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Report to the Chairwoman, Committee
on Education and the Workforce, House
of Representatives

September 2024

DEPARTMENT OF EDUCATION

Student Loan Relief in Cases of College Misconduct

GAO Highlights

Highlights of [GAO-24-106530](#), a report to the Chairwoman, Committee on Education and the Workforce, House of Representatives

Why GAO Did This Study

Borrowers may qualify for relief of their federal student loans if their colleges engaged in certain types of misconduct, such as misrepresenting information about the employment prospects of their graduates. The Higher Education Act of 1965, as amended, authorized borrower defense, and federal regulations established the process for borrower defense. Borrower defense is designed to protect student loan borrowers. However, the federal government generally bears the cost of discharged and refunded federal student loans. Given the potential cost to the federal government, GAO was asked to review how Education processes borrower defense applications and the outcomes.

This report describes the process used to determine student loan relief under borrower defense and the total dollar amount of loans discharged; the number of borrower defense applications Education received and the outcome of those applications; and Education's approval of loan relief for groups of borrowers, among other things.

GAO analyzed Education's cumulative borrower defense data as of April 30, 2024, the most recent data available. GAO also reviewed relevant federal laws and regulations, a relevant class-action lawsuit settlement (known as the *Sweet* settlement), Education policies and procedures, and other agency documents. GAO also interviewed agency officials.

View [GAO-24-106530](#). For more information, contact Melissa Emrey-Arras at (617) 788-0534 or emreyarrasm@gao.gov.

September 2024

DEPARTMENT OF EDUCATION

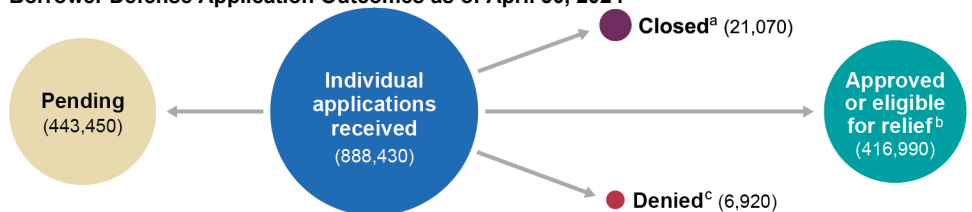
Student Loan Relief in Cases of College Misconduct

What GAO Found

The Department of Education can approve relief for student loan borrowers through a process called borrower defense to repayment (borrower defense) if colleges engaged in certain types of misconduct. As of April 30, 2024, Education had discharged (i.e., forgiven) a cumulative total of \$17.2 billion in federal student loans for 974,820 borrowers under borrower defense, according to agency data. Under the 1995 and 2016 borrower defense regulations, the agency determines if a borrower qualifies for loan relief using two pathways. Under the first pathway, Education evaluates individual borrower defense applications by following a multistep process to determine if a borrower's claim of a college's misconduct is credible. Under the second pathway, Education provides relief for a group of borrowers. Education uses this "group discharge" process when it determines that a college engaged in widespread and pervasive misconduct. In such cases, Education may provide relief to all borrowers who attended a specific college, campus, or program during a specific time, even if they did not submit applications. The \$17.2 billion represents discharges through both the individual and group application pathways. The 974,820 borrowers include those who filed applications as well as those who did not.

Education had received a cumulative total of 888,430 borrower defense applications filed by individual borrowers as of April 30, 2024, according to agency data (see figure). All borrowers with approved applications received full relief (i.e., the discharge of outstanding loan(s) to attend the college and a refund of payments made to Education), according to agency data and officials.

Borrower Defense Application Outcomes as of April 30, 2024



Source: Department of Education data. | GAO-24-106530

^aEducation may close an application when, for example, the borrower cannot be reached to provide missing information or the borrower's loans were already discharged through other means.

^bApproved includes 199,020 applications approved through individual adjudication or a group discharge. Eligible for relief includes 217,970 applications found eligible under the terms of a 2022 legal settlement (known as the *Sweet* settlement).

^cDenied does not include approximately 137,000 denials that the agency rescinded and will reprocess according to the terms of the *Sweet* settlement.

As of April 30, 2024, Education approved group discharges for seven colleges. According to agency officials, all borrowers in the seven groups received full relief. According to GAO's analysis of agency documents and information from officials, the most common type of misconduct Education found (for six of the seven colleges) was the college misrepresenting its graduates' employment prospects, including job placement rates or expected earnings. Education determined that six of the seven colleges engaged in more than one type of misrepresentation. To assess the allegations, Education used information from various sources, including state attorneys general.

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Abbreviations

Fifth Circuit U.S. Court of Appeals for the Fifth Circuit
Ninth Circuit U.S. Court of Appeals for the Ninth Circuit

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September 24, 2024

The Honorable Virginia Foxx
Chairwoman
Committee on Education and the Workforce
House of Representatives

Dear Madam Chairwoman,

Our previous work has shown the importance of the Department of Education overseeing colleges to ensure they do not engage in misconduct,¹ such as misrepresenting information about the employment prospects of graduates or students' ability to transfer credits.² These types of college misconduct can make it difficult for students to find jobs in their fields or complete their degrees, leading to financial hardship. When these types of misconduct occur, student loan borrowers may qualify for federal student loan relief under borrower defense to repayment (borrower defense). Relief may include Education discharging (i.e., forgiving) borrowers' outstanding federal student loans and refunding loan payments already made to the agency.³

Borrower defense is designed to protect student loan borrowers from the financial burden of college misconduct. However, the federal government generally bears the cost of federal student loan relief through borrower defense.⁴ Given these potential costs, you asked us to review how Education processes borrower defense applications. This report addresses the following topics:

¹In this report, we use the term "college" to include colleges, universities, vocational schools, and other postsecondary institutions.

²GAO, *Higher Education: Department of Education Should Improve Enforcement Procedures Regarding Substantial Misrepresentation by Colleges*, [GAO-23-104832](#) (Washington, D.C.: Dec. 13, 2022).

³According to Education, the terms "discharge," "forgiveness," and "cancellation" mean the same thing but are used in different ways. If a borrower is no longer required to make payments on a loan due to certain circumstances, such as a college closure or misconduct, it is generally called discharge.

⁴Education may try to recoup the amount of loan relief from colleges that are still operating. Recoupment is a separate process that is not included in this report.

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1. Outcomes of borrower defense, including the total dollar amount of loans discharged, the number of applications received, and application outcomes
 2. Education’s intake process for borrower defense applications
 3. Education’s process to approve or deny individual borrower defense applications
 4. Education’s process for approving loan relief for groups of borrowers
 5. Education’s process following borrower defense decisions

We reviewed Education summary data as of April 30, 2024 (the most recent available at the time of our review). This included the total amount of loans discharged under borrower defense, the number of borrowers who received loan discharges, and the cumulative number of applications received and their outcomes.⁵ Specifically, we reviewed data about the dollar amount of loans discharged due to both individual approved applications and “group discharges”—loan discharges provided to a group of borrowers when Education determines their college engaged in widespread and pervasive misconduct.⁶ Group discharges may include borrowers who attended the college even if they did not file applications. We assessed the reliability of these data by interviewing knowledgeable officials and reviewing relevant documents and determined them to be reliable for our purposes.

We reviewed and analyzed Education’s borrower defense policies, procedures, and documents; public court documents on a relevant legal settlement (known as the *Sweet* settlement); and federal laws and regulations.⁷ To determine Education’s intake process for applications and the process following borrower defense decisions, we reviewed Education’s contracts with its business process operation vendors (vendors) and the loan servicers involved in the intake and post-decision processing of borrower defense applications. We also reviewed the communication templates, guidance, and training materials that

⁵Education’s data about the dollar amount of loans discharged do not include the amount of loan payment refunds provided to borrowers. The agency could not provide data about refunds because it does not track refunds resulting from borrower defense separately from refunds provided for other reasons, according to agency officials.

⁶A group discharge includes borrowers who fit within parameters defined by Education (i.e., enrolled during a specific time frame and at a specific location or locations of the same college or groups of colleges with the same ownership).

⁷See app. I for more information about the *Sweet* settlement.

Education provided vendors and loan servicers to communicate with borrowers.

To determine the current process for approving or denying individual applications as well as for discharging loans for groups of borrowers, we reviewed the policies and procedures under which Education evaluates (adjudicates) borrower defense applications subject to the 1995 and 2016 borrower defense regulations and the terms of the *Sweet* settlement.⁸ To identify some of the facts and circumstances that have resulted in group discharges, we analyzed agency executive summaries available for five of the seven group discharges that were announced as of April 30, 2024, which we downloaded from Education’s website.⁹ Education officials provided similar information for the other two group discharges, which we included in our analysis. We then summarized the details of each group discharge, including the types of misconduct that Education found, sources of evidence Education considered, and the agency’s rationale for recommending the group discharge. We also reviewed federal regulations to identify the circumstances under which Education might reopen a denied application or a college may challenge a borrower defense decision.

We interviewed Education officials as well as agency vendors and loan servicers. We interviewed Education officials about the processes they use to adjudicate applications, including how they evaluate borrowers’ allegations to mitigate the risk of fraud. We also interviewed vendors and loan servicers about their roles, responsibilities, and activities related to borrower defense by randomly selecting two of the three that provide both business process operations and loan services. We separately

⁸In documents, Education uses the term “adjudication” to refer to the process spanning the Borrower Defense Group’s fact-finding process, legal analysis to determine the application’s merits, and determination of appropriate relief to provide to the borrower, if any. We describe the processes Education used according to agency officials and documents, but we did not evaluate those processes or Education’s adherence to them.

⁹We downloaded the group discharge executive summaries from <https://studentaid.gov/announcements-events/borrower-defense-update> on August 10, 2023, and continued to monitor the website for updates through April 30, 2024. Our analysis does not include a group discharge announced by Education on May 1, 2024, because it occurred outside of our data collection time frame. In addition, there is a time lag between when Education approves discharges and when loan servicers complete them, according to agency officials. For the May 1, 2024, group discharge, Education estimated that nearly 317,000 borrowers would receive relief of more than \$6.1 billion.

interviewed representatives providing each type of service for a total of four interviews.¹⁰

We conducted this performance audit from January 2023 to September 2024 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Borrowers with an outstanding balance on a federal loan can receive borrower defense relief through two pathways.¹¹ The first pathway is used when Education adjudicates an individual's borrower defense application. The second pathway, a group discharge, may be used when Education obtains evidence that a college's misconduct was widely disseminated and pervasive across borrowers, campuses, or programs. Education may obtain such evidence by receiving many applications alleging the same college misconduct, finding that the college misrepresented information in the past, or receiving information from law enforcement partners such as a state attorney general or the Consumer Financial Protection Bureau. Under a group discharge, Education may provide loan relief to an entire group of borrowers who meet its criteria, regardless of whether the borrowers each filed applications.

Only borrowers with Direct Loans, or other loans consolidated into Direct Loans, may receive relief through the borrower defense process. Direct Loans are federal student loans provided by Education to eligible students to cover the cost of higher education. In addition to student borrowers, parents who received a Direct Loan on behalf of a student

¹⁰As of June 2023, Education had contracts with four business process operations vendors. Three of the four vendors also had contracts as loan servicers.

¹¹Per the 2016 borrower defense regulations, relief may include (1) loan discharge, which is the removal of a borrower's obligation to repay the outstanding balance on the loan(s) to attend the college that engaged in misconduct, and (2) refund of loan payments already made to Education or collected on the loan(s) to attend the college. For the purposes of this report, full relief is defined as a combination of full loan discharge and a full refund of payments previously made to Education. To be eligible for borrower defense, a borrower must have an outstanding loan balance on at least one federal student loan for the college that was found to have engaged in misconduct. Borrowers may also raise borrower defense as a defense if they are brought to court in a collection action. However, raising borrower defense for that purpose is extremely infrequent, according to Education officials. This use of borrower defense was outside the scope of this report.

may also apply for borrower defense.¹² Borrowers with Federal Family Education Loans whose borrower defense applications are approved must consolidate their loans into a Direct Loan prior to receiving a loan discharge or refund.¹³

Borrower Defense Legal and Regulatory History

Borrower defense originated from the Student Loan Reform Act of 1993.¹⁴ Education initially issued borrower defense regulations in 1994, which took effect in 1995. They remained in effect for over 20 years.¹⁵ Education received few borrower defense applications for many years. However, in 2015, the agency began receiving thousands of applications, primarily due to the closure of Corinthian Colleges, which operated 105 campuses nationwide at its peak.¹⁶

When the influx of applications occurred, Education did not have an official borrower defense application intake process or staff dedicated to reviewing applications. In 2015, Education hired staff and developed processes that have since been subject to legal challenges and policy changes. In 2017, Education stopped processing borrower defense applications at various times to conduct internal reviews of the process or due to ongoing litigation. Education subsequently issued revised borrower defense regulations in 2016, 2019, and 2022.¹⁷ For the 1995, 2016, and 2019 regulations, the specific regulation that applies to a borrower

¹²Parents who received a Parent PLUS loan—a federal Direct Loan to eligible parents of students—may submit a borrower defense application even if the student does not.

¹³The Federal Family Education Loan Program worked with private lenders to provide education loans guaranteed by the federal government. This program ended in 2010.

¹⁴Pub. L. No. 103-66, tit. IV, § 4021, 107 Stat. 312, 351 (codified at 20 U.S.C. § 1087e(h)). The Student Loan Reform Act of 1993 amended the Higher Education Act of 1965, authorizing the Secretary to specify in regulations which acts or omissions of a college a borrower may assert as a defense to repayment of a direct loan. See app. I for more detail.

¹⁵These regulations included language that Education would work with interested parties to develop additional borrower defense regulations. In 1995, Education convened a negotiated rulemaking committee and, based on the committee's recommendation, stated that it would not amend those regulations.

¹⁶For more information about the steps Education took after the closure of Corinthian Colleges, see app. I.

¹⁷In this report, we refer to different sets of borrower regulations as the 1995, 2016, and 2019 regulations. Education also issued borrower defense regulations in 2022 that were scheduled to take effect on July 1, 2023. Those regulations would apply to all applications pending on or submitted after July 1, 2023. On August 7, 2023, the U.S. Court of Appeals for the Fifth Circuit (Fifth Circuit) issued an injunction that delayed the effective date, and as of June 2024, the injunction had not been lifted.

defense application generally depends upon the date that the borrower's loan to attend the college was disbursed. See appendix I for key federal laws, regulations, and events regarding borrower defense.

In addition to regulations, individual applications may be subject to the terms of a class action lawsuit settlement, known as the *Sweet* settlement, that became effective on January 28, 2023. The *Sweet* settlement established two sets of individual borrowers: *Sweet* "class members" and *Sweet* "post-class applicants." *Sweet* class members are borrowers who submitted an application for borrower defense that was pending as of June 22, 2022.¹⁸ The *Sweet* post-class includes borrowers who submitted applications after June 22, 2022, and before November 16, 2022. See appendix I for more information about the *Sweet* lawsuit and settlement.

Education Offices Involved in Borrower Defense

Primarily, two offices within Education's Office of Federal Student Aid handle aspects of borrower defense, according to Education officials. The Office of Student Experience and Aid Delivery oversees vendors and loan servicers, who are responsible for application intake, communication with borrower defense applicants, and processing any loan discharges and refunds. The Borrower Defense Group, within the Office of Enforcement, includes attorneys who adjudicate applications to see if they meet certain criteria. The Borrower Defense Group also makes the initial recommendation regarding group discharges.

Outcomes of Borrower Defense

What is the total dollar amount of loan discharges that have been provided under borrower defense?

As of April 30, 2024, Education had discharged a cumulative total of \$17.2 billion in federal student loans for 974,820 borrowers under

¹⁸Under the *Sweet* settlement, class members also include borrowers who were certified as class members on October 30, 2019, but whose borrower defense applications were subsequently denied between the class certification date and the settlement execution date (June 22, 2022).

borrower defense, according to agency data.¹⁹ The 974,820 borrowers include those who filed applications as well as those who did not file an application, but Education identified them as meeting criteria for a group discharge. The borrowers who filed applications include those who had their applications approved through individual adjudication, whose applications were found eligible for loan discharge under the terms of the *Sweet* settlement, or who submitted an application but received relief through a group discharge. Education provided full loan discharges to all borrowers in those categories, according to agency summary data and officials.

How many borrower defense applications has Education received, and what were the outcomes?

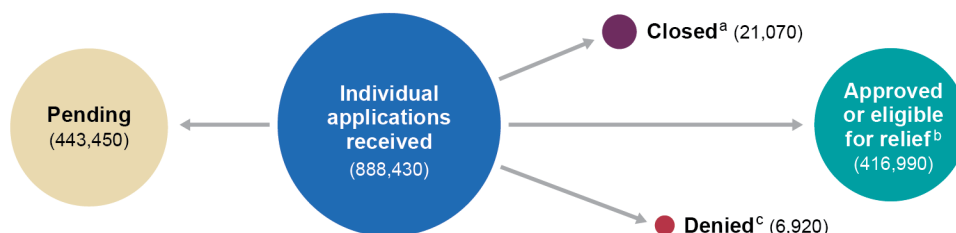
As of April 30, 2024, Education had received a cumulative total of 888,430 borrower defense applications from 762,180 borrowers, according to agency data (see fig. 1).²⁰ Of those, 6,920 applications (1 percent) were denied, and 416,990 applications (47 percent) received approval through individual adjudication, were eligible for relief under the terms of the *Sweet* settlement, or the applicant was provided relief

¹⁹Education's data about the dollar amount of loans discharged are rounded to the nearest million. Data about the numbers of borrowers are rounded to the nearest 10. The \$17.2 billion includes only the amount of loans discharged, not the amount refunded, because Education cannot isolate refunds resulting from borrower defense from other types of refunds, according to agency officials. The number of borrowers receiving discharges and the total dollars discharged may differ from announcements on Education's website (<https://studentaid.gov/announcements-events/borrower-defense-update>), according to agency officials. This is because the announcements are based on estimates of eligibility and may not reflect final numbers, and there is a time lag between when Education approves discharges and when loan servicers complete them.

²⁰Education's data about the number of borrower defense applications and application outcomes are rounded to the nearest 10. The 974,820 borrowers described in the section above include those who received relief through a group discharge but who did not file an application. Those borrowers are not included in the 762,180 borrowers who filed 888,430 applications. Borrowers who filed the 888,430 applications include those who are subject to the terms of the *Sweet* settlement. Borrowers may submit more than one borrower defense application. For example, if borrowers have allegations against more than one college, they must file an application for each college, officials said.

through a group discharge.²¹ The remaining applications (52 percent) were either closed or pending.²²

Figure 1: Number of Borrower Defense Applications Received and Outcomes as of April 30, 2024



Source: Department of Education data. | GAO-24-106530

Note: Data are rounded to the nearest 10. These data only include borrowers who applied for borrower defense by submitting an application. Some of the applications are subject to the terms of a class action lawsuit settlement agreement, known as the *Sweet* settlement.

^aApplications are closed for various reasons, according to Education data. For example, applications are closed when the borrower cannot be reached to provide missing information or when the borrower's loans were already discharged through other means.

^bThe number of applications approved or eligible for relief includes 199,020 applications approved through individual adjudication or a group discharge, and 217,970 applications found eligible for relief under the terms of the *Sweet* settlement.

^cThe number of applications denied does not include approximately 137,000 denials that the agency issued using form denial notices before October 2020. Pursuant to the terms of the *Sweet* settlement, the agency rescinded and will reprocess those denials. Education officials also noted that in October 2020 the agency agreed not to issue any more denials until a final approval was filed in the *Sweet* case, which occurred on November 16, 2022.

²¹The number of applications denied does not include approximately 137,000 denials that the agency issued using form denial notices before October 2020. Pursuant to the terms of the *Sweet* settlement, the agency rescinded and will reprocess those denials (see app. I for more information). Education officials also noted that in October 2020 the agency agreed not to issue any more denials until a final judgment was entered in the *Sweet* case, which occurred on November 16, 2022.

²²Applications are closed for various reasons, according to Education data. For example, applications are closed when the borrower cannot be reached to provide missing information or when the borrower's loans were already discharged through other means.

How many borrower defense group discharges has Education approved?

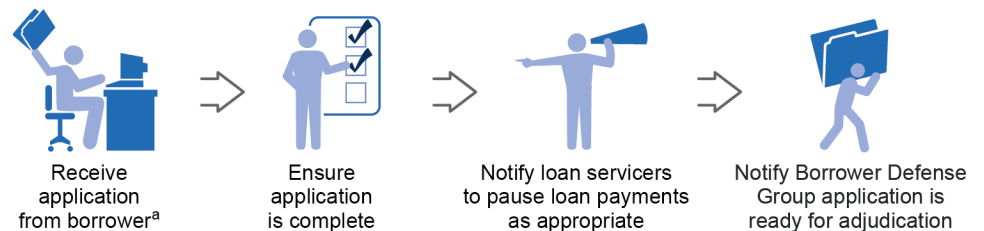
As of April 30, 2024, Education announced group discharges for seven colleges.²³ All seven colleges were closed before Education issued its group discharges, according to Education documents. All group discharges provided borrowers with full relief, according to agency officials.

Education's Intake Process for Borrower Defense Applications

How does Education intake borrower defense applications?

Education has four business process operations vendors (vendors) that are responsible for several intake steps before the agency adjudicates the applications. The vendors receive applications from borrowers, screen them, and work with loan servicers to pause loan payments as appropriate before moving the applications to Education's Borrower Defense Group for adjudication (see fig. 2).

Figure 2: Education's Intake Process for Borrower Defense Applications



Source: GAO analysis of Department of Education documents and interviews with Education officials. | GAO-24-106530

^aMost borrowers submit their application online, according to Education officials. Mailed applications are scanned and uploaded to the applications database.

²³Our analysis does not include a group discharge announced by Education on May 1, 2024, because it occurred outside our data collection time frame. In addition, there is a time lag between when Education approves discharges and when loan servicers complete them, according to agency officials. The May 1, 2024, discharge was for a closed college. Education estimated that nearly 317,000 borrowers would receive relief of more than \$6.1 billion.

The Borrower Defense Application

Borrowers can find instructions for submitting an application at the Department of Education's StudentAid.gov borrower defense webpage

(<https://studentaid.gov/borrower-defense/>).

The webpage includes information about who is eligible to apply, what documents the borrower should include in the application, and what the borrower should expect after submitting the application.

The borrower defense application guides the applicant through several sections, each asking about specific types of college misconduct. For example, one section asks about a college misrepresenting or omitting information about graduates' employment prospects. Another section asks about misrepresentation of the likelihood that other colleges will accept transfer credits.

The application lists several specific statements about the college's misconduct and asks the applicant to check all that apply. Example statements are "My school misrepresented its job placement rates" and "My school misrepresented that my program had the accreditation necessary to qualify graduates for licensure or certification when it did not." The application then provides space for the applicant to describe details such as what the college communicated or failed to communicate and why the borrower believes it was a misrepresentation.

Applicants may attach relevant documents to support their allegations, such as a transcript, promotional material from the college, or a student manual. Borrowers must sign their applications under the penalty of perjury, certifying that all information they provided was true and complete to the best of their knowledge.

Source: GAO analysis of the borrower defense application (Office of Management and Budget Number 1845-0163). | GAO-24-106530

Receive application from borrower. Education officials said most borrowers submit their applications through the webpage, but they can also mail a hard copy application to Education. An agency database assigns the applications to the vendors for processing.²⁴ The assigned vendor notifies the borrower that the application was received and provides a case number for the borrower's reference.

Ensure application is complete. After checking for any duplicate applications submitted by the same borrower, the vendor verifies that the borrower's application is complete.²⁵ On the application, borrowers must include information such as their social security number, date of birth, college program(s) attended and credential(s) sought, at least one allegation of college misconduct, and their signature. The vendor also uploads information about the borrower's loans, programs, and credentials from the National Student Loan Data System and adds it to

²⁴Borrower defense applications are equally and randomly assigned among the four vendors regardless of whether the vendor's company also serves as the borrower's loan servicer. Vendors process applications starting with the oldest submission first.

²⁵The vendor checks to see if the borrower filed any prior applications that cite the same college and program or credential, according to Education's training documents for vendors. If the vendor finds another application with the same information, the vendor transfers any additional information from the most recently submitted application(s) to the original application and closes the duplicate application.

the application.²⁶ If a borrower's application is incomplete, the vendor notifies the borrower about what additional information is needed, according to Education training documents.²⁷

Types of Student Loan Payment Pauses for Borrower Defense Applicants

Forbearance: A period during which a borrower is not required to make loan payments. Interest continues to accumulate.

Stopped collections: For federal student loans that are placed into stopped collections status, the federal government or debt collection companies stop attempting to collect on the loan, including by not withholding money from the borrower's wages or income tax refunds. Interest continues to accumulate.

Source: Federal Student Aid website. | GAO-24-106530

Notify loan servicer(s) to pause loan payments as appropriate. The vendor notifies the loan servicer(s) to pause the borrower's loan payments unless the borrower opts out on the borrower defense application, according to an Education document and a vendor representative. The vendor sends a request to the loan servicer(s) to put the borrower's loan(s) in forbearance or stopped collections, as appropriate, until a decision is rendered on the borrower's application.²⁸

Notify Borrower Defense Group application is ready for adjudication. The vendor electronically notifies the Borrower Defense Group that the application is ready for adjudication, according to an Education document.

Education's Process to Approve or Deny Individual Borrower Defense Applications

What is the general process Education uses to approve or deny individual borrower defense applications?

Education's adjudication process for individual applications includes fact-finding; legal analysis to determine the merits of the application; and, in the case of approved applications, a determination of appropriate relief for the borrower, according to Education officials and documents

²⁶The National Student Loan Data System is the national database of information about loans and grants awarded to students under Title IV of the Higher Education Act of 1965, as amended.

²⁷If the borrower does not respond after a minimum of five outreach attempts, the vendor closes the application. Borrowers can follow the status of their application on their StudentAid.gov account or by calling the Borrower Defense hotline.

²⁸The loan forbearance and stopped collections process differs for borrowers with Federal Family Education Loans because loan servicers for these loans do not have access to Education's database, according to an Education training document for vendors. Instead, the vendor emails a separate secure file with the borrower's information to the loan servicers to put the loan(s) in forbearance or stopped collections.

(see fig. 3).²⁹ This process applies to individual applications adjudicated under the 1995 and 2016 regulations. The agency also uses this process for *Sweet* post-class applications, which the agency must adjudicate under the 2016 regulations per the *Sweet* settlement.³⁰

Figure 3: Education’s Process to Adjudicate Individual Borrower Defense Applications



Source: GAO analysis of Department of Education documents and interviews with Education officials. | GAO-24-106530



Source: GAO. | GAO-24-106530

Fact-finding. In the fact-finding stage, Education gathers data about the college named in the application, according to agency officials and documents. Education’s first step in fact-finding is determining if the agency has an existing common findings memo that applies to the borrower’s allegations in the application (see the sidebar for a description of a common findings memo). If there is an applicable memo, the

²⁹The process does not differ based on the college sector (i.e., public, private non-profit, or private for-profit), according to Education officials.

³⁰As of April 30, 2024, Education had not approved or denied any applications under the 2019 regulations, according to agency data. Education officials said this is because applications subject to the 2019 regulations need to meet two criteria. First, the applications would need to involve loans disbursed after July 1, 2020. Second, the applications would need to have been filed on or after November 16, 2022. Any applications that were already pending as of November 16, 2022, are subject to the terms of the *Sweet* settlement. Applications subject to the *Sweet* settlement must be processed under the 2016 regulations, per the terms of the settlement. In addition, Education officials said they are focusing agency resources on processing applications that are subject to the *Sweet* settlement given its strict timelines. See app. I for more information about the *Sweet* settlement.

application moves to the next step in the adjudication process, which is legal analysis and merits determination.³¹

Common Findings Memos

According to agency officials, Education develops a common findings memo when fact-finding reveals evidence that a college committed misconduct that, according to federal regulations, could make borrowers eligible for borrower defense. The memo compiles the evidence collected by the agency and generally establishes the college's misrepresentation, when and where it occurred, how it was false or misleading, why it was reasonable for borrowers to rely on the misrepresentation, and the harm borrowers experienced due to the misrepresentation. The memo includes analysis of any evidence provided by the college.

Common findings memos also recommend the relief that should be provided to borrowers with similar facts and circumstances if their application is ultimately approved. As of April 2024, all common findings memos had recommended full relief.

The memos are reviewed by Education's Office of the General Counsel and sent to the agency's Office of the Under Secretary for approval, according to agency documents and officials. If approved, Education uses the findings in the memo to develop a college-specific legal analysis and merits determination protocol.

Source: GAO analysis of Department of Education documents and interviews with Education officials. | GAO-24-106530

If Education does not have an existing common findings memo for the college and type(s) of misconduct alleged in the application, the agency conducts fact-finding. Fact-finding includes reviewing allegations and evidence presented in other pending borrower defense applications that name the same college, according to agency guidance.³² The agency also reviews any response from the college about the allegation(s) made in the application.³³ (See the text box for more information about college notification.) In addition, Education reviews information that the agency can obtain from internal or external sources, according to Education policy memos.

³¹Even if an application names a college with an existing common findings memo, the allegations in the application may fall outside the parameters of the memo (i.e., the time frame, program, and type of allegation(s) may differ). Therefore, Education might need to review additional evidence, according to agency officials. In those cases, the fact-finding process would continue before moving the application to legal analysis and merits determination.

³²Depending on the number of applications, the Borrower Defense Group may review a "statistically significant number of applications," according to Education's fact-finding policy.

³³The 2016 borrower defense regulations require Education to notify and consider any response from the borrower's college named in an application.

Education’s Notification to Colleges Named in Borrower Defense Applications

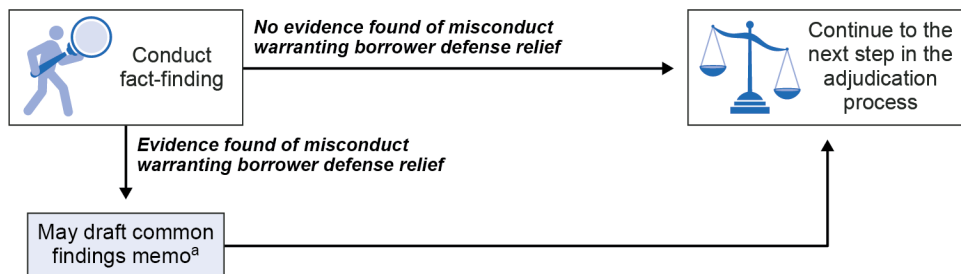
In the college notification email template we reviewed, Education informs the college of the associated application and explains that the agency is sharing the application with the college as part of a fact-finding process. The notice says that the college may submit a response to the borrower’s allegation within 60 days but that the college is not required to respond. It also includes information about how the college can submit information and where to direct questions about the notification.

In November and December 2023, Education provided additional information for colleges about the borrower defense process. In November, the agency issued an electronic announcement, “Borrower Defense School Notification Process under the 2016 Regulation.” Education also showed a training video about the borrower defense process at a Federal Student Aid conference, according to officials, and the agency posted the video online in December 2023.

Source: GAO analysis of Department of Education documents and interviews with Education officials. | GAO-24-106530

Once Education has conducted thorough fact-finding and collected all evidence, the agency moves applications to legal analysis and merits determination (see fig. 4). If Education finds sufficient evidence that the college engaged in misconduct and that evidence is not documented in an existing common findings memo, the agency may summarize this information in a new memo.

Figure 4: Possible Outcomes of Education Fact-Finding for Evidence of Prior College Misconduct



Source: GAO analysis of Department of Education documents and interviews with Education officials. | GAO-24-106530

^aIf Education identifies a pattern of likely misconduct by a college during fact-finding, it may compile the evidence in a common findings memo.

All applications undergo a legal analysis and merits determination (as described below) based on their individual claims of college misconduct and any evidence discovered during fact-finding, according to Education documents and officials. The legal analysis and merits determination is conducted regardless of whether an application’s allegations align with a new or existing common findings memo.



Legal analysis and merits determination

Source: GAO. | GAO-24-106530

Legal analysis and merits determination. The legal analysis and merits determination refers to the process Education uses to determine if the borrower's allegation is a valid basis for borrower defense and meets the legal standards defined in the 2016 regulations.

If Education determined during fact-finding that an existing common findings memo pertains to the college named in an individual application, or if the agency drafted a common findings memo at the conclusion of fact-finding, Education assesses the application's allegation(s) against the evidence in the common findings memo and its associated protocol, according to Education officials.³⁴

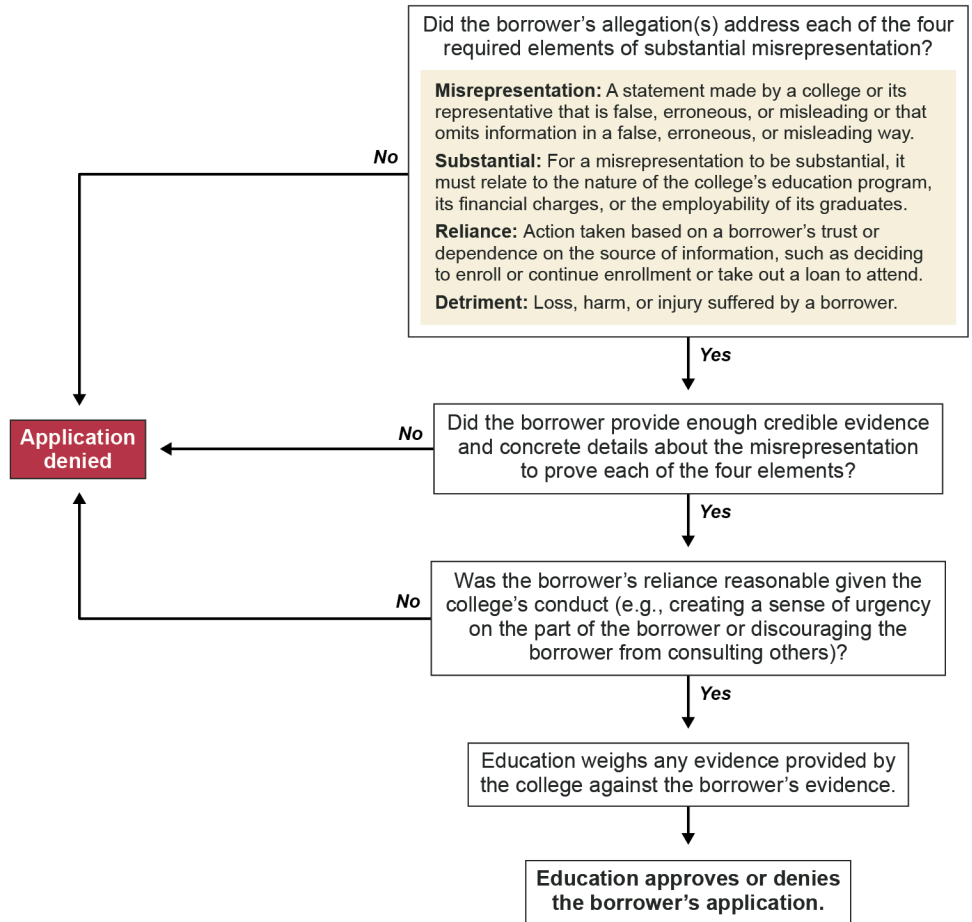
When an application's allegation(s) aligns with misconduct identified in a common findings memo, the common findings support the borrower's application and expedite the legal analysis and merits determination process because the college's misconduct and its effects have already been described and established in the memo, according to Education officials. If the application's allegation(s) does not align with evidence in a common findings memo, or there is no memo pertaining to the college, Education conducts the legal analysis and merits determination process based on the information provided in the application itself along with any additional evidence the borrower may have submitted or the agency obtained.

Most borrower defense applications allege substantial misrepresentation, according to Education officials.³⁵ For an allegation of substantial misrepresentation, Education must determine if the borrower's claims meet each of the four required elements, according to agency documents (see fig. 5).

³⁴When Education creates a common findings memo, the agency also drafts a protocol that includes illustrative examples of the language, words, or phrasing a borrower might use to describe the type of college misconduct detailed in the memo, according to agency officials. Education uses the protocol to support the legal analysis and merits determination of applications covered by the memo.

³⁵Substantial misrepresentation occurs when a college makes certain false or misleading statements—or omissions—about the nature of its educational programs, costs, or the employability of its graduates, that students or others rely on to their detriment. Agency documents also describe the steps for the legal analysis and merits determination in cases in which the borrower alleges other misconduct that may be eligible for borrower defense under the 2016 regulations. The other types of misconduct are a judgment against the college or a breach of contract between the borrower and the college.

Figure 5: Education’s Evaluation of the Credibility of a Substantial Misrepresentation Allegation in a Borrower Defense Application under the 2016 Regulations



Source: GAO analysis of Department of Education documents and interviews with Education officials. | GAO-24-106530



Source: GAO. | GAO-24-106530

Relief determination for approved applications. If Education’s legal analysis of a borrower’s allegation(s) results in the approval of an application, the agency then determines the appropriate relief to award

the borrower, according to agency officials.³⁶ However, since establishing a new relief policy in March 2021, Education had not made any individual relief determinations on applications as of April 30, 2024. Education officials said that is because all individually adjudicated applications that were approved since then were either subject to the relief prescribed in a common findings memo or the *Sweet* settlement.³⁷ According to agency officials, they are in the process of developing a procedure that aligns with their March 2021 policy (see the text box).³⁸

Education's Relief Methodology

If an approved application did not align with a common findings memo, then Education would determine relief for the individual application. Education's methodology for determining individual relief has undergone administrative changes. Education announced in March 2021 that it was shifting its policy from formula-based relief determinations to the presumption that approved applications would start at full relief and be decreased as appropriate.

According to Education officials, a new procedure the agency is developing would outline how to determine appropriate relief for a borrower with an approved application that does not match the circumstances described in a common findings memo. Officials said that a borrower's relief would be reduced from full relief on a case-by-case basis, depending on the facts and circumstances of the application and whether available evidence rebuts the presumption of full relief. For example, evidence provided by the college could reduce the amount of relief provided to the borrower, they said.

Source: GAO analysis of Department of Education documents and interviews with Education officials. | GAO-24-106530

After Education determines appropriate relief for approved applications, the agency updates the application database with the final decision,

³⁶Relief may include discharge of an outstanding loan balance and a refund of payments already made. Full relief is a combination of full loan discharge and a full refund. For the steps Education takes when an application is denied, see the section below that addresses the agency's process following borrower defense decisions.

³⁷Some borrowers who submitted an application received relief through a group discharge. When Education approves a group discharge, the agency also determines the relief that all borrowers who are part of the group will receive.

³⁸To be consistent with the March 2021 relief policy, Education subsequently notified all borrowers who had previously received partial relief that they would receive full relief, according to agency officials. Education officials said that the agency relied on the Secretary of Education's settlement-and-compromise authority to waive the statute of limitations on the refund of loan payments made by borrowers whose loans were discharged. See 20 U.S.C. § 1082(a)(6) (stating that the Secretary, in the performance of his duties under Title IV of the Higher Education Act, may "enforce, pay, compromise, waive, or release any right, title, claim, lien, or demand, however acquired, including any equity or right of redemption"). The 2016 regulations do not apply a statute of limitations to discharge of outstanding loan balances; however, they do place a statute of limitations on the refund of loan payments already made. Without the use of this authority, Education was barred from refunding payments already made, according to officials. Education officials said they relied on settlement-and-compromise authority in this instance to apply an equitable approach across affected groups of borrowers.

Education officials said. The decision and the relevant information used to make the decision may be reviewed by a quality control team.³⁹

How does Education process applications submitted by *Sweet* settlement class members?

Per the class action legal settlement (the *Sweet* settlement), applications submitted by *Sweet* class members are not subject to Education's general adjudication process (see app. I for more information about the *Sweet* lawsuit and settlement). The *Sweet* settlement divided the class members into two categories, and required that their applications are processed as described below:

- **Automatic full relief.** To determine which applications were part of the automatic full relief category, Education first identified which *Sweet* class applications made allegations against one of the 151 colleges identified in the settlement, according to an agency official.⁴⁰ Next, Education identified the loans used to attend those colleges and the loan servicers that were servicing the loans.⁴¹ Education then manually created unique lists for each loan servicer to discharge the relevant loans.

³⁹The Borrower Defense Group has tiers of quality control, according to Education documents. When introducing a new protocol or training new attorneys, all attorneys are subject to 100 percent quality control, meaning a quality control team member reviews every application decision. As attorneys gain experience and demonstrate 90 percent accuracy, they are placed on daily quality control. At this level, a random sample of decisions are reviewed by the quality control team and attorneys receive a report identifying errors. The quality control team also conducts a weekly review of critical information from all applications decided in the previous week.

⁴⁰Education determined that borrowers in the automatic full relief category held approximately 2.9 million federal student loans, according to an agency official.

⁴¹There were approximately 20 vendors that held a loan subject to automatic full relief. Vendors included federal loan servicers, guaranty agencies (a state or private non-profit agency that helps administer Federal Family Education Loans), and others, according to an agency official.

Per the settlement, Education had to notify these borrowers by April 28, 2023, that they would receive full relief by January 28, 2024.⁴²

- **Streamlined review.** For the remaining class member applications that did not include allegations against one of the 151 colleges identified in the settlement, Education must process applications according to a schedule, with the oldest applications decided first. Per the settlement, Education must use the standards established by the 2016 regulations and a streamlined review process. When reviewing an application, Education must determine whether the borrower's allegation, if presumed to be true, provides a valid basis for borrower defense. If it does, Education must not require evidence other than the written application.⁴³ If the borrower asserts a misrepresentation or omission, Education must presume that the borrower reasonably relied on it and will provide the borrower full relief. Before denying an application in this category, Education must issue a revise and resubmit notice. The notice provides the borrower with instructions on the type of additional information that would support the application and allows the borrower 6 months to revise and resubmit the application.⁴⁴

⁴²According to Education officials, borrowers who were originally identified as members of the automatic full-relief category were notified of their approval by the April 2023 deadline. Through ongoing monitoring of borrower applications, however, the agency identified additional borrowers who met the qualifications for automatic relief. In those cases, for example, the borrower needed to make corrections to the application, or the application submission date was incorrectly reported and should have been updated to an earlier date. Those borrowers were sent approval notifications after the April 28, 2023, deadline, but their information was expedited to the loan servicers for action, according to agency officials. In an Education report issued on February 26, 2024, the agency stated that some members in the automatic full-relief category had not received full relief by the January 2024 deadline, although their relief was in process.

⁴³The *Sweet* settlement provides that Education will not apply any statute of limitations for applications adjudicated as part of this category. For example, the 2016 regulations include a 6-year statute of limitations period for refunds in certain instances.

⁴⁴The primary reason that borrowers in the streamlined-review category have received revise and resubmit notices is because their applications did not include an allegation that, if presumed to be true, would be the basis for borrower defense relief, according to Education officials.

Education's Process for Approving Loan Relief for Groups of Borrowers

When does Education consider group discharge?

Group discharge is considered for two reasons, according to Education documents. The first reason is to provide simple, accessible, and fair avenues to relief for borrowers harmed by widespread and pervasive misconduct by their colleges. The second reason is to promote greater efficiency and expediency in the resolution of borrower defense claims.

When deciding whether to recommend group discharge, Education officials said they use professional judgment rather than a numerical threshold.⁴⁵ The agency's primary consideration is if the evidence shows that a college's misrepresentations were similar across borrowers, campuses, or programs and were widely disseminated. In some cases, Education finds evidence supporting a group discharge during its fact-finding process, which may include factors related to consumer protection and fraud concerns.⁴⁶ In other cases, a state attorney general provides Education with evidence, according to agency officials. Education then independently reviews the evidence and decides whether to recommend a group discharge.

How does Education process a group discharge?

When developing a group discharge recommendation, Education identifies the criteria for borrowers to be included in the group, such as the borrower's dates of enrollment and location, according to Education officials. Education may identify group members from individually filed applications and by searching an agency database for borrowers who did not file an application but who meet the criteria.⁴⁷ As part of a group

⁴⁵As in consumer protection litigation, Education does not apply a numerical threshold to determine whether to implement a group discharge because doing so risks overlooking case-specific circumstances, officials said.

⁴⁶These factors can include misrepresentations in standardized documents, forms, sales scripts, or other instructional materials directed to a wide audience or a significant number of independent consumer complaints reporting similar misrepresentations.

⁴⁷To identify group members who have not filed a borrower defense application, Education uses the group discharge criteria to search the National Student Loan Data System for borrowers who should be included in the group.

discharge, Education also determines the relief that all borrowers who are part of the group will receive.

For six of the seven group discharges that Education approved as of April 30, 2024, the agency relied on the Secretary's settlement-and-compromise authority rather than the applicable regulations, according to agency officials.⁴⁸ Education officials said that the agency relied on its settlement-and-compromise authority because it found that the supporting evidence and findings met the standards for borrower defense for all borrowers who attended the college during the time frame covered by the group discharge. Officials also said that if borrowers stopped paying their loans, and Education subsequently brought collection proceedings against them to enforce the borrowers' loan obligations, the agency would likely not succeed. Education's Office of the General Counsel reviewed each group discharge and relief recommendation for legal sufficiency, and the Office of the Under Secretary approved them.

Why has Education approved group discharges?

Our analysis of Education's executive summaries and other information provided by agency officials found that Education determined all seven colleges approved for group discharges as of April 30, 2024, had engaged in pervasive and widespread misconduct over time and across campuses or locations. Education also determined that borrowers were harmed by the college's misrepresentations.⁴⁹ For four of the colleges, part of Education's justification for the group discharge was that many thousands of additional borrowers bringing similar allegations would likely be approved if they were to apply individually for borrower defense.

According to our analysis, the most common type of misconduct that Education found (for six of the seven colleges) was the college's misrepresentation of its graduates' employment prospects, including job

⁴⁸The Secretary, in the performance of his duties under Title IV of the Higher Education Act, may "enforce, pay, compromise, waive, or release any right, title, claim, lien, or demand, however acquired, including any equity or right of redemption." 20 U.S.C. § 1082(a)(6). This authority is commonly referred to as the Secretary's settlement-and-compromise authority. For the seventh group discharge, which was announced in January 2017, Education relied on the 1995 regulations and applicable state law, according to agency officials. Our analysis does not include a group discharge announced by Education on May 1, 2024, because it occurred outside our data collection time frame. Education approved that group discharge using settlement-and-compromise authority, according to Education officials.

⁴⁹Education posted an executive summary for five of the seven group discharges as of April 30, 2024. For the remaining two group discharges, we reviewed information provided by agency officials.

placement rates or expected earnings. Education also determined that four colleges misrepresented educational services, such as faculty qualifications or program offerings. For six of the seven colleges, Education concluded that the college engaged in more than one type of misrepresentation.

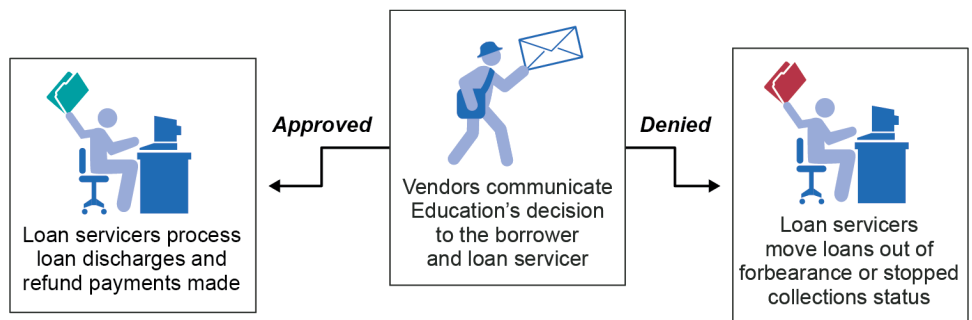
For each group discharge, Education identified multiple sources of evidence that it used to assess the allegations. Evidence Education cited included consistent allegations across borrowers' applications as well as corroborating evidence from additional sources, such as investigations by state attorneys general, employee affidavits, or college marketing materials.

Education's Process following Borrower Defense Decisions

What is Education's process following its decisions on individual applications?

Education communicates its decision on individual applications to its vendors that then communicate with borrowers and loan servicers, according to agency documents (see fig. 6).⁵⁰

Figure 6: Education's Process following Its Decisions on Individual Borrower Defense Applications



Source: GAO analysis of Department of Education documents and interviews with Education officials. | GAO-24-106530

Note: "Vendors" refers to Education's business process operations vendors. Loan discharge is the removal of a borrower's obligation to repay a loan used to attend the college named in the borrower's application.

⁵⁰Under the 1995 and 2016 regulations, Education is not required to notify colleges when an application naming them has been approved.

Vendors communicate Education’s decision to the borrower and loan servicer. The vendor notifies the borrower of Education’s decision, according to agency documents. The vendor also notifies the loan servicer responsible for servicing the borrower’s loan(s).

If borrowers are found eligible for relief, loan servicers process loan discharges and refunds. According to Education documents and officials, the loan discharge and refund processes for individual applications include⁵¹

- discharging loans associated with approved applications and refunding payments already made, if applicable;⁵²
- notifying borrowers of their loan relief and the estimated time frame for completion;
- ending forbearance or stopped collections on any other outstanding loans the borrower may have that were not associated with the borrower defense application;⁵³
- updating the borrower defense database and notifying Education when the process is complete; and
- notifying consumer reporting agencies to remove any adverse credit history associated with the loan(s) from the borrower’s credit report.

If borrowers are denied relief, loan servicers move loans out of forbearance or stopped collections status. Denial notices to borrowers include an explanation of why Education denied a borrower’s application, the fact that borrowers will be required to resume making payments on their loans, and information about how borrowers may apply for reconsideration, according to an agency document.

⁵¹The loan servicer is normally required to complete all approval processing within 15 business days of receiving the request, according to Education’s instructions to loan servicers.

⁵²Education’s preliminary approval letter informs the borrower that the agency will review the borrower’s eligibility for a refund of payments already made. In March 2023, Education changed its policy from applying refunds to the borrower’s other outstanding loans, if applicable, to providing the refund to the borrower, according to an agency memo. The policy was changed to streamline the loan relief process and provide borrowers options on how to use their refunds.

⁵³According to an Education document, the agency will remove any interest accrued on Direct Loan(s) while the loan(s) were in borrower defense forbearance.

Education's decisions on borrower defense applications are final per the 2016 regulations. However, borrowers may request reconsideration of their individual applications based on new evidence. Education may also reopen a borrower defense application at any time to review evidence that was not considered during the previous adjudication process.

What is Education's process following its decisions on group discharges?

After Education approves a group discharge under settlement-and-compromise authority, the agency sends individual notification letters to borrowers informing them that their eligible loans will be placed in forbearance or stopped collections until the loan discharge process is complete, according to agency officials.⁵⁴ Education sends loan servicers a list of borrowers who should receive loan relief. Loan servicers then send letters notifying borrowers when the forbearance or stopped collections has been applied and informing them that they may opt out of this step.

The servicers notify borrowers when their loans have been discharged, the amount discharged, steps the borrower may need to take, and loan servicer contact information, according to an Education document. Like the process used following decisions on individual applications, loan servicers also inform Education when the loan relief process for group discharges is complete and notify consumer reporting agencies to remove any adverse credit history from the borrowers' credit reports, according to Education documents.⁵⁵

Agency Comments and Our Evaluation

We provided a draft of this report to the Department of Education for review and comment. Education noted the report's attention to detail regarding the complexities of borrower defense. The agency also stated that borrowers who received borrower defense relief might have done so through either an approval granted by Education or under the terms of the *Sweet* settlement. We had noted this distinction in appropriate places

⁵⁴When borrowers submit applications, all their loans are placed in forbearance or stopped collections during application intake because Education does not know until the application is adjudicated which loans, if any, may be eligible for relief, according to agency officials. However, group discharges may include borrowers who did not file applications. Because these borrowers are not identified until after the terms of the group discharge have been approved, their loans have not yet been placed in forbearance or stopped collections. The terms of the group discharge determine which of a borrower's loans are eligible for relief. Therefore, for borrowers who are included in a group discharge but who did not file an application, Education places only the eligible loans in forbearance or stopped collections, rather than all the borrower's loans.

⁵⁵If Education were to deny a group discharge following the procedures in the 2016 regulations, borrowers could submit individual applications.

throughout the draft report. We added information, in response to Education’s comment, on the number of applications that received relief through each process.

Education stated that the number of denials might appear comparatively low for a few reasons. First, Education stated the number of approvals in our report reflect work done starting in 2015 whereas the number of denials reflect decisions based on applications reviewed since the agency established its current processes. The department provided, and we included in the draft report, summary data on the outcomes of all borrower defense applications received as of April 30, 2024. Second, Education stated the agency had to rescind 137,000 denials and return them to “pending” status. We had noted in the draft report that under the terms of the *Sweet* settlement, Education rescinded 137,000 denials issued using form denial notices and will reprocess those applications. In response to Education’s comment, we added information about the rescinded denials to the Highlights page. Third, Education stated that after it rescinded the 137,000 denials, the agency agreed not to issue any more denials for approximately 2 years until the court issued a final judgment in the *Sweet* case, which occurred in November 2022. We added this information to the report.

Education also submitted technical comments that we incorporated as appropriate.

As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the appropriate congressional committees, the Secretary of Education, and other interested parties. In addition, the report is available at no charge on the GAO website at <https://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (617) 788-0534 or emreyarrasm@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix III.

Sincerely,

A handwritten signature in black ink that reads "Melissa Emrey-Arras". The signature is written in a cursive, flowing style.

Melissa Emrey-Arras, Director
Education, Workforce, and Income Security

Appendix I: Key Federal Laws, Regulations, and Events Regarding Borrower Defense to Repayment from August 1993 to June 2024

This appendix contains an overview of key federal laws, regulations, and events related to borrower defense to repayment (borrower defense) from August 1993 to June 2024. It is not intended to be a comprehensive overview of all events related to borrower defense, nor is it intended to be a comprehensive overview of how the Department of Education has processed borrower defense applications over time. To compile the information presented in this appendix, we reviewed relevant federal laws and regulations, court filings, and publicly available information from Education.

Borrower Defense (1993–2014)

The Student Loan Reform Act of 1993 amended the Higher Education Act of 1965 to authorize the Secretary of Education to specify in regulations which acts or omissions of a college a borrower may assert as a defense to repayment.¹ Subsequently, in December 1994, Education issued borrower defense regulations (1995 regulations), which established a state law standard for borrower defense. Specifically, the regulations stated that in “any proceeding to collect on a Direct Loan, the borrower may assert as a defense against repayment, any act or omission of the school attended by the student that would give rise to a cause of action under applicable [s]tate law.”² These regulations took effect on July 1, 1995.³ The 1995 regulations remained unchanged until 2016.

Borrower Defense (2015–2016)

Prior to 2015, few borrowers asserted a defense under the 1995 regulations, according to agency officials. Education noted that in 2015, when Corinthian Colleges closed, borrower defense applications increased. In response, Education announced that it would develop new regulations to clarify and streamline the borrower defense process, among other things. Education appointed a special master tasked with creating and overseeing a process to provide borrower defense relief.⁴ In June 2016, the special master reported that responsibility for borrower defense had been transferred to Federal Student Aid’s Enforcement Office within Education.

¹Pub. L. No. 103-66, tit. IV, § 4021, 107 Stat. 312, 351 (codified at 20 U.S.C. § 1087e(h)).

²59 Fed. Reg. 61,664, 61,696 (Dec. 1, 1994).

³The state law standard created by the 1995 regulations currently applies to loans disbursed before July 1, 2017.

⁴The special master issued four reports documenting his efforts to address the increase in borrower defense applications and aid the agency with establishing procedures to review applications.

**Appendix I: Key Federal Laws, Regulations,
and Events Regarding Borrower Defense to
Repayment from August 1993 to June 2024**

In November 2016, Education issued a final rule providing for new borrower defense regulations (2016 regulations), which made several substantive and procedural changes to borrower defense.⁵ The 2016 regulations established a single federal standard rather than the state law standard used in the 1995 regulations. The federal standard created by the 2016 regulations currently applies to loans issued on or after July 1, 2017, and before July 1, 2020. Under the 2016 regulations, a borrower defense refers to an act or omission by a college that relates to the making of a Direct Loan for enrollment at the college, or the provision of educational services for which the loan was provided, and includes a defense to repayment of amounts owed and a right to recover amounts previously paid on the loan. Furthermore, the 2016 regulations provided that a borrower has a defense to repayment under three bases (see table 1).

Table 1: Bases to Assert a Borrower Defense under the 2016 Regulations

Basis	Description
Judgment against the college	The borrower has a defense under this basis if the borrower, whether an individual or as a member of a class, or a governmental agency, has obtained a nondefault, favorable contested judgment against the college based on state or federal law in a court or administrative tribunal of competent jurisdiction.
Breach of contract by the college	The borrower has a defense under this basis if the college the borrower received the Direct Loan to attend failed to perform its obligations under the terms of the contract with the student.
Substantial misrepresentation	A borrower has a defense under this basis if the college or any of its representatives, or any institution, organization, or person with whom the college has an agreement to provide education programs, marketing, advertising, recruiting, or admissions services, made a substantial misrepresentation that the borrower reasonably relied on to the borrower's detriment when the borrower decided to attend, or to continue attending, the college or decided to take out a Direct Loan.

Source: GAO analysis of Department of Education 2016 borrower defense regulations. | GAO-24-106530

The 2016 regulations outlined the adjudication process applicable to loans reviewed under either the state law standard of the 1995 regulations or the federal standard established by the 2016 regulations. These procedures addressed how Education would review individual borrower defense applications and provided for Education to initiate a group-wide borrower defense process for borrowers with similar facts and

⁵81 Fed. Reg. 75,926 (Nov. 1, 2016). The final rule included other regulatory changes in addition to new borrower defense regulations. However, for the purposes of this appendix, we use "2016 regulations" to specifically refer to the borrower defense provisions.

claims. The 2016 regulations also established an opportunity for borrowers to submit new evidence after their application has been denied, called reconsideration.

Borrower Defense (2017–2019)

Timeline of Events

From 2017 to 2019, several events impacted borrower defense, including regulatory and administrative actions by Education and litigation initiated by borrowers and states. Below are key events that occurred during this period.

March 2017. The Secretary of Education created a Borrower Defense Review Panel to examine the borrower defense review process and recommend changes. Education did not adjudicate borrower defense applications while the panel’s review was ongoing.

May 2017. The panel recommended that the Secretary direct that no additional borrower defense applications be approved prior to the implementation of interim procedures. Education requested that its Office of Inspector General conduct a review of the program.

June 2017. Education issued a final rule that postponed the scheduled July 1, 2017, effective date of the 2016 regulations in light of pending litigation challenging the regulations.⁶

October 2017. Education issued an interim final rule that delayed the scheduled July 1, 2017, effective date of the 2016 regulations until July 1, 2018.⁷ During the time that the effective date of the 2016 regulations was delayed, Education continued to process borrower defense claims to which the 1995 regulations applied.

⁶82 Fed. Reg. 27,621 (June 16, 2017). Education cited section 705 of the Administrative Procedure Act in its reasoning for postponing the effective date of the 2016 regulations. Section 705 permits an agency to postpone the effective date of an action taken by it when the agency “finds that justice so requires.” 5 U.S.C. § 705.

⁷82 Fed. Reg. 49,114 (Oct. 24, 2017).

December 2017. The Inspector General released a report on its review of the borrower defense process.⁸ The report included several recommendations, including that the Federal Student Aid office request approval from the Acting Undersecretary to resume the review, approval, and discharge processes for certain borrower defense applications. Additionally, Education announced a new partial relief methodology for calculating relief for claims from borrowers who attended Corinthian Colleges and began applying it to certain approved applications.

February 2018. Education issued a final rule that delayed the scheduled July 1, 2017, effective date of the 2016 regulations until July 1, 2019.⁹

May 2018. The U.S. District Court for the Northern District of California issued a preliminary injunction prohibiting Education from using the December 2017 partial relief methodology. The court reasoned that the parties challenging the methodology had shown a likelihood of succeeding in their claims that Education violated the Administrative Procedure Act and the Privacy Act of 1974.¹⁰ After the court's decision, from June 2018 until December 2019, Education did not issue any borrower defense decisions.

September 2018. The U.S. District Court for the District of Columbia issued an order vacating Education's February 2018 final rule that postponed the effective date of the 2016 regulations.¹¹ The court also vacated Education's June 2017 final rule that postponed the effective date of the 2016 regulations. As a result, the 2016 regulations became effective.¹²

⁸U.S. Department of Education, Office of Inspector General, *Federal Student Aid's Borrower Defense to Repayment Loan Discharge Process*, ED-OIG/I04R0003 (Washington D.C.: December 2017).

⁹83 Fed. Reg. 6,458 (Feb. 14, 2018).

¹⁰*Manriquez v. DeVos*, 345 F. Supp. 3d 1077, 1109–10 (N.D. Cal. 2018). The *Manriquez* litigation was a class action lawsuit filed by students who attended career training programs at Corinthian Colleges. On June 1, 2022, Education announced that it would discharge all remaining federal loans borrowed to attend any campus owned or operated by Corinthian Colleges from its founding in 1995 through its closure in April 2015.

¹¹*Bauer v. DeVos*, 332 F. Supp. 3d 181, 186 (D.D.C. 2018); see also *Bauer v. DeVos*, 325 F. Supp. 3d 74 (D.D.C. 2018).

¹²The court stayed its order vacating the June 2017 final rule until October 12, 2018, at 5:00 p.m. On October 12, 2018, the court extended the suspension of its vacatur until noon on October 16, 2018.

June 2019. Borrowers filed a lawsuit (*Sweet* litigation) in the U.S. District Court for the Northern District of California asserting that the delay in reviewing borrower defense applications was unlawful.

September 2019. Education issued new borrower defense regulations (2019 regulations).¹³

October 2019. The U.S. District Court for the Northern District of California certified a plaintiff class in the *Sweet* litigation.

December 2019. Education issued an updated partial relief methodology that it said would be used to calculate relief for borrowers with approved borrower defenses.

The 2019 Regulations

The 2019 regulations established a new federal standard to apply to loans first disbursed on or after July 1, 2020, under which borrowers could assert a defense solely based on a misrepresentation. Under the 2019 regulations, a borrower may assert a defense to repayment if the borrower establishes by a preponderance of the evidence that a college made a misrepresentation of material fact upon which the borrower reasonably relied in deciding to obtain a Direct Loan. Furthermore, the misrepresentation must directly and clearly relate to enrollment or continuing enrollment at the college or the provision of educational services for which the loan was made.

The 2019 regulations defined “misrepresentation” to be a statement, act, or omission that was false, misleading, or deceptive; that was made with knowledge of its false, misleading, or deceptive nature, or with a reckless disregard for the truth; and that directly and clearly relates to enrollment or continuing enrollment at the college or the provision of educational services for which the loan was made. Under the 2019 regulations, the borrower must show financial harm. The 2019 regulations state that the act of taking out a Direct Loan does not qualify as financial harm. Furthermore, the 2019 regulations did not provide for a group process for borrower defense claims or a reconsideration process. For a general overview of applicable borrower defense standards, see table 2.

¹³84 Fed. Reg. 49,788 (Sept. 23, 2019).

Appendix I: Key Federal Laws, Regulations, and Events Regarding Borrower Defense to Repayment from August 1993 to June 2024

Table 2: General Overview of Applicable Borrower Defense Standards by Disbursement Date of Direct Federal Student Loan

Date borrower’s federal student loan was disbursed	Applicable standards
Prior to July 1, 2017	1995 regulations
On or after July 1, 2017, and before July 1, 2020	2016 regulations
On or after July 1, 2020	2019 regulations

Source: GAO analysis of Department of Education borrower defense regulations. | GAO-24-106530

Note: In 2022, Education issued final regulations that would apply to all borrower defense applications pending on or submitted after July 1, 2023. These regulations were scheduled to take effect on July 1, 2023. However, on August 7, 2023, the U.S. Court of Appeals for the Fifth Circuit (Fifth Circuit) issued an injunction that delayed the effective date. On April 4, 2024, the Fifth Circuit instructed a federal district court to issue a preliminary injunction, pending final judgment in a lawsuit challenging the 2022 regulations. As of June 2024, the 2022 regulations were not able to be implemented. Borrowers who submitted an application for borrower defense to relief that included a Federal Family Education Loan or Perkins Loan prior to July 1, 2020, and would need to consolidate loans into a Direct Consolidation Loan to receive relief will have their eligibility for relief adjudicated under the standard for Direct Loans disbursed between July 1, 2017, and July 1, 2020.

Borrower Defense (2020–June 2024)

Sweet Settlement Agreement

In April 2020, Education and the plaintiffs in the *Sweet* litigation reached a proposed settlement agreement. However, the district court later denied final approval of the settlement due to a dispute regarding Education’s issuance of form denial notices.¹⁴ In October 2020, Education entered a stipulation agreeing not to deny any applications of class members until the court reached a final judgment on the merits.

In June 2022, the parties reached a new settlement agreement commonly referred to as the *Sweet* settlement. The *Sweet* settlement applies to two categories of class members. Class members include borrowers with pending borrower defense applications as of June 22, 2022, and borrowers who received a denial on their borrower defense application between October 30, 2019, and June 22, 2022.¹⁵ The settlement also

¹⁴See *Sweet v. DeVos*, 495 F. Supp. 3d 835 (N.D. Cal. 2020). A dispute arose between the parties regarding Education’s issuance of form denial notices, which did not explain the evidence reviewed or law applied. The court determined that there was not a “meeting of the minds” between the parties and denied approval of the settlement agreement.

¹⁵Borrowers with pending applications who are class members in the *Manriquez* litigation are not class members under the *Sweet* settlement.

created a third category consisting of post-class applicants. The three categories of borrowers are to receive the following relief:

- The first category consists of class members who attended one of the 151 colleges included in Exhibit C attached to the settlement agreement. Under the settlement, borrowers in this category are to automatically receive full settlement relief.
- The second category consists of all other class members. Under the settlement, these borrowers are to receive a final written decision on their borrower defense application, reviewed under the standards established by the 2016 regulations, within a specified period. The period varies for borrowers based on how long their application has been pending. Under the settlement, if borrowers in the second category do not receive a decision within the specified period, then they are to receive full settlement relief. In addition, the settlement provides for Education to review applications using a streamlined process. Under the settlement, when reviewing these applications, Education must not require evidence outside of a written application, require proof of reliance, or apply any statute of limitations. Education must determine whether the application states a claim that, if presumed to be true, would assert a valid basis for borrower defense under the applicable regulation.
- The third category consists of post-class applicants who submitted a borrower defense application after the agreement date of the settlement on June 22, 2022, but prior to the final approval date of the settlement on November 16, 2022. Under the settlement, these borrowers are to receive a decision on their application no later than January 28, 2026, and their applications are to be reviewed under the 2016 regulations.

After the parties reached a settlement agreement in June 2022, four colleges intervened in the lawsuit to challenge the settlement agreement.¹⁶ Following briefing and oral argument, the district court granted final approval of the settlement on November 16, 2022. Three of the intervening colleges appealed the final approval to the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit). Subsequently, they requested that the district court stay the settlement approval pending the appeal. The district court denied this request but issued a temporary stay allowing the three intervening colleges to request a stay from the Ninth Circuit.

¹⁶Sweet v. Cardona, 641 F. Supp. 3d 814, 822 (N.D. Cal. 2022). Preliminary approval of the settlement agreement was granted in August 2022.

The Ninth Circuit rejected the colleges' request for a stay of the settlement pending appeal on March 29, 2023. In April 2023, the intervening colleges filed a petition with the U.S. Supreme Court requesting a stay of the district courts approval of the settlement. The Court denied this request. The Ninth Circuit heard oral arguments on December 5, 2023. As of June 2024, the intervening colleges' appeal was ongoing, and the implementation of the settlement was proceeding with respect to all class members and post-class applicants.

Other Related Events

Since 2020, Education has taken additional actions related to the borrower defense process.

- In December 2020, Education announced a change for borrowers who submitted borrower defense applications prior to July 1, 2020, that included Federal Family Education Loans or Perkins loans and who would need to consolidate those loans to receive relief. Those borrowers are to have their applications reviewed under the standards for Direct loans disbursed between July 1, 2017, and July 1, 2020.¹⁷
- In March 2021, Education announced it was rescinding the 2019 partial relief methodology and subsequently implemented a rebuttable presumption of full relief. This presumption can be rebutted or bolstered by evidence submitted by the college, the borrower, or other sources, according to Education.

The 2022 Borrower Defense Regulations

On November 1, 2022, Education issued final regulations amending the borrower defense regulations.¹⁸ The 2022 regulations establish a new federal standard and would apply to all applications pending on or submitted after July 1, 2023. These regulations were scheduled to take effect on July 1, 2023. On August 7, 2023, the U.S. Court of Appeals for the Fifth Circuit (Fifth Circuit) issued an injunction pausing the implementation of these regulations. On April 4, 2024, the Fifth Circuit instructed a federal district court to issue a preliminary injunction pending

¹⁷85 Fed. Reg. 79,856, 79,857 (Dec. 11, 2020). Education stated that it was relying on authority provided under the Higher Education Relief Opportunities for Students Act of 2003 to make this change.

¹⁸87 Fed. Reg. 65,904 (Nov. 1, 2022).

**Appendix I: Key Federal Laws, Regulations,
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final judgment in a lawsuit challenging the 2022 regulations.¹⁹ As of June 2024, the regulations were not able to be implemented due to pending litigation.

¹⁹Career Colls. & Sch. of Tex. v. United States Dep't of Educ., 98 F.4th 220 (5th Cir. 2024).

Appendix II: Comments from the Department of Education



August 15, 2024

Melissa Emrey-Arras
Director, Education, Workforce, and Income Security
Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Ms. Emrey-Arras:

I write on behalf of the U.S. Department of Education (Department), office of Federal Student Aid (FSA) in response to the Government Accountability Office (GAO) draft report, *Student Loan Relief in Cases of College Misconduct* (GAO-24-106530), which contained no recommendations for the Department. We appreciate the opportunity to review this draft report and the thoughtful interaction with the GAO team throughout this engagement.

The Department appreciates GAO's acknowledgement that, for the first time, the Department and FSA established a systematic borrower defense adjudicative process. We will continue to use this process to implement the requirement in the Higher Education Act to provide relief to borrowers harmed by misrepresentations and other misconduct by their institutions of higher education and to deny claims that do not meet those standards.

The Department also appreciates GAO's careful attention to the complexities of borrower defense and wants to highlight one key set of facts. As GAO's draft report noted, nearly 417,000 applications were deemed eligible for some form of student loan relief. Of this number, the Department notes that about half (199,000 applications) were granted a borrower defense approval. The other half (218,000) received relief under the terms of the *Sweet* litigation settlement, which is not considered approved borrower defense relief. We highlight this distinction to make sure readers use caution when interpreting the number of claims approved for student loan relief.

We further want to highlight that, while the number of denied claims referenced in the draft report is comparatively low, the Department has built a thorough, fair, and consistent process to review claims that are part of the post-class applications under the *Sweet* settlement. Prior to its current work, the Department had to rescind 137,000 denial letters. It also had agreed in October 2020 to not issue any denial letters until the court entered final judgment on the merits in the *Sweet* litigation, which did not occur until November 16, 2022. The number of approvals in GAO's draft report reflects work done starting in 2015 (almost a decade ago), while the number of denials almost entirely reflects decisions based upon reviews done after the Department established its current

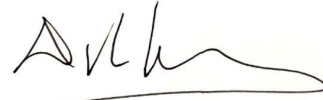
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processes. We will continue to review claims and approve those that are meritorious and deny those that are not.

We welcome GAO's examination of the borrower defense process as the Department and FSA continue to work to support borrowers and ensure and improve access to education for all.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Johnson", with a long horizontal flourish extending to the right.

Dennis Johnson
Director of Strategy and Performance
Federal Student Aid

Appendix III: GAO Contact and Staff Acknowledgments

GAO Contact

Melissa Emrey-Arras, (617) 788-0534 or emreyarrasm@gao.gov

Staff Acknowledgments

In addition to the contact named above, Amy Anderson (Assistant Director), Julie Phipps (Analyst in Charge), Kyle Abe, and Will Stupski made key contributions to this report. Additional assistance was provided by Howard Arp, Seto Bagdoyan, James Bennett, Charlotte Cable, Elizabeth Calderon, Marcia Carlsen, Holly Dye, James Healy, Gina Hoover, John Mingus, Amrita Sen, Tom Short, and Adam Wendel.

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