

How hard is it to sue for student loan forgiveness? - AvvoStories

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By [Gemma Alexander](#)

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In short—it's hard. And about to get harder.

Failure to pay a student loan results in more than annoying collection calls and a ding on your [credit score](#). But thousands of students have tuned out such warnings during mandatory exit counseling sessions, confident in job prospects that ensure repayment is no big deal.

Unfortunately, many of them are dismayed upon graduation to find that their financial expectations were unrealistic. Confronted by a lack of jobs in their field, or jobs that don't pay enough to cover their student loan payments, many feel cheated.

As it turns out, some of them were cheated. A federal judgement found that the Corinthian chain of for-profit colleges illegally issued loans to students. Corinthian has gone out of business, but now thousands of unhappy former students are trying to get their federal student loans forgiven under the “borrower defenses” clause of U.S. Code 1087e(h).

Defense of repayment

Also known as “defense of repayment,” this clause has been included in all student loan contracts since 1994. But because it was only invoked a handful of times in its first 20 years, this governing federal code is easily ignored. It states:

Notwithstanding any other provision of State or Federal law, the Secretary shall specify in regulations which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a loan made under this part...

Through a combination of stakeholder self-interest and bureaucratic process, no such regulations were ever adopted. So there is no standard, for example, to determine what proof is needed to demonstrate that a school committed fraud.

The obscure law leapt into significance when a group of 15 Corinthian students staged a debt strike, calling attention to predatory recruitment and loan practices at for-profit colleges. The number of students seeking debt relief has expanded into a movement. Almost all of the borrowers applying for forgiveness attended for-profit schools. According to the Wall Street Journal, three-quarters went to Corinthian-owned institutions, while hundreds of others attended the Art Institutes and ITT Technical Institute, all three of which have been subject to federal investigations for illegal recruiting tactics.

By January 2016, 7,500 borrowers owing \$164 million had filed for forgiveness under the once-obscure defense of repayment clause. By March, the number of claimants had grown to about 11,000, some 8,500 of whom had attended a Corinthian school. The first successful petitioners were 1,312 student borrowers who had attended Corinthian’s Heald College campuses; their case was supported by a Department of Education finding that the college provided misleading career placement rates. Then in late March, an additional 736 Corinthian plaintiffs received a similar finding from the Department of Education. All other petitioners still await a decision.

Burden of proof

Considering that the college enrollment boom stimulated by for-profit schools has tripled student loan debt in the past decade, the number of debtors potentially eligible for forgiveness has evidently spooked some in the Education Department.

The DOE, which faces the possibility of billions of dollars in forgiven loans, is trying to pass a new rule that would make it exceedingly difficult for defrauded borrowers to receive justice. Last October, faced with thousands of applications for forgiveness, the department initiated a negotiated rulemaking to formalize the process for future borrowers. The result of that process upset a lot of people.

For one thing, the new rule excludes some kinds of loans, such as PLUS loans, even if they were equally fraudulent. The causes of action are defined more narrowly than most contracts, excluding some standard benchmarks like unlawful conduct and accepting only “breach of contract” and “substantial misrepresentation.” The new rule would also establish a requirement that students sue for forgiveness within two years—before many students would even enter the repayment period, and a much shorter timeframe than is standard. It pits well-funded institutions against individual petitioners in an uneven fight that few students could be expected to win.

Finally, many critics point out that as the decision-maker, the Department of Education—which has potentially billions of dollars at stake in the decision—has a clear conflict of interest.

In all fairness, the DOE is faced with a significant challenge to develop rules in the midst of an avalanche of claims. They are hamstrung by an inefficient and outdated stakeholder process. Determining federal standards is tricky when states already have widely varying rules about advertising and recruitment. Many students have no documentation of the verbal promises and employment data that recruiters gave them. The department also has the difficult task of determining when and how to pursue fraudulent institutions, which was also undefined in the original law.

Ultimate responsibility

This last question is largely academic. Like Corinthian, most fraudulent universities will go out of business before they pay back any ill-gotten gains, and the federal government will be on the hook for any forgiven student loans. Loan forgiveness advocates point out that this is as it should be: without accreditation from the US Department of Education, those schools could never have defrauded students in the first place.

The National Consumer Law Center has proposed [alternative guidelines](#) for a more fair approach to student loan forgiveness. Like many student advocates, they favor a group process that would discharge debts for entire classes rather than burden each individual student with complex petition requirements.

They also have a website outlining [actions](#) that student borrowers who feel they may have been defrauded—and there's a good chance that if you attended a for-profit college you were—can take to try to have their student loans forgiven.

Although the debt forgiveness process is murky and it's far from clear that the Department of Education is on track to making it better, most everyone agrees that defrauded students should not have to repay student loans. Speaking to the *Wall Street Journal*, Ted Mitchell, the Department of Education's undersecretary said, "The law is clear about giving students redress when they've been defrauded."

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