

**Issue Paper 2**  
**Session 1: January 12 -14, 2015**

**Issue:** Time period for availability of Borrower Defense to Repayment claims

**Statutory cites:** §455(h) of the Higher Education Act of 1965, as amended, 20 U.S.C. 1087e(h)

**Regulatory cites:** 34 CFR 685.206(c)

**Summary of issue:**

The current regulation is silent on the timeframe during which a borrower may bring a Direct Loan Defense to Repayment (DTR) claim and provides a three-year period during which the Department of Education (Department) may recover the amount of loss on a loan due to a successful DTR claim from a school.

Public commenters have suggested that “since there is no statute of limitations on Federal student loan collection, no state or Federal statutes of limitations should bar a borrower from establishing a defense to repayment.” While the Department has the authority to adopt a new Federal time period for DTR claims on new Direct Loans, this is not currently an open issue for DTR claims related to existing Direct Loans or for Federal Family Education Loans, which will be governed by the current regulation .

Questions to be considered by the negotiating committee if the Department seeks to establish a time limitation for the availability of borrower DTR claims include:

1. Should the regulations address a limitation period for borrowers to bring DTR claims? What limitation period should apply? Should the limitation period differ for different kinds of claims, based on a new Federal standard(s), state law-based claims, or both?
2. What is the “trigger” date from which such a limitation period for borrowers to bring DTR claims should run? What, if any, circumstances would warrant tolling (extending) the limitation period?
3. The current Direct Loan rule provides that the Department will not pursue recovery against the school for the amount of loss on a loan later than three years after the last year in which the student last attended the school. 34 CFR §685.206(c). This limitation period was derived from the rule requiring schools to retain records of “administration” of title IV programs for at least three years following the last award year in which the student attended the school or aid was provided. 34 CFR 668.24(d). Borrower DTR claims, however, will ordinarily arise not from the calculation and award of title IV aid, but rather from certain acts or omissions by a school for which Department regulations impose no record retention requirements. What, if any, limitation period should apply for the Department to assert a recovery claim against a school (e.g., the routine title IV aid record retention period, as in the current version of §685.206? Some other period?)