

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

Federal law allows students whose schools have defrauded or cheated them to have their loans discharged. Prior to 2016, there were few details in law or regulation about how borrowers could seek discharges or the U.S. Department of Education's (ED) process for adjudicating them. In 2016, the Obama Administration issued a rule to articulate clear processes for applying for and granting borrower defense discharges. In August 2019, the Trump Administration released a new rule that will make it almost impossible for students to get relief.

Key differences between the 2016 and 2019 rules are outlined below.

PROVISION	2016 RULE (APPLIES TO ALL BORROWERS TAKING LOANS BETWEEN 7/1/2017 AND 6/30/2020)	2019 RULE (APPLIES TO ALL BORROWERS TAKING LOANS AFTER 6/30/2020)
1. What is the time limit for filing a borrower defense claim?	Borrowers have six years from when they discovered or reasonably could have discovered misrepresentation to file a claim.	All borrowers must file a claim within three years from when they left the school. Claims outside this three-year window will rarely be allowed, even when the school's misconduct is discovered through a government investigation more than three years later.
2. Can groups of borrowers receive loan discharges without having to apply individually if ED has evidence that the entire group was mistreated?	Yes. Automatic discharge of student loans for groups of borrowers can be granted when there is evidence of widespread mistreatment.	No. Borrowers must each individually apply and prove their claim, even when there is evidence of widespread and systemic mistreatment.
3. What must a borrower show to qualify for loan discharge as a result of a misrepresentation made to the borrower?	A loan discharge will be granted if the borrower shows there was a <i>substantial misrepresentation</i> on which the borrower relied.	The borrower must not only prove that the school made a substantial misrepresentation on which the borrower relied, but also that: The school made the misrepresentation with knowledge that it was false, misleading, or deceptive; or That the school acted with reckless disregard to the accuracy of the information; and That the borrower suffered specific types of <i>financial harm</i> .
4. Does a borrower need to demonstrate that they were financially harmed by misrepresentations made by a school?	No. The fact that the borrower took out loan(s) based on the misrepresentation is sufficient.	Yes. The borrower must provide documents that prove that they experienced financial harm beyond the obligation to repay the loan(s), and that any financial harm suffered is not the result of the overall economy.
5. Are judgments against a school or breach of contract grounds for a borrower defense loan discharge?	Yes. A judgment against the school, or a breach of contract, are both grounds for a borrower to receive loan discharge.	No. Final judgments against the school and breach of contract can be used as evidence in support of a claim, but are not sufficient for a borrower to receive a loan discharge.

Top 10 Ways the New Borrower Defense Rule is Worse for Borrowers

PROVISION	2016 RULE (APPLIES TO ALL BORROWERS TAKING LOANS BETWEEN 7/1/2017 AND 6/30/2020)	2019 RULE (APPLIES TO ALL BORROWERS TAKING LOANS AFTER 6/30/2020)
6. Can a borrower whose borrower defense claim is initially denied seek reconsideration?	Yes. A borrower can seek reconsideration based on new evidence not previously considered.	No. The denial of a borrower defense claim is final.
7. Does the rule give schools the go-ahead to punish borrowers if a borrower has an approved defense to repayment claim?	No. The rule provides no basis for schools to punish students with successful claims.	Yes. The rule states that the school may deny transcripts to and refuse to verify earned credentials of students with successful claims so long as the school is not otherwise prohibited from doing so.
8. What happens if a student attended a school that closed?	A student may choose to complete a teach-out plan, transfer if possible, or have their loans discharged. If the student does not re-enroll in another school within three years their loans will be automatically discharged without an application.	No student will receive an automatic discharge at the end of three years if the school closed on or after July 1, 2020. All students must file individual applications. If the school convinces a borrower to begin to participate in a teach-out of a program, the student will become ineligible for a closed school discharge.
9. Can harmed borrowers go to court, either individually or as a group?	Yes. Colleges cannot require students to sign mandatory pre-dispute arbitration agreements or class-action waivers with regard to claims about fraud or deceptive practices. Thus student borrowers can go to court if they believe they were wronged.	Unlikely. The rule allows schools to require students sign mandatory pre-dispute arbitration agreements and class-action waivers as a condition of enrollment if these terms are disclosed. These agreements and waivers can deny borrowers their day in court and to hide misconduct from the public.
10. How much will borrowers be helped?	In 2016, the Department estimated that the rule would provide \$17 billion in relief to students harmed by school misconduct and abrupt closures.	The Department estimates that under the new rule, just three percent of the loans associated with misconduct will be cancelled.