



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

Issue Paper #7: Borrower Defense to Repayment
Session 1: October 4-8, 2021

Issue:	Borrower Defense to Repayment – Post-Adjudication
Statutory cites:	§455(h) of the Higher Education Act of 1965, as amended
Regulatory cites:	34 CFR 685.206(c) and (e) 34 CFR 685.222

Summary of issues: Section 455(h) of the Higher Education Act of 1965, as amended (HEA), requires the Secretary to specify in regulation which acts or omissions by an institution of higher education a borrower may assert as a defense to repayment of a Direct Loan. This issue paper generally covers post-adjudication treatment of borrower defense to repayment claims.

After adjudicating a borrower defense claim in accordance with the applicable regulations, the Department notifies the borrower of the Department's decision, including any amounts discharged, via decision letter.

The Department observed the following problems with the borrower defense post-adjudication process:

- Borrowers whose claims have been approved have not received sufficient relief; and,
- The 2019 regulations do not include a reconsideration process.

Solutions: As part of improving the borrower defense to repayment process, the Department wants to provide greater clarity about how the Department determines the amount of relief for approved claims, including establishing a rebuttable presumption of full relief, and to design a structured process for reconsidering decisions. To accomplish this goal and address the issues identified above, the Department proposes the following initial solutions for discussion with the negotiating committee:

Relief amounts. The Department proposes to adopt a presumption of full relief for an approved borrower defense claim. This presumption may be rebutted by evidence showing that the harm to the borrower is less than what they would receive from a full discharge. This evidence could be held by the Department or provided by an institution or other party.

Reconsideration process. Establish a reconsideration process that the borrower may pursue if a borrower defense claim is denied or if partial relief is granted. To be eligible for reconsideration, the borrower would have to provide additional evidence or request adjudication under a specific State standard that they specified and specify the basis for using the State standard instead of the federal standard. The Department would establish timeframes by which it must receive a request for reconsideration from individuals or groups. While the Department processes the reconsideration request, the borrower's loans would remain in forbearance and/or the Department would cease enforced collections. Borrowers would be able to opt out of forbearance.

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The Department would review the reconsideration request and issue a decision. If, after the reconsideration process, a borrower's claim is still denied or still receiving partial relief, the borrower would not enter repayment until 90 days after adjudication of their reconsideration request to give the borrower adequate time to re-enter repayment.