

Borrower Defense Summary of Major Provisions (effective July 1, 2023)

Borrower Defense to Repayment:

A borrower should have a fair path to a student loan discharge if their college deceives them. The final rule sets fair requirements for what borrowers must show to obtain a discharge, allows for consideration of claims as a group instead of only considering individual applications, and provides appropriate institutional due process. It also simplifies the process for recouping from schools when claims are approved.

Standards for approval: The borrower defense standards in this rule will apply to all claims pending on or received on or after July 1, 2023. A claim may be approved based on any of the following acts or omissions:

- Substantial misrepresentation
- Substantial omission of fact
- Breach of contract
- Aggressive and deceptive recruitment
- Judgments and secretarial final actions

The final rule clarifies that, to approve a borrower defense claim, the Department must conclude, based upon a preponderance of the evidence, that the act or omission occurred and that it caused detriment to the borrower that warrants relief, which includes a discharge of the remaining loan balance and refunds of amounts paid to the Secretary, among other benefits. Such a determination will consider the totality of the circumstances, including the nature and degree of the acts or omissions and of the detriment caused to the borrower.

These elements ensure that there is a connection between institutional acts or omissions and the borrower's claim, as well as a negative effect on the borrower, without imposing unreasonable requirements that a borrower applying for relief would be unlikely to meet. The Department also refined the standard for aggressive and deceptive recruitment from the proposed rule, including deleting some items that caused confusion. We have also clarified that the final secretarial actions that can serve as the basis for borrower defense approvals will only include fines, limitations, and suspension actions, including denials of recertifications and revocation of program participation agreements.

Claims process: The final rule continues the options for reviewing claims on either an individual or group basis from the proposed rule. The Department can initiate a group process or may choose to form one based upon a request from a third-party requestor. In the final rule, the third-party requestor can be a state entity, such as an attorney general, or a nonprofit legal assistance organization.

The Department has also made some adjustments to the group formation process to afford institutions an opportunity to respond to the group request before the Department decides whether to form a group. Because of the expanded category of requestors and additional due process steps, the final rule adjusts the timeline for the Department to respond to a group claim to two years instead of one, but the decision on the group claim will then be rendered within one year of formation rather than two, leaving the total timeline unchanged. Individual borrowers in a group may opt out of the group discharge if it is approved.

As was the case in the proposed rule, borrowers who have an outstanding balance will be able to bring a borrower defense claim at any point.

Approval amounts: The final rule provides that all approved claims will receive a full discharge and refund of all amounts paid to the Secretary. Where applicable, this relief will also include restoring borrowers' federal aid

eligibility and changes to credit reporting. The Department has tried for years to construct a workable process for determining partial discharge amounts and has concluded there is not a consistent way to achieve that goal. Instead, to approve a claim, the final rule will require the Department to conclude that the act or omission caused detriment that warrants a full discharge and refund.

Reconsideration: The final rule affords borrowers the option to have their claim reconsidered if it is denied, so long as they have new evidence or are raising an administrative or technical error. Borrowers whose loans were first disbursed prior to July 1, 2017, may also request reconsideration under a state law standard that would have been available to them under older borrower defense regulations. This is a change from the proposed rule, which proposed giving all borrowers the option of reconsideration under a state law standard.

Recoupment: The final rule clarifies the procedures for recouping the cost of a discharged claim in several ways. It notes that recoupment actions will follow the same procedures used by the Department to collect any other liability owed to the Department, which places the burden of persuasion on the institution once the Department has made factual determinations that account for various parties' input. The Department has added regulatory text explaining how these procedures will work. The final rule also clearly states that recoupment cannot occur on a claim approved under this rule that would not have been approved under the standards for borrower defense in place at the time the loans associated with the claim were first disbursed. The final rule also adopts a six-year limitations period for recoupment. That period may be tolled once the institution is notified of the claim, including through the filing of lawsuits and other steps.

Prohibiting Mandatory Pre-dispute Arbitration and Class Action Waivers

Borrower defense claims should be a backstop, not a first stop, for borrowers cheated by their school. To that end, the final rule continues the policies in the proposed rule that give borrowers a way to have their day in court. It prohibits institutions that participate in the Direct Loan Program from requiring borrowers to agree to mandatory pre-dispute arbitration agreements and/or requiring them to waive the ability to participate in a class-action lawsuit with respect to a borrower defense claim. These institutions similarly cannot compel students to go through an internal dispute resolution process before contacting the accreditor or government agency about their complaint.

The final rule also requires institutions to disclose the use of arbitration and to provide the Department with certain arbitral records and judicial records connected with any borrower defense claim filed against the school, increasing transparency and providing the Department with more information to investigate schools engaged in possible wrongdoing. The Department will publish these records in a central database.

Interest Capitalization

The final rule eliminates all instances of interest capitalization that are not required by statute, including two instances that were inadvertently excluded in the proposed rules. Interest capitalization is a frustrating experience for borrowers because it means that outstanding interest is added to the borrower's principal balance, resulting in a larger overall amount owed and the borrower being charged interest on that higher amount. More specifically, capitalization will no longer occur in the following instances going forward:

- When a borrower first enters repayment.
- When a borrower leaves a forbearance.
- When a borrower in the *Pay As You Earn* repayment plan no longer has a partial financial hardship.
- When a borrower leaves the revised *Pay As You Earn* repayment plan.
- During periods of negative amortization under the alternative payment plan or the income- contingent repayment plan.
- Upon entering default.

Total and Permanent Disability Discharges

The final rule adopts the policies in the proposed rule, which received consensus approval during the negotiated rulemaking sessions.

These changes will provide more pathways for a borrower to receive a discharge based upon a disability determination made by the Social Security Administration (SSA). Existing rules only allowed borrowers who are categorized as Medical Improvement Not Expected (MINE) to be eligible for a discharge. The final rules also add the following categories:

- Medical Improvement Possible;
- Compassionate allowance; or
- Having an established onset date of at least five years ago.

Borrowers who do not qualify for a discharge due to an SSA determination will be able to submit additional forms of documentation to the Department to more easily obtain approval through the Total and Permanent Disability certification process by allowing additional types of medical professionals to sign the necessary paperwork.

For borrowers who do receive a discharge, the final rule eliminates the three-year income-monitoring requirement, which had resulted in large numbers of borrowers inadvertently losing discharges in the past.

Closed School Discharges

Borrowers are entitled to a discharge if they were unable to complete their program because the college closed. However, in the past too many borrowers who were eligible for a discharge failed to receive one, with significant numbers of these borrowers ending up delinquent or in default. These final regulations restore the ability of borrowers to get an automatic discharge, expand the number of borrowers who will be eligible for an automatic discharge, and provide relief sooner so that borrowers are at a reduced risk of default. More specifically, the regulations do the following: :

- Continue standards that a borrower is eligible for a discharge if their school closed, and they did not finish their program or had left the school within 180 days of its closure.
- Provide an automatic discharge one year after a school closes if the borrower does not enroll elsewhere, accept a teach out, or continue their program at another location of the school. If a borrower accepts but does not complete a teach out or the continuation of program at another location of the school, then they would receive an automatic discharge one year after their final date of attendance.
- Give the Secretary the flexibility to adjust the closure date if a school closes but first discontinued the programs in which most borrowers were enrolled. This addresses past practices the Department has observed, where a college may try to drag out its closure to avoid liabilities from closed school discharges.

Public Service Loan Forgiveness

The PSLF regulations will reduce previous barriers created in regulation that made it harder for borrowers to make progress toward forgiveness.

Help borrowers get closer to forgiveness: The regulations allow borrowers to receive credit for payments that are made late, in installments, or in a lump sum. Prior rules only counted a payment as eligible if it was made in full within 15 days of its due date. The rule also allows certain periods in deferment or forbearance to count toward PSLF to avoid instances where a borrower may have faced confusing choices about pausing payments or getting credit toward PSLF.

These periods include:

- Cancer treatment deferment
- Military service deferment
- Post-active-duty student deferment
- Economic hardship deferment, which includes service in the Peace Corps
- AmeriCorps and National Guard service forbearances
- U.S. Department of Defense Student Loan Repayment Program forbearance
- Administrative or mandatory administrative forbearances

Borrowers will also receive a weighted average of existing qualifying payments toward PSLF when they consolidate their Direct loans. Under current rules, borrowers lose all progress toward forgiveness when they consolidate. Under the new regulations, for example, a borrower with 60 qualifying payments on \$30,000 in debt who forms a consolidation loan with another \$30,000 in loans will have a new payment count of 30 payments.

Further information on the permanent improvements made to PSLF regulations can be found [here](#).

False Certification Discharges

The final rule adopts the policies in the proposed rule designed to streamline the rules that apply to cases when a college falsely certified a borrower's eligibility for student loans when, in fact, the student was ineligible. These policies provide borrowers with an easier path to a discharge. The final rule also expands the types of allowable documentation and clarifies the applicable dates for a discharge. The regulations also allow for group false certification claims, so that similarly affected borrowers do not need to apply for relief individually when sufficient group evidence exists.