

Proposed Borrower Defense Rule: Worse than the 2016 Rule for Military-Connected Students

In 1993, Congress authorized loan discharges for students who enrolled based on misleading marketing concerning costs, job placement rates, quality, transfer of credits, and other issues. Few students, however, sought federal loan discharges. With mounting claims for loan forgiveness from defrauded Corinthian students, the Department of Education initiated rulemaking in 2015 to better define the standards and process for federal loan discharges. After robust debate by interested parties, such as individuals representing veterans and servicemembers, the Department released a new rule in 2016 with strong protections for students as well as provisions to deter schools from committing fraud.

The Education Department stopped implementation of the rule before it took effect in July 2017 and convened a new rulemaking panel. The rationale for developing a new rule was the Department’s belief that the 2016 rule created a “muddled process that’s unfair to students and schools, and puts taxpayers on the hook for significant costs.” The Education Department released a new draft rule for public comment on July 31, 2018. Here are the key differences between the 2018 and 2016 rule:

PROVISION	2018 PROPOSED RULE	2016 RULE
1. Who is eligible?	<ul style="list-style-type: none"> • Preference to limit eligibility to students who have <i>defaulted</i> on their student loans • Based on public comment, eligibility <i>may</i> be expanded to students in repayment, possibly requiring safeguards against “frivolous” claims such as a higher standard of proof • Forcing servicemembers to default to qualify for relief would put them at risk of losing their security clearance and being discharged from the military 	<ul style="list-style-type: none"> • Loan repayment status does not affect eligibility for a loan discharge
2. How do I apply?	<ul style="list-style-type: none"> • No “group” process—each student must file an application, even if evidence exists of widespread misrepresentation by a school • Unlikely that students will have a tape recording of the lies that were used to persuade them to enroll 	<ul style="list-style-type: none"> • Group process established for widespread misrepresentation by a school (Corinthian and ITT), dispensing with the need for an application • Process also established for individual applications
3. How easy is it to prove misrepresentation?	<p>Very difficult</p> <ul style="list-style-type: none"> • No group process where Department or others collect the evidence • Each student must have a claim proving that: (1) school knew it was lying and was ignoring any consequences of doing so, known as “reckless disregard,” and (2) student was financially harmed 	<p>Easier</p> <ul style="list-style-type: none"> • For group process, burden of collecting evidence rests on the Department or others • For individual claims, no reckless disregard standard or need to prove financial harm
4. Will loan be discharged in full or in part?	<ul style="list-style-type: none"> • Preference for less than full relief in order to limit impact on taxpayers (and on schools that must reimburse the Department for discharged loans) 	<ul style="list-style-type: none"> • Envisions full or partial relief but indicates that circumstances such as those of Corinthian borrowers would likely mean full relief
5. Are there strong deterrents to protect taxpayers from future liabilities?	<p>Weaker deterrents</p> <ul style="list-style-type: none"> • 3 triggering events for the provision of mandatory financial guarantees (letters of credit) by schools to offset the costs to taxpayers of potential borrower defense claims 	<p>Stronger deterrents</p> <ul style="list-style-type: none"> • 7 events trigger the provision of mandatory financial guarantees, including lawsuits and failing to meet the 90/10 rule • Mandatory reporting of such events to students
6. Can I sue a school for misrepresentation?	<p>No</p> <ul style="list-style-type: none"> • Student must (1) agree to use internal processes for dispute resolution (arbitration) and agree to forgo class action lawsuits or (2) opt out of enrolling • No reporting of arbitration outcomes because it’s considered too burdensome for schools 	<p>Yes</p> <ul style="list-style-type: none"> • Students may opt out of arbitration and seek redress in court, including filing or joining class action lawsuits • To increase transparency, schools must report arbitration outcomes to the Department
7. What is the time limit for filing a claim?	<p>Short</p> <ul style="list-style-type: none"> • If in default, claim must be filed within 30-65 days after student receives notice of garnishment of wages or tax returns • 3 years—if students in repayment can file claims 	<p>Long</p> <ul style="list-style-type: none"> • No time limit on filing a claim to have remaining loan balances canceled • 6-year time limit to recover amounts previously paid on a loan
8. Can I appeal if my claim is denied?	<p>No</p> <ul style="list-style-type: none"> • Department’s decision is final 	<p>Yes</p> <ul style="list-style-type: none"> • Must provide additional evidence that wasn’t submitted with the initial claim
9. Can I get a loan discharge if my school closes?	<p>No</p> <ul style="list-style-type: none"> • Students are not eligible for loan discharge if given the option of completing their degree at another school, which is also likely to be another predatory school 	<p>Yes</p> <ul style="list-style-type: none"> • Students chose between completing the program through a teach-out at a different school or a loan discharge.
10. What is the overall impact of the rule for taxpayers?	<p>Reduce Costs</p> <ul style="list-style-type: none"> • Limiting eligibility to students in default, tightening the standard, and changing the closed school discharge would reduce costs by \$13 billion compared to the 2016 rule 	<p>Increase Costs</p> <ul style="list-style-type: none"> • Would provide \$15 billion in relief to defrauded students while creating stronger disincentives for schools to engage in misrepresentation

