

[Banking and Finance Law Daily Wrap Up, TOP STORY—M.D. Pa.: Pennsylvania case against student loan servicer can proceed despite similar CFPB action, \(Dec. 19, 2018\)](#)

Banking and Finance Law Daily Wrap Up

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By [Colleen M. Svelnis, J.D.](#)

A Pennsylvania district court has denied a motion to dismiss made by student loan servicer Navient Corporation, and its subsidiary Navient Solutions, LLC, allowing the case to proceed in the state even though the Consumer Financial Protection Bureau has a similar suit pending against Navient. The Commonwealth of Pennsylvania alleged that the student loan servicer committed unfair, deceptive, and abusive practices in violation of the Consumer Financial Protection Act (CFPA) and the Pennsylvania Unfair Trade Practices and Consumer Protection Law. The conduct alleged involves Navient's origination and servicing of federal and private student loans including while Navient was still Sallie Mae ([Pennsylvania V. Navient Corp.](#), Dec. 17, 2018, Mariani,R).

Navient sought to establish itself as a "preferred lender" in order to obtain access to schools' students, and created custom packages of loans to market to schools to obtain their business, including private loans and subprime loans. The subprime borrowers were responsible for a large percentage of Navient's "credit losses" and the company knew ahead of time that these were higher risk for nonpayment.

Pennsylvania asserted that subprime borrowers were harmed by Navient's loan origination-related conduct. The complaint also alleged that Navient affirmatively steered borrowers facing long-term financial hardship into forbearance (where interest would accumulate and be added to the principal) rather than exploring more appropriate income driven repayment options.

Pennsylvania also alleged that the loan servicing company did not advise borrowers of the negative consequences of failing to submit timely, complete, and correct borrower recertifications for income driven plans, and did not supply access to their complete electronic annual renewal notices without logging in to the website. According to the state, Navient tracked the number of borrowers who clicked on hyperlinks in Navient emails sent to them, and so "knew or should have known that many borrowers did not view the electronic renewal notices."

Additionally, the commonwealth alleged that Navient misrepresented the requirements to release cosigners from their obligations, specifically failing "to specifically define for borrowers consecutive or on-time payments." The commonwealth also alleged that Navient committed many payment processing errors, including misallocating or misapplying submitted payments.

Copycat case and preemption claims. Navient laid out arguments based on preclusion and preemption theories, contending that a proper reading of the CFPA bars Pennsylvania from bringing a "copycat" action under the CFPA where the CFPB has already filed a similar lawsuit alleging identical claims under the CFPA. Navient called it an unauthorized copycat lawsuit that impermissibly "parrots allegations from a materially indistinguishable lawsuit" filed by the CFPB. Additionally, Navient argued that the text and structure of the remainder of Sec. 5552 of the CFPA should lead the court to conclude that Sec. 5552(a) does not permit a state to bring an action where the Bureau "has been pursuing materially indistinguishable claims against Navient for more than nine months." Navient also contended that to allow intervention by the CFPB in a state-initiated CFPA case would be prohibited by the traditional rule "that a single-party plaintiff cannot simultaneously maintain two actions against the same defendant."

The court referred to Navient's arguments as "creative" but did not agree that the CFPA prohibits concurrent state enforcement actions. The court noted that there is no relevant case law interpreting Sec. 5552. The court

found that the pre-suit notification provision in the CFPB, which requires a state to notify the CFPB before initiating a proceeding under the CFPB, "is not rendered meaningless in the event the CFPB already has its own action underway against the same defendant." The court stated that a "state seeking to bring a concurrent action may have a different litigation strategy than the CFPB, even if it alleges the same or similar claims in its own case."

The court also did not agree with Navient's argument that the Higher Education Act and the Truth in Lending Act preempt Pennsylvania loan origination, forbearance steering, and recertification conduct claims. The court found that the requirements of the TILA do not conflict with the requirements of the Pennsylvania Unfair Trade Practices and Consumer Protection Law.

This case is [No. 3:17-cv-01814-RDM](#).

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Companies: Commonwealth of Pennsylvania; Navient Corp.; Navient Solutions, LLC

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