



AMERICAN
BANKRUPTCY
INSTITUTE

Alexander L. Paskay Memorial Bankruptcy Seminar

Consumer

Student Loans

Jeffrey C. Hakanson

McIntyre Thanasides Bringgold Elliott Grimaldi & Guito, P.A. | Tampa

Hon. Catherine Peek McEwen

U.S. Bankruptcy Court (M.D. Fla.) | Tampa

Grace Anne Monnig

U.S. Attorney Office | Tampa

Igor Roitburg

Stretto | New York

Go To School With Us On How To Handle Student Loans in Bankruptcy

Understanding student loans and strategies for managing them in bankruptcy

February 27, 2025

TODAY'S PRESENTERS

Catherine Peek McEwen
U.S. Bankruptcy Judge
Middle District of Florida
cmcewen@flmb.uscourts.gov
813-301-5082

Igor Roitburg
Senior Managing Director, Stretto
igor.roitburg@stretto.com
859.663.2928

Grace Anne Monnig, Esq.
Assistant United States Attorney
Middle District of Florida
Grace.Anne.Monnig@usdoj.gov
813-274-6145

Jeffrey Hakanson, Esq.
McIntyre Thanasides Bringgold Elliott Grimaldi & Guito, P.A.
Jeff@mcintyrefirm.com
813-480-0882

Christopher Emden, Esq.
Assistant United States Attorney
Middle District of Florida
cemden@usdoj.gov
813-274-6005

Agenda

- 1 Student Loan Facts
- 2 Dealing with Federal Student Loans
- 3 Dealing with Private Student Loans
- 4 Client Representation

Student Loan Facts

But, first a quick quiz...

Who was President when Federal student loans began?

5

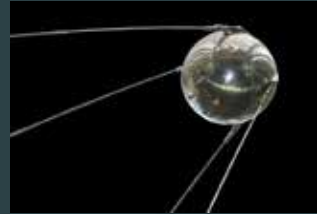
Dwight D. Eisenhower



6

What inspired the creation of federal student loans?

The Soviet Union's launch of Sputnik in 1957 inspired the creation of federal student loans in the United States.



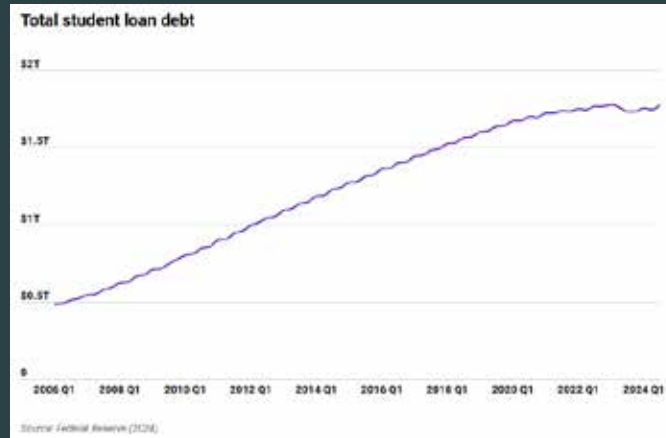
The National Defense Education Act (NDEA) of 1958 established the program.



The NDEA provided federal funding for student loans and curriculum development.

Student Loan Debt – Facts and Statistics

\$1.77 trillion as of 3Q 2024...and growing!



9

Student Loan Debt – Facts and Statistics

93% Federal Student Loan Debt¹

43M Borrowers have federal student loan debt²

46% Do not know how much they owe³

16% Borrowers are behind on loan payments⁴

3X Total federal student loan debt has roughly tripled since 2007.⁵

**See Appendix for sources*

10

Types of Loans – Federal and Private

Federal:

- Made or guaranteed by Federal government
- Various programs – Direct, FFEL, Perkins
- Since 2010, all loans are Direct
- Credit checks not required (except for Parent PLUS limited “adverse credit history” check)
- Special protections provided by law such as IDRs, subsidies, cancellation and forgiveness
- No statute of limitation – debt collection can continue indefinitely with broad powers like wage garnishment and withholding of tax refunds

Private:

- Made by private lending institution
- Loans based on credit
- Co-signer may be required
- Rarely offered flexible repayment plans, cancellation or forgiveness options
- Statute of limitations apply
- No special collection powers

Are My Client’s Loans Federal or Private?

- Find out at studentaid.gov
- If loans are listed on studentaid.gov, they are federal. If not, they are private.
- Download NSLDS file to find out types of loans, loan balances, statuses, etc.
- Each person has a unique account
- NOTE: STOP Act prevents attorneys from accessing client’s account directly

Instructions for downloading the NSLDS file

- Download Written Guide [here](#)
- Watch Video [here](#)

Dealing with Federal Student Loans

13

Federal Student Loan Options

- 1 Undue Hardship Discharges under DOJ Guidance (11/17/2022)
- 2 Repayment Plans
- 3 Loan Forgiveness and Administrative Discharges

Discharges Under the DOJ Guidance Issued November 17, 2022

15

Statutory Standard for Student Loan Discharge in Bankruptcy

11 U.S.C. § 523

(a) A discharge under section 727, 1141, 1192 [1] 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

(8) Unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents, for—

A.

- i. An educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution; or
- ii. An obligation to repay funds received as an educational benefit, scholarship, or stipend; or

B. Any other educational loan that is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of 1986, incurred by a debtor who is an individual

16

Standard of Review for Student Loan Discharge

(Majority Standard)

Brunner v New York State Higher Education Services Corp., 831 F.2d 395 (2d Cir. 1987)

To discharge a student loan under the *Brunner* test, a bankruptcy court must find that the debtor has established that:

- The debtor cannot presently maintain a minimal standard of living if required to repay the student loan
- Circumstances exist that indicate the debtor's financial situation is likely to persist into the future for a significant portion of the loan repayment period
- The debtor has made good faith efforts in the past to repay the student loan

17

Traditional Process for Seeking Discharge of Student Loans

- Discharges have been exceptionally difficult to achieve
- Litigation is often too costly for debtor, in bankruptcy, to afford
- *Duke Law Journal* 2020 study: 250,000 bankruptcy cases involving student loans filed annually, fewer than 300 debtors (less than .1%) received a discharge of student loans

18

U.S. Department of Justice Guidance

- Does NOT change
 - Statute
 - Case law
 - Requirement to file adversary

- Does provide objective standards and streamlined process
 - No full discovery – focus on Attestation provided by debtor
 - Allows AUSA with DOE to stipulate that “undue hardship” exists and recommend discharge if three conditions are met:
 - ✓ The debtor presently lacks an ability to repay the loan
 - ✓ The debtor’s inability to pay the loan is likely to persist in the future
 - ✓ The debtor has acted in good faith in the past in attempting to repay the loan

- 85% resulted in full or partial discharge ([10/28/24 Letter from Senators Warren, Durbin, Whitehouse and Warnock](#))

19

U.S. Department of Justice Guidance

- Applies to Direct loans
 - *Dear Colleagues Letter* issued 10/19/2023 subjecting FFEL & Perkins Loans to the Guidance but language is not binding
 - Can consolidate FFEL but ONLY before BK filed (WARNING: consolidating after BK filing creates a post petition debt)

- Does not limit potential discharge to specific bankruptcy chapters.

- Partial discharge specifically called for where appropriate and permissible. Paragraph IV(E)

- Footnote #22: *This memorandum applies only to future bankruptcy proceedings, as well as (wherever practical) matters pending as of the date of this Guidance.*
 - Can you reopen case...? Maybe...appears to be a case-by-case analysis by court.

20

U.S. Department of Justice Guidance – Basic Procedures

1. To initiate, an adversary proceeding under 523(a)(8) must be filed
2. After adversary is filed, debtor must provide completed Attestation to the DOJ
 - Debtor lacks current ability to pay the student loans
 - Debtor's inability to pay is likely to persist in the future
 - Debtor has made a good faith effort to repay the student loans
3. DOJ "consults proactively" with DOE to determine if discharge should be granted
4. DOJ reports determination to Debtor

21

The Attestation

1. Personal Information
 - a. Household
 - b. Loans
 - c. Schools
2. Current Household Income and Expenses
 - a. Household income details
 - b. IRS Standards used as guideline for expenses
3. Future Ability to Repay
 - a. Rebuttable presumptions
 - Over 65 | Disabled | 10 years in repayment
Unemployed 5 of last 10 years | Did not finish degree
 - b. Additional factors

22

The Attestation (cont'd)

4. Prior Efforts to Repay
 - a. Payments made
 - b. Attempted contacts
5. Current Assets
 - a. Real estate, cars, investments
6. Additional Circumstances
 - a. Catchall

23

Practice Pointers

- Make sure correct entities are served with the Complaint and Summons
 - Should be made in accordance with Bankruptcy Rule 7004(b)(5)
 - United States Attorney for the relevant district
 - US Attorney General
 - Department of Education
- Make sure Attestation is signed by Debtor
- Submit Attestation to AUSA – after Complaint is best
- Once Complaint filed, extend answer date if necessary
- Cooperate with AUSA

24

Repayment Plans

Repayment Plans

Balance Based:

Repay full loan amount based on balance, term and rate

- Standard
 - 10 year term
- Graduated
 - Steps up every 2 years
 - 10 year term
- Extended
 - Balance must be over \$30K
 - 25 year term
- Extended Graduated
 - Balance must be over \$30K
 - Steps up every 2 years
 - Up to 25 year term

Income Driven:

Repayment based on family size and income; Forgiveness available if not repaid within 20-25 years

- IBR
 - 15% discretionary income / 25 years
- IBR New
 - 10% discretionary income / 20 years
- PAYE
 - 10 % discretionary income / 20 years
- REPAYE / SAVE*
 - 10% discretionary income / 20-25 years
- ICR
 - Lesser of 20% discretionary income or 12 year plan / 25 years

Repayment Plan Details

- All plans are “by right”, eligible debtors cannot be denied
- Income Driven Repayment plans:
 - Monthly payment can be \$0
 - Discretionary income varies between plans (100% - 225% of poverty line)
 - Must recertify income every year (generally tax return)
 - Any balance remaining at end of term is forgiven
 - Beginning in 2026, there may be tax consequences for any forgiveness

27

Litigation Update

- SAVE Plan was to replace REPAYE
 - Provides interest subsidies
 - Increases percentage of income that was shielded
 - Allows for exclusion of spousal income
 - Lowers payment for undergraduate loans (from 10% to 5%)
 - Accelerated forgiveness timeline
- BUT...8th Circuit has issued a ruling enjoining further implementation of SAVE rules
 - As a result, borrowers enrolled in SAVE are placed in interest free forbearance
 - Borrowers can still enroll in SAVE, but not credited towards forgiveness
 - What will happen to SAVE regulations under Trump 2.0...?

28

Loan Forgiveness and Administrative Discharges

29

Loan forgiveness or cancellation

Forgiveness Programs

- Public Service Loan Forgiveness (PSLF)
 - Must work for government or eligible non-profit
 - Make 120 payments under IDR plan
- Teacher Loan Forgiveness
 - Full-time for 5 complete and consecutive academic years in certain schools
 - May be eligible for up to \$17,500
 - Cannot receive credit towards Teacher Forgiveness and PSLF for same time

30

Loan forgiveness or cancellation (cont'd)

Administrative Discharges - complete and submit applicable form

- Total and Permanent Disability
 - Borrower unable to work due to a permanent physical or mental disability
 - Requires certification from doctor, SSA or VA
- Death
 - When borrower or student dies
 - Requires death certificate

31

Loan forgiveness or cancellation (cont'd)

Other discharge possibilities:

- Borrower Defense Discharge
- Closed School Discharge
- Unpaid Refund Discharge
- False Certification – Disqualifying Status
- False Certification – High School Graduation Status
- False Certification – Identity Theft
- False Certification – Unauthorized Signature / Payment
- Forgery

32

Dealing with Private Student Loans

33

Private Student Loans

- Different from Federal student loans
 - Require “undue hardship” to discharge but NOT subject to DOJ Guidance
 - Statute of limitations apply!
 - No flexible repayment plans or cancellation/forgiveness programs
- Borrowers should be careful of refinancing federal student loans into private. Cannot go back and lose federal protections.
- Since private lenders do not have the same collection powers as federal student loans, they may be more willing to negotiate and settle.

34

Client Representation

35

Ethical Obligations for Reviewing Student Loans for Discharge

1. It's not enough to say "student loans are not dischargeable" anymore
2. Applicable Model Rules of Professional Conduct
 - a) Rule 1.1: Competence
 - b) Rule 1.2: Scope of Representation & Allocation of Authority Between Client & Lawyer
 - c) Rule 1.3: Diligence
 - d) Rule 1.4: Communications
 - e) Rule 2.1: Advisor

36

Tools and Programs

Student Loan Management Program

- Provides rules of engagement for debtor and loan holder to discuss available and consensual student loan resolutions
- Allows parties to review and enroll in by-right repayment plans while in bankruptcy
 - Without a program, federal student loans are placed in administrative forbearance and debtor cannot enroll in repayment plans
- Eliminates creditors' concerns of Espinosa discharges, stay violations and court-imposed modifications
 - Program provides for standardized language and guidance
- Uses online secure portal to facilitate communications
- Adopted in 5 jurisdictions
- DOE participated

37

Tools and Programs (cont'd)

From Stretto DMM Portal

- **Discharge Snapshot** – FREE, quick assessment of dischargeability
- **Discharge Analyzer*** – Comprehensive analysis of dischargeability and completed attestation
 - \$29 for Report
 - \$99 for Attestation
- **Repayment Plan Analyzer*** -- Comprehensive analysis of available repayment plans and completed application materials
 - \$19 for Report
 - \$99 for Applications

* Included NSLDS parser which reads NSLDS and provides loan details

* See <https://www.dclmwp.com/BestCase> for more details

38

Tools and Programs (cont'd)

Videos From Stretto DMM Portal

- [Discharge Snapshot](#)
- [Discharge Analyzer](#)
- [Repayment Plan Analyzer](#)
- [How to Download NSLDS](#)
- [How to Generate Student Loan Client List with Best Case](#)
- [Assisting Debtors with Student Loan Debt](#)
- [FLNB Student Loan Management Program Training – 11/11/22](#)

39

Tools and Programs (cont'd)

Student Loan Management Programs in Florida

- Middle District
 - Administrative Order – [link](#)
 - Program Procedures and Checklists - [link](#)
- Southern District
 - Administrative Order – [link](#)
 - Program Procedures – [link](#)
 - Program Forms – [link](#)
- Northern District
 - Administrative Order - [link](#)

40

Questions?

41

Document Appendix

- DOJ Discharge Guidance Text – November 17, 2022
- DOJ Discharge Guidance Fact Sheet
- DOJ Discharge Guidance Attestation Form [05/2024]
- DOJ Discharge Guidance Sample Scenario
- FLMB Sample Documents
 - Stipulation of Facts
 - Order Finding Undue Hardship
 - Final Judgment

42

Document Appendix

- NCLC Student Loan Toolkit [May 2024]
 - Note: some of the material may be outdated
- Sample Retainer Agreement
- Stretto Attorney Guide

43

Source Appendix

¹<https://educationdata.org/student-loan-debt-statistics>

²<https://educationdata.org/student-loan-debt-statistics>

³<https://www.nerdwallet.com/article/loans/student-loans/nearly-half-with-federal-student-loan-debt-dont-know-how-much-they-owe#:~:text=After%20several%20years%20of%20nonpayment,who%20their%20loan%20servicer%20is>

⁴<https://www.federalreserve.gov/publications/2024-economic-well-being-of-us-households-in-2023-higher-education-student-loans.htm#:~:text=Additionally%2C%20in%202023%2C%2016%20percent,the%2017%20percent%20from%202019.>

⁵<https://www.bestcolleges.com/research/average-student-loan-debt/>

44

Completing a Student Loan Bankruptcy Discharge Review under DOJ Guidance issued November 17, 2022

1. Obtain Client's NSLDS File

The NSLDS file contains all the borrower's federal student loan information and is essential to completing a review. We recommend having your client email the NSLDS .txt file to you BEFORE proceeding to ensure the analysis completion. You cannot proceed without an electronic version of the NSLDS file.

For instructions on how your client can obtain their NSLDS file, see below.

- [NSLDS Download Guide](#)
- [NSLDS Download Video](#)

2. Set Appointment with Client

Your client needs to provide some basic information including information about their household, income, expenses, and educational history. (For a complete list of information needed, please log in to the [portal](#), click **Bankruptcy Discharge Analyzer** and select **Start New**. This will launch the Discharge Analyzer tool. Review each section to determine the needed information.)

3. Conduct Interview and Upload NSLDS

Create a client profile on the Stretto DMM Portal.

Please follow these instructions:

- Log in to the [portal](#)
- Click on the **Student Loans** tab in the upper left corner
- Navigate to **Bankruptcy Discharge Analyzer**
- Click **Start New**
- Complete the online questionnaire covering the following topics:
 - Personal Info
 - Household information



- Employment
 - Income
 - Assets
 - Expenses
 - Educational History
 - Student Loan Information
- Upload the NSLDS (from Step #1 above) and provide basic information about the client's repayment efforts
4. **Download the Discharge Analysis (\$29)**

After the data is entered in Step 3, download the client's customized discharge analysis report. The report indicates if your client appears to be eligible for a bankruptcy discharge under the DOJ Guidance.
 5. **Review Report with Client**

Review the report with your client and determine if they wish to proceed with the discharge. If your client does not appear to qualify for a discharge, review the report to determine what (if anything) your client can do to achieve a discharge. (Example: If your client has not yet applied for an income driven repayment plan, consider doing so to help satisfy the "good faith efforts" prong of the DOJ Guidance).
 6. **File Adversary Proceeding**

If your client appears to be eligible for a discharge, file an adversary proceeding per your court's requirements. Reference the analysis to provide fact-specific pleadings in the complaint.
 7. **Return to the Portal to Complete the Attestation**

Once the adversary proceeding is filed, return to the portal to provide the bankruptcy and adversary proceeding information.
 8. **Download the Attestation (\$99)**

After providing the required bankruptcy information, download your client's customized attestation.

- 9. Sign the Attestation and Gather Proof of Income and Other Supporting Documents**

Review the attestation for accuracy as well as the proof of income checklist. Sign and date the attestation and gather the required proof of income documentation from your client. Note that the only required supporting documentation for the attestation is the proof of income, however the provision of additional supporting documents may further advocate your client's position and can be provided.
- 10. Send the Attestation to Assistant U.S. Attorney**

Send the client's signed attestation together with the required proof of income to your AUSA. (Your AUSA should establish the manner and protocol for how they wish to receive the attestation).
- 11. Obtain Stipulation from Assistant U.S. Attorney**

The AUSA will review the attestation and determine if your client is eligible for a student loan discharge. If the AUSA concurs that your client is entitled to a discharge, they will send a stipulation. If the AUSA determines that your client is not eligible for a student loan discharge, review their findings and ensure that the AUSA has the correct information.
- 12. Finalize Discharge with Court**

Follow your court's procedures for finalizing and securing the discharge.

For additional information or to schedule a demo, contact [Igor Roitburg](#) or [George Vogl](#)

November 17, 2022

**GUIDANCE FOR DEPARTMENT ATTORNEYS REGARDING STUDENT LOAN
BANKRUPTCY LITIGATION**

I. Introduction

This memorandum provides guidance (Guidance) to Department of Justice (Department) attorneys regarding requests to discharge student loans in bankruptcy cases. Developed in coordination with the Department of Education (Education), this Guidance will enhance consistency and equity in the handling of these cases. In accordance with existing case law and Education policy, the Guidance advises Department attorneys to stipulate to the facts demonstrating that a debt would impose an undue hardship and recommend to the court that a debtor's student loan be discharged if three conditions are satisfied: (1) the debtor presently lacks an ability to repay the loan; (2) the debtor's inability to pay the loan is likely to persist in the future; and (3) the debtor has acted in good faith in the past in attempting to repay the loan.

To assist the Department attorney in evaluating each of these factors, a debtor will typically be asked to provide relevant information to the government by completing an attestation form (Attestation). The Attestation requests information about the debtor's income and expenses to enable the Department attorney to evaluate the debtor's present ability to pay. The Attestation also seeks information that will help the Department attorney evaluate the other two factors. In the following sections, this Guidance provides more detail about the Attestation that a debtor will be asked to complete, and how the information provided in the Attestation will be considered by the Department attorney. In Appendix A, this Guidance provides a sample attestation form. In addition, in Appendix B, this Guidance provides a concrete example of how a debtor's request for discharge of a student loan will be evaluated.

II. Objectives of the Guidance and Education's Role in Supporting Discharge Cases

In cases where a debtor seeks the discharge of a student loan in bankruptcy, the Department shares with Education the responsibility to represent the interests of the United States in accord with existing law and in the interests of justice. This responsibility includes recommending that a bankruptcy court grant full or partial discharge of student loan debts in appropriate cases. To fulfill that responsibility, Department attorneys should stipulate to facts necessary to demonstrate undue hardship and recommend discharge where the debtor provides information in the Attestation (or otherwise during the adversary proceeding) that satisfies the elements of the analysis below. Some debtors have been deterred from seeking discharge of student loans in bankruptcy due to the historically low probability of success and due to the mistaken belief that student loans are ineligible for discharge. Other student loan borrowers have been dissuaded from seeking relief due to the cost and intrusiveness entailed in pursuing an

adversary proceeding. This Guidance is intended to redress these concerns so that discharges are sought and received when warranted by the facts and law. In addition, Department attorneys are expected to consult proactively with Education to evaluate the specific circumstances of each case.

In collaborating in the preparation of this Guidance, the Department and Education have sought to promote three goals in particular:

1. To set clear, transparent, and consistent expectations for discharge that debtors understand regardless of representation;
2. To reduce debtors' burdens in pursuing an adversary proceeding by simplifying the fact-gathering process. This includes use of an Attestation, and where feasible, information provided through prior submissions to the bankruptcy court and available student loan servicing records;
3. Where the facts support it, to increase the number of cases where the government stipulates to the facts demonstrating a debt would impose an undue hardship and recommends to the court that a debtor's student loans be discharged.

Education is committed to supporting Department attorneys handling these cases. Department attorneys should expect that, for each adversary proceeding, Education will provide to the Department attorney a record of the debtor's account history, loan details, and—where available—educational history, which the Department attorney will share with the debtor. This information will be provided with the Education litigation report.

The Department attorney is expected to consult with Education in each case; consultation includes sharing the completed Attestation and conferring on an appropriate course of action. In its initial litigation report, Education will advise on matters including whether it has data relating to the presumptions in this Guidance regarding assessment of future circumstances and whether it considers the debtor made good faith efforts to repay their student loans. This process will ensure the final decision is informed by Education's experience administering student loans and its role as creditor. Once the Department attorney reaches a recommendation in accordance with this Guidance, the Department attorney shall submit their recommendation or approval, as appropriate, along with Education's recommendation, under the standard procedures applicable in that attorney's component.

III. Applicable Law

Under Section 523(a)(8) of the Bankruptcy Code, certain student loans may not be discharged in bankruptcy unless the bankruptcy court determines that payment of the loan “would impose an undue hardship on the debtor and the debtor’s dependents.” 11 U.S.C. § 523(a)(8); *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 278 (2010) (“the bankruptcy court must make an independent determination of undue hardship . . . even if the creditor fails to object or appear in the adversary proceeding.”).¹ This inquiry is undertaken through a formal adversary proceeding in the bankruptcy court. *United Student Aid Funds*, 559 U.S. at 263-64; Fed. R. Bankr. P. 7001(6). The parties in that proceeding may stipulate to the existence of certain facts and recommend that the bankruptcy court find, based on such facts, that repayment of the student loan would cause the debtor an undue hardship.

The most common framework for assessing undue hardship is the so-called *Brunner* test, emanating from *Brunner v. New York State Higher Education Services Corp.*, 831 F.2d 395 (2d Cir. 1987). To discharge a student loan under the *Brunner* test, a bankruptcy court must find that the debtor has established that (1) the debtor cannot presently maintain a minimal standard of living if required to repay the student loan, (2) circumstances exist that indicate the debtor’s financial situation is likely to persist into the future for a significant portion of the loan repayment period, and (3) the debtor has made good faith efforts in the past to repay the student loan. *Id.* at 396.

Other courts have employed a “totality of circumstances” test (Totality Test) to determine whether repayment of student loan debt would cause an undue hardship. *See, e.g., In re Long*, 322 F.3d 549, 553 (8th Cir. 2003). The Totality Test looks to: (1) the debtor’s past, present, and reasonably reliable future financial resources; (2) a calculation of the debtor’s and their dependents’ reasonably necessary living expenses; and (3) any other relevant facts and circumstances surrounding each particular bankruptcy case. *Id.*

This Guidance applies in both *Brunner* and Totality Test jurisdictions. Courts have recognized the *Brunner* and Totality Tests “consider similar information—the debtor’s current and prospective financial situation in relation to the educational debt and the debtor’s efforts at repayment.” *In re Polleys*, 356 F.3d 1302, 1309 (10th Cir. 2004); *see also In re Jespersen*, 571

¹ Section 523(a)(8) requires the debtor to demonstrate an undue hardship to discharge nearly all federal student loans, excluding Health Education Assistance Loans, as well as private education loans that meet the definition of qualified education loans under the Internal Revenue Code. *See* 26 U.S.C. § 221(d)(1).

F.3d 775, 779 (8th Cir. 2009).² Both tests require assessment of the debtor’s income and reasonable expenses to determine whether the debtor has the present and future ability to maintain a “minimal standard of living” while making student loan payments. *See, e.g., In re Hurst*, 553 B.R. 133, 137 (B.A.P. 8th Cir. 2017) (“[I]f the debtor’s reasonable financial resources will sufficiently cover payment of the student loan debt—while still allowing for a minimal standard of living—then the debt should not be discharged.”) (citing *In re Jespersen*, 571 F.3d at 779). Finally, both tests direct the court to review the debtor’s past efforts at repayment. *In re Polleys*, 356 F.3d at 1309; *see also In re Bronsdon*, 435 B.R. 791, 797 (B.A.P. 1st Cir. 2010).

IV. Discussion of the Applicable Factors

As explained above, consideration of student loan debt discharge requires an evaluation of a debtor’s present, future, and past financial circumstances. This Guidance offers a framework for Department attorneys to apply each of these factors.

With respect to the first factor, the Guidance relies upon the Internal Revenue Service Collection Financial Standards (the IRS Standards) to assess whether a debtor can presently maintain a “minimal standard of living” if required to repay student loan debt. In particular, the Department attorney is advised to use the IRS Standards to evaluate a debtor’s expenses, and then to compare those expenses to the debtor’s income, to determine whether the debtor has a present ability to pay the loan.

With respect to the second factor, the Guidance uses presumptions for determining whether inability to repay is likely to persist in the future. The Guidance recognizes, however, that even in the absence of such presumptions a debtor may be able to establish that their inability to pay will continue in the future.

With respect to the third factor, the Guidance identifies certain objective criteria that evidence a borrower’s good faith. In addition, the Guidance discusses how to evaluate a debtor’s

² The Eighth Circuit has described the Totality Test as “less restrictive” than the *Brunner* framework, *In re Long*, 322 F.3d at 554, but it has also recognized that the distinction between the standards “may not be that significant.” *Jespersen*, 571 F.3d at 779 n.1, 782. *See, e.g., In re Long*, 322 F.3d at 554-55 (“Simply put, if the debtor’s reasonable future financial resources will sufficiently cover payment of the student loan debt—while still allowing for a minimal standard of living—then the debt should not be discharged. Certainly, this determination will require a special consideration of the debtor’s present employment and financial situation—including assets, expenses, and earnings—along with the prospect of future changes—positive or adverse—in the debtor’s financial position”); *see also Jespersen*, 571 F.3d at 782 (the totality approach also requires consideration of “evidence of a less than good faith effort to repay . . . student loan debts”). The Guidance does not supersede applicable case law in the circuits. Department attorneys should advance the principles and goals described in this Guidance consistent with that case law.

payment history and decision to participate in an income-driven repayment plan, and clarifies that neither of these factors are dispositive evidence where other evidence of good faith exists.

Finally, the Guidance also provides direction to Department attorneys regarding the treatment of a debtor's assets and the availability of partial discharge.

The Attestation provided with this Guidance will assist in the assembly of the information needed to assess these factors.³ Department attorneys are expected to review completed Attestations in consultation with Education.

A. Assessment of Present Circumstances

The first factor relevant to whether a student loan debtor can meet the statutory undue hardship standard requires the debtor to prove an inability to presently maintain “a minimal standard of living” while making student loan payments. To address this factor, the Department attorney should complete two steps. First, the Department attorney should use the IRS Standards to determine the debtor's “allowable” expenses. Second, the attorney should compare those allowable expenses to the debtor's income to determine whether the debtor has income after expenses with which to make student loan payments. If the debtor's allowable expenses exceed their gross income, this element of the analysis is satisfied. If the debtor's financial circumstances changed since filing the initial bankruptcy petition, the Department attorney can look to the debtor's actual financial circumstances when making an undue hardship determination. *Cf. In re Walker* 650 F.3d 1227, 1232 (8th Cir. 2011).

I. Assessment of the Debtor's Expenses

The Attestation solicits expense information from debtors in categories corresponding to the IRS Standards, particularly the portions of the IRS Standards described as “National and Local Standards” and “Other Necessary Expenses.”⁴ The IRS Standards are a useful guide to assess a debtor's expenses for purposes of the “minimal standard of living” inquiry. Use of these standards will ensure more consistent and equitable treatment of debtors seeking discharge. The IRS has established and updated the IRS Standards to determine appropriate collection actions where taxpayers have outstanding unpaid tax obligations. The IRS Standards evaluate what

³ As discussed in more detail below, the Attestation requires a debtor to present information relevant to the Department attorney's analysis in an efficient, organized manner. If the debtor's satisfaction of the requirements for discharge are clearly demonstrated by the complaint or other facts available outside the Attestation, then upon verification of those facts, a Department attorney may recommend discharge without requiring that the debtor complete the Attestation.

⁴ Links to the IRS Standards are found at <https://www.irs.gov/businesses/small-businesses-self-employed/collection-financial-standards>.

expenses are “necessary to provide for a taxpayer’s health and welfare[.]”⁵ or, as described in the IRS Collection Manual, “the *minimum* a taxpayer and family needs to live.”⁶ Courts have recognized the IRS Standards as useful objective criteria in assessing “undue hardship” under Section 523(a)(8). *See, e.g., In re O’Hearn*, 339 F.3d 559, 565 (7th Cir. 2003); *In re Cota*, 298 B.R. 408, 415 (Bankr. D. Ariz. 2003). The IRS Standards list certain expenses (the National and Local Standards) for which they provide a recommended maximum allowance, but also recognize other potential expenses (Other Necessary Expenses) that are potentially necessary for an individual’s health and welfare.

Allowance of Expenses in National Standard Categories: The IRS National Standards consist of tables of allowable expense amounts in the following categories: food; housekeeping supplies; apparel and services; personal care products and services; and miscellaneous. Where the debtor’s expenses are below the amount allowed under the IRS National Standards, no further inquiry into the debtor’s actual expense amount is needed and the debtor is allowed the full National Standards amount. If a debtor’s reported expenses exceed the IRS National Standard amount, a debtor’s reasonable explanation for why particular actual expenses exceed the standard should be considered carefully by the Department attorney, in consultation with Education, and may be accepted if allowing the additional expenses is warranted by the debtor’s circumstances and would comport with a “minimal standard of living.”⁷

Allowance of Expenses in Local Standards Categories: The Local Standards provide expense standards for the categories of housing, utilities, and transportation. Unlike the expenses in the National Standards category, for the Local Standards categories, the Department attorney should limit the debtor to their *actual* expenses. To the extent such expenses do not exceed the amount prescribed in the Local Standards for the debtor’s location and household size, Department attorneys should consider the debtor’s actual expenses in these categories to be consistent with a minimal standard of living and treat such amount as allowed. If the debtor’s actual expense exceeds the Local Standards amount, Department attorneys should generally limit the debtor’s allowable expense to the standard amount. However, as with those expenses categorized as National Standards expenses, the Department attorney should, in consultation

⁵ IRS, *Collection Financial Standards*, <https://www.irs.gov/businesses/small-businesses-self-employed/collection-financial-standards>.

⁶ IRS, Internal Revenue Manual: Part 5.15.1.8 (July 24, 2019), https://www.irs.gov/irm/part5/irm_05-015-001#idm139862108264304 (emphasis added).

⁷ The decision whether to allow expenses in excess of the National and Local Standards will necessarily be fact-intensive, but allowable excess expenses could, for example, include specific health-related costs, costs for special dietary needs, unique commuting requirements, or other needs of the debtor or dependents.

with Education, carefully consider and accept a debtor's reasonable explanation for the need for the additional expenses.

Allowance of Other Necessary Expenses: The IRS Standards recognize "Other Necessary Expenses" in addition to the National and Local Standards expenses. The Attestation requests that debtors list expenses in these "Other Necessary Expense" categories. For example, the IRS Standards allow expenses for alimony and child support payments if they are court-ordered and actually being paid, as well as for baby-sitting, day care, nursery and preschool costs where reasonable and necessary. These Other Necessary Expenses are consistent with a "minimal standard of living," so long as they are necessary and reasonable in amount.⁸

Allowance for Reasonable Expenses Not Incurred: In addition to the comparison of expenses and income described above, Department attorneys should also recognize there may be circumstances in which a debtor's actual expenditures fall below the expenses required to maintain a minimal standard of living and to meet basic needs. For example, a debtor may be living in housing that the debtor is not paying for (e.g., the debtor is staying with a family member) or living in substandard or overcrowded housing but should not be required to remain there indefinitely. Likewise, a debtor may be forgoing spending on childcare, dependent care, technology, or healthcare that would otherwise be expenses one would reasonably expect to maintain a minimal living standard. A simple comparison of present expenses and income could unduly assess the debtor's financial situation against a standard that is below a minimal standard of living. In such circumstances, it would be inappropriate to conclude a debtor possesses income with which to make student loan payments and ignore the debtor's actual living standard. To address these situations, the Attestation provides an opportunity for a debtor to identify and explain expenses the debtor would incur if able to address needs that are unmet or insufficiently provided for. The Department attorney should use those projected expenses in assessing the debtor's present and future financial circumstances. Unless the amount of the projected expenses exceeds the Local Standards, it is not necessary to probe the debtor's calculation.

Appendix B includes specific examples of the recommended analysis of expenses.⁹

⁸ The Department attorney may consult the IRS Standards themselves to assist in determining whether these expenses are necessary to a debtor's minimal standard of living.

⁹ The Attestation process is intended to be distinct from the bankruptcy "means test," which is used to determine a debtor's eligibility for Chapter 7 relief. Although the means test also uses the IRS Standards as part of its calculation of a debtor's household disposable income for the purpose of establishing bankruptcy eligibility, courts have recognized that the means test is not a test of a "minimal standard of living." See *In re Miller*, 409 B.R. 299, 319–320 (Bankr. E.D. Pa. 2009) (means test not appropriate to determine whether the "undue hardship" standard is met) (citing *In re Savage*, 311 B.R. 835, 840 n.7 (1st Cir. B.A.P. 2004)). Moreover, the means test calculation differs from the Attestation in specific ways, including that (1) the means test (unlike

2. *Comparison of Expenses with the Debtor's Gross Income*

After determining the debtor's allowable household expenses using the National and Local Standards and Other Necessary Expenses, the Department attorney should compare the debtor's expenses to the debtor's household gross income. Gross income includes income from employment of the debtor and other household members, as well as unemployment benefits, Social Security benefits and other income sources. Debtors normally provide this information in the Schedule I filing. Where debtors filed this form less than 18 months prior to the adversary proceeding, the debtor may use the information on Schedule I to complete the Attestation. Where Schedule I was filed more than 18 months prior to the adversary proceeding or the debtor's circumstances have changed, the Attestation directs the debtor to provide the new income information.

Using the expense and income information provided in the Attestation, the Department attorney should determine whether the debtor possesses income with which to make student loan payments. If the debtor's allowable expenses exceed the debtor's income, the minimal standard of living requirement is satisfied and the debtor may be eligible for a student loan discharge, subject to consideration of the additional factors below. If, however, after considering the analysis described above, the debtor has sufficient discretionary income to make full student loan payments as required under their loan agreement, the debtor has not satisfied the test for undue hardship.¹⁰ Where a debtor's income allows for payment toward the student loan debt but in an amount insufficient to cover the required monthly student loan payment, the Department attorney

the Attestation) is required only for "consumer" debtors whose income exceeds a state "median," and (2) in practice, the means test often allows expenses regardless of their necessity to the debtor's basic or minimal standard of living, such as payments on multiple vehicles or for real property other than the debtor's residence.

¹⁰ Department attorneys are expected to consult with Education to determine the monthly repayment amount. Generally, where permitted in a given jurisdiction, the Department attorney should use the monthly payment amount due under a "standard" repayment plan for the student loan in question when determining whether the debtor has the ability to make payments. The standard repayment amount is the payment amount required to pay the student loan within the remaining term of the loan, as determined by Education. *See* 34 C.F.R. § 685.208. Where the account includes unpaid interest, Department attorneys should take care to ensure that the monthly payment amount would be sufficient to pay the loan obligation in full. Except as required by controlling law, the Department attorney should not use the monthly payment amount available through income-driven repayment plan options as the comparator. Finally, where a student loan has been accelerated, whether based on a debtor's payment default or otherwise, the Department attorney should, following consultation with Education, determine the standard repayment amount either prior to default or as calculated if the loan were removed from default status.

should consider the potential for a partial discharge (discussed more fully in Section IV.E. below).

B. Assessment of Future Circumstances

The second factor for discharge is whether the debtor's current inability to repay the debt while maintaining a minimal standard of living will likely persist for a significant portion of the repayment period. This showing is required in both *Brunner* Test and Totality Test jurisdictions. See *In re Thomas*, 931 F.3d 449, 452 (5th Cir. 2019); *In re Long*, 322 F.3d at 554.

A presumption that a debtor's inability to repay debt will persist is to be applied in certain circumstances, including: (1) the debtor is age 65 or older; (2) the debtor has a disability or chronic injury impacting their income potential;¹¹ (3) the debtor has been unemployed for at least five of the last ten years; (4) the debtor has failed to obtain the degree for which the loan was procured; and (5) the loan has been in payment status other than 'in-school' for at least ten years.¹² The Attestation is designed to identify any such circumstances, and it advises the debtor to disclose all of the circumstances applicable to their situation and not rely exclusively on a single presumptive basis for claiming a continuing inability to repay.

The presumptions identified in this Guidance are rebuttable. Although circumstances supporting rebuttal of a presumption will likely be uncommon, the Department attorney need not apply a particular presumption if the debtor's attestation nonetheless indicates a likely future ability to pay. Such a rebuttal must be based on concrete factual circumstances. Mere conjecture about the borrower's future ability is not enough. For example, the presumption in favor of a

¹¹ The debtor may, but is not required to, submit information from a treating physician indicating that the debtor suffers from a disability or chronic injury impacting their income potential, and when provided, that information should be considered carefully. The presumption may be applied even in the absence of a formal medical opinion.

Education offers Total and Permanent Disability (TPD) discharge for qualifying borrowers with certain severe disabilities. Because TPD discharge has its own requirements, the existence of that potential administrative relief generally should not foreclose the debtor from showing a future inability to pay. If, in the view of the Department attorney, the debtor may qualify for TPD discharge, the attorney can provide information to the debtor about the program. Finally, Education's denial of a TPD discharge request is not dispositive of the future circumstances analysis: a prior denial for TPD discharge only implies that Education determined the borrower is likely to have some ability to earn income at the time of the application based on the information provided and evaluation criteria in place, but does not otherwise suggest that the debtor's income is sufficient to service student loan debt or that future circumstances are likely to change.

¹² In the case of consolidation loans, the length of time the debtor has been in repayment includes periods in repayment on the original underlying loans.

debtor who failed to obtain a degree may be rebutted by evidence that the debtor has received employment offers with salaries significantly higher than their current income. In sum, a presumption may be rebutted by evidence that a debtor's future financial circumstances render them able to pay their outstanding debt.

The presumptions identified above are not the sole bases upon which a future inability to pay may be found. A debtor may attest to any facts the debtor believes are relevant to future inability to pay, and the Department attorney should review the Attestation to determine whether the facts presented by the debtor satisfy the standards for proof of likely persistence of inability to pay. A Department attorney may find, for example, that a debtor's financial circumstances are unlikely to improve in the future where the debtor has a significant history of unemployment, even if the debtor's unemployment does not meet the criteria for a presumption. A stipulation may also be appropriate, even absent a particular presumption, where the institution that granted the debtor's degree has closed, and that closure has inhibited a debtor's future earning capacity.¹³ Education has indicated that closure of a school after completion of the debtor's degree may affect a debtor's future ability to pay where the debtor incurs reputational harm from such closure or where the debtor's lack of access to records hampers employment efforts.¹⁴

C. Assessment of Good Faith

Whether a debtor has demonstrated good faith with regard to repayment of student loan debt depends upon the debtor's actions relative to their loan obligation.¹⁵ Good faith may be demonstrated in numerous ways and the good faith inquiry "should not be used as a means for courts" or Department attorneys "to impose their own values on a debtor's life choices." *Polleys*, 356 F.3d at 1310. A debt should not be discharged if the debtor has "willfully contrive[d] a hardship in order to discharge student loans," *id.*, abused the student loan system, *In re Coco*, 335 Fed. App'x 224, 228-29 (3rd Cir. 2009), for example, by committing fraud in connection with obtaining the loans, or otherwise demonstrated a lack of interest in repaying the debt, *id.*

¹³ Education offers a loan discharge for students attending a school that closed while the borrower was in attendance or shortly after withdrawal. As with a TPD discharge, the availability of this administrative relief should have limited influence on the analysis discussed in this Guidance. Debtors may not receive the "closed-school" discharge for a range of reasons that do not implicate their financial status.

¹⁴ The presumptions discussed in this Guidance are intended to direct a Department attorney's assessment of the debtor's situation and do not shift any burden of proof in undue hardship litigation. Before the court in the adversary proceeding, the debtor retains the burden of proof on all elements of the undue hardship claim.

¹⁵ In discussing good faith, this Guidance intends to encompass satisfaction of both Prong Three of the *Brunner* test and good faith as considered under the Totality Test in evaluating the debtor's past efforts at repayment.

Where the debtor has taken at least one of the following steps and in the absence of countervailing circumstances as discussed below, the steps demonstrate good faith. We would normally expect the Department attorney to be able to determine the presence of any countervailing circumstances based on the information contained in the Attestation and provided by Education or that is publicly available.

Evidence of good faith: The following steps evidence good faith:

- making a payment;
- applying for a deferment or forbearance (other than in-school or grace period deferments);
- applying for an IDR plan;
- applying for a federal consolidation loan;
- responding to outreach from a servicer or collector;
- engaging meaningfully with Education or their loan servicer, regarding payment options, forbearance and deferment options, or loan consolidation; or
- engaging meaningfully with a third party they believed would assist them in managing their student loan debt.

The good faith standard also assesses criteria such as “the debtor’s efforts to obtain employment, maximize income and minimize expenses.” *In re Mosko*, 515 F.3d 319, 324 (4th Cir. 2008) (citing *In re O’Hearn*, 339 F.3d at 564); *see, e.g., In re Jespersen*, 571 F.3d at 780. A debtor’s handling of finances in a manner that suggests responsible management of their debts, including student loan debts, also suggests good faith. A debtor has minimized expenses if their expenses fall within the IRS Standards as discussed in this Guidance.¹⁶ Good faith can be satisfied where debtors’ personal or family obligations significantly reduce their employment opportunities or increase their expenses.” Issues concerning employment, income, and expenses are case-specific and may be highly dependent on a debtor’s family, community, and individual circumstances. Debtors may provide an explanation of those circumstances, and the Department attorney should weigh the explanation in consultation with Education.

Actual payment history and IDR enrollment: Department attorneys should consider the following two issues that frequently arise and deserve additional attention: a debtor’s actual payment history and a debtor’s enrollment or non-enrollment in an IDR. Department of Education studies have shown that the servicing of student loan debt has been plagued at times

¹⁶ By contrast, a debtor whose expenses exceed the IRS Standards should not be foreclosed from showing they have minimized expenses, and the Department attorney and Education should carefully assess any explanations debtors may provide for exceeding the standard expenses.

by administrative errors and dissemination of confusing and inaccurate information, and that these issues may have affected debtors' responses to their loan obligations. In addition, the Consumer Financial Protection Bureau has found that debtors have been wrongfully denied IDRPs and that monthly payments have been inaccurately calculated. *See* Consumer Financial Protection Bureau, *Supervisory Highlights* Fall 2022, Summer 2021, and Fall. The Bureau has also found that servicers falsely but affirmatively represented to borrowers that loans were never dischargeable in bankruptcy. *See* Consumer Financial Protection Bureau, *Supervisory Highlights*, Fall 2014 & Fall 2015. These problems have also given rise to a lack of trust by debtors in the repayment process. As a result, the good faith inquiry should not disqualify debtors who may not have meaningfully engaged with the repayment process due to possible misinformation, wrongful IDRPs, or a lack of adequate information or guidance. When considering a debtor's attempts to engage with their student loan, attorneys should look at the entire life of the loan rather than merely considering the recent history.

Department attorneys should consider payment history within the broader context of the debtor's financial means and personal circumstances. Where other evidence of good faith exists, including evidence that the debtor lacked financial means to pay or that the debtor made meaningful contact with Education or the servicer to explore repayment options, the failure to repay (or inconsistent or limited repayment) does not indicate a lack of good faith. In some circumstances, the Department of Education may not have records or have incomplete records about a debtor. The absence of ED data should not reduce the weight of the borrower's evidence.¹⁷

Department attorneys should also exercise caution in assessing IDRPs. IDRPs are intended to provide a means through which debtors may respond to difficult financial circumstances, and the model Attestation asks a debtor to identify if they enrolled in an IDRPs and to offer an explanation if they did not. Where a debtor participated in an IDRPs, this factor is evidence of good faith.¹⁸

¹⁷ Between March 2020 and December 2022, borrowers were placed into an automatic COVID-related forbearance. The vast majority of borrowers remained in that forbearance for the duration of the period because it included a zero percent interest rate and eligibility toward IDRPs and PSLF forgiveness. Due to this extended period, many debtors may not have taken any action toward their loans. This period of inactivity is not evidence of bad faith and actions taken prior to March 2020 should not be discounted because they are not recent.

¹⁸ *See, e.g., In re Tingling*, 990 F.3d 304, 309 (2d Cir. 2021); *In re Krieger*, 713 F.3d 882, 884 (7th Cir. 2013); *In re Coco*, 2009 WL 1426757, at *228–229; *In re Mosko*, 515 F.3d at 323; *In re Barrett*, 487 F.3d 353, 363–64 (6th Cir. 2007); *In re Mosley*, 494 F.3d 1320, 1327 (11th Cir. 2007); *In re Jespersen*, 571 F.3d at 782–83; *In re Nys*, 446 F.3d 938, 947 (9th Cir. 2007); *In re Alderete*, 412 F.3d 1200, 1206 (10th Cir. 2005); *In re Bronsdon*, 435 B.R. at 802.

However, where a debtor has not enrolled in an IDRPs, the Department attorney should give significant weight to the fact that, as noted, Education has found widespread problems with IDRPs servicing. In particular, Education has advised that IDRPs have not always been administered in ways that have been effective for, or accessible to, student loan debtors. In some cases, borrowers may not have been aware of their IDRPs options. At times, servicers failed to inform borrowers about these options in favor of other repayment plans or nonpayment options like forbearance. Likewise, many schools have failed to advise prospective borrowers about IDRPs, despite being legally obligated to do so. *See* 20 U.S.C. § 1092(d). Thus, non-enrollment alone does not show a lack of good faith.

Where a debtor did not enroll in an IDRPs, the Department attorney is expected to look first to the debtor's Attestation response and to accept any reasonable explanation or evidence supporting the debtor's non-enrollment in an IDRPs. Acceptable explanations or evidence could include, for example:

- that the debtor was denied access to, or diverted or discouraged from using, an IDRPs, and instead relied on an option like forbearance or deferment;
- that the debtor was provided inaccurate, incomprehensible, or incomplete information about the merits of an IDRPs;
- that the debtor had a plausible belief that an IDRPs would not have meaningfully improved their financial situation;
- that the debtor was unaware, after reasonable engagement, of the option of an IDRPs and its benefits; or
- where permitted under controlling case law, that the debtor was concerned with the potential tax consequences of loan forgiveness at the conclusion of an IDRPs.

Where these explanations are based in part on contact or attempted contact with Education, servicers, or trusted third parties, they evidence good faith.

If a debtor provides an explanation that lacks sufficient detail or is not otherwise acceptable (or fails to provide any explanation), the debtor may still demonstrate good faith through other actions such as making payments, responding to outreach from a servicer or collector, enrolling in deferment or forbearance, making contact with Education or their servicer about their loan, or otherwise taking professional or financial steps that indicate a good-faith attempt to meet their loan obligations. In sum, we would expect Department attorneys not to oppose discharge for lack of good faith where there is a basis to conclude that the debtor's IDRPs non-enrollment was not a willful attempt to avoid repayment.

D. Consideration of a Debtor's Assets

A debtor's assets must also be considered in the undue hardship analysis. Department attorneys, however, should not give dispositive weight to the existence of assets that are not easily converted to cash or are otherwise critical to the debtor's well-being, and should be cautious in concluding that the existence of real property or other financial assets demonstrates a lack of undue hardship.¹⁹

The Attestation facilitates this inquiry by seeking information regarding the debtor's assets. It may be appropriate to suggest that a debtor consider liquidating an asset where the asset is unnecessary to the debtor's and dependents' support and welfare. Residential real property and funds in retirement accounts are often exempt from collection under federal or state exemption laws. Although the exempt status of property may not be dispositive of whether that property is necessary for a minimal standard of living, the Department attorney should be careful in considering such property in the undue hardship analysis. *In re Marcotte*, 455 B.R. 460, 471 (Bankr. D.S.C. 2011).²⁰ The Department recognizes that liquidating a primary residence or retirement account is an extreme measure and therefore requests to liquidate those assets should be exceptionally rare.

E. Partial Discharge.

Where appropriate and permissible under governing case law, Department attorneys may recognize the availability of partial discharge. Partial discharge occurs where the bankruptcy

¹⁹ The debtors' assets may be liquidated by a bankruptcy trustee to fund payments to creditors of the estate. Such property, if liquidated by the trustee, would not be available for the payment of student loan debt and thus should not be considered.

²⁰ The question of how exempt property should be considered under the "undue hardship" analysis has generated disagreement among courts. Generally, courts find that "the exempt character of an asset does not necessarily preempt its relevance to a hardship evaluation." *In re Armesto*, 298 B.R. 45, 48 (Bankr. W.D.N.Y. 2003); *see also In re Nys*, 446 F.3d at 947 (recognizing courts must consider availability of assets "whether or not exempt, which could be used to pay the loan"); *In re Gleason*, 2017 Bankr. LEXIS 3455, at *14 (Bankr. N.D.N.Y. Oct. 6, 2017) (allowing consideration of IRA or 401K account, regardless of exemption status). Other courts, however, have noted the necessity to weigh the policies underlying certain exemptions, for example, the homestead exemption in the debtor's residence, before considering such assets in assessing undue hardship. *Schatz v. Access Grp., Inc. (In re Schatz)*, 602 B.R. 411, 427-28 (1st Cir. B.A.P. 2019) (reversing bankruptcy court's treatment of exempt equity in homestead as dispositive of a lack of undue hardship). Notably, the *Schatz* opinion states that the bankruptcy court failed to make any finding whether the equity in the debtor's home could be liquidated without imposing an undue hardship on the debtor. *Id.* at 428.

court discharges a portion of the outstanding student loan debt while requiring payment of the remainder.²¹

Department attorneys may consider recommending partial discharge based upon a determination that the debtor has the ability to make some payments on the loan while maintaining a minimal standard of living, but an inability to make the full standard monthly repayment due. A partial discharge should not result in a remaining (undischarged) balance larger than what a debtor's discretionary income (as determined under the Prong One analysis) permits them to pay off in monthly payments over the remaining loan term. In practice, a full discharge is appropriate for debtors whose expenses are equal to or greater than their income where they meet the other elements of the analysis. Partial discharge may also be available to a debtor who is able to liquidate assets to pay a portion of the debt but remains unable to pay the remainder while maintaining a minimal standard of living. *See In re Stevenson*, 463 B.R. 586, 598-99 (Bankr. D. Mass. 2011); *In re Clavell*, 611 B.R. 504, 531-32 (Bankr. S.D.N.Y. 2020).

V. Procedures

Although the process for soliciting and reviewing the Attestation may vary from case to case, Department attorneys should generally observe the following procedures in soliciting Attestations.

A. **Submission of the Attestation**

Upon a debtor's commencement of an adversary proceeding seeking discharge pursuant to 11 U.S.C. § 523(a)(8), the Department attorney should provide a debtor the opportunity to complete and submit the Attestation. The Department attorney is encouraged to contact the debtor or debtor's counsel as soon as practicable after service of process in an adversary

²¹ Section 523(a)(8) is silent with respect to whether bankruptcy courts may discharge part of a student loan based on undue hardship. The concept, however, has been recognized by several courts of appeals. *See generally In re Miller*, 377 F.3d 616, 622 (6th Cir. 2004); *In re Saxman*, 325 F.3d 1168, 1173-1174 (9th Cir. 2003); *In re Alderete*, 412 F.3d at 1207; *In re Cox*, 338 F.3d 1238, 1243 (11th Cir. 2003). In most jurisdictions where no circuit level authority exists, lower courts have permitted partial discharges. *See, e.g., In re Rumer*, 469 B.R. 553, 564 n.12 (Bankr. M.D. Pa. 2012) (recognizing majority rule is to allow partial discharges); *In re Gill*, 326 B.R. 611, 644 (Bankr. E.D. Va. 2005) (recognizing lower courts have generally allowed partial discharges); *but see, e.g., In re Conway*, 495 B.R. 416, 423 (B.A.P. 8th Cir. 2013) (explaining that the general rule prevents discharging parts of individual loans). Prior to any partial discharge, a debtor must have established all elements necessary for an undue hardship determination. *See In re Saxman*, 325 F.3d at 1175; *Hemar Ins. Co. of Am. v. Cox (In re Cox)*, 338 F.3d 1238, 1243 (11th Cir. 2003).

proceeding, advising the debtor of the opportunity to submit the Attestation for review by the United States. Any Attestation should be submitted by a debtor under oath by signing under penalty of perjury pursuant to 28 U.S.C. § 1746. The Attestation requests that a debtor provide documents corroborating the debtor's stated income (tax returns, or where appropriate, paystubs or other documents proving income). The Department attorney may seek additional evidence where necessary to support representations in the Attestation.

Education will provide debtors' account history and loan details to the Department and that information will be provided to the debtor with the Attestation form.

B. Time for Attestation

Ideally, the Department attorney would solicit the Attestation from the debtor at the outset of the case to permit early consideration whether to stipulate to facts relevant to undue hardship. The Department attorney is not required to impose any strict time limit for the Attestation.

C. Bankruptcy Court Authority

The Department attorney should advise debtors that although the United States may stipulate to facts relevant to undue hardship and recommend to the bankruptcy court that a finding of undue hardship is appropriate, the United States' position is not binding on the bankruptcy court, which will render its own determination whether a debtor has met the standard for an undue hardship discharge. Department attorneys and debtors should cooperate to file appropriate documents to enable the court to consider whether to issue an order to discharge student loan debt based upon undue hardship.

VI. Conclusion

The goal of this Guidance is to provide Department attorneys with a consistent and practical approach for handling student loan discharge litigation. Because of the fact-specific nature of such litigation, questions may arise about how the Guidance should be applied in particular cases. For assistance in interpreting and implementing the Guidance, Department attorneys are invited to contact the Commercial Litigation Branch, Corporate/Financial Litigation Section of the Civil Division.²²

²² This memorandum applies only to future bankruptcy proceedings, as well as (wherever practical) matters pending as of the date of this Guidance. This Guidance is an internal Department of Justice policy directed at Department components and employees. Accordingly, it is not intended to and does not create any rights, substantive or procedural, enforceable at law by any party in any matter.

Consumer Corner

BY STACY LUTKUS

Student Loan Discharge: Where Are We Headed?

The discharge and forgiveness of student loan debt has long¹ been a contentious topic, both inside and outside of bankruptcy circles. With escalating student loan debt levels² a focus of national attention, critics have called for a change to the legal landscape governing the dischargeability of student loan debt in bankruptcy. Courts considering the issue are bound to apply decades-old tests. Nonetheless, there are indications that change might be on the horizon, even as a new administration takes office.

Discharge of student loan debt³ in bankruptcy is governed by 11 U.S.C. § 523(a)(8). The provision requires a debtor to demonstrate that repaying the loan(s) at issue would impose “an undue hardship on the debtor and the debtor’s dependents.”⁴ The Bankruptcy Code does not define “undue hardship,” so its meaning has been left to the courts. Several decades of case law have resulted in the emergence of two tests to determine the dischargeability of student loans: the majority *Brunner* test, and the totality-of-the-circumstances test.

In *Brunner v. New York State Higher Educ. Servs. Corp.*,⁵ the U.S. Court of Appeals for the Second Circuit adopted a three-pronged test that a debtor must satisfy to obtain a discharge of student loan debt. The test requires a debtor to demonstrate that (1) he or she is unable, at his or her current level of income and expenses, to maintain a “minimal” standard of living if required to repay the loans; (2) additional circumstances exist indicating that his or her current state of affairs is likely to persist for a significant portion of the repayment period; and (3) he or she has made good faith efforts to repay

the loan.⁶ Significantly,⁷ the court observed that § 523(a)(8) indicates a “clear congressional intent to make the discharge of student loans more difficult than that of nonexcepted debt.”⁸

The *Brunner* test has since been adopted by the U.S. Courts of Appeals for the Third, Fourth, Fifth, Sixth, Seventh, Ninth, Tenth and Eleventh Circuits.⁹ The Eighth Circuit¹⁰ and the majority of lower courts in the First Circuit¹¹ apply the so-called totality-of-the-circumstances test, under which courts consider a debtor’s “past, present, and reasonably reliable future financial resources, reasonable and necessary living expenses, and any other relevant facts and circumstances.”¹² Despite this distinct nomenclature, the differences between the totality-of-the-circumstances test and the *Brunner* test are “modest, with many overlapping considerations.”¹³ Courts universally recognize the heavy burden of establishing undue hardship to obtain a discharge of student loan debt.¹⁴

Student loan borrowings account for roughly 9 percent of total U.S. household debt.¹⁵ Studies regarding the effect of increasing student debt levels on the broader economy abound. For example, according to one Federal Reserve Board study, a \$1,000 increase in student loan debt caused a decrease of approximately 1.5 percent in the home ownership rate among the study’s control group of borrowers¹⁶



Stacy Lutkus
McDermott Will
& Emery LLP
New York

Stacy Lutkus is a partner in McDermott Will & Emery LLP’s Business Restructuring Group in New York, and maintains an active pro bono practice, with a particular focus on representing the interests of children.

1 See Report of the Comm’n on the Bankr. Laws of the United States, H.R. Doc. No. 93-137, 93 Cong., 1st Sess. Pt. II (1973), reprinted in *Collier on Bankruptcy*, App. Pt. 4(C) at 4-710 (16th ed. 2024) (explaining that exception to discharge for student loan debt “responds to the rising incidence of consumer bankruptcies of former students motivated primarily to avoid payment of educational loan debt”).

2 See Federal Reserve Bank of New York, Center for Microeconomic Data, Quarterly Report on Household Debt and Credit (November 2024) (reporting \$1.61 trillion in outstanding student loan debt in U.S. as of end of third fiscal quarter of 2024).

3 In *Homaidan v. Sallie Mae Inc.*, 3 F.4th 595 (2d Cir. 2021), the U.S. Court of Appeals for the Second Circuit found that § 523(a)(8) does not apply to certain direct-to-consumer private loans that exceed the cost of attendance because they do not comprise “an obligation to repay the funds received as an educational benefit.” *Id.* at 601 (quoting 11 U.S.C. § 523(a)(8)(A)(ii) (internal quotation marks omitted)). Recognizing that § 523(a)(8)(B) exempts from discharge any loan that is a “qualified education loan” as defined in the Internal Revenue Code, the Second Circuit explained that “for a loan to be ‘qualified’ ... the student must attend an eligible educational institution and the loan must fund only higher education expenses.” *Id.* at 601, n.3 (citations omitted).

4 11 U.S.C. § 523(a)(8).

5 831 F.2d 395 (2d Cir. 1987).

6 *Id.* at 396.

7 Given the “fresh start policy” embodied in the Bankruptcy Code, *Grogan v. Garner*, 498 U.S. 279, 826-87 (1991), courts considering the dischargeability of other types of debt strictly construe exceptions to discharge against the creditor. See, e.g., *Pazdzierz v. First Am. Title Ins. Co. (In re Pazdzierz)*, 718 F.3d 582, 586 (6th Cir. 2013) (citation omitted); *Oklá. Dept. of Sec. ex rel. Faught v. Wilcox*, 691 F.3d 1171, 1174 (10th Cir. 2012) (internal quotation marks and citation omitted); *In re Crosswhite*, 148 F.3d 879, 881 (7th Cir. 1998) (citation omitted); *In re Cohn*, 54 F.3d 1108, 1120 (3d Cir. 1995).

8 *Id.*

9 See *In re Frushour*, 433 F.3d 393, 400 (4th Cir. 2005); *In re Oyster*, 397 F.3d 382, 385 (6th Cir. 2005); *Educ. Credit Mgmt. Corp. v. Polleys*, 356 F.3d 1302, 1309 (10th Cir. 2004); *In re Gerhardt*, 348 F.3d 89 (5th Cir. 2003); *In re Cox*, 338 F.3d 1238, 1239 (11th Cir. 2004); *In re Pena*, 155 F.3d 1108, 1112 (9th Cir. 1998); *In re Faish*, 72 F.3d 298, 306 (3d Cir. 1995); *In re Roberson*, 999 F.2d 1132, 1135 (7th Cir. 1993).

10 See *Long v. Educ. Credit Mgmt. Corp.*, 322 F.3d 549 (8th Cir. 2003).

11 See *Nash v. Conn. Student Loan Found. (In re Nash)*, 446 F.3d 188, 190 (1st Cir. 2006) (declining to “pronounce our views of a preferred method of identifying a case of undue hardship”).

12 *Educ. Credit Mgmt. Corp. v. Jespersion (In re Jespersion)*, 571 F.3d 775, 779 (8th Cir. 2009).

13 *Bronsdon v. Educ. Credit Mgmt. Corp. (In re Bronsdon)*, 435 B.R. 791, 798 and n.12 (B.A.P. 1st Cir. 2010) (adopting totality-of-circumstances test and recognizing that “only practical difference between the two tests is that under *Brunner*, the debtor must establish that she made a good faith effort to repay the loans”) (citing *Educ. Credit Mgmt. Corp. v. Kelly (In re Kelly)*, 312 B.R. 200, 206 (B.A.P. 1st Cir. 2004)); see also *Nash*, 446 F.3d at 190 (noting that bankruptcy court had applied totality-of-circumstances test “but was of the view that courts essentially looked at the same factors under either test”).

(this is equivalent to an average delay of 2.5 months in home ownership¹⁷). Other studies have attributed student loan debt to a reduction in the likelihood of entrepreneurship¹⁸ and a reduction in the likelihood of stock ownership.¹⁹

Citing these factors and others as its bases, in 2022 the Biden administration commenced efforts to relieve student loan debt. In a June 2023 decision, the U.S. Supreme Court found that the comprehensive student loan forgiveness program established by the Secretary of Education was not authorized under the Higher Education Relief Opportunities for Students (HEROES) Act of 2003 — a bipartisan 2003 law addressing national emergencies invoked by the Secretary to carry out the program.²⁰ The program would have resulted in up to \$20,000 in debt relief to Pell Grant recipients and up to \$10,000 in debt relief to other qualified borrowers, in each case subject to income and other requirements and qualifications. Revised efforts, most of which met with varying degrees of opposition in the federal courts,²¹ followed.

Separately, the Department of Justice (DOJ) announced a revised process developed in coordination with the Department of Education (DOE) for handling cases in which borrowers seek to discharge federal student loan debt in bankruptcy.²² The process is set forth in a guidance memo provided to DOJ attorneys for reference in connection with the representation of the government in adversary proceedings filed by debtors seeking a discharge of student loan debt.²³ It advises that the government should stipulate to facts supporting undue-hardship claims and recommend discharge to the bankruptcy court where the debtor, based on information provided in a government-developed attestation form, satisfies three stated conditions that effectively mirror the *Brunner* test (*i.e.*, “(1) the debtor presently lacks an ability

to repay the loan; (2) the debtor’s inability to pay the loan is likely to persist in the future; and (3) the debtor has acted in good faith in the past in attempting to repay the loan”²⁴).

According to the guidance memo, the procedures are intended to ensure that “discharges are sought and received when warranted by the facts and law.”²⁵ The memo also provides that DOJ attorneys should consult with the DOE to evaluate the specific circumstances of each case.²⁶ According to the results of a survey of all 94 U.S. Attorneys’ Offices conducted after the first year of implementation of the revised process, borrowers have reaped myriad intended benefits, including an increased number of court judgments providing full or partial discharge.²⁷

It remains to be seen whether the new administration will alter, roll back or leave the revised process in place. Notably, in 2018 the DOE under the prior Trump administration published a request for public comment on factors to be considered in evaluating undue-hardship claims in connection with its reconsideration of its then-current policy regarding the discharge of student loan debt in bankruptcy.²⁸

Regardless of the view eventually espoused by the new administration, the government’s position with respect to discharge is not binding on the bankruptcy court. Similar to the described actions of the Executive Branch, recent jurisprudence may indicate a trend toward flexibility in the determination of whether a debtor has demonstrated undue hardship. Circuit and other courts have questioned the stringency of the *Brunner* requirements.²⁹

Congress also is tuned in to the issue of dischargeability in bankruptcy. In August 2021, Sens. Dick Durbin (D-Ill.), John Cornyn (R-Texas) and Josh Hawley (R-Mo.) introduced a bipartisan bill amending § 523(a).³⁰ A key provision of the bill would allow for the discharge of student loan debt 10 years after the first loan payment is due while retaining the current concept of dischargeability at any time in cases of undue hardship.³¹ A separate provision would require institutions of higher education that have at least one-third of their students receiving federal student loans to partially repay a discharged loan to the DOE, with the repayment amount dependent on the institution’s average rates of student loan default and repayment.³² While the bill died in committee after no action was taken, the measure bears watching, as it is common for legislative text to be reintroduced in subsequent sessions of Congress.³³

14 See, e.g., *Jespersion*, 571 F.3d at 779 (8th Cir. 2009) (“The debtor has the burden of proving undue hardship ... [and] [t]he burden is rigorous.”); *Nash*, 446 F.3d at 191 (recognizing debtor’s “formidable task” in establishing undue hardship because “Congress has made the judgment that the general purpose of the Bankruptcy Code to give honest debtors a fresh start does not automatically apply to student loan debtors”); *Frushour*, 433 F.3d at 401 (“The second [*Brunner*] factor is ... a demanding requirement”); *Educ. Credit Mgmt. Corp. v. Curiston*, 351 B.R. 22, 29 (D. Conn. 2006) (“[T]he additional circumstances element [of the *Brunner* test] sets a high standard of proof.”); *Williams v. N.Y. State Higher Educ. Serv. Corp.* (In re *Williams*), 296 B.R. 298, 302 (S.D.N.Y. 2003) (“A debtor carries a heavy burden when she seeks to establish an undue hardship under section 523(a)(8).”); *aff’d*, 84 Fed. Appx 158 (2d Cir. 2004); *In re Kelly*, 351 B.R. 45, 52 (Bankr. E.D.N.Y. 2006) (“Establishing undue hardship is a ‘heavy burden’ for any debtor.”) (footnote and citation omitted); see also, e.g., *Traversa v. Educ. Credit Mgmt. Corp.*, 2010 U.S. Dist. LEXIS 117559, at *9 (D. Conn. Nov. 5, 2010), *aff’d*, 444 Fed. Appx 472 (2d Cir. 2011); *Bridgeforth v. United States Dep’t of Educ.* (In re *Bridgeforth*), 2022 Bankr. LEXIS 209, at *3 (Bankr. M.D. Pa. Jan. 26, 2022); *Magsino v. United States Dep’t of Educ.* (In re *Magsino*), 2014 Bankr. LEXIS 1365, at *13 (Bankr. W.D.N.C. April 4, 2014); *Duval v. IRS* (In re *Duval*), 2012 Bankr. LEXIS 1391, at *12 (Bankr. S.D.N.Y. April 3, 2012).

15 See Federal Reserve Bank of New York Quarterly Report on Household Debt and Credit (November 2024).

16 Alvaro A. Mezza, Daniel R. Ringo, Shane M. Sherlund & Kamila Sommer, “Student Loans and Homeownership,” Washington: Bd. of Governors of the Fed. Reserve Sys. 3 (2017), doi.org/10.17016/FEDS.2016.0101r (unless otherwise specified, all links in this article were last visited on Dec. 27, 2024).

17 *Id.*

18 See Thomas Korankeye, “Student Loan Debt and U.S. Married Households’ Stock Investment Decisions,” *Econ. Analysis Letters* 2(4) 13-18 (2023); Karthik Krishnan & Pinshuo Wang, “The Cost of Financing Education: Can Student Debt Hinder Entrepreneurship?,” *Mgmt. Sci.* 65(10): 4522-4554 (2018).

19 See Jordan Coakley & Meng Li, “Impact of Student Loan Debt on Stock Ownership: An Analysis Based on the Survey of Consumer Finances,” 20(6) *J. Accounting & Fin.* 31 (2020).

20 See *Biden v. Nebraska*, 600 U.S. 477 (2023).

21 See Katie Lobosco, “Federal Appeals Court Could Rule Soon on Biden’s Student Loan Repayment Plan. Here’s What Borrowers Need to Know,” CNN (Oct. 24, 2024), cnn.com/2024/10/24/politics/student-loans-save-plan-court/index.html.

22 See “Justice Department and Department of Education Announce a Fairer and More Accessible Bankruptcy Discharge Process for Student Loan Borrowers,” U.S. Dep’t of Justice Office of Public Affairs (Nov. 17, 2022), justice.gov/opa/pr/justice-department-and-department-education-announce-fairer-and-more-accessible-bankruptcy.

23 “Student Loan Guidance,” U.S. Dep’t of Justice (2022), justice.gov/ust/student-loan-guidance.

24 *Id.* at 1.

25 *Id.* at 2.

26 See *id.*

27 See “Justice Department and Department of Education Announce Continuing Success of Student-Loan Bankruptcy Discharge Process,” U.S. Dep’t of Justice Office of Public Affairs (July 17, 2024), justice.gov/opa/pr/justice-department-and-department-education-announce-continuing-success-student-loan.

28 See United States Department of Education, Request for Information on Evaluating Undue Hardship Claims in Adversary Actions Seeking Student Loan Discharge in Bankruptcy Proceedings, 83 Fed. Reg. 7460 (Feb. 21, 2018).

29 See, e.g., *Krieger v. Educ. Credit Mgmt. Corp.*, 713 F.3d 882 (7th Cir. 2013) (“The statutory language is that a discharge is possible when payment would cause an ‘undue hardship.’ It is important not to allow judicial glosses ... to supersede the statute itself.”).

30 See Fostering Responsible Education Starts with Helping Students Through Accountability, Relief and Taxpayer Protection (FRESH START) S. 2598, 117th Cong. (2021) (referred to committee on judiciary).

31 See *id.*

32 See *id.*

33 See S. 2598, 117th Congress: FRESH START Through Bankruptcy Act, govtrack.us/congress/bills/117/s2598.

continued on page 57

Consumer Corner: Student Loan Discharge: Where Are We Headed?

from page 17

Conclusion

It is impossible to predict executive or legislative action or court decisions on any topic, but the fact that issues regarding dischargeability and forgiveness of student loan debt will persist as long as students continue to borrow is a sure bet. As

judicial precedent continues to evolve and policymakers continue to respond to the challenges posed by mounting student debt levels, outcomes will continue to significantly impact borrowers and, arguably, the entire economic landscape. The issue warrants close attention. **abi**

Copyright 2025
American Bankruptcy Institute.
Please contact ABI at (703) 739-0800 for reprint permission.

Below is a model supplemental retention agreement for use in student loan discharge adversary cases under the DoJ guidance. Please consider this a starting point and a “white label” document. Modify it in accordance with your jurisdiction’s local rules and practices as well as your firm’s practices as necessary. Stretto makes no guarantees or assurances that this document will be acceptable in any specific jurisdiction or court.

The Law Offices of _____
Supplemental Retainer Agreement – Student Loan Evaluation

The undersigned (also referred to as “I,” “you(r),” or “me”) wishes to retain the Law Offices of _____ (including its principals, employees, agents, representatives, and independent contractors, hereinafter referred to as the “Firm,” “we,” or “us”) to evaluate my student loan(s) for the purpose of evaluating their possible dischargeability. I understand that this will consist of three separate stages and that the fees described at each stage will either be included in my current Chapter 13 case or paid directly to the Firm. The Stages are as follows:

1. **Evaluation of Student Loan History and for Dischargeability:** The Firm will review and evaluate the history of each loan to be evaluated. This includes dispersal history, payment history, forbearance history, default history and current status. I agree to assisting the Firm where necessary in obtaining the appropriate records related to my loan(s). The Firm will prepare and provide a *Student Loan Bankruptcy Discharge Analysis* and, based upon the Firm’s understanding of Department of Education (DOE) and Department of Justice (DOJ) guidance, may recommend commencement of an Adversary Proceeding to Discharge my student loans. **The attorney fees charged by the Firm at this stage is \$ _____.**
2. **Preparation for Adversary Proceeding and Non-Bankruptcy Options:** Based on the guidance from the federal government, the Firm may recommend that prior to the commencement of an Adversary Proceeding that I take other actions, with the help of the Firm, to improve the standing of my loan(s). This may include taking action to get a loan out of default; the enrollment in an Income Driven Repayment plan (IDR); the refinancing of one or more loans, the application for a Total and Permanent Disability (TPD) administrative discharge or other actions. I agree to cooperate with the reasonable requests of the Firm in this regard. **The attorney fee charged by the Firm at this stage is \$ _____.**
3. **Initiation of an Adversary Proceeding.** This Stage is the filing of a lawsuit by the Firm on my behalf against the DOE with the goal being the discharge of my student loans or, if appropriate, a significant reduction in the balance and new payment terms. This Stage also encompasses the review of documents submitted by the DOE and preparation and submission of the Debtor’s Attestation. **The attorney fee charged by the Firm at this stage is \$ _____.**
4. **Attorney Fees and Chapter 13:** The above fees may be paid through my Chapter 13 plan, but I understand this may require an increase in my monthly payment.
5. **Litigation of Student Loan Adversary Proceeding:** This Agreement does not encompass litigation if the federal government does not agree to the discharge of my student loans. In such an event, ongoing litigation will be billed at the Firm’s prevailing hourly rates, currently \$ _____/hr. for attorneys and \$ _____/hr. for paralegals. The Firm may also require payment of an initial Retainer of \$ _____ and, if not paid within thirty (30) days of request for such, may the Firm may seek to withdraw from representation in the Student Loan Adversary Proceeding. (Withdrawal from representation in any Adversary Proceeding will not result in withdrawal in representing me in my bankruptcy.)
6. **Enrollment into Income-Driven Repayment Plan:** This Agreement does not encompass enrollment into an Income-Driven Repayment Plan if the federal government does not agree to the discharge of my student loans, or only agrees to a partial discharge of my student loans. If, after such determination is made, it is determined that enrollment into an eligible Income-Driven Repayment Plan is the best option for the remaining balance of the debt, the attorney charged by the firm to complete this enrollment will be \$ _____.

To assist the Firm in this matter, I hereby grant the Firm the following:

- Authority and Power of Attorney to obtain my credit report from any credit reporting agency

2025 ALEXANDER L. PASKAY MEMORIAL BANKRUPTCY SEMINAR

at the discretion of the Firm, as well as request my cell phone records from my provider, if applicable to my claims;

- Authority and Power of Attorney to obtain any records necessary from any source that document the status or history of my loan(s); and
- Authority and Power of Attorney to discuss any medical conditions and obtain any medical records from any source.

I hereby Acknowledge and Agree to the Following:

- I must stay in touch with the Firm. If I move or change telephone numbers or e-mail address, I will provide the new information as soon as possible. My failure to keep the Firm informed in writing of current address, phone numbers and email at all times will relieve the Firm of any responsibility caused by such failure, and the Firm may seek to withdraw from representing me regarding this Student Loan Adversary Proceeding;
- As the Firm's recommendation to begin the process described above is based upon the information I provided or that was obtained through my credit file regarding my loan(s), income, and budget, I must always tell the complete truth regarding these and must quickly provide the Firm with any and all information requested;
- Nothing in this agreement obligates the Firm to proceed from one Stage to the next. I understand that the Firm's decision to recommend or initiate the progression of the case is based upon its sole discretion and my ability to fund the fees associated with each Stage, based upon my Plan payment, is part of that analysis.
- The fees associated with each stage are billed and an application for payment through my Chapter 13 plan will be made when the work is begun and is not contingent upon any outcome; and
- No representation has been made as to the ultimate success of the Firm's efforts. I understand that the discharge or reduction of Student loans is based in large part on current government policy and that such policies are subject to change;
- If I filed by Chapter 13 bankruptcy with a spouse, their representation by the Firm regarding the discharge of any student loans they may have are not included in this Agreement;
- The Firm will retain my file for five (5) years from the date of this retainer agreement at which point it may be destroyed. The Firm reserves the right to store records electronically. If I need a copy of any part of the file in the future, I will pay a \$75 charge; and
- This is not an Agreement for credit repair or debt negotiation nor, as an obligation incurred after the filing of bankruptcy, will any fees owed be discharged through my Chapter 13 plan.

This ____ day of _____, 202__.

X

Client E-Signature

The Brunner Test in the Eleventh Circuit

By Deana Alegi, Law Clerk for the Bankruptcy
Court for the Middle District of Florida

In *Brunner*, the Second Circuit set forth a three-part test for the “undue hardship” exception to 11 U.S.C. § 523(a)(8) for determining eligibility for a student loan discharge. *Brunner v. New York State Higher Education Services Corp.*, 831 F.2d 395, 396 (2d Cir. 1987). To establish “undue hardship” under the *Brunner* test, a debtor must show:

(1) that the debtor cannot maintain, based on current income and expenses, a “minimal” standard of living for herself and her dependents if forced to repay the loans; (2) that additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment period of the student loans; and (3) that the debtor has made good faith efforts to repay the loans.

Id. at 396. Described below are some Eleventh Circuit decisions applying the *Brunner* “undue hardship” test (listed in reverse chronological order).

- In *In re Graddy*, the Eleventh Circuit concluded that a bankruptcy court did not commit reversible error by considering a debtor’s work history, employability, and home and car ownership to determine that the debtor failed to prove the second factor of the *Brunner* “undue hardship” test. *Graddy v. Educ. Credit Mgmt. Corp. (In re Graddy)*, 852 F. App’x 509 (11th Cir. 2021). The Eleventh Circuit explained that “[a] factual finding is not clearly erroneous unless this court, after reviewing all of the evidence, is left with the definite and firm conviction that a mistake has been committed.” *Id.* at 512 (internal quotation marks and citations omitted).
- In *In re Acosta-Conniff*, the Eleventh Circuit determined that a bankruptcy court’s findings as to the three prongs of the *Brunner* test are factual findings. *Educ. Credit Mgmt. Corp. v. Acosta-Conniff (In re Acosta-Conniff)*, 686 F. App’x 647 (11th Cir. 2017). Therefore, the district court should have reviewed the bankruptcy court’s findings only for clear error, not

under a de novo standard of review. *Id.* In regard to the second prong of the *Brunner* test, the Eleventh Circuit explained that it "does not look backward to assess blame for the student debtor's financial circumstances," and "even if the court concludes that a debtor has acted recklessly or foolishly in accumulating her student debt, that does not play into an analysis under the second prong." *Id.* at 650.

- In *In re Zumbo*, the Eleventh Circuit held that a debtor's ineligibility to restructure her student loan debt pursuant to a government extended repayment program supported a bankruptcy court's determination that the current state of the debtor's financial affairs was likely to persist for a significant portion of the repayment period, so as to satisfy the second prong of the *Brunner* "undue hardship" test. *The Educ. Resources Inst., Inc. v. Zumbro (In re Zumbro)*, 536 F. App'x 991 (11th Cir. 2013).
- In *Wieckiewicz*, the Eleventh Circuit determined that a bankruptcy court did not abuse its discretion by dismissing with prejudice a chapter 7 debtor's complaint against the assignee of his student loan lender due to the debtor's refusal to comply with the court's order to apply for a federal loan consolidation program, under which his payments would have been as low as \$0 per month and eventually forgiven. *Wieckiewicz v. Educ. Credit Mgmt. Corp.*, 443 F. App'x 449 (11th Cir. 2011). The Eleventh Circuit explained that the debtor's eligibility for the federal program was a substantial factor in determining whether he could establish "undue hardship" under *Brunner*. *Id.* at 451.
- In *In re Mosley*, the Eleventh Circuit held that under the second prong of the *Brunner* "undue hardship" test, medical disabilities are additional circumstances likely to render a debtor unable to repay his student loans. *Educ. Credit Mgmt. Corp. v. Mosley (In re Mosley)*, 494 F.3d 1320 (11th Cir. 2007). The Eleventh Circuit also concluded that the

bankruptcy court did not abuse its discretion by allowing the debtor to testify about his disability from his personal knowledge. *Id.* While a debtor may not give an opinion on his medical prognosis, he may testify about how his disability affects his ability to work. *Id.* at 1325.

- In *In re Cox*, the Eleventh Circuit adopted the Second Circuit's *Brunner* test as the standard for determining "undue hardship" under § 523(a)(8) of the Bankruptcy Code and held that a partial discharge of a student loan debt is not possible without a finding of undue hardship. *Hemar Insurance Corp. of America v. Cox (In re Cox)*, 338 F.3d 1238 (11th Cir. 2003). The court explained that the "fresh start" principle does not create an exception to § 523(a)(8), and that the bankruptcy court's equitable powers under 11 U.S.C. § 105(a) do not allow it to override the statutory language of § 523(a)(8) by awarding a partial discharge without a finding of undue hardship. *Id.* at 1243.

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In re:

CHANDRA DAVIS,

Debtor,

Case No. 8:23-bk-02174,
Chapter 7

CHANDRA DAVIS,

Plaintiff,

v.

Adv. Pro. No.: 8:23-ap-00081-CPM

DEPARTMENT OF EDUCATION,

Defendant.

STIPULATION OF FINDINGS OF FACTS AND CONCLUSIONS OF LAW

The United States, on behalf of the Department of Education, pursuant to 11 U.S.C. § 523(a)(8) and Rule 7052, Federal Rules of Bankruptcy Procedure, files this proposed Findings of Fact and Conclusions of Law. The parties jointly recommend and respectfully request that this Court adopt the findings and conclusions herein and order the discharge the federal student loan debt of the debtor, Chandra Davis, whose financial circumstances satisfy the three elements of undue hardship under Section 523(a)(8): 1) she lacks a current ability to pay her loans while maintaining “minimal” standard living; 2) her inability to pay is likely to persist into the future; and 3) she has made good faith efforts to repay her loans.

I. INTRODUCON

This matter comes before the Court upon Debtor's Complaint, filed on July 17, 2023, which sought to determine that her student loan debt of approximately \$344,412.00, plus interest, is dischargeable because it would impose an undue hardship under 11 U.S.C. § 523(a)(8). Doc. 1, Adversarial Proceeding Case Number 8:23-ap-00081-CPM. Specifically, Debtor is 54 years old and is raising her two minor grandchildren. Debtor is earning only \$45,000 per year in a position which utilizes her doctoral degree. The majority of Debtor's loans have been in repayment status for more than 10 years, as Debtor began working on her degrees in the 1990s and graduated with a doctorate in 2022. Though Debtor has maximized her income and reduced her expenses, it is unlikely that she will be able to pay her loan balance before reaching retirement age.

To support her claim, Debtor provided the United States with her financial information concerning her income and expenses to assist in the evaluation of her financial circumstances and determination of whether she satisfies the conditions for an undue hardship discharge. Exhibit A (Debtor's Attestation). Debtor received a discharge of her debts on August 29, 2023, in Bankruptcy Case Number 8:23-bk-02174-CPM.

II. FINDINGS OF FACTS

A. *Debtor's Living Situation*

1. Debtor's household consists of herself, aged 54, and her two minor grandchildren.

2. Debtor rents a home in Tampa, Florida.

B. Debtor's Employment

3. Debtor is currently employed as an Instructor at the University of South Florida.

C. Debtor's Gross Income

4. Debtor's monthly gross household income consists of her wages of \$6,072.04. She does not receive any child support from her grandchildren's parents.

D. Debtor's Expenses

5. Debtor's payroll deductions include taxes of \$406.76, a \$121.29 contribution to a retirement account, \$77.83 life insurance premium, and a \$56.26 health insurance premium.

6. Under the 2023 IRS National Standard,¹ Debtor's living expenses include the following allowable² expenses for three people or a total of \$1,835 (or \$1,610 not including uninsured medical costs):

- a. Food (\$903)
- b. Housekeeping Supplies (\$74)
- c. Apparel and Services (\$206)

¹ Debtor provided her Attestation in 2023. Therefore, the United States conducted its analysis based on the 2023 standards.

² Although the National Standards were updated on April 24, 2023 and no longer include an allowable expense for uninsured medical costs, *see* <https://www.irs.gov/businesses/small-businesses-self-employed/national-standards-food-clothing-and-other-items>.

- d. Personal care products and services (non-medical) (\$78)
- e. Uninsured medical costs (\$225)
- f. Miscellaneous (\$349)

7. Per the Attestation and a screenshot of daycare payments provided by Debtor, Debtor's expenses include an average of \$1,200 per month for daycare.

E. Debtor's Housing Costs

8. Under the IRS's local housing and utilities standard for Hillsborough County, Florida, the allowable housing cost for three people is \$2,328 per month, to include mortgage or rent payments, property taxes, homeowners' or renters' insurance, home maintenance and repair, and utilities. Notably, these standards became effective in April 2023 and it is well known that the rental prices in the Tampa Bay Area have been dramatically increasing.

9. Debtor's rental payment is \$2,200.00 per month, and her utilities are \$650 per month for a total housing cost of \$2,850, which is \$522 per month more than the amount allowed by the IRS Local standards. *Id.* at 7. However, Defendant stipulates that this expense is reasonable when considering that Debtor is choosing to live very close to her job and, as a result, has transportation costs well under the IRS' standards for transportation. Debtor's choice of a higher housing cost in exchange for lower transportation costs is reasonable and further demonstrate her attempts to minimize her expenses.

F. Debtor's Transportation Costs

10. Under the IRS's national standard, the allowable vehicle ownership cost

is \$629 per month. The regional standard for the Tampa region is \$297 per month for operating one vehicle.

11. Per the Attestation, Debtor does not have a cost of vehicle ownership and only spends \$100 per month on transportation. Debtor's actual transportation costs are \$826 less than the amounts the IRS considers reasonable. As discussed above, this reduced expense offsets Debtor's slightly higher than average housing costs.

G. Debtor's Assets

12. Debtor claims no assets other than household goods totaling \$410.00.
Doc. 1, p. 15, 8:23-bk-02174-CPM.

H. Debtor's Education

13. Debtor attended Florida School of Business in 1990 but withdrew without receiving her degree. She then attended Hillsborough Community College, graduating in 2004, and the University of Florida, graduating in 2022 with a doctoral degree.

I. Debtor's Loan Status

14. According to the Department of Education's account history and loan details as of August 25, 2023, Debtor's student loan balance is \$335,946.00 in unpaid principal and \$8,466.00 in accrued interest, for a total of \$344,412 plus any additional accrued interest.

15. The standard repayment amount for Debtor's student loans would be \$3,782.73 per month. However, Debtor's loans are currently in a forbearance status.

16. Debtor has made several efforts to address her outstanding loans,

including that: 1) she sought out and received forbearances and deferments; and 2) she applied for federal loan consolidation.

III. CONCLUSIONS OF LAW

A. Legal Authority

Section 523(a)(8) of the Bankruptcy Code provides that a discharge under Section 727 does not discharge a debtor’s student loan debt unless excepting such debt from discharge would impose an “undue hardship” on the debtor and the debtor’s dependents. 11 U.S.C. § 523(a)(8). Although the Bankruptcy Code does not define the term “undue hardship,” the Eleventh Circuit adopted a three-part test to determine whether a debtor meets the undue hardship exception under § 523(a)(8). *See In re Acosta-Conniff*, 686 F. App’x 647, 648 (11th Cir. 2017); *Wieckiewicz v. Educ. Credit Mgmt. Corp.*, 443 F. A’ppx 449, 451 (11th Cir. 2011); *Hemar Ins. Corp of America v. Cox*, 338 F.3d 1238, 1241 (11th Cir. 2003) (citing *Brunner v. New York State Higher Education Services Corp.*, 831 F.2d 395, 396 (2d Cir. 1987)). To establish undue hardship under the *Brunner* test, a debtor must demonstrate:

- (1) That the debtor cannot maintain, based on current income and expenses, a “minimal” standard of living for himself and his dependents if forced to repay the loans;
- (2) That the additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment period of the student loans; and
- (3) That the debtor has made good faith efforts to repay the loans.

Brunner, 831 F.2d at 396; *See also In re Acosta-Conniff*, 686 F. A’ppx 449, 648;

Wieckiewicz, 443 F. A’ppx 449, 451; *Hemar*, 338 F.3d at 1241.

The debtor must establish all three Brunner elements by a preponderance of the evidence. *Educ. Credit Mgmt. Corp. v. Mosely (In re Mosley)*, 494 F.3d 1320, 1324 (11th Cir. 2007). *See also, D’Ettore v. Devry Inst. of Tech. (In re D’Ettore)*, 106 B.R. 715, 718 (Bankr. M.D. Fla. 1989).

i. Element One

Under the first element of the *Brunner* test, a debtor is required to show that he cannot maintain, based on his current income and expenses, a “minimal” standard of living for himself if required to repay the student loan. *See Hemar*, 388 F.3d at 1241. This prong focuses on the debtor’s particular circumstances, such as sources of income, expenses, and any available debt restructuring options. *See In re Matthews-Hamad*, 377 B.R. 415, 421 (Bankr. M.D. Fla. 2007). To qualify, a debtor must demonstrate that he has maximized his “ability to produce adequate income” and live modestly with reasonable expenses. *See In re Vuini*, 2012 WL 5554406, at *4.

ii. Element Two

Under the second element of the *Brunner* test, a debtor is required to show that additional circumstances exist outside of his control, demonstrating that this state of affairs is likely to continue for a significant portion of the repayment period of the student loans. *See Hemar*, 388 F.3d at 1241. This element looks to the future and focuses on whether the debtor has proven an inability to repay the student loan during a significant portion of the repayment period. *See In re Acosta-Conniff*, 686 F.App’x at

650. To prevail on this second prong, courts require that a debtor demonstrate grim circumstances such as illness or disability, unusable job skills or care for a large number of dependents, that are likely to exist for a substantial portion of the repayment period. See *In re Matthews-Hamad*, 377 B.R. at 422 (citations omitted).

A debtor does not satisfy the second element by merely demonstrating employment in a low payment career without much opportunity for improvement (especially where the debtor's work history and resume allow for better employment opportunities). See *In re Vuini*, 2012 WL 5554406, at *5. Instead, a debtor must be faced with a "certainty of hopelessness" because the debtor will never be able to pay the student loans for reasons outside of the debtor's control. *Id.* Only a debtor with rare circumstances will satisfy the second prong of the *Brunner* test. *In re Matthews-Hamad*, 377 B.R. at 422 (citing *Educ. Credit Mgmt. Corp. v. Frushour (In re Frushour)*, 433 F.3d 393, 401 (4th Cir. 2005)).

iii. Element Three

The third element of the *Brunner* test requires the debtor to show a good faith effort to repay the student loans. See *In re Cox*, 388 F.3d at 1241. However, a debtor's "failure to make a payment, standing alone, does not establish a lack of good faith." *Educ. Credit Mgmt. Corp. v. Mosely (In re Moseley)*, 494 F.3d 1320, 1324 (11th Cir. 2007) (quoting *Educ. Credit Mgmt. Corp. v. Polleys*, 356 F.3d 1302, 1311 (10th Cir. 2004) (internal quotation marks omitted)). This prong reviews the debtor's past conduct to determine if the debtor's actions manifest a good faith effort to repay the student loans.

See *In re Acosta-Conniff*, 686 F. App'x at 649. A court must consider the debtor's efforts to obtain employment, maximize income, and minimize expenses. See *Kidd v. Student Loan Xpress, Inc. (In re. Kidd)*, 472 B.R. 857, 862 (Bankr. N.D. Ga. 2012). Further, this Court has previously held that "[a] factor the Court must consider when determining whether [a debtor] exhibited good faith when seeking discharge of [his] student loans is [his] 'effort – or lack thereof – to negotiate a repayment plan.'" *In re Brosnan*, 323 B.R. 533, 538 (Bankr. M.D. Fla. 2005) (quoting *U.S. Dept. of Educ. v. Wallace*, 259 B.R. 170, 185 (C.D. Cal. 2000)) (citations omitted).

B. Application of the *Brunner* Test to Assess Undue Hardship

The three *Brunner* elements focus on a three different time periods. Specifically, 1) the first element focuses on Debtor's present ability to pay the debt; 2) the second element focuses on Debtor's future ability to repay the debt; and 3) the third element focuses on Debtor's past conduct to determine whether her past actions have manifested a good faith effort to repay her debt. Based on the information Debtor provided to the United States, the three *Brunner* elements of undue hardship are satisfied as set forth more fully below:

i. *Brunner* Test: Element One

The first *Brunner* element focuses on Debtor's present ability to pay the debt and looks to her particular circumstances. See *In re Matthews-Hamad*, 377 B.R. at 421. In this case, Debtor currently does not have sufficient means to pay her student loans while maintaining a minimal standard of living. Debtor's gross monthly household

income is \$6,072.04. In applying the IRS national standards to assess a “minimal standard of living,” Debtor’s allowable monthly expenses total \$6,647.14. These standard and allowable living expenses are not exorbitant and are thus modest and reasonable. *See In re Vuini*, 2012 WL 5554406, at *4. Debtor’s monthly payment amount under the Standard Repayment Plan would be \$3,782.73. The total of Debtor’s allowable monthly expenses and her student loan payment would be \$10,429.87, which is \$4,357.83 more than her income. Accordingly, based on her current income and expenses, Debtor cannot maintain a “minimal” standard of living if required to repay the student loan and the first *Brunner* element is satisfied. *See Hemar*, 388 F.3d at 1241.

ii. *Brunner Test: Element Two*

The second *Brunner* element focuses on Debtor’s future ability to repay the debt, assessing the likelihood or unlikelihood that Debtor would become able to repay the loan. Debtor’s past supports a presumption that she has a future inability to pay because: 1) Debtor’s loans have been in repayment status for more than 10 years.

Furthermore, Debtor is only a few years away from retirement age and has two minor dependents. No evidence suggests that Debtor’s circumstances will change to allow her to pay her loans. Indeed, these circumstances suggest that Debtor is facing “a certainty of hopelessness” in that she will likely never be able to pay the student loans for reasons outside of her control. *See In re Vuini*, 2012 WL 5554406, at *5. Accordingly, Debtor has satisfied the second element of the *Brunner* test.

iii. Brunner Test: Element Three

The third *Brunner* element focuses on Debtor's past conduct to determine whether her past actions have manifested a good faith effort to repay her debt. *See In re Acosta-Conniff*, 686 F. App'x at 649. Debtor has demonstrated a good faith effort, as evidenced by her: 1) efforts to reduce her expenses; 2) efforts to seek out forbearance and deferments on her student loan debt; and 3) efforts to consolidate her loans. *See In re Brosnan*, 323 B.R. at 538. Accordingly, based on her efforts described above, Debtor has demonstrated a good faith effort to pay her debt sufficient to satisfy element three of the *Brunner* test.

IV. CONCLUSION

For the above-mentioned reasons, the Defendant has concluded that Debtor would be entitled to discharge of her student loan debt under Section 523(a)(8) because she satisfies the three elements of undue hardship: 1) she lacks a current ability to pay her loans while maintaining a "minimal" standard living; 2) her inability to pay is likely to persist into the future; and 3) she has made good faith efforts to repay her loans. Accordingly, the United States provides these stipulated findings of facts and conclusions of law herein and recommends that the Court adopts the same in ordering the discharge of Debtor's debt of approximately \$344,412.00, plus interest.

CERTIFICATE OF CONFERENCE

The undersigned certifies that on March 5, 2024, she conferred with Debtor's counsel and provided this Stipulation of Findings of Facts and Conclusions of Law,

AMERICAN BANKRUPTCY INSTITUTE

Case 8:23-ap-00081-CPM Doc 17 Filed 03/05/24 Page 12 of 12

proposed Order, and proposed Judgment for review. Debtor and her attorney have reviewed and approved these documents.

Respectfully submitted,

ROGER B. HANDBERG
United States Attorney

By: /s/ Grace Anne Monnig
GRACE ANNE MONNIG
Assistant United States Attorney
USA No. 208
400 North Tampa St., Suite 3200
Tampa, FL 33602
Telephone No.: (813) 274-6000
Facsimile No.: (813) 274-6198
E-mail: Grace.Anne.Monnig@usdoj.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on, March 5, 2024, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notice of electronic filing to all parties of record:

Jeffrey Hakanson, Esq.
jeff@mcintyrefirm.com
Counsel for Debtor/Plaintiff

/s/ Grace Anne Monnig
GRACE ANNE MONNIG
Assistant United States Attorney

Exhibit A

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In re:

Chandra Davis,
Debtor.

Case No. 8:23-bk-02174
Chapter 7

_____ /

Chandra Davis,
Plaintiff,

v.

Adversary Pro. No.: 8:23-ap-00081-CPM

United States Department of
Education, et al.,

Defendants.

_____ /

ATTESTATION OF CHANDRA DAVIS IN SUPPORT
OF REQUEST FOR STIPULATION CONCEDING
DISCHARGEABILITY OF STUDENT LOANS

I, Chandra Davis, make this Attestation in support of my claim that excepting the student loans described herein from discharge would cause an “undue hardship” to myself and my dependents within the meaning of 11 U.S.C. §523(a)(8). In support of this Attestation, I state the following under penalty of perjury:

I. PERSONAL INFORMATION

1. I am over the age of eighteen and am competent to make this

Attestation.

2. I reside at 30405 USF Holly Drive, Tampa, FL 33620, in Hillsborough County, Florida.

3. My household includes the following persons (including myself):

Chandra Davis 54 [age] Self

Danyelle Daniels 12 [age] Grandchild

Summer Daniels 2 [age] Grandchild

Questions four through nine request information related to your outstanding student loan debt and your educational history. The Department of Education will furnish this information to the Assistant United States Attorney (“AUSA”) handling your case, and it should be provided to you. If you agree that the information provided to you regarding your student loan debt and educational history is accurate, you may simply confirm that you agree, and these questions do not need to be completed. If you have not received the information from Education or the AUSA at the time you are completing this form, or if the information is not accurate, you may answer these questions based upon your own knowledge. If you have more than one student loan which you are seeking to discharge in this adversary proceeding, please confirm that the AUSA has complete and accurate information for each loan or provide that information for each loan.

4. I confirm that the student loan information and educational history provided to me and attached to this Attestation is correct: **YES**.

5. The outstanding balance of the student loan[s] I am seeking to discharge in this adversary proceeding is \$ \$344,472.87.

6. The current monthly payment on such loan[s] is \$3,782.73. The loan[s] are scheduled to be repaid in Sept 2023 [month and year] **[OR]** My student loan[s] went into default in [month and year].

7. I incurred the student loan[s] I am seeking to discharge while attending Hillsborough Community College and University of South Florida, where I was pursuing a Associates and Bachelor’s degree with a specialization in Liberal Arts/Nursing/Education.

8. In May 2023 [month and year], I completed my course of study and received a Doctorate degree **[OR]** In [month and year], I left my course of study and did not receive a degree.

are attached, and the amounts stated on such tax returns have not changed materially since the tax year of such returns; **OR**

 X Represents an average amount calculated from the most recent two months of gross income stated on four (4) consecutive paystubs from my current employment, which are attached; **OR**

 My current monthly household gross income is not accurately reflected on either recent tax returns or paystubs from current employment, and I have submitted instead the following documents verifying current gross household income from employment of household members:

13. In addition, I have submitted _____ verifying the sources of income other than income from employment, as such income is not shown on [most recent tax return[s] or paystubs].

B. Monthly Expenses

14. My current monthly household expenses do not exceed the amounts listed below based on the number of people in my household for the following categories [Indicate “yes” if your expenses do not exceed the referenced amounts]:

(a) Living Expenses²

- | | | |
|------|---|-----|
| i. | Food
\$431 (one person)
\$779 (two persons)
\$903 (three persons)
\$1028 (four persons) | YES |
| ii. | Housekeeping supplies
\$40 (one person)
\$82 (two persons)
\$74 (three persons)
\$85 (four persons) | YES |
| iii. | Apparel & Services
\$99 (one person)
\$161 (two persons)
\$206 (three persons) | YES |

² The living expenses listed in Question 14 and 15 have been adopted from the Internal Revenue Service Collection Financial Standards “National Standards” and “Local Standards” for the year in which this form is issued. This form is updated annually to reflect changes to these expenses.

AMERICAN BANKRUPTCY INSTITUTE

- \$279 (four persons)
- iv. Personal care products and services (non-medical) YES
\$45 (one person)
\$82 (two persons)
\$78 (three persons)
\$96 (four persons)
 - v. Uninsured medical costs YES
\$75 (per individual under 65)
\$153 (per individual over 65)
 - vi. Miscellaneous expenses YES
not included elsewhere on this Attestation:
\$170 (one person)
\$306 (two persons)
\$349 (three persons)
\$412 (four persons)

(b) Households Greater Than Four Persons

If your household consists of more than four people, please provide your *total* expenses for the categories in Question 14(a): \$ _____

[If you filed a Form 122A-2 Chapter 7 Means Test or 122C-2 Calculation of Disposable Income in your bankruptcy case, you may refer to lines 6 and 7 of those forms for information.]³

(c) Excess Expenses

If your current monthly household expenses exceed the amounts listed above for any of the categories in Question 13(a) and you would like the AUSA to consider such additional expenses as necessary, you may list those expenses and explain the need for such expenses here.

³ Forms 122A-2 and 122C-2 are referred to collectively here as the “Means Test.” If you filed a Means Test in your bankruptcy case, you may refer to it for information requested here and in other expense categories below. If you did not file a Means Test, you may refer to your Schedule I and Form 106J – Your Expenses (Schedule J) in the bankruptcy case, which may also list information relevant to these categories. You should only use information from these documents if your expenses have not changed since you filed them.

15. My current monthly household expenses in the following categories are as follows:

(a) Payroll Deductions

i. Taxes, Medicare and Social Security \$ 406.76
 [You may refer to line 16 of the Means Test or Schedule I, line 5]

ii. Contributions to retirement accounts \$ 121.29
 [You may refer to line 17 of the Means Test or Schedule I, line 5]

Are these contributions required as a condition of your employment? NO

iii. Union dues \$ N/A
 [You may refer to line 17 of the Means Test or Schedule I, line 5]

iv. Life insurance \$ 77.83
 [You may refer to line 18 of the Means Test or Schedule I, line 5]

Are the payments for a term policy covering your life? YES / NO

v. Court-ordered alimony and child support \$ N/A
 [You may refer to line 19 of the Means Test or Schedule I, line 5]

vi. Health insurance \$ 56.26
 [You may refer to line 25 of the Means Test or Schedule I, line 5]

Does the policy cover any persons other than yourself and your family members? NO

vii. Other payroll deductions

		\$ _____
		\$ _____
		\$ _____

(d) Housing Costs⁴

⁴ You should list the expenses you actually pay in Housing Costs and Transportation Costs

AMERICAN BANKRUPTCY INSTITUTE

- i. Mortgage or rent payments \$ 2,200
- ii. Property taxes (if paid separately) \$ N/A
- iii. Homeowners or renters insurance (if paid separately) \$ N/A
- iv. Home maintenance and repair (average last 12 months' amounts) \$ N/A
- v. Utilities (include monthly gas, electric water, heating oil, garbage collection, residential telephone service, cell phone service, cable television, and internet service) \$ 650

(e) Transportation Costs

- i. Vehicle payments (itemize per vehicle) \$ N/A
- ii. Monthly average costs of operating vehicles (including gas, routine maintenance, monthly insurance cost) \$ 100
- iii. Public transportation costs \$ N/A

(f) Other Necessary Expenses

- i. Court-ordered alimony and child support (if not deducted from pay) \$ N/A
[You may refer to line 19 of Form 122A-2 or 122C-2 or Schedule J, line 18]
- ii. Babysitting, day care, nursery and preschool \$ N/A
[You may refer to line 21 of Form 122A-2 or 122C-2 or Schedule J, line 8]⁵

Explain the circumstances making it necessary for you to expend this amount:

- iii. Health insurance (if not deducted from pay) \$ N/A
[You may refer to line 25 of the Means Test or Schedule J, line 15]

Does the policy cover any persons other than yourself and your family members? YES / NO

categories. If these expenses have not changed since you filed your Schedule J, you may refer to the expenses listed there, including housing expenses (generally on lines 4 through 6 of Schedule J) and transportation expenses (generally on lines 12, 15c and 17).

⁵ Line 8 of Schedule J allows listing of expenses for "childcare and children's education costs." You should not list any education expenses for your children here, aside from necessary nursery or preschool costs.

iv. Life insurance \$ N/A
(if not deducted from pay)
[You may refer to line 25 of the Means Test or Schedule J, line 15]

Are the payments for a term policy YES / NO
covering your life?

v. Dependent care (for elderly or disabled \$ 1200
family members)
[You may refer to line 26 of the Means Test or Schedule J, line 19]

Explain the circumstances making it necessary for you to expend this amount:

vi. Payments on delinquent federal, state or local \$ N/A
tax debt
[You may refer to line 35 of the Means Test or Schedule J, line 17]

Are these payments being made pursuant YES / NO
to an agreement with the taxing authority?

vii. Payments on other student loans \$ N/A
I am not seeking to discharge

viii. Other expenses I believe necessary for \$ N/A
a minimal standard of living.

Explain the circumstances making it necessary for you to expend this amount:

16. After deducting the foregoing monthly expenses from my household gross income, I have no remaining income.

17. In addition to the foregoing expenses, I anticipate I will incur additional monthly expenses in the future for my, and my dependents', basic needs that are currently

not met.⁶ These include the following:

III. FUTURE INABILITY TO REPAY STUDENT LOANS

18. For the following reasons, it should be presumed that my financial circumstances are unlikely to materially improve over a significant portion of the repayment period (answer all that apply):

I am over the age of 65.

The student loans I am seeking to discharge have been in repayment status for at least 10 years (excluding any period during which I was enrolled as a student).

I did not complete the education for which I incurred the student loan[s].

I have a permanent disability or chronic injury which renders me unable to work or limits my ability to work.

Describe the disability or injury and its effects on your ability to work, and indicate whether you receive any governmental benefits attributable to this disability or injury.

I have been unemployed for at least five of the past ten years.

Please explain your efforts to obtain employment.

⁶ If you have foregone expenses for any basic needs and anticipate that you will incur such expenses in the future, you may list them here and explain the circumstances making it necessary for you to incur such expenses.

19. For the following additional reasons, my financial circumstances are unlikely to materially improve over a significant portion of the repayment period (answer all that apply):

I incurred student loans I am seeking to discharge in pursuit of a degree I was unable to complete for reasons other than the closure of the educational institution.

Describe your reasons for being unable to complete the degree:

I am not currently employed.

I am currently employed, but I am unable to obtain employment in the field for which I am educated or have received specialized training.

Describe reasons for inability to obtain such employment, and indicate if you have ever been able to obtain such employment:

I am currently employed, but my income is insufficient to pay my loans and unlikely to increase to an amount necessary to make substantial payments on the student loans I am seeking to discharge.

Please explain why you believe this is so: Although I am employed as an instructor, my current income, will never increase to an amount that would ever enable me to pay off or even make substantial payments to my current student loan debt. This is largely due to the current market rate for instructors. I enjoy this career field, I enjoy helping students and it is unlikely that at this point in my life that I can change careers. The market rate for instructors is far below any amount that would ever put me in a position to repay my student loans. Additionally, having this student loan burden prevents me from living the American dream of home ownership, or even assisting my children with the basics of life such as their own home, owning a car, and having to have the bare minimum when it comes to food, shelter etc. Because of these student loans, I am always considered a "credit risk", meaning I can never receive prime interest rates for anything, I would always have to pay higher interest rates and fees to purchase anything.

Additionally, this student loan debt does not just cause me financial stress, but physical stress as well. I constantly worry about it, how will I ever pay this, this worry has caused a serious decline in my physical and mental health, as well as to my overall financial health.

_____ Other circumstances exist making it unlikely I will be able to make payments for a significant part of the repayment period.

Explain these circumstances:

IV. PRIOR EFFORTS TO REPAY LOANS

20. I have made good faith efforts to repay the student loans at issue in this proceeding, including the following efforts:

21. Since receiving the student loans at issue, I have made payments on the loans.

22. I have received _____ 6 _____ forbearances or deferments, for a period totaling _____ 32 _____ months.

23. I have attempted to contact the company that services or collects on my

student loans or the Department of Education at least 10 times.

24. I have sought to enroll in one or more “Income Deferred Repayment Programs” or similar repayment programs offered by the Department of Education, including the following:

Description of efforts:

25. [If you did not enroll in such a program]. I have not enrolled in an “Income Deferred Repayment Program” or similar repayment program offered by the Department of Education for the following reasons:

26. Describe any other facts indicating you have acted in good faith in the past in attempting to repay the loan, including efforts to obtain employment, maximize your income, or minimize your expenses:

V. CURRENT ASSETS

27. I own the following parcels of real estate:

Address: N/A

Owners⁷ N/A

Fair market value: N/A

Total balance of mortgages and other liens. N/A

28. I own the following motor vehicles:

Make and model: N/A

Fair market value: N/A

Total balance of vehicle loans and other liens N/A

29. I hold a total of _____ in retirement assets, held in 401k, IRA and similar retirement accounts.

30. I own the following interests in a corporation, limited liability company, partnership, or other entity:

Name of entity	State incorporated ⁸	Type and Age of Interest ⁹
_____	_____	_____
_____	_____	_____
_____	_____	_____

⁷ List by name all owners of record (self and spouse, for example).

⁸ The state, if any, in which the entity is incorporated. Partnerships, joint ventures and some other business entities might not be incorporated.

⁹ For example, shares, membership interest, partnership interest.

31. I currently am anticipating receiving a tax refund totaling \$_____.

VI. ADDITIONAL CIRCUMSTANCES

32. I submit the following circumstances as additional support for my effort to discharge my student loans as an “undue hardship” under 11 U.S.C. §523(a)(8):

I started school in 1988, during that time, my mother was diagnosed with Lupus, I had to stop going to school and take care of her full-time. I tried many times between 1988-1998 to return to school, it was difficult, as a single mom and taking care of a mother who was ill. It took me many attempts at starting and stopping school to finish. At this point in my life, there is no way I will ever be able to pay back the amount of student loan debt I have. Being not only a single mother, but being responsible for my own mother at a young age, caused me any hardships which prevented me from finishing school. These loans prevent me from owning a home, helping my children financially, obtaining prime rate loans and living comfortably. The stress of having this student loan debt has caused an undue hardship on me and my family not just financially but emotionally.

AMERICAN BANKRUPTCY INSTITUTE

Case 8:23-ap-00081-CPM Doc 17-1 Filed 03/05/24 Page 16 of 16

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Chandra Davis
Signature:
Chandra Davis
Name:
9/26/23
Date:

ORDERED.

Dated: March 12, 2024



Catherine Peek McEwen
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
www.flmb.uscourts.gov

In re:

CHANDRA DAVIS,

Debtors.

CHANDRA DAVIS,

Plaintiffs,

v.

DEPARTMENT OF EDUCATION,

Defendants.

Chapter 7

Case No. 8:23-bk-02174

Adv. No. 8:23-ap-00081-CPM

FINAL JUDGMENT IN FAVOR OF CHANDRA DAVIS

THIS PROCEEDING came on for consideration of the Stipulation of Findings of Fact and Conclusions of Law (the “Stipulation”) (Doc. No. 17) and the Court’s Order (Doc. No. 18) adopting the stipulated findings and conclusions. Accordingly, it is

AMERICAN BANKRUPTCY INSTITUTE

Case 8:23-ap-00081-CPM Doc 19 Filed 03/13/24 Page 2 of 2


ORDERED:

1. Judgment is entered in favor of Plaintiff Chandra Davis and against the United States Department of Education.
2. The debt of \$344,412.00, plus any accrued interest thereon, owed by Chandra Davis to the Department of Education is dischargeable under 11 U.S.C. § 523(a)(8) as constituting an undue hardship and is, therefore, discharged.

The Clerk is directed to serve a copy of this judgment on all interested parties that do not receive service via CM/ECF.

ORDERED.

Dated: March 11, 2024


Catherine Peek McEwen
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In re:

CHANDRA DAVIS,
Debtor,

Case No. 8:23-bk-02174,
Chapter 7

CHANDRA DAVIS,
Plaintiff,

v.

Adv. Pro. No.: 8:23-ap-00081-CPM

DEPARTMENT OF EDUCATION,
Defendant.

ORDER FINDING UNDUE HARDSHIP

THIS CASE came on for consideration without a hearing on the United States Department of Education's ("DOE") *Stipulation of Findings of Fact and Conclusions of Law* (Doc. No. 17) (the "Stipulation"). The DOE has stipulated to certain facts and proposed conclusions of law, recommending that the Court find that requiring Chandra Davis (the "Debtor") to repay the student loan debt she owes to the DOE would impose an undue hardship.

Upon independent review of the stipulated facts and proposed conclusions of law, the Court accepts and adopts the legal and factual conclusions recommended in the Stipulation.

Accordingly, it is:

ORDERED:

1. The findings of facts and conclusions of law proposed in the Stipulation are **ADOPTED** as an opinion of the Court.

2. The Court specifically finds that Chandra Davis' student loan debt owed to the United States Department of Education is dischargeable pursuant to 11 U.S.C. § 523(a)(8) because repayment would impose an undue hardship on her.

3. A separate Judgment will be entered in favor of Plaintiff/Debtor Chandra Davis on her Complaint as it relates to the student loan debt owed to the United States Department of Education in the amount of \$344,412.00 plus any interest accrued thereon.

Assistant United States Attorney Grace Anne Monnig is directed to serve a copy of this Order on interested parties who do not receive service by CM/ECF and file a proof of service within three days of the entry of this Order.



STUDENT LOAN TOOLKIT

A GUIDE FOR ADVOCATES AND BORROWERS



May 2024

STUDENT LOAN TOOLKIT

PART 1: UNDERSTANDING AND MANAGING YOUR STUDENT LOAN SITUATION

How to Use This Toolkit	3
Student Loans: A Trillion-Dollar Crisis	3
Do You Have Federal Loans, Private Loans, or Both?	4
Dealing with Federal Student Loan Debt	6
You Have Options That Can Help	6
Find Your Federal Student Loan Information by Logging in to Your Account on Studentaid.gov	6
Are You Eligible to Have Your Loans Canceled, Forgiven, or Discharged?	13
Lowering Your Payments by Signing Up for an Income-Driven Repayment Plan	15
You Have Several Repayment Plan Options	15
Deciding Which Repayment Plan Is Right for You Using the Loan Simulator Tool	20
Retroactive Credit Toward Loan Forgiveness Through a One-Time Payment Count Adjustment	20
Consider Consolidating Loans to Make Repayment Easier	22
Get Loans Out of Default and Stop Collection	23
Why You Should Get Your Loans Out of Default	23
Loans That Defaulted Before the Pandemic	24
Using Fresh Start to Get Out of Default	24
Discharging Federal Student Loans in Bankruptcy	25
Dealing with Private Student Loans and Other Education Debt	26
Private Student Loans Are Different	26
Be Aware of the Statute of Limitations on Old Private Student Loans	27
Relief Options for Private Student Loans	27
Don't Refinance Federal Student Loans into Private Loans	28
Discharging Private Student Loans in Bankruptcy	28
Defending Against a Private Student Loan Collection Lawsuit	28
Watch Out for Student Loan Scams	29
File Complaints to Resolve Your Student Loan Issues	29
Get More Help with Your Student Loans	30

PART 2: CHECKLISTS & GUIDES FOR MANAGING STUDENT LOANS

Getting Started	31
Are your student loans for yourself or someone else's education?	31
Do you have federal or private student loans?	31
What schools did you attend?	32
Dealing with Federal Student Loans	33
Have you set up an account on studentaid.gov?	33
What types of federal student loans do you currently have?	34
What is the status of your federal student loans?	35
Who holds your federal student loans?	36
Who is your loan servicer?	37
Are you eligible to have your loans canceled, forgiven, or discharged?	38
Did you attend any of the following schools?	41
Managing federal student loan repayment	42
Income-Driven Repayment plan comparison chart	47
Should you consider consolidating your federal student loans?	48
Dealing with Private Student Loans and Other Education Debt	49
Are you struggling with private student loans or other education debt?	49
Student Loans & Bankruptcy	50
Should you consider filing for bankruptcy to deal with your student loan debt?	50



National
Consumer Law
Center

This toolkit was written by advocates in the National Consumer Law Center's Student Loan Borrower Assistance Project. For more information, visit the website at studentloanborrowerassistance.org.

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services; and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state governments and courts across the nation to stop exploitative practices, help financially stressed families build and retain wealth, and advance economic fairness.

HOW TO USE THIS TOOLKIT

This toolkit was adapted from the book, *Surviving Debt*, published by the National Consumer Law Center (NCLC). It has been a leading resource for more than 30 years for consumers struggling with various types of debt. *Surviving Debt* is available for free online at library.nclc.org/book/surviving-debt. You can also purchase a print copy at library.nclc.org/SD/subscribe.

Whether you are just starting your student loan journey or have been dealing with student loan debt for decades, you can use the resources and materials in this toolkit to help you take charge of your student loan situation and achieve financial stability.

The toolkit explains the basics of the student loan system, how to assess your own student loan situation, and your options for managing your student loan debt. It includes fillable pages where you can record your own student loan information to help you work through your situation and track your progress toward becoming debt-free. Finally, the toolkit includes information on how and when to get additional help with your student loans, as well as other useful resources.

This toolkit is also designed to be used by financial counselors and legal aid advocates working with student loan borrowers. The information in this guide is useful as a resource to borrowers, counselors, and attorneys alike, and the fillable pages can be used to guide meetings with borrowers, collect key information, and document information for the borrower to refer back to as needed.

STUDENT LOANS: A TRILLION-DOLLAR CRISIS

Almost 45 million Americans have student loan debt. Today, Americans collectively owe more than \$1.7 trillion in student loan debt. Student loan debt impacts people of all ages, including an alarming number of older Americans. Because student debt burdens have increased and there is no statute of limitations on the collection of federal student loans, this debt can follow people for decades.

If you have student loan debt, you are not alone.

If you have student loan debt, you are not alone. While the government used to cover much of the cost of college, particularly at public schools, most students now have to take out student loans to pay for it. The student loan crisis is a growing problem, but the good news is that there is almost always something you can do to improve your situation.

This might include removing your loans from default, enrolling in a more affordable payment plan, temporarily postponing payments, or even having your loans canceled through one of several federal relief programs.

Your options vary a lot depending on what types of loans you have, who your loan holders are, and what the status of your loans is. It is important to know this information before you start dealing with your student loan problems.

DO YOU HAVE FEDERAL LOANS, PRIVATE LOANS, OR BOTH?

The majority of student loans are federal student loans. If you took out the maximum amount of federal student loans, you may have also taken out private student loans to cover the rest of your education costs.

Federal student loans are generally better than private student loans because the law provides special benefits and protections to help borrowers with federal student loans. Most private student loans do not have strong protections for borrowers who are struggling to pay. Private loans have different terms and protections depending on the loan agreement. The terms for private loans are made by the lender in the loan agreement. In contrast, federal student loan terms and protections are set by the law.

Federal student loans are loans that are made through special government programs. These programs include the Direct Loan Program, Perkins Program, and Federal Family Education Loan (FFEL) Program. Since 2019, all new federal student loans are given out directly by the federal government through the **Direct Loan Program**. But many borrowers still have older types of federal student loans, including **FFEL** and **Perkins Loans**. These older types of loans were issued by private lenders or schools, but were backed by the federal government.

Private student loans are issued by a bank, lender, or other institution. Private loans are not backed by the federal government and are made outside of the federal government programs.

It may be hard to tell at first glance if you have a private or a federal loan because many private student loan lenders also manage and service federal student loans. You may also have both federal and private student loans.

You can usually find your federal student loan information by logging into your Federal Student Aid account on studentaid.gov. Private student loans are not listed on studentaid.gov because they are not issued or managed by the federal government.

Private student loans may be listed on your credit reports. Because federal student loans are usually listed on your credit reports as well, it may be hard to tell if the loan listed is a federal loan or a private loan. If the loan on your credit report is labeled as “Department of Education,” “DEPT of ED,” or “DEPTED,” it is likely that it is a federal loan, but not all federal loans are listed this way. If you know who your private student loan servicer is, you can log in to your online account with the servicer or call your servicer to get your loan information.

See the table below for more information on the differences.

FEDERAL STUDENT LOANS	PRIVATE STUDENT LOANS
Loans are issued through a federal government program.	Loans are issued by a bank, lender, or other institution.
You apply using the FAFSA form.	You apply for a private loan directly with the lender.
The government caps the amount you can borrow.	The amount you can borrow is set by the lender.
Credit checks are not required (except for Parent PLUS Loans).	Loans offered are based on your credit.
There are generally no co-signers (but parents may be able to get Parent PLUS Loans to pay for their children’s education and PLUS loans may have endorsers).	A co-signer may be required by the lender (usually a close relative, but doesn’t have to be).
Interest rates are fixed (except for some older loans).	Interest rates may vary.
Special protections are provided by law, such as Income-Driven Repayment plans, interest subsidies, loan cancellation and forgiveness programs, and help for borrowers in default.	Private lenders rarely offer flexible repayment plans, loan cancellation or forgiveness programs, or pathways out of default.
No statute of limitations applies, meaning debt collection can continue indefinitely.	State statutes of limitations apply, protecting borrowers from lawsuits to collect on old loans.
Find information on federal loans on studentaid.gov .	There is no central place to find private student loan information, but you may be able to see this information on your credit report.

DEALING WITH FEDERAL STUDENT LOAN DEBT

You Have Options That Can Help

There are different options for managing your federal student loan debt and getting more help if you can't make your payments. You may even be eligible to have some or all of your student loans canceled.

In order to determine what options or relief you are eligible for, you first need to know what types of federal student loans you have, what the status of your loans is, and who your loan holders and loan servicers are. You can find all of this information about your federal student loans in your account on studentaid.gov.

Find Your Federal Student Loan Information by Logging in to Your Account on Studentaid.gov

You can access information about your federal student loans at the Department of Education's Federal Student Aid (FSA) website by going to studentaid.gov and clicking the "Log In" button.

If it's your first time using studentaid.gov, you will need to create an account with an FSA ID and password. You will also need to provide an email address and other identity information. Your online account will provide your approximate loan balance, the types of federal loans you have, who is servicing those loans, and other loan details.

Once you have logged into your account, you can find your loan details on your Dashboard. Any loans listed on your studentaid.gov account are federal student loans. Some information is easy to find on studentaid.gov, but certain types of information may take a few steps to find.

The key pieces of information you need about your federal student loans are:

- The types of student loans you have;
- The status of your loans;
- Who holds the loans; and
- Your loan servicers.

Any loans listed on your studentaid.gov account are federal student loans.

Step One: What Types of Federal Loans Do You Have?

It is important to know exactly what types of federal student loans you have, as some loan benefits only apply to certain types of federal loans.

Over the years, there have been a number of changes to the federal student loans offered to borrowers. Today, the government only issues **Direct Loans** to new student loan borrowers—but older loans from different federal programs still exist. And if you took out your student loans a while ago, you may have one or more of these older types of federal student loans, such as **Federal Family Education Loans (FFEL)**, **Perkins Loans**, or (less commonly) **HEAL loans**.

Within the Direct Loan and FFEL programs, there are many different types of loans. A Direct Loan or FFEL loan can be a subsidized, unsubsidized, Parent PLUS, Graduate PLUS, or Consolidation Loan.

- **Subsidized** loans are only available to undergraduate borrowers and are based on your financial need. Interest does not accrue on subsidized loans while you are in school or during grace periods or deferments.
- **Unsubsidized** loans do not require you to show financial need and are available to undergraduate and graduate school students. Interest accrues while you are in school and is added to your principal balance if it's not paid each year. Many borrowers have both subsidized and unsubsidized loans.
- **Parent PLUS** Loans are made to parents for their children's education.
- **Grad PLUS** loans are available (along with unsubsidized loans) for graduate school.
- **Consolidation Loans** are loans used to pay off one or more federal student loans, often to combine multiple loans.

For more details on the types of federal student loans you may have, see the list below.

Federal Student Loans Issued Today

Direct Loans (the only types of loans the Department currently issues), including:

- Direct Subsidized Loans (for undergraduate study);
- Direct Unsubsidized Loans;
- Direct Parent PLUS Loans;
- Direct Graduate PLUS Loans;
- Direct Consolidation Loans.

Other Types of Federal Student Loans:

- **Family Federal Education Loans (FFEL)** (last issued in 2010), including:
 - Subsidized Federal Stafford Loans;
 - Unsubsidized Federal Stafford Loans;
 - FFEL PLUS Loans;
 - FFEL Joint Spousal Consolidation Loans (last issued in 2006); and
 - FFEL Consolidated Loans.
- **Perkins Loans.**
- **Direct Joint Spousal Consolidation Loans** (last issued in 2006).
- **Health Education Assistance Loans (HEAL)** (last issued in 1998).
- **Federally Insured Student Loans (FISL)** (much older type of student loan).
- **Supplemental Loans for Students (SLS)** (much older type of student loan).
- **Guaranteed Student Loans** (much older type of student loan).

NOTE: The majority of federal student loans are Direct Loans—the only type of student loans still issued today. But if you took out student loans before 2018, and especially before 2010, it's possible that you may have a different type of federal student loan that is no longer issued today. If you have one or more of these other types of loans (listed above as “Other Types of Federal Student Loans”), **you may want to consider consolidating those loans into a new Direct Consolidation Loan** to access better repayment plans and other types of loan relief.

Find Out What Types of Federal Student Loans You Have

To find exactly what types of loans you have, log in to your account on studentaid.gov and follow the steps listed here:

1. Once you are on the Dashboard, click on “View Details.”
2. You will then be on the “My Aid” page, where you can scroll down to the “Loan Breakdown.”

3. For each of your loans with a balance over \$0 listed in the “Loan Breakdown” section, click on “View Loans.”
4. Click on “View Loan Details” for each loan listed on this page where the balance is more than \$0.
5. You will then be on a new page where you can see your loan type (for example, Direct Unsubsidized, FFEL Subsidized, Direct Parent PLUS Loan, etc.).

You should write down (or print out) the loan type information for each of the loans you have. You may need to repeat this process if you have multiple loans that you are still paying on. Loans that are listed in your account that show a balance of \$0 were either paid off, forgiven or canceled, or consolidated into a new loan.

NOTE: If you cannot find your student loan type information on studentaid.gov, you can call the Federal Student Aid Call Center at **1-800-433-3243**.

Step Two: What Is the Status of Your Federal Loans?

Depending on your situation, your loans may be:

- In repayment;
- In a grace period (if you recently left school);
- In deferment or forbearance (a temporary pause on your loan payments usually for an economic hardship or because you went back to school);
- Delinquent (after your first missed payment); or
- In default (after nine missed payments).

Find the Status of Your Loans on Studentaid.gov

1. To figure out the status of your federal student loans, take the following steps:
2. Log in to your studentaid.gov account.
3. Once you are on the Dashboard, click on “View Details.”
4. You will then be on the “My Aid” page, where you can scroll down to the “Loan Breakdown.”
5. Look for the “Loan Status” for each of your loans listed in the “Loan Breakdown.”

If you have paid off your loans, or consolidated your loans, the status of your loans with a \$0 balance will say “Paid-in-Full” or “Paid-in-Full By Consolidation.”

You should write down (or print out) the status of each of your loans.

NOTE: If your loans are in default, the default will be listed in red under the “**Loan Breakdown**.” There will also be an alert notification at the top of your **Dashboard** letting you know that you have loans in default. If you have loans in default, you should take steps now to get your loans out of default to avoid collection.

The government has powerful tools to collect on student loan debt, and can garnish your wages, take your tax refunds, and even seize your Social Security benefits to pay back student loans in default without suing you first. See **the section on page 23 on default** for more information on how to get out of default.

Step Three: Who Holds Your Federal Loans?

A loan holder is the owner of your student loans. Most federal student loans are owned and held by the federal government through the Department of Education. These loans are sometimes called “ED-held,” “Department-held,” or “federally held” loans. All Direct Loans are held by the Department of Education.

Some older federal student loans, such as FFEL and Perkins Loans, are not always held by the Department of Education. These loans might instead be held by a private lender, school, or other entity. This is sometimes referred to as “commercially held” or “non-ED-held” loans. If your loan is not held by the Department of Education, you may have to take steps before you can get certain loan relief, such as loan cancellation or forgiveness.

How Can You Tell if Your Loan Is Held by the Department of Education?

All Direct Loans are held by the Department of Education. For other federal student loan types, you will have to check to see who holds them.

Here’s how to find out:

1. Log in to your account on studentaid.gov.
2. On your Dashboard, click on “View Details.”
3. Scroll down to “Loan Breakdown.”

4. If the name of the loan servicer starts with “Dept. of Ed” or “Default Management Collection System,” then that loan is held (owned) by the Department of Education.
5. If the name of the loan servicer starts with either a company’s name or a school’s name, the loan is not held by the Department of Education.

You should write down (or print out) the loan servicer name listed in studentaid.gov for each of your loans.

NOTE: The majority of federal student loans are held by the Department of Education. And Direct Loans, the only types of federal loans issued today, are all automatically held by the Department of Education.

If you took out student loans before 2018, and especially before 2010, it’s possible that you may have another type of federal student loan that is not held by the Department of Education. If you have a loan that is not held by the Department of Education, **you may want to consider consolidating those loans into a new Direct Consolidation Loan** to access better repayment plans and other types of loan relief.

Step Four: Who Is Your Loan Servicer?

A loan servicer is a company that the loan holder or owner hires to handle the billing and other services on your student loans. The U.S. Department of Education contracts with several different companies to service federal student loans. Your loan servicer will work with you on repayment options and will help you with other issues related to your loans. If you need help with your student loans, you should contact your loan servicer first to see if they can assist you. Loan servicers will not charge you for any help they offer you, as they are paid to manage your loans by the loan holder.

The customer service agents at your loan servicer can help you with a number of things, including:

- Changing your payment due date;
- Stopping automatic payment withdrawals from your bank;
- Getting your loan records and payment history;
- Helping you enroll in an Income-Driven Repayment (IDR) plan to lower your monthly payment amount;

- Helping you sign up for forbearances to temporarily pause your loan payments;
- Advising you on loan forgiveness and cancellation options;
- Helping you stop collections and get out of default; and
- Answering any questions you have about your student loans.

While loan servicers can be helpful, they also have a history of making mistakes or providing incorrect information. If you think you are getting bad information or that your servicer has made a mistake, consider asking to speak with a manager. If that doesn't resolve the problem, see the [section on page 29 about how to File Complaints to Resolve Your Student Loan Issues](#).

There are dozens of companies that service student loans. Who your loan servicer is depends on whether your loan is held by the Department of Education or a private company, agency, or school.

Here are the current loan servicers for federal student loans that are held by the Department of Education, as of May 2024:

- **Edfinancial**, edfinancial.studentaid.gov, 1-855-337-6884
- **MOHELA**, mohela.com, 1-888-866-4352
- **Aidvantage**, aidvantage.studentaid.gov, 1-800-722-1300
- **Nelnet**, nelnet.studentaid.gov, 1-888-486-4722
- **ECSI**, efpls.ed.gov, 1-866-313-3797
- **Default Resolution Group**, myeddebt.ed.gov, 1-800-621-3115
- **CRI**, cri.studentaid.gov, 1-833-355-4311

If your loan is held by a private company, agency, or school, you may have a different loan servicer than those listed above.

Student loan accounts are frequently transferred from one servicer to another. That means your loan servicer today may have changed from the company that previously serviced your loans. It is important you check this information to make sure that your contact information is up to date with your current loan servicer so you don't miss out on any important notices or bills. If you haven't already, you should sign up for an online account with your loan

If you think you are getting bad information or that your servicer made a mistake, consider asking to speak to a manager or filing a complaint with the government.

servicer—which is different from your studentaid.gov account. On your online servicer account, you can make payments, enroll in auto-debit, and communicate with your servicer.

How Do You Find Your Loan Servicer?

If you have a federal student loan, you can find your loan servicer information on your Dashboard at studentaid.gov under the “My Loan Servicers” section. You can also call the Federal Student Aid Information Center at 1-800-433-3243 to get this information.

If you haven't already, you should sign up for an online account with your loan servicer—which is different from your studentaid.gov account.

NOTE: It's possible to have multiple loan servicers. This is more likely if you took out student loans at different times (such as for undergraduate loans and then graduate school loans) or if you have loans for your own education and then separate Parent PLUS Loans for your child's education.

If you have multiple loan servicers, you will have to make student loan payments to each of those student loan servicers directly. **You can consolidate your loans together to get one loan servicer (you can choose your servicer when you apply to consolidate your loans) to make repayment easier.** There may be some downsides to consolidating your loans together. See the **section on page 22 on consolidation for more information.**

Are You Eligible to Have Your Loans Canceled, Forgiven, or Discharged?

There are several programs to cancel some or all of your federal loans or have them forgiven, depending on your situation.

You may be able to cancel your federal student loans if:

- Your school closed, and you did not complete your program there (Closed School Discharge);

- Your school misled or lied to you about important information about the program you would attend, the outcomes of graduates, the type of federal aid you'd receive, or they engaged in aggressive and deceptive recruitment (Borrower Defense to Repayment);
- Your loans were taken out in your name without your knowledge (False Certification/ Identity Theft);
- You have a serious disability that generally prevents you from working (Total and Permanent Disability Discharge);
- You work full-time in a public service job for 10 years while in repayment (Public Service Loan Forgiveness); or
- You have been in repayment for 10 to 25 years (Income-Driven Repayment Cancellation).

Additionally, federal student loans are dischargeable upon the borrower's or student's death. The toolkit includes more information about Income-Driven Repayment. For more information on the other cancellation programs, visit NCLC's Student Loan Borrower Assistance site at studentloanborrowerassistance.org, and see the [cancellation checklists on page 38](#) to learn if you are potentially eligible for loan cancellation or discharges.

NOTE: The Total and Permanent Disability Discharge has recently gotten easier to apply for and can offer complete student loan cancellation for eligible borrowers. To apply, visit disabilitydischarge.com.

What about President Biden's Loan Cancellation Plan?

After the U.S. Supreme Court struck down President Biden's original student debt cancellation plan, the President announced he would pursue an alternative pathway for providing debt relief to borrowers. This process, however, is still ongoing as of May 2024 and may take months (if not longer) to proceed. Borrowers should not count on this new plan when making decisions about how to manage their student loan debt.

IMPORTANT NOTE: On June 24, 2024, two court decisions temporarily blocked parts of the SAVE Plan from taking effect. These decisions may change borrowers' rights and access to certain benefits, including repayment plans. Visit the Department of Education's website for more information about the changes at studentaid.gov/announcements-events/save-court-actions.

LOWERING YOUR PAYMENTS BY SIGNING UP FOR AN INCOME-DRIVEN REPAYMENT PLAN

You Have Several Repayment Plan Options

The typical federal student loan repayment plan, called the Standard Repayment Plan, generally gives you up to ten years to repay your student loan (up to 30 years for consolidation loans). Under the Standard Repayment Plan, payments are the same amount every month. But the Standard Repayment Plan is just one option—there are a number of other repayment plans that borrowers can choose to manage their loans.

For many borrowers struggling to afford their student loans, income-driven repayment (IDR) plans are the best option. These plans base monthly payments on your current income and family size, with payments sometimes as low as \$0/month, and they offer forgiveness of any outstanding balance after 10 to 25 years of qualifying payments, even if your payment is \$0 per month.

There are several different IDR plans, but all of them work in the same way: Your monthly payment amount is set each year based on your current income and family size and can go up if you make more money or down if you make less or your family grows. After a certain number of years of making payments, any loan balance you have left is forgiven (canceled). Beginning in 2026, there may be tax consequences for any loan debt that is forgiven through this program.

After you sign up for an IDR plan, you will have to recertify (update) your income and family size each year, even if they haven't changed. If you're married, these plans allow you to not count your spouse's income if you file your taxes separately.

You can apply for an IDR plan by calling your loan servicer or going online at studentaid.gov/idr.

Types of Income-Driven Repayment Plans

As discussed below, there are four different IDR plans:

- **SAVE** (Saving on a Valuable Education);
- **PAYE** (Pay As You Earn);
- **IBR** (Income-Based Repayment);
- **ICR** (Income-Contingent Repayment).

SAVE

The SAVE (Saving on a Valuable Education) plan is the newest IDR plan. The SAVE plan is one of the best plans for student loan borrowers to consider. Compared to the other IDR plans, the SAVE plan will:

- Offer much lower monthly payments for most borrowers;
- Shorten the number of years some borrowers will need to make payments (as short as ten years for some borrowers);
- Prevent balances from increasing while borrowers are making payments (interest that isn't covered by your payment will be waived); and
- Reduce the total amount that most borrowers will pay on their loans.

Importantly, under the SAVE plan, many more low-income borrowers will be eligible for \$0 monthly payments than under other IDR plans.

Some of the SAVE plan benefits were implemented in 2023 and early 2024, but other benefits won't go into effect until July 1, 2024. The SAVE plan is replacing the REPAYE plan. If you were already enrolled in the REPAYE plan, you should have been automatically transferred to the SAVE plan in fall 2023.

How Much Are Payments? Your monthly payment is based on your income and family size. If you make less than 225% of the Federal Poverty Level for your family size, you will have a \$0 monthly payment.

Until July 1, 2024, if you make more than 225% of the federal poverty level, your monthly payments will be 10% of the portion of your income above that amount. After July 1, 2024, if you make more than 225% of the federal poverty level, and you only borrowed loans for your undergraduate education, your monthly payment will be 5% of any income above 225% of the federal poverty line.

If you only borrowed loans for graduate school, your monthly payment will be 10% of your income above 225% of the federal poverty line. If you borrowed for both graduate and undergraduate schools, your monthly payment will be a weighted average of your loans and will be between 5% and 10% of your monthly income above 225% of the federal poverty level.

Eligible Loans: Direct Subsidized and Unsubsidized Loans, Direct Grad PLUS Loans, and Direct Consolidation Loans that do not include Parent Plus Loans are eligible for this plan. Parent Plus Loans or Direct Consolidation Loans that paid off Parent Plus Loans are generally not eligible for SAVE.

Time Until Forgiveness: If you continue to make payments under SAVE, any remaining balance on your loans will be canceled after a specific number of years of payment that depends on how much you originally borrowed and whether you borrowed any loans for graduate school. See the chart below for more information on when you may be eligible for cancellation under the SAVE plan. Depending on your income and debt, you may pay off your loans sooner.

AMOUNT ORIGINALLY BORROWED	YEARS IN REPAYMENT UNTIL ANY REMAINING STUDENT DEBT IS CANCELED
\$12,000 or less	10
\$12,001 to \$13,000	11
\$13,001 to \$14,000	12
\$14,001 to \$15,000	13
\$15,001 to \$16,000	14
\$16,001 to \$17,000	15
\$17,001 to \$18,000	16
\$18,001 to \$19,000	17
\$19,001 to \$20,000	18
\$20,001 to \$21,000	19
\$21,001 to \$22,000	20
\$22,001 to \$23,000	20 (for borrowers with only undergraduate loans), 21 (for borrowers with at least one loan for graduate school)
\$23,001 to \$24,000	20 (for borrowers with only undergraduate loans), 22 (for borrowers with at least one loan for graduate school)

AMOUNT ORIGINALLY BORROWED	YEARS IN REPAYMENT UNTIL ANY REMAINING STUDENT DEBT IS CANCELED
\$24,001 to \$25,000	20 (for borrowers with only undergraduate loans), 23 (for borrowers with at least one loan for graduate school)
\$25,001 to \$26,000	20 (for borrowers with only undergraduate loans), 24 (for borrowers with at least one loan for graduate school)
\$26,001 or more	20 (for borrowers with only undergraduate loans), 25 (for borrowers with at least one loan for graduate school)

PAYE

PAYE (Pay As You Earn) is another good plan to consider if SAVE is not right for you, though borrowers will not be able to enroll in this plan after July 1, 2024 (borrowers already enrolled in PAYE before that date may remain in the plan). PAYE may be a better option than SAVE for some borrowers with graduate school debt who would benefit from the 20-year cancellation period or for borrowers whose income increases significantly after initially enrolling in PAYE. Borrowers can compare payment plan options and estimate their payments in different plans using the Loan Simulator on studentaid.gov.

How Much Are Payments? Payments in PAYE are capped at 10% of your monthly discretionary income (defined as the difference between your income and 150% of the poverty guideline). Your payments will never be higher than what you would pay under the ten-year Standard Repayment Plan. Unlike the SAVE plan, your balance may increase while making payments in PAYE if your monthly payment is less than the interest you are charged monthly.

Eligible Loans: Only Direct Loans are eligible for the PAYE plan. Parent PLUS Loans and Direct Consolidation Loans that paid off Parent PLUS Loans are not eligible. Borrowers will not be able to newly enroll in this plan after July 1, 2024 (borrowers already enrolled in PAYE before that date may remain in the plan).

In addition, you are only eligible to enroll in PAYE if your current payment in PAYE would be less than your payment in a Standard plan and if you received a Direct Loan on or after October 1, 2011, and you had no outstanding Direct or FFEL loan balance when you received your first federal loan on or after Oct. 1, 2007.

Time Until Forgiveness: With the PAYE plan, any remaining loan balance you have will be canceled after 20 years of repayment, regardless of how much you borrowed or whether you took out loans for graduate school.

IBR

IBR (Income-Based Repayment) is generally not as generous as the SAVE and PAYE plans, but this may be a good option for FFEL borrowers who don't consolidate their loans into a Direct Consolidation Loan and for some borrowers with graduate school loans who cannot enroll in PAYE after July 1, 2024. IBR is generally the only income-driven repayment plan available to borrowers with FFEL loans. If you have a FFEL loan and want to sign up for an IDR plan, you may want to consider consolidating your FFEL loan into a new Direct Consolidation Loan to qualify for SAVE (or PAYE before July 1, 2024).

How Much Are Payments? Your monthly payment is based on your income and family size and depends on when you borrowed:

- Payments are 10% of your monthly discretionary income (defined as the difference between your income and 150% of the poverty guideline) if you were a new student loan borrower on or after July 1, 2014.
- If you borrowed before then, payments are generally 15% of your monthly discretionary income.

In IBR, just like in PAYE, payments will never be higher than what you would pay under the ten-year Standard Repayment Plan, and interest continues to accrue and be added to your balance.

Eligible Loans: All Direct and FFEL Loans are eligible for IBR, except for Parent PLUS Loans and Direct Consolidation Loans that repaid Parent Plus Loans. In addition, you are only eligible for IBR if your payment in IBR would be less than your payment in a Standard plan.

Time Until Forgiveness: If you continue to make payments under IBR, any remaining balance on your loans will be canceled after:

- 20 years of payments if you were a new student loan borrower on or after July 1, 2014; or
- 25 years if you borrowed before July 1, 2014.

ICR

ICR (Income-Contingent Repayment) usually requires higher payments than SAVE, PAYE, and IBR. However, ICR is the only IDR plan that is available to borrowers with Parent Plus Loans, but you first have to consolidate your Parent PLUS Loan into a new Direct Consolidation Loan to be eligible.

How Much Are Payments? In ICR, payments are capped at 20% of your monthly discretionary income (defined for ICR as income over 100% of the poverty guideline), though they may be lower based on a complicated alternative formula. Interest continues to accrue and be added to your balance under ICR.

Eligible Loans: Starting July 1, 2024, the ICR plan will limit new enrollments. After that date, only borrowers with Direct Consolidation Loans that include an underlying Parent PLUS Loan may enroll in ICR.

Time Until Forgiveness: If you continue to make payments under ICR, any remaining balance on your loans will be canceled after 25 years of payments.

NOTE: If you have FFEL Loans, you are generally eligible for the IBR plan, but you may want to consolidate your loans into a Direct Consolidation Loan to access the SAVE or PAYE plan, which are usually better plans for most borrowers.

If you have Parent PLUS Loans, you have to consolidate your loans into a Direct Consolidation Loan in order to be eligible for the ICR plan. **However, the ICR plan is the most expensive IDR plan, so if you have other types of loans besides Parent PLUS Loans, you may want to leave those loans out of your consolidation or consolidate those loans separately.** If you consolidate all of your loans together, you will only be eligible for the ICR plan and your payment may be higher.

Deciding Which Repayment Plan Is Right for You Using the Loan Simulator Tool

You can also use the Department of Education's helpful [Loan Simulator Tool](#) to see which payment plans you are eligible for and how much and how long you would likely pay under each plan. This can be very helpful in deciding which plan is right for you. The Loan Simulator Tool is available online at studentaid.gov/loan-simulator.

Retroactive Credit Toward Loan Forgiveness Through a One-Time Payment Count Adjustment

Beginning in 2023 and continuing in 2024, the Department of Education is conducting a one-time payment count adjustment to help borrowers get more credit toward Income-Driven Repayment (IDR) and Public Service Loan Forgiveness (PSLF) loan cancellation. While most borrowers will get this credit automatically, some borrowers had to take steps before June 30, 2024 to receive this credit.

As discussed above, on an IDR plan, borrowers have any remaining balance on their loans canceled or forgiven after a certain number of years of repayment (10 to 25 years, depending on the plan and loans). However, there have been huge problems with how the IDR plans were managed and how records were kept, which meant that only a small number of borrowers ever had their loans forgiven through IDR loan forgiveness prior to 2023. To help fix these issues, the Department of Education announced a one-time payment count adjustment program to give borrowers more credit toward forgiveness through IDR or PSLF. The account adjustment should help millions of borrowers get one step closer to loan forgiveness.

Under the account adjustment, any “time in repayment” on loans held by the Department of Education between July 1, 1994, and the end of the adjustment period will be counted as IDR-qualifying months, even if you were not enrolled in an IDR plan at the time. Additionally, “time in repayment” prior to consolidating loans before June 30, 2024, as well as some time in forbearance or time in deferment, will now be counted. This time will also count toward PSLF loan forgiveness as long as you meet the employment requirements for PSLF. Time in default, time in an in-school deferment, and time in a grace period still will not count toward IDR loan cancellation under the payment count adjustment.

What to Do After the Account Adjustment

If your loans are all held by the Department of Education, then you did not need to take any additional steps to get credit under the payment count adjustment. But if you don't have enough time in repayment to have your loans forgiven under IDR or PSLF loan forgiveness after the account adjustment, then you will need to sign up for an IDR plan going forward if you want to keep earning credit toward IDR or PSLF loan forgiveness.

Direct Parent PLUS Loans and other Parent PLUS Loans held by the Department will receive credit toward IDR cancellation under the payment count adjustment, even if they have not yet been consolidated. But to keep earning credit toward IDR loan forgiveness, you need to consolidate Parent PLUS Loans into a new Direct Consolidation Loan and then sign up for an Income-Contingent Repayment (ICR) plan. For more information on the payment count adjustment, visit the Department of Education's website at studentaid.gov.

NOTE: Loans that are not held by the Department of Education, such as commercially held FFEL loans and school-held Perkins loans, are not eligible for the payment count adjustment unless they were consolidated into a Direct Consolidation Loan before June 30, 2024. If you have one or more of these loans, **you needed to consolidate your loan into a new Direct Consolidation Loan before June 30, 2024**, to get credit for that loan under the account adjustment.

Consider Consolidating Loans to Make Repayment Easier

If you have federal student loans, you may be eligible to consolidate (combine) your loans into a new Direct Consolidation Loan. You may want to consolidate your loans if you have multiple loans and want to simplify repayment or make your loans eligible for certain loan repayment, relief, or forgiveness options. You may also want to consolidate defaulted loans to get out of default.

Consolidation is similar to refinancing a loan. In both cases, you are taking out a new loan that pays off your existing loans. But consolidation is less risky because the new loan is still a federal loan, and you keep your federal student loan benefits. Refinancing, on the other hand, replaces your existing federal loans with a new private loan.

NOTE: Only consolidate your federal loans using the federal Direct Consolidation Loan program. Consolidating or refinancing your federal student loans using a private loan refinancing or consolidation program will cause you to lose your federal student loan protections and benefits.

Direct Consolidation Loans are now the only type of federal student consolidation loan offered (although some borrowers still have older FFEL Consolidation Loans). Under the Direct Loan Consolidation Program, you can consolidate just about any type of federal student loan into a new Direct Consolidation Loan. You can consolidate all, just some, or even just one of your federal student loans. But you cannot consolidate private student loans into a federal Direct Consolidation Loan.

Interest rates for consolidation loans are fixed and set based on the interest rates of the loans you consolidate. There is no fee to consolidate your loans. Beware of any company that offers to help you with consolidation for a fee, as this is likely a scam. You can apply to consolidate your loans for free by completing the Direct Consolidation Loan application on the Department of Education's website.

There are many good reasons to consolidate, but whatever the reason, you should consider the pros and cons before consolidating. Once you consolidate, you cannot undo the consolidation—so make sure consolidation is right for you before you take this step.

Pros of Consolidating:

- Combines multiple loans into one to simplify loan repayment;
- Borrowers with FFEL and Perkins Loans can replace them with a Direct Loan that is eligible for more repayment plans and benefits;
- Borrowers with Parent PLUS Loans can consolidate to access the income-contingent repayment (ICR) plan;

Cons of Consolidating:

- If you are repaying in a standard or graduated plan, consolidating may result in a longer repayment period and, as a result, paying more interest over time;
- You might lose certain benefits and options, including the option to use consolidation to get out of default in the future;
- Consolidating certain types of loans together can limit your eligibility for some programs, but you can avoid this by leaving some loans out when you consolidate.

Visit the Department of Education’s Federal Student Aid website for more information on consolidating loans at: studentaid.gov/manage-loans/consolidation.

GET LOANS OUT OF DEFAULT AND STOP COLLECTION

Why You Should Get Your Loans Out of Default

If you fall behind on your student loan payments, you need to act quickly to avoid defaulting on your debt. In general, your federal student loans will be considered in default after you miss nine payments in a row.

If you default on your federal student loan debt, the federal government has powerful tools to collect on that debt. The government may be able to garnish your wages, seize your tax refunds, and even take a portion of your Social Security benefits to collect on your student loan debt. It can also make you ineligible to take on additional federal student aid, including Pell Grants, that you may need if you want to go back to school. If you are in this situation, this does not mean you should give up. The good news is that there are ways to recover even if you have already defaulted.

NOTE: There are special protections in place to help borrowers returning to repayment now that the COVID-19 payment pause has ended. If you miss payments on loans that are held by the Department of Education during the first year of returning to repayment (from September 1, 2023, to September 30, 2024), those loans will not be considered delinquent or placed into default until after September 30, 2024. This will give you time to sign up for a more affordable repayment plan or ask for a deferment or forbearance to pause your student loan payments. The government also won't collect on defaulted student loans through September 30, 2024. These protections are due to the Department of Education's **special on-ramp** and the **Fresh Start** program.

Loans That Defaulted Before the Pandemic

If your loans were in default before the payment pause, they will still be in default when you return to repayment unless you take action to get them out of default. Right now, there are three ways to get your loans out of default:

- Sign up for Fresh Start;
- Complete a loan rehabilitation; or
- Consolidate your loans to get out of default.

For more information, visit studentaid.gov/manage-loans/default and see the [default checklist](#) on page 43 in the toolkit.

Using Fresh Start to Get Out of Default

The Fresh Start Program is the easiest way to get out of default. All you have to do is make a quick phone call. The Fresh Start Program is only available until September 30, 2024. The pause on collections will continue for all loans that are eligible for Fresh Start (loans that defaulted before the pandemic) through the end of the Fresh Start period. Don't miss out!

If your loans are held by the Department of Education, you can get out of default using Fresh Start by calling the Default Resolution Group at 1-800-621-3115. You can also apply online at myeddebt.ed.gov by logging in to your account. If you do not have an online account yet with the Default Resolution Group, you can create one.

If your loans are held by a commercial lender or agency, you have to contact the agency that holds your loans to ask for a Fresh Start. If you don't have this information, you can find it on studentaid.gov, or call the Federal Student Aid Information Center at 1-800-433-3243.

DISCHARGING FEDERAL STUDENT LOANS IN BANKRUPTCY

It is difficult but not impossible to discharge student loan debt in bankruptcy. Bankruptcy is often considered a last resort option because of the impacts it can have on your credit and the costs and time involved in filing for bankruptcy. If you are struggling with debt and have student loans, it may be worth talking to an experienced bankruptcy attorney about your options. The federal government recently made changes to bankruptcy guidance that should increase the number of borrowers who are able to have their federal student loans discharged in bankruptcy.

If you file for bankruptcy, any collections and payments on your student loans and other debts will automatically be paused until the case is over or a judge says that payments should restart. Your student loans will not be automatically discharged if you file for bankruptcy, even if your bankruptcy is approved. You have to take special steps in the bankruptcy case to ask the judge to discharge your student loans. This is done by filing an adversary proceeding.

In order to have your student loans discharged in bankruptcy, you have to show that you have an undue hardship. When deciding if you have an undue hardship, the court will consider the following factors:

- **Present Ability to Pay:** if you're forced to repay your student loans, will you be able to maintain a minimal standard of living? If your expenses equal or exceed your income, you may be able to show that you lack the present ability to pay.
- **Future Ability to Pay:** can you show that your hardship will continue for a significant amount of the time left on repaying your loans? If you are in retirement, have a disability, have a chronic injury, have a long history of unemployment, are not likely to get better paying employment, don't have a degree, or have been in extended repayment status, you may be able to show that your hardship will continue.
- **Good Faith Effort to Repay:** have you made good faith efforts to repay your student loans before filing for bankruptcy? Have you contacted the Department of Education or your loan servicer regarding payment options for your loan prior to filing for bankruptcy? If you have taken all of these steps and still could not pay, or you never had an ability to pay, you may be able to show that you have made a good faith effort to repay.

Here are some examples of borrowers who discharged their student loans because of an undue hardship.

- A 50-year-old student loan borrower, earning \$8.50/hour as a telemarketer, was granted a discharge because they did not earn enough to pay the loans and meet their basic needs and were trapped in a “cycle of poverty.”
- A borrower who received Social Security benefits due to a medical condition received a discharge because she was able to show the judge that her illness was likely to continue to prevent her from working.
- A student who attended a for-profit college that lied to the student about their job prospects and earning potential was able to get their student loans discharged in bankruptcy.
- A college-educated married couple proved undue hardship and were able to discharge their student loans by showing the court that they worked steadily, maintained a very frugal budget, and tried an affordable repayment plan, but were still unable to meet their basic expenses.

For more information on filing for bankruptcy, contact a bankruptcy lawyer or visit studentloanborrowerassistance.org/for-borrowers/dealing-with-student-loan-debt/loan-cancellation-forgiveness-bankruptcy/bankruptcy.

DEALING WITH PRIVATE STUDENT LOANS AND OTHER EDUCATION DEBT

Private Student Loans Are Different

Private student loan payments are a lower priority than paying your mortgage, rent, utilities, car loan, or even your federal student loans. Private student loans should be treated like your credit card or medical debt—the only difference being that, as with federal student loans, it may be difficult (but not impossible) to discharge most private student loans in bankruptcy.

Private student loan lenders or collectors may be willing to negotiate because they do not have as many collection tools as the federal government. They cannot take your tax refunds, seize your Social Security benefits, or seize your wages before going to court. They also cannot deny you future government loans or financial aid. A defaulted private loan may, however, show up on your credit report.

Private lenders often hire collection agencies. You have the same rights as with any other debt to fight back against any collection harassment or abuse.

Be Aware of the Statute of Limitations on Old Private Student Loans

Unlike with federal student loans, there are state statutes of limitations that apply to private student loans. If a number of years has passed since you last made a payment or requested a deferment or forbearance on a private student loan, talk to an attorney before you contact the lender or start making payments again. A “statute of limitations” may have already expired on the loan, meaning the lender can no longer sue you on the debt. Payment now—or even a new promise to pay—may suddenly give the lender the right to sue you for years into the future.

It can be complicated to determine the number of years before the statute of limitations prevents suit on a debt, hence the need for legal help. In many places, the number is six years after your default, but in some states and for certain loans it may be only three or four years, or even as long as 20 years.

The attorney will want to see a copy of the loan agreement to help determine this. If you do not have a copy, request one from the lender whose contact information may be on collection letters or your credit report. If you reach out to the lender, avoid making payments or promises to repay, and don’t contact the lender unless you are prepared for them to follow up with collection efforts.

Relief Options for Private Student Loans

Private student loans do not have the same flexible repayment plans, loan cancellation, or other borrower protections that federal student loans have, but there may be steps you can take to get help. First, see if the loan agreement says anything about relief if you are having trouble making payments. If the statute of limitations has not expired, you may choose to negotiate for lower payments or even a reduction in your principal balance.

A borrower or the borrower’s estate will generally be liable for the loan even if the borrower becomes permanently disabled or dies, but some private student loan lenders voluntarily cancel the debt in these circumstances. For loans made after November 20, 2018, the lender cannot declare a default and ask for the immediate payment of the full loan amount from either the student or a co-signer just because the student has declared bankruptcy or dies. For loans made after that date, a co-signer’s legal obligation is also released upon the student’s death. Even for loans extended before November 20, 2018, lenders may voluntarily choose to follow these same protections.

Also, if your private student loan's interest rate is more than 6%, and you go on military active duty after taking out the loan, you have a right to reduce the interest rate to 6% while you are on active duty. If the lender does not adjust your rate automatically, notify it of your active-duty status.

Don't Refinance Federal Student Loans into Private Loans

Be wary of refinancing federal student loans with private companies. Even if a private lender offers you an interest rate that appears to be lower than your federal student loan interest rate, the rate might be variable. This means that what could start out as a 3% interest rate may later jump to a 19% interest rate, which is far higher than federal student loan rates.

Refinancing your federal loans into private loans also means you will lose all the protections under the federal student loan system, including income-driven repayment options, special deferments and forbearances, and any existing or future cancellation.

You can look into refinancing higher-interest private loans into a lower-interest private loan—but beware of other charges and fees to do so and watch out for variable interest rates that could make the loan more expensive.

Discharging Private Student Loans in Bankruptcy

In general, the ability to discharge private student loans in bankruptcy is subject to the same difficult standard as applies to federal student loans. But there is an important exception. If the school you attended (such as an unlicensed vocational school) is not eligible to participate in one of the federal student financial assistance programs, then you can discharge the private student loan in bankruptcy just like any other unsecured debt. Also, it is becoming increasingly easier to discharge private student loans in bankruptcy. Talk to an experienced bankruptcy attorney for more advice on handling your private student loans in bankruptcy.

Defending Against a Private Student Loan Collection Lawsuit

Private student loan lenders do not have the collection tools that are available to the government, making them more likely to sue on an unpaid debt. However, you have a number of defenses to such lawsuits. You may have similar defenses to these lawsuits as you would with other types of debt collection actions. Look carefully at any collection fees the private lender is seeking. The right to those fees must be stated in the loan agreement, and state law may further limit collection fees.

WATCH OUT FOR STUDENT LOAN SCAMS

Scammers are taking advantage of all of the confusion surrounding student loan repayments and cancellation. Don't pay a company to help you settle your student loan debt, reduce your payments, or access loan cancellation. Debt relief companies frequently charge expensive fees and upfront costs and never deliver on the promises they make to reduce your debt. And they can't do anything for you that you can't do for yourself, or with the help of your loan servicer, for free. The Consumer Financial Protection Bureau (CFPB) has a [list of red flags](#) for identifying student loan relief scams at consumerfinance.gov/StudentLoanScams. If you have been a victim of a debt relief scam, file a complaint with the Federal Trade Commission (FTC) and CFPB.

FILE COMPLAINTS TO RESOLVE YOUR STUDENT LOAN ISSUES

If you have problems with your student loans, you may be able to get help with your problem by contacting your lender or loan servicer's complaint department. If your problem is not resolved, you can try a couple of other places that might be able to help:

- File a complaint with the Department of Education Federal Student Aid Ombudsman office at studentaid.gov/feedback-center/login/complaint. This is often the best way to get issues with your federal student loans resolved if your loan servicer cannot resolve it or if you think your loan servicer has made a mistake.
- File a complaint with your state student loan ombudsman or advocate (if they have one) or your state attorney general.
- If your issue involves your school, you can consider filing a complaint with your state's higher education agency.
- If your issue has to do with private loans or student loan servicing, you can file a complaint with the Consumer Federal Protection Bureau (CFPB) at consumerfinance.gov/complaint, a federal agency that works on protecting consumers. You can also file complaints with the Federal Trade Commission, which also protects consumers, at reportfraud.ftc.gov.

If you still aren't able to resolve your issue, you might consider seeking legal assistance.

GET MORE HELP WITH YOUR STUDENT LOANS

More Information: Free information to help you with all types of student loan problems is available at NCLC's Student Loan Borrower Assistance website, studentloanborrowerassistance.org. NCLC's *Student Loan Law*, available at nclc.org/bookstore, has even more detailed information. For general student loan information and for managing your own loans, the best Department of Education website to use is studentaid.gov.

Free Legal Help: There are legal aid and legal services organizations in every state that provide free legal help to people whose incomes fall below certain amounts or to people who meet other requirements. Contact your local legal aid organization to see if you qualify for free help. You can find your local legal aid or legal services agency at LawHelp.org. Depending on where you live, there may be more than one organization in your area.

Find a Private Consumer Lawyer: If you do not qualify for free legal help, you may be able to hire a lawyer to help you with your student loan issue. Student loans are generally a consumer law issue, and you may be able to find a consumer lawyer who handles student loan cases on the National Association of Consumer Advocates (NACA) website at consumeradvocates.org/findanattorney.

You can also get information on finding other legal help at studentloanborrowerassistance.org/for-borrowers/find-help/help-with-your-student-loans.

GETTING STARTED

Use the following checklists and guides to help you navigate your student loan situation. These tools refer to explanations in previous sections of the toolkit for more guidance on finding the information you need to complete these questions.

Are your student loans for yourself or someone else's education?

See [page 4](#) of the toolkit: “Do You Have Federal Loans, Private Loans, or Both?” Check all that apply.

- My loans are for my education.
- My loans are for my child's education (such as Federal Parent PLUS Loans).
- I have loans for my own education and my child's education.
- I co-signed private student loans for someone else's education (such as a relative or friend).

Do you have federal or private student loans?

See [page 4](#) of the toolkit: “Do You Have Federal Loans, Private Loans, or Both?”

- I have federal student loans.
Complete the section on “Dealing with Federal Student Loans.”
- I have private student loans.
Complete the section on “Dealing with Private Student Loans and Other Education Debt.”
- I have both federal and private student loans.
Complete both sections on “Dealing with Federal Student Loans” and “Dealing with Private Student Loans and Other Education Debt.”

What schools did you attend?

If your student loans were for your education, list all of your schools and dates of attendance below.

Name/location of school: _____

Dates attended: _____

Diploma/degree earned, if any: _____

Name/location of school: _____

Dates attended: _____

Diploma/degree earned, if any: _____

Name/location of school: _____

Dates attended: _____

Diploma/degree earned, if any: _____

Name/location of school: _____

Dates attended: _____

Diploma/degree earned, if any: _____

Name/location of school: _____

Dates attended: _____

Diploma/degree earned, if any: _____

DEALING WITH FEDERAL STUDENT LOANS

See [page 6](#) of the toolkit for more information on “[Dealing with Federal Student Loan Debt.](#)”

Have you set up an account on studentaid.gov?

See [page 6](#) of the toolkit, “[Find Your Federal Student Loan Information by Logging in to Your Account on Studentaid.gov.](#)”

- Yes
- No
- Yes, but I forgot my login information.

If you have federal student loans, setting up a studentaid.gov account will help you understand your loan situation and apply for payment plans and relief programs. Be sure to save your login information to make it easy to access your account and apply for relief now and in the future. If you previously set up an account but forgot your login information, you can retrieve your username and reset your password at studentaid.gov.

What types of federal student loans do you currently have?

See [page 7](#) of the toolkit, “[Step One: What Types of Federal Loans Do You Have?](#)” Check all that apply. It’s common to have several different types of loans.

Most Common Types of Loans (still issued today):

- Direct Subsidized Loans (for undergraduate study)
- Direct Unsubsidized loans
- Direct Parent PLUS loans
- Direct Graduate PLUS loans
- Direct Consolidation Loans (subsidized and unsubsidized)
 - Check here if your Direct Consolidation Loan paid off a Parent PLUS loan

Older, Less Common Types of Loans (no longer issued today):

- Family Federal Education Loans (FFEL) (last issued in 2010), including:
 - Subsidized Federal Stafford Loans
 - Unsubsidized Federal Stafford Loans
 - FFEL PLUS Loans
 - FFEL Consolidated Loans
 - FFEL Joint Spousal Consolidation Loans (last issued in 2006)
- Perkins Loans (issued by schools, last issued in 2018)
- Direct Joint Spousal Consolidation Loans (last issued in 2006)

Much Older, Less Common Types of Loans (no longer issued today):

- Health Education Assistance Loans HEAL (last issued in 1998)
- Federal Insured Student Loans (FISL)
- Supplemental Loans for Students (SLS)
- Guaranteed Student Loans

What is the status of your federal student loans?

See page 9 of the toolkit, “Step Two: What Is the Status of Your Federal Loans?” If you have more than one federal student loan, check the status of each one, and if they have different statuses, fill in the blank with the loan that matches each status option.

- In repayment:** _____
- In a grace period** (if you recently left school): _____
- In deferment or forbearance** (a temporary pause on your loan payments, usually for an economic hardship or because you went back to school): _____
- Delinquent** (after your first missed payment): _____
 - Date of first missed payment:** _____
- In default** (after 270 days or nine months of missed payments): _____
 - Date of first missed payment:** _____

NOTE: See page 15 of the toolkit, “Lowering Your Payments by Signing Up for an Income-Driven Repayment Plan.” If you cannot afford your payments or are in forbearance, you may qualify for a more affordable loan payment (in some cases as low as \$0 per month) by signing up for an Income-Driven Repayment (IDR) plan.

If you are behind on your payments (delinquent), it is important to take action to prevent your loans from going into default, which can damage your credit, increase the cost of your loans, and put you at risk of wage garnishment, among other things. There are steps you can take now to avoid this.

If your loans are already in default, don’t despair. There are often steps you can take to get your loans back in good standing.

Who holds your federal student loans?

See page 10 of the toolkit, "Step Three: Who Holds Your Federal Loans?"

All Direct Loans are held by the Department of Education, but other loan types might be held by a school, private lender, or other entity. If you have loans that are not Direct Loans, check whether the loan holder is the Department of Education or not, and list all loans **not held** by the Department of Education below. If you have more than one federal student loan, you may have different loan holders.

- My federal student loans are held by the Department of Education.
- My federal student loans are not held by the Department of Education.
- Some of my loans are held by the Department of Education, and some of my loans are held by other entities (such as private lenders or schools).

Loans Not Held by the Department of Education (if any):

NOTE: If you have loans that are not held by the Department of Education, consider consolidating them to access better repayment options, loan forgiveness and cancellation, and other benefits. See page 22 of the toolkit for help consolidating loans.

Are you eligible to have your loans canceled, forgiven, or discharged?

See [page 13](#) of the toolkit. Check the boxes below if any of these apply to you, and review your options for loan cancellation or forgiveness.

Total & Permanent Disability Discharge

- Are you unable to work due to an ongoing disability or a physical or mental condition?
- Do you receive some type of disability benefits, such as VA benefits, SSI benefits, or Social Security benefits?
- Are you retired and not able to go back to work due to a disability?

If you checked any of these boxes, you may be eligible to have your federal student loans canceled through the Total & Permanent Disability Discharge program.

Apply for Relief: You can apply for a Total & Permanent Disability Discharge online at disabilitydischarge.com.

Public Service Loan Forgiveness (PSLF)

- Do you work full-time in a public service job (at least 30 hours or more per week)?
- Is your public service employer a government, 501(c)(3) nonprofit organization, or [other nonprofit organization that provides a public service?](#)

If you checked these boxes, you may be eligible to have your federal student loans canceled after making 120 qualifying payments (10 years of payments) while working full-time in a qualifying public service job.

Only Direct Loans are eligible for PSLF, so if you have other loan types, you will need to consolidate them into a Direct Consolidation Loan.

Apply for Relief: Start earning credit toward PSLF or apply for forgiveness using the Department of Education's online PSLF Help Tool at studentaid.gov/pslf.

Income-Driven Repayment (IDR) Loan Cancellation

- Are you enrolled in an income-driven repayment (IDR) plan?
- Have you been in repayment for 10 to 25 years on your federal student loans?

If you checked these boxes, you may be eligible to have your federal student loans automatically canceled after 10 to 25 years of repayment depending on the IDR plan you are enrolled in, the amount you borrowed, and the type of loans that you have.

You may get credit for some past periods of repayment, deferment, and forbearance under the one-time payment count adjustment in 2024. You will need to be enrolled in an IDR plan to keep earning credit toward cancellation after the adjustment is made in 2024.

Apply for Relief: Make sure you are signed up for an IDR plan to keep earning credit. Once you've earned enough credit, cancellation will be automatic.

Borrower Defense to Repayment

- Did you take out student loans to attend a school that misled you or engaged in other misconduct to convince you to enroll or take out loans?
- Did your school mislead or lie to you about important information about the program you would attend, the outcomes of graduates, or the type of federal aid you'd receive?
- Did your school engage in any aggressive and deceptive recruitment to get you to enroll?

If you checked any of these boxes, you may be eligible to have your federal student loans discharged under the Borrower Defense to Repayment program.

Apply for Relief: You can apply for Borrower Defense to Repayment at studentaid.gov/borrower-defense/.

Due to recent court decisions, the Borrower Defense to Repayment Discharge program is in flux, and there may be delays in processing applications.

False Certification & Identity Theft

- Did someone else use your identity to take out loans in your name that you didn't receive? (*Forgery/Identity Theft*)
- Did you not have a high school diploma or GED when you enrolled in college? (*Ability to Benefit*)
- Did someone who worked at your college sign your name on your loan documents without your knowledge or authorization? (*Unauthorized Signature/Payment*)
- Did your school sign you up for a program to train you for a job you would not be able to get because of some type of disqualifying status (such as a criminal record or medical condition)? (*Disqualifying Status*)

If you checked any of these boxes, then student loans may have been issued in your name that shouldn't have been. You may be able to have those federal student loans canceled through a False Certification discharge.

Apply for Relief: There are four different applications for False Certification Discharge, depending on your circumstances.

Find the False Certification Discharge applications at studentaid.gov/manage-loans/forgiveness-cancellation/false-certification.

Closed School Discharge

- Did your school close while you were enrolled but before you completed your program?
- Did you withdraw from your school within 180 days of it closing?

If you checked either of these boxes, you may be eligible to have your loans discharged through the Closed School Discharge program.

Apply for Relief: Some borrowers will automatically have their loans canceled for schools that close after July 1, 2023. Borrowers who do not qualify for automatic cancellation can apply to have their loans canceled.

Find the Closed School Discharge application online at studentaid.gov/forms-library.

Did you attend any of the following schools?

Check all that apply. If you attended any of the following schools, you may be eligible for automatic cancellation of your student loans through the Borrower Defense to Repayment program. See [page 13](#) of the toolkit, “Are You Eligible to Have Your Loans Canceled, Forgiven, or Discharged?”

- Ashford University
- CollegeAmerica Colorado Campus
- Corinthian Colleges:
 - Everest College
 - WyoTech
 - Heald College
- Court Reporting Institute
- DeVry University
- Globe University
- ITT Tech
- Kaplan Career Institute’s Kenmore Square Campus
- Marinello Colleges of Beauty
- Minnesota School of Business
- University of Phoenix
- Westwood College
- The Art Institutes

NOTE: For more information on automatic cancellation, visit studentaid.gov/announcements-events/borrower-defense-update.

Managing federal student loan repayment

See page 15 of the toolkit, “Lowering Your Payments by Signing Up for an Income-Driven Repayment Plan.”

CHECK THE BOXES THAT MATCH YOUR SITUATION	CONSIDER TAKING THESE STEPS	GET MORE INFORMATION
<input type="checkbox"/> I am struggling to afford my student loan payments.	<p>You may be able to lower your monthly payment amount with an income-driven repayment (IDR) plan.</p> <p>With an IDR plan, your payment is set based on your income and household size and could be as low as \$0 per month.</p>	<p>Use the Department of Education’s Loan Simulator Tool to see which payment plans you are eligible for and how much and how long you would likely pay under each plan.</p> <p>The Loan Simulator Tool is available online at studentaid.gov/loan-simulator.</p>
<input type="checkbox"/> I’ve temporarily paused my payments and am in deferment or forbearance.	<p>On an IDR plan, your loans may be canceled automatically after 10 to 25 years of payments.</p> <p>If you’ve already explored your IDR and payment plan options, and you can’t afford payments under any of the plans right now, consider requesting a deferment or forbearance. Deferments and forbearances allow you to temporarily postpone payments and protect you against defaulting, which is very important. But they are generally not as helpful for getting out of debt as enrolling in an IDR plan that works for you.</p>	<p>If none of the plans are currently affordable to you, check out deferment and forbearance options at https://studentaid.gov/manage-loans/lower-payments/get-temporary-relief.</p>
<input type="checkbox"/> I am behind on my student loan payments (delinquent), but I’m not yet in default.	<p>If you’ve already explored your IDR and payment plan options, and you can’t afford payments under any of the plans right now, consider requesting a deferment or forbearance. Deferments and forbearances allow you to temporarily postpone payments and protect you against defaulting, which is very important. But they are generally not as helpful for getting out of debt as enrolling in an IDR plan that works for you.</p>	<p>See the Income-Driven Repayment Plan Comparison Chart on page 47.</p>

CHECK THE BOXES THAT MATCH YOUR SITUATION	CONSIDER TAKING THESE STEPS	GET MORE INFORMATION
<input type="checkbox"/> I want to earn credit toward loan cancellation or forgiveness while making payments on my loans.	<p>You may be able to earn credit toward income-driven repayment (IDR) loan cancellation or Public Service Loan Forgiveness (PSLF) by signing up for an IDR plan.</p> <p>On an IDR plan your loans may be canceled after 10 to 25 years of payments, depending on your situation.</p> <p>Only Direct Loans are eligible for PSLF. If you have other loan types, you must consolidate them into a Direct Consolidation Loan to benefit from PSLF.</p> <p>If you have Parent PLUS Loans or Perkins Loans, you must consolidate them into a Direct Consolidation Loan to be eligible for IDR. Additionally, if you have FFEL loans, you must consolidate into a Direct Consolidation Loan to be eligible for the SAVE plan.</p>	<p>Review your eligibility for loan forgiveness on page 38 of the toolkit. Use the Department of Education’s Loan Simulator Tool to see which payment plans you are eligible for and how many payments are required before your loans would be canceled.</p> <p>The Loan Simulator Tool is available online at studentaid.gov/loan-simulator.</p> <p>See the Income-Driven Repayment Plan Comparison Chart on page 47.</p>
<input type="checkbox"/> I want to pay off my student loans as quickly as possible and limit the amount of interest I pay on my loans.	<p>Depending on your goals for managing your repayment and your student loan situation, you may want to change your repayment plan. There are different lengths of repayment depending on what type of payment plan you are enrolled in.</p>	<p>The Department of Education’s Loan Simulator Tool can help you compare student loan payment plans and choose one that fits your goals, including:</p> <ul style="list-style-type: none"> ▪ Paying off your loans as quickly as possible, ▪ Getting the lowest monthly payment amount,

CHECK THE BOXES THAT MATCH YOUR SITUATION	CONSIDER TAKING THESE STEPS	GET MORE INFORMATION
	<p>In some cases, the Standard repayment plan may be best if you want to limit the amount you pay over time and the amount of time you are in repayment. Some borrowers may also like the Graduated repayment plan, but it can be riskier because the payments increase every two years.</p> <p>For some borrowers, the new SAVE plan may be the best option. In many cases, the SAVE plan will offer much lower monthly payments, prevent balances from increasing while borrowers are making payments, and reduce the amount of interest and the total amount that borrowers will pay on their loans. Depending on how much you borrowed, you could have your loans canceled after 10 to 25 years of payments.</p> <p>Regardless of which payment plan you choose, you can also make extra payments to pay down your loans faster and potentially reduce the amount of interest you pay. You can also enroll in auto-debit payments to slightly reduce the interest rate on your loans.</p>	<ul style="list-style-type: none"> ▪ Paying the lowest amount over time on your loans, and ▪ Paying off your loans by a specific date. <p>The Loan Simulator Tool is available online at studentaid.gov/loan-simulator.</p>

CHECK THE BOXES THAT MATCH YOUR SITUATION	CONSIDER TAKING THESE STEPS	GET MORE INFORMATION
<input type="checkbox"/> I am in default on my student loans.	<p>Sign up for Fresh Start before September 30, 2024, to get your loans out of default quickly and easily.</p> <p>While signing up for Fresh Start, you can ask for an income-driven repayment (IDR) plan to help make your monthly payments affordable. In some cases, your payments could be as low as \$0 per month and will allow you to earn credit toward IDR loan cancellation.</p> <p>You can also get out of default through loan rehabilitation or by consolidating your defaulted loans into a new Direct Consolidation Loan. Consolidation is generally faster and easier than rehabilitation. There are pros and cons to consolidating loans. See page 22 of the toolkit for information on consolidation.</p>	<p>If your loans are held by the Department of Education, you can get out of default using Fresh Start by calling the Default Resolution Group at 1-800-621-3115 or visiting myeddebt.ed.gov.</p> <p>If your loans are not held by the Department of Education, contact your loan holder and ask for a Fresh Start. You can find out who your loan holder is at studentaid.gov, or by calling the Federal Student Aid Information Center at 1-800-433-3243. See page 10 of the toolkit for information on loan holders.</p> <p>For more information about getting out of default through consolidation or rehabilitation, see studentaid.gov/manage-loans/default/get-out.</p>

CHECK THE BOXES THAT MATCH YOUR SITUATION	CONSIDER TAKING THESE STEPS	GET MORE INFORMATION
<input type="checkbox"/> I have Parent PLUS Loans and can't afford my payment plan.	<p>If you have Parent PLUS Loans, you must consolidate them into a Direct Consolidation Loan to be eligible for IDR.</p> <p>Parent PLUS Loans that are consolidated into a Direct Consolidation Loan are generally only eligible for the Income-Contingent Repayment (ICR) plan.</p> <p>NOTE: If you have multiple loans that you have not yet consolidated, you may be eligible for the <i>Double Consolidation Loophole</i>, which could help you become eligible for a more affordable repayment plan, such as the SAVE Plan. More information about the <i>Double Consolidation Loophole</i> is available here: edcapny.org/parent-plus-double-consolidation/.</p>	<p>Use the Department of Education's Loan Simulator Tool to see which payment plans you are eligible for and how much and how long you would likely pay under each plan.</p> <p>The Loan Simulator Tool is available online at studentaid.gov/loan-simulator.</p> <p>If none of the plans are currently affordable to you, check out deferment and forbearance options at studentaid.gov/manage-loans/lower-payments/get-temporary-relief.</p> <p>See the Income-Driven Repayment Plan Comparison Chart on page 47.</p>

Income-Driven Repayment Plan Comparison Chart

REPAYMENT PLAN	ELIGIBLE LOANS	ELIGIBLE LOAN DATES	REPAYMENT CALCULATION	FORGIVENESS PERIOD	PARENT PLUS?
Saving on a Valuable Education (SAVE) <i>previously Revised Pay As You Earn (REPAYE)</i>	Only Direct Loans , except Parent PLUS Loans and Consolidation loans that repaid Parent PLUS Loans	All	Payments will be capped between 5% and 10% of income <i>*lower payment rate will begin in July 2024</i>	10-25 years, depending on the original loan balance and loan.	No
Pay As You Earn (PAYE)	Only Direct Loans , except Parent PLUS Loans and Consolidation loans that repaid Parent PLUS Loans	New borrowers on or after Oct. 1, 2007, who received a disbursement on or after Oct. 1, 2011	Payments capped at 10% of income <i>*after 7/1/24, no new enrollments in PAYE</i>	20 years	No
Income- Based Repayment (IBR) for loans taken out before July 1, 2014	Direct Loans & FFEL Loans , except Parent PLUS Loans and Consolidation loans that repaid Parent PLUS Loans	Borrowed before July 1, 2014	Payments capped at 15% of income <i>*after 7/1/24, some limits on switching to IBR</i>	25 years	No
Income- Based Repayment (IBR) for loans taken out after July 1, 2014	Only Direct Loans , except Parent PLUS Loans and Consolidation loans that repaid Parent PLUS Loans	New borrowers on or after July 1, 2014	Payments capped at 10% of income <i>*after 7/1/24, some limits on switching to IBR</i>	20 years	No
Income-Contingent Repayment (ICR)	Only Direct Loans <i>*Parent PLUS Loans are eligible, but only if they are first consolidated into a Direct Consolidation Loan</i>	All	Payments capped at 20% of income <i>*after 7/1/24, no new enrollments except for Direct Consolidation Loans that repaid a Parent PLUS loan</i>	25 years	No, unless consolidated first

Should you consider consolidating your federal student loans?

See [page 22](#) of the toolkit, “Consider Consolidating Loans to Make Repayment Easier.”

Check all the boxes that apply to you.

- I have federal student loans that are not held by the Department of Education.
- I have federal student loans that are not Direct Loans, such as FFEL, Perkins, or HEAL loans.
- I have Parent PLUS Loans, and I want to sign up for an income-driven repayment (IDR) plan.
- I want to be in a different income-driven repayment (IDR) plan (such as the SAVE plan), but my current loans are only eligible for the IBR plan.
- I have FFEL or Perkins Loans, and I want to participate in the Public Service Loan Forgiveness (PSLF) program.
- I want to make repayment easier by having fewer loans and loan servicers to manage.
- I have federal student loans in default.

If you checked any of the boxes above, you may want to consider consolidating your federal student loans into a new Direct Consolidation Loan. There are pros and cons to consolidating federal student loans. See [page 22](#) of the toolkit for more information on consolidating federal student loans.

Visit the Department of Education’s Federal Student Aid website for more information and to apply to consolidate your loans at: studentaid.gov/manage-loans/consolidation.

DEALING WITH PRIVATE STUDENT LOANS AND OTHER EDUCATION DEBT

Are you struggling with private student loans or other education debt?

See [page 26](#) of the toolkit, “[Dealing with Private Student Loans and Other Education Debt.](#)”
Check all the boxes that apply to your situation.

- I have private student loans or other education debt that I am struggling to pay back.
- I am in default on my private student loans.
- I have been contacted by debt collectors about private student loans or other education debt (not federal student loan debt), and I want to know what might happen and what my options are.
- I have been sued (or am being sued now) for a private student loan or other education debt.
- I have a judgment against me for a private student loan or other education debt.
- My wages, bank accounts, or tax refunds have been seized to pay back a private student loan or other education debt.

If you are facing collections, lawsuits, or garnishments (if you checked any of the last four boxes), you may want to contact a lawyer for additional help. You may be able to get free legal help from your local legal aid agency. See [page 30](#) of the toolkit, “[Get More Help with Your Student Loans,](#)” for more information on finding additional legal help.

STUDENT LOANS & BANKRUPTCY

Should you consider filing for bankruptcy to deal with your student loan debt?

See [page 28](#) of the toolkit, “Discharging Federal Student Loans in Bankruptcy.” Check all the boxes that apply to you.

- Do you have other debts in addition to student loan debt, such as credit card debt, medical debt, or other household debt?
- Are you unable to afford your student loan payments, even with an income-driven repayment plan?
- Are you ineligible for student loan cancellation or loan forgiveness?
- Do you have private student loan debt that you are unable to pay?
- Are you facing collection, such as lawsuits, garnishments, or tax refund offsets to pay back your student loan debt?

If you checked any of the boxes above, then you may want to talk to an experienced bankruptcy attorney to see if bankruptcy is a good option for you. You may be able to get free legal help from your local legal aid agency. See [page 30](#) of the toolkit for more information on finding additional legal help.



National
Consumer Law
Center
*Fighting Together
for Economic Justice*

NATIONAL HEADQUARTERS

7 Winthrop Square, Boston, MA 02110
(617) 542-8010

NCLC.ORG

WASHINGTON OFFICE

Spanogle Institute for Consumer Advocacy
1001 Connecticut Ave, NW, Suite 510
Washington, DC 20036
(202) 452-6252

The Ethics of Seeking Student Loan Discharges under DOJ Guidance

BY IGOR ROITBURG, MANAGING DIRECTOR, STRETTO & KATARINA ESSENMACHER, COORDINATOR, ALABAMA BANKRUPTCY ASSISTANCE PROJECT, ALABAMA STATE BAR

“You can’t discharge student loans in bankruptcy.” As bankruptcy professionals, we have all heard and repeated this refrain for years. Technically, of course, this was never exactly true. Section 523(a)(8) of the Bankruptcy Code has long provided for the discharge of student loans if the debtor could demonstrate “undue hardship.” Practically, however, discharging student loans proved nearly impossible, with fewer than 0.1% achieving discharge.¹ As such, advising debtors that their student loans were not dischargeable was sound and accurate advice consistent with a bankruptcy attorney’s ethical obligations.

On Nov. 17, 2022, the Department of Justice (“DOJ”) and Department of Education (“DOE”) announced new guidance (“Guidance”) for discharging federal student loans in bankruptcy. The Guidance provides a streamlined and objective approach. Instead of guessing what “undue hardship” means and how to prove it, the Guidance clearly outlines how the standard will be reviewed and applied. Instead of spending countless hours and dollars in discovery and litigation, the Guidance offers an attestation form that the DOJ and DOE use to evaluate if a debtor meets the standard.

Industry experts estimate that up to 75% of cases seeking discharge under the Guidance succeed.²



BINKSOL/SHUTTERSTOCK.COM

The Guidance has completely shifted the landscape. What once was rare and hopeless is now proving to be attainable and life-changing for many debtors. This raises the question: What impact does the Guidance have on the debtor attorney's ethical obligations to review and represent the debtor on the dischargeability of their student loans?

At the core of this discussion are two sub-issues: (1) what a debtor attorney must tell their client and (2) what the debtor attorney must do in the course of their representation.

The Model Rules of Professional Conduct ("Rules") make it clear that the basic role of a lawyer is to provide clients "with an informed understanding of [their] legal rights and obligations and [explain] their practical implications."³ In doing so, attorneys must provide "competent representation" (Rule 1.1), "act with diligence and promptness" (Rule 1.3) and consult with and keep the client properly informed (Rule 1.4).

At a minimum, attorneys now have an obligation to notify their clients—past and present—that they may now have a realistic path to discharging their federal student loans. After all, student debt is the second largest consumer debt and has a tremendous impact on the financial well-being of a debtor. Numerous studies show that student debt significantly influences debtors' life decisions.⁴ It is our informed assessment, based on the Guidance, that attorneys now have an obligation to at least alert their clients to the possibility that these loans may now be dischargeable under the Guidance.

That said, Rule 1.2(c) clearly allows attorneys to "limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent." Given that the Guidance requires the filing of an adversary proceeding, a process with which attorneys may not be familiar or comfortable, and which is beyond the scope of most standard representation arrangements, attorneys should not be obligated to prosecute the adversary proceeding on behalf of the client

Share your thoughts

What do you think of the ethical requirement? Email Igor Roitburg at Igor.Roitburg@stretto.com with your comments.

“
At a minimum, attorneys now have an obligation to notify their clients—past and present—that they may now have a realistic path to discharging their federal student loans.
”

in the ordinary course of their bankruptcy representation. But, as Rule 1.2(c) also makes clear, the client must give "informed consent". Rule 1.0 explains that "informed consent denotes the agreement by a person to a proposed course of conduct *after the lawyer has communicated adequate information and explanation* about the material risks of and reasonably available alternatives to the proposed course of conduct." (emphasis added). Thus, even if the attorney does not elect to represent the client in the discharge adversary proceeding, the ethics rules make clear that attorneys must communicate to the debtor that they have the option of doing so.

The DOJ Guidance on discharging student loans is groundbreaking, making what was once nearly impossible now very realistic. With the Guidance in place, attorneys can no longer simply tell clients that "student loans are not dischargeable in bankruptcy." While lawyers are not required to file an adversary proceeding to seek the discharge, they should advise their clients that discharge is now possible and explain the process. If their clients wish to proceed, attorneys should be prepared to handle the matter, co-counsel or refer it to another attorney for prosecution. ■

FOOTNOTES

1. Jason Iuliano, *The Student Loan Bankruptcy Gap*, 70 Duke L.J. 497-543 (2020)
Available at: <https://scholarship.law.duke.edu/dli/vol70/iss3/>
2. NACBA 2024 Conference.
3. Model Rules of Professional Conduct: Preamble & Scope
4. <https://www.nyc.gov/site/dca/news/046-21/student-loans-negatively-affect-life-decisions-half-new-york-city-borrowers#:~:text=Effect%20on%20Major%20Life%20Choices&text=About%2033%20percent%20indicated%20they%20prevented%20from%20starting%20a%20business.>



**SURRENDERING
YOUR CLIENT'S
CAR,
BOAT,
OR RV?**

**OUR SERVICE PUTS
YOU IN CONTROL!**

Lenders routinely pick up collateral *at their convenience* - *not your client's!* Sometimes in the middle of the night! Don't let your client get caught in an embarrassing situation. Collateral Services takes care of all of the arrangements for your client, so they can avoid visits from the reposman.

SAVE MONEY

We transport and store your client's car, boat, motor home or any type of collateral until the lender picks it up.



NATIONAL COLLATERAL SERVICES
Call us. We'll take it from there.
888-919-4274

Faculty

Jeffrey C. Hakanson is an attorney with McIntyre Thanasides Bringgold Elliott Grimaldi & Guito, P.A. in Tampa, Fla., where he focuses his practice on defending and protecting clients who are entering or trying to avoid foreclosure. He began his practice of law in a local Tampa real estate firm, where he developed expertise in representing secured lenders in mortgage foreclosure actions, lender-liability actions and bankruptcy cases. Mr. Hakanson then joined the law firm of Gibbons, Smith, Cohn & Arnett, during which time he focused his practice primarily on real estate litigation and the representation of creditors in bankruptcy court. Mr. Hakanson is an ABI member and is admitted to practice in the U.S. District Courts for the Middle, Northern and Southern Districts of Florida. He received his Bachelor's degree in history in 1991 from Washington and Lee University, and his J.D. in 1995 from South Texas College of Law.

Hon. Catherine Peek McEwen is a U.S. Bankruptcy Judge for the Middle District of Florida in Tampa, appointed by the Eleventh Circuit Court of Appeals on Aug. 22, 2005, and an adjunct professor at Western Michigan University Cooley Law School. She is the first female judge appointed in her district. Prior to becoming a judge, she was in private practice for almost 23 years in Tampa, concentrating on commercial litigation with an emphasis on representing parties in bankruptcy cases, and was a solo practitioner from 2001 until she was appointed to the bench. Judge McEwen was elected into the American Law Institute in 2012. In recent years, she was appointed by Chief Justice John Roberts to be the Bankruptcy Observer to the Judicial Conference of the United States (JCUS), the policy-making body for federal judiciary, for a two-year term (2017-19). She is a member of the JCUS Advisory Committee on the Bankruptcy Rules (2020-26) and, most recently, a member of the Committee on the Judicial Branch (indefinite term). Judge McEwen is a past Eleventh Circuit Governor on National Conference of Bankruptcy Judges' Board of Governors and is currently a member of the NCBJ's Legislative Committee and Centennial Celebration Committee. She also is a member of The Florida Bar's Business Law Section (BLS) Executive Council and the immediate past judicial chair of the section's Bankruptcy/UCC Committee. Judge McEwen is currently co-chair of The Florida Bar's *Pro Bono* Legal Services Committee and judicial chair of the BLS Scholars & Fellows Retention Task Force. She also is a past chair of The Florida Bar's Federal Court Practice Committee. Judge McEwen is a past chair/president of the Tampa Bay Bankruptcy Bar Association, was a court-appointed bankruptcy mediator from 1989-2005, is a past chair of the U.S. Bankruptcy Court for the Middle District of Florida's Local Bankruptcy Rules Advisory Committee, and is a past chair of a Florida Bar Grievance Committee. Prior to becoming a lawyer, Judge McEwen was a sportswriter from 1975-79 for the *Tampa Tribune* and the *Tampa Times*. She received her B.A. in political science from the University of South Florida in 1979 and her J.D. *cum laude* from Stetson University in 1982.

Grace Anne Monnig is an Assistant U.S. Attorney in the U.S. Attorney's Office for the Middle District of Florida in Tampa. She focuses on defensive civil matters, including representing agencies of the federal government as creditors in bankruptcy matters and representing federal employees who have been sued in their official capacity. Prior to joining the Department of Justice, Ms. Monnig represented the U.S. Department of Agriculture in several roles, culminating in service as associate regional counsel over Texas and Oklahoma. She also served the State of Texas as an Assistant At-

torney General and worked in private practice as a civil litigator. Ms. Monnig received her B.A. from the University of Texas at Arlington and her J.D. in 2013 from Baylor University.

Igor Roitburg is a senior managing director with Stretto in New York and has more than 25 years of combined legal, bankruptcy industry and technology proficiency. Prior to joining Stretto, he served as COO at Default Mitigation Management LLC (DMM), acquired by Stretto, where he co-created the DMM Portal, the industry's leading technology platform specifically designed to facilitate mortgage and student loan debt resolution. Mr. Roitburg is responsible for overseeing the day-to-day development and integration of the DMM Portal. He directs a team of subject-matter experts who are focused on expanding the adoption of both the mortgage and student loan modification programs with the goal of making debt-resolution a more simplified process for an increased number of nationwide borrowers. Mr. Roitburg has a thorough understanding of the consumer bankruptcy process and the administrative hurdles both lawyers and their clients must navigate to ensure a successful resolution. He received his J.D. from Cornell Law School.