

# **Durbin, Schumer, Veterans Groups Urge Senate to Overturn DeVos Borrower Defense Rule**

by Dan Brannan, Content Director  
February 13 2020 9:52 AM



WASHINGTON – Today, U.S. Senate Democratic Whip Dick Durbin (D-IL), along with Senate Democratic Leader Chuck Schumer (D-NY) and veterans organizations, held a press conference to urge Senate Republicans to support Durbin’s [Congressional Review Act \(CRA\) Resolution, \(S.J.Res. 56\)](#) which would overturn the U.S. Department of Education’s 2019 Borrower Defense rule that gutted essential protections for student borrowers and taxpayers. Durbin and Schumer were joined by Ohio Army veteran Tasha Berkhalter who was defrauded by ITT Tech; and representatives from the American Legion, Veterans Education Success, Iraq and Afghanistan Veterans of America, Student Veterans of America, Tragedy Assistance Program For Survivors, and National Military Family Association.

“Betsy DeVos is telling our veterans and student borrowers: You’re on your own. Lawyer up,” Durbin said. “The only winners here are the predatory schools that the DeVos rule shields from accountability. Our veterans and service members deserve

better than that. I hope when this resolution comes for a vote, that all of those who give great speeches on the floor and back home about how much we honor our veterans can show it with their votes.”

“The Trump administration’s Borrower Defense Rule sends a clear message to predatory institutions: You can cheat students, and get away with it, scot-free.” said Leader Schumer. “Far too often, our brave veterans are targeted by for-profit institutions looking to take advantage of GI Bill funds, and it’s shameful that Secretary DeVos has propped up these institutions at the expense of those who have served. Senate Democrats’ CRA vote will force Republicans to go on the record on this important issue—I urge my colleagues to stand with veterans and students.”

“As I stand here today I currently owe almost \$100,000 in student loans for a degree that no one takes seriously. When I told employers where I went, I was shown the door. Out of the 50 students I graduated with, only two I know of are in our field, but those jobs don’t require the degree. Being married with four children – three in school and one at home – has been a hard challenge for me,” said Tasha Berkhalter, an Army veteran and former ITT Tech student. “I have no GI Bill to go back to school and an extreme amount of debt. I have dealt with stress, anxiety and depression over the whole ordeal for years.”

“It’s time to put an end to Secretary Betsy DeVos’ non-stop efforts to prioritize the interests of predatory, for-profit colleges over the interests of student loan borrowers who have been cheated out of a quality education. Republicans will finally have to decide who they are fighting for—corrupt, for-profit colleges or hardworking students. For me, that choice isn’t hard, and I’ll keep fighting to make sure defrauded student loan borrowers receive the relief they are entitled to,” said Senator Patty Murray (D-WA).

“ITT Tech’s unfair and often fraudulent practices left thousands of Ohio students with near-worthless degrees or credits, tens of thousands of dollars in loan debt, and limited job prospects,” said Senator Sherrod Brown (D-OH). “We need strong protections for students to prevent this from ever happening again. This resolution would block Betsy DeVos’ rule, which guts the process that students need to receive debt relief and shields predatory institutions from being held to account.”

**Video of the press conference is available [here](#).**

**Audio of the press conference is available [here](#).**

**Footage of the press conference is available [here](#) for TV Stations.**

**Photos of the press conference are available [here](#).**

Last month, the House of Representatives voted on a bipartisan basis to pass its version of the measure, [H.J.Res. 76](#) introduced by U.S. Representative Susie Lee (D-NV-03).

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.

In a letter to Durbin supporting the resolution, American Legion National Commander, James W. “Bill” Oxford 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.” Commander Oxford’s letter is available [here](#).

Twenty State attorneys general support for overturning the DeVos borrower defense rule. A copy of their letter is available [here](#).

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

The Association of Jesuit Colleges and Universities also sent a letter of support—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 more than 220,000 borrower defense applications currently pending at the Department as of [September 2019](#)

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