

BORROWER DEFENSE TO REPAYMENT

Borrower Defense to Repayment (BD), as provided by the Higher Education Act, should offer critical protections for students and deter misleading and deceptive practices by colleges. It is intended to protect students from having to repay loans that they borrowed based on false information.¹ The 2016 rule created a process for students to apply for this relief, as well as a process for the Education Department (ED) to evaluate claims, allow group relief for similarly situated borrowers, and collect from schools that had engaged the misconduct.²

Unfortunately, the ED for too long failed to make borrowers' rights real through implementation. While the 2016 rule was an important step, creating a regulatory process and improved clarity, those regulations in practice showed ED did not do enough to make rights real and relief accessible to borrowers. Applications for relief sat unresolved for years, and then were subjected to cursory and unjustified denials--or approvals for only partial relief. The inability of advocates to bring claims for group relief created a particularly high obstacle for borrowers. Many borrowers continued to struggle with debt after ED found that their school had committed misconduct entitling them to relief.

The change in Administrations that occurred in 2017 resulted in an illegal delay in implementation of the rule and a complete halt in the approval of applications. A new rule finalized in 2019 [made it virtually impossible](#) for defrauded students to cancel loans, or for students to successfully pursue a defense to repayment claim. This rule took effect July 1, 2020.

*For new borrowers, by the Department's own estimate, 97 percent of loans of students who are victims of a school's illegal conduct will not be forgiven.*³ Clearly, the current administration must re-regulate. Guiding principles should result in a borrower defense process that improves on the 2016 BD rule and:

- Makes BD easier to understand, and simplifies the application process;
- Allows stakeholders who could include borrower advocates, state attorneys general, and consumer protection agencies to file on behalf of similarly situated borrowers;
- Facilitates collection and review of evidence for resolving claims;
- Makes it easier for ED to provide relief to groups of borrowers without requiring individual applications, when appropriate;
- Ensures claims are processed transparently, expeditiously, and fairly;
- Discharges approved claims in full, without using a partial relief formula;
- Deters future misconduct by institutions by creating a clear process to recapture funds from colleges engaged in misconduct;
- Restores the provision of the 2016 rule that addressed borrower discharge in instances of schools falsely certifying student eligibility to borrow through federal loan programs.

¹ Federal Register. Student Assistance General Provisions Federal Perkins Loan Program Federal Family Education Loan, November 1, 2016. <https://bit.ly/2Wj5CJzloan>; S.1150 - 102nd Congress (1991- 1992): Higher Education Amendments of 1992. (1992). Congress.Gov | Library of Congress. <https://bit.ly/3adirqv>; Federal Trade Commission. FTC Completes Review of Holder Rule. May 2, 2019. <https://bit.ly/38frA5v>

² Education and Labor Committee, Chairman Bobby Scott., Scott Statement on Department of Education's New Formula for Denying Defrauded Borrowers Full Debt Relief. December 10, 2019. <https://bit.ly/2WoZP4N>.

³ TICAS. Defrauded Students Left Holding the Bag Under Final "Borrower Defense" Rule. September 3, 2019. <https://bit.ly/3BkNXDA>.