



Durbin Statement On House Passage Of Resolution Overturning Devos Borrower Defense Rule

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WASHINGTON – U.S. Senate Democratic Whip Dick Durbin (D-IL) today issued the following statement after the House of Representatives voted 231-180 to pass H.J.Res. 76, a Congressional Review Act (CRA) resolution of disapproval overturning Department of Education Secretary Betsy DeVos’ rewritten borrower defense rule that guts essential protections for student borrowers and taxpayers. Six Republicans joined House Democrats to pass the measure. The resolution was introduced by U.S. Representative Susie Lee (D-NV-03), and Durbin is the sponsor of the Senate companion resolution (S.J.Res. 56).

“I’m going to call on members of the Senate to go on the record, as the House did today, about where they stand on helping these defrauded students, many of who are veterans. I’ll be reaching out to all my colleagues, those who wave the flag in support of our veterans for everything they do, that they will have a chance to support them on the Senate floor in the coming weeks,” Durbin.

In a Senate floor speech this week, Durbin cited a letter urging the Senate to overturn the rule from American Legion National Commander, James W. “Bill” Oxford who wrote, “thousands of student veterans have been defrauded over the years—promised their credits would transfer when they wouldn’t, given false or misleading job placement rates in marketing, promised one educational experience...but given something completely different.” Video of Durbin’s remarks on the Senate floor is available [here](#).

The DeVos borrower defense rule makes it almost impossible for borrowers who are defrauded by their school or harmed by their school’s closure to receive the relief to which they are entitled, and which Congress intended, under the Higher Education Act

(HEA). According to an analysis by The Institute for College Access and Success, the DeVos borrower defense rule will cancel just three percent of all loans associated with misconduct.

CRA resolutions of disapproval allow Congress to overturn regulatory actions of federal agencies with a simple majority vote in both chambers. A time for consideration of the resolutions on the floor of the Senate will be coordinated with Senate leadership.

Specifically, the DeVos borrower defense rule:

- Cuts \$11.1 billion in expected relief to students compared to the 2016 rule, currently in effect, by making it more difficult for borrowers to obtain relief;
- Increases the burden on defrauded borrowers to gather and submit, often impossible to obtain, evidence to prove their claim including that the school intentionally harmed them;
- Requires borrowers to apply individually for relief rather than receiving automatic discharges when a group of borrowers has been harmed by widespread fraud or misconduct;
- Establishes a statute of limitations on claims—expiring 3 years after leaving school—despite the fact that a school’s misconduct often doesn’t become known until many years after it;
- Eliminates judgments against a school for misconduct as a sufficient ground for a borrower to receive a discharge;
- Eliminates prohibition on class action bans and mandatory arbitration clauses from the 2016 rule—practices used, primarily in the for-profit college industry, to prevent students from suing a school for misconduct in court;
- Eliminates ability for borrower whose claims are denied from having their claims reconsidered with new evidence;
- Eliminates automatic closed school discharge provision from the 2016 rule for schools that close after July 1, 2020—provision requires automatic discharge of loans for any borrower who has not enrolled in another Title IV program within three years of the school’s closure.

A copy of the Senate resolution of disapproval (S.J. Res. 56) is available [here](#).

A copy of the letter from Commander Oxford is available [here](#).

Additionally, this week 20 State attorneys general sent a letter announcing their support for overturning the DeVos borrower defense rule. A copy of that letter is available [here](#).

In December, fifty-seven organizations wrote a letter supporting the resolution. A copy of their letter is available [here](#).

The Congressional Review Act (5 U.S.C. §801-808) gives Congress the authority to overturn rules promulgated by federal agencies. A CRA resolution of disapproval must be passed by both the House and the Senate and signed by the President in order to overturn a rule. The CRA provides expedited procedures in the Senate for a resolution of disapproval to be considered on the floor—allowing discharge from committee upon the petition of 30 Senators, after which any Senator can bring a resolution to the floor with only a simple majority needed for passage if certain procedural steps are met. If a CRA resolution of disapproval is passed by both chambers in Congress and signed by the President, the rule has no effect and the agency is prohibited from reissuing the disapproved rule in “substantially the same form” in the future.

In 1992, Congress added a provision, known as borrower defense, to the Higher Education Act to give borrowers a legal right to discharge their federal student loans due to misconduct by their institution. In 1995, the Department of Education, at the direction of Congress in the 1992 HEA amendments, promulgated a final rule establishing the criteria for borrowers to receive a borrower defense discharge. The authority was rarely used until the major collapse of predatory for-profit Corinthian Colleges. As a result of this collapse which left an estimated 350,000 students with worthless degrees and fraudulent student debt, the Department began receiving a flood of borrower defense claims from Corinthian and other students—largely from for-profit colleges. Facing a flood of defrauded borrowers seeking discharges, the Obama Department announced it would enter a negotiated rulemaking to update its 1995 borrower defense rule because it “provided little detail on how borrowers could submit, and how the Department would adjudicate claims.” In October 2016, the Department issued its final [borrower defense rule](#)—estimated to provide \$17 billion in relief to students harmed by school misconduct and abrupt school closures. Upon taking office, Secretary DeVos delayed implementation of the 2016 rule—delays which were eventually found by a federal judge to be illegal, making the rule take effect—and announced an effort to rewrite the rule. In the meantime, Secretary DeVos has failed to process nearly 180,000 borrower defense applications currently pending at the Department as of [March 31, 2019](#).