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Federal Appeals Court Blocks Department of Education's New Borrower Defense to Repayment Rules

On Monday, the U.S. Court of Appeals for the Fifth Circuit issued a nationwide injunction blocking the U.S. Department of Education (ED) from implementing its new borrower defense to repayment (BDR) rules. The BDR rules, which took effect July 1, simplified the existing BDR process, making it easier for borrowers to obtain loan forgiveness. Under the rules and broadly speaking, borrowers may apply to have their federal student loans forgiven if their institution misled them, engaged in aggressive or deceptive recruitment practices, or violated certain state laws. The Biden administration is continuing its push to enforce borrower defense rules, recently discharging \$130 million in federal student loan debt for 7,400 students.

Career Colleges and Schools of Texas (CCST), a trade association representing for-profit institutions in Texas, initially challenged the new BDR rules in February, arguing that the regulations exceeded ED's authority under the Higher Education Act and were unconstitutional. On appeal of the district court's denial of CCST's motion for preliminary injunction, a three-judge Fifth Circuit panel granted CCST's request for an emergency injunction pending appeal (without addressing the merits of the underlying appeal) and issued a nationwide injunction, setting a hearing for November 6, 2023.

The future of BDR and what this means for institutions

The BDR rules that went into effect July 1, 2023 are enjoined for all regulated entities while the Fifth Circuit considers whether the district court erred in its denial of CCST's preliminary injunction motion. The Fifth Circuit could affirm, reverse, or remand the district court's decision.

Even if CCST prevails in obtaining a preliminary injunction at this stage, the merits of CCST's claim—and the fate of the new BDR rules—will still need to be decided. That is, to succeed, CCST will need to demonstrate that the new BDR rules exceed ED's statutory authority and/or are unconstitutional. In the meantime, the prior version of the BDR rules will control.

Contact us

For assistance with the ED's BDR rules, please contact Annie Cartwright, Julie Miceli, Lisa Parker, Abby Felter, or your Husch Blackwell attorney.