COMPLIANCE UPDATE
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BORROWER DEFENSE TO REPAYMENT FINAL RULE

On Nov. 1, 2016, the USDE released its final borrower defense to repayment rules, which establishes a new standardized process for how students can discharge their federal student loans on the grounds that they were misled or otherwise defrauded by their college. If borrowers can prove their school violated its contractual agreement with the student or made a "substantial misrepresentation" to the student about the nature of the education offered, cost of the program or employability of graduates, borrowers will have the right to have their student loans discharged. Under the new rules, state or federal court judgments against a school related to loan or educational services can serve as evidence for a successful borrower defense claim. Also stated in the new rule is the stipulation that colleges receiving federal aid will be banned from requiring students to agree to settle any claims against a school in arbitration as a condition of enrolling. This change makes it possible for students to file a lawsuit. Troubled colleges will also be required to make new disclosures to their students, as well as set aside money to cover the costs to taxpayers in case the school collapses. Most of the new regulations take effect on July 1, 2017. A final version of the rules was issued in the Federal Register Notice on Nov. 1.

A summary of the major provisions include:

- **Clear, Transparent Processes for Borrowers:** Student loan borrowers will be able to seek loan forgiveness when: 1) The school breaches its contract with the student; 2) A state or federal court finds misconduct at a school; or 3) Their school substantially misrepresents its educational offerings or job placement rates.
- **Opportunity for Group-Wide Discharges:** The USDE will have the ability to discharge the loans of groups of defrauded borrowers even if they don't individually apply for debt relief.
- **Statutes of Limitation:** Borrowers will have six years to file a debt relief claim based on their school's misrepresentation or breach of contract.
- **Student and Taxpayer Protections:** The rule establishes a number of triggering and early-warning events that would automatically require the school to provide financial protection to the USDE that totals at least 10 percent of the amount of Title IV funds received by the school over the previous year.
- **Early Warnings for Students:** Institutions that are required to post collateral due to lack of stability must disclose this information to current and potential students. These institutions will also be required to include a warning in all advertising and marketing materials if their students have poor loan repayment outcomes.

- **Increased Access to Closed School Discharges:** The USDE will automatically provide loan discharges to students whose school suddenly closes if they haven't re-enrolled at another school within three years.
- **Protection Against Any Pre-dispute Arbitration Agreements:** Colleges receiving federal aid are prohibited from requiring students to agree in advance to resolve disputes through arbitration as opposed to a court. Students and colleges are allowed to agree to settle a particular complaint through arbitration, but only after the dispute arises. The rules bar colleges from forbidding class-action lawsuits by their students or imposing gag rules on students that prevent them from informing regulators of their complaints about a school.
- **Older Loans Now Eligible for Debt Relief:** Defrauded borrowers who took out loans under the FFEL program or the Perkins Loan program will be able to apply for debt relief once they consolidate their loans into a new federal direct loan. This provision took effect on Tuesday, Nov. 1st.

Additional provisions were included in this final rules package as outlined below.

- Expand the types of documentation that may be used in granting a discharge based on the death of the borrower in the Perkins, FFEL, Direct Loan, and TEACH Grant programs.
- Codify the conditions under which the discharge of a Direct Subsidized Loan will lead to the elimination or recalculation of a Subsidized Usage Period under the 150 Percent Direct Subsidized Loan Limit or the restoration of interest subsidy.
- Make technical corrections to the regulation that describes the authority of the Department to compromise, or suspend or terminate collection of, debts.
- Make technical corrections to the regulations governing the Pay as You Earn (PAYE) and Revised Pay as You Earn (REPAYE) repayment plans.
- Allow for the consolidation of Nurse Faculty Loans.
- Allow borrowers to obtain a Direct Consolidation Loan if the borrower consolidates at least one eligible loan.
- Clarify the conditions under which the capitalization of interest by FFEL Program loan holders is permitted.

For additional information, be sure to read the Press Release and Fact Sheet from the USDE on this topic.