

CR Memo of Support for HB 111 and SB 732 (MD) - Pr

Uploaded by: Charles Bell

Position: FAV

MEMORANDUM IN SUPPORT FOR H.B.111 and S.B.732

TITLE: Action to collect a private student loan – documents required

SPONSORED BY: Delegate Lesley J. Lopez, and Senators Ron Watson, Susan C. Lee, Paul G. Pinsky, Jim Rosapepe, William C. Smith, and Jeff Waldstreicher

SYNOPSIS: Prohibiting private education lenders and private education loan collectors from initiating a certain action unless the private education lenders or private education loan collectors possess certain documents; requiring a private education lender or private education loan collector to introduce certain information in a certain action; and requiring a private education loan collector to provide certain information to a student loan borrower in a certain communication and on request of the student loan borrower.

STATEMENT OF SUPPORT: Consumer Reports supports H.B.111/S.B.732, which would create critically needed consumer protections for Maryland student loan borrowers who have private student loans, and ensure that the companies that service private loans operate fairly and transparently, and are accountable to borrowers and regulators.

The nation is currently facing a student loan debt crisis, as more than 43 million Americans owe at least \$1.5 trillion in student loan debt backed by the federal government,¹ plus another \$128 billion in private student loans.² Maryland student loan borrowers hold \$30 billion in outstanding debt,³ including \$2.89 billion in private student loan debt owed by 270,000 borrowers.⁴

Since the recovery from the 2008 financial crisis, the private student loan market has been expanding in the United States, growing more rapidly than lending for other financial services such as mortgages, auto loans and credit cards. Borrowers with private student loans have many fewer protections than borrowers of federal student loans. Typically, these loans have higher interest rates and less favorable terms. They carry few safeguards when borrowers experience financial distress. This situation puts Maryland borrowers at greater risk for delinquency and default, which can have lifelong consequences.

[continued]

¹ Miller, B., et al, "Addressing the \$1.5 Billion in Student Loan Debt," Center for American Progress, 6/12/19, available at: <https://www.americanprogress.org/issues/education-postsecondary/reports/2019/06/12/470893/addressing-1-5-trillion-federal-student-loan-debt/> See also US Federal Reserve, Consumer Credit G.19, available at: <https://www.federalreserve.gov/releases/g19/current/default.htm>

² Kaufman, Ben. "Private Student Lending," Student Borrower Protection Center, 4/30/20, p.7., available from: https://protectborrowers.org/wp-content/uploads/2020/04/PSL-Report_042020.pdf

³ "50 State Snapshot of Student Debt," Consumer Financial Protection Bureau, October 2017, available at: https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_student-loans_50-state-snapshot_complaints.pdf

⁴ Student Borrower Protection Center calculation based on Department of Education and Federal Reserve Bank of New York data.

Memorandum of Support for H.B.111/S.B.732, page 2

Private student loan companies have engaged in a wide range of unfair practices, including preventing co-signers from obtaining release and withholding documentation and information from them; using robo-signed documents to pursue collection judgments that are not fairly substantiated; putting loans in “auto-default” to collect the entire balance of the loan when co-signers die or file for bankruptcy; and making predatory loans at for-profit schools.⁵

In 2021, the Maryland Consumer Rights Coalition, SEIU Local 500 and the Student Borrower Protection Center issued a report detailing the debt collection lawsuits filed in the state of Maryland from 2015 through 2020.⁶ Navient, the largest private creditor in the student loan market, has obtained default judgments and wage garnishment orders against Maryland borrowers, despite its public pledge to halt collections litigation in the wake of the pandemic. 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 cannot prove it actually owns, is active in the state. Across all Maryland counties, NCSLT has filed over 1,330 cases against Maryland borrowers since 2015. 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. Against this backdrop, it is clear to see why this legislation is desperately needed.

H.B. 111 is the response that Maryland needs to address some of the most harmful tactics employed by private education lenders to sue borrowers for unsubstantiated debts. Some of these common-sense but important protections include:

- Requiring lenders and debt collectors to have documentation related to the private student loan debt in question 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.

H.B.111 and S.B. 732 would create a comprehensive set of protections for private student loan borrowers, by ensuring that private student loan companies and services treat borrowers fairly

[continued]

⁵ Op.cit note #2.

⁶ Maryland Consumer Rights Coalition, SEIU Local 500 and Student Borrower Protection Center, *The Long Legacy of Predatory Private Student Loans: Defrauding Borrowers and Lying to Courts*, January 2021, available at:

<https://protectborrowers.org/MD-psl-collections>

Memorandum of Support for H.B.111/S.B.732, page 3

in repayment and debt collection. The bill establishes strong, fair ground rules for private student loan companies, so that they will more fully respect consumer rights, and work with borrowers when they face hardships and financial challenges in loan repayment.

This pro-consumer legislation will help Maryland's economy by helping private student loan borrowers and co-signers to get the basic information they need to protect their rights in repayment; avoid delinquency and default; defend themselves against unfair collection practices; and obtain better protection and payment arrangements with private lenders that are appropriate and suitable for their financial interests.

For all these reasons, Consumer Reports strongly urges you to support H.B.111/S.B.732 to improve state oversight of private student loans, and protect borrowers from unfair, deceptive, and predatory tactics by private student loan companies and debt collectors.

For more information, contact:

Chuck Bell, Programs Director

Consumer Reports

101 Truman Avenue

Yonkers, NY 10703-1057

www.ConsumerReports.org

E-Mail: Chuck.Bell@consumer.org

Phone: (914) 378-2507

Mobile: (914) 830-0639

SB732 MCRC Testimony 2022.pdf

Uploaded by: Isadora Stern

Position: FAV



Maryland Consumer Rights Coalition

Testimony to the Senate Judicial Proceedings Committee
SB732: Action to Collect a Private Education Loan - Required Documents
Position: Favorable

March 9, 2022

The Honorable William Smith, Jr., Chair
Judicial Proceedings Committee
2 East, Miller Senate Office Building
Annapolis, Maryland 21401

cc: Members, Judicial Proceedings Committee

Honorable Chair Smith and Members of the Committee:

The Maryland Consumer Rights Coalition (MCRC) is a statewide coalition of individuals and organizations that advances economic rights and financial inclusion for Maryland consumers through research, education, direct service, and advocacy. Our 8,500 supporters include consumer advocates, practitioners, and low-income and working families throughout Maryland.

We are writing today in support of SB732.

MCRC works on issues related to college affordability, student loan debt, and debt collection. Student borrowers who face financial hardship may become delinquent or default on their debt. When borrowers fall behind on their student loans, this debt may be passed on to a debt collector.

In 2021, the average student loan debt owed in Maryland was \$43,219 and the amount of student borrowers in delinquency was \$115,201.¹ In the United States, women owe the majority of the outstanding \$1.7 trillion dollars in student loans and Black women carry about 20% more student debt than white women do.²

Although creditors often lack documentation to prove they have the legal right to pursue private student loan debt, they have continued to seek wage garnishment orders in court, even throughout the COVID-19 pandemic.

¹ <https://educationdata.org/student-loan-debt-by-state>

²

<https://www.cnbc.com/2021/06/14/black-women-owe-22percent-more-in-student-debt-then-white-men-on-average.html>



An analysis of court filings in Maryland shows that just one creditor, NCSLT, filed more than 1,330 cases against Maryland borrowers in the past six years alone.³ These cases disproportionately target communities of color in Maryland. More than half of the lawsuits analyzed are against borrowers in majority-minority zip codes, and more than 25% of all lawsuits analyzed were filed in Prince George's County.

The growth of student loan debt indicates that consumer protections must be enacted to prohibit predatory practices and debt collection tactics in the student lending industry.

SB732 strengthens protections for student borrowers by banning the use of mass-produced documentation, also known as “robo-signing” and prohibiting creditors from obtaining judgments against borrowers without accurate documentation. Maryland has a history of requiring better documentation for debt collection as Attorney General Frosh has advocated for and passed legislation prohibiting student loan servicers from engaging in any unfair, abusive, or deceptive trade practice.⁴ SB732 provides protections for student borrowers that are in line with these laws and will help ensure that student borrowers are protected from abusive debt collection tactics.

For these reasons, we support SB732 and urge a favorable report.

Best,
Marceline White
Executive Director

3

<https://protectborrowers.org/md-pslcollections/#:~:text=Across%20all%20Maryland%20counties%2C%20NCSLT,in%20the%20past%20six%20years.&text=These%20abuses%20aren't%20unique,court%20from%20coast%20to%20coast.>

⁴ https://mgaleg.maryland.gov/2019RS/chapters_noln/Ch_546_hb0594T.pdf

SB 732 - Favorable - NACA Testimony.pdf

Uploaded by: Kathleen Hyland

Position: FAV



**Testimony to the Senate Judicial Proceedings Committee
SB 732 – Action to Collect a Private Education Loan – Required Documents
Position: Favorable**

March 9, 2022

Senator William C. Smith, Jr., Chair
Judicial Proceedings Committee
Miller Senate Office Building, 2 East
Annapolis, Maryland 21401
cc: Members, Judicial Proceedings Committee

Honorable Chair Smith and Members of the Committee:

The National Association of Consumer Advocates is a nonprofit organization whose members are private and public sector attorneys, legal services attorneys, law professors, and law students whose primary focus involves the protection and representation of consumers. NACA's mission is to promote justice for all consumers by maintaining a forum for information-sharing among consumer advocates across the country and by serving as a voice for its members and consumers in the ongoing struggle to curb unfair or abusive business practices that affect consumers. In pursuit of this mission, NACA advocates for student loan protections for consumers and families.

I litigate private and federal student loan issues on behalf of Maryland consumers. We have experienced the following issues with private student loans in Maryland: cases filed past the statute of limitations; cases filed without supporting documents; litigation brought by companies the students do not recognize; instances where the student has desperately tried to pay or settle the cases for over two years, but has not been able to communicate with the lender; incomplete payment histories; suspicious "forbearances" and other devices that artificially age the loans; filings against uncollectible and disabled individuals who have even managed to get their federal debt administratively discharged; loan balances with nearly double the principal balance added as capitalized interest; co-signers who have not received any communications from lenders at any point prior to litigation; and more.

This is an area ripe with debt collection abuses. I have filed cases against student loan servicers and debt collectors for sending out false and misleading communications about the debt, and for passing files along to third-party debt collectors when the cases became stale. I am currently litigating a matter in the U.S. District Court of Maryland in which the student loan company has sued dozens of Marylanders on debts they initially took out with Bank of America more than 10 years ago. The lender cannot produce the original contract documents, did not properly compute loan balances, and made false and misleading claims in the state court documents.

Marylanders need stronger protections in this growing area of litigation. In 2020, the largest filer of private student loan cases in Maryland, the National Collegiate Student Loan Trust, opened 163 new cases in 15 counties, and over 500 cases in the past three years. We have also seen a rise in cases filed by companies who purchase student loan portfolios for the sole purpose of litigation. Historically, the Maryland legislature has responded by strengthening consumer protections when a rising trend in litigation demonstrates potential for abuses by out-of-state debt collectors. So too here, we need more specific requirements in litigation for private student lenders.

Consumers and their families need stronger student loan protections. SB 732 will provide these necessary protections. For this reason, we strongly urge a favorable report.

Sincerely,



Kathleen P. Hyland, Esq.
Maryland State Chair, NACA

AFSCME-FAV-SB732.pdf

Uploaded by: Lance Kilpatrick

Position: FAV



190 West Ostend St., #201
Baltimore, MD 21230
Phone: 410.547.1515
Fax: 410.837.5436

Patrick Moran - President

Testimony
SB 732 – Action to Collect a Private Education Loan - Required Documents
Judicial Proceedings
March 9, 2022
Support

AFSCME Council 3 supports SB 732. This legislation helps prevent predatory lending practices by requiring creditors specify evidence in wage garnishment lawsuits for student loan debt. It bans mass produced documentation that predatory creditors often use to “fishnet” borrowers, instead requiring that collectors prove private student loan debts are valid when collecting debt. This puts the onus on creditors to certify that the old debts are not barred by a state statute of limitations. It also prevents creditors from seeking court orders to garnish wages on loans they cannot prove borrowers owe.

Crushing student loan debt already is a tremendous burden upon those who have sought to better themselves through accessing educational opportunities. Student loan debt can serve as a tremendous obstacle for individuals to move up within their economic class, and limit their ability to productively contribute to their local economy due to resources being diverted towards this debt. Predatory lending practices create a horrible burden above and beyond an already onerous situation. We should be doing all we can to stop this practice, and in turn focus on solutions that enable those who are seeking to better themselves to do so without significant burdens inhibiting their progress.

We urge a favorable report of SB 732.

Every AFSCME Maryland State and University contract guarantees a right to union representation.
An employee has the right to a union representative if requested by the employee.
800.492.1996

Find us: afscmemd.org
Like us: facebook.com/AFSCMEMD
Follow/Tweet us: [@afscmemaryland](https://twitter.com/afscmemaryland)

CPD Support - SB 732.pdf

Uploaded by: Philip Ziperman

Position: FAV

BRIAN E. FROSH
Attorney General

ELIZABETH F. HARRIS
Chief Deputy Attorney General

CAROLYN QUATTROCKI
Deputy Attorney General



WILLIAM D. GRUHN
Chief
Consumer Protection Division

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION

Writer's Fax No.

Writer's Direct Dial No.
(410) 576-6417

March 9, 2022

TO: The Honorable William C. Smith, Jr., Chair
Judicial Proceedings Committee

FROM: Philip Ziperman, Deputy Chief - Consumer Protection Division

RE: Senate Bill 732 – Action to Collect a Private Education Loan - Required Documents
FAVORABLE

The Consumer Protection Division of the Office of the Attorney General supports Senate Bill 732, sponsored by Senator Watson along with you and Senators Lee, Pinsky, Rosapepe, and Waldstreicher, because it will help to protect Maryland consumers from unfair, deceptive, and abusive practices in the collection of private student loans owned or collected upon by unscrupulous for-profit schools, bad-acting debt buyers, trusts, and other non-bank or non-credit union companies.¹ These protections are especially needed at this time when the people most likely to be sued for defaulting on a private student loan are the same people who are most harmed by the economic disruption caused by the COVID-19 global pandemic.

Our office, along with other Attorneys General and the Federal Trade Commission, have long been concerned about the rising numbers of debt collection lawsuits that have little, if any, evidentiary support and are filed with boilerplate allegations that lack important information, such as the name of the original creditor and the current owner of the debt, the date of the default, and the amount due.² These problems are intensified for borrowers of private student loans that often have higher interest rates³ than federal student loans and do not feature affordable repayment options (such as income-based repayment plans) or rehabilitation and consolidation options when borrowers fall behind on payments, all of which are available to federal student loan borrowers, leaving students with few options when they face a change in their financial circumstances like a loss of income or a job due to COVID-19. Because the pause on all payments for federally-owned student loans in the CARES Act⁴ and the subsequent executive orders did not affect private student loans, borrowers of those loans have

¹ This bill exempts banks that are governed by the Federal Deposit Insurance Act or federal or state credit unions governed by the Federal Credit Union Act.

² <https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-bureau-consumer-protection-staff-report-repairing-broken-system-protecting-debtcollectionreport.pdf>.

³ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-report-finds-distressed-private-student-loan-borrowers-driven-into-default/>.

⁴ The U.S. Department of Education has extended the pause on repayment of federally student loans to until May 22, 2022.

been left unprotected from aggressive debt collection tactics and lawsuits that lack evidence to support the claims filed by the holders of the student loan debt.

In addition to the aggressive contract terms that lack any of the consumer protections in federal loans, private student loans are often relied upon by students attending for-profit institutions because the price of those schools is much higher (but the quality of education and earnings potential is generally much lower) than a similar program at a UM System school, an HBCU/MSI, or a community college. Our office and other State Attorneys General have investigated multiple for-profit institutions of higher education that use illegal recruitment tactics to convince students to incur a significant amount of private student loan debt to pay for their programs by utilizing high pressure sales tactics, emotional appeals, and using unfair, deceptive, and abusive tactics. Federal and state law enforcement agencies have brought significant litigation alleging predatory lending and collection practices by large private education lenders.⁵

This bill does not alter private student loan contracts, allow consumers to avoid paying a debt that they legitimately owe, or reduce access to student loans. Instead, Senate Bill 732 provides desperately needed protections for Maryland student loan borrowers by ensuring that applicable creditors and collectors of private student loans possess accurate loan records and documentation for each loan and present that information to the court to prove that they are collecting the actual amount owed from the correct person. Much like the protections that were put into place in 2016 requiring debt buyers or collectors acting on behalf of a debt buyer to possess certain information before they initiate debt collection actions against consumers,⁶ SB 732 expands those protections enacted in 2016 beyond debt buyers and requires private student loan lenders and their collectors to possess, among other things, information concerning the original lender and subsequent owners, the original loan amount, the collection and payment history, the date and amount of last default, and other information about the history of the loan and any attempt to settle the debt. Requiring collectors of student loans to possess this information will help ensure that errors do not occur in the collection of the student loan debt and better enable a consumer and a reviewing court to determine whether the student loan debt is being fairly collected and if there are alternatives to repayment. Furthermore, before applicable debt collectors can obtain a judgment in a Maryland court and garnish a borrower's wages, the bill requires them to prove that they have the right to collect on the loan and submit an affidavit to establish that the statute of limitations has not expired.

The Consumer Protection Division urges the Judicial Proceedings Committee to give SB 732 a favorable report.

cc: Members, Judiciary Committees
Honorable Ronald L. Watson
Honorable Susan C. Lee
Honorable Paul G. Pinsky
Honorable James Rosapepe
Honorable Jeffrey D. Waldstreicher

⁵ See e.g., *Attorney General Frosh Announces \$1.85 Billion Settlement with Student Loan Servicer Navient*, <https://www.marylandattorneygeneral.gov/press/2022/011322.pdf>.

⁶ See Md. Code Ann., Cts. & Jud. Proc. § 5-1203 and Md. Rule 3-306.

2022.03.09 SBPC Written Testimony in Favor of SB 7

Uploaded by: Winston Berkman-Breen

Position: FAV



**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



STUDENT
BORROWER
PROTECTION
CENTER



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.



STUDENT
BORROWER
PROTECTION
CENTER



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.

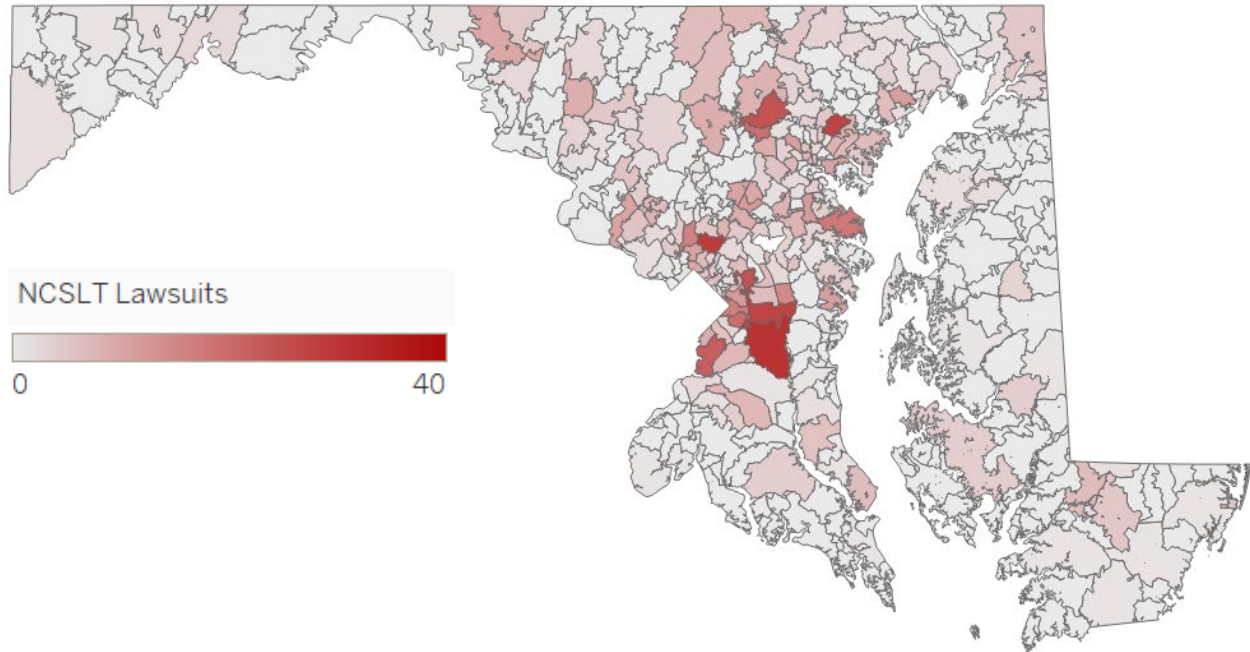
Key Findings

<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



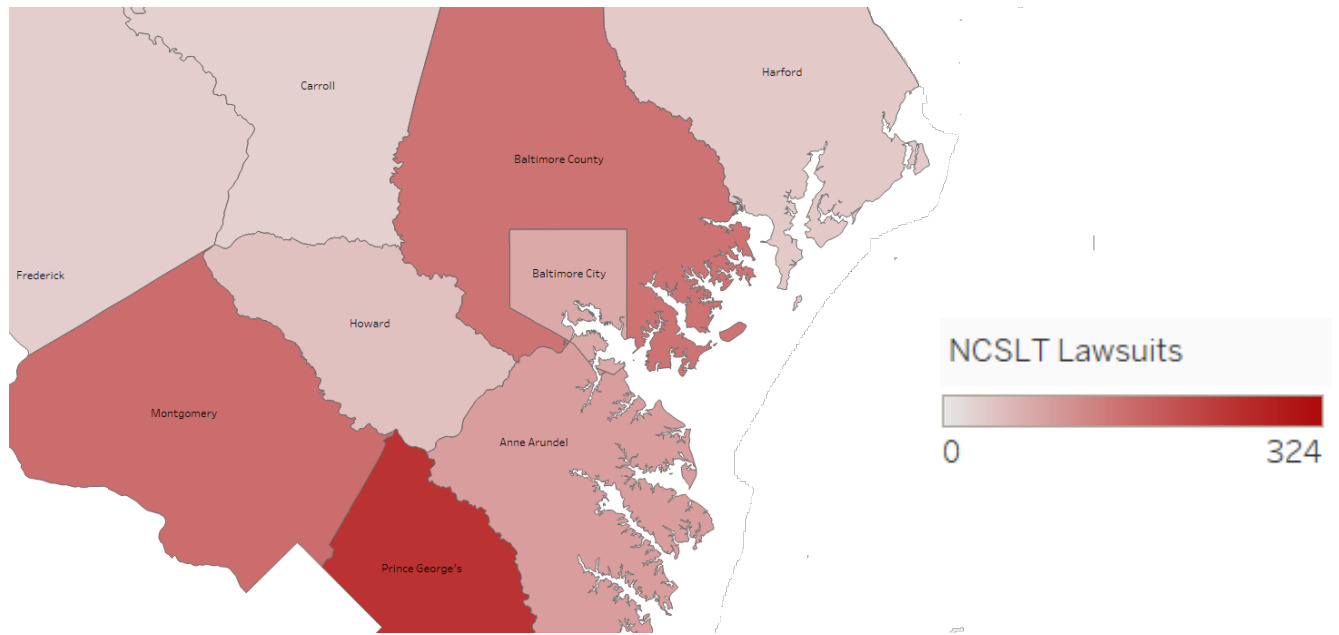
National Collegiate . . . has been pursuing a case about a student loan they said I owe. Over time I have asked them to submit the proof and nothing has been done. Since [that date] they called and harassed me by phone and mail.

...

Maryland borrower pursued by NCSLT

CFPB complaint 3210042

Baltimore Metro Area by County



DC Metro Area by County

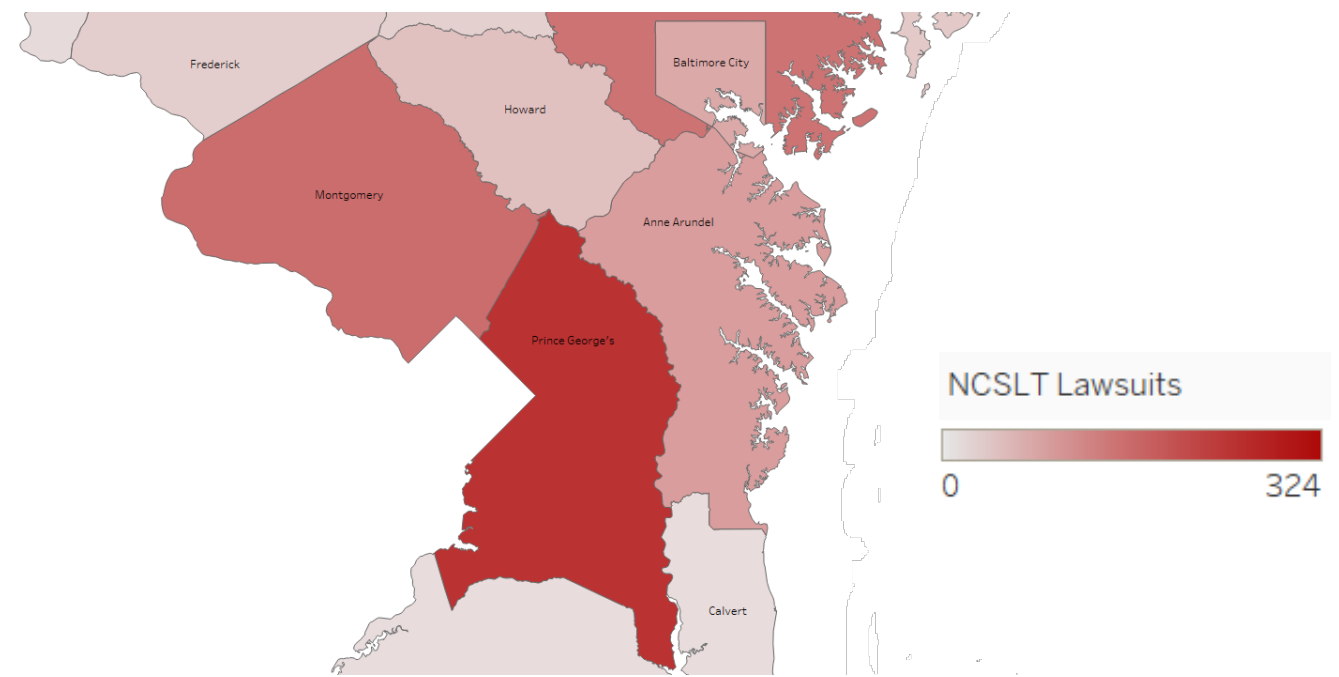


Table 1: Top Five Maryland Counties with Highest Number of NCSLT Lawsuits 2015 - 2021

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.

SB 732 Senator Watson FWA.pdf

Uploaded by: Ron Watson

Position: FWA

RON WATSON, PH.D
Legislative District 23
Prince George's County

Judicial Proceedings Committee



James Senate Office Building
11 Bladen Street, Room 121
Annapolis, Maryland 21401
301-858-3631 · 410-841-3631
800-492-7122 Ext. 3631
Fax 301-858-3174 · 410-841-3174
Ron.Watson@senate.state.md.us

The Senate of Maryland

ANNAPOLIS, MARYLAND 21401

March 9, 2022

Chair Smith, Vice-Chair Waldstreicher, and members of the Judicial Proceedings Committee:

Thank you for the opportunity to present this legislation before you today.

SB 732 bans the use of mass-produced documentation, also known as “robo-signing,” by requiring collectors to prove private student loan debts are valid when attempting to collect. This bill places the burden on creditors to certify that old debts are not barred by state statutes of limitations, preventing creditors from obtaining judgements against borrowers for time-barred debts. This protection will prevent creditors from obtaining court orders to garnish wages and seize assets to repay defaulted student loans that creditors cannot prove borrowers owe.

As Marylanders continue to feel the economic pain of COVID-19, one group of economically vulnerable constituents has been left out of conversations regarding relief: private student loan borrowers. These borrowers were excluded from all federal relief packages and collectively owe more than \$100 billion nationally, often at higher interest rates and with less protections than borrowers with only federal student loans.

Private student loans are often a last resort for students who have taken the maximum amount for federal loans. Because many private loans require cosigners, the financial repercussions can span generations.

Lack of oversight of private loan creditors has led to disastrous consequences for these borrowers. Similar to the subprime mortgage crisis from several years ago, economically vulnerable borrowers across the higher education landscape were targeted by predatory private lenders a decade ago and continue to struggle and fall behind on these debts. For more than two years, law enforcement officials have brought significant federal and state litigation alleging predatory lending by the largest private education lender and alleging abusive collections, robo-signing, and illegal pursuit of invalid debts by collectors, investors, and servicers. These cases expose significant, systemic flaws in the way the judicial system approaches private education loan debts, particularly in terms of wage garnishment.

Private student loan creditors are seeking judgments every day to collect on loans that they cannot prove they own. Because they lack proper documentation, these companies are lying to both borrowers and the courts, including the Maryland courts, about their legal ability to sue borrowers and obtain court orders to garnish borrowers' wages.

The National Collegiate Student Loan Trusts (NCSLT), just one of these creditors, owned more than 15,000 separate loans owed by Maryland borrowers, totaling more than \$190 million. The federal government has ordered NCSLT to pay over \$20 million in penalties for its deceptive acts in the past.

An analysis of court filings in Maryland by the Student Borrower Protection Center shows that just this one creditor, NCSLT, filed 1,334 cases against Maryland borrowers in the past five years alone. These cases disproportionately target communities of color in Maryland. More than half of the lawsuits analyzed are against borrowers in majority-minority zip codes. And 25.9% of all lawsuits analyzed were filed in majority-minority Prince George's County, which as the committee knows well, was the center of Maryland's foreclosure crisis a decade ago.

In addition to people of color, seniors are also disproportionately impacted by this abuse. Because borrowers of private student loans almost always require a cosigner, parents and grandparents are more frequently defaulting on private student loan debt. According to AARP, 37 percent of the student loan borrowers over 65 are in default. Not only is the potential to retire put at risk, many of these seniors are already on a fixed income and have benefits highly susceptible to wage garnishment. Since 2005, the amount of seniors whose benefits were garnished as the result of a defaulted student loan has quadrupled.

SB 732 prevents these abuses from happening in Maryland by requiring creditors to provide specific evidence in wage garnishment lawsuits that proves that the loan is in default and that they are the creditor owed the loan. This will ensure that private loan borrowers in Maryland do not fall victim to predatory and unsubstantiated lawsuits.

In closing, accompanying this testimony is an amendment that matches the Senate version of this bill to its House cross-file. I also have panelists in attendance with me who are testifying in favor of this bill and are willing to answer any additional questions you may have.

For these reasons, I respectfully ask for a favorable report on SB 732.

Sincerely,

A handwritten signature in blue ink that reads "Ron L. Watson". The signature is written in a cursive, flowing style.

Senator Ron Watson

Legislative District 23

SB0884-633624-01.pdf

Uploaded by: Ron Watson

Position: FWA



SB0884/633624/1

AMENDMENTS
PREPARED
BY THE
DEPT. OF LEGISLATIVE
SERVICES

07 MAR 22
15:58:37

BY: Senator Watson
(To be offered in the Judicial Proceedings Committee)

AMENDMENTS TO SENATE BILL 884
(First Reading File Bill)

On page 2, in line 7, after “(b)” insert “(1)”; in the same line, after “**WHOSE**” insert “INDIVIDUAL”; and after line 8, insert:

“(2) TO DETERMINE THE INCOME OF AN OBLIGOR FOR THE PURPOSES OF THIS SECTION, THE ADMINISTRATION MAY CONSIDER:

(I) THE INCOME OF AN OBLIGOR AT THE TIME A CHILD SUPPORT ORDER IS ENTERED;

(II) INCOME INFORMATION PROVIDED BY THE OBLIGOR;

(III) INCOME INFORMATION PROVIDED BY THE COMPTROLLER; AND

(IV) INCOME INFORMATION PROVIDED BY AN EMPLOYER OF THE OBLIGOR.”.

On page 4, in line 17, after “Transportation” insert “, THE COMPTROLLER,”.

On page 5, in line 12, strike “2022” and substitute “2023”.