

U.S. Sen. Baldwin: Supports congressional effort to overturn DeVos borrower defense rule

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Devos' rule eliminates more than \$11 billion in relief to defrauded borrowers and guts critical borrower protections

WASHINGTON, D.C. – U.S. Senator Tammy Baldwin supports a Congressional Review Act (CRA) resolution of disapproval – led by Senator Dick Durbin (D-IL) – on Department of Education Secretary Betsy DeVos' rewritten borrower defense rule that gutted essential protections for student borrowers and taxpayers.

CRA resolutions of disapproval allow Congress to overturn regulatory actions of federal agencies with a simple majority vote in both chambers. The Senate will consider the resolution on the floor this week. The House of Representatives passed a companion resolution of disapproval, led by Representative Susie Lee (D-NV-03), last month, 231-180.

“Secretary DeVos has again sided with the predatory, for-profits colleges that seek to defraud people who are pursuing their education,” **said Senator Baldwin.** “We have a student loan debt crisis in our country and instead of working to make things better, the Trump administration is making things worse for defrauded students who need relief. I’m joining my colleagues in standing up for our students first, and protecting them from scams, fraud and abuse.”

The DeVos borrower defense rule makes it more difficult 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). Specifically, the DeVos 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.

Organizations supporting the resolution include The Institute of College Access and Success, National Association of College Admissions Counseling, Student Veterans of America, Veterans Education Success, The Education Trust, National Education Association, Project on Predatory Student Lending, National Consumer Law Center (on behalf of its low income clients), Third Way, Americans for Financial Reform, Center for Responsible Lending, and American Federation of Teachers.

The Congressional Review Act 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](#).

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