



STUDENT
BORROWER
PROTECTION
CENTER

Affirming Accountability

How the Biden Administration Can Stop the Shady Companies Helping
For-Profit Colleges Evade Responsibility for Driving Students Into Default

December 2020

Background

Over the last year, the Student Borrower Protection Center has investigated the ecosystem of players and practices that have long propped up the for-profit school industry. This web of predatory actors is a lifeline for for-profit institutions—providing critical support for unscrupulous programs and exploiting legal loopholes that enable these schools to access and maintain eligibility for billions of dollars in federal student aid. Despite serving as essential cogs in a market that has left millions of vulnerable borrowers with mountains in risky debt, the firms propping up for-profit schools have long flown under the radar of federal and state regulators and law enforcement officials.



Current and former students at for-profit schools continue to be harmed by these companies and practices. This includes students pushed into high-cost, risky debt by [shadow student debt companies](#) like [Climb Credit](#), [PayPal](#), and [Vemo Education](#) or borrowers left without justice or recourse because of the rampant use of [forced arbitration clauses](#). Others are subject to aggressive and deceptive recruiting tactics by [lead generators](#) or are dragged to court through [abusive debt collection tactics](#). Our ongoing investigations aim to expose these players and root out their harmful practices in order to truly protect vulnerable students.

SBPC's work has yielded significant success—within days of the SBPC sending [a letter about the company](#) to federal regulators, [PayPal announced it was cutting ties](#) with hundreds of unaccredited for-profit schools. After [sending a complaint](#) to the Consumer Financial Protection Bureau about Climb Credit's deceptive marketing and lending practices, Climb instituted [swift changes](#) to its advertising and marketing materials, including new warnings to students that programs may not lead to relevant credentials and changes in how it reports the cost of its loans to better reflect the true cost to borrowers. Similarly, SBPC has worked with partners who advanced legislation in statehouses across the country to [clean up](#) abusive [debt collection](#) practices [by schools](#) and [stop limited state resources](#) from flowing to unsafe programs that silence students with forced arbitration clauses.

The following report builds on this foundation, developing recommendations to address abuses by a subset of private-sector firms that prop up and profit from unscrupulous schools: consultants hired to manipulate schools' cohort default rate metrics.

What is a Cohort Default Rate?

In order for schools to maintain eligibility to offer federal student loans and grants to their students as authorized under Title IV of the Higher Education Act (Title IV), lawmakers established a check to ensure a significant portion of students would not end up in default on their federal student loans. This accountability metric, known as a "cohort default rate" or "CDR," was originally created in the 1980s as loan default rates at fly-by-night schools exploded. Over the years, the CDR metric has been adjusted to address the growing abuses and manipulation of CDR, most recently in the 2008 reauthorization of the Higher Education Act.

In its current form, the U.S. Department of Education (ED) requires schools to report default rates for a three-year cohort of students—a school loses its Title IV eligibility if more than 30 percent of students in a given cohort cumulatively default within three years of leaving school, or if more than 40 percent of a cohort defaults in any single year, up to three years after leaving school. Importantly, this measure makes no attempt to evaluate the

long-term financial success of student loan borrowers, instead focusing on only the three-year window immediately following graduation or separation.

This structure has created a powerful incentive for low-quality schools to focus only on the short-term financial outcomes of former students. [Data show](#) that after five years, the number of schools that exceed the 30 percent cohort default threshold increases by almost seven times the number after the three-year mark, and most of these students defaulting between three and five years are those who attended for-profit schools. So, despite these guardrails, schools that have a high number of students default on their loans have gone to extraordinary lengths to avoid violating the government's CDR regime—as discussed below.

How do schools manipulate CDR?

Advocates have [long warned of the risk](#) posed to students when for-profit schools skirt and manipulate CDR metrics, calling for legislative or regulatory action to fix serious flaws in this accountability regime.

Yet it is critical to look not just at the schools driving students into debt but also at the highly specialized private-sector firms hired by thousands of schools to assist these schools in evading accountability. Over time, these firms have emerged to form a class of specialty student loan companies that assist schools in evading the

A growing body of evidence shows that these contractors manipulate schools' CDR metrics by driving borrowers into forbearance.

consequences of failing CDR requirements. A growing body of evidence shows that these contractors manipulate schools' CDR metrics by driving borrowers into forbearance—a short-term repayment option that increases loan costs and is often a precursor to long-term financial hardship.

For example, a 2012 [Senate investigation](#) highlighted how for-profit schools often evade the CDR metrics by using aggressive tactics to drive down CDR. The practices described in this report mirror similar conduct alleged in a wave of consumer protection lawsuits that would be filed against some of

the [largest student loan companies](#) in America years later—a practice known as “forbearance steering.” The report highlights the actions of one for-profit school chain, Education Management Corporation (EDMC):

Internal documents suggest that EDMC is taking aggressive action to manage their default rate. “Get comfortable with doing a verbal forbearance!!!,” instructs EDMC’s Spring 2010 Default Prevention presentation. The same presentation adds, “DON’T B AFRAID-KEEP CALLING and KEEP CALLING LET THEM KNOW THIS IS NOT GOING TO GO AWAY” and that “It’s time to be

aggressive since we are now in a 3 year CDR window-defaults are likely to double/triple!! Take action now!!"

The same Senate investigation highlighted the use of specialized contractors to perform this function, noting that chains including Kaplan, Bridgepoint, ITT Tech, and the University of Phoenix all contracted with so-called "default prevention companies" to "cure" loans owed by students approaching default. Records consistently showed how the practice of forbearance steering operates in this context—the vast majority of borrowers' circumstances were "cured" by placing them into forbearance, rather than providing the necessary assistance to ensure borrowers' access to an affordable loan payment.

The prevalence and dangers posed by the companies engaged in CDR manipulation were further highlighted in a 2018 [Government Accountability Office \(GAO\) report](#). This report underscored the need for improved oversight of schools and the contractors they hire to skirt CDR metrics. The GAO analysis looked at nearly a dozen companies contracted to provide default management services and found:

- **Contractors paid off borrowers in exchange for using forbearance.** For example, the GAO found that contractors offered borrowers gift cards as an incentive to immediately put their loans into forbearance.
- **Contractors engaged in high-pressure tactics to drive borrowers into forbearance.** For example, contractors sent forbearance applications to past due borrowers to pressure them into the fastest option, even though it would likely not be in borrowers' best financial interest to do so.
- **Contractors provided borrowers with misleading and inaccurate information.** For example, CDR manipulation firms inaccurately told borrowers that they could lose their public benefits including Supplemental Nutrition Assistance Program and Supplemental Security Income benefits if they were to default on their federal student loans.

[T]he GAO found that contractors offered borrowers gift cards as an incentive to immediately put their loans into forbearance.

Given the risk to consumers and the central role these firms play in propping up predatory schools, the SBPC submitted a Freedom of Information Act request to the Department of Education requesting a full list of "third-party servicers" and their partner schools—as required by statute and regulation to be reported to the Secretary. These include firms that manipulate CDR metrics, as well as other vendors performing a wide range of services

related to Title IV. From this comprehensive list of third-party servicers, the SBPC identified those companies that have provided “default management” and “default prevention” services.

The SBPC found that at least 1300 schools, including public, non-profit, and for-profit schools, reported contracts with these firms since 1995. Many of the companies that have expanded into this emerging market are legacy participants in the federally guaranteed student loan program terminated by Congress in 2010, including guaranty agencies [Trellis](#) and [ECMC](#). In addition to providing services directly to schools, firms like Trellis and ECMC also perform [a specific kind of student loan servicing](#) that is already regulated by federal and state financial regulators, establishing an important precedential role for these regulators as it relates to the practices described in this report.

Recommendations

When Congress created the CDR metric, it was designed to protect students from predatory schools that had an overwhelming portion of borrowers defaulting on their loans. Today, we see schools evading this critical protection by hiring companies to manipulate these rates. The Biden-Harris administration, state regulators, and law enforcement officials should take the following immediate steps to close these loopholes and end abuses by these firms:

- **Law enforcement officials and regulators must scrutinize CDR manipulation companies.** At every level of government, law enforcement officials and regulators have legal tools to address these practices through enforcement and rulemaking. For example, the Consumer Financial Protection Bureau (CFPB) and the Federal Trade Commission can pursue both these firms and the schools that employ them, particularly where practices mirror the illegal forbearance steering tactics [deployed by student loan servicers like Navient](#), as described above. State consumer protection officials are also well positioned to halt these abuses because, critically, the conduct undertaken by these firms is a variation of student loan servicing—these companies contact student loan borrowers and advise them about their repayment options consistent with the definition of student loan servicing under many state laws. In addition to oversight, the CFPB should also issue new guidance to clarify that the Dodd-Frank Act’s prohibition on unfair, deceptive, and abusive acts and practices prohibits the practice of forbearance steering specifically as it relates to firms that provide these services to

schools. To assess the scope of the abuses present at these firms, we developed a guide for enforcement officials and regulators.¹

- **The Secretary of Education must clarify that the Higher Education Act does not preempt state consumer protection and licensing laws and support state efforts to police CDR manipulation.** For the last half-decade, states have increasingly fought to protect borrowers by passing laws that establish critical oversight of student loan companies. Meanwhile, industry has sought to halt these efforts by pushing legally dubious arguments that misrepresent the scope of federal preemption under the Higher Education Act. In particular, [private actors with agreements](#) authorized under the legacy Federal Family Education Loan program—many of which are the same actors engaging in CDR manipulation—have affirmatively misled lawmakers about what role states can play in protecting their citizens. The SBPC recently published a report documenting how ED [must halt efforts by industry to preempt state oversight](#) of student loan companies. Part of that work must be to make it clear that these companies—including those that manipulate CDR metrics on behalf of predatory schools like Corinthian Colleges, ITT Tech, EDMC, Kaplan, and many others—are not above state law. Building on this foundation, the Secretary of Education should work with state attorneys general and state regulators to police abuses by these firms by providing support and data to any state consumer protection officials that wish to scrutinize the practices of these firms or schools.
- **The Secretary of Education must prioritize action to halt unlawful CDR manipulation.** The Higher Education Act and its implementing regulations establish joint and several liability for schools that employ third-party contractors that engage in illegal practices. The Secretary of Education should use this authority to crack down on both these firms and on schools themselves. As described above, the Higher Education Act also requires schools to inform the Secretary of all third-party contractors providing any services related to Title IV and at the request of the Secretary produce the contract between the school and contractor. Unfortunately, it is [unclear whether the Department of Education has ever scrutinized the contents of these contracts](#). To protect students and student loan borrowers, the Department of Education must:

¹ See Appendix at 9.

- **Collect, analyze, and make available records and data.** Ensure that all services provided by these firms to schools, including "default prevention" services, are regularly reported to ED as currently required by law and regulation. Building on this requirement, ED must also ensure that contracts are automatically provided to the Secretary for review on a routine basis, rather than on demand. Further, contracts and processes must be independently audited to determine whether compensation paid by schools to third-party firms would drive these companies to steer borrowers into forbearance. Additionally, ED should coordinate with federal and state regulators to ensure independent review of contracts and empower consumer protection officials to investigate third-party firms for violations of consumer law and subsequently hold schools jointly and severally liable for these violations.
- **Conduct a rulemaking under the Higher Education Act.** The Higher Education Act establishes that "[t]he Secretary shall prescribe regulations designed to prevent a [school] from evading the application to that [school] of a default rate determination. . . ." Given the years of abuses by schools and their contractors to manipulate CDR, the Secretary should [conduct a comprehensive rulemaking](#) which includes clarifying and codifying that practices like illegal forbearance steering are also a violation of the Higher Education Act and the school's Program Participation Agreement.
- **Officials across the government must prioritize relief for borrowers failed by this broken system.** Finally, it is critical that relief is prioritized for borrowers who enrolled at schools that engaged in these predatory schemes. The law provides schools with numerous exemptions from CDR metrics, including a provision that allows a school to claim to be economically disadvantaged. In these circumstances, the Department of Education allows schools that have failed the CDR metric to remain eligible for federal student loans, despite the continued high risk of default. Students should have some protection from the debts incurred while enrolled at institutions that have failing CDRs, and any student who was misled by a CDR manipulation company should have their debts automatically discharged pursuant to the authority granted to the Secretary under the borrower defense to repayment provisions. Similarly, in circumstances where the Secretary of Education is unable to cancel a borrower's loans outright but where a borrower was advised by a firm with a history of misleading student loan borrowers, the Secretary of Education should leverage existing authority to provide both retroactive and prospective relief through income-driven repayment.

MEMORANDUM

December 2020

TO: Stakeholders

FROM: Student Borrower Protection Center

RE: Manipulation of Cohort Default Rate (CDR) and Other Illegal “Default Aversion” by Third-Party Contractors

Specialized student loan companies routinely counsel student loan borrowers about repayment options, targeting borrowers who are experiencing financial distress. Unlike traditional student loan servicers that accept and process payments on behalf of creditors (e.g. Nelnet and FedLoan Servicing), the specialty student loan companies described below advise borrowers about repayment options but do not manage borrowers’ loan accounts. As described below, these third-party firms perform these services either on behalf of schools, including for-profit colleges, or on behalf of creditors.

- **Default Prevention and For-Profit Colleges.** In December 2020, the Student Borrower Protection Center released an issue brief detailing the use of third-party firms by for-profit schools to engage in student loan “default prevention,” manipulating a key federal accountability metric tracked by the U.S. Department of Education. This metric, known as the “cohort default rate” or “CDR,” tracks the share of former students with federal student loans who default on their debts over a three year period. If schools’ CDR metrics exceed a specific threshold set by the Department of Education, these schools forfeit eligibility to offer federal grants and loans to students—the key source of revenue for the for-profit school industry.
- **Default Aversion and Federally Guaranteed Student Loans.** Similarly, many of these same firms engage in a practice known as “default aversion” on behalf of the private-sector creditors that own older, federally guaranteed student loans made through the now-defunct Federal Family Education Loan Program (FFEL). Unlike the default prevention services performed on behalf of for-profit schools, default aversion services are expressly authorized under federal law and may only be carried out pursuant an agreement with the United States Secretary of Education under Section 428(b) of the Higher Education Act of 1965 (20 U.S.C. Sec. 1078(b)).

A growing body of evidence suggests that these third-party firms, providing “default aversion” and “default prevention” services, routinely steer student loan borrowers into high-cost student loan repayment options.¹ Consumer protection stakeholders in and out of government should take immediate action to investigate these abuses, evaluating whether the counseling provided by these firms unfairly or deceptively steers borrowers into selecting forbearance when these borrowers are contacted because they are struggling to manage student loan payments.

¹ See Student Borrower Prot. Ctr., Affirming Accountability: How the Biden Administration Can Stop the Shady Companies Helping For-Profit Colleges Evade Responsibility for Driving Students Into Default (Dec. 2020), www.protectborrowers.org/cdr_manipulation; Student Borrower Prot. Ctr., What it means to be a student loan servicer: Guaranty Agency edition (Mar. 2019), <https://protectborrowers.org/what-it-means-to-be-a-student-loan-servicer-guaranty-agency-edition/>.

By prioritizing short-term repayment options that may not be in borrowers' financial interests, rather than enrolling borrowers in income-driven repayment plans, these firms are potentially engaged in similar illegal practices to those identified by CFPB and the states of the Illinois, Washington, Pennsylvania, California, New Jersey, New York, Massachusetts, and Mississippi against the largest student loan companies, including Navient.²

Law enforcement officials and regulators should investigate CDR manipulation by for-profit schools and third-party service providers. To assist in this effort, SBPC has developed a model information request attached to this memorandum. [TAB 1].

Attachment: [TAB 1] Information Request/Civil Investigative Demand

² See, e.g. Consumer Fin. Prot. Bureau v. Navient Corp., No. 17-cv-00101, 2017 U.S. Dist. LEXIS 123825 (M.D. Pa. Aug. 4, 2017), Complaint, Pa. v. Navient Corp., No. 3:17-cv-1814-RDM (M.D. Pa. June 19, 2019), <https://www.attorneygeneral.gov/wp-content/uploads/2018/01/PA-v.-Navient-Complaint-2017-10-6-Stamped-Copy.pdf>; Complaint, Cal. v. Navient Corp., No. CGC-18- 19 567732 (Cal. Oct. 16, 2018), https://oag.ca.gov/system/files/attachments/press_releases/CA%20AG%20First%20Amended%20Complaint%20-%20Navient.pdf; Complaint, Ill. v. Navient Corp., No. 2017-CH-00761 (Ill. July 10, 2018), https://illinoisattorneygeneral.gov/pressroom/2017_01/NavientFileComplaint11817.pdf; Complaint, Miss. v. Navient Corp., No. G2108-98203 (Miss. July 24, 2018), <https://www.scribd.com/document/384612507/Navient-ComplaintFiled>; Complaint, Wash. v. Navient Corp., No. 17-2- 01115-1 SEA (Wash. Jan. 18, 2017), <https://www.classaction.org/media/state-of-washington-v-navient-corporation-et-al.pdf>.

[TAB 1] Information Request/Civil Investigative Demand**Part One: Default Prevention**Internal Policies, Procedures, Scripts and Guidance for Call Center Personnel

- Please provide a complete list of all institutions of higher education on behalf of which [COMPANY] currently performs “default prevention” or “cohort default rate management” services.
- Please provide a complete list of all institutions of higher education on behalf of which [COMPANY] has performed “default prevention” or “cohort default rate management” services between 2010 and 2020.
- Please provide all current internal policies, procedures, scripts and other materials developed by [COMPANY] to govern interactions between [COMPANY] personnel and student loan borrowers related to “default prevention” or “cohort default rate management” services performed by [COMPANY], on behalf of an institution of higher education.
- Please provide all historical internal policies, procedures, scripts and other materials developed by [COMPANY] to govern interactions between [COMPANY] personnel and student loan borrowers related to “default prevention” or “cohort default rate management” services performed by [COMPANY], on behalf of an institution of higher education, in use between 2010 and 2020.
- Please describe and provide all relevant internal policies and procedures related to the current compensation and incentive structure implemented by [COMPANY] to govern interactions between [COMPANY] personnel and student loan borrowers related to “default prevention” or “cohort default rate management” services performed by [COMPANY], on behalf of an institution of higher education.
- Please describe and provide all relevant internal policies and procedures related to historical compensation and incentive structures implemented by [COMPANY] to govern interactions between [COMPANY] personnel and student loan borrowers related to “default prevention” or “cohort default rate management” services performed by [COMPANY], on behalf of an institution of higher education, in use between 2010 and 2020.

Nationwide Data

- How many borrowers nationwide received “default prevention” or “cohort default rate management” services performed by [COMPANY], pursuant to an agreement with an institution of higher education, between July 1, 2019 and June 30, 2020?
 - Of those borrowers who received “default prevention” or “cohort default rate management” services performed by [COMPANY] over this period, how many were placed in forbearance?
 - Of those borrowers who received “default prevention” or “cohort default rate management” services performed by [COMPANY] over this period, how many enrolled in an Income-Driven Repayment plan (IDR)?
- For each student aid year (July 1-June 30) between 2010 and 2020, How many borrowers nationwide received “default prevention” or “cohort default rate management” services performed by [COMPANY] pursuant to an agreement with an institution of higher education?
 - Of those borrowers who received “default prevention” or “cohort default rate management” services performed by [COMPANY] over this period, how many avoided default by enrolling in forbearance?



- Of those borrowers who received “default prevention” or “cohort default rate management” services performed by [COMPANY] over this period, how many avoided default by successfully enrolling in an Income-Driven Repayment plan (IDR)?

State Data

- How many borrowers in [STATE] received “default prevention” or “cohort default rate management” services performed by [COMPANY], pursuant to an agreement with an institution of higher education, between July 1, 2019 and June 30, 2020?
 - Of those borrowers who received “default prevention” or “cohort default rate management” services performed by [COMPANY] over this period, how many were placed in forbearance?
 - Of those borrowers who received “default prevention” or “cohort default rate management” services performed by [COMPANY] over this period, how many avoided default by successfully enrolling in an Income-Driven Repayment plan (IDR)?
- For each student aid year (July 1-June 30) between 2010 and 2019, How many borrowers in [STATE] received “default prevention” or “cohort default rate management” services performed by [COMPANY] pursuant to an agreement with an institution of higher education?
 - Of those [STATE] borrowers who received “default prevention” or “cohort default rate management” services performed by [COMPANY] over this period, how many were placed in forbearance?
 - Of those [STATE] borrowers who received “default prevention” or “cohort default rate management” services performed by [COMPANY] over this period, how many avoided default by successfully enrolling in an Income-Driven Repayment plan (IDR)?
- How many times did the U.S. Department of Education personnel conduct an on-site review of [COMPANY]'s default aversion work in 2020? Between 2010 and 2020?
 - If such a review occurred, did U.S. Department of Education personnel review or monitor individual phone calls between borrowers and [COMPANY]?

Part Two: Default Aversion

Internal Policies, Procedures, Scripts and Guidance for Call Center Personnel

- Please provide all current internal policies, procedures, scripts, and other materials developed by [COMPANY] to govern interactions between [COMPANY] personnel and student loan borrowers related to “default aversion” services performed by [COMPANY], pursuant to an agreement with the United States Secretary of Education under Section 428(b) of the Higher Education Act of 1965 (20 U.S.C. Sec. 1078(b)).
- Please provide all historical internal policies, procedures, scripts and other materials developed by [COMPANY] to govern interactions between [COMPANY] personnel and student loan borrowers related to “default aversion” services performed by [COMPANY], pursuant to an agreement with the United States Secretary of Education under Section 428(b) of the Higher Education Act of 1965 (20 U.S.C. Sec. 1078(b)), in use between 2010 and 2020.
- Please describe and provide all relevant internal policies and procedures related to the current compensation and incentive structure implemented by [COMPANY] to govern interactions between [COMPANY] personnel and student loan borrowers related to “default aversion” services performed



by [COMPANY], pursuant to an agreement with the United States Secretary of Education under Section 428(b) of the Higher Education Act of 1965 (20 U.S.C. Sec. 1078(b)).

- Please describe and provide all relevant internal policies and procedures related to historical compensation and incentive structures implemented by [COMPANY] to govern interactions between [COMPANY] personnel and student loan borrowers related to “default aversion” services performed by [COMPANY], pursuant to an agreement with the United States Secretary of Education under Section 428(b) of the Higher Education Act of 1965 (20 U.S.C. Sec. 1078(b)), in use between 2010 and 2020.

Nationwide Data

- How many borrowers nationwide received "default aversion" services performed by [COMPANY], pursuant to an agreement with the United States Secretary of Education under Section 428(b) of the Higher Education Act of 1965 (20 U.S.C. Sec. 1078(b)), between July 1, 2019 and June 30, 2020?
 - Of those borrowers who received "default aversion" services performed by [COMPANY] over this period, how many were enrolled in forbearance as a result?
 - Of those borrowers who received "default aversion" services performed by [COMPANY] over this period, how many enrolled in an Income-Driven Repayment plan (IDR)?
- For each student aid year (July 1-June 30) between 2010 and 2019, How many borrowers nationwide received "default aversion" services performed by [COMPANY] pursuant to an agreement with the United States Secretary of Education under Section 428(b) of the Higher Education Act of 1965 (20 U.S.C. Sec. 1078(b))?
 - Of those borrowers who received "default aversion" services performed by [COMPANY] over this period, how many were enrolled in forbearance as a result?
 - Of those borrowers who received "default aversion" services performed by [COMPANY] over this period, how many enrolled in an Income-Driven Repayment plan (IDR)?

State Data

- How many borrowers in [STATE] received "default aversion" services performed by [COMPANY], pursuant to an agreement with the United States Secretary of Education under Section 428(b) of the Higher Education Act of 1965 (20 U.S.C. Sec. 1078(b)), between July 1, 2019 and June 30, 2020?
 - Of those borrowers who received "default aversion" services performed by [COMPANY] over this period, how many were enrolled in forbearance as a result?
 - Of those borrowers who received "default aversion" services performed by [COMPANY] over this period, how many were enrolled in an Income-Driven Repayment plan (IDR)?
- For each student aid year (July 1-June 30) between 2010 and 2020, How many borrowers in [STATE] received "default aversion" services performed by [COMPANY] pursuant to an agreement with the United States Secretary of Education under Section 428(b) of the Higher Education Act of 1965 (20 U.S.C. Sec. 1078(b))?
 - Of those [STATE] borrowers who received "default aversion" services performed by [COMPANY] over this period, how many were enrolled in forbearance as a result?
 - Of those [STATE] borrowers who received "default aversion" services performed by [COMPANY] over this period, how many enrolled in an Income-Driven Repayment plan (IDR)?

- How many times did the U.S. Department of Education personnel conduct an on-site review of [COMPANY]'s default aversion work in 2020? Between 2010 and 2020?
 - If such a review occurred, did U.S. Department of Education personnel review or monitor individual phone calls between borrowers and [COMPANY]?