



**U.S. Department of Education
Releases Proposed
Borrower Defense to Repayment Regulations**

July 6, 2022

Earlier today, the U.S. Department of Education (“ED”) [released](#) a [Notice of Proposed Rulemaking](#) (“NPRM”) outlining its proposed changes to the Borrower Defense to Repayment (“BDR”) regulations, along with a [Fact Sheet](#) summarizing the primary changes to existing regulations. The official version of the NPRM will be published in the *Federal Register* in the coming days. ED has indicated that a 30-day period for submitting comments regarding the proposed regulations will be open following the official publication.

The BDR regulations apply to all private and public institutions that participate in the Title IV programs. The proposed regulations would effectively replace the series of BDR regulations adopted during the Clinton, Obama and Trump administrations. ED developed the proposed regulations following public hearings and negotiated rulemaking sessions in 2021. ED’s stated intent is to review and consider the comments it receives and to issue a Final Rule no later than November 1, 2022, to become effective as of July 1, 2023.

The proposed regulations implement or clarify regulations addressing a number of topics, including the following:

- Establishing a uniform process for reviewing and resolving BDR claims, no matter when the underlying student loan was disbursed.
- Clarifying the acts and omissions of institutions that could support a BDR claim.
- Implementing a reconsideration process for claims that are not granted.
- Reviving a process for adjudication of claims for groups of borrowers.
- Formalizing the role of State Attorneys General and other state officials in initiating and supporting individual and group claims.
- Enunciating a process by which ED will seek recoupment from institutions for discharged loans.
- Providing automatic loan discharges for all students who were still enrolled when a school closed or withdrew within 180 days prior to closure who did not finish their program at the school or complete an approved teach-out agreement at another school within one year.
- Prohibiting the use of mandatory pre-dispute arbitration agreements and class action waivers.
- Collecting and disclosing records of arbitration and judicial decisions pertaining to BDR claims.
- Modifying and expanding the opportunities for borrowers to obtain Public Service Loan Forgiveness, Total and Permanent Disability Discharges and False Certification Discharges.

We will review these proposed regulations and expect to issue a more detailed analysis in the coming days. In the meantime, please feel free to contact us if you have any questions.

#

[Maynard Cooper](#) is a full-service firm with attorneys experienced in all regulatory and operational aspects of higher education, including federal and state oversight, accreditation, employee and benefits issues, and real estate concerns.

[Roger Swartzwelder](#) advises regionally and nationally accredited institutions of higher education, investors, and accrediting agencies regarding legal, administrative, regulatory, accreditation and transaction matters.

[Brandon Sherman](#) advises postsecondary institutions, accrediting agencies, and education investors on matters pertaining to federal financial aid eligibility, accreditation, cybersecurity, and Title IX.