

Proposed Regulations to Improve Student Loan Relief Programs

The Biden-Harris Administration is proposing new regulations to make critical improvements to student loan discharge programs and to make student loans more affordable for borrowers. The proposed regulations would alleviate student loan debt burdens for borrowers whose schools closed or lied to them, who are permanently disabled, and for public service workers who have met their commitments under the Public Service Loan Forgiveness (PSLF) program. In addition, the proposed regulations include measures that would lower the overall cost of loans by ending student loan interest capitalization where it is not required by statute, and would ensure that borrowers can have their day in court in disputes with their colleges. The public is invited to comment on the proposed regulations for 30 days. The Department will consider those comments and publish final rules this fall, meaning they will take effect no later than July 1, 2023.

Summary of Major Provisions

Borrower Defense

The proposed regulations would create a fair path for borrowers to receive a discharge if their colleges lied to or took advantage of them. The regulations propose to allow for the consideration of groups of borrowers instead of only considering individual applications, eliminate overly strict limits on when borrowers can file a claim, expand the types of misconduct by a college that can lead to an approved claim to include aggressive and deceptive recruitment practices, and ensure borrowers receive timely decisions about their claims. Key provisions of the proposed regulations include:

- A single standard and streamlined process for relief that would apply to all future and pending claims as of July 1, 2023, in contrast to prior regulations, which varied based upon the disbursement date of the borrower's loans.
- A broader and clearer standard for what kinds of misconduct could lead to borrower defense discharges. Valid claims would fall under five categories of misconduct by a college:
 1. Substantial misrepresentations
 2. Substantial omissions of fact (included as a standalone, defined category for the first time)
 3. Breaches of contract
 4. Aggressive and deceptive recruitment (a new category of misconduct included for the first time)
 5. State or Federal judgments or final Department of Education actions that could give rise to a borrower defense claim (revised from the 2016 regulations)
- A presumption that borrowers reasonably relied upon misrepresentations or omissions.
- A reconsideration process for borrowers whose claims are not approved for a full discharge, including allowing reconsideration based on a state law standard.
- A clear timeline for adjudication of group and individual claims.
- A strong process for forming groups of borrowers, based on information held by the Department or evidence submitted by a relevant State official, and adjudicating claims based on the common facts of those group claims.
- A clear expectation that the Department will hold colleges accountable for the cost of discharges. Recoupment for group claims would be separate from the approval of those claims,

ensuring that borrowers won't have to wait for the lengthy recoupment process to run its course before receiving relief.

Arbitration

The Department proposes to ensure that borrowers whose schools misled them be allowed their day in court, by prohibiting colleges from requiring borrowers to sign mandatory pre-dispute arbitration agreements or class action waivers. The Department also proposes greater transparency into arbitration proceedings that do occur to help the Department investigate possible wrongdoing. Key provisions of the proposed regulations include:

- Prohibiting Direct Loan-participating colleges from requiring borrowers to agree to mandatory pre-dispute arbitration agreements and/or requiring them to waive the ability to participate in a class-action lawsuit with respect to a borrower defense claim.
- Prohibiting colleges from compelling students to go through an internal dispute resolution process before contacting the accreditor or government agency about their complaint.
- Requiring colleges to disclose to the Department the use of arbitration and to provide certain arbitral records and judicial records connected with any borrower defense claim filed against the school to the Department, increasing transparency and providing the Department with more information to investigate schools engaged in possible wrongdoing.
- Requiring the Secretary to publish in a centralized database arbitral and judicial records in relation to any borrower defense claim filed against the college, ensuring public accountability and transparency.

PSLF

The Department proposes to make it easier for borrowers working in public service to obtain forgiveness. Specifically, the Department proposes allowing more payments to qualify for PSLF by allowing lump sum, and late payments, and allowing certain kinds of deferments and forbearances to count toward PSLF. The Department also proposes to ensure the rules work better for non-tenured instructors whose colleges need to calculate their full-time employment and seeks comments from negotiators on how best to consider some other types of employment that do not currently qualify for PSLF. Additionally, the Department proposes to create a formal reconsideration process in the regulations for borrowers whose applications are denied.

These proposed regulatory changes would build on parts of the [limited PSLF waiver](#) that the Department announced in October 2021. That waiver allows borrowers to count all of their payments toward PSLF, provides for an automatic reconsideration process for borrowers whose payments or applications were previously denied, and provides for some automatic application of credit towards forgiveness. However, not all of the limited PSLF waiver provisions are included in the proposed regulations due to statutory restrictions. Borrowers seeking to count their payments on FFEL loans toward forgiveness should [apply](#) for PSLF before October 31, 2022.

Key provisions of the proposed regulations include:

- Removing overly stringent requirements that payments must be made in full within 15 days of being due to count and allow for lump-sum and partial payments to count toward forgiveness, recognizing that borrowers deserve some flexibility.
- Adopting a simpler definition of full-time employment to require employment of at least 30 hours a week, clarifying how to calculate hours for non-tenured instructors, and establishing clearer definitions for the PSLF program.
- Clarifying the definition of a qualifying employer to ensure that most of an organization's employees are providing a qualifying public service.
- Allowing certain types of following deferments and forbearances to count toward PSLF. Those statuses include:
 - Cancer treatment deferment
 - Peace Corps service deferment
 - Economic hardship deferment
 - Military service and post-active-duty deferments
 - AmeriCorps forbearance
 - National Guard Duty forbearance
 - U.S. Department of Defense loan repayment forbearance
 - Certain administrative forbearances (those that are not requested by the borrower) used while the Department processes paperwork.
- Providing borrowers with a hold-harmless option to make up for all other periods in a deferment or forbearance.
- Wherever possible, allowing for automation of progress toward forgiveness, so that those people the Department knows have qualifying service don't need to apply.
- Creating a reconsideration process for borrowers whose applications are denied.
- Seeking comment from the public on how to treat some other types of employment that do not currently qualify for PSLF, particularly doctors providing services at a nonprofit hospital in states that prohibit their direct employment by that hospital and employees of for-profit early childhood education programs that are licensed and regulated.

Interest Capitalization

The Department proposes to protect borrowers from seeing their balances balloon by removing instances of interest capitalization wherever it is not required by statute. Interest capitalization occurs when accrued interest is added to the principal balance of the loan, so that future interest accrues on a higher amount and the borrower ultimately owes more on their loans. The Department's proposed regulations would eliminate capitalization when a borrower enters repayment, exits forbearance, defaults on a student loan, and upon exiting most of the income-driven repayment plans.

Total and Permanent Disability Discharges

The proposed regulations would help more borrowers who are totally and permanently disabled (TPD) receive and keep the discharge they are entitled to under the law. The proposed regulations would allow for a broader set of disability statuses recognized by the Social Security Administration (SSA) to qualify for discharge, eliminate the three-year income monitoring period for borrowers who receive discharges based upon a determination by a physician or SSA, and widen the types of documentation and signatures borrowers may submit to demonstrate they are eligible for relief. The Department is

particularly concerned that the income monitoring requirements have caused far too many borrowers to lose their discharges even though they still have low incomes. Key provisions of the proposed regulations include:

- Making more disability statuses recognized by the Social Security Administration eligible categories for a discharge. Currently, Medical Improvement Not Expected (MINE) is the only status that counts from SSA. MINE requires a review within 5 to 7 years. We propose to add:
 - Medical Improvement Possible if it has been renewed at least once (where such reviews and renewals occur every 3 years).
 - Compassionate allowance (certain serious illnesses).
 - A disability status with an onset date of at least five years ago.
- Eliminating the three-year monitoring period that tracks a borrower's income after they get the discharge and had been a source of roughly half of all TPD discharges being reinstated, despite evidence that nearly all of those borrowers still had low incomes and were simply struggling with the paperwork requirements.
- Making other improvements, such as accepting more forms of documentation and signatures from different types of medical professionals, to ensure greater access to the benefit.
- Allowing for discharges to be provided automatically wherever the Department is able to do so.

Closed School Discharges

In recent years, a significant number of colleges have closed, and often these schools leave borrowers holding debt but no degree. Many of those borrowers default on their loans after the closure. The proposed regulations provide automatic discharges to any borrower who was enrolled within 180 days prior to the closure and who didn't complete their education at the school or via an approved teach-out agreement at another school within one year after the closure of their original school. Key provisions of the proposed regulations include:

- Providing automatic discharges to any borrower within one year of a college's closure for any borrower who did not complete, was still enrolled 180 days before closure, and who does not accept and complete a teach out. This proposal to shorten the period for automatic discharge from the three years included in the 2016 regulations would ensure borrowers do not default on their loans after a closure of their college.
 - Establishing a standard, 180-day window prior to the closure for borrowers to qualify for a closed school discharge, and clarifying that students may receive a discharge as long as they did not graduate or attend and complete an approved teach-out program.

False Certification

The Department proposes to streamline the rules for when a college falsely certifies a borrower's eligibility for student loans when, in fact, the student was ineligible. These proposed rules would provide these borrowers with an easier path to a discharge. Key provisions of the proposed regulations also include improvements include expanding allowable documentation and clarifying the applicable dates for a discharge. The Department also proposes to allow for group false certification claims, so that similarly affected borrowers don't need to apply for relief individually when sufficient evidence exists.