



**Written Testimony of Winston Berkman-Breen
on behalf of the
Student Borrower Protection Center
at the
Joint Legislative Budget Hearing on Higher Education**

February 7, 2022

Introduction

Thank you for the opportunity to provide testimony today before the Joint Committee.

My name is Winston Berkman-Breen, and I am Policy Counsel and Deputy Advocacy Director for the Student Borrower Protection Center. The SBPC is a national non-profit policy organization committed to ending the student debt crisis. Prior to joining the SBPC, I was the Student Loan Ombudsperson for the State of New York housed in its financial regulator, the Department of Financial Services, where I was also the Director of Consumer Advocacy.

I am here to testify today about two critical opportunities for the Legislature to support New Yorkers and to ensure every student and graduate is set up for success. The first is to complete the work that has already been on related to transcript withholding to end this practice at all institutions in the state. The second is to enact common-sense consumer protections that are targeted to specific and well-documented abuses in the private student loan industry.

Each of these proposals would be accomplished through legislation already pending in the Legislature, discussed in greater detail below. By advancing them, the Legislature will remain a leader in student and borrower protection and will continue to serve as an example for states across the country.

1. By Ending Transcript Withholding, New York Would Set Its Students And Graduates Up For Academic And Professional Success, Rather Than Keeping Them Trapped In A Vicious Catch 22 Cycle Of Debt.

New York is well on its way to ending the harmful practice of transcript withholding in the State. Last year, the Senate passed S5924A, while the Assembly introduced A6938A, both of which would end this practice. Last month, both the State University of New York and the City University of New York announced that each institution has permanently ended its practice of



withholding transcripts from students and graduates who owe account balances.¹ In her 2022 State of the State address, Governor Hochul committed to ending transcript withholding in New York,² and has proposed legislation in her budget that would end the practice at all schools in New York.³ We urge the Legislature to work with Governor Hochul by supporting legislation to end transcript withholding and its unintended harms in New York.

Although transcript withholding—the practice of refusing to give a student or graduate with an account balance access to their transcript—is a common practice nationwide, it has unintended consequences that disproportionately harm low-income students by placing them in a limbo from which they cannot continue their education or professional advancements. Counter-intuitively, it also inhibits students’ ability to pay account balances while suppressing the local economy by preventing students from re-enrolling and graduates from obtaining gainful employment.

New York is already ahead of the curve, but the nation as a whole is coming to terms with the fact that transcript withholding is an outdated practice. As recently as December 2021, U.S. Secretary of Education Miguel Cardona emphasized the detrimental effect of transcript withholding policies on retention and completion.⁴ Secretary Cardona stressed that this practice drives inequitable outcomes and called on schools to re-evaluate these long-standing policies. For this reason, more and more states and schools are eliminating transcript withholding policies. Now is the time for New York to support residents seeking to improve their education and employment opportunities, not to hold them back.

a. Although common, withholding policies are ineffective and harmful to students.

Transcript withholding is a common practice that is coming under new scrutiny. Recent research revealed that so-called institutional debts—debts owed directly to schools, which may result

¹ Press Release, State University of New York, *Governor Hochul Announces SUNY Board Ends Practice of Withholding Transcripts from Students with Outstanding Balances* (Jan. 25, 2022), <https://www.suny.edu/suny-news/press-releases/1-22/1-25-22/transcript-withholding-ends.html>; Press Release, City University of New York, *Governor Hochul Announces CUNY Formally Discontinues Practices of Withholding Transcripts from Students and Grads with Unpaid Balances* (Jan. 31, 2022), <https://www1.cuny.edu/mu/forum/2022/01/31/governor-hochul-announces-cuny-formally-discontinues-practice-of-withholding-transcripts-from-students-and-grads-with-unpaid-balances/>.

² New York Governor Kathy Hochul, *State of the State 2022: a New Era for New York* 82 (January 2022), <https://www.governor.ny.gov/sites/default/files/2022-01/2022StateoftheStateBook.pdf>.

³ Part I, *Education, Labor and Family Assistance Arti. VII Legislation* (FY 2023 New York State Proposed Executive Budget), <https://www.budget.ny.gov/pubs/archive/fy23/ex/artvii/elfa-bill.pdf>.

⁴ Kirk Carapezza, *Education Secretary, college leaders want colleges to stop holding transcripts over unpaid balances*, W.G.B.H. (Dec. 21, 2021), <https://www.wgbh.org/news/education/2021/12/21/education-secretary-college-leaders-want-colleges-to-stop-holding-transcripts-over-unpaid-balances>.



from hidden fees or even parking tickets, in addition to tuition—total \$15 billion nationwide and affect an estimated 6.6 million individuals, but that the amount owed to trigger withholding can be as little as \$25 or less.⁵ According to the researchers who have conducted the only major national study of these institutional debt practices, the average balance owed at community colleges is \$631.47.⁶ Although these balances represent only a fraction of schools’ revenues and operating budgets, for many students, they are insurmountable financial barriers.

Despite its frequent use—the same study found over 90 percent of institutions report using transcript withholding—transcript withholding is an ineffective collection tool. A study on institutional debt collection and transcript withholding in Ohio found that these accounts only yielded \$0.07 for every dollar owed.⁷ Withholding policies are even less cost effective once the facts that it prevents students from re-enrolling—thus reducing future tuition revenue—and graduates from obtaining higher salaries—which they would spend in the local economy—are factored in. This is especially true for community colleges, which stand to benefit from increased enrollment by students seeking to complete their education at a more affordable school, but who may be prevented from doing so by a transcript hold.

Transcript withholding also disproportionately impacts low-income and Black and Latino consumers, in particular college "non-completers" seeking to continue their education but who cannot do so without an official transcript. It places them in a “double-bind”: they cannot afford to pay their account balance because they cannot obtain gainful employment, but they cannot obtain gainful employment until they have completed their education and received their transcript or diploma.

For low-income students, these account balances may result from unknown fees, but are often due to a misalignment between schools’ withdrawal dates and federal financial aid refund deadlines that can result in students’ Pell Grants being recalled by the U.S. Department of Education and a balance suddenly due on students’ accounts. These balances may be a few thousand dollars, for which the student should never have been responsible. We regularly hear stories about students who must take several years off from their education working minimum wage jobs simply to save enough to pay their outstanding balance, receive their transcript, and transfer to a more affordable school where they can complete their education. These lost years help no one, and are deeply harmful to students.

⁵ Julia Karon, James Dean Ward, Katherine Bond Hill & Martin Kurzweil, Ithaka S+R, Solving Stranded Credits (Oct. 5, 2020), <https://sr.ithaka.org/wp-content/uploads/2020/10/SR-Report-Solving-Stranded-Credits-100520.pdf>.

⁶ *Id.* at 12.

⁷ Rebecca Maurer, Withholding Transcripts: Policy, Possibilities, and Legal Recourse 29 (Dec. 2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3288837.



b. Schools and states continue to end their withholding policies.

There is growing national attention to withholding policies as a harmful practice.⁸ During COVID-19, it is particularly disastrous for those seeking to financially recover through education or new employment, but who are unable to obtain an official transcript or diploma to do so. Last year, Bunker Hill Community College of Boston, MA, voluntarily ended its practice of transcript withholding for institutional debt,⁹ and before deciding to permanently end the practice, CUNY announced that it would temporarily suspend transcript withholding at the institution to lighten the burden of students who have been facing hardship during the COVID-19 pandemic.¹⁰ Clearly CUNY determined from its initial announcement that it would not be detrimental to the institution to make its temporary practice permanent.

Some states, including California and Washington, have moved toward banning the practice of transcript withholding altogether.¹¹ In California, schools cannot withhold academic transcripts for any reason.¹² In Washington, where schools may continue to withhold transcripts in limited circumstances, most schools have chosen to completely eliminate the practice, which underscores that it is not an essential or productive means of collecting from students and graduates.¹³

⁸ See, e.g., Kirk Carapezza, *More Than Half Of Public Colleges in Mass. Used COVID Relief Funds To Cover Unpaid Student Bills*, W.G.B.H. (Aug. 19, 2021), <https://www.wgbh.org/news/education/2021/08/19/more-than-half-of-public-colleges-in-mass-used-covid-relief-funds-to-cover-unpaid-student-bills>; Sara Weissman, *The “Human Cost” of Stranded Credits*, Inside Higher Ed (Aug. 20, 2021), <https://www.insidehighered.com/news/2021/08/20/report-stranded-credits-inequitable-impact-students>; Jon Marcus, *States Step in to Stop Colleges Holding Transcripts Ransom for Unpaid Bills*, N.P.R. (April 8, 2021), <https://www.npr.org/2021/04/03/982676353/states-step-in-to-stop-colleges-holding-transcripts-ransom-for-unpaid-bills>.

⁹ Sarah Butrymowicz, *City University of New York reverses its policy on withholding transcripts over unpaid bills*, Hechinger Report (Aug. 13, 2021), <https://hechingerreport.org/city-university-of-new-york-reverses-its-policy-on-withholding-transcripts-over-unpaid-bills/>.

¹⁰ City University of New York, *CUNY Will Stop Long-Held Practice of Holding Transcripts for Students with Outstanding Debt* (Aug. 11, 2021), <https://www1.cuny.edu/mu/forum/2021/08/11/cuny-will-stop-long-held-practice-of-holding-transcripts-for-students-with-outstanding-debt-will-lift-financial-holds-for-students-impacted-by-the-pandemic/>.

¹¹ See, e.g., Am. Assoc. Of Collegiate Registrars and Admissions Officers, *California Transcript Legislation*, <https://www.aacrao.org/advocacy/issues/california-transcript-legislation>.

¹² Cal. Civ. Code. 1788.90-93; Cal. Ed. Code 66022.

¹³ See, e.g., Washington State Board Community and Technical Colleges, “Transcript Withholding and Limiting the Practice of Registration Holds as Debt Collection Practices,” (Dec. 1, 2020) (discussing a system-wide policy for all 34 colleges to release transcripts upon request regardless of account balance or debt type).



c. Schools would not be prohibited from collecting debts owed by students and graduates.

Despite concerns raised by some institutions, legislation to end transcript withholding would not forgive any debts owed to schools or prevent schools from communicating with students or graduates about these debts or sending accounts to collection, as they currently do. The proposals would merely prohibit schools from withholding transcripts or diplomas as a means of compelling payments because of the well-documented and harmful effect this practice has on students seeking to complete their education or obtain employment.

When a student or graduate seeks a transcript or diploma to complete their degree at another school or to secure employment upon graduating, withholding the document effectively places the student in limbo: they are unable to complete their degree and are unable to obtain the gainful employment needed to repay the account balance.

Rather than withholding documentation of students' academic credits, schools can continue their practice of seeking voluntary payment from students and graduates and sending accounts to collection, if necessary. It is important for the Joint Committee to understand that any student who could pay for a withheld document would also be able to pay upon notice that the account is being sent to collection, whereas any student who cannot afford to settle their account wouldn't be able to do so when requesting documents anyway, and therefore would ultimately find their account with collections in any event. Therefore, the schools' ability to collect via collection is no different than its ability to collect using withholding, except that withholding has the perverse effect of putting low-income students and graduates in a worse-off position. It is worth noting, too, that document withholding is a passive practice: it is only triggered when students proactively approach the school.

These policies also disproportionately affect low-income students and graduates. When the outcome would be the same, there is no need to punish lower-income students by withholding their transcript in addition to sending them to collection. Indeed, nothing in the proposed legislation, by the Governor or Legislature, would prevent a school from providing a transcript or diploma and simultaneously informing the former student that if they do not pay their account, it will be sent to collection. Permitting the student or graduate to obtain these documents would actually increase low-income students' and graduates' ability to repay their debts by enabling them to complete their education and find employment.

New York has an opportunity to join other states across the country in banning transcript withholding at academic institutions, allowing students to access documentation of their earned credits and move forward with their educations and careers. The bills proposed by the Governor



and by the Senate and Assembly would build on action in California and Washington, which have passed legislation that permanently prohibits transcript withholding, and the recent announcements from SUNY and CUNY. Similar bills are pending or under consideration in other states, including in Colorado and Virginia.¹⁴ There is a growing understanding that this practice is as harmful to students as it is ineffective for schools' budgets, and that it should be ended.

We urge the Joint Committee to support these proposals so that current and future students have the ability to continue their education and secure the employment that they had hoped a higher education would enable them to find at the outset of their college experience.

2. The Legislature Must Act To Address The Known Abuses Taking Place In The Private Student Lending And Debt Collection Industries.

In 2019, New York took the critically important step of passing a Student Loan Borrower Bill of Rights.¹⁵ Now enacted, New York borrowers know that their state has their back. Student loan companies can no longer rip off citizens of this state without repercussions. Borrowers have a place to turn within their own state government for essential information and advice. And most importantly, because of the actions taken by New York policymakers, borrowers in this state have the power to pursue justice when they have been wronged by predatory servicing practices.

However the work is not yet done. Although there is great momentum in addressing improper and predatory servicing, and the inadequacies of the federal student loan system more generally, the failings of the private student loan market remain mostly unaddressed.

Today, more than 700,000 New Yorkers owe \$10.6 billion in private student loans—loans made by banks and other private lenders without the involvement of the federal government. These loans are often peddled by predatory for-profit college operators and small lenders that operate in the shadows—using deceptive bait-and-switch tactics that leave borrowers with little to no safeguards when things go wrong. And unfortunately, things often do go wrong.

a. Background on the private student loan market.

Across America, student loan borrowers owe nearly \$130 billion dollars in private student loans—loans made by banks and other private lenders without the involvement of the federal

¹⁴ See, e.g., Megan Pauly, *A Virginia legislator wants to ban a practice holding back students with college debt*, V.P.M. (Jan. 5, 2022), <https://vpm.org/news/articles/28616/a-virginia-legislator-wants-to-ban-a-practice-holding-back-students-with>.

¹⁵ See N.Y. Banking L. Art. 14-A.



government. Private student loans are typically riskier for borrowers than federal student loans. They often carry less favorable terms and contain fewer safeguards when borrowers face financial distress. This is particularly concerning given the prevalence of predatory loans made by failed for-profit college operators, big banks, and many unscrupulous lenders. These loans are then often sold and resold using practices that mirror the worst aspects of the crisis-era mortgage market, and frequently result in robo-signing debt collection actions.

The private student loan market has grown explosively since the recovery from the 2008 Financial Crisis, outpacing the rate of market growth in all other consumer credit markets; while private student loans have long been considered a small part of the overall student loan market, they are on track to play a more prominent role in higher education finance.

Older consumers are the fastest growing segment of student loan borrowers, in part due to the extraordinarily high rates of cosigners on private student loans.¹⁶ As of 2011, over 90 percent of undergraduate private student loans were cosigned.¹⁷ Nationwide, there have been thousands of complaints to state and federal regulators from cosigners who are unable to access documentation on their cosigned loan, receive accurate information on loan payment processing or notice of loan delinquency, or were denied their right to a cosigner release. According to a CFPB report, student loan servicers rejected 90 percent of borrowers who applied for cosigner release.¹⁸ Through stringent payment requirements, limited notice of eligibility, and unscrupulous company practices, private student loan servicers created insurmountable challenges for borrowers seeking cosigner release.¹⁹ Several state Attorneys General have sued over these provisions, and are just now beginning to win on the merits.²⁰

It is also extremely well documented that private student loan creditors clog the state court systems with collection lawsuits for debts that they do not actually own and cannot prove,

¹⁶ See, generally, Report, Consumer Financial Protection Bureau, *Private Student Loans* (Aug. 29, 2012), https://files.consumerfinance.gov/f/201207_cfpb_Reports_Private-Student-Loans.pdf.

¹⁷ *Id.* at 3.

¹⁸ Report, Consumer Financial Protection Bureau, *Mid-year update on student loan complaints* 15 (June 2015), https://files.consumerfinance.gov/f/201506_cfpb_mid-year-update-on-student-loan-complaints.pdf.

¹⁹ See *id.* at 16.

²⁰ See, e.g., Press Release, Washington State Office of the Attorney General, *Judge rules national student loan servicer Navient broke the law in servicing student loan debt* (Mar. 5, 2021), <https://www.atg.wa.gov/news/news-releases/ag-ferguson-judge-rules-national-student-loan-servicer-navient-broke-law>.



instead relying on high rates of default judgments against low-income borrowers who cannot represent themselves in court.²¹ This phenomenon has been widely reported.²²

b. Private student loan borrowers in New York are suffering from abusive lenders and predatory debt collectors.

Unfortunately these harmful national trends are present in New York, too. For example:

- Consider the borrower in New York City, who cosigned on a loan but the lender subsequently denied her access to account information. As a result, she was unable to see the loan become delinquent, and only learned of the account status after it damaged her credit.
- Or consider the borrower from upstate New York who lost his job due to COVID. Despite his lender advertising relief for struggling borrowers, he could not get a straight answer about his eligibility. Despite a customer service representative telling him he was enrolled in a modification, the lender auto-debited the full payment amount from his bank account.

Sadly, these are only two of countless examples of private student loan borrowers struggling all across the state. Nearly a thousand New Yorkers have filed complaints with the Consumer Financial Protection Bureau related to their private student loans.²³

The same is true with predatory debt collection. Last year, the Student Borrower Protection Center, in partnership with Young Invincibles, the Community Service Society, and New Yorkers for Responsible Lending, published a report on predatory private student loan debt collection in New York.²⁴ The report revealed that a handful of companies—Navient and the National Collegiate Student Loan Trusts (NCSLT), to name a few—account for the majority of filings in New York to collect on a private student loan. NCSLT alone had filed over 2,4000 cases against New Yorkers in the six year review period.

²¹ PEW Charitable Trusts, *How Debt Collectors are Transforming the Business of State Courts* (May 6, 2020), <https://www.pewtrusts.org/en/research-and-analysis/reports/2020/05/how-debt-collectors-are-transforming-the-business-of-state-courts>.

²² Stacy Cowley and Jessica Silver-Greenberg, *Behind the Lucrative Assembly Line of Student Debt Lawsuits*, N.Y. Times (Nov. 13, 2017), <https://www.nytimes.com/2017/11/13/business/dealbook/student-debt-lawsuits.html>.

²³ Consumer Financial Protection Bureau, *Consumer Complaint Database* (last accessed Feb. 3, 2022), https://www.consumerfinance.gov/data-research/consumer-complaints/search/?date_received_max=2022-02-03&page=1&product=Student%20loan%E2%80%A2Private%20student%20loan&searchField=all&size=25&sort=created_date_desc&state=NY&tab=List (filter by New York and Private Student Loan).

²⁴ Student Borrower Protection Center, Young Invincibles, the Community Service Society, and New Yorkers for Responsible Lending, *Dubious Debts: Ending an era of illegal private student loan debt collection practices* (March 2021), https://protectborrowers.org/wp-content/uploads/2021/03/Dubious-Debts_2021.pdf.



The report also found that these filings had a disparate impact on communities of color. For example, although New York has only three counties that are majority non-white—Kings, Queens, and Bronx—those three counties account for over 44 percent of the NCSLT lawsuits filed in the state. Overall, the number of NCSLT lawsuits per capita in New York is 2.6 times higher in majority-minority counties than in majority white counties.

A copy of the report, *Dubious Debts*, is appended to this testimony.

c. Passing S5136A/A6266A would address these known abuses and bring much-needed relief to private student loan borrowers in New York.

Now, as the economy grapples with the fallout of the coronavirus pandemic, we are already seeing predatory lenders pull from the same playbook they used in 2008—targeting vulnerable students into taking out loans designed to fail. And unfortunately, these borrowers have been left out of any relief from Washington and still desperately need help.

S.5136A/A.6226A would fill critical gaps in consumer protection law. It would amend both the General Business Law and the Civil Practice Law and Rules to respond directly to known industry practices and consumer harms. This legislation will end the worst abuses in the private student loan market. For example:

- **Provide protections for cosigners.** Older borrowers have been repeatedly denied key protections like disability discharge and access to payment relief when living on a fixed income. This legislation sets new standards for the servicing of cosigned private student loans by mandating a process for disability discharge, requiring servicers to apply payments from cosigners only to the cosigned loans, and establishing new standards for customer service representatives to provide assistance to older student loan borrowers.
- **End technical defaults.** This bill prohibits lenders from considering a private student loan as defaulted and accelerating the entire amount for any reason other than non-payment. So long as the borrower is current, the loan cannot be treated as defaulted.
- **Address known robo-signing practices in collection.** This bill requires creditors to possess and include certain information in its initial debt collection communications with consumers. The required information—e.g., name of original creditor, chain of title, and payment history—are already necessary to prove a claim in court, but in the instance of a default judgment, are currently not required. The bill therefore also requires creditors to affirm possession of such documents when initiating a lawsuit and to file them when seeking a judgment, and requires such a filing before the entry of a judgment.



These protections are enforceable by the Office of the Attorney General, District Attorneys, the Department of Financial Services, and individual borrowers who have been harmed. Substantially identical legislation has already passed in California, Colorado, Maine, and Connecticut, and is pending in other states.

Now is the time for the State to act. Households are losing numerous other protections and benefits that were critical throughout the pandemic, such as the eviction moratorium. Now is the time to put basic but important protections in place for private student loan borrowers. We urge the Legislature to champion S.5136A/A.6226A.

Conclusion

In conclusion, the Legislature has the opportunity to address two known sets of practices that impede New Yorkers from completing their educations and prospering in the workforce and economy. Taking the final steps to end transcript withholding in the state will set New Yorkers up for success, rather than keeping them in limbo. Addressing the well-documented abuses in the private student loan industry will ensure that low-income New Yorkers receive similar protections for their private student loans as they do for their federal student loans, and that they are not improperly and abusively dragged through the court system.

Now is the time to act, as households across the State work to maintain financial security. For many that means returning to school or starting a new job, for which they will need their transcript. For many others, it will mean carefully balancing their household finances, and praying that they won't experience an unplanned financial shock such as being hauled into court needlessly. By supporting these policies, the Legislature can support New Yorkers.

Thank you. I 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.



STUDENT BORROWER
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APPENDIX A

Dubious Debts:
Ending an era of illegal private student loan debt collection
practices

March 2021



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Dubious Debts

**Ending an era of illegal private student loan
debt collection practices**

March 2021

Executive Summary

- The following investigation exposed the predatory practices rampant within the debt collection of private student loans in New York. More than a decade ago, in the run up to the Great Recession, the subprime lending practices driving the mortgage crisis were also occurring in the private student loan market, with lenders pushing predatory loans onto borrowers they knew were ill-equipped to repay. Predictably, hundreds of thousands of borrowers defaulted on these loans in the years that followed, triggering a cycle of debt collection, damaged credit, and litigation. To make matters worse, creditors and debt collectors of these loans, like the National Collegiate Student Loan Trusts, lost many of the documents proving ownership of these loans and, in many cases, lied to courts across the country when collecting debts creditors could not prove they owed.
- These predatory practices have long harmed New Yorkers but have been further exacerbated during the coronavirus pandemic. As COVID-19 cases and subsequent increases in unemployment badly damaged New York, private student loan debt collectors have continued to pursue judgments against New Yorkers in courts across the state. These court filings ended temporarily only when courts closed, and cases spiked when courts reopened, continuing to grow in number even as the pandemic worsened since October. Since the beginning of the COVID-19 pandemic, student loan creditors have filed at least 55 debt collection lawsuits in New York.
- Court filings show that predatory collection tactics, including abuse of the courts, are widespread in the private student loan industry. 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, Jefferson Capital, Arrowood Indemnity, Student Loan Solutions, and Turnstile Capital Management.
- The following investigation exposes the practices of NCSLT as a case study—illustrating the abuse of New York courts by this large creditor and documenting the lasting effects of these abuses on New York families. Across all New York counties, NCSLT has filed over 2,400 cases against New York borrowers in the past six years alone.
- Through a review of SEC filings and court filings from January 2015 through December 2020, the SBPC found a disparate impact of these practices on New York’s communities of color. For instance, the investigation found that though New York has only three counties with populations that are majority

non-white (Kings, Queens, and Bronx), those three counties account for over 44 percent of NCSLT lawsuits filed in the state. Overall, the number of NCSLT lawsuits per capita in New York state is 2.6 times higher in majority-minority counties than it is in majority white ones.

- 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.

Introduction to Predatory Creditors and Debt Collectors in New York

Today, borrowers in courtrooms across the country are being sued for faulty or unsubstantiated private student loan debt. Predatory creditors are abusing state court systems and intimidating people to pay debts they do not owe.¹

In fact, private student loan creditors have sued more than 100,000 student loan borrowers in courtrooms across the country over allegedly unpaid student loan debts.² However, these lawsuits often lack evidence or documentation proving that the creditors have a legal right to collect on these debts.³ 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.⁴ 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.⁵ These borrowers may be unaware that debt collectors do not have proper documentation and overwhelmed at the prospect of being dragged into court. Since the outbreak of COVID-19, this prospect has

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 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.").

³ See, e.g., Julia Barnard, Kiran Sidhu, Peter Smith & Lisa Stifler, *Court System Overload: The State of Debt Collection in California after the Fair Debt Buyer Protection Act*, Ctr. for Responsible Lending (Oct. 2020), <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-california-debt-oct2020.pdf>.

⁴ 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>.

⁵ *Id.* ("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.").

grown only more daunting. In many cases, these lawsuits happen because creditors may not be forced to provide loan ownership documentation to the courts when they bring a collection lawsuit. This 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.⁶ 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 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."⁷

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.⁸ 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

⁶ 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-cycle-of-boom-and-bust-in-private-student-loan-market/>.

⁷ Complaint at 26, Illinois v. Navient Corp. (Jan. 18, 2017) (No. 2017CH00761), http://www.illinoisattorneygeneral.gov/pressroom/2017_01/NavientFileComplaint11817.pdf.

⁸ 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/>.

Case Study: NCSLT in New York

Many bad actors plague the student loan debt collection system.⁹ 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,¹⁰ Jefferson Capital,¹¹ Arrowood Indemnity,¹² Student Loan Solutions,¹³ and Turnstile Capital Management.¹⁴

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,¹⁵ 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 New York 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.

⁹ 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>.

¹⁰ See Complaint, *Illinois v. Navient Corp.*, *supra* note 7 ("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.").

¹¹ 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.").

¹² 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>.

¹³ See, e.g., Complaint, *Shadrin et. al. v. Student Loan Solutions, LLC et. al.* (Dec. 17, 2020) (No. C-02-cv-20-002123) (alleging a violation of the statute of limitations applicable to consumer debt collection).

¹⁴ 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>.

¹⁵ 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>.

In the years prior to the 2008 financial crisis, Wall Street packaged into trusts more than \$12 billion of largely subprime private student loans.¹⁶ Many of these risky loans were made to students at predatory for-profit colleges across the country.¹⁷ These loans were made by banks, including US Bank, Bank of America, JPMorgan Chase, and Citizens Bank.¹⁸ 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,”¹⁹ 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.²⁰ This includes embattled student loan giant the Pennsylvania Higher Education

¹⁶ See Cowley & Silver-Greenberg, *supra* note 4.

¹⁷ 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 attorney’s 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).

¹⁸ See Cowley & Silver-Greenberg, *supra* note 4.

¹⁹ 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>.

²⁰ 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>.

Assistance Agency, which remains responsible for maintaining loan documents and account records for NCSLT.²¹

In order to continue collecting on the debt, NCSLT lied to courts across the country in thousands of lawsuits²² and used mass-produced documentation, also known as robo-signing,²³ in tens of thousands of other cases to drag borrowers into court for debts NCSLT could not prove the borrowers owed.²⁴ 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.²⁵ 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.*²⁶

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.²⁷ Court filings reveal that various parties

²¹ *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.

²² See Cowley & Silver-Greenberg, *supra* note 4. See also, Complaint at 2, *Consumer Fin. Prot. Bureau v. The Nat' Collegiate Master Student Loan Trust*, *supra* note 2 ("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.").

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

²⁴ See Cowley & Silver-Greenberg, *supra* note 4.

²⁵ *National Collegiate's Audit of P.H.E.A.A.*, *supra* note 20.

²⁶ Complaint at 2-3, *Consumer Fin. Prot. Bureau v. The Nat'l Collegiate Master Student Loan Trust* *supra* note 2.

²⁷ 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/>.

purporting to speak on behalf of NCSLT blocked the settlement between the government and the trusts in 2020 and this litigation will continue into 2021.²⁸ As litigation related to this and other public enforcement actions continues, NCSLT's problems persist to this day.²⁹

Impact of COVID-19

The onset of the coronavirus pandemic has only exacerbated the crisis for those with private student loan debt. In the months of February to April, New York suffered through higher declines in employment when compared to the rest of the country. New York State saw a loss of more than 1.9 million jobs in March and April.³⁰ Any gains seen over the subsequent months ended in October, as New York's jobs total remained nearly 1.1 million below February levels amid a new spike in COVID-19 cases.³¹

Despite the fact that New Yorkers have struggled with unemployment and the public health effects of the pandemic since March 2020, private student loan borrowers continue to have little recourse. While the federal government has suspended interest and payments on federal student loans since March 2020 for approximately 41 million borrowers, private loans are not included in these protections.³² And even those with jobs may be subject to wage garnishment if they cannot afford to make payments due to economic fallout caused by the pandemic.³³

Even though coronavirus cases and subsequent increases in unemployment badly damaged New York, private student loan debt collectors have continued to pursue judgments against New Yorkers in courts across the state. After courts reopened in the summer, there was a spike in debt collection lawsuits which sustained even when

²⁸ 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>.

²⁹ 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.

³⁰ Off. of the N.Y. State Comptroller, *New York's Economy and Finances in the COVID-19 Era* (Dec. 2, 2020), <https://www.osc.state.ny.us/reports/covid-19-december-2-2020>.

³¹ *Id.*

³² Annie Nova, *For People with Private Student Loans, Little Relief Amid the Pandemic*, CNBC (May 2, 2020), <https://www.cnbc.com/2020/05/01/the-cares-act-delivered-no-relief-to-those-with-private-student-loans.html>.

³³ N.Y. C.P.L.R. Law § 5231 (2021).

COVID-19 cases and unemployment numbers rose once again in the fall and skyrocketed in November and December 2020.³⁴ At the same time, 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:

*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.*³⁵

Since the first period of the pandemic, including when courts were closed, the weekly rate of just one debt collector's case filings has increased by almost 4 times. When New York courts reopened in July, COVID and its economic fallout were still getting worse.³⁶ But NCSLT quickly began pursuing lawsuits against New Yorkers. Now, NCSLT continues to drag New York borrowers into court in the middle of a global pandemic that has caused the most devastating recession since the Great Depression—for debts it may not be able to prove borrowers owe.³⁷

³⁴ Danielle Douglas Gabriel, *Student loan companies return to court to collect on private education debt*, Washington Post (January 21, 2021), <https://www.washingtonpost.com/education/2021/01/21/private-student-debt-collection/>.

³⁵ Navient, Covid-19 Support Center (Dec. 7, 2020), <https://perma.cc/XD2V-HDHE> (last accessed Dec. 17, 2020).

³⁶ Ctrs. for Disease Control, United States COVID-19 Cases and Deaths by State over Time, <https://data.cdc.gov/Case-Surveillance/United-States-COVID-19-Cases-and-Deaths-by-State-o/9mfq-cb36> (last accessed Feb. 5, 2021).

³⁷ Fed. Rsv. Bank of St. Louis, *Initial Claims in New York*, <https://fred.stlouisfed.org/series/NYICLAIMS> [<https://perma.cc/7FWB-AEKA>] (last accessed Feb. 5, 2021).

Figure 1: COVID cases and NCSLT lawsuits in New York

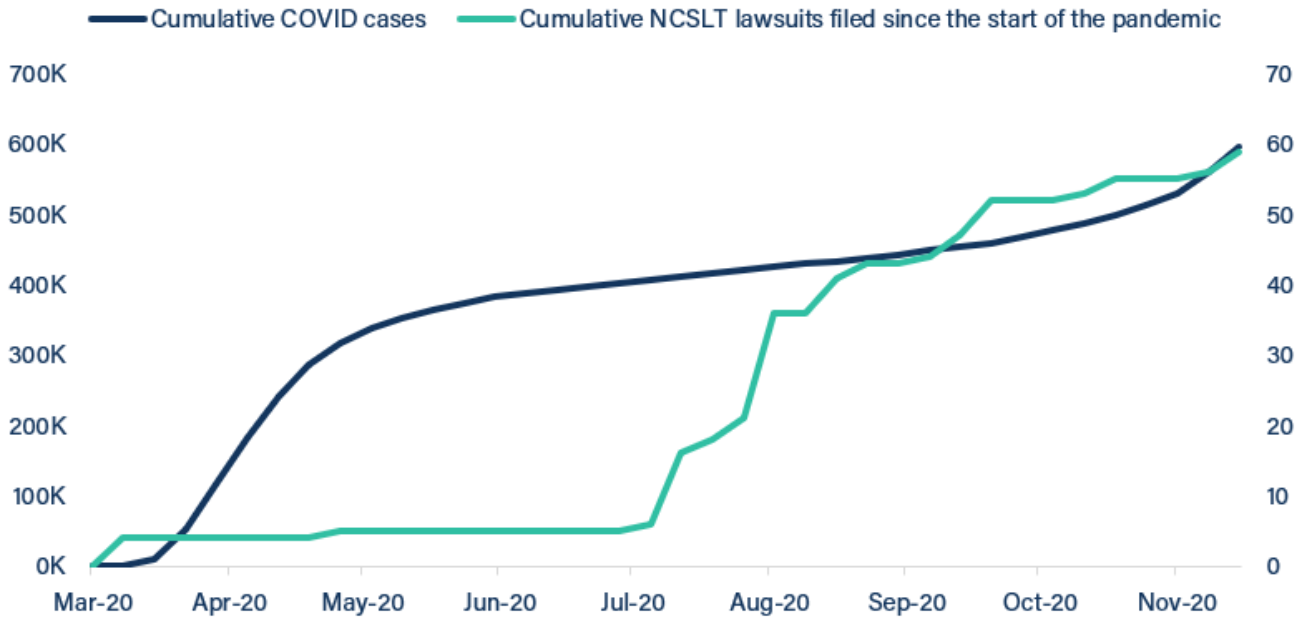
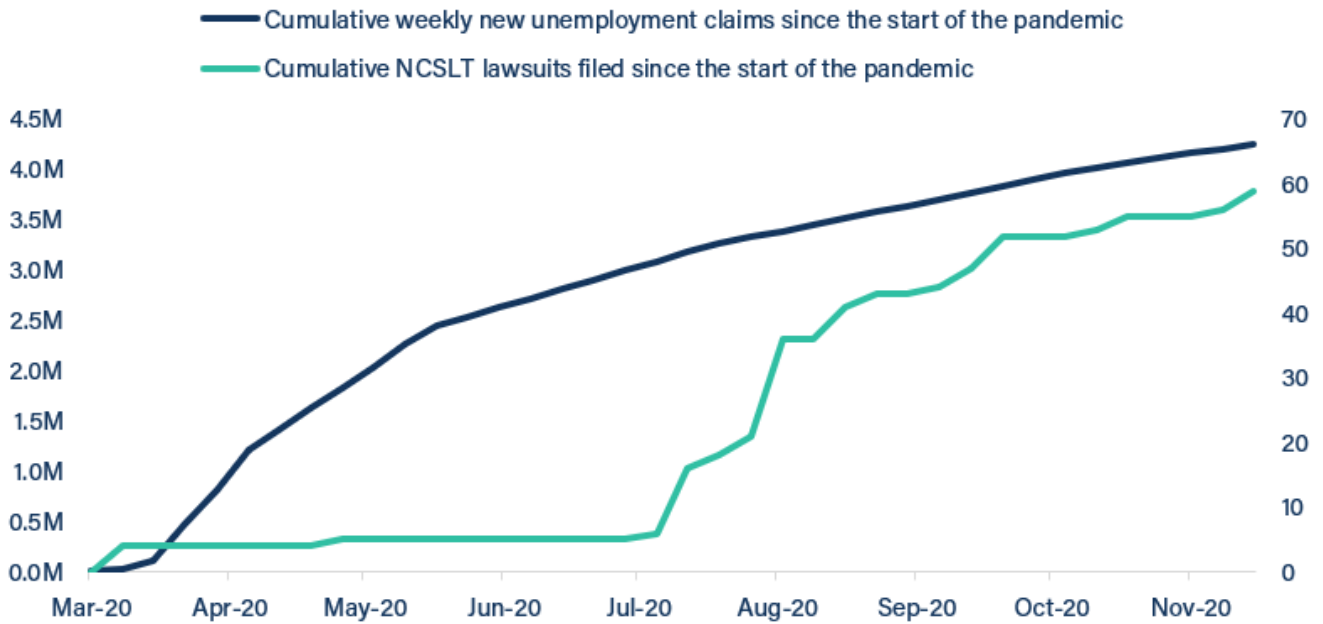


Figure 2: Unemployment and NCSLT lawsuits in New York



Student Loan Lawsuit Machine Targets Borrowers Across New York

Court filings show that predatory collection tactics, including abuse of the courts, are widespread in the private student loan industry.³⁸ The following case study examines the practices of NCSLT across the state of New York, documenting how, as the largest owner of private student loan debt,³⁹ NCSLT's practices have hit New York borrowers particularly hard.

Key Findings:

53,700+ loans

totaling more than **\$627 million** made to borrowers in New York

2,400+ lawsuits

filed against New York borrowers over the past six years

Almost half

of the lawsuits were against borrowers in the state's three majority-minority counties.

2.6x more lawsuits

per capita in majority-minority counties than in majority white ones.

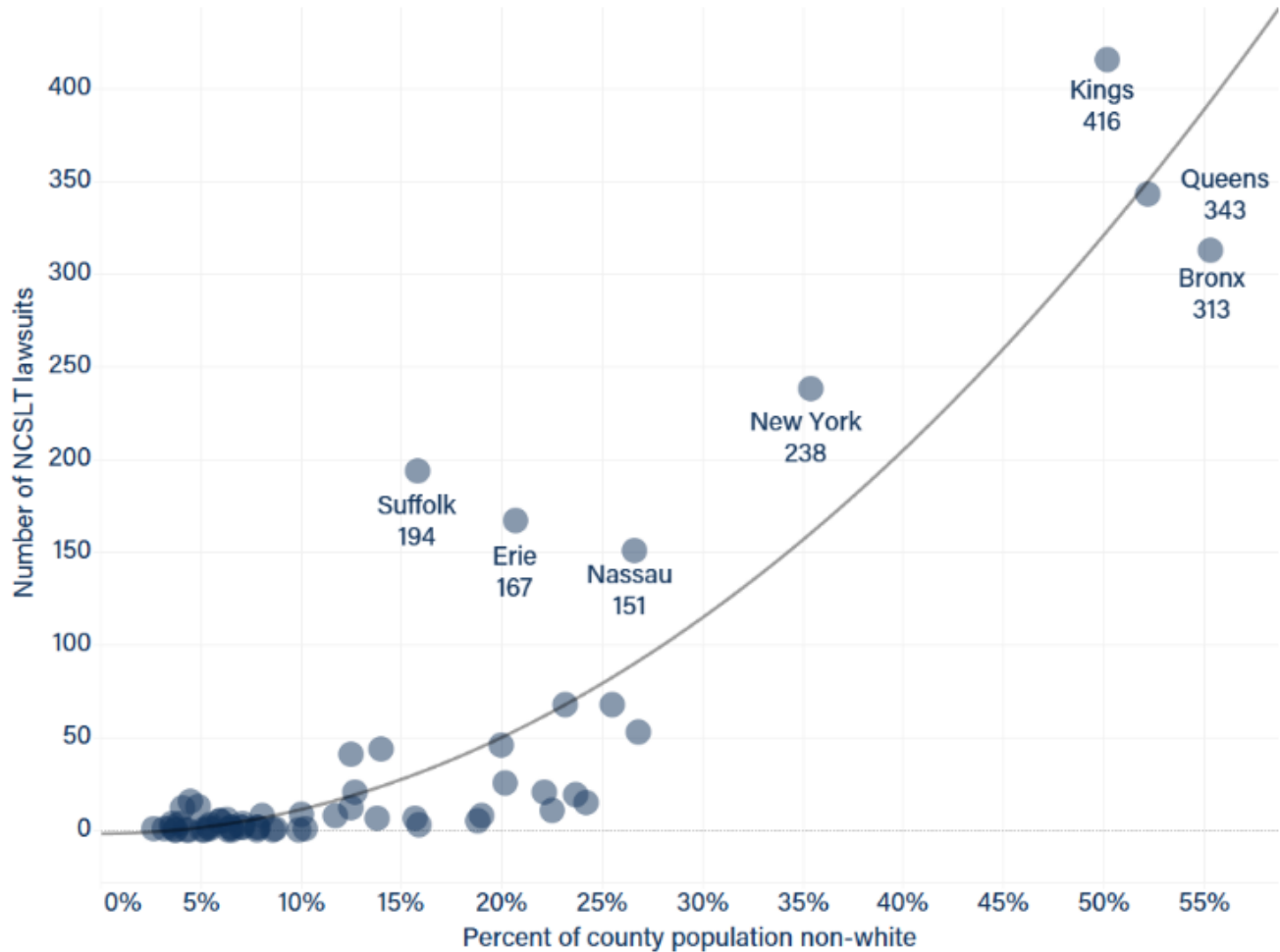
To examine the scope of the issue, the SBPC reviewed SEC filings and court filings from January 2015 through December 2020. Public filings show that over the past two decades, NCSLT owned more than 53,700 separate loans totaling more than \$627 million made to borrowers in New York. When New Yorkers defaulted on these loans, NCSLT was relentless in its use of the state's court system to pursue these defaulted debts. NCSLT filed over 2,400 cases against New York borrowers since the start of 2015 alone. These lawsuits disproportionately target communities of color in the state. Though New York has only three counties with populations that are majority non-white (Kings, Queens, and Bronx), those three counties account for over 44 percent of NCSLT

³⁸ See, e.g., Complaint, *Obelagu v. Navient*, *supra* note 9; *Going to School on Robo-signing*, *supra* note 12; *Hensley-Clancy*, *supra* note 14.

³⁹ See Marco Di Maggio et al., *supra* note 15.

lawsuits filed in the state.⁴⁰ Overall, the number of NCSLT lawsuits per capita in New York state is 2.6 times higher in majority-minority counties than it is in majority white ones.

Figure 3: NCSLT lawsuits and race in New York state



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, like NCSLT and more broadly across the market, pursuing consumers in default on private student loans.⁴¹

⁴⁰ U.S. Census Bureau, *Quick Facts*, <https://www.census.gov/quickfacts/fact/table/US/PST045219>.

⁴¹ Shahien Nasiripour, *supra* note 19.

Recommendations for State Policymakers and State Courts

These 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 Corporation.⁴²

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.

In New York, 440 borrowers were dragged into court multiple times, with one borrower subject to 21 different cases.

- **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.⁴³
- **Ban abusive debt collection tactics by requiring debt collectors to prove debts are valid when attempting to collect.** States should require debt collectors provide basic documentation substantiating

⁴² See Complaint, *Obelagu v. Navient*, supra note 9; 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.

⁴³ See *Going to School on Robo-signing*, supra note 12.

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.

- **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 New York, 440 borrowers were dragged into court multiple times, with one borrower subject to 21 different cases. With a private right of action from any new state consumer protection legislation, borrowers could bring lawsuits against student finance companies 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.