



A BRIEF OVERVIEW OF AN ESSENTIAL PROTECTION FOR DEFRAUDED STUDENT BORROWERS: BORROWER DEFENSE

Borrower defense to repayment, or “borrower defense” (BD), refers to the provision in law that federal student loan borrowers should not be forced to repay loans for classes or degrees from schools that have lied to, deceived, and misled them. Borrowers who have been defrauded can file a claim with the U.S. Department of Education. If approved, defrauded borrowers will have their federal student loan debts incurred for these fraudulent programs discharged.

Borrower Defense isn’t new.

An amendment to the Higher Education Act’s renewal in 1993 codified BD to repayment. The law empowers the Secretary of Education to determine when and under what circumstances to discharge debt under BD. Although the Education Department received and resolved dozens of BD claims in the 1990s and 2000s, it only began to develop an administrative process for BD in the wake of the 2015 collapse of Corinthian Colleges. As of 2023, more than 770,000 people have filed BD claims.

The Biden Administration implemented stronger protections in 2023.

The prior administration rewrote the ground rules to ensure that over 95 percent of meritorious claims would be denied, introduced a new formula to reduce the amount of loan cancellation for those few successful claims, and instituted claim review protocols designed to disregard evidence of misconduct. Bipartisan, bicameral majorities passed a congressional resolution of disapproval against that rule, but then-President Trump’s veto kept it in place. Under Secretary DeVos, a judge described the Department’s approach to BD as “disturbingly Kafkaesque.” The Biden-Harris Administration has sought to strengthen the BD rule as a borrower, rather than institutional, protection. That rule, the product of an extensive rulemaking process, formally took effect July 1, 2023, and includes commonsense provisions that strengthened the Department’s ability to grant relief to both individual borrowers and groups of borrowers deceived by their schools and streamlined the process for recouping the cost of approved claims from fraudulent institutions.

BD is currently under attack; borrowers and taxpayers are at risk.

In April 2024, the U.S. Court of Appeals for the Fifth Circuit issued an order maintaining an injunction of the most recent BD rule in the case *Career Colleges and Schools of Texas v. Cardona*. This order halts the implementation of the Biden Administration’s 2022 rule and the protections it would offer to borrowers.

To date, this administration has announced discharges totaling \$28.7 billion for 1.6 million borrowers who were cheated by their schools, saw their institutions precipitously close, or are covered by related court settlements. However, hundreds of thousands of BD claimants continue to await having their debt balances removed.

In the class action lawsuit *Sweet v. Cardona*, the administration settled long-standing litigation in which the Project on Predatory Student Lending (PPSL) represents borrowers whose BD applications had been ignored by the Education Department for years. In November 2022, a court approved a \$6 billion settlement to cancel these loans under the Secretary of Education’s discretionary authority. However, the Department failed to meet at January 2024 deadline for making discharges and is now on a court-ordered plan to action to resolve these claims in keeping with the settlement.

Policymakers must take action to protect borrowers and taxpayers.

To further protect borrowers, we recommend:

- Congress pass legislation codifying the existing 2022 regulation to protect it from future attacks;
- The Department of Education should clear the current backlog of applications;
- The Department should continue processing group discharges stemming from instances of known misconduct.