

Education Dept. Proposes New Rules that Would Make it Much Harder for Students Harmed by For-Profit Schools to Get Loan Relief

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Education Department Proposes New Rules that Would Make it Much Harder for Students Harmed by For-Profit Schools to Get Loan Relief

Boston - Today, the U.S. Department of Education proposed new rules, replacing 2016 rules, that would 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 Department proposes to severely restrict access both to “borrower defense” loan relief for students cheated by predatory schools that used illegal enrollment tactics and to loan relief for students whose schools closed before they completed their education.

“The federal student loan system is supposed to promote economic mobility and provide a ladder to a better future for low-income Americans,” **said National Consumer Law Center attorney Abby Shafroth**. “But for too many Americans it has done the opposite—putting targets on low-income, financial aid eligible students and veterans who are recruited by predatory institutions focused on growth and profit rather than on education and career training. It doesn’t have to be this way. The Department can and should apply rules that deter schools from lying to students to get them to enroll and that ensure students who were taken advantage of have real access to relief.”

Troublingly, the Department announced that it is considering severely restricting access to relief for student borrowers who are not in default. It is even considering refusing to allow students who are not in default to apply for borrower defense relief based on their school’s illegal conduct. Either alternative would unfairly punish borrowers who manage to stay out of default—and may even encourage default. The new rules would also narrow the grounds for federal student loan relief and eliminate the process to provide relief to groups of students who were subject to widespread misconduct or fraud. It would require students to submit more evidence (which borrowers often don’t have access to) and prove more difficult facts (such as what the school knew when providing false information). It would create a lopsided process that gives schools, but not students, the opportunity to respond to all the evidence and appeal adverse decisions. Additionally, the rule would make it harder for students to hold schools directly accountable for their illegal conduct by allowing schools to use forced arbitration clauses and class action bans to deprive students of their constitutional right to bring claims to an impartial judge or jury.

Moreover, despite recent widespread school closures that have left students with huge debts and no degree, the Department’s proposal would severely restrict federal student loan relief to students harmed by school closures. Its proposal would render students ineligible for closed school relief so long as their school provides an option to complete their program at a different school (as closing schools are generally already legally required to do), and would axe a 2016 rule that would have

automatically discharged loans for eligible borrowers whose schools closed.

The Department has refused to implement borrower defense rules finalized in 2016 and plans to apply these new rules instead. Secretary of Education Betsy DeVos characterized the 2016 rules as making it too easy for student loan borrowers to get relief. The Department's summary of the new rules states that they are designed to address concerns expressed by a for-profit school industry trade group and other industry representatives that the 2016 rules would impose financial liabilities that might imperil the viability of some schools. The proposal reflects an ongoing shift to protecting the multi-billion dollar for-profit education industry at the expense of students, and comes at a time that concerns about conflicts of interest have been raised about the role of former for-profit school executives hired by the Department.

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. that preceded this proposed rule. Shafroth and other representatives for students, veterans, and low-income borrowers made numerous suggestions to the Department to ensure that the rule would provide student borrowers reasonable access to relief, but those suggestions were not included in the proposed rule.

"If these proposed rules are implemented, schools will continue to break the law and harm students with impunity, and student borrowers will continue to pay the price," **said Shafroth**. "We urge the Department of Education to promptly implement the 2016 rules and to use this rulemaking to make it easier, not harder for students to get relief. We also urge students and the people who care about them to send comments to the Department of Education telling it to put students and taxpayers first over predatory schools."

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

Comments of NCLC and 16 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. (August 1, 2016)

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.