

To: Department of Education
From: Rory O'Sullivan
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Re: Cohort Default Rate Manipulation and Gainful Employment

The Department rightly incorporated a program level cohort default rate (pCDR) in its most recent draft rule. However, it left out an essential element. The ease with which institutions can game their CDRs will render pCDRs meaningless without concurrent limits on CDR manipulation. Another negotiator proposal would reward colleges with low CDRs by exempting them from program assessments entirely. A safe harbor of this nature without limits on CDR manipulation threatens to undermine the entire regulation. The Department must address CDR manipulation to ensure pCDR have their desired effect. It can take a number of actions to do so including:

Steps that do not require regulatory change:

- Analyze the extent to which companies use forbearance and deferment, particularly serial forbearance and deferments, which indicate that borrowers are not receiving proper counseling about their repayment options.
- Examine whether the number of defaults at an OPEID spikes after the CDR window closes. For instance, when four additional months were examined for the 2008 cohort, the number of OPEIDs with three-year CDRs over 40 percent more than doubled. The use of serial forbearances and spikes in defaults after the CDR window closes should prompt an immediate investigation into possible CDR evasion, a program review, and/or an audit.

Steps that may require regulatory change:

- Define what it means for a forbearance to be "for the benefit of the student borrower", as required by the Higher Education Act.¹
- Prohibit schools/servicers from making any payments to get students into forbearance. In investigating forbearance abuse, the Department itself found one borrower who had been given a gift card to get into forbearance after previously being in good standing on her loan.
- The Department could either not allow changes in OPEIDs in cases where institutional compliance is in question or require continued compliance under former OPEIDs for at least three years after any change in OPEID and sanction any that would have exceeded the CDR thresholds but for the change in OPEID.² Such monitoring would comport with other steps the Department takes to prevent gaming of accountability measures: the Department's Federal Student Aid Handbook for 2012-13 explicitly provides for the continued monitoring and enforcement of 90/10 rates when a school converts from for-profit to non-profit.³

¹ See 20 USC § 1080(b).

² The Higher Education Act (20 USC § 1085(m)(3)) specifically authorizes the Secretary to act prevent CDR evasions, stating "The Secretary shall prescribe regulations designed to prevent an institution from evading the application to that institution of a default rate determination under this subsection through the use of such measures as branching, consolidation, change of ownership or control, or any similar device."

³ U.S. Department of Education. 2012. *2012-13 Federal Student Aid Handbook*. Volume 2 (School Eligibility and Operations), Chapter 4 (Audits, Financial Standards, Limitations, & Cohort Rates). <http://www.ifap.ed.gov/fsahandbook/attachments/1213FSAHbkVol2Ch4.pdf>.