



# CFPB v. National Collegiate Student Loan Trusts

Litigation has the Potential to Destabilize  
the Securitization Market

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## The Consumer Financial Protection Bureau is Seeking to Hold Innocent Investors in Securitization Trusts Responsible for the Alleged Wrongdoings of a Third Party

In 2017, the CFPB filed a lawsuit against 15 securitization trusts that would abrogate their governing documents and penalize investors for alleged actions of the servicer(s).

- National Collegiate Student Loan Trusts (NCSLT) are 15 separate student loan securitization trusts that originally held more than 800,000 private student loans, totaling \$12 billion.
- The trusts were created to provide financing for student loans by selling notes to investors secured by the loans.

On March 19, 2024, the U.S. Third Circuit Court of Appeals ruled that the trusts are “covered persons” under the Consumer Financial Protection Act and therefore are subject to CFPB enforcement authority.

On May 6, 2024, the CFPB filed a second complaint against the Trusts and their servicer, the Pennsylvania Higher Education Assistance Agency (PHEAA). Concurrently, there was a proposed settlement of the complaint, which would require the NCSLT trusts and PHEAA to pay \$400,000 and \$1.75 million in penalties, respectively, and be collectively responsible for nearly \$3 million in redress to harmed borrowers.

**Subjecting passive securitization trusts to liability for the actions of third parties could have significant negative consequences for consumer lending.**

## Underlying Investors in Securitization Trusts Should Not Be Held Liable for Actions of Third Parties

- SFA fully supports the importance of protecting consumers from unscrupulous practices and addressing unfair and deceptive acts by holding accountable the bad actor, not the investor.
  - The interests of securitization investors are aligned with strong consumer protections.
- Pursuing enforcement action against a trust or its underlying investors does not protect consumers and is improper because trusts and their investors do not engage with consumers.
  - A cooperative relationship between the industry and CFPB to solve problems is a better approach.

## Treating Securitization Trusts as “Covered Persons” could Destabilize the Consumer Finance Market

The CFPB’s assertions and the Third Circuit’s ruling could result in credit becoming more expensive and less available for U.S. consumers.

- All market participants -- and especially innocent investors -- need assurance that government actors will not abrogate their contractual rights and hold them responsible for the acts of unrelated third parties.
- The legal standard argued by the CFPB could materially harm investors with punitive costs and increase the cost of consumer credit.
- Investment grade bond investors do not have the capacity or resources to take on the liability of third parties – certainly not at the same level of risk / return.

### Negative Precedent in the Securitization Market

Certain government actions previously disrupted market expectations in the private-label residential mortgage securities market, pushing liability down to the trusts and investors who have no control over alleged violations of law.

- Specifically, in connection with the government’s 2012 consent judgments involving six of the nation’s largest mortgage servicers, the trusts and investors bore the brunt of the expense, despite having no role in the violations or in negotiating the settlement.

**Following the Third Circuit’s decision, and the CFPB’s most recent enforcement action, we are concerned that a similar extension of liability to investors may occur and extend to all other securitized asset classes, such as credit cards and auto loans.**

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