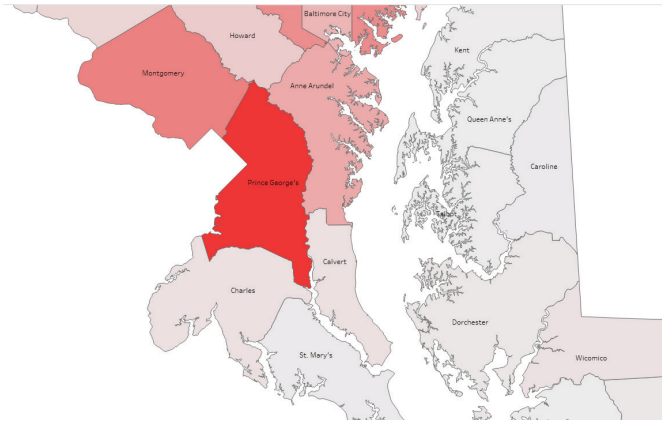
NCSLT-Initiated Lawsuits by Zip Code Since 2015



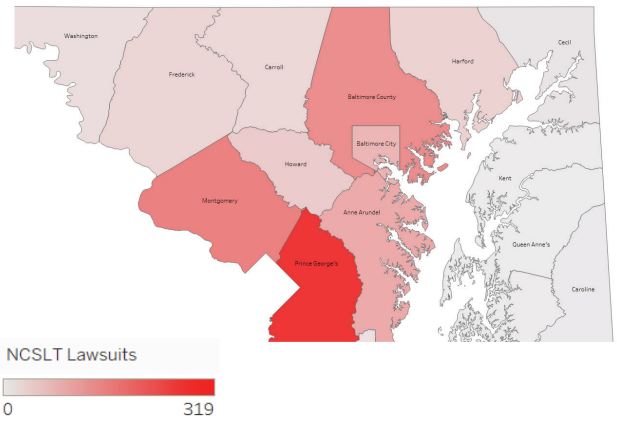
"National Collegiate . . . has been pursuing a case about a student loan they said I owe. Over time I have asked them to submit the proof and nothing has been done. Since [that date] they called and harassed me by phone and mail. . . ."

-MD Borrower Pursued by NCSLT Consumer Financial Protection Bureau, Consumer Complaint 3210042

DC Metro Area by County



Baltimore Metro Area by County



TOP FIVE MARYLAND COUNTIES with the Highest Number of NCSLT Lawsuits 2015-2019

County	# of NCSLT Lawsuits
Prince George's	319
Montgomery	185
Baltimore	166
Ann Arundel	114
Baltimore City	93

Recommendations For State Policymakers and State Courts

These are only a portion of the aggressive debt collection practices and abusive lawsuits plaguing borrowers. Unfortunately, these practices are not unique to NCSLT. Predatory tactics are common across the industry, including for trusts managed by the embattled student loan giant Navient Corporation.[30]

State lawmakers can act to protect borrowers who took out predatory private student loans by strengthening state laws to ban abusive debt collection tactics and stop the private student loan industry from deceiving the courts and cheating borrowers.

- **Ban the use of mass-produced documentation, also known as "robo-signing," by prohibiting creditors like NCSLT from obtaining garnishment orders without proper documentation.** States should require creditors to prove the debt is valid and the balance is accurate by producing original loan documentation at the time a court order is sought. Necessary documentation should include proof that the plaintiff in a consumer debt collection case owns the loan and has the right to collect on it; evidence should also include a copy of the original contract or other documentation showing the consumer's liability.[31]

- **Ban abusive debt collection tactics by requiring debt collectors to prove debts are valid when attempting to collect.** States should require debt collectors provide basic documentation substantiating these debts as part of the first attempt to collect a debt from a private student loan borrower, long before a creditor tries to drag a borrower into court.

- **Give borrowers new tools, such as a private right of action, to halt abuses when debt collectors and creditors break the law.** SBPC's investigation reveals that debt collection companies and creditors often pursue default claims multiple times against the same borrower, likely because these companies are rarely held to account when collecting on illegitimate debts. In Maryland, 316 borrowers were dragged into court multiple times, with one borrower subject to 14 different cases. With a private right of action from any new state consumer protection legislation, borrowers could bring lawsuits against student finance companies for collecting on debts they cannot document or deceiving courts about the validity of these debts. This protection would discourage debt collection companies from filing repeated default claims against the same borrower, among other abuses.

Endnotes

1 SBPC would like to thank Robyn Smith and Persis Yu at the National Consumer Law Center for their guidance and feedback when drafting this report. The authors' analysis builds on the April 2014 NCLC report *Going to School on Robo-signing: How to Help Borrowers and Stop the Abuses in Private Student Loan Collection Cases,* found at https://www.studentloanborrowerassistance.org/wp-content/uploads/2013/05/robo-signing-2014.pdf.

2 *See, e.g.,* Complaint at 2-3, *Consumer Fin. Prot. Bureau v. The Nat'l Collegiate Master Student Loan Trust* (Aug. 18, 2017) (No. 1:17-cv-01323-UNA), https://files.consumerfinance.gov/f/documents/201709_cfpb_national-collegiate-student-loan-trusts_complaint.pdf ("In connection with collecting or attempting to collect debt from consumers, between November 1, 2012 and April 25, 2016, Subservicers, acting through Defendants' Special Servicer and acting on behalf of Defendants, initiated 94,046 collections lawsuits in courts across the country.").

3 *See, e.g.,* Stacy Cowley & Jessica Silver-Greenberg, *As Paperwork Goes Missing, Private Student Loan Debts May Be Wiped Away,* The New York Times (July 17, 2017), https://www.nytimes.com/2017/07/17/business/dealbook/student-loan-debt-collection.html ("National Collegiate is an umbrella name for 15 trusts that hold 800,000 private student loans, totaling $12 billion. More than $5 billion of that debt is in default, according to court filings. The trusts aggressively pursue borrowers who fall behind on their bills.").

4 *See CFPB and U.S. Department of Education Joint Report Finds a Cycle of Boom and Bust in Private Student Loan Market,* Consumer Financial Protection Bureau (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/.

5 Complaint at 26, *Il. v. Navient Corp.* (Jan. 18, 2017) (No. 2017CH00761), http://www.illinoisattorneygeneral.gov/pressroom/2017_01/NavientFileComplaint11817.pdf.

6 *See, e.g.,* SLM Loan Trust 2008-9 Prospectus Supplement, (2008), https://www.sec.gov/Archives/edgar/data/949114/000119312508184482/d424b5.htm; Prospectus National Collegiate Student Loan Trust 2006-4 (2006), https://sec.report/Document/0001125282-06-007609/.

7 *See* Marco Di Maggio et al., *Second Chance: Life without Student Debt* (July 31, 2019), https://www.fdic.gov/news/conferences/consumersymposium/2019/documents/papers/kalda-paper.pdf.

8 *See* Cowley & Silver-Greenberg, *supra* note 3.

9 *Medina v. National Collegiate Student Loan Trust 2007-1,* 19-ap-00065 (Bankr. S.D. Cal. 2020) (seeking relief from private student debt incurred at a for-profit culinary school); *Medina v. National Collegiate Student Loan Trust 2004-2, et. al.,* 2016 WL 11574867, at *5–6 (Bkrtcy.D.Nev., 2016) (concluding NCSLT failed to provide adequate documentation for loans incurred a for-profit college."); *National Collegiate Student Loans Trust 2004-2 v. Vitale,* 2018-ef-0036 (N.Y. Supreme Court Jan. 12 2020) (sanctioning NCSLT and ordering them to pay debtor's attorneys fees for seeking judgment on student debt they could not verify or prove); *National Collegiate Student Loan Trust 2005-2 v. Kraushaar,* 2018-ef-5428 (N.Y. Supreme Court 2018) (seeking default judgment on debt for for-profit college Full Sail Real World Education).

10 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.

11 *See National Collegiate's Audit of P.H.E.A.A.,* The New York Times (July 17, 2017), https://www.nytimes.com/interactive/2017/07/17/business/dealbook/document-National-Collegiate-PHEAA-audit.html.

12 *Id.* For further discussion of the role that the Pennsylvania Higher Education Assistance Agency plays with respect to these trusts, see Student Borrower Protection Center and Kentucky Equal Justice Center, *Amicus Brief in PHEAA v. Kentucky* (2018), https://protectborrowers.org/wp-content/uploads/2019/01/SBPC_PHEAA_KY_Amicus_Brief-.pdf.

13 *See* Cowley & Silver-Greenberg, *supra* note 3. *See also,* Complaint at 2, *Consumer Fin. Prot. Bureau v. The Nat'l Collegiate Master Student Loan Trust, supra* note 2 ("In support of these lawsuits . . . Defendants executed and filed affidavits that falsely claimed personal knowledge of the account records and the consumer's debt and, in many cases, personal knowledge of the chain of assignments establishing ownership of the loans.").

14 *See* Eric Dash, *Foreclosures: A Paperwork Fiasco,* The New York Times (Oct. 23, 2010), https://www.nytimes.com/2010/10/24/weekinreview/24dash.html.

15 *See* Cowley & Silver-Greenberg, *supra* note 3.

16 *National Collegiate's Audit of P.H.E.A.A., supra* note 11.

17 Complaint at 2-3, *Consumer Fin. Prot. Bureau v. The Nat'l Collegiate Master Student Loan Trust, supra* note 2.

18 *See CFPB Takes Action Against National Collegiate Student Loan Trusts, Transworld Systems for Illegal Student Loan Debt Collection Lawsuits,* Consumer Financial Protection Bureau (Sept. 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/.

19 *See Notice to holders of notes,* US Bank (Mar. 30, 2018), https://trustinvestorreporting.usbank.com/TIR/public/deals/populateReportDocument/19012352/PDF.

20 *See, e.g., Amicus Curiae Brief in the Matter of Pennsylvania Higher Education Assistance Agency v. the Commonwealth of Kentucky,* Student Borrower Protection Center (2019), https://protectborrowers.org/wp-content/uploads/2019/01/SBPC_PHEAA_KY_Amicus_Brief-.pdf.

21 *See, e.g.,* Complaint, *Obelagu v. Navient* (Feb. 7, 2018) (No. 8:18-cv-00392-PX), https://www.classaction.org/media/obeleagu-v-navient-solutions-llc-et-al.pdf.

22 *See* Complaint, *Il. v. Navient Corp., supra* note 5 ("From 2006-2007 Sallie Mae claimed 42% of the private student loan market by pursuing an unfair and deceptive subprime lending strategy of providing expensive subprime loans to vulnerable borrowers even though Sallie Mae knew many - even most - of those loans would default.").

23 *See, e.g., 2017 Annual Report,* Housing and Economic Rights Advocates (2017), http://www.heraca.org/documents/annual_reports/HERA_Annual_Report_2017.pdf ("HERA represented a borrower sued by a debt buyer [Jefferson Capital] on a predatory private student loan. HERA successfully defended the client and the case against her was dismissed resulting in the elimination of $40,617 in claimed debt.").

24 *See, e.g., Going to School on Robo-signing: How to Help Borrowers and Stop the Abuses in Private Student Loan Collection Cases,* National Consumer Law Center & Student Loan Borrower Assistance (Apr. 2014), https://www.studentloanborrowerassistance.org/wp-content/uploads/2013/05/robo-signing-2014.pdf.

25 *See, e.g.,* Molly Hensley-Clancy, *New Class Action Lawsuit Targets Student Loan Debt Collector,* BuzzFeed News (July 15, 2016), https://www.buzzfeednews.com/article/mollyhensleyclancy/new-class-action-lawsuit-targets-student-loan-debt-collector.

26 Shahien Nasiripour, *supra* note 10.

27 *See, e.g.,* Complaint, *Obelagu v. Navient, supra* note 21; *Going to School on Robo-signing, supra* note 24; Hensley-Clancy, *supra* note 25.

28 *See* Marco Di Maggio et al., *supra* note 7.

29 *Consumer Complaint 3210042*, Consumer Financial Protection Bureau (Apr. 12, 2019), https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3210042.

30 *See* Complaint, *Obelagu v. Navient, supra* note 21.

31 *See Going to School on Robo-signing, supra* note 24.

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