

Key Points Summary:

SFA Urges CFPB to Consider Alternative Approach in National Collegiate Master Student Loan Trusts Case

Main Takeaway

In a May 2019 letter to the Consumer Financial Protection Bureau (CFPB), SFA raised issues with the construct of the bureau's proposed consent judgement against the National Collegiate Master Student Loan Trusts. The judgement, SFA stated, would unfairly penalize investors in the capital markets — including insurance companies, pension funds, and retirement plans — for the alleged actions of third-party servicers.

Background

In 2017, the Consumer Financial Protection Bureau (CFPB) **took action against fifteen National Collegiate Student Loan Trusts (NCSLT)**, and therefore the underlying investors of the trusts, for illegally filing debt collection lawsuits against consumers with student loans. The complaint **alleged that the trusts were in violation of the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act** when they pursued collection lawsuits for debts they could not prove were owed and filed affidavits that were false and misleading.

The lawsuit included a **proposed consent judgment** containing injunctive provisions that would **abrogate and rewrite the trusts' governing contracts**, which the parties previously agreed to, and **penalize the underlying investors** (including pension funds and retirement plans), **who are not accused of any wrongdoing**.

SFA's Key Points

- SFA fully supports CFPB's goal of protecting consumers from illegal or deceptive business practices. But the proposed consent judgment goes far afield of that goal and would negatively impact the healthy functioning of the securitization markets.
- The proposed consent judgment contains injunctive provisions that would abrogate and rewrite the National Collegiate Master Student Loans Trusts' governing contracts and penalize investors for the alleged actions of the third-party servicers.
- SFA members agree that market participants must be able to rely on agreed-upon transaction documents without the risk of a regulator or government official stepping in, altering the contract terms, and holding them responsible for the actions of an unrelated third party.
- Altering the transaction parties' settled contractual rights and obligations will destabilize market expectations and introduce significant uncertainty into the market. This uncertainty will likely result in securitization investors requiring higher risk premiums or reducing their participation in the securitization market, leading to higher borrowing costs and lower credit availability for the very consumers the CFPB is seeking to protect.
- The end investors in these plans are U.S. consumers and retirees who have invested their savings in these funds. The CFPB has a duty to protect them, as well as student loan borrowers.
- The CFPB has attempted to enter into this proposed consent judgment without the involvement of the broad set of transaction parties who have interests, rights and obligations that would be modified by the order.
- SFA urges CFPB leaders to consider strongly an alternative approach that would address consumer protection concerns while also safeguarding the legal and contractual foundation of a capital market that provides credit for consumers and businesses and supports the real economy in a responsible manner.

[Read SFA's letter and amicus brief.](#)