

U.S. Department of Education Outlines Loan Relief Pathway for Certain Students

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On March 11, the U.S. Department of Education (DOE) released an advanced proposal of rulemaking that would establish a more "borrower-friendly process" for students seeking loan relief triggered by unscrupulous conduct by higher education institutions. Not two weeks later, the DOE issued another press release detailing how students who were defrauded at 91 former Corinthian Colleges, Inc. campuses nationwide "have a clear path to loan forgiveness under evidence uncovered by the Department." Significantly, this DOE rule applies to colleges and not the financial institutions providing student loans to the educational institutions. In response to the failure of several for-profit higher education institutions like Corinthian, the DOE began a rulemaking process to clarify how direct loan borrowers who believe they have been defrauded by their institutions can seek relief. Importantly, the DOE rule strengthens provisions to hold colleges accountable for alleged wrongdoing outside of arbitration proceedings. In addition to addressing arbitration, the language of the proposed rule would:

- Allow students to pursue a discharge of their student loan balances without the constraints of a statute of limitation;
- Establish a simpler, more uniform standard for relief that incorporates crucial elements of state consumer protection laws;
- Create borrower-friendly processes for determining whether discharges are merited, including pathways for group relief without individual applications from borrowers;
- Hold schools accountable and ensure they have skin in the game when discharges result from their unlawful actions;
- Ensure schools disclose information to prospective students when various risk indicators are triggered, like too many former students struggling to repay their loans; and

- Provide more information more often to affected borrowers on their closed school discharge rights, and grant discharge without an application in certain circumstances.

The DOE proposal is independent of the Consumer Financial Protection Bureau (CFPB) rule proposed May 5, which prohibits the use of arbitration agreements to block class actions involving consumer financial products and services (including student loans). That rule would cover most consumer loans once finalized. The DOE release clarifies prior DOE regulations for so-called "defense to repayment" or "borrower defense" allowing borrowers to seek discharge of federal loans if their college's acts give rise to a state law cause of action. In the future, post-secondary institutions arranging financing for student loans must comply with both DOE and CFPB rules.

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