

HIGHER EDUCATION INFORMATION MEMO

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Colleges and Universities Experience a Surge of Borrower Defense to Repayment Claims

Over the past several months, institutions of higher education (IHE) have seen an influx of Borrower Defense to Repayment (BDR) applications from former students.

Student loan borrowers with federal student loans can apply for a BDR loan discharge through the U.S. Department of Education (ED). Generally, in order to be successful, a borrower must demonstrate that they enrolled in an IHE or continued to attend an IHE based on misleading information or other related misconduct covered by the regulation, such as breach of contract.

When ED approves a BDR claim, the borrower may receive loan discharge and a refund of payments previously made on the loan(s). Under certain circumstances, ED may then recoup those funds from the institution.

While BDR has long existed as a provision of the Higher Education Act, regulatory activity, litigation and an aggressive policy agenda from ED have combined to drive a sudden and significant increase in the number of BDR claim notices received by IHEs.

When ED sends an IHE notice of a BDR claim, it indicates that responding is optional. However, submitting a response is strongly advised for several reasons. First, ED evaluates BDR applications using materials submitted by the borrower, evidence in the ED's possession and evidence provided by the institution. If the institution does not respond, the borrower's allegations will go unanswered and ED may even presume that the institution does not dispute the claims. Second, the financial and reputational consequences of an adverse finding are potentially severe. Third, if the IHE does not raise certain objections and affirmative defenses during the initial stage, those defenses may be waived during subsequent recoupment actions.

When responding to BDR applications, IHEs should factually refute the borrower's claims, provide available documentation and raise applicable legal arguments.

Bond attorneys regularly assist and advise IHEs with responding to BDR applications. If you have any questions regarding BDR applications, please contact [Seth Gilbertson](#), [Alison Roach](#), any attorney in Bond's [higher education practice](#) or the Bond attorney with whom you are regularly in contact.

