SEARCHING FOR RELIEF

DESPERATE BORROWERS AND THE GROWING STUDENT LOAN "DEBT RELIEF" INDUSTRY

NCLC®

NATIONAL CONSUMER LAW CENTER®

June 2013

ABOUT THE AUTHORS

Deanne Loonin is a staff attorney at the National Consumer Law Center (NCLC) and the director of NCLC's Student Loan Borrower Assistance Project. She was formerly a legal services attorney in Los Angeles. She is the author of numerous publications and reports, including *Student Loan Law* and *Surviving Debt*.

Contributing Author **Jillian McLaughlin** is a research assistant at NCLC. She graduated from Kalamazoo College with a degree in political science.

ACKNOWLEDGMENTS

This report is a release of the National Consumer Law Center's Student Loan Borrower Assistance Project. The authors thank NCLC colleagues Carolyn Carter and Jan Kruse for valuable comments and assistance.

The findings and conclusions in this report are those of the authors alone.

NCLC's Student Loan Borrower Assistance Project provides information about student loan rights and responsibilities for borrowers and advocates. We also seek to increase public understanding of student lending issues and to identify policy solutions to promote access to education, lessen student debt burdens, and make loan repayment more manageable.

studentloanborrowerassistance.org

ABOUT THE NATIONAL CONSUMER LAW CENTER

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitive practices, help financially stressed families build and retain wealth, and advance economic fairness.

7 WINTHROP SQUARE, BOSTON, MA 02110 ■ 617-542-8010 ■ WWW.NCLC.ORG

SEARCHING FOR RELIEF

DESPERATE BORROWERS AND THE GROWING STUDENT LOAN "DEBT RELIEF" INDUSTRY

TABLE OF CONTENTS

EXECUTIVE SUMMARY

The United States government has responded to growing levels of student loan debt by creating an array of borrower assistance programs. Getting this relief, however, is rarely easy. Government programs are unnecessarily complex and borrowers too often confront an impenetrable bureaucracy that prevents them from accessing their rights. To compound these problems, there are few reliable resources borrowers can turn to if they need help.

A new "student loan debt relief" industry has sprung up in response to the demand for borrower assistance and the dearth of reliable resources. Most of these companies are for-profit, although there are issues with a growing number of nonprofit organizations as well. This National Consumer Law Center (NCLC) report investigates this growing industry.

Our investigation consisted of ten secret shopper calls, an analysis of the web sites of the ten companies to which we made secret shopper calls plus ten others, review of actual contracts and online complaints, and discussions with other advocates and state and federal regulators.

Our findings highlight numerous problems with this new industry, including:

- **Student loan debt relief companies mischaracterizing government programs as their own.**
- **Charging High Fees for Programs that are Available for Free**

  This practice is not inherently abusive, but it raises a number of warning signs. At a minimum, it is deceptive that most of the companies fail to prominently disclose that "their" programs are actually federal government programs that an individual can access on her own at no cost.

  None of the companies in our secret shopper calls or web reviews disclosed the fees online. Moreover, most companies would not initially specify the exact cost of their services by phone.

  Lack of transparency is not the only problem. Another key concern is the amount of fees charged and whether these are reasonable. Our investigation found a range of fees charged, including initial fees up to $1600 in some cases and monthly fees for ongoing services of $20-50.

  The monthly fees are particularly suspect since it is unclear what services, if any, the consumer is buying on a monthly basis.

- **Selling a One-Size-Fits-All Approach**

  Despite claims of broad services, most of the representatives we spoke with acknowledged that they offered only loan consolidation.

  There are numerous problems with this approach including that consolidation is not an appropriate product for all borrowers and may not even be available to all borrowers. In addition, there is only one federal student loan consolidation program. Even companies that admit that they sell only consolidation cannot possibly be tailoring the product to individual needs or searching among multiple products. Why? Because there is only one student loan consolidation option.

- **Providing Inaccurate Information**

  The report highlights a shocking number of inaccuracies about consolidation, garnishment, rehabilitation, bankruptcy, and other critical topics.

  These inaccuracies are in stark contrast to the ubiquitous claims of sophisticated student loan expertise. Not only is much of the information inaccurate, but in one instance, a company took information from NCLC's Student Loan Borrower Assistance web site, copying nearly all of the borrower questions and answers from the site.

- **Improperly Claiming Government Affiliations**

  For example, one of the companies we contacted told our shopper that it is an "approved servicer" with the U.S. Department of Education. This is inaccurate.

- **Discouraging Borrowers from Handling Their Own Cases**

  The debt relief companies seize on federal government incompetence in selling their services. This may be an appealing selling point, but it is deceptive if the companies go too far in implying or in some cases stating explicitly that a borrower cannot get relief on her own.

- **Focusing on Sales, Not Counseling**

  Despite the company's descriptions of its staff as experts, in some cases touting years of experience counseling borrowers, it appears that many advertise jobs as sales positions. This is a troubling trend if these "counselors" are paid by commission.

- **Limiting Remedies and Access to Justice**

  We found widespread use of mandatory arbitration clauses (which require consumers to waive their right to use the court system and instead limit consumers to resolving their disputes through a binding arbitration process) and waivers of jury trials in consumer contracts.

- **Numerous potential legal violations of consumer protection laws, including the federal Credit Repair Organizations Act (CROA), Federal Trade Commission (FTC) Telemarketing Sales Rule, state debt settlement and debt management laws, and unauthorized practice of law provisions.**

  Abuses in the debt relief industry are not new. The abuses grew so severe in the credit card counseling, foreclosure rescue, and debt settlement industries in recent years that the federal government and many states passed laws to crack down on abuses. Most of these laws should apply to student loan debt relief companies. Many of these companies appear to be routinely violating all or some of these laws intended to protect consumers.

For example, under the CROA, a consumer has the right to cancel any contract with a credit repair organization within three business days. The contract must include a conspicuous, bold disclosure of this three-day right to cancel. A contract that does not meet these requirements should be treated as void and unenforceable. Of the contracts we reviewed, only one included a three-day cancellation right. This one provision did not, however, comply with the CROA requirements.

All of the companies required some sort of payment before initiating services. This practice violates federal and state laws that require debt relief companies to complete services before charging consumers. Our investigation also highlights instances of false and deceptive advertising.

Some companies may claim that they are compliant with all state and federal laws. One company, for example, describes its services as "FTC Compliant." A statement of compliance, however, is not the same as actual compliance.

Despite these problems, none of the regulators we contacted had focused on student loan debt relief companies. It appears that this issue has not hit the federal or state regulatory radar yet.

- **Requiring Powers of Attorney**

  This is extraordinary power that consumers are giving to questionable companies.

- **Safeguarding Consumer Privacy**

  A number of the representatives we spoke with said that our shopper had to reveal her federal student loan PIN number in order to move forward with the service. These practices raise serious privacy concerns and violate U.S. Department of Education guidance.

Our investigation shows that student loan debt relief companies can easily cross over into practices that violate key consumer laws, provide inaccurate and misleading information, and take student loan debtors' money without providing valuable services. Given the many misrepresentations we uncovered, it is unlikely that these companies are providing quality services in return for the money they are charging. Such practices severely compound the pain of vulnerable consumers seeking to find resolutions to difficult student debt problems.

Recommendations

The following recommendations are intended to help ensure that only borrowers that truly want these services and know what they are getting buy them.

- **Improve Government Bureaucracy and Simplify Student Loan Relief Programs**
- **Require Fair and Reasonable Fees**
  - ✓ All companies must disclose fees online and in all calls with consumers.
  - ✓ The companies must not charge advance fees in violation of federal law before services are completed.
  - ✓ Companies should charge only fees that are bona fide and reasonable.

- **Prohibit Misleading Advertisements or Representations**
  - ✓ Companies must not engage in false, deceptive, or misleading advertising, including improperly stating or implying affiliations or connections with government agencies.
  - ✓ Companies must prominently disclose if their programs are government programs and if so that these programs are available at no cost through the government.
  - ✓ Claims about performance must be transparent and verifiable.
  - ✓ Claims about borrower rights and the requirements of student loan programs must be accurate and up to date.
- **Safeguard Consumer Privacy**
  - ✓ Companies must not request or require borrowers to provide PIN numbers for the National Student Loan Data System (NSLDS).
  - ✓ Companies must provide information about the potential dangers of signing power of attorney documents and comply with all applicable laws regarding such documents.
- **Refunds**

  Refunds should not be as much of a concern if companies comply with applicable laws and do not charge any fees until services are completed. However, the companies must, at a minimum, refund any funds received if the consumer does not qualify for a program or otherwise has grounds for refund.
- **Other Consumer Protections**
  - ✓ Commissions should not be allowed based on numbers of borrowers enrolled in particular programs.
  - ✓ Transparency is critical. The companies must not only disclose all fees online and in response to requests for information, but also provide sample contracts upon request and verification of performance information.
  - ✓ Comply with all applicable consumer laws, state and federal, including cancellation rights.
  - ✓ Companies must comply with unauthorized practice of law provisions.
  - ✓ Mandatory arbitration and other contract provisions limiting consumer access to justice should be banned.
- **Enforcement**

  Federal and state regulators must step up to investigate these companies and enforce consumer protection laws.
- **Expand Reliable Assistance Resources**

  Schools, loan holders, and credit counselors can and should do more to assist borrowers, with possible public funding or support from higher education institutions.

INTRODUCTION

The United States government has responded to growing levels of student loan debt by creating an array of borrower assistance programs. Getting this relief, however, is rarely easy. Government programs are unnecessarily complex and borrowers too often confront an impenetrable bureaucracy that prevents them from accessing their rights. To compound these problems, there are few reliable resources borrowers can turn to if they need help.

A new "student loan debt relief" industry has sprung up in response to the demand for borrower assistance and the dearth of reliable resources. Most of these companies are for-profit, although there are issues with a growing number of nonprofit organizations as well.

This National Consumer Law Center (NCLC) report investigates this growing industry. The stakes are high as borrowers seek solutions to burdensome student loan debt. Higher education remains the primary means for upward mobility in this country. Sadly, many borrowers trying to get ahead through education end up with nothing but mountains of debt. Their problems only get worse when unscrupulous businesses take advantage of them. Too many companies claiming to offer help are compounding the pain of vulnerable consumers.

Cutting off borrower access to relief not only harms individual borrowers, but also impacts economic productivity. Many borrowers are seeking solutions to student loan debt in order to go back to school and get retrained for the new economy. Each individual denied this opportunity is also denied the benefits of completing higher education, including increased income and civic involvement.

NCLC INVESTIGATION OF STUDENT LOAN DEBT RELIEF COMPANIES

Our investigation consisted of ten secret shopper calls, an analysis of the web sites of the ten companies to which we made secret shopper calls plus ten others, review of actual contracts and online complaints, and discussions with other advocates and state and federal regulators.[1]

For our secret shopper investigation, an NCLC employee called ten randomly selected student loan relief companies. One of these companies did not return a voice message. She was able to speak to representatives at the other companies. She told each company that she had about $30,000 in student loan debt, mostly federal but maybe a small private student loan as well. She said that she worked at a nonprofit crisis hotline and earned between $25–30,000/year and that her loan payments were between $250 and $300 each month. She told them that the loans were for undergraduate study and that she was single.

Our efforts to contact the presidents or directors of a number of companies were not successful. We sent e-mails to four of the companies and never heard back. The ten companies we called did not post phone numbers online other than the general phone numbers for prospective clients.

KEY FINDINGS

Companies Mischaracterize Government Programs as Their Own

Federal student loan borrowers may choose from a range of affordable payment options, including income-based repayment (IBR) and income contingent repayment (ICR). These plans, which also include the Pay as You Earn (PAYE) plan, help borrowers keep their loan payments affordable with payment caps based on their income and family size.

There are also federal programs that allow borrowers to postpone payments through deferments and forbearances, discharge loans in limited circumstances, and get out of default. These options are mandated in the Higher Education Act. Congress, not private companies, created these programs.

Nearly all of the companies we surveyed, through both secret shopper calls and website reviews, either do not inform borrowers that the products they offer are government programs or bury this information in fine print.

For example, one company states on its web site that it has consolidation packages that design unique payment systems that fit into your budget and put you back on track. These "unique payment systems" appear to be the federal government repayment plans. Another company claims on its web site to have developed programs to assist nearly every one of the 40 million Americans that currently carry student loan debt.[2] This business does note elsewhere that it helps identify federal, state, and/or local programs that borrowers may qualify for.

In reviewing a number of applications for services, we found that the companies simply require clients to fill out the information that is required on the government's Direct

Government Student Loan Consolidation

As of July 1, 2010, a Direct consolidation loan is the only type of federal consolidation loan available. Most federal loan borrowers may obtain a Direct consolidation loan. They must have at least one guaranteed loan (also known as Federal Family Education Loans or FFEL) or a Direct Loan to qualify for consolidation.

Borrowers have the option to consolidate all, just some, or even just one of their existing student loans. There is no minimum or maximum size for a Direct consolidation loan.

A borrower who already has a consolidation loan with either FFEL or Direct is not able to "reconsolidate" with either program, except in limited circumstances. One of these exceptions is if a borrower is consolidating as a way out of default. However, a defaulted Direct consolidation loan may not be re-consolidated. In effect, this means that borrowers have only one shot at consolidating as a way out of default.

Loan consolidation form. All of these government forms are available online at no charge. Borrowers can download the forms or apply directly online.

Every company representative that was willing to discuss payments with our secret shopper quoted a different monthly student loan repayment amount that the shopper would have after enrolling in the program. These amounts ranged from $60 to $272. Most did not explain the source of these calculations. However, in one call, a representative did reveal when questioned that she performed the estimate based on an U.S. Department of Education calculator.

Only a few of the companies in our investigation clarified that the programs were government programs. The representative from one company who spoke with our shopper said that the company helps to complete the paperwork and consolidation forms for the U.S. Department of Education.

However, other companies disclose these facts, if at all, only in the fine print of the contract the consumer signs. For example, one company acknowledged that the programs are available from the government, but disclosed this information only in small print

Services Agreement

Defaulted Student Loan Program

Print Full Name: ____________________

Professional Student Loan Solutions, Inc., hereinafter "Consultant", agrees to perform such services as may be required in the pursuit of restructuring Federal student loan(s) for the undersigned, hereinafter "Principal", upon the following terms and conditions:

1. Principal has stated to Consultant that Principal has student loan(s) in the approximate amount of $____________
In consideration of Consultant restructuring Principal's student loan(s), Principal agrees to pay Consultant a service fee as follows:

a) $____________ with application to initiate services, debited from my account electronically upon receipt.
[ ] Check here if enclosing check with application instead of draft.
[ ] Debit initial payment on ____________________

b) Payment Plan : [ ] Check here if paid in full, payment plan is not applicable.

$____________ per month for ______ consecutive months beginning on ____________________
Choose a date within 30 days of agreement; monthly payments will be drafted on same date each month.

2. If payment plan is chosen, Principal authorizes Professional Student Loan Solutions, Inc. to process electronic debits from their account per the electronic debit authorization completed in the amount indicated, as well as any fees incurred. Principle understands there will be a $35 fee automatically charged to their account for any insufficient funds (NSF) transactions. Accounts that become late without making arrangements with Consultant will also incur a $35 late fee per month.

3. Principal will provide Consultant a Limited Power of Attorney granting Principal's full and complete authority to perform, or engage in any necessary act on behalf of Principal to restructure the Principal's student loan(s).

4. The restructuring of student loan(s) may be accomplished through consolidation and/or rehabilitation of title IV funds through all existing federal sources and/or Principal's original or current student loan creditor(s). Principal acknowledges that it is aware that consolidation and/or rehabilitation sources may be available to Principal without the use of Consultant's services. However, Principal has determined that it is in its best interest to retain the services of Consultant to restructure Principal's student loan(s).

5. Principal understands that Principal is solely responsible for payments on all restructuring agreements negotiated by Consultant. Principal further understands that the service conducted by Consultant pursuant to this Agreement is for the sole purpose of restructuring Principal's student loan obligation.

6. Principal understands that Principal is solely responsible for the debt owed including principal, interest and collection costs. Further, Consultant has made no guarantee to Principal, implied or written, that the amount owed will be reduced, or that any plan of action will succeed or produce any specific result. It is the Principal's sole responsibility for payment of Principal's student loan(s) whether or not Consultant is able to restructure the Principal's student loan(s).

7. Principal understands that Consultant does not provide legal services and does not engage in the practice of law. Should legal action be initiated against Principal related to its student loan(s), Principal must seek the services of legal counsel.

in its contracts This company states in its contract that it assists consumers in taking advantage of the opportunities provided by the Department of Education to consolidate student loans. The home page of this company's web site, however, does not clarify that it assists borrowers in accessing government programs. In addition, the representative of the company that spoke with our shopper did not mention this important issue. In quoting the IBR payment, the representative did not call it IBR or state that it was a set formula derived from a government program. Another company requires the consumer to sign and acknowledge that the services may be available without the use of the company's services, but that the consumer has determined that it is in his best interest to retain the services of the consultant. (See box on p. 9.)

High Fees for Programs that are Available for Free

The government has a lot of work to do to make sure that borrowers can efficiently access the various relief programs. Despite these obstacles, there is no cost to enroll in these programs and no cost to maintain enrollment.

Charging fees for services that are available for free is not inherently abusive, but it raises a number of warning signs. At a minimum, it is deceptive that most of the companies fail to prominently disclose that "their" programs are actually government programs that an individual can access on her own at no cost.

It is possible that a consumer might want to pay for assistance in obtaining a government benefit. This happens in other areas such as tax preparation. A few companies we reviewed appear to target higher-income consumers, including medical residents and law school graduates. Higher-income borrowers may be more likely to voluntarily pay relatively high prices for services they can get for free. There is greater risk of abuse in targeting services to lower-income and less sophisticated borrowers. Regardless of the target demographic, the companies at a minimum must disclose facts about the true origin of these programs and that consumers can access them on their own for free. Our investigation found that most do not.

In addition to disclosure, the key question is whether the fees are reasonable given the services being sold. This is a question about the basic business model. As one company wrote in response to the question of how they can save clients thousands of dollars and years off of their loans while covering the cost of their services, "There is an easy answer to that question! Most people grossly overpay for their loans, so their [sic] is more than enough room for Student Loan Managers to help save you thousands and still maintain a stable business model."[3]

This may be the standard business model, but the question is whether it is a model that exploits vulnerable consumers.

Lack of Transparency

One consulting company—one that appears to target higher-income consumers—clearly lists its fees on its web site. This appears to be an anomaly. None of the companies in our secret shopper calls or web reviews disclosed the fees online.

Moreover, most companies would not initially specify the exact cost of their services by phone, although some revealed the fee structure when pressed. Some would not reveal costs even when asked. In one of our shopper calls, the representative said that the monthly payment covers all services, including the "cost of his help." The company takes a small percentage as a management fee, he said, but he did not give out specific percentages or amounts unless the shopper revealed personal information. There is also considerable confusion about whether the companies are passing on fees charged by the government or charging their own fees. In a recorded call posted on an independent web site, a company representative told a secret shopper that the $599 fee to the consumer was an underwriting fee. It is unclear whether the representative was saying that the federal government charges underwriting fees. If so, this is not the case. In fact, the government does not do underwriting for consolidation loans.[4]

Many of the online complaints about these companies focus on confusion and misrepresentations about fees.

For example, a consumer wrote in an online complaint forum:

> *I received a call on 1/22/13 telling me that a payment of $75.00 was due and that I had signed a contract for $395.00. Fortunately, I had printed the original contract that I had signed and there was no mention of a total of $395.00. Only $75.00. When I go to look at the electronic copy of the contract, it shows additional pages and changes with my electronic signature included.*[5]

Charging Only Reasonable Fees

Our investigation found a range of fees charged. The following information is based on amounts quoted in our secret shopper survey and contracts we obtained.

Fee structures:

- A representative revealed that the company charges 1% of the loan balance as a service fee, but he said that there is a money-back guarantee. An agreement from this company posted on an independent web site showed an initial enrollment fee of $445.15. Once consolidation occurred, the agreement lists a "new program monthly cost" of $39.[6]
- A representative from another company told our shopper that the cost varies, depending on the level of legal work involved and the amount of the debt. The range he quoted was $499-$1600.

  The fee schedule on p. 12 from this company that was posted on an independent web site shows a total fee of $699 that may be paid in nine "easy payments." In addition, payment after consolidation included a monthly fee that is not paid toward the loan, but to the company.

FederalStudent
Aid Relief

Your Payment Schedule (Exhibit C) Your total fee for our services will be $ 699.00 You may pay this amount in 9 easy payments as outlined below:

Payment #	Payment Amount	Payment Due Date
1.	99.00	1/11/13
2.	75.00	1/25/13
3.	75.00	2/08/13
4.	75.00	2/22/13
5.	75.00	3/08/13
6.	75.00	4/22/13
7.	75.00	5/05/13
8.	75.00	5/19/13
9.	75.00	6/03/13
10.	x	x
11.	x	x
12.	x	x
13.	x	x
14.	x	x
15.	x	x

Please complete the following authorization for payment:

Name of Cardholder: [redacted]

Billing Address: same

x

City / State / Zip: x

no One Time Payment yes Payment Plan Option

Card Type: Visa M/C Amex Discover visa

Card # [redacted] vCode [redacted]

Expiration Date: [redacted] / [redacted]

The undersigned customer understands that the Federal Student Aid Relief requires this authorization to be on file and a valid card is required to continue the service. Your card will be charged according to the schedule listed above. The undersigned customer authorizes Federal Student Aid Relief to charge said credit card the amount due for services rendered, and due according to the plan listed above. Being the authorized cardholder, the undersigned customer agrees to the terms set forth in this agreement and specifically authorizes Federal Student Aid Relief to charge my credit or debit card, for provided services. This authorization will remain in full effect until terminated in writing by the undersigned.

DocuSigned by:

X [redacted]

CF94B05CB5BD4E7

PO Box 2074, Delray Beach, Florida 33483

- A representative from a different company told our shopper that the cost was $500, which he said takes care of processing fees. He said that the fee could be paid over two months and that the down payment is usually half of the initial fee.
- A representative at another company would not give our shopper an exact estimate, but did tell our shopper that the fees ranged from $399-$599. She claimed to have the ability to give a $100 discount before the end of the month. The representative also said that consolidation costs an additional $29.95 for the first three months of the consolidation. The representative told our shopper that she could pay the first $149.50 and then make another payment the next month, although the remainder of the fixed rate, plus the consolidation fee, would be charged.
- A fee from a 2010 contract from one company was $650. There was an additional $250 fee for those in active litigation or who have received a garnishment notice.[7] In addition, clients that qualify for a refund are subject to an additional fee that is equal to 20% of the total refund.
- According to an independent web site, a nonprofit organization charges $ 399-999 to do consolidations and assist with IBR.[8] The fees are based on loan balance and go up to $999. This organization targets military service members.
- A one-year membership fee of $295 for a step-by-step repayment action plan and ongoing assistance, and $50/month for a rehabilitation plan for as long as the consumer needs the services.[9]
- A flat $700 fee.[10]

The initial fees for these free programs are quite high in most cases. Most companies will set up payment plans to spread out the enrollment or initial fee. Many also charge separate monthly fees, apparently for ongoing services. These monthly fees are even more suspect. Once a borrower consolidates a federal student loan, the only monthly activity in nearly every case is to make the required payment. This payment could be $0 for very low-income borrowers. There is an annual recertification process for IBR and some of the companies specifically state that they assist with this process. It is not clear, however, why they charge a monthly fee for a certification process that occurs only once a year.

All of the companies required some sort of payment before initiating services. Three companies offered some sort of down payment arrangement. As discussed in greater detail in the next section, this practice violates federal and state laws that require debt relief companies to complete services before charging consumers.

Evaluating the Services

Evaluating whether the fees are reasonable requires an understanding of the services offered and whether those services have any value.

Improperly Selling a One-Size-Fits-All Approach

We found in nearly all cases that the services described on the web sites were much broader than those actually described by representatives. Most common are web sites that describe a range of services to get borrowers out of default, stop collection efforts, and even get diplomas and transcripts from schools. Most of the representatives we spoke with, however, acknowledged that they offered only loan consolidation. Only a few, however, were up-front about their limited services in advertisements and web sites.

Nearly all of the companies claim to offer individualized, tailored service. One company asserts that it will help consumers ". . . identify the most appropriate program based on your unique situation as well as assist you to fill out all the required consolidation program paperwork."[11] Yet the prominent statement on its web site refers only to consolidation, stating "Consolidate Your Student loans and Save."

There are numerous problems with this approach including that consolidation is not an appropriate product for all borrowers and may not even be available to all borrowers. In addition, there is only one federal student loan consolidation program. Even companies that admit that they sell only consolidation cannot possibly be tailoring the product to individual needs or searching among multiple products. Why? Because there is only one student loan consolidation option.

It is possible that some of these companies follow through and provide other services, such as helping with wage garnishment hearings. Our secret shopper and web site investigation could not independently verify the scope of services actually offered without providing personal identifying information. There are, however, numerous online complaints about student loan debt relief companies and their failure to follow through with promised services.

A number of companies have long lists of Better Business Bureau (BBB) complaints, including at least one in which the BBB revoked its accreditation. In this case, the majority of complaints were about the products and services, mainly alleging failure to perform services after being paid.[12]

Inaccuracies and More Inaccuracies

Many companies sell themselves as unique experts on student loans. One company states that: "We serve those that do not wish to spend thousands of hours researching previous Federal and State Congressional Bills. We believe your time would be better spent pursuing the things you value most in life. Let us be your expert and your guide through the complicated, convoluted, contradictory, and often treacherous world that is Federal Student Loan Repayment in the 21st Century."[13] Another company describes itself as experts on a mission.[14]

One of the companies states that it will help borrowers get out of default utilizing techniques that collection agencies "don't want you to know about or use."[15] Yet another company states on its web site "Managing student loans isn't easy.... We put our vast financial experience to work for you."[16]

Despite the claims of independent knowledge and expertise, one of the companies took information from NCLC's Student Loan Borrower Assistance web site, copying nearly all of the questions and answers.[17] This is wrong on multiple levels. Cleary it is wrong to take content from a copyrighted web site without seeking permission. In addition, a company that purports to be staffed by student loan experts should presumably be able to write its own content. This company claims that "Our consultants and employees undergo regular training to maintain a high level of competence in their respective areas of expertise in order to achieve the industry's highest standards."[18] Regardless of who they hire, there is no excuse for lifting information from another web site without permission and holding it out as its own information.

Given the ubiquitous claims of expertise, it is particularly shocking that we found so many errors in the information that representatives told our secret shoppers and on web sites. We discuss **selected** examples of inaccuracies below.

1. Inaccurate Information about Bankruptcy

We found three companies that stated incorrectly on their web site that student loans cannot be discharged in bankruptcy due to a 2005 change in the law. In addition, we found three companies that mentioned the rule that a borrower can discharge a student loan in bankruptcy after seven years. Congress eliminated this provision in 1998![19]

> ***Inaccuracy:*** Under current law, all student loans **can** be discharged in bankruptcy if a borrower can prove "undue hardship." This is a difficult, but not impossible, standard to meet.

Prior to 2005, these heightened dischargeability standards applied only to a limited category of student loans, mainly government loans. In 2005, Congress included most private loans in the non-dischargeability category as part of comprehensive bankruptcy amendments.[20]

2. References to Defunct Guaranteed Loan (FFEL) Program

One site makes repeated references to loans available through the guaranteed loan (FFEL) program. For example, the company states that consolidation loans are available through both Direct Loans and FFEL.[21]

> ***Inaccuracy:*** The FFEL program ended in July 2010.

3. Consolidation and Garnishment

Numerous sites stated that they will assist borrowers in consolidating even after a garnishment has begun. These statements are often in the testimonials on the various sites. In addition, one company states in FAQs that borrowers can consolidate while in default or in garnishment, but only under the income contingent repayment plan.[22]

> ***Inaccuracy:*** Federal student loan consolidation is not allowed once there is a garnishment order in place. It is possible to consolidate if the garnishment order is lifted, but this is an additional hurdle that is not referenced on the site. In addition, borrowers consolidating as a way out of default may select IBR or ICR.

4. The Amount of Rehabilitation Payments

According to information on one web site, "Guarantors and lenders will try to get you into a repayment plan for nine consecutive months that will have a higher payment than your original payment that you could not afford in the first place."[23]

> ***Inaccuracy:*** It is certainly possible that guarantors and lenders will try to pressure borrowers into making higher payments. However, the description fails to mention that borrowers are entitled to pay only what is reasonable and affordable during a rehabilitation plan. A borrower's payment will by no means be necessarily higher during the rehabilitation period than the original payment. In fact, many lenders are now using the income-based repayment formula to determine the amount of the borrower's reasonable and affordable rehabilitation payment. The U.S. Department of Education is supposed to be issuing regulations this year to **require** such practice.

5. Collection Fee Amounts

A number of sites state that rehabilitation can cost you up to an additional 40% in fees on top of your balance.

> ***Inaccuracy:*** Fees for FFEL and Direct loan collection are limited to 18.5% as part of rehabilitation.

On the same topic, a number of web sites state that collection agencies can take up to 40% in fees when they collect, whether through rehabilitation or not.

> ***Inaccuracy:*** The 40% figure is likely derived from regulations that apply only to Perkins loans, the smallest of the federal student loan programs. This limit does not even apply to all Perkins loans.[24] The limit for the vast majority of student loans is 25%. The allowable fee limits for consolidation and rehabilitation is 18.5%.

6. Ways to Get out of Default

A number of companies gave the following list to describe how borrowers can "escape" default:

1. Cancel or discharge
2. Renew or consolidate
3. Deferment or forbearance

> ***Inaccuracy:*** This list is both incomplete and inaccurate. It is incomplete because it does not mention rehabilitation unless perhaps the company considers "renewal" to be rehabilitation. Describing rehabilitation as a type of renewal is inaccurate because rehabilitation involves getting an existing loan out of default and continuing payment on that loan. In addition, deferment is not available to borrowers in default.

7. Credit Reporting Implications after Default

A number of companies stated that borrowers will no longer have a default notation on a credit report after consolidating.

> ***Inaccuracy:*** Only rehabilitation requires that the default notation be removed from a borrower's credit report. With consolidation, the default notation remains, but the new loan is shown as current going forward. Even with rehabilitation, the other derogatory history is not removed from the credit report until it becomes obsolete.

8. Garnishment limits

Two web sites listed the garnishment limit for student loans at 10%.

> ***Inaccuracy:*** The correct amount is 15%.

9. Comparing Consolidation and Rehabilitation

In one of our secret shopper calls, a representative said that rehabilitation is only for borrowers who have already consolidated.

Inaccuracy: There is no such requirement. In fact, a borrower is only allowed to consolidate out of default one time and rehabilitate one time. Using both options at once will limit future opportunities.

10. Inability to Reapply for Programs

In a recorded call posted on an independent web site, a representative from one of the companies told a secret shopper that it was best to use his company's services to consolidate his loans with the government because if he is denied, "that's for life." He also said that once a borrower consolidates, it is difficult to move things around and get better payments.[25]

> ***Inaccuracy:*** Many borrowers have their consolidation applications denied due to lack of paperwork or other reasons. These borrowers can reapply. Borrowers also receive a statement from the U.S. Department of Education prior to consolidation that allows them to cancel the consolidation. There are some limits with respect to reconsolidation after a successful consolidation. However, after a successful consolidation, a borrower can change payment plans at any time as long as he is eligible for the other plans.

Improperly Claiming Government Affiliations

A few of the companies we reviewed use logos that suggest an affiliation with the government, such as pictures of government buildings or American flags. In addition, one of the companies uses a phone number that is similar to the phone number for the U.S. Department of Education's student loan center, 1-800-4FEDAID.[26]

One of the companies we contacted told our shopper that they are an "approved servicer" with the Department of Education. This is inaccurate. One company posts logos for various national news networks, including CNN and Fox on the site. There is a place to click for a report that links to an interview with Secretary of Education Arne Duncan. The link has nothing to do with the company.[27]

These companies should be clear that they are not affiliated with the U.S. Department of Education or other government entities. Yet we found an explicit statement disclaiming affiliation with the government on only one of the sites we reviewed.[28]

The U.S. Department of Education has issued a warning of sorts on its web site, but it is not particularly prominent. The warning appears on the front page after the consumer clicks on "consolidation loan" on the **studentaid.ed.gov** web site and reads: "There is no application fee to consolidate your federal student loans into a Direct Consolidation Loan. If you are contacted by someone offering to consolidate your loans for a fee, you are not dealing with the U.S. Department of Education's loan consolidation servicer. To apply for a Direct Consolidation Loan, visit the Direct Consolidation Loans web site at **www.loanconsolidation.ed.gov**."[29]

Discouraging Borrowers from Handling Their Own Cases

We have represented low-income borrowers for many years. We certainly know that the federal student loan programs are unnecessarily complex and that many borrowers face unimaginable and inexcusable bureaucratic hurdles in trying to get relief. The federal government has made some improvements, including online applications, and there are resources such as ombudsman programs, discussed later in this report, that can help borrowers navigate the system. Yet there is no question that serious problems persist.

Our experience is that the consolidation application is not particularly complex, but the process of getting the application approved and properly handled is extremely difficult. Our clients frequently find that the consolidation servicer does not consolidate the loans listed on the application, repeatedly asks borrowers to submit information they have already supplied, and places borrowers in the wrong payment plans. There are inexcusable delays particularly with borrowers seeking to complete annual recertification of eligibility for IBR. Servicers routinely lose paperwork or fail to process certifications on time. Borrowers who catch the problem on time still end up in most cases placed in forbearances which can lead to capitalization of interest or delays in public service forgiveness time periods.

The debt relief companies seize on this incompetence in selling their services. It may be an appealing selling point, but it is deceptive if the companies go too far in implying or in some cases stating explicitly that a borrower cannot get relief on her own.

According to one company's web site,". . . even if a borrower can locate a program that can provide them relief, complying with the extensive list of requirements and "if-then" statements in the bill can be a daunting task for those of us without PhD's in Law. In the rare instance a borrower can locate a program and comply with requirements to participate, more hurdles exist, such as the fact that in many instances borrowers are given just one chance to change their loans. This often leads to selecting a program that doesn't maximize the benefits available and there is no way of changing it back."[30]

It is certainly true from our experience that there are significant barriers to successful application and enrollment in student loan programs, but it is goes much too far to say that borrowers can locate these programs only in rare instances and comply with program criteria only in rare instances. It is even more misleading, and, in fact, inaccurate to state that borrowers have only one chance to change their loan.

This Is Really about Sales

Despite the company's descriptions of their staff as experts, in some cases touting years of experience counseling borrowers, it appears that many advertise the positions as sales jobs. An ad posted on an independent web site for one of these companies describes the "counselor" employment as sales jobs. One company's ad is titled, "Top Producer_We'll Show you the Money" and goes on to say ". . . we have enjoyed tremendous success and we now have several sales specialists who are well on their way to making between 6k to 9k in commissions in only their second full month with the company. All of our leads are inbound calls from people who are serious about lowering their student loan payments."[31] We need more sales specialists who are highly motivated to succeed. These ads are all about sales jobs and do not even mention student loan expertise. Another advertised $250,000/year potential.[32]

The "counselors" can be aggressive in signing borrowers up for debt relief services. Our secret shopper gave out an e-mail address and phone number to three of the ten companies she called. She received three e-mails and more than a dozen calls from the companies. One "counselor" tracked down the secret shopper's work number and left a voicemail. We also heard directly from consumers, even some who had rejected the services, about repeated sales calls.

Despite the company's descriptions of their staff as experts, in some cases touting years of experience counseling borrowers, it appears that many advertise the positions as sales jobs.

There is a troubling trend if these "counselors" are paid by commission. Similar problems arise in the federal government's use of private collection agencies. If, for example, employees are compensated based on how many borrowers they convince to consolidate, they are likely to pressure borrowers into these options even when it is not in the borrowers' best interest.

Limiting Remedies and Access to Justice

Our investigation found widespread use of mandatory arbitration clauses in the company's agreements and other provisions to limit a consumer's access to justice. Mandatory arbitration provisions are buried in many kinds of consumer contracts. These provisions require consumers to waive their right to use the court system, and instead limit consumers to resolving their disputes through a binding arbitration process. This constraint puts the lender or business in a stronger position. Under arbitration, little discovery is available. The business can choose the arbitration service provider, and repeat players bring more business, leading to an incentive for the arbiter to rule for them.[33]

Mandatory arbitration clauses are controversial as they are hallmarks of predatory loans. The Center for Responsible Lending lists mandatory arbitration clauses as one of the seven signs of predatory lending.[34] The 2010 Dodd-Frank Act legislation banned forced arbitration in mortgages and gives the new Consumer Financial Protection Bureau (CFPB) the authority to prohibit or impose conditions on other forced arbitration provisions involving consumer financial products or services.[35]

In addition to arbitration clauses, we found one company that requires the consumer to waive the right to a jury trial. Generally applicable contract law principles require that such waivers of constitutional rights be clear and unambiguous. One of the contracts we reviewed has a provision on the last page of a four-page agreement stating that the client and the company acknowledge a knowing and intentional waiver of their rights to a jury trial on all matters that concern the service agreement, as well as any other communications or matters related to the provision of services to the client. However, merely stating that the waiver is knowing and intentional does not make it so.

Potential Legal Violations

Abuses in the debt relief industry are not new. The abuses grew so severe in the credit card counseling, foreclosure rescue, and debt settlement industries in recent years that the federal government and many states passed laws to crack down on abuses. It appears that many of the principals leading these companies come from the credit card debt settlement industry. For example, Jason Spencer is the executive chairman for Settlement Collections and also owner of Student Loan Relief.[36] Some, such as Debt Alternatives Center, advertise as debt settlement companies.

As described next, most of these laws should apply to student loan debt relief companies. Many of these companies appear to be routinely violating all or some of these laws intended to protect consumers.

Federal Laws

Credit Repair Organizations Act

The federal Credit Repair Organizations Act (CROA) was adopted in 1996.[37] Many states have similar laws.[38] The definition of credit repair organization is broad, applying to any person who performs or offers to perform any service in return for payment for the express or implied purpose of improving any consumer's credit record, credit history, or credit rating, or providing advice and assistance to any consumer with regard to any activity or service described above. Courts have found that simply advertising or claiming to provide credit repair services is sufficient for coverage. Bona fide nonprofit organizations are excluded.

Nearly all of the web sites we reviewed specifically state that the company can assist in improving or cleaning up the consumer's credit. For example:

> Federal Student Aid Relief: We will improve your credit score and remove your i9 rating. . . The i9 mark on your credit report is the worst possible mark you can get.[39]
>
> Student Loan Assistance (**mydefaultedloans.com**): We help consolidate, improve credit ratings, and put you on the right path.[40]

These companies should therefore be required to comply with the CROA.

Among other provisions of the CROA, a consumer has the right to cancel any contract with a credit repair organization within three business days. The contract must include a conspicuous, bold disclosure of this three day right to cancel. The form must use the exact language specified in the Act. A contract that does not meet these requirements should be treated as void and unenforceable.

Of the contracts we reviewed, only one included a three-day cancellation right. This provision did not, however, comply with the CROA requirements. CROA states that the cancellation right must be provided to the consumer on a form in duplicate with the bold heading, "Notice of cancellation." In this case, the cancellation provision was one of many items in a long list in the client agreement.

In addition, the CROA prohibits companies from charging or receiving any money before the services are fully performed. As noted earlier, a number of the representatives told our secret shopper that the fees must be paid up-front.

In reviewing the contracts, we found that all required some sort of payment before beginning services. In some cases, they required only a down payment. Some offered payment plans. One company said that it would give priority service if the consumer paid in full. Another company says in its contract that if it cannot resolve the borrower's situation, "you don't pay us a thing." Since it requires an up-front payment from the consumer before beginning work, the statement can, at most, be referring to a commitment to provide a refund. However, offering a refund should not shield the company from the federal prohibition against charging any fees before achieving results. The CROA provides that credit repair organizations may not charge or receive money for services before the services are fully performed.[41]

From a Consumer Contacting NCLC:

"I spoke with someone who stated that they could pay off my loans and guarantee that they could get me a zero payment based on my income because I am disabled and also get the loan discharged in about 20 years for a fee of $299. . . . They said that if I go with their services, it would help to clean my credit report, which contains numerous student loans that show up as negative due to so many loans."

FTC Telemarketing Sales Rule

The FTC Telemarketing Sales Rule covers any program or service that is represented or implied to renegotiate, settle, or alter the terms of a debt between a person and one or more unsecured creditors or debt collectors.[42] It applies to any company that initiates or receives phone calls to or from a customer. It applies to services not only when the company initiates the call but also when the customer initiates a call in response to the seller's advertisement in any medium. All of these debt relief companies should be covered, with the exception of true nonprofit organizations.

Probably the most important provision in the Rule is the limit on when and how providers may be paid. In essence, they may not be paid until they achieve results. Specifically they may not request or receive payment for any debt relief service until they have renegotiated, settled, reduced or otherwise altered the terms of at least one debt pursuant to a settlement agreement, debt management plan, or other valid contractual agreement and the customer has made at least one payment pursuant to the settlement agreement, plan or other agreement. We discussed the common practice of requiring advance fees in the CROA section.

Some companies may claim that they are compliant with all state and federal laws. One company, for example, describes its services as "FTC Compliant."[43] A statement of compliance, however, is not the same as actual compliance.

Nonprofit Status

A few of the companies we reviewed were 501(c)(3) nonprofit organizations. As with debt settlement companies offering credit card and other services, the I.R.S. should scrutinize these companies carefully to ensure that they are bona fide nonprofit organizations.

In the credit card debt management area, the I.R.S. Credit Counseling Compliance Project revoked, terminated, or proposed revocation of over half of the organizations it examined. Among other requirements, bona fide credit counseling agencies must provide services tailored to the specific needs and circumstances of consumers, provide credit repair services only to the extent such services are incidental to credit counseling and without charging separately for such services, and establish and implement a fee policy so that fees charged are reasonable and waivers are given to consumers who are unable to pay. A key issue is whether the companies set up payment plans funded in part by creditors.

In a call with a nonprofit debt relief company posted on an independent web site, the representative characterized the $599 fee as an underwriting fee. She said that even though the company is nonprofit, they ". . . need to be able to keep the lights on."[44] It is extremely troubling when a nonprofit mischaracterizes fees as underwriting fees and charges almost $600 for a program that a borrower can obtain at no cost.

Current Federal Enforcement

We do not know of any FTC public actions against student loan debt relief companies, although the agency has taken numerous enforcement actions in recent years against other types of debt settlement and debt management companies. In May 2013, the CFPB filed a complaint against two debt-relief service providers alleging illegal advance fees for debt settlement services. These were not student loan debt relief companies. The complaint is focused on charging upfront fees prior to settling debts, in violation of the FTC Telemarketing Sales Rule.[45]

These agencies, as well as the U.S. Department of Education, already have jurisdiction and a number of powerful legal tools to pursue enforcement. In addition to the specific laws discussed previously, the federal agencies have authority to take action against companies that engage in unfair and deceptive acts. The CFPB's authority extends to unfair, deceptive, or abusive acts or practices in connection with any transaction with a consumer for a consumer financial product or service or the offering of such a product or service.[46]

In response to our request for comment, an FTC spokesperson said in mid-May 2013 that the agency has not had any enforcement action against a debt relief company that exclusively focused on student loans. He said that student loan debt relief complaints have not stood out because the Commission receives so many complaints against the industry as a whole. He did say that the type of business model we described must follow the FTC Act and the Telemarketing Sales Rule. He said all of the laws that cover the debt relief industry in general should apply to the student loan debt relief companies.

CFPB staff reported that they have heard from consumers and institutions of higher education about companies offering services for a fee that are accessible at no charge through other means. The CFPB staff also said that it appears that some companies may be charging consumers to access repayment options that are available under existing programs, such as rehabilitation of defaulted federal student loans.

A U.S. Department of Education spokesperson chose to refrain from comment at this point, but stated that the Department was looking forward to seeing the results of NCLC's research and analysis.

Both the U.S. Department of Education and CFPB offer online tools to help borrowers understand their student loans and options. The CFPB site has comprehensive information on both federal and private loans.[47]

State Debt Settlement/Management Laws

Most states have laws requiring certain debt relief agencies to be registered or licensed. Even states without licensing requirements have criminal or civil consumer protection laws that apply to debt relief companies.

Student loan debt relief companies should fit within the definitions of state debt relief services and therefore should be registered or licensed in the states that require these steps. It does not appear that the companies we examined are in fact registered or licensed. Many, in fact, were not even listed as corporations in the Secretary of State online listings in the states where they are located.

We contacted a number of state regulators in states with a variety of debt relief laws.[48] A number of the states contacted have adopted a version of the uniform debt relief law (National Conference of Commissioners on Uniform State or NCCUSL law), which defines management services broadly as intermediary services between an individual and one or more creditors of the individual for the purpose of obtaining concessions. Concessions are defined as a consumer's assent to repayment of a debt on terms more favorable to an individual than the terms of the contract between the individual and the creditor.[49] The services offered by these companies should fit within this definition.

None of the state regulators we contacted had focused on student loan debt relief companies:

> **Nevada:** The state has adopted a version of the NCCUSL law. The regulator we spoke with said that to his knowledge, there are no companies operating with the student loan debt relief/debt assistance model in the state. He did not know of any complaints. He said that the state does not license the specific student loan relief model, but they often see problems with internet companies based in other states targeting Nevada consumers.
>
> The regulator in **Iowa** said that he was not aware of any written opinions about whether these companies fit within the state debt management law. He did not know of any enforcement actions.
>
> We also contacted **Maine and Mississippi** regulators as those states have laws that are very similar to the NCCUSL law. The Maine regulator said that they receive a lot of calls about debt management, but he had not heard about the student loan model. He was not sure if they had received complaints, but the business model we described seemed to fit within the definition in the Maine law.
>
> In **Mississippi**, the regulator said that the current debt management law does not really cover debt settlement, whether student loan related or not. The **Oregon** regulator expressed interest, but did not have any information to provide.
>
> We did not hear back from regulators in **Texas** and **Tennessee**. The **Wisconsin** regulator said that there were no current investigations and they did not have an opinion at this time about whether the debt settlement law applies to the student loan companies.
>
> **New Hampshire** is the only state in our investigation to take action against a student loan debt relief company operating within its borders, Default Federal Student Loan Help, LLC formed in 2009. The company's activities fell under the state's "Debt Adjuster" law, which requires companies to obtain a license from the state. After the company failed to seek a license and collected fees from two New Hampshire consumers, the New Hampshire Banking Department investigated the company for violations. In 2011, default Federal Student Loan Help entered a consent order to reimburse the fees consumers paid for its services.[50]

It appears that this issue has barely hit the federal or state regulatory radar yet despite the proliferation of online complaints and the numerous problems and violations discussed in this report. It also appears clear that in many states, there are existing laws that should apply to student loan relief companies. In some states, these laws require the companies to obtain licenses or registrations. Many of these state laws include a number of other substantive provisions including limits on fees, contract requirements, bond requirements, and prohibition of certain practices.[51]

Other Potential Legal Violations

Unauthorized Practice of Law

None of the companies we contacted or investigated appear to have lawyers on staff or supervising the "counselors." We could not independently verify this finding. However, most state that they are not lawyers. Most of the agreements have clauses similar to this provision from one company stating that the company ". . . is not providing the client with legal, tax or financial advice of any kind." The contract on page 9 states in line seven that the consumer ". . . understand that Consultant does not provide legal services and does not engage in the practice of law. Should legal action be initiated against Principal related to its student loan(s), Principal must seek the services of legal counsel."

Despite these disclaimers, it is likely that the services that these companies claim to provide would be considered the practice of law in nearly every state. One of the companies even stated that it sets fees based on the amount of **legal work** involved.

State laws that prohibit the unauthorized practice of law should restrict or prohibit nonattorney counselors from advising a consumer regarding student loan options or even just regarding basic budget concerns. What is authorized in one jurisdiction may be expressly forbidden in another. Despite the variations in state laws, a few common themes emerge. For example, most states allow nonattorneys to make legal forms available to consumers and to complete those forms at the direction of the consumer. On the other hand, most states do not permit nonattorneys to give legal advice pertaining to the particular facts of an individual's case.[52] Analyzing an individual's student loan case and recommending particular programs should cross the unauthorized practice of law line in most states.

It appears that this issue has barely hit the federal or state regulatory radar yet despite the proliferation of online complaints and the numerous problems and violations discussed in this report. It also appears clear that in many states, there are existing laws that should apply to student loan relief companies.

This is not to say that involving an attorney in the work of a student loan debt relief company will eliminate abuses. Not all lawyers are competent or ethical. However, laws that restrict the practice of law to lawyers ensure that practitioners at least meet standards of education, are subject to rules regarding handling of client funds, and are subject to some level of oversight. Client recovery funds are often available if an attorney mishandles a case. If student loan debt relief companies are practicing law without a license, the result is that consumers have none of these protections.

Use of Powers of Attorney Documents

Nearly every company we reviewed requires clients to sign powers of attorney. A few of the companies explicitly state that the client must cease communication with the loan holder after signing the agreement and power of attorney. One company requires consumers to sign that they will not work on their own accounts after signing up with the company. The company says it will not provide a refund if the client works on his own account after signing the agreement.

There are numerous potential problems with the widespread use of powers of attorney. This is extraordinary power that consumers are giving to questionable companies. One problem is that not all of the documents contain specific instructions about how to revoke this authority. Many of the consumer complaints are from consumers who claim that the companies stopped contacting them after taking their money. It is particularly troublesome that these companies are not in touch with consumers, even those trying to get refunds or otherwise terminate services. Consumers may not know that they also must attempt to cancel the power of attorney documents in these cases.

In addition, in all of the documents we reviewed, the authority is given to the company, not to a particular individual. Although the Uniform Power of Attorney Act, which has been adopted in 14 states, does not require that the power be granted to an individual, some states do have such requirements. For example, Florida's law requires that the agent be a natural person over 18 years old or a financial institution with trust powers.[53] The documents we examined would violate the laws in these states. A few loan holders reported to us that they are now requiring that the student loan debt relief companies name the individuals who are authorized to act for the corporation.

Failure to Safeguard Consumer Privacy

A number of the representatives we spoke with said that our shopper had to reveal her federal student loan PIN number in order to move forward with the service. In a recorded call posted on an independent web site, a company representative tells a secret shopper that she can obtain his PIN for him.[54] These practices raise serious privacy concerns. Further, such practices violate U.S. Department of Education guidance.

The PIN number is used to access the National Student Loan Data System (NSLDS). The U.S. Department of Education warns on its web site that borrowers should never give these PIN numbers to third parties.[55] According to the Department, access to the NSLDS Web site is limited to one borrower's record at a time by an individual user.

School officials and loan holders may access the NSLDS information, but only in limited circumstances. Access to NSLDS is restricted to the staff of an eligible participating postsecondary institution and to eligible FFEL lenders, lender servicers, and guaranty agencies. With exceptions not relevant here, no other persons or organizations can have access to NSLDS data.[56]

A September 2004 U.S. Department of Education guidance letter clarifies the requirements for requesting and using a PIN for use in the federal student aid programs. First, the person initiating a request for a PIN must be the person identified in the submission who then becomes the owner of the PIN. Second, the person to whom the PIN is sent (either by e-mail or regular mail) must be this same person. Third, the person using the PIN, for any purpose, must be the PIN owner. Finally, the owner of the PIN must not share it with any other person or transfer any of his or her rights or responsibilities to another person or entity.[57]

False and Deceptive Advertising

A number of advertising claims are particularly suspect, including:

- **Guaranteed results.** One company guaranteed results within 4-6 weeks.
- **Guaranteed refunds.** Many companies guarantee results, but then qualify these guarantees. One company offers a full refund if the consolidation does not occur within 120 days. However, the agreement may be terminated during this time if the borrower does not keep up on required fees owed to the company. These fees are presumably owed even though the consolidation application is pending.
- **Deceptive or fabricated testimonials.** Some of the testimonials on the various web sites appeared nearly identical as those on other web sites. This raises questions about the authenticity of the testimonials.
- **Undocumented, undefined satisfaction rate claims.** One company cited a satisfaction rate of 97.5%. It gave no information about how a satisfaction rate is measured and no data to back up this claim.[58]
- **Unverifiable claims about the numbers of consumers served and amounts of dollars saved.**
- **Unverifiable claims about research**, including one company that claims to know of 233 different congressional and state government bills that can lower a borrower's payments or provide temporary relief.[59] This is particularly misleading if it counts bills that have been introduced. Most of these bills will never become law.

ALTERNATIVE ASSISTANCE RESOURCES

Student loan debt relief companies are thriving in large part because of the lack of alternative assistance resources. There are some reliable resources available. However, most are not strictly borrower advocates and many lack the expertise required to provide assistance on the complex government programs.

Student loan debt relief companies are thriving in large part because of the lack of alternative assistance resources.

Student Loan Ombus Programs Describe Their Missions

"To be the voice of fair process. To assist borrowers to make sure the process has worked correctly for them."

"To provide borrowers with an impartial review of their student loan complaints/concerns."

"Facilitate resolution of customer concerns as a neutral advocate for the borrower. . . "

"As a neutral third party and voice for a fair process, the Ombudsman serves as a mediator, fact finder, and arbitrator in assisting borrowers in resolving issues that are in controversy."

"To review, respond to and track escalated issues. . . "

"To determine the real problem, then obtain all applicable information and documentation that relates to the issue."

"Improve the customer experience by providing comprehensive review and impartial resolution to concerns and issues raised by our customers."

Source: Responses to NCLC Survey of Student Loan Ombuds Programs, January–February 2013.

Ombuds Programs

The federal government and many guaranty agencies have created ombuds or mediation programs. We surveyed a number of these companies for this report.

They generally describe their mission as helping ensure that borrowers have access to a fair process. Some of the guaranty agencies have created specialized repayment programs for borrowers. One agency also promotes the garnishment hearing process as a means for borrowers to get relief from garnishment.

One of these agencies reported that it proactively reaches out to borrowers who have been subject to tax refund and Social Security offsets in order to make them aware of options that can either eliminate or reduce such offsets. This may include making voluntary payments or completing a financial hardship form which is reviewed by the agency's borrower advocacy staff.

These services can be useful for many borrowers, but there are important limitations to consider. Loan holder ombuds programs work for and with loan holders. Although they can be neutral mediators, they are not and do not purport to be borrower representatives. As effective as the ombuds offices may be in many cases, they are part of an overall guaranty agency or loan holder structure in which lenders pay the agencies to recover loans.

A mediator can help many borrowers, particularly those with less complex questions and certainly those that need basic information about their accounts. However, there are many situations in which borrowers need advocates that are clearly on their side. For example, many guaranty agencies promote rehabilitation as the best way out of default. In fact, this is an individualized decision and in some cases, consolidation or even cancellation is a better strategy.

In addition, ombuds counselors are generally not lawyers and must not engage in the unauthorized practice of law. Given the dearth of legal assistance resources, it is understandable that these agencies want to help.[60] Overreaching beyond competency, however, can be worse than not helping at all. Providing some assistance is not always better than none if the advice is inaccurate.[61]

Credit Counselors

There are some nonprofit credit counselors that have begun to offer student loan counseling, but there is risk here as well. One challenge in expanding the role of credit counselors is ensuring that only legitimate nonprofit agencies provide these services.[62] Credit counselors must also change their traditional service model which focuses mainly on assisting consumers with credit card debt problems. In addition, credit counselors are accustomed to placing consumers in standardized credit card debt management plans. This type of "one size fits all" approach will not work with the complex federal student loan programs. Finally, credit counselors, like financial aid staff, often lack specific student loan expertise.

Default Management Companies

There is also a relatively new business of default management companies. These companies are hired by schools to contact borrowers directly, offering assistance. For-profit colleges in particular have enlisted specialized contractors to lower their reported cohort default rates. The Senate Health, Education, Labor & Pensions (HELP) committee included information about these contractors in a 2012 investigation of the proprietary school sector.[63] Twelve of the thirty companies studied hired a private contractor to manage student defaults.[64] General Revenue Corporation, a division of private student loan giant Sallie Mae, handled the overwhelming majority of default management functions for the twelve schools.

General Revenue Corporation and other default management companies contracted by proprietary schools have been criticized for the strategies they peddle to students.

According to the HELP report, ". . . internal documents show that at some schools the emphasis is on signing students up for forbearance and deferment with the sole goal of protecting the colleges so that they do not lose access to Federal taxpayer-funded student aid dollars."[65] By funneling borrowers into forbearance and deferment, schools artificially lower their cohort default rate. If the borrower cohort default rate exceeds 25% (soon 30%), tracked over two (soon to be three) years, schools lose access to federal financial aid. Forbearance and deferment delay payments, but interest continues to accrue. The strategy is particularly attractive to for-profits with high rates of loan defaults because borrowers in forbearance and deferment are considered current. By the time the deferment or forbearance ends, the defaulted borrowers are no longer included in the cohort default rate.

The HELP committee's analysis of four large for-profit schools showed that more than three-quarters of students who were delinquent "cured" by enrolling in forbearances or deferments. Only 24% of students at the schools were making timely loan payments.[66]

While forbearance and deferments may be optimal solutions for some borrowers, they are not designed to be a long-term solution to unaffordable student loan debt. Other options like income-based repayment (IBR) or income-contingent repayment (ICR) can be more effective long-term solutions.

CONCLUSION

Given the problems in accessing government relief programs, it is not surprising that there is a growing student loan debt relief industry. An informed consumer with resources may feel it is worthwhile to hire someone to help navigate the complex government student loan system. This is not necessarily abusive if the fees are disclosed properly, and the company is in fact what it says it is, is competent and up to date on the complex laws, and in compliance with all relevant consumer protection laws.

One of the best ways to keep these companies in check is for the government to improve its administration of its own programs. This will more easily be done if the programs are simplified.

As we have shown throughout this report, these companies can easily cross over into practices that violate key consumer laws, provide inaccurate and misleading information, and take student loan debtors' money without providing valuable services. Given the many misrepresentations we uncovered, it is unlikely that these companies are providing quality services in return for the money they are charging. Complaints from borrowers affirm these concerns. Such practices severely compound the pain of vulnerable consumers seeking to find resolutions to difficult student debt problems.

We particularly urge regulators to follow up and investigate these companies to find out more about the services actually offered and about the advertising claims.

RECOMMENDATIONS

The following recommendations are intended to help ensure that only borrowers that truly want these services and know what they are getting buy them.

Improve Government Bureaucracy and Simplify Student Loan Relief Programs

Student loan debt relief companies go too far in selling how difficult it is for consumers to get relief from the federal government on their own. Yet, the reality is that the government does not have an efficient system for informing borrowers of these programs or of administering them efficiently and according to the law. One of the best ways to keep these companies in check is for the government to improve its administration of its own programs. This will more easily be done if the programs are simplified.

Require Fair and Reasonable Fees

- All companies must disclose fees online and in all calls with consumers.
- The companies must not charge advance fees in violation of federal law before services are completed.

- Companies should charge only fees that are bona fide and reasonable. This will likely mean that any fees for ongoing assistance with loan consolidation are unreasonable.

Prohibit Misleading Advertisements or Representations

- Companies must not engage in false, deceptive or misleading advertising, including improperly stating or implying affiliations or connections with government agencies.
- Companies must prominently disclose if their programs are government programs and if so that these programs are available at no cost through the government.
- Claims about performance must be transparent and verifiable.
- Claims about borrower rights and the requirements of student loan programs must be accurate and up to date.

Safeguard Consumer Privacy

- Companies must not request or require borrowers to provide PIN numbers for the National Student Loan Data System (NSLDS). The U.S. Department of Education should investigate these practices in order to preserve the integrity of the student loan database.
- Companies must provide information about the potential dangers of signing power of attorney documents and comply with all applicable laws regarding such documents.

Refunds

Refunds should not be as much of a concern if companies comply with applicable laws and do not charge any fees until services are completed. However, the companies must at a minimum refund any funds received if the consumer does not qualify for a program or otherwise has grounds for refund.

Other Consumer Protections

- Commissions should not be allowed based on numbers of borrowers enrolled in particular programs.
- Transparency is critical. The companies must not only disclose all fees online and in response to requests for information, but also provide sample contracts upon request and verification of performance information.
- Comply with all applicable consumer laws, state and federal, including cancellation rights.
- Companies must comply with unauthorized practice of law provisions.
- Mandatory arbitration and other contract provisions limiting consumer access to justice should be banned.

Enforcement

Many of the consumer protections described above are already on the books. Federal and state regulators must step up to investigate these companies and enforce consumer protection laws.

Expand Reliable Assistance Resources

Schools, loan holders, and credit counselors can and should do more to assist borrowers, particularly in providing information and counseling services. These entities may also provide direct assistance in certain circumstances, but they cannot be everything to everyone. A particular concern involves conflicts of interest as well as nonlawyer counselors failing to stay up to date on the complex student loan programs and crossing the line into providing legal advice.

Funding is a problem for all of these programs. Creative solutions should be considered, including possible public funding or support from higher education institutions. We do not believe that an effective program can be built through funding from creditors. This will create improper incentives and conflicts of interest that disadvantage borrowers.

It is more difficult to close the gap in direct assistance service for borrowers. One solution is for lawyers, including legal aid and pro bono programs, to expand their services and provide legal assistance for student loan borrowers.

Existing legal resources are insufficient. Legal aid programs are underfunded and restricted in what they can do in some cases. Few assist student loan borrowers. At a minimum, Congress or state policymakers should consider pilot projects to fund neutral, nonprofit entities to provide direct assistance to financially distressed student loan borrowers. Private funders could also offer assistance as long as there is no funding from conflicting interests, such as lenders. This would be a borrower advocate program that would work in collaboration with ombuds, counseling, and other mediation entities. Counselors in this program must be under the supervision of a qualified lawyer.

ENDNOTES

1. The secret shopper calls occurred during March 2013. We present the results in this report without naming specific companies. NCLC has the information identifying the secret shopper information by company on file. NCLC did not record any of the secret shopper calls that we made. All web site references are current as of May 15, 2013. We found a number of the contracts as well as recordings with the companies on various online sites. The information was publicly available, but we cannot affirm that the recordings complied with all applicable laws. We reviewed all of the information we obtained online for signs of fabrication or alteration. The information we use in this report is accurate and reliable to the best of our knowledge.
2. See **http://www.studentloanrelief.us/about-us/** (last checked May 15, 2013).
3. **http://studentloanmanagers.com/about-us/** (last checked May 15, 2013).
4. **http://getoutofdebt.org/48875/military-debt-management-agency-mdma-charges-ridiculous-fees-for-student-loan-help** (Posted on Feb. 7, 2013).
5. **http://www.ripoffreport.com/r/student-consulting-group/tampa-fl-internet-/student-consulting-group-scg-univeristy-of-one-deceptive-practices-internet-1001172** (posted January 22, 2013).
6. **http://getoutofdebt.org/49366/student-loan-processing-us-my-observations-and-site-review** (posted Feb. 22, 2013).
7. This contract is from 2010, Student Loan Relief Organization.
8. See **http://getoutofdebt.org/48875/military-debt-management-agency-mdma-charges-ridiculous-fees-for-student-loan-help** (Posted Feb. 7, 2013).
9. See **http://www.student-loan-consultant.com/Services.html** (last checked May 15, 2013).
10. This contract is from 2012, Debt Alternative Center.
11. **http://www.studentloanservice.us/services/** (last checked May 15, 2013).
12. See **http://www.bbb.org/west-florida/business-reviews/student-loan-consolidation/student-consulting-group-in-tampa-fl-90097729** (last checked May 15, 2013), indicating that the BBB revoked accreditation for Student Consulting Group on July 25, 2012.
13. **http://www.studentloanrelief.us/about-us/** (last checked May 15, 2013).
14. **http://www.defaultstudentloanspecialists.com/why-us.php** (last checked May 15, 2013).
15. **http://www.debtalternativecenter.com/business-opportunities/student-loan-default** (last checked May 15, 2013).
16. **http://www.defaultstudentloanspecialists.com/about.php** (last checked May 15, 2013).
17. **http://www.studentloanrelief.us/faq/** (last checked May 15, 2013). The html code was taken directly from the NCLC web site as of the date last checked.
18. **http://www.studentloanrelief.us/our-philosophy/** (last checked May 15, 2013).
19. For a history of the bankruptcy provisions affecting student loans, see National Consumer Law Center, "No Way Out" (June 2006).
20. P.L. No. 109-8, §220.
21. **http://www.debtalternativecenter.com/student_loan_faq** (last checked May 15, 2013).
22. **http://www.studentloanprocessing.org/?page_id=126** (last checked May 15, 2013).
23. Federal Student Aid Relief **http://www.federalstudentaidrelief.com/services.html** (last checked May 15, 2013).

24. Perkins collection costs must not exceed 30% of the amount of principal, interest and late charges collected for first collection efforts and 40% for second and subsequent collection efforts and for collection efforts resulting from litigation. In the latter case, collectors may also add court costs. 34 C.F.R. § 674.45(e)(3).
25. **http://getoutofdebt.org/48875/military-debt-management-agency-mdma-charges-ridiculous-fees-for-student-loan-help** (Posted on Feb. 7, 2013).
26. The phone number listed on the web site at http://www.studentloanrelief.us/how-it-works/ is 855-MY-FEDLOAN. This is too many digits for a phone number. The site states next to MY-FEDLOAN that the number is 855-693-3356. This corresponds to MYFEDLO.
27. See **http://www.defaultloanhelp.com/**, one of the sites for Student Consulting Group (last checked May 15, 2013).
28. **http://www.studentloanprocessing.org/** (last checked May 15, 2013).
29. **http://www.studentaid.ed.gov/repay-loans/consolidation**
30. See **http://www.studentloanrelief.us/about-us/** (last checked May 15, 2013).
31. **http://getoutofdebt.org/49366/student-loan-processing-us-my-observations-and-site-review** (posted Feb. 22, 2013).
32. **http://getoutofdebt.org/48761/broadsword-student-advantage-pitches-expensive-student-loan-help-that-you-can-really-do-yourself** (posted Feb. 1, 2013).
33. National Consumer Law Center, "Forced Arbitration: Consumers Need Permanent Relief", available at: **http://www.nclc.org/images/pdf/arbitration/report-forced-arbitration.pdf** (April 2010).
34. Center for Responsible Lending, "Common Abuses: Seven Signs of Predatory Lending", available at: **http://www.responsiblelending.org/mortgage-lending/tools-resources/seven-signs-of-predatory.html**.
35. Pub. L. No. 111-203, signed into law on July 21, 2010.
36. See **http://www.settlement-collections.com/about-us/consultant-bio-s/**
37. 15 U.S.C. § 1679.
38. See generally National Consumer Law Center Fair Credit Reporting § 15.1.2 (7th ed. 2010 and Supp.).
39. **http://www.federalstudentaidrelief.com/services.html** (last checked May 15, 2013).
40. **http://www.mydefaultedloans.com/** (last checked May 15, 2013).
41. 15 U.S.C. § 1679b(b).
42. 16 C.F.R. § 310.
43. **http://www.debtalternativecenter.com/business-opportunities/student-loan-default** (last checked May 15, 2013).
44. **http://getoutofdebt.org/48875/military-debt-management-agency-mdma-charges-ridiculous-fees-for-student-loan-help** (Posted on Feb. 7, 2013).
45. Consumer Financial Protection Bureau (CFPB), "Consumer Financial Protection Bureau Takes Action Against Two Companies for Charging Illegal Debt-Relief Fees" Press Release May 7, 2013.
46. 12 U.S.C. § 5531(a).
47. See, e.g., http://www.consumerfinance.gov/paying-for-college/repay-student-debt/#Question-1.
48. Nevada Financial Institutions Division (March 4, 2013); Iowa Division of Banking (March 4, 2013); Maine Bureau of Consumer Credit Protection (March 11, 2013); Mississippi Department of Banking and Consumer Finance (March 26, 2013); Oregon Department of Consumer and

Business Services (March 27, 2013); and Wisconsin Department of Financial Institutions (March 11, 2013).

49. The NCCUSL debt management services law is available online at **http://www.uniformlaws.org/shared/docs/debt_management_services/udmsa_final_2011.pdf**. See generally National Consumer Law Center, Federal Deception Law ch. 10 (2012).
50. Case No.: 10-012: State of New Hampshire Banking Department and Default Federal Student Loan Help, LLC, Consent Order (Oct. 28, 2011).
51. See generally National Consumer Law Center, Federal Deception Law § 10.7.3 (2012).
52. These prohibitions apply only to nonattorneys who are not agents of licensed attorneys.
53. See, e.g. Fla. Sat. Ann. 709.2105(a).
54. **http://getoutofdebt.org/48875/military-debt-management-agency-mdma-charges-ridiculous-fees-for-student-loan-help** (Posted on Feb. 7, 2013).
55. **http://www.pin.ed.gov/PINWebApp/pinindex.jsp**
56. U.S. Department of Education, Dear Colleague Letter GEN-05-06, "Access to and Use of NSLDS Information" (April 2005), available online at: **http://ifap.ed.gov/dpcletters/GEN0506.html**.
57. U.S. Dep't of Educ., Dear Colleague Letter GEN-04-10 (Sept. 2004). See also a letter GEN-05-06 (April 8, 2005).
58. **http://www.fixmystudentloan.com** (last checked May 15, 2013).
59. **http://www.studentloanrelief.us/about-us/** (last checked May 15, 2013).
60. For more information on the lack of legal resources, see National Consumer Law Center, "Finding a Way Out: Improving the Assistance Network for Financially Distressed Student Loan Borrowers" (Dec. 2007).
61. Id.
62. See generally National Consumer Law Center, "Credit Counseling in Crisis" (April 2003); U.S. Senate Permanent Subcomm. On Investigations, Comm. On Homeland Sec. Governmental Affairs, "Profiteering in a Non-Profit Industry: Abusive Practices in Credit Counseling", S. Rep. No. 109-55 (Apr. 13, 2005).
63. Senate Committee on Health, Education, Labor, and Pensions, "For-Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success." (July 30, 2012), v. 2.
64. As of July 2012, the twelve companies that contracted out default management functions included: Corinthian, APEI, Apollo, Bridgepoint, DeVry, Education Management Corp., ITT, Kaplan, Keiser, Lincoln, Strayer, Vatterott.
65. Senate Committee on Health, Education, Labor, and Pensions, "For-Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success." (July 30, 2012), v. 1, p. 11.
66. Senate Committee on Health, Education, Labor, and Pensions, "For-Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success." (July 30, 2012), v. 1, p. 12.

Boston Headquarters:
7 Winthrop Square
Boston, MA 02110-1245
Phone: 617/542-8010
Fax: 617/542-8028
www.nclc.org

NCLC®

NATIONAL CONSUMER LAW CENTER®

Advancing Fairness in the Marketplace for All

Washington Office:
1001 Connecticut Ave, NW
Suite 510
Washington, DC, 20036
Phone: 202/452-6252
Fax: 202/463-9462