

March 10, 2020

MEMORANDUM TO INTERESTED PARTIES

FROM: The Institute for College Access & Success

SUBJECT: This Week's Senate Vote on Student Loan Borrower Defense Rules

The borrower defense rule protects students from student loan debts tied to fraud and other illegal conduct by their colleges (such as deceptive claims about job placement rates, transferability of credits or accreditation status). The Trump Administration rewrote the rule in 2019, making it far harder for student borrowers to get relief from loans they took based on misconduct by colleges. Under the 2019 rule, the Department of Education's own estimate is that students cheated by their colleges will be left with 97 percent of their student loan debt.

As soon as today, the Senate will vote on a resolution (H.J. Res 76) disapproving the 2019 rule and restoring the stronger rule created in 2016. The House of Representatives approved it in January on a bipartisan basis. The [American Legion](#), [student and consumer groups](#), religious [college leaders](#) and [state attorneys general](#) have called for disapproval of the rule. With several Republicans considering support for the legislation, the vote could constitute a bipartisan repudiation of the Administration's higher education policies.

In recent months, the [Washington Post](#) and [Wall Street Journal](#) reported that President Trump is seeking a proactive agenda to address student debt. Instead, he could find himself issuing his first veto on domestic policy against the interests of veterans and other students deceived by their colleges.

"Borrower Defense" Rule Denies Relief to Nearly All Cheated Borrowers

The purpose of the borrower defense rule is to protect students and taxpayers from fraud, deception, and other illegal misconduct by unscrupulous colleges. A well-designed rule will allow students who borrowed loans connected to illegal conduct by colleges to cancel their loans, while holding colleges responsible for the cost of cancellation to deterring college wrongdoing.

In 2016, the Department of Education published a borrower defense rule establishing a clear and fair process to review borrower defense claims on loans made after July 1, 2017. After illegal delays by new leadership, the rule was finally implemented under [court order](#).

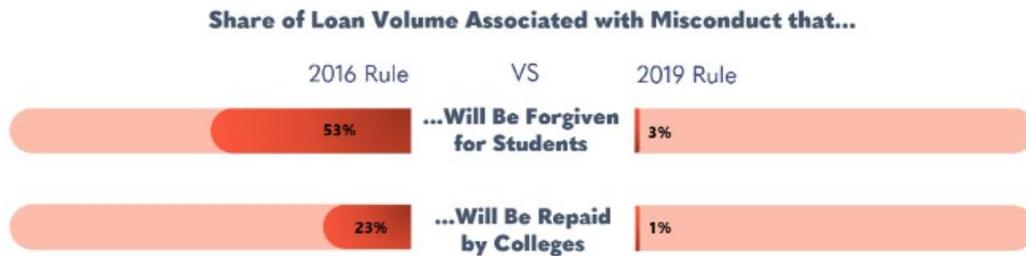
In September 2019, the Department created a new, far weaker rule that applies to loans made after July 1, 2020. The 2019 rule would deny relief to the vast majority of cheated students by:

- Requiring borrowers to prove schools intended to deceive them or acted recklessly, although students have no ability to access information or evidence that might show this intent;
- Prohibiting the filing of claims after three years, even when evidence of wrongdoing emerges at a later date;
- Eliminating the ability of groups of borrowers to be granted relief, even in cases where there is evidence of systemic wrongdoing documented in an investigation; and

- Stipulating that loans taken by students under false pretenses are insufficient and requiring students demonstrate additional financial harm.

An [analysis](#) of the Department’s own calculations estimates that only 3 percent of the loans that result from school misconduct would be cancelled under the new rule. Schools would be held accountable for reimbursing taxpayers for just 1 percent of these loans.

Comparison of 2016 and 2019 Federal ‘Borrower Defense’ Rules



Additionally, the 2019 rule permits colleges to impose mandatory pre-dispute arbitration waivers and eliminates the promise of automatic loan relief to eligible students whose school closed before they could graduate – for example students and veterans attending Corinthian and ITT. Recent evidence suggests that the vast majority of students attending closed schools neither continued their education nor discharged their federal debts. Fewer than [5 percent](#) of students who attended the recently shuttered Education Corporation of America, Dream Center Education Holdings, and Vatterott College chains successfully transferred.

Congressional Disapproval of the 2019 Rule

The Congressional Review Act creates an expedited process allowing Congress to disapprove new regulations. On January 16, the House of Representatives [passed](#) H.J. Res. 76 -- a resolution disapproving the 2019 rule and restoring the stronger 2016 rule – with the votes of every Democrat and six Republicans. A number of Senate Republicans are also considering supporting this legislation. If the resolution passes the Senate, it will be sent to the president for his signature.

The White House has [stated](#) that the president’s advisors would recommend a veto, one step removed from a firm commitment to veto the resolution. H.J. Res. 76 could be President Trump’s first veto on a matter of domestic policy (he has [vetoed](#) six bills since taking office, all regarding matters of national security or the U.S. border).

If the President were to veto the resolution, Congress could vote to override the veto. The 2019 rule is also being [challenged](#) in court by the Harvard Project on Predatory Student Lending, Public Citizen, and the New York Legal Assistance Group. The 2020 election could also determine the future of the rule: Joe Biden has [promised](#) to restore the 2016 rule while Bernie Sanders [would cancel](#) all student debt.

The Backlog in Borrower Defense Claims

Regardless of the outcome of the 2019 rule, hundreds of students continue to wait for relief from illegal conduct that occurred years ago. Both the 2016 and the 2019 borrower defense rules apply only to new

loans made after the date of the rule. After widespread abuses at Corinthian Colleges, ITT, and other colleges in recent years, nearly 300,000 students have applied for relief, and nearly 220,000 claims are pending. At one point, the Department of Education did not issue any approvals or denials for more than a year. Many students have waited three or four years.

Borrower Defense Claims Over Time (6/30/18 - 12/31/19)



Source: U.S. Department of Education, Federal Student Aid, Borrower Defense Quarterly Reports. Available at <https://bit.ly/332ybx>.

For More Information

For more information on the need for Congress to vote for a strong borrower defense rule, please visit the [Protect Students and Taxpayers web site](#).