




Borrower Defense to Repayment: A School's Perspective

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Agenda

Overview of Borrower Defense to Repayment (BDR) Regulations

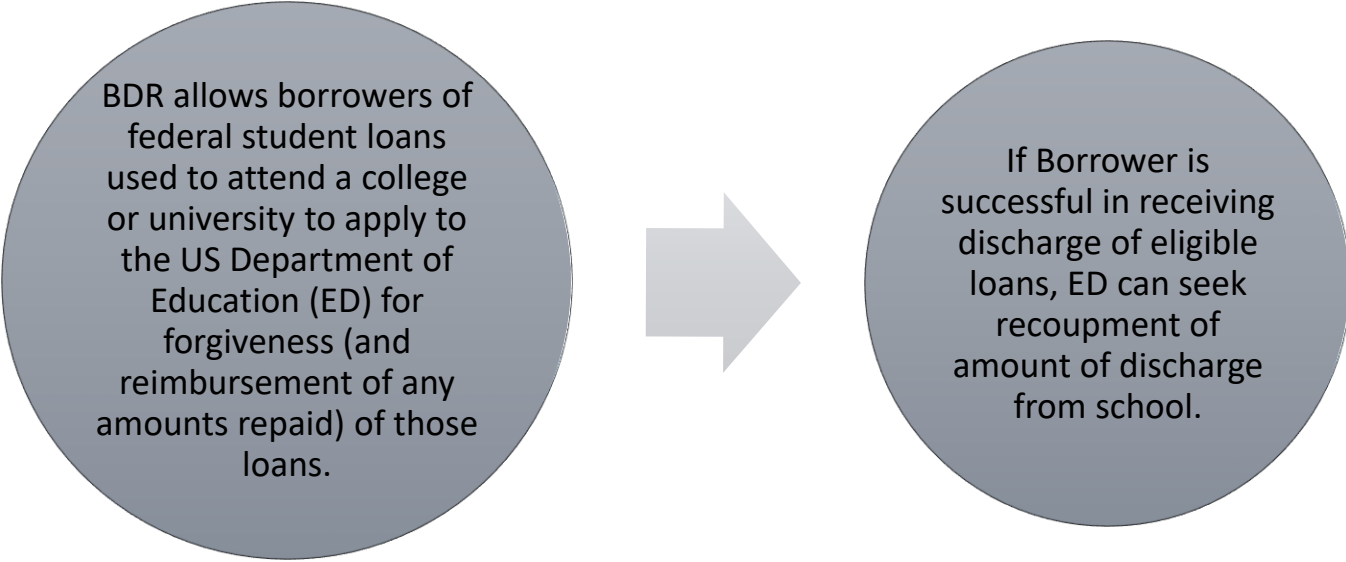
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BDR-Related Litigation Activity

A large, light gray downward-pointing arrow indicating the flow from the second item to the third.

What to think about should you receive a BDR claim

BDR in a Minute

A flowchart consisting of two grey circular nodes connected by a grey arrow pointing from left to right. The left node contains text about applying for BDR, and the right node contains text about recoupment.

BDR allows borrowers of federal student loans used to attend a college or university to apply to the US Department of Education (ED) for forgiveness (and reimbursement of any amounts repaid) of those loans.

If Borrower is successful in receiving discharge of eligible loans, ED can seek recoupment of amount of discharge from school.

Comparison of Borrower Defense Rules

	1995 BD Standard	2016 BD Standard	2019 BD Standard	2022 BD Standard
Applicability	Loans first disbursed <u>prior</u> to July 1, 2017	Loans first disbursed <u>on or after</u> July 1, 2017 and <u>before</u> to July 1, 2020	Loans first disbursed <u>on or after</u> July 1, 2020	BDR claims received by ED <u>on or after</u> July 1, 2023 BDR claims pending adjudication <u>as of</u> July 1, 2023.
Claim Standard	Act or omission that would give rise to a cause of action against the school under applicable State law.	Judgment Breach of Contract Substantial Misrepresentation (668 Subpart F)	Misrepresentation as defined under BDR rules	<ul style="list-style-type: none"> • Substantial misrepresentation (668 Subpart F) • Substantial omission of fact (668 Subpart F) • Breach of contract • Aggressive and deceptive recruitment (668 Subpart R) • Judgment • Previous ED sanctions or adverse actions (668 Subpart G) based on acts or omissions that could give rise to a BD claim. <p>State law in the event that a loan is first disbursed prior to July 1, 2017, and there is a requests for reconsideration of a denied BD claim.</p>

Comparison of Borrower Defense Rules

	1995 BD Standard	2016 BD Standard	2019 BD Standard	2022 BD Standard
Evidentiary Standard	Preponderance of the evidence	Preponderance of the evidence	Preponderance of the evidence Borrower must show financial harm.	Preponderance of the evidence
Claim Process	Follows 2016 claim process	ED notifies school of the BD application as part of its “fact-finding process” for individual and group claims. School may respond or submit evidence (no regulatory timeline defined).	ED notifies the school of borrower defense allegation within 60 days of ED’s receipt of BD claim. School receives copies of supporting documents provided by the borrower, with opportunity to respond or submit evidence. No group process	ED notifies school when a third-party requestor submits a materially complete application requesting formation of a group. School has 90 days to respond. ED notifies school of group or individual claim as part of adjudication and provides opportunity for school response. (Exception: doesn’t apply to BD claims based on prior ED final actions). School has 90 days to respond to the group / individual claim and/or request for information.

Comparison of Borrower Defense Rules

	1995 BD Standard	2016 BD Standard	2019 BD Standard	2022 BD Standard
Statute of Limitations - Borrower Claim	Anytime	<p>Judgment - no time limit.</p> <p>Breach of contract - within 6 years after the breach occurred.</p> <p>Substantial misrepresentation - within 6 years discovery.</p>	3 years from the student's last date of enrollment	Anytime as long borrower still owes a balance on an eligible loan
Statute of Limitations - Recovery from School	<p>Later of :</p> <p>3 years from last date of award year in which student attended, OR</p> <p>Applicable State law limitation period</p> <p>SOL may be tolled if school received notice as defined in the regulation.</p>	<p>Judgment - no time limit.</p> <p>Breach of contract - within 6 years after the breach occurred.</p> <p>Substantial misrepresentation - within 6 years after the borrower discovers, or reasonably could have discovered, the information constituting the substantial misrepresentation.</p> <p>SOL may be tolled if school received notice as defined in the regulation.</p>	5 years from written notice of determination.	<p>6 years from the borrower's last date of attendance, unless SOL is tolled upon notice of a complaint to the school (includes notice by ED of a BD claim, certification of a class, or school receives written notice including civil investigative demand for conduct that may form basis of BD claim)</p> <p>Anytime if claim based on judgment against the school</p> <p>Anytime if claim based on ED sanctions</p>

BDR-Related Litigation Activity



Sweet vs. ED / DeVos / Cardona

Complaint Overview

- Filed 6/25/19

New Administration =
New Direction

Settlement –
6/22/22

Intervenors’
Challenge

Settlement
Approval –
11/16/22

Intervenors’
Appeal

Current Status

- Loan Forgiveness
- Appeal

DeVry vs. ED / Cardona

First Ever BDR
Recoupment
Action

Complaint
Overview

Proceeding on
Dual Tracks

ED's Motion to
Dismiss

Current Status

\$23.6M

Filed
10/11/22

Lead-Up
Process

CCST vs. ED / Cardona

Challenge to
New BDR Regs
Effective 7/1/23

Complaint
Overview

ED's Motion to
Dismiss /
Transfer Venue

CCST's Motion
for Preliminary
Injunction

Current Status

Filed 2/28/23

What to think about



Can we meet the deadline?



Who should reply?



To what are we replying?

Can we meet the deadline?



60 Days



Conversation with ED

Who should reply?

Office of the
General Counsel

Form a team

To what are we responding?

The application includes potential claims in the following categories:

- Admission Selectivity
- Representations to Third Parties
- Urgency to Enroll
- Educational Services
- Employment Prospects
- Program Cost and Nature of Loans
- Transferring Credits
- Career Services
- Judgment
- Breach of Contract
- Other

To what are we responding?

EMPLOYMENT PROSPECTS

Did your school misrepresent employment outcomes that would be available to you or the employment outcomes of prior graduates? Please select all that apply:

- My school did not fulfill its promise that I would find future employment.
- My school misrepresented its job placement rates.
- My school misrepresented the demand for graduates in my field.
- My school misrepresented its partnerships with employers.
- My school misrepresented my eligibility for a certification or a licensure in my field of study.
- My school exaggerated the earnings of prior graduates or my likely earnings after graduation.
- My school misrepresented that it was accredited when it was not.
- My school misrepresented that my program had the accreditation necessary to qualify graduates for licensure or certification when it did not.
- My school failed to tell me that my programs did not have the accreditation necessary to qualify graduates for certification or licensure.
- Other, please identify:

Per item selected, above:

Please describe how the school communicated with the school. Please describe in detail what the school told you, or failed to tell you, and why you believe it was a misrepresentation.



Questions?

2023 NASASPS Annual Conference

April 30 – May 3 | Phoenix, Arizona



Thank you!

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