

Borrower Defense NPRM Frequently Asked Questions 6.13.16

Q: What is borrower defense?

A: A provision in the law and regulations called "defense to repayment" or "borrower defense" allows borrowers to seek Federal student loan forgiveness if they believe they were defrauded by their college. This provision has rarely been used in the past. Now, the Department is revising its regulations to create a streamlined process that is fair to students who may have been victims of fraud, and that holds colleges accountable to taxpayers.

Q: What is the timing on the proposed regulations and who do they pertain to?

A: The Department's proposed borrower defense regulations:

- Clarify the process for relief for all current FFEL borrowers and current and future Direct Loan borrowers;
- Prospectively (after the expected July 1, 2017 effective date) streamline the standard by which Direct Loans can be discharged and the ways in which Title IV-receiving institutions will be held accountable for their actions;
- Prospectively and retroactively release Direct Loan borrowers from their school's mandatory pre-dispute arbitration agreements and class action waivers;
- Prospectively revise the closed school discharge regulations to ensure Direct Loan borrowers are able to benefit from their ability to receive the discharge; and
- Prospectively and retroactively streamline the false certification regulation for FFEL and Direct Loan borrowers.

Q: Will this regulation help Corinthian borrowers and/or affect current borrowers?

A: Yes. While the new Federal standard would not apply to current borrowers, the Department anticipates that the regulations would help define the process that the Department will be using to determine borrower defenses for all claims, including those from Corinthian borrowers.

Q: Under the proposed regulations, could borrowers who think they have a claim stop payment on their loans or stop collection on a defaulted loan?

A: Yes. All borrowers, including FFEL borrowers, who apply for defense to repayment under the proposed regulations, would be able to have their loans placed into administrative forbearance or stop collection while their claims are being evaluated.

Q: Is the Department going to provide a way for FFEL borrowers of loans owned by the Department to receive borrower defense relief?

A: As announced in March, the Department is developing a plan to provide FFEL borrowers a path to the same borrower defense relief as Direct Loan borrowers through Direct Consolidation Loans. The proposed regulations would also ensure that borrowers with FFEL Loans will have the same access to administrative forbearance as Direct Loan borrowers while their borrower defense claims are being evaluated.

Q: Will ED be providing relief to groups of borrowers?

A: Yes, the proposed regulations would establish a process for resolving claims based on conduct that harmed a group of borrowers.

Q: Can people receive relief without applying?

A: Yes, the Secretary can identify a group of borrowers from individually filed applications or from any other source of information and, if the Secretary determines that common facts and claims exist that apply to groups of borrowers, including some who may have not filed an application, the Secretary could include such borrowers in the determination of a group claim.

Q: How are you going to ensure that the Department's decisionmakers make independent decisions?

A: ED's decisionmakers make independent decisions daily regarding the merit of objections to loan enforcement raised by borrowers who have defaulted on their loans, and borrower defense is no different. ED also makes decisions regarding liabilities of institutions to the Department and enforcement actions against institutions. We do so by meeting standards that have been established for such decisions made by administrative agencies.

Q: How are the Institutional Accountability provisions going to protect taxpayers?

A: Schools that show signs of financial risk will be required to provide an irrevocable letter of credit as an insurance against the risks they pose to taxpayers. Schools demonstrating multiple risks will need to provide cumulative letters of credit.

Q: What are the next steps for this regulation? Will you publish by November 1st?

A: The 45-day public comment period for these proposed regulations will begin once they are published in the Federal Register on June 16th. Public Comment will conclude on August 1st. We look forward to hearing from the public about what we've proposed, and we are working towards publishing final regulations by November 1st.