

THE TOP 10 WAYS THAT THE NEW BORROWER DEFENSE RULE IS WORSE FOR BORROWERS

Federal law allows students whose schools have defrauded or otherwise abused them to have their loans discharged. In 2016, the Obama Administration issued new rules to govern the process for applying for and granting borrower defense discharges. The Trump administration is rewriting the rules in ways that make it harder for students to get relief. Key differences between the rules are outlined below.

PROVISION	2016 RULE	2018 PROPOSED RULE
<p>1. Can a borrower who is current on their loan payments seek a loan discharge based on a school's fraud?</p>	<p>A borrower can file a defense to repayment claim regardless of their repayment status.</p>	<p>The Department's primary proposal requires a borrower to default before they can file a borrower defense claim. This creates a perverse incentive for students to strategically default on their loans — with higher costs and punitive consequences — simply to be eligible to apply for borrower defense.</p> <p>The Department has also included an alternative proposal that does not require default but considers even higher evidentiary standards.</p>
<p>2. What is the burden of proof a borrower must meet to have a successful borrower defense claim?</p>	<p><i>Preponderance of the evidence</i>, i.e. that it is more likely than not that the borrower's claim is valid. This is the standard for state consumer protection law.</p>	<p>The Department's primary proposal — which would allow only defaulted borrowers to apply — maintains the preponderance of the evidence standard.</p> <p>The Department's alternative proposal considers a much more difficult standard of <i>clear and convincing evidence</i>, or enough to create a firm conviction.</p>
<p>3. What actions by a school make a borrower eligible for a borrower defense discharge?</p>	<p>A judgment against the school, a breach of contract, or a substantial misrepresentation by the school which the borrower relied upon to their detriment.</p>	<p>Final judgments against the school and breach of contract are excluded entirely.</p> <p>Claims based on misrepresentation are substantially limited: The borrower must demonstrate that the school intentionally or recklessly make a substantial misrepresentation which the borrower relied upon which caused the borrower financial harm.</p>
<p>4. If a borrower has an approved defense to repayment claim, can the offending school punish the borrower?</p>	<p>There is no mention of the ability of schools to punish students with successful claims.</p>	<p>Yes. The rule explicitly provides that the school may deny transcripts to and refuse to verify earned credentials of students with successful claims.</p>
<p>5. What is the time limit for filing a borrower defense claim?</p>	<p>There is no statute of limitations on outstanding balances. Borrowers have six years from when they discovered, or reasonably could have discovered misrepresentation to file a claim to recover amounts already paid.</p>	<p>Defaulted borrowers will have only a 30-65 day window to apply following a notice of collection action (such as wage garnishment) by the Department against the borrower.</p> <p>If non-defaulted borrowers are allowed to file claims, they will have three years from when they left the school to file a claim, whether or not they were aware of the misrepresentation or knew of their right to apply.</p>

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6. What happens when ED has evidence that entire groups of borrowers were mistreated?	Automatic discharge of student loans for groups of borrowers can be granted when there is evidence of widespread mistreatment.	No matter how much evidence there is of widespread problems, applications for relief will be considered on an individual basis.
7. Can harmed borrowers go to court, either individually or as a group?	Yes, colleges cannot require students to sign mandatory pre-dispute arbitration agreements and class-action waivers, so they can go to court if they believe they were wronged.	Colleges can require students, as a condition of enrollment, to sign mandatory pre-dispute arbitration agreements and class-action waivers, which can be used to deny borrowers their day in court.
8. What happens if a student attended a school that closed?	A student may choose to accept a teach-out plan or have their loans discharged. If the student does not re-enroll in another school or transfer their credits within three years their loans will be automatically discharged without an application.	If the school offers a “teach-out” plan and students do not accept it, they are ineligible for closed school discharge. Also, there is no automatic discharge after three years, students must apply individually.
9. Can a borrower with an unsuccessful borrower defense claim appeal?	Yes. If a borrower can submit new evidence they may file for reconsideration.	No. The denial of a borrower defense claim is final.
10. How much will borrowers be helped?	In 2016, the Department estimated that the rule would provide \$15 billion in relief to students.	The Department estimates that the new rule will <i>reduce</i> the amount of loan forgiveness for borrowers by \$13 billion.