

Education Department Erects New Barriers to Relief for Students Harmed by School Fraud and Closures; Protects For-Profit College Industry at Expense of Students

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Education Department Erects New Barriers to Relief for Students Harmed by School Fraud and Closures; Protects For-Profit College Industry at Expense of Students

Boston – Today, the U.S. Department of Education (Department) announced new rules that will make it much harder for students who are harmed by illegal school conduct or closures to get relief from their federal student loans or to hold schools accountable for illegal conduct. The rules strip away protections put in place in 2016 under the Obama administration to rein in predatory for-profit school misconduct and protect students and taxpayers from the costs of such misconduct and introduces new barriers to student loan relief.

“This rollback by the Department will encourage schools to break the law, engage in risky practices that lead to abrupt closures, and harm students with impunity,” **said National Consumer Law Center attorney Abby Shafroth.** “There will be more students harmed by schools attempting to boost enrollment through deceptive marketing and misrepresentations, and more schools closing before students can graduate. And those students will be much less likely to get relief from their student loans. Today’s action by the Department will result in a high risk of default on student loans and lifelong financial instability for the students.”

The new rules severely restrict access to “borrower defense” loan relief for students cheated by predatory schools that used illegal enrollment tactics. Among the new obstacles standing between scammed student borrowers and relief are provisions that prevent borrowers from having their applications for relief considered if they found out about the process or the basis for relief too late, and provisions eliminating the process for providing relief to groups of students who were subject to widespread misconduct or fraud. These two changes would significantly reduce the number of borrowers even considered for relief. For those who are considered, the application process would be daunting, requiring student borrowers navigate a complex bureaucratic process and prove demanding facts that will make relief inaccessible to many borrowers harmed by school misconduct.

The rules also jettison protections against forced arbitration, allowing schools to insulate themselves from lawsuits and evade accountability for and detection of fraud. Students will likely lose their right to bring claims against their schools to an impartial jury or judge, and to hold the school directly accountable for illegal conduct.

Finally, despite recent widespread for-profit school closures—including Education Corporation of America, Vatterott Educational Centers, and Dream Center Education Holdings—that have left tens of thousands of students with huge debts and no degree, the Department’s new rules end the promise of student loan relief for students whose schools close before they graduate. The rules axe a

provision that provided automatic discharges to eligible students, and instead requires each student to navigate a bureaucratic application process.

Secretary of Education Betsy DeVos characterized the Obama-era borrower defense rules that these rules are to replace as making it too easy for student loan borrowers to get relief. The Department has effectively stopped processing borrower defense applications, with no applications approved or denied in the past year. There are over 170,000 pending applications with many borrowers held in limbo for years. The new rules reflect an ongoing shift to protect the multi-billion dollar for-profit education industry at the expense of students and taxpayers, and come amid concerns about conflicts of interest raised about the role of former for-profit school executives hired by the Department.

Most provisions of the new rules are scheduled to go into effect July 1, 2020, though legal challenges are likely before then. **Shafroth notes that the rules suffer from a number of legal infirmities:** “The Department has reversed rules finalized only three years ago without considering the value of those rules or assessing whether the rules were working to hold institutions accountable for misconduct and abrupt closures that cost students dearly. The Department also failed to engage in meaningful stakeholder participation and public notice and comment after the 2016 rules went into effect following the close of the notice and comment period, changing the regulatory baseline. The Department can change rules but cannot do so arbitrarily or without opportunity for public comment, and these rules will be challenged in court.”

Shafroth, a staff attorney for the National Consumer Law Center’s Student Loan Borrower Assistance Project, participated as a representative for legal-aid organizations in rulemaking meetings held by the Department of Education in Washington, D.C in winter 2017 through spring 2018. Shafroth and other representatives for students, veterans, and low-income borrowers made numerous suggestions to the Department to ensure that the rules would provide student borrowers reasonable access to relief, but those suggestions were ignored and not included in the rules released today.

Related NCLC Resources

Issue Brief: The Borrower Defense Rule protects students and taxpayers against fraud and abuse in higher education. (January 2017)

Comments of NCLC and 15 other legal aid groups to the Department of Education re: Proposed Regulations on Borrower Defenses and Use of Forced Arbitration by Schools in the Direct Loan Program, and Proposed Amendments to Closed School and False Certification Discharge Regulations, Aug. 30, 2018

Comments of NCLC to the Department of Education Re: Borrower Defense Rule Delay and Intent to Establish Negotiated Rulemaking Committee (July 12, 2017)

Blog: Who is the Department of Education Looking Out For? Another Delay of Student Protections Follows a String of Actions Protecting Industry Profits Over Students

Further Information on school-related cancellation of federal student loan debt.

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