



**Written Testimony of Student Borrower Protection Center
at a Bill Hearing before the
Senate Judicial Proceedings Committee
on SB 732
“An Action to Collect a Private Education Loan - Required Documents”**

IN SUPPORT

March 9, 2022

Senator Smith and Members of the Committee:

The Student Borrower Protection Center (SBPC) writes in support of SB 732, “An Action to Collect a Private Education Loan - Required Documents.” This bill has been filed in the House for several years and last year, as HB 26, passed in the House and was sent to the Senate, where it did not receive a vote. This year, the bill is already advancing again in the House as HB 111 and with Senate support for SB 732, the General Assembly can pass this important measure to ensure that low-income private student loan borrowers are protected from well-documented debt collection abuses. Maryland would join California, Maine, and Colorado,¹ which each enacted substantially identical laws in 2021, and New York and New Jersey, which have a similar bill pending in 2022.² Particularly given the fast-moving changes to the federal student loan landscape, it is critical the Maryland act now to protect its residents with private student loan debt.

The SBPC is a national nonprofit advocacy and research organization focused on ending the student debt crisis in Maryland and across the country. Our work focuses on all consumer and financial practices facing students, including loan origination, servicing, and debt collection.

There is a well-documented abuse of Maryland courts by predatory student loan creditors.

Unscrupulous collectors abuse this state’s court system, exploiting loopholes that allow companies to pursue judgments for debts they do not even own. Through practices like dual tracking and robo-signing, these predatory companies target the most vulnerable communities as they seek to replicate the worst practices of the mortgage crisis.

More than 270,000 Maryland residents owe a collective \$2.89 billion in private student loan debt.³ Borrowers with private student loans face a wide range of unique challenges when managing student debt. These loans often have extremely high interest rates and lack affordable repayment options,⁴ leaving borrowers with little recourse when faced with a financial shock.

¹ See A.B. 424 (Cal. 2021), C.R.S. 5-20-200 et seq. (Co. 2021), Sec. 19-A M.R.S.A. Art. 15 (Me. 2021).

² See S.5136A/A.6226 (New York 2021-2022); S.1974/A.1576 (New Jersey 2022).

³ Student Borrower Protection Center calculation based on Department of Education and Federal Reserve Bank of New York data.

⁴ Press Release, Consumer Fin. Prot. Bureau, “CFPB Report Finds Distressed Private Student Loan Borrowers Driven Into Default” (Oct. 16, 2014)



When borrowers fall behind on this debt, they often face aggressive debt collection tactics and lawsuits.⁵ Some of the most egregious private student loan companies exploit state court systems to get default judgments against borrowers, including robo-signing “false and misleading” affidavits in pursuit of debts that are not actually owed or that these creditors do not actually own and have the right to enforce. Unscrupulous private student loan companies have now brought hundreds of cases against Maryland borrowers for unsubstantiated private student loan debt, as documented in the recent report discussed below.

Navient, the largest private creditor in the student loan market, has obtained default judgments⁶ and wage garnishment orders⁷ against Maryland borrowers since the pandemic began, despite its public pledge to halt collections litigation in the wake of COVID-19. In January of 2022, attorneys general from 39 states, including Maryland, entered into a settlement agreement with Navient, which will result in the cancellation of \$1.7 billion in debt cancellation of predatory student loans nationwide, \$34 million of which will benefit Maryland borrowers.⁸ Although these are the same types of predatory loans that have been clogging Maryland’s courts and plaguing low-income borrowers, the settlement agreement was just with one company, and leaves other predatory lenders free to seek collection of their harmful loans in court.

Similarly, another large creditor in the student loan market, the National Collegiate Student Loan Trusts (NCSLT), which is notorious for suing to collect on private student loans that it can not prove it actually owns,⁹ is active in Maryland. In a 2021 report issued in partnership with the Maryland Consumer Rights Coalition and SEIU Local 500, the SBPC documented the ways in which NCSLT has hijacked Maryland courts.¹⁰ Across all Maryland counties, NCSLT filed over 1,330 cases against Maryland borrowers from 2015 to 2021. This avalanche of litigation weighs most heavily on communities of color. **For example, more than 1-in-4 of NCSLT debt collection lawsuits were filed in Prince George’s County—Maryland’s largest majority-Black county.** This is particularly concerning given NCSLT’s track record of suing to collect on loans for which it lacks even the most basic paperwork. Against this backdrop, it is clear to see why this legislation is desperately needed. A copy of this report is appended here.

<https://www.consumerfinance.gov/about-us/newsroom/cfpb-report-finds-distressed-private-student-loan-borrowers-driven-into-default/>.

⁵ National Consumer Law Center, “Going to School on Robo-signing: How to Help Borrowers and Stop the Abuses in Private Student Loan Collection Cases” (April 2014),

<https://www.studentloanborrowerassistance.org/wp-content/uploads/2013/05/robo-signing-2014.pdf>.

⁶ See, e.g., <https://perma.cc/7A5V-N6E4>.

⁷ See, e.g., <https://perma.cc/UT4F-79UF>.

⁸ Press Release, Maryland Office of the Attorney General, “Attorney General Frosh Announces \$1.85 Billion Settlement with Student Loan Servicer Navient” (Jan. 13, 2022),

<https://www.marylandattorneygeneral.gov/press/2022/011322.pdf>.

⁹ Stacy Cowley and Jessica Silver-Greenberg, N.Y. Times, “As Paperwork Goes Missing, Private Student Loan Debts May Be Wiped Away” (July 17, 2017),

<https://www.nytimes.com/2017/07/17/business/dealbook/student-loan-debt-collection.html>.

¹⁰ Student Borrower Prot. Center, Maryland Consumer Rights Coalition, SEIU Local 500, “The Long Legacy of Predatory Private Student Loans: Defrauding Borrowers and Lying to Courts” (Jan 2021),

<https://protectborrowers.org/wp-content/uploads/2021/12/Maryland-NCSLT.pdf>.



More often than not, these cases result in a default judgment, which means that NCSLT never has to document that it actually owns and has the authority to collect on these loans. Even when borrowers do appear, they rarely can afford to hire counsel, and appearing pro se they lack the ability to identify NCSLT's—and other plaintiff creditors'—paperwork defects. Effectively, in Maryland and across the country, these private lenders can sue for debts that they do not own and cannot substantiate, and can still expect to obtain an enforceable court judgment. These judgments are then used to garnish the wages or levy the bank accounts of Maryland borrowers.

Until these plaintiff creditors are affirmatively required to document that they actually own the debts that they seek to enforce, they will continue to hijack civil courts and leverage the government's authority to continue collecting on these debts through judgment enforcement.

This legislation will end this practice by ensuring collectors can only pursue judgments when they can prove they own the debt and have already explored available workout options with the borrower.

This bill would merely codify minimum obligations to establish ownership of a debt before suing and receiving a judgment.

Given that these private student lenders and debt collectors regularly engage in robo-signing and authority predatory collection practices, Maryland must act to prevent its courts from being used to enter judgments for debts that these plaintiffs do not owe. SB 732 would require these parties to substantiate these debts before receiving a judgment. For any creditor who actually owns a debt and seeks to enforce it in good faith, these new requirements should pose no burden.

Specifically, SB 732's common-sense but important protections include:

- Requiring lenders and debt collectors to have documentation related to the private student loan debt in question in their possession prior to initiating a collection action and that the same be filed with the court before a judgment can be entered;
- Mandating that lenders and debt collectors communicate specific information about the private student loan debt to the consumer when seeking payment and upon request of the consumer;
- Providing that a failure to produce any of the documents required by the bill to a borrower constitutes an unfair, abusive, or deceptive practice under Maryland law, furthering industry accountability and enhancing the state Attorney General's oversight over these predatory practices; and
- Creating a private right of action for borrowers to seek recourse if they suffer any damages as a result of a lender or collector's failure to comply with the law.

These are specific fixes that are narrowly tailored to a specific set of well-documented industry abuses.



Now is the time to act. With more and more COVID-19 financial safety-net programs expiring, low-income Maryland households will see their monthly expenses increase. Enacting SB 732 would reduce the burden on these households' budgets by protecting them from payments on loans that they never borrowed and to debt collectors with no documentation.

Conclusion

We urge the Committee to support SB 732 in order to curb court abuses and ensure that low-income Maryland borrowers are not subject to collection on loans that they do not owe and that lenders cannot substantiate. Thank you. The SBPC would be happy to answer any questions.

Please contact Winston Berkman-Breen, Deputy Advocacy Director and Policy Counsel, at winston@protectborrowers.org, if you have any questions or would like to discuss this comment further.

APPENDIX

*The Long Legacy of Predatory Private Student Loans:
Defrauding Borrowers and Lying to Courts*

Student Borrower Protection Center
Maryland Consumer Rights Coalition
SEIU Local 500

January 2021



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THE LONG LEGACY OF PREDATORY PRIVATE STUDENT LOANS

Defrauding Borrowers and Lying to Courts

January 2021

A note about collections during COVID

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

Last year, the Student Borrower Protection Center (SBPC) published a report documenting the predatory and discriminatory actions of private student loan creditors and debt collectors in Maryland.² The following reissued report from the SBPC, the Maryland Consumer Rights Coalition, and SEIU Local 500 provides additional data for the past year, covering the course of the coronavirus pandemic to date. Despite the devastating impact the COVID-19 crisis has had on Maryland and Maryland borrowers, and despite the ongoing public health risks, private student loan debt collectors have continued to drag these borrowers into court across the state.

For over a decade, the subprime student loan boom and its legacy of predatory debt collection have harmed families throughout Maryland, especially in communities of color. Now, these same families are disproportionately affected by the coronavirus pandemic. As COVID-19 cases and subsequent increases in unemployment³ and economic distress⁴ continue to damage Maryland's residents, private student loan debt collectors continue to pursue judgements in courts across the state to collect on these debts, despite the deadly pandemic and continued orders to stay at home. And as our research continues to show, these cases are filed disproportionately in majority-minority counties.

¹ The authors 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 Student Borrower Prot. Ctr., *The Long Legacy of Predatory Private Student Loans: Defrauding Borrowers and Lying to Courts* (Mar. 2020), <https://protectborrowers.org/MD-NCSLT-2020>.

³ Eli Rosenberg, *Jobless claims spike in the U.S. last week, with 853,000 people seeking new benefits*, Wash. Post (Dec. 10, 2020), <https://www.washingtonpost.com/business/2020/12/10/jobless-claims-spiked-us-last-week-with-853000-people-seeking-new-benefits/>.

⁴ Kim Dacey, *Looking Ahead to 2021: How Long Will It Take Maryland's Economy to Recover?*, WBALTV - 11 (Dec. 31, 2020), <https://www.wbaltv.com/article/how-long-will-it-take-maryland-economy-to-recover-covid-19-pandemic/35105519#>.

While the federal government has suspended debt collection efforts on federal student loans since March 2020, private loans do not have the same emergency protections. Because Congress has failed to provide the same relief for private student loan borrowers as it did for borrowers with federal loans, the more than 270,000 Maryland borrowers who owe on private student loans have been put at risk of being dragged into court during COVID-19 for no other reason than that they chose a private student loan to finance their education.⁵

In April, before courts officially closed their doors due to COVID-19 but as the disease ravaged the country, the SBPC warned that, despite the national emergency, student loan companies were continuing to pursue borrowers in court.⁶ Because of this advocacy, student loan debt collectors agreed to stop filing lawsuits with some even retroactively dismissing suits filed after the declaration of a national emergency.⁷

However, relief did not last long. Student loan companies swiftly began pursuing cases again when court doors reopened, despite the continuing global pandemic. For example, Navient rejected the consensus of scientists and public health officials by declaring an end to the COVID-19 pandemic just months after it began, prominently displaying on its website (emphasis added):⁸

“In light of the reopening of the U.S. economy and the resumption of normal business activities that have already begun . . . [administrative forbearance programs for those not included in Congressional student loan protections would] no longer be offered as of June 30, 2020.”

In the months since, Navient has obtained default judgements and garnishment orders against Maryland borrowers, pursuing defendants targeted by Navient collection lawsuits filed early in 2020.

⁵ SBPC estimate based on estimates available from: Federal Res. Bank of N.Y., Student Loans By State, <https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/xls/student-loan-by-state.xlsx> (last accessed Jan 14, 2021); Dep’t of Educ., Office of Fed. Student Aid, Federal Student Loan Portfolio by Borrower Location (Sept. 30, 2020), <https://studentaid.gov/sites/default/files/fsawg/datacenter/library/Portfolio-by-Location.xls> (last accessed Jan. 14, 2021); Department of Educ., Baccalaureate and Beyond: 2016/2017 Survey, https://nces.ed.gov/datalab/index.aspx?ps_x=bffcape7c (last accessed Jan. 14, 2021).

⁶ Press Release, Student Borrower Prot. Ctr., Embattled Private Student Lenders Finally Cease Abusive Lawsuits During the Coronavirus Pandemic (Apr. 3, 2020), <https://protectborrowers.org/embattled-private-student-lenders-finally-cease-abusive-lawsuits-during-the-coronavirus-pandemic/>.

⁷ Danielle Douglas-Gabriel, *As Americans faced layoffs and lost wages, student loan companies kept going to court to collect*, Wash. Post (Apr. 3, 2020), <https://www.washingtonpost.com/education/2020/04/03/student-loans-collection-lawsuits-coronavirus/>.

⁸ Navient, *Covid-19 Support Center* (Dec. 7, 2020), <https://perma.cc/XD2V-HDHE> (last accessed Dec. 17, 2020).

Dozens of new lawsuits have also been filed across Maryland. For example, 61 cases have been filed since early July by just one company, the National Collegiate Student Loan Trusts (NCSLT). These cases continue to target communities of color, harming those who have already been hit hardest by the pandemic and its economic fallout.⁹ For example, the proportion of cases filed in Prince George’s County—Maryland’s largest majority-Black county—increased since the beginning of the pandemic. Since 2015, more than 1-in-4 of NCSLT’s debt collection lawsuits have been filed in this jurisdiction—324 cases in total.

The following report highlights the practices of NCSLT as a case study—illustrating the abuse of Maryland courts by this large creditor and documenting the lasting effects of these abuses on Maryland families. Across all Maryland counties, NCSLT has filed more than 1,330 cases against Maryland borrowers in the past six years alone.

Widespread abuses by student loan creditors and debt collectors demands immediate action by Maryland officials. As illustrated by the refusal of debt collection companies to cease their lawsuits during the pandemic, it is imperative for policymakers to act. Legislation by Maryland Delegate Lesley Lopez would ensure critical yet basic protections for Maryland borrowers against the predatory practices of these companies. Last year, labor, consumer, and veteran groups fought for this legislation until COVID-19 shut down the session. Now, borrowers need these protections now more than ever.



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⁹ Maria Godoy, Daniel Wood, *What Do Coronavirus Racial Disparities Look Like State by State*, NPR (May 30, 2020), <https://www.npr.org/sections/health-shots/2020/05/30/865413079/what-do-coronavirus-racial-disparities-look-like-state-by-state>.

Introduction

Private student loan creditors have sued more than 100,000 student loan borrowers in courtrooms across the country over allegedly unpaid student loan debts.¹⁰ 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.¹¹ 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.¹² 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

¹⁰ 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.").

¹¹ 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.").

¹² 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-cycl-of-boom-and-bust-in-private-student-loan-market/>.

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."¹³

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.¹⁴ 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.

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

Sallie Mae CEO, 2007

¹³ Complaint at 26, Illinois v. Navient Corp. (Jan. 18, 2017) (No. 2017CH00761), http://www.illinoisattorneygeneral.gov/pressroom/2017_01/NavientFileComplaint11817.pdf.

¹⁴ 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/>.

Nefarious players in the market

Many bad actors plague the student loan debt collection system.¹⁵ Borrowers across the country 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,¹⁶ Jefferson Capital,¹⁷ Arrowood Indemnity,¹⁸ and Turnstile Capital Management.¹⁹

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,²⁰ or NCSLT. The following report focuses on the consequences of this specific predatory private lending scheme and contains a case study of the impact on Maryland borrowers to illustrate broader trends and challenges in the student loan debt collection system. However, readers should note that the problems highlighted below were not limited to NCSLT.

In the years prior to the 2008 financial crisis, Wall Street packaged into trusts more than \$12 billion of largely subprime private student loans.²¹ Many of these risky loans were made to students at predatory for-profit

¹⁵ 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>.

¹⁶ See Complaint, *Illinois v. Navient Corp.*, *supra* note 13 ("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.").

¹⁷ 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.").

¹⁸ 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>.

¹⁹ 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>.

²⁰ See Marco Di Maggio, Ankit Kalda & Cinvent W. Yao, *Second Chance: Life without Student Debt* (July 31, 2019), <https://www.fdic.gov/news/conferences/consumersymposium/2019/documents/papers/kalda-paper.pdf>.

²¹ See Cowley & Silver-Greenberg, *supra* note 11.

colleges across the country.²² These loans were made by banks, including US Bank, Bank of America, JPMorgan Chase, and Citizens Bank.²³ 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,”²⁴ ultimately driving hundreds of thousands of student loan borrowers into financial distress.

But it gets worse.

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.”

The companies managing NCSLT were grossly incompetent and lost many of the documents proving ownership of the loans in the trusts.²⁵ This includes embattled student loan giant the Pennsylvania Higher Education Assistance Agency, which remains responsible for maintaining loan documents and account records for NCSLT.²⁶

²² 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 (Bankr. 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. Sup. Ct. 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. Sup. Ct. 2018) (seeking default judgment on debt for for-profit college Full Sail Real World Education).

²³ See Cowley & Silver-Greenberg, *supra* note 11.

²⁴ 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>.

²⁵ 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>.

²⁶ *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.

In order to continue collecting on the debt, NCSLT lied to courts across the country in thousands of lawsuits²⁷ and used mass-produced documentation, also known as robo-signing,²⁸ in tens of thousands of other cases to drag borrowers into court for debts NCSLT could not prove the borrowers owed.²⁹ 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.³⁰ 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.*³¹

The federal government ordered NCSLT to pay over \$20 million for its illegal acts up to 2017, spurring years of litigation between the investors and banks that created the trusts.³² Court filings reveal that various parties purporting to speak on behalf of NCSLT blocked the settlement between the government and the trusts in 2020

²⁷ See Cowley & Silver-Greenberg, *supra* note 11. See also, Complaint at 2, *Consumer Fin. Prot. Bureau v. The Nat'l Collegiate Master Student Loan Trust*, *supra* note 10 ("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.").

²⁸ See Eric Dash, *Foreclosures: A Paperwork Fiasco*, N.Y. Times (Oct. 23, 2010), <https://www.nytimes.com/2010/10/24/weekinreview/24dash.html>.

²⁹ See Cowley & Silver-Greenberg, *supra* note 11.

³⁰ *National Collegiate's Audit of P.H.E.A.A.*, *supra* note 25.

³¹ Complaint at 2-3, *Consumer Fin. Prot. Bureau v. The Nat'l Collegiate Master Student Loan Trust*, *supra* note 10.

³² 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/>.

and this litigation will continue into 2021.³³ As litigation related to this and other public enforcement actions continues, NCSLT's problems persist to this day.³⁴

Today, state lawmakers have an opportunity to step in to protect borrowers from what has been described as the "systemic malfeasance, gross negligence and willful misconduct" of creditors and collectors pursuing consumers in default on private student loans.³⁵

³³ See 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>; *Notice to holders of notes*, US Bank (Mar. 30, 2018), <https://trustinvestorreporting.usbank.com/TIR/public/deals/populateReportDocument/19012352/PDF>.

³⁴ 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.

³⁵ Shahien Nasiripour, *supra* note 24.

Case study: NCSLT in 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.³⁶ 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,³⁷ NCSLT’s practices have hit Maryland borrowers particularly hard.

To examine the scope of the issue, the SBPC reviewed SEC filings and court filings from 2015 through 2021. Public filings show that over the past two decades, NCSLT owned more than 15,000 separate loans made to borrowers in Maryland which total more than \$190 million. 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 1,330 cases against Maryland borrowers in the past six years alone, and 66 cases were filed since the COVID-19 state of emergency was declared. These lawsuits disproportionately target communities of color in the state. Nearly 60 percent of all NCSLT lawsuits filed in Maryland are against borrowers in majority-minority zip codes. Additionally, 26 percent of all NCSLT lawsuits filed in Maryland were filed in Prince George’s County, a majority-Black county.

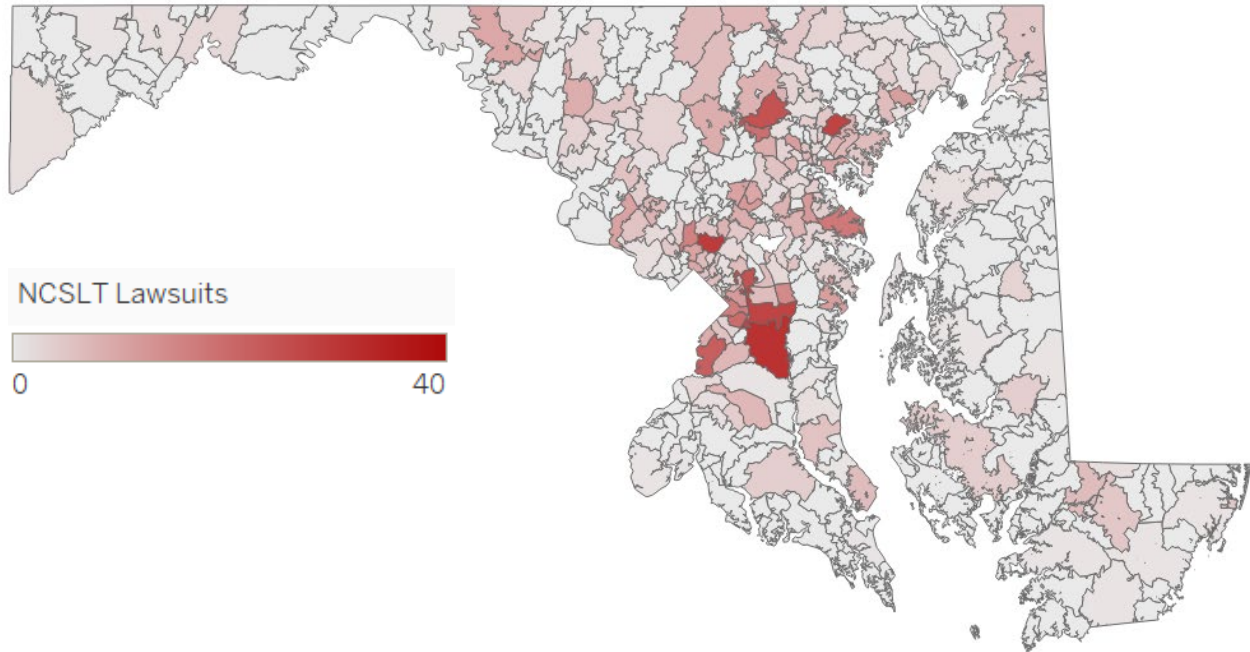
Key Findings

<p>15,000 loans totaling more than \$190 million made to borrowers in Maryland</p>	<p>1,330+ lawsuits filed against Maryland borrowers over the past six years</p>
<p>nearly 60 percent of the lawsuits were filed against borrowers living in majority-minority zip codes.</p>	<p>26 percent of the lawsuits were filed in Prince George’s County</p>

³⁶ See, e.g., Complaint, *Obelagu v. Navient*, *supra* note 15; *Going to School on Robo-signing*, *supra* note 18; Hensley-Clancy, *supra* note 19.

³⁷ See Marco Di Maggio et al., *supra* note 20.

NCSLT-initiated lawsuits by zip code since the start of 2015



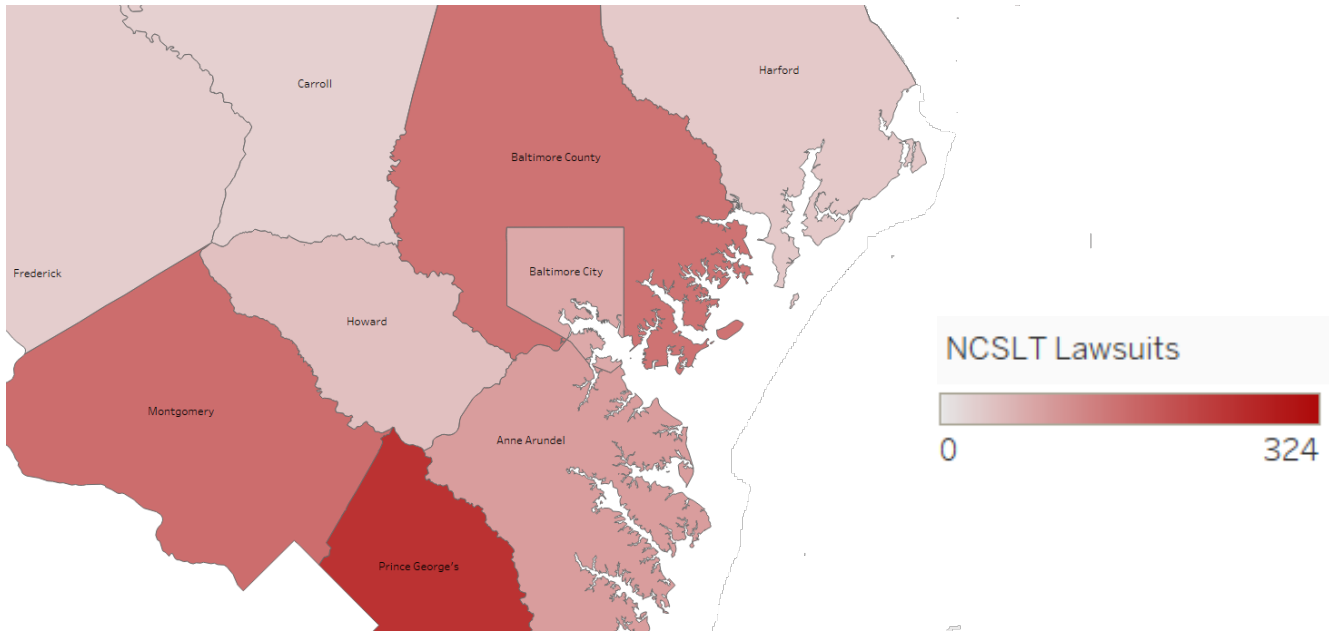
National Collegiate . . . has been pursuing a case about a student loan they said I owe. Over time I have asked them to submit the proof and nothing has been done. Since [that date] they called and harassed me by phone and mail.

...

Maryland borrower pursued by NCSLT

CFPB complaint 3210042

Baltimore Metro Area by County



DC Metro Area by County

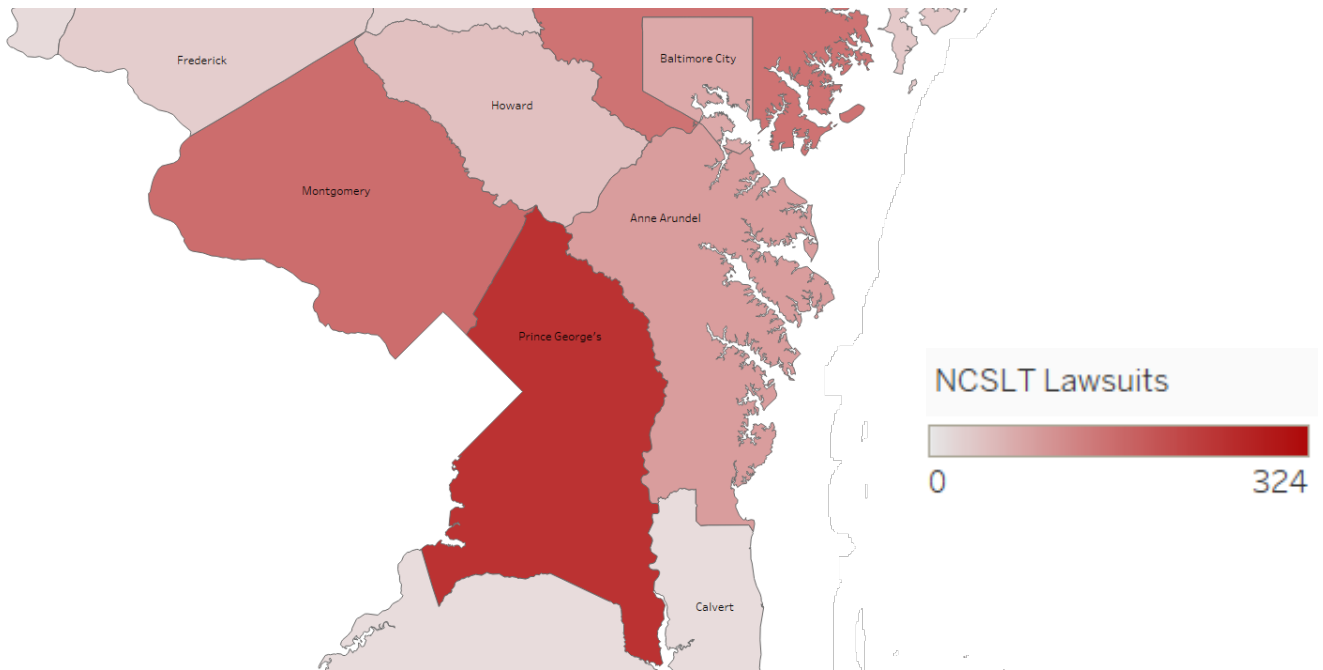


Table 1: Top Five Maryland Counties with Highest Number of NCSLT Lawsuits 2015 - 2021

County	Number of NCSLT Lawsuits
Prince George's County	324
Montgomery	201
Baltimore	189
Ann Arundel	117
Baltimore City	97

Recommendations for state policymakers and state courts

The abuses outlined above 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.³⁸

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. This is important now more than ever as the coronavirus pandemic continues to devastate communities across the country.

- **Cleaning up Maryland courts.** States should 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.³⁹
- **Banning abuses by student loan debt collectors.** States should ban abusive debt collection tactics by requiring debt collectors to prove debts are valid when attempting to collect. States should require that 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.

³⁸ See Complaint, *Obelagu v. Navient*, supra note 15; see also Consumer Fin. Prot. Bureau, Mid-Year Update on Student Loan Complaints (June 2015), https://files.consumerfinance.gov/f/201506_cfpb_mid-year-update-on-student-loan-complaints.pdf.

³⁹ See *Going to School on Robo-signing*, supra note 18.

- **Expanding access to justice for Maryland student loan borrowers.** States should 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, 335 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 loan creditors and debt collectors 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.