

# Deadline Approaches for Higher Education Institutions to Submit Judicial and Arbitral Records to U.S. Department of Education

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As described in an [earlier alert](#), regulations promulgated by the U.S. Department of Education in November 2016 (the “Department”) concerning borrower defenses to repayment (the “2016 BDR Rules”), which the current administration had postponed from coming into effect, were reinstated pursuant to an October 2018 federal court order and are now effective. Among other things, the 2016 BDR Rules establish [additional financial responsibility standards](#), prohibit class action waivers and pre-dispute arbitration clauses in student enrollment agreements, and require the submission of certain arbitral and judicial records to the Department if related to borrower defense claims. On March 15, 2019, the Department issued [guidance](#) regarding its delayed implementation of the 2016 BDR Rules.

Under this guidance, no later than **Thursday, June 13, 2019**, institutions must submit existing arbitral and judicial records as described below, and on a going-forward basis must comply with regulatory deadlines set forth in the 2016 BDR Rules for all such submissions.

***Borrower defense claims in arbitration.*** In connection with any matter filed in arbitration regarding a borrower defense claim, whether filed by or against the institution, the institution must submit:

1. The initial claim and any counterclaim;
2. The arbitration agreement itself, as filed with the arbitrator or arbitration administrator;
3. The judgment or award, if any, issued by the arbitrator or arbitration administrator;
4. If applicable, any communication received by the institution from the arbitrator or arbitration administrator dismissing or refusing to administer a claim due to the institution's failure to pay required filing or administrative fees; and
5. If applicable, any communication received by the institution from the arbitrator or arbitration administrator determining or relating to a determination that the institution's pre-dispute

arbitration agreement regarding educational services does not comply with the arbitrator's "fairness principles, rules, or similar requirements."

These arbitral records must be provided for any dispute based on a borrower defense claim that was pending on or initiated since July 1, 2017. Following its initial submission to the Department of any applicable claims or records on or before June 13, 2019, an institution must provide all such arbitral records on an ongoing basis **within 60 days** of filing or receipt, as applicable.

*Borrower defense claims in **judicial proceedings**.* In connection with any borrower defense claim filed in a lawsuit by the institution against the student, or by any party (including a governmental agency) against the institution, the institution must submit:

1. The complaint and any counterclaim;
2. Any dispositive motion filed by a party; and
3. The court's ruling on any dispositive motion and the judgment issued by the court.

These judicial records must be provided for any dispute based on a borrower defense claim that was pending on or initiated since July 1, 2017. Following its initial submission to the Department of any applicable judicial records on or before June 13, 2019, an institution must provide all such judicial records on an ongoing basis **within 30 days** of filing or receipt, as applicable.

**Again, for any of the above-described records in connection with an arbitration or judicial proceeding pending as of July 1, 2017, or initiated thereafter, a copy of the specified records must be sent to the Department via email no later than June 13, 2019.** Going forward, institutions must submit such records within the timeframe established in the 2016 BDR Rules; that is, within 30 days for pertinent judicial records and within 60 days for pertinent records in connection with an arbitration. The specific email address for such submissions is [borrowerdefense@ed.gov](mailto:borrowerdefense@ed.gov).

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