

A Toolkit for Students:

“The Borrower Defense to Repayment” Proposed Regulation

Dear Students:

The Department of Education, in a meeting with the Career Education Colleges & Universities (your national association for this and similar schools) leadership in early July, said that public comments by students related to the “Borrower Defense to Repayment Regulation” would be especially important. Accordingly, we want to encourage every school to reach out to their students, and thoughtfully share with them the proposed regulation and its various impacts on students. In this process we also encourage you, as students, to share your comments with the Department.

Borrower Defense to Repayment Regulation:

What Students should Know!

Background:

In 1995, the Department of Education created a rule making it possible for students to seek forgiveness of loan repayment obligations resulting from fraudulent actions by a college/school. Between 1995 and 2015, approximately 5,000 students sought such relief.

As a result of the collapse of Corinthian Colleges, over 26,000 students have filed claims against repayment of their loans (approximately 87% of these claims were from students previously enrolled in Corinthian College schools). So far, 4,000 of those former Corinthian students have received some form of relief.

But this recent history caused the Department to seek a new regulation that would make it much easier, and clearer, for students to seek such remedies if their school engaged in fraudulent activities impacting the quality and outcomes of a student’s education.

The issues:

The Department engaged with interested parties: schools, student advocacy groups, consumer groups, and states attorneys general to name a few. Those parties were unable to come to an agreement, allowing the Department to draft their own proposed rule. The new draft rule is large and complicated – over 530 pages of regulatory text! As such there are good and bad things contained within this new regulation for everyone. The draft regulation is now open for public comment until August 1st.

1. *Forbidding Mandatory Arbitration Clauses, or Class Action Waivers:*

From a student's perspective, this may be the most controversial provision in the new regulation. Currently, many schools have enrollment agreements requiring that students resolve disputes through arbitration; and do so individually rather than as a class action suit against the school. The proposed regulation prohibits such provisions in an enrollment agreement. Now, students would be required to go through complicated legal proceedings or a bureaucratic process through the Department of Education.

2. *Bases for Borrowers to file claims:*

The proposed rule creates a new federal standard for filing such claims. In order to file a claim, one of three tests must be met:

- A favorable decision for the student/students in state or federal court regarding claims where the students were frauded in the educational services for which the loan was issued;
- A breach of contract (generally the enrollment agreement) between the student and the school; or
- A substantial misrepresentation by the school regarding the nature of the educational program; the costs; or the employability of graduates.

Under the proposed rule, most time limits for filing such claims are eliminated.

3. *Claim Resolution Process:*

The proposed rule sets up a "fact-finding" process to resolve claims. Both the student and the school will have the ability to provide evidence for their case.

If the Department finds common facts amongst a group of borrowers against a school, the Department could initiate a group claim. In this situation, the Department may assign one of its own personnel to advocate on behalf of the group in front of a hearing official the Department chooses.

4. *Recovering Funds:*

If a student's debt is reduced or eliminated, the Department will have the authority to seek repayment of the relief from the school. The actual process is not currently defined in the proposed rule. Students may be required to consider the unpaid loan as income, and would be required to pay appropriate taxes.

5. *Required Warnings to Students:*

If a school's former graduates have a record of not repaying loans (over a five year period), the regulation requires ONLY proprietary schools – unlike other schools – to warn current and future students of the poor rates of repayment by recent graduates.

Issues for Students:

Most of the time, students and schools will agree on the elements of a good education! We hope that is always the case. But, unfortunately, there are times when disputes do occur. As such, a student who seeks to comment on the proposed regulation may have opinions that are different from the school. Such opinions, and their right to offer such comments, should always be respected!

It is NOT our intention to tell any student what comments they should make – if any. But if you, or other students choose to file your thoughts, the following may be some of the issues to consider in your comments: When the federal government steps in to create a formal process there are both good and bad outcomes. If you have feelings regarding whether a new rule should/should not be created; this is the time to share those comments. In doing so, any relevant personal experience would be worthy of sharing. Remember, this rule applies to issues related to requests for “defense to repayment of federal student loans” – not other issues. Please consider the below examples of the impact of the proposed rule, and how it could affect your educational experience.

1. Eliminating Arbitration as a Dispute Resolution:

The regulation eliminates mandatory arbitration clauses in enrollment agreements. Most times, these provisions were inserted into such agreements to provide opportunities for both students and schools to resolve disputes in the easiest way possible. On the one hand, such a process establishes a formal method to address any disputes. On the other hand, such a process eliminates the ability of the student and the school to work out any disputes in ways they think are easiest for both parties.

One of the side effects of the proposed rule is that if you are enrolled at a small school, and arbitration is no longer an option, the likelihood that you will be able to achieve a remedy diminish if the only remedy is through filing complaints with the Department or in the courts. If this seems unusually complicated for you, then it is important to share your thoughts as to why all options for remediation should be available to students – especially those in small schools.

- The rules limit your ability to choose how you would want to settle a dispute, if you had one.
- You would be forced into a complicated legal claims process that may not suit your individual needs.
- You may be lumped into a larger group, where the government could use your information without your knowledge or approval.

2. Required warnings at Proprietary Schools:

There are good and bad schools in every sector of higher education. The question is whether the federal government should impose a set of notices on schools in one sector and not other sectors. As mentioned above, the rule would require schools like yours to disclose information to prospective students that other schools would not need to disclose. For example, if you believe the notice of a school's poor history in repayment should be given to students at any school with such a history, then your comments should make clear the regulation should apply to all schools.

- The rules would unfairly target your school, while not targeting other schools with similar, or worse, repayment rates

3. Posting Letters of Credit:

There is an issue, which while it doesn't seem to directly affect you, could actually do the most harm to your education! A provision in the draft regulation includes 10 new "triggers" when schools could be required to post a letter of credit with the Department of Education for up to 10% of the value of all financial aid received by the students enrolled at the school the previous year.

This provision could be implemented simply because of a law suit filed against the school and before a judge even considers the case. Such a provision could also be implemented multiple times if multiple suits are filed against a school. The end result is that those opposed to our schools could file such suits to trigger the letter of credit requirement and close good schools.

While it is not our place to tell you what to say, if you want to weigh in on this issue you should state that "No letters of credit should be required until such time as a case is decided against the school. Anything else has the potential to reward frivolous law suits and damage students who simply want to finish their education and pursue their careers."

- Schools would be required to secure credit which would divert valuable resources away from your education.
- Such letters of credit are difficult to obtain, and may cause schools to close.
- If a school closes, students may need to start their education elsewhere, adding to the time it takes for students to finish their programs.

How to File Your Comments:

Students have two options to submit their comments to the Department of Education.

You can file them directly with the Department (Instructions below)

You can send them to us and we'll do it for you.

Filing Directly with the Department of Education:

1. Once your comments are finalized save them in PDF format
 - i. Go to the [regulations.gov portal](http://regulations.gov)
 - ii. Search for ED-2015-OPE-0103-0221
 - iii. Click on "[Student Assistance General Provisions: Federal Perkins Loan Program, Federal Family Education Loan Program, William D. Ford Federal Direct Loan Program, and Teacher Education Assistance for College and Higher Education Grant Program](#)"
 - iv. Click "[Comment Now](#)" on the far right side
 - v. Upload your comment document(s) – If you are uploading more than one document we recommend you save them with titles like "<insert abbreviated name of school>_Attachment1_<insert name of document>" for example if CECU were to submit separate comments for the Letters of Credit issue and Arbitration issue we would name the files:
 - i. "CECU_Attachment1_Letters of Credit"
 - ii. "CECU_Attachment2_Arbitration"
 - vi. If desired you can provide your contact information
2. You must then select a "category" – there you can identify as a "Student"
3. Click on "Continue" at the bottom of the page
4. You will be taken to a preview page that will show you how your comment will appear on the federal register
5. To edit your comment click on the "Edit" button at the bottom of the page
6. Check the "I read and understand the statement above." box
7. When ready to submit your comments click on the "Submit Comment" button.

Asking us to file them for you:

Students can also email their completed comments in PDF Form to regulations@career.org.

This rule will have a major impact upon you as a student, and your school. We encourage you to share with the Department any thoughts you might have as to how such regulations could impact you, or students like you in the future, seeking a career education. Anything you say is appropriate! Any position you take is welcome! **But remember, all comments must be submitted BEFORE August 1, 2016.**