

U.S. Department of Education Releases Final Regulations on Borrower Defense to Repayment and Closed School Discharge

November 2, 2022

On November 1, 2022, the U.S. Department of Education (“Department”) released final regulations set to take effect on July 1, 2023. According to the Department’s [press release](#), the regulations reflect “extensive stakeholder input across the higher education community, including multiple public hearings, three negotiated rulemaking sessions conducted last fall, and more than 5,000 public comments received this summer.” The new regulations amend seven areas including borrower defense to repayment claims, arbitrations, closed school discharges, total and permanent disability discharges, interest capitalization, false certification, and Public Service Loan Forgiveness.

The Department announced several major changes including:

- Full discharge of all remaining loan balances and a full refund of all amounts paid to the Department Secretary for loans associated with an approved borrower defense claim;
- Stopping of interest accrual on a borrower’s loans beginning 180 days after the initial grant of forbearance or stopped collections in the case of an individual borrower defense claim and immediately upon formation of a group borrower defense claim;
- Prohibition on institutions that participate in Title IV programs requiring that borrowers agree to mandatory pre-arbitration agreements or waiver of class action lawsuits;
- Revisions to the Federal Perkins Loan, Federal Family Education Loan, and William D. Ford Federal Direct Student Loan Programs to simplify the closed school discharge process by expanding access to automatic discharges and clarifying the circumstances when borrowers who re-enroll in a comparable program are not eligible for discharge;
- Establishment of a process for recouping the cost of approved discharges;
- Creation of pathways for a borrower to receive a discharge based upon a disability determination made by the Social Security Administration;
- Elimination of interest capitalization on William D. Ford Federal Direct Student Loans where capitalization is not required by statute; and
- Revisions to the regulations for Public Service Loan Forgiveness to improve the application process, expand what qualifies as an “eligible monthly payment,” expand the definition of “full-time employment,” and provide clarifying definitions to public service employment to clearly establish the definitions of qualifying employment for borrowers.

The Department released a fact sheet to accompany the final rule, titled “[Landmark Improvements to Targeted Debt Relief Programs](#).” The regulations, which U.S. Secretary of Education Miguel Cardona stated are a “monumental step forward in the Biden-Harris team’s efforts to fix a broken student loan system and build one that’s simpler, fairer, and more accountable to borrowers,” comes just weeks after the Administration released its online application for wide-spread student debt relief. The student debt discharge, however, is temporarily stalled by an [8th Circuit ruling](#) issued in mid-October.

The new Borrower Defense regulations make sweeping changes to Higher Education Act. This advisory provides a brief overview of the most significant changes in the law and does not constitute legal advice. Nothing herein creates an attorney-client relationship between the sender and recipient.

If you have any questions on the published regulations and how they may impact your institution, please feel free to contact Dina Vespia at (516) 357-3726 or dvespia@cullenllp.com, Kevin McDonough at (516) 357-3787 or kmcdonough@cullenllp.com, Jennifer McLaughlin at (516) 357-3389 or jmclaughlin@cullenllp.com, Deirdre Mitacek at (516) 296-9136 or dmitacek@cullenllp.com.

Thank you to Ciara Villalona, a Law Clerk pending New York bar admission, who assisted in the preparation of this alert.

Practices

- Higher Education

Attorneys

- Dina L. Vespia
- Kevin P. McDonough
- Jennifer A. McLaughlin
- Deirdre M. Mitacek