



America First Legal BORROWER DEFENSE TOOLKIT

DOES YOUR SCHOOL HAVE GENERAL RULES OF STUDENT AND FACULTY CONDUCT?

DO WOKE, PRO-HAMAS, LEFTIST ADMINISTRATORS, STUDENTS, FACULTY, AND STAFF VIOLATE THESE RULES WITHOUT CONSEQUENCES?

THEN YOU *MAY* BE ENTITLED “BORROWER DEFENSE” AND *HAVE YOUR FEDERAL STUDENT LOANS DISCHARGED AT YOUR SCHOOL’S EXPENSE!*

WHAT IS BORROWER DEFENSE?

Borrower Defense to Repayment means act or omission of the school attended by the student that relates to the making of a Direct Loan for enrollment at the school or the provision of educational services for which the loan was provided

“Borrower Defense” is the legal process through which a student or graduate who was defrauded may have his or her student loan debt discharged by the Department of Education. Federal law provides that “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” 20 U.S.C. 1087e(h). Potentially relevant regulations are found at [34 CFR Part 668 Subpart F](#) and at [34 CFR Part 685 Subpart D](#). This is a *defense* to loan repayment.

Generally, a college or university is prohibited from making “substantial misrepresentations” regarding the nature of its educational program in its marketing

materials, website, or other communications to prospective or current students. This includes omitting information in such a way as to make a statement false, erroneous, or misleading. An “omission of fact” *may* be a basis for Borrower Defense “if a reasonable person would have considered the omitted information in making a decision to enroll or continue attendance at the institution.” [When a school makes a substantial misrepresentation that gives rise to a valid Borrower Defense, then the school, NOT the student and NOT the American taxpayer, should be on the hook for repayment.](#)

Here’s how the process *might* work.

- ❖ A school represents that it has a generally applicable code of conduct for students, administrators, faculty, and staff.
- ❖ However, it fails to disclose that it will, for example, refuse to hold leftist students, pro-Hamas faculty, or anti-American foreign nationals to the same standards of conduct as pro-Israel or politically and culturally conservative Americans.
- ❖ The school has, therefore, omitted information that a reasonable person would have considered in making a decision to enroll in or continue attendance – after all, who would knowingly attend a school that [treats foreign students better than it does Americans](#) or allows [leftist students to attack pro-American students without consequences?](#)

YOU MAY BE ELIGIBLE FOR [BORROWER DEFENSE DISCHARGE OF YOUR FEDERAL STUDENT LOAN AT THE SCHOOL’S EXPENSE IF](#)

1. You are a graduate, current student, or a Parent PLUS borrower on behalf of a graduate or current student,
2. You have at least one outstanding Federal student loan,

AND THE SCHOOL HAS

1. Represented that it has generally applicable codes of conduct and disciplinary policies, AND
2. Failed to discipline pro-Hamas, leftist, anti-American, or foreign students, faculty, staff, or administrators for violations of generally applicable codes of conduct. Such violations could include, but are not limited to, assaulting or intimidating Jewish, Christian, or pro-

American students, faculty, and staff; tearing down or defacing posters of Hamas hostages; and disrupting classes or speeches by conservatives.

REMEMBER: *The same sort of conduct that could lead to a Borrower Defense to the repayment of a student loan may also give rise to civil rights, tort, anti-terrorism law, civil conspiracy, and criminal claims against the perpetrators and against any school administrators, faculty, and staff who facilitate, support, or participate in it. We urge you to consult with competent legal counsel to protect your rights.*

WHAT YOU NEED TO DO

Consult with competent legal counsel regarding all available criminal complaints and civil claims and then:

- Visit <https://studentaid.gov/borrower-defense/>. Find “Apply for Borrower Defense.”
- Review the application and follow the instructions. You will be asked to certify, under penalty of perjury, that the application is true and complete.
- Explain how your school misrepresented its educational opportunities or support services.
 - *What did your school represent to you or omit regarding the policies that are central to its educational program?*
- Describe how you were harmed.
 - *How did a statement, act, or omission affect your decision to enroll, remain enrolled, or take out a student loan?*
- **Provide as much detail as possible.** Carefully read your school’s codes of conduct, investigate whether school administrators, faculty, staff, and students are held accountable for violating them, and then document, preserve, and screenshot *everything*. **It is crucial that you identify individual bad actors - students, faculty, administrators, and staff - by name.**

MODEL CLAIMS

Here are some examples, drawn from recent events, of what claims included in the **Educational Services** or **Other** sections of the Department of Education’s Borrower Defense form might look like. ***These examples are for your information and education only.*** AFL strongly recommends that you seek out competent legal counsel to help you prepare your Borrower Defense claim.

Example 1: The Cooper Union (TCU)

- TCU [represents](#) that its educational program is based on “the freedom of its students to pursue their scholarly, artistic, and intellectual interests.” Therefore, “The Cooper Union has developed policies to safeguard this freedom and to maintain an environment conducive to academic endeavor.”
- TCU’s [Code of Conduct](#) for students states that the following violations are “extremely serious and subject to the highest penalties:” “Bullying and Intimidation in all forms,” “acts that cause physical or psychological harm,” “[d]isorderly, disruptive, or aggressive behavior that interferes with the general comfort, safety, security, health, welfare or education of a member of the Cooper community or the regular operation of the College. This includes damage to property and any behavior that is perceived to be threatening or dangerous to the health or safety of the Cooper Union community.” [Part Two: Standards of Conduct for Students, Category A \(14\)](#). Students must “comply with a request for identification from an employee or security guard of The Cooper Union” and “cooperate with the staff supervising the facilities.” [Part Two: Standards of Conduct for Students, Category B \(3\)](#).
- All of these statements are false.
- On October 25, 2023, a mob of pro-Hamas students and others breached campus security and made their way through a campus building while chanting antisemitic slogans and “banging on the library doors and windows,” as confirmed by [video](#) and the [school’s president](#). Students in the library were locked inside for their safety.
- To my knowledge, no students have been disciplined, and no arrests have been made. The administration ignored open and obvious violations of the college’s Code of Conduct and of New York anti-trespassing and anti-assault laws because it favored the identity and views of the perpetrators (pro-Hamas, Muslim, leftist). The [administration has taken affirmative steps to protect those who attacked the students in the library from consequences](#).
- TCU omitted the fact that it would effectively waive its code of conduct for pro-Hamas, anti-American activity by students, faculty, and staff, even when such conduct clearly violates the law. Accordingly, I have been the victim of multiple misrepresentations with respect to this institution’s educational program. Students cannot pursue their scholarly, artistic, and intellectual interests when the administration, students, faculty, and staff support and encourage the above-described conduct. TCU’s failure to discipline the perpetrators of the October 25 attack in accordance with its published policies and the realization, based on multiple pro-terrorist demonstrations and actions thereafter, that it

tolerates, sanctions, and promotes pro-Hamas activities on campus, including physical assault and intimidation, make it clear that TCU's representations regarding its educational program are a lie.

- TCU has discarded the very policies that I relied on when deciding to enroll there, causing me deep mental distress, worry, and concern. I have also suffered personal reputational harm because I attend an institution that supports Hamas, a genocidal terrorist group that engages in the most bestial of atrocities in the name of [Muslim supremacy](#). As a result of TCU's conduct, I cannot focus on my studies. Had my family and I known the truth about TCU's educational program, I would have attended a different school.
- TCU represents that its educational program is "to prepare bright, creative, and ambitious students of all backgrounds to apply their talent and expertise to make meaningful contributions to society and the world." This is demonstrably false. Because TCU condones support for terrorism and facilitates the harassment of some of its students, it is now under [Federal investigation](#). TCU has become nationally recognized for the wrong reasons, rendering its claim to have an educational program that makes it a "highly regarded institution" false. Google Trends indicates that searches for "Cooper Union" in the United States [surged more than 500%](#) in the days surrounding October 25, 2023, the day of the attack on the library. TCU has never been more nationally recognized than in recent months, but it is recognized for its failures. Alumni are also [pulling donations](#). This is not the school that I was told I would be attending.
- Accordingly, I request a complete borrower defense to loan repayment. I further request that the Department exercise its authority under 34 CFR § 685.409 to ensure that TCU, not the taxpayers, bears full financial responsibility for the discharged loans.

Example 2: The Massachusetts Institute of Technology (MIT)

- MIT [represents](#) that its educational program includes being "a humane and welcoming place where people from a diverse range of backgrounds can grow and thrive – and where we all feel that we belong." To that end, MIT has an extensive and detailed code of conduct for [students, faculty, administrators, and staff](#).
- MIT [represents](#) that it "offers a vibrant campus environment" so that "all students can cultivate personal growth, build community, and prioritize wellbeing."

- MIT [represents](#) that it has policies against disorderly conduct, which it defines as “any unreasonable or reckless conduct by an individual or group that is inherently or potentially unsafe to other persons or to their real or personal property, and/or any behavior that disrupts the peace or interferes with the normal operation of the Institute or Institute-sponsored activities. Disorderly conduct includes making unreasonable noise, disrupting a lawful meeting, obstructing pedestrian or vehicle traffic, or creating a hazardous situation.” This is also an important part of MIT’s educational program.
- MIT also [represents](#) that it has policies against [harassment](#), which it defines as “unwelcome conduct of a verbal, nonverbal or physical nature that is sufficiently severe or pervasive to create a work or academic environment that a reasonable person would consider intimidating, hostile or abusive and that adversely affects an individual’s educational, work, or living environment.” This is also an important part of MIT’s educational program.
- MIT [represents](#) that it has [standards](#) governing [student events on campus](#): “each organization must comply with city, state, and federal laws as well as applicable MIT rules and regulations. In addition, each organization will accept responsibility for conducting its event in accordance with standards of orderly conduct generally acceptable to the MIT community.” This is also an important part of MIT’s educational program.
- I relied on all of these representations when I enrolled at MIT and took out a student loan to pay for tuition and costs. These representations were false.
- For example, on November 9th and 12th, in an area of campus known as “Lobby 7,” students, faculty, and staff violated MIT policies by calling for violence against Jews (MIT Hillel felt compelled to send out a notice to its members warning them against traversing these areas on campus for their own safety) and by storming faculty and staff offices and going from door to door trying to reach the individuals barricaded insides. Incredibly, [MIT was aware](#) of the problem and [warned](#) students of their obligations but did nothing to enforce the standards that are the foundation of its educational program.
- In fact, President Kornbluth affirmatively chose to violate MIT’s published policies. She [expressed](#) “serious concerns about collateral consequences for the students [who violated MIT policies], such as visa issues.” That is the very reason visas have triggers if students are disciplined – to remove violent, lawbreaking foreign nationals from our institutions of higher education. MIT’s support for foreign nationals who violate U.S. laws by supporting Hamas and attacking law-abiding Americans demonstrates that the above-described representations regarding its educational program are manifestly false.

- Also, in testimony before Congress, President Kornbluth claimed calls for “intifada” and other violent rhetoric are [not harassment](#) because they are not directed at specific individuals. This is patently ridiculous and entirely at odds with MIT’s representations regarding the nature of its educational program.
- Had I known that MIT’s representations regarding its educational program were false, I would never have enrolled in that institution. I suffer from mental and physical distress because of them. It is bad enough that my school’s president says that these horrific threats I hear on campus, all of which violate the institution’s published code of conduct, “[depend on context](#)” (the “context” is that I am harassed, targeted, and [blocked from attending class](#)), but the fact that MIT’s faculty and staff support her failure to enforce the rules against pro-Hamas students (MIT deans, department heads, and senior faculty leaders stand rank and file behind the decisions of President Kornbluth in a [letter of support](#)) demonstrates that the representations MIT makes to students and parents regarding its educational program are lies. Plainly, MIT cares more about supporting Hamas than about keeping its promises to students and parents.
- I reasonably fear for my safety while I am on campus. This affects my learning. I also fear the reputational harm the administration’s choice to support Hamas and render its representations regarding the policies that are the bedrock of the institution’s educational program lies will have on my future employment. I am embarrassed and ashamed to attend MIT, where protecting pro-Hamas visa holders matters more than the promises it has made to law-abiding U.S. citizens.
- Accordingly, I request a complete borrower defense to loan repayment. I further request that the Department exercise its authority under 34 CFR § 685.409 to ensure that MIT, not the taxpayers, bears full financial responsibility for the discharged loans.

Example 3: The New York University (NYU)

- The foundation of NYU’s educational program includes the policies that govern student and faculty conduct and discipline on campus. These [policies promise](#) students an educational program with “adherence to the highest ethical standards,” “respect for and compliance with the law,” and “respect for the rights and dignity of others.” NYU affirms it “has a right to require the cooperation of its members in the performance of its educational functions.” However, the educational program that NYU represented to me and my

parents when it induced me to attend the university is not the program that exists in reality.

- NYU's [Student Conduct Policy](#) covers conduct “which, actually or has potential to, impede, obstruct, or threaten the maintenance of order and achievement of the University’s educational goals.” It prohibits:
 - “Engaging in or threatening to engage in behavior(s) that, by virtue of their intensity, repetitiveness, or otherwise, endanger or compromise the health or safety of oneself, another person, or the general University community. This includes, but is not limited to, threatening, tormenting, mocking, intimidating, maliciously or inappropriately ridiculing another’s work or comments beyond the scope of scholarly inquiry, and exploiting known psychological or physical vulnerabilities or impairment.”
 - “Physical violence, actual or threatened, against any individual or group of persons.”
 - “Vandalizing, damaging, destroying, defacing, or tampering with university property or the property of others.”
 - “Engaging in behavior prohibited under the NYU Non-Discrimination and Anti-Harassment Policy for Students or for Employees.”
 - “Disorderly, disruptive, or antagonizing behavior that interferes with the safety, security, or health of the community, and/or the regular operation of the University.”
 - “Behaviors that, by virtue of their intensity and/or repetitiveness, interfere with an educational activity (e.g., classroom, remote or online learning environments, advising session, lecture, workshop . . . deliberately engaging in other behaviors that unreasonably and illegitimately distracts from or interferes with the educational experience or otherwise violates University policy.”
- NYU affirms that student organizations and individuals within those organizations are accountable for violations “Whether acting in an official or unofficial capacity.”
- In NYU’s [Guidance and Expectations on Student Conduct](#), NYU represents that “[a]ll students deserve the opportunity to live and learn in peace. [And NYU’s] aim is to maintain our academic mission, abide by our principles, safeguard the well-being of all members of the community, and act in accord with long-established rules even in this fraught moment,” linking to the aforementioned NYU Student Conduct Policy. This policy applies to students in their education program, for which they took out student loans to earn their degrees. The policy describes “zero tolerance” for “violence, threats, or

intimidation” and applies to “language advocating for killing people or groups of people, and all relevant synonyms (e.g., eradicate, destroy, massacre, exterminate, etc.).”

- NYU also represents that it has a [Code of Conduct](#) for the NYU library to ensure students “find themselves in an environment that will enable them to achieve their educational objectives.”
- I enrolled in NYU and took on student loan debt based on the multiple, detailed, and specific representations described above regarding the nature of its educational program. NYU falsely represented that these policies applied to everyone at NYU - it did not tell me it would ignore its own policies with respect to, inter alia, pro-Hamas students and faculty, or that it would ignore federal, state, and local criminal laws governing vandalism and violence. But that is what the administration has done. However, pro-Hamas students and faculty stormed the library, hung antisemitic banners, and screamed antisemitic slogans through amplification devices. NYU faculty asked which side students supported and distributed masks to pro-Hamas students so they could avoid being identified if NYU decided to enforce its Code of Conduct, which it has not done.
- In my opinion, the allegations in this [complaint](#), though accurate, only reflect a small portion of what has occurred on campus. I firmly believe that the administration, faculty, and staff support Hamas more than they care about me, other students, and the promises they have made about NYU’s educational program. In fact, if NYU had told the truth about its education program, that only some people need to comply with its student code of conduct, and that the administration, faculty, and staff would protect Hamas supporters from the consequences of breaking those rules, I never would have enrolled in this school and taken on the debt.
- Furthermore, I suffer from mental and physical distress because of them - imagine paying \$75,000 a year to attend a school where, for example, some students celebrate mass rape and murder while threatening to slit the throats of other students, all as the administration, faculty, and staff at best sit silently by, and often cheer on Hamas and call for more violence. NYU lied about its educational program, and each day, I need to be prepared to defend myself, knowing that the rules that would be applied against me for protecting myself are not enforced against pro-Hamas rulebreakers. This is not a healthy learning environment.
- Accordingly, I request a complete borrower defense to loan repayment. I further request that the Department exercise its authority under 34 CFR §

685.409 to ensure that NYU, not the taxpayers, bears full financial responsibility for the discharged loans.

Example 4: Harvard University

- In its [Statement on Rights and Responsibilities](#) (SRR), which is the basis for Harvard's educational program, Harvard states that "interference with members of the University in performance of their normal duties and activities must be regarded as unacceptable obstruction of the essential processes of the University." The Statement further provides that "intense personal harassment of such a character as to amount to grave disrespect for the dignity of others be regarded as an unacceptable violation of the personal rights on which the University is based" and "any unauthorized occupation of a University building, or any part of it, that interferes with the ability of members of the University to perform their normal activities constitutes unacceptable conduct in violation of the Statement and is subject to appropriate discipline."
- Contrary to the SRR, pro-Hamas students at Harvard have targeted and harassed their peers, calling them "murderers," "colonizers," "racists," "white supremacists," "killers and rapists of children," and "genocidal." Pro-Hamas students have also engaged in violent assault and battery.
- On November 16 and 17, 2023, pro-Hamas students occupied the University Hall despite being told to leave by Harvard administrators.
- About halfway through the unsanctioned occupation, Harvard College Dean Rakesh Khurana offered the occupiers a deal: leave now and not face discipline, despite clear Harvard policies. The occupiers refused.
- Instead of holding the protesters accountable by removing and disciplining them, Harvard, in coordination with the University Police, allowed the students to continue their occupation for 24 hours. Adams House Faculty Dean Salmaan Keshavjee even gifted the students with burritos.
- Harvard has canceled classes so students can attend antisemitic rallies without consequence, and it does not discipline demonstrators who violate Harvard policies. While pro-Hamas students get burritos for violating Harvard's policies, Jewish students were told to hide their menorah during Hanukkah so that the University would be relieved of its obligations to protect it from vandalism and to discipline the vandals.
- I would not have chosen to attend Harvard had I known that it decides when to enforce its code of conduct based on the political beliefs of the individuals involved.

- Accordingly, I request a complete borrower defense to loan repayment. I further request that the Department exercise its authority under 34 CFR § 685.409 to ensure that Harvard, not the taxpayers, bears full financial responsibility for the discharged loans.

Example 5: SUNY Binghamton

- I attended SUNY-Binghamton.
- SUNY-Binghamton promised me that its educational program was founded on the principle that students would be free to speak, learn, challenge, and dissent. It also promised me that it had generally applicable rules for student and faculty conduct.
- However, apparently because of political bias against political conservatives, it failed to apply these rules consistently. I was interested in reading material and attending programs presented by the College Republicans and the Young Americans for Freedom/Young America's Foundation ("YAF"). But, because of the conduct of leftist students and faculty in violation of the generally applicable rules of student and faculty conduct, I was denied this opportunity. The institution took no action against the perpetrators.
- The facts of this matter are laid out in detail in [an investigatory letter](#) published in the Federal Register on September 30, 2020, from the Department of Education to the institution.
- I relied on the representations made by SUNY-Binghamton regarding the role played by free speech, free inquiry, and a safe and orderly learning environment in its educational program. Had I known the truth that free speech and free inquiry are denied to conservatives and that those with leftist views are favored, protected, and free from the rules of student and faculty conduct that apply to me, I never would have attended this institution or taken on student loan debt.
- Accordingly, I request a complete borrower defense to loan repayment. I further request that the Department exercise its authority under 34 CFR § 685.409 to ensure that SUNY-Binghamton, not the taxpayers, bears full financial responsibility for the discharged loans.

THIS TOOLKIT IS PURELY INFORMATIONAL AND DOES NOT CONSTITUTE LEGAL ADVICE OR A SUBSTITUTE FOR LEGAL ADVICE. NO ATTORNEY-CLIENT RELATIONSHIP IS FORMED, NOR IS AFL SOLICITING TO CREATE AN ATTORNEY-CLIENT RELATIONSHIP. AFL RECOMMENDS THAT YOU CONSULT A QUALIFIED ATTORNEY WITH FURTHER QUESTIONS RELATING

TO SUBMITTING YOUR BORROWER DEFENSE TO REPAYMENT APPLICATION.

**** AMERICA FIRST LEGAL encourages student loan borrowers to hold their schools accountable for omitting material information about their educational programs. We urge you to consult an attorney to discuss what makes sense for you. ****

**** This is for your general informational purposes only. It is not legal advice and does not create an attorney-client relationship between you and America First Legal. ****