

# WHAT TO KNOW ABOUT BORROWER DEFENSE TO REPAYMENT

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## What is Borrower Defense to Repayment?

Borrower Defense to Repayment is a provision in the Higher Education Act that relieves students from repaying their federal student loans if the loans were taken out as a result of a school's fraudulent, misleading or illegal acts. This concept exists in other types of [consumer protection and consumer credit laws](#).

## Creation of the Borrower Defense Process

- » Although the borrower defense provision has existed for many years, it was rarely used prior to 2015 when Corinthian Colleges, a large for-profit institution, collapsed. Following the collapse, grassroots organizations helped thousands of former students who were saddled with large amounts of student debt seek loan discharges.
- » The efforts to help students discharge their loans demonstrated that a better method for discharging student debt was needed. Organizations working on behalf of [students, consumers, faculty, staff, veterans, servicemembers, and taxpayers](#), as well as [state attorneys general](#) encouraged the Department of Education to create a simple, fair process.
- » In 2016, the Department of Education responded by issuing a [rule](#) that created a process for borrowers to seek loan discharges, and for the Department to consider discharges for groups of students. The rule was an important first step toward making borrower defense loan discharges a reality for students.

## Borrower Defense in the Trump Administration

- » In 2018 a court found that the Trump Administration, under Education Secretary Betsy DeVos, [illegally delayed](#) implementing the 2016 borrower defense rule. Despite this ruling, the Department continued refusing to act on student claims. By the end of 2019, the Department's inaction left [more than 200,000 borrowers](#) with loan discharge applications sitting idle before the Department.
- » In the meantime, investigations by [state attorneys general](#), the [Federal Trade Commission](#) and the [Department of Justice](#) continued to document widespread patterns of misleading and deceptive practices by a number of for-profit colleges. Additional large for-profit college chains [collapsed amidst scandals and investigations](#), and thousands more students filed borrower defense claims.
- » In 2020, Department of Education finally began processing the backlog of borrower defense claims, issuing perfunctory denials to over 100,000 students, while providing pennies on the dollar to some students already approved for relief.

## The 2019 Borrower Defense Rule

- » In 2019, the Department of Education adopted a new borrower defense rule that made it [virtually impossible](#) for students to discharge their loans, even when they were clearly lied to and misled by their college.
- » By the Department's own estimate, the rule would result in students successfully discharging [just three percent of loans resulting from misconduct](#) by colleges, while colleges themselves would be expected to repay just one percent of loan revenues they received as a result of their own misconduct.
- » The rule set such impossible thresholds for students, that in 2020 the House and Senate, on a bipartisan basis, used the Congressional Review Act to [reject](#) the new rule.
- » President Trump vetoed Congress' effort to halt the rule, and the rule is currently in effect for new borrowers.

## Making Borrower Defense a Reality for Students

- » The Biden Administration has already moved to provide full loan relief for student borrowers who previously received “partial forgiveness” on their approved borrower defense claims.

### But more must be done:

- » Hundreds of thousands of students who attended collapsed colleges and colleges where state and federal investigations have found patterns and practices of deceptive and predatory practices continue to be saddled by student loans from these schools. Many are not aware of their borrower defense rights, or do not see value in applying because many original claimants have not yet succeeded in discharging their loans.
- » New borrowers taking loans today remain subject to the draconian 2019 borrower defense rule.

### Next steps for the Department of Education include:

- » Providing automatic loan forgiveness to more students who attended schools that collapsed and closed by extending the eligibility (or look-back) periods.
- » Comprehensively addressing the unfair and unlawful process used by the DeVos Department of Education, including reinstating denied claims of students who have already been waiting too long for relief.
- » Providing school-wide borrower defense loan discharges to students who attended schools, including Corinthian Colleges, where widespread deceptive, misleading and fraudulent practices have been demonstrated.
- » Adopting a new law or Borrower Defense to Repayment rule that:
  - » Creates a simple, streamlined process for students to apply for relief based on school misconduct, and for the Department of Education to fairly evaluate claims, so that students are not saddled with federal student loan debt from schools that misled them.
  - » Enables the Department of Education, legal aid advocates and state attorneys general to seek group relief on behalf of students.
  - » Discourages schools from engaging in deceptive practices by allowing the Department of Education to recover discharged loan amounts from such schools.
  - » Prohibits schools receiving federal student aid from using forced arbitration, which denies students their day in court and makes it harder to bring to light misconduct by schools.
  - » Protects students by automatically discharging loans for students who have not completed their program due to school closure.