



## CFPB v National Collegiate Student Loan Trusts

May 2019

### Primary SFIG Contacts

Michael Bright, President & CEO, 202.524.6301  
Kristi Leo, Head of Investor Policy, 917.415.8999  
Leslie Sack, Head of Government Relations,  
202.524.6304



## CFPB Suing Securitization Trusts, and thereby the underlying Investors, for Alleged Wrongdoings of a Third Party

**In Sept. 2017, the CFPB filed a lawsuit, along with a proposed consent order, against 15 securitization trusts that would abrogate the Trusts' governing documents and seeks to penalize the Trusts Investors for alleged actions of the servicer(s)**

- National Collegiate Student Loan Trusts are 15 separate student loan securitization trusts that hold more than **800,000 private student loans, totaling \$12 billion**
- **Trusts were created to provide financing for student loans** via selling notes to investors secured by the loans

## A Primary Industry Concern is the Inviolability of Contractual Agreements

**The CFPB's proposed consent order effectively rewrites the contractual provisions that parties agreed to**

- The Proposed Consent Judgment appears to have been negotiated without the involvement of any of the other parties to the securitization transactions including the Trusts, the Investors/Noteholders, the Indenture Trustees, etc.
  - All of whom would be materially adversely impacted by the entry of the Proposed Consent Judgment because their contractual rights and obligations would be altered
  - As evidence, since the proposed consent judgment was filed various transactions parties have filed motions seeking to intervene in the case, including: U.S. Bank, Transworld, Ambac, GSS, Wilmington Trust Company, PHEAA and a various institutional investors/noteholders

## Securitization Trusts are not "Covered Persons" within the Consumer Financial Protection Act

**The Bureau has mistakenly treated the Trusts as Covered Persons and Debt Collectors**

- Congress carefully crafted the supervisory and enforcement authority of the Bureau to "Covered Persons" who have violated Federal Consumer Financial Protection laws
- Inaccurately treating Securitization Trusts as such has severe adverse public policy consequences

## Negative Precedent in RMBS Market

**One of the many-cited contributors to the failure of the private label RMBS market to rebound from its crisis-driven lows is contractual ambiguity, concern around the inviolability of the contract and a general lack of trust that trust cash flows will be allocated as dictated by the transaction documents**

- We would counsel against running the risk that a similar lack of confidence might extend to all other asset classes (credit cards, student loans, auto, small business, etc.)
- While neither appropriate nor acceptable, the extra-legal re-ordering of legacy RMBS contracts, in retrospect, can at least be attributed to a crisis situation (i.e. The Great Financial Crisis)
  - That is not the case in NCSLT
  - Accordingly, investors' rational expectation will be that the bureau believes it appropriate to use trust assets to pursue policy goals; doing so will minimize, if not eliminate, the potentially vast ABS balance sheet from the economy
  - This will both artificially limit growth and also increase the cost of consumer credit

## The CFPB'S Treatment of the Trusts in the Proposed Consent Order would likely Destabilize Market Expectations

**The resulting uncertainty will undoubtedly lead to a reduction in the availability of and/or an increase in the**

**cost of credit for individuals and businesses across the United States**

- All market participants and especially investors need to trust that well-meaning government actors and regulators will not abrogate their contractual rights and hold them responsible for the alleged acts of unrelated third parties
- If market participants cannot trust that transaction documents, it calls into question the validity of those contracts and, consequently, the existence of the market itself