

Borrower Defense to Repayment

A PRIMER TO PROVIDE STUDENTS ACCESS TO POTENTIAL DEBT RELIEF

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Who is this guy?

Justin Palu was born and raised in a small town in Nebraska. After graduating with honors from Nebraska Wesleyan University, Justin chose to pursue a Juris Doctorate through Charlotte School of Law. While in law school, Justin was a member of Law Review, Trial Team, and Order of the Crown. After graduating with honors in 2011, Justin joined a boutique firm in Asheville, NC focusing on relief for homeowners after the housing market collapse. Justin has extensive experience negotiating with both small and large entities, including the Federal Government; to date, he has negotiated millions of dollars in debt relief for struggling homeowners. Justin currently resides in Charlotte, NC, and would enjoy speaking with you regarding your options for debt relief. Whether employing his services or providing advice for clients to pursue options on their own, Justin encourages all prospective clients to seek their full action within the law. If you have further questions, you may reach him at

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Disclaimer

- ▶ In North Carolina, the negotiation of debt is the practice of law. Student loan debt relief, and the negotiation thereof, should therefore only be conducted by a licensed attorney knowledgeable in the field of debt negotiation. By negotiating student loan debt, you may be losing/waiving certain legal rights, and may be subject to tax consequences based on the result of such negotiations.

What is it? How is it used?

- ▶ US Code providing debt relief of **Federal loans** to student borrowers that attended an institution that committed a crime which would be actionable by the student against the institute under State law (20 U.S.C. § 1087e(h), 34 C.F.R. § 685.206(c)(1))
- ▶ Asking the Department of Education to discharge student loan debt because the school materially misrepresented the state of affairs in order to drive business (fraud/deceptive trade practices)
- ▶ Administrative safe guard to prevent institutions from abusing Federal student loan funding for private gain

What is it? How is it used? (cont.)

- ▶ Administrative process, however
- ▶ If successful, you will likely subrogate your legal claim against the school to the federal government, i.e. no class action \$ if class action is successful

Am I eligible?

- ▶ Only Federal loans
- ▶ Arguably occurred since the beginning/inception of the school, therefor all Federal loans may be within the umbrella of loans eligible for debt forgiveness
- ▶ Find your Federal loans here - <https://studentaid.ed.gov/sa/>
- ▶ Private (non-Federal) loans are **outside** the program; would need to negotiate directly with lender/servicer. May still have a legal claim against the institution.
- ▶ Includes Federal loans that were consolidated under a Federal program (IBR, etc.)

What does it cover?

- ▶ If successful, borrower defense would cover the student's current outstanding principal balance, along with all payments made in relation to the federal loan(s)
- ▶ Basis: Federal government should have never loaned the money, nor the student been able to receive the money, to attend the institution BUT FOR the institution fraudulently representing itself so as to undermine the Federal review process
- ▶ **Your success or failure after law school does not matter**; this is not a lawsuit wherein your post graduation success or failure would likely come into play. The Federal government is recognizing it allowed the school to defraud you and itself.

What about the lawsuits?

- ▶ Debt relief through borrower defense, if successful, allows for discharge of a student's federal loans from the government itself.
- ▶ The government subrogates the student's claim(s) against the institution
- ▶ The student would likely be unable to join the lawsuit, as the claim would likely no longer be the student's claim

Lawsuit vs Borrower Defense Considerations

- ▶ Time: Lawsuit may drag, institute may appeal. Borrower defense claim should be wrapped within one year
- ▶ Payout: Borrower defense only covers Federal student loans and past payments. Lawsuit, if successful, could result in damages beyond student loan amount
- ▶ Pockets: The Federal government has free access to forgive its own loans. While a lawsuit may be successful against the institute, having a judgment against a bankrupt entity isn't worth the paper on which it's written
- ▶ Attorneys' Fees

Other Considerations

- ▶ Borrower defense is very new/raw in terms of being vetted; only within the past few years has it began to develop. Corinthians College provides a good primer, and has been paramount to the development of the law.
- ▶ North Carolina is considered a very debtor friendly state, which may be valuable to the lawsuits, but not to Borrower Defense, as it's a Federal entity/process

How do I apply?

- ▶ Application occurs directly through the Federal government
- ▶ Specific information is required, including a short statement of alleged misconduct
- ▶ Loan payments will be differed while application is under review
- ▶ Review Federal website for further details and ongoing updates, or contact an experienced debt negotiation attorney for assistance
- ▶ <https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation/borrower-defense>

FAQ

- ▶ When should I move forward with my claim?
 - ▶ Gather the appropriate information and begin; this is a government process and will take some time. It is also new to them – similar to when the housing market collapsed, there will be growing pains as the government processes these claims. Hopefully Corinthians provided a good backdrop for the government to establish a mitigation team.
- ▶ Does students' writing to request reconsideration of the institute's financial federal funding affect the borrower defense claim?
 - ▶ No. The Department of Education's report and findings will still stand, regardless of the Federal government's ultimate decision to fund student loans. Ted Mitchell, the Under Secretary of the Department of Education, wrote, "CSL continuously misrepresented itself to current and prospective students . . . CSL's actions were misleading and dishonest." Months earlier he wrote, "The law is clear about giving students redress when they've been defrauded,"

FAQ 2

- ▶ Do you have to surrender your law degree of license?
 - ▶ No; while the Federal government recognizes it (and you) were defrauded, it will not pull your degree. Again, your success or failure post graduation is moot.
- ▶ I'm a successful attorney floating on my yacht. Will my success be a mitigating factor in my Borrower Defense claim?
 - ▶ Nope.
- ▶ Is there forgiveness for those that have paid off their Federal student loans or privately consolidated federal loans?
 - ▶ In theory, yes; because all prior payments are reimbursable, payment into such loans should be reimbursed. Any private fees incurred would likely be outside the federal government's reimbursement amount.

FAQ 3

- ▶ Are all loans eligible for discharge?
 - ▶ No; Borrower Defense only applies to Federal loans. That does not mean there are not options though – private lenders may be willing to accept lump sum payments or refinance your loan into terms more suitable for you. A good attorney will know how to discuss repayment options with you and your loan lender/servicer that will ultimately result in a benefit for you and your servicer.
- ▶ I work for a public entity and have been enrolled in a Public Service Loan Forgiveness program. How does that all work?
 - ▶ If the underlying loan is a Federal loan, there should not be an issue nor distinction that would disqualify you from the program, similar to if you consolidated into an income-based repayment plan.
- ▶ What about taxes?
 - ▶ You may receive a 1099 for the forgiveness' of debt, An experienced CPA or tax attorney should be able to help minimize or eliminate the tax ramifications.

More FAQs?

Please feel free to contact Attorney Palu directly; he will evaluate your claim thoroughly, and will use his knowledge and experience to help you determine the best plan of action for you. You may reach him at:

PaluLegal@GMail.com

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