



Docket ID ED– 2015–OPE–0103  
Comments on Final Rules on Borrower Defense Processes

March 20, 2017

The National Association of Student Financial Aid Administrators (NASFAA) submits these comments in response to the final rule published January 19, 2017, concerning the processes to be used in carrying out the borrower defenses to loan repayment rules published on November 1, 2016. NASFAA represents nearly 20,000 financial aid professionals who serve 16 million students each year at approximately 3,000 colleges and universities of all sectors throughout the country. NASFAA member institutions serve nine out of every ten undergraduates in the U.S.

NASFAA continues to support the Department of Education’s (ED) efforts to standardize the discharge process for loans made under fraudulent or false pretenses, deceptive practices, or other recognizably duplicitous circumstances. As we also noted in our comments to the proposed rules that led to the November 1 regulations, schools that encourage or have a pattern of such behavior should be held fully accountable for losses to the federal government. The proposed rules did not include the processes under which the Department implements relief for borrowers or determines liabilities of institutions.

We are concerned that ED elected to bypass the negotiated rulemaking and public comment procedures before publishing final rules, even though they are procedural in nature. Regardless of whether they promulgate substantive policy, procedural processes play a significant role in how well policy is carried out. For almost 30 years now, negotiated rulemaking has consistently demonstrated that in the relationships between regulators and the regulated entities, neither side has full possession of all the facts and factors that result in fair, efficient, and comprehensible rules. Further, not only the content, but the wording and presentation of requirements benefit from the formal rulemaking process.

While we understand the complications that a change in administration imposes, the rules published on November 1 do not go into effect until July, and the processes that are needed have a degree of independence from the particulars of the rules that lead to borrower defense discharges. The process rules could have been developed along a parallel track with sufficient attention given to input from the regulated entities in a negotiated rulemaking environment, and the public.

As you may know, NASFAA works with other groups to ensure that students who have experienced school closure receive information to help them move forward with their academic

goals and answer their questions about the impact of school closure on their federal student financial aid, which includes loans and loan discharges. We are concerned, as is ED, that these students not suffer financial hardship due to circumstances beyond their control in addition to the life disruptions to which they are already subject. We hope that as both individual and group borrower defense claims are resolved, the Department will share what it learns from the procedures it puts into place, and partner with schools and the higher education community to make that process as fair, efficient, and straightforward as possible. We look forward to working with you in that endeavor.

Questions about our comments may be directed to me at [mccarthyk@nasfaa.org](mailto:mccarthyk@nasfaa.org).

Sincerely,

A handwritten signature in black ink that reads "Karen S. McCarthy". The signature is written in a cursive style with a large, stylized initial "K".

Karen S. McCarthy  
Director of Policy Analysis