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## Dept. of Education proposes disclosure of pre-dispute arbitration agreements by schools receiving Title IV aid for student borrowers

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The Department of Education, [in an issue paper submitted as part of negotiated rulemaking](#) on its final “borrower defense” rule, is proposing to require schools that use pre-dispute arbitration agreements and class action waivers in agreements with students to provide disclosures to students regarding their use of such agreements and waivers.

The ED’s proposed approach represents a reversal of the ED’s position under the Obama Administration. In its final “borrower defense” rule issued in November 2016, the ED banned the use of pre-dispute arbitration agreements by schools receiving Title IV assistance under the Higher Education Act. The final rule also prohibited a school from relying on such an agreement to block the assertion of a borrower defense claim in a class action lawsuit.

In November 2017, the ED announced that it was postponing “until further notice” the July 1, 2017 effective date of various provisions of the final rule, including the rule’s provisions banning the use of arbitration agreements and reliance on such agreements to block class claims. At that time, the ED also announced that it planned to establish two negotiated rulemaking committees, with one committee to develop proposed regulations to revise the “borrower defense” rule and the other to develop proposed revisions to the “gainful employment” rule that became effective in July 2015 and includes requirements for schools to make various disclosures such as graduation rates, earnings of graduates, and student debt amounts.

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