



## Education ADVISORY ■

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### U.S. Department of Education Approves \$415 Million in Borrower Defense to Repayment Discharges

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Yesterday, the U.S. Department of Education announced its approval of \$415 million in borrower defense to repayment discharges for nearly 16,000 student borrowers who attended DeVry University, Westwood College, ITT Technical Institute, and Minnesota School of Business/Globe University. Importantly, “These are the first approved borrower defense claims associated with a currently operating institution, and the Department will seek to recoup the cost of the discharges from DeVry,” according to the department’s February 16, 2022 [press release](#).

The “Borrower Defense Rule” stems from a 1993 amendment to the Higher Education Act that required educational institutions to accept responsibility and financial liability stemming from their failure to perform functions under their program participation agreements with the Department of Education. The Borrower Defense Rule allows a borrower to assert a defense against repayment of a federal direct loan based on an “act or omission” of the borrower’s school. The department’s action brings the total amount of approved relief under the Borrower Defense Rule to approximately \$2 billion for over 107,000 borrowers and signals that the department is continuing to provide relief to student borrowers.

Use of the Borrower Defense Rule was greatly expanded in 2016 under the Obama Administration to allow for claims based on a school’s “substantial misrepresentation” to a borrower, and then significantly narrowed in 2019 under the Trump Administration, which required that borrowers demonstrate that the misrepresentation be “material” and that the borrower “reasonably relied” on the misrepresentation. As reflected in this recent announcement, it appears that under the Biden Administration, the rule is being broadly applied to grant significant relief to student borrowers. The decision suggests that in addition to forgiving federal loan debt, the department may soon begin aggressively pursuing recovery directly from the institutions.

Alston & Bird’s Education Group has significant experience working with education institutions to effectively and thoroughly respond to claims filed with the department under the Borrower Defense Rule, including our current representation of several education clients that are defending these exact claims. If you have received claim applications or need to develop a plan to respond, do not hesitate to reach out to our team.

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