



AMERICAN
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Bankruptcy Institute

Department of Education and Student Loan Issues

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CONCURRENT SESSION

2025

Student Loan Adversaries in Bankruptcy: What's Working, What's Changing & What's Next

With Heather Marx & Stanley Tate

Post-2022 Attestation: Outcomes at a Glance

Where we are now?

632

cases filed in first 10 months (Nov '22-Sep '23)

~99%

relief granted (full or partial discharge)

97%

resolved by stipulation (not trial)

~6-10

months as median resolution time

Source: DOJ/ED Annual Report (2023); ABI analysis of PACER dockets

What's Working – Attestation Workflow



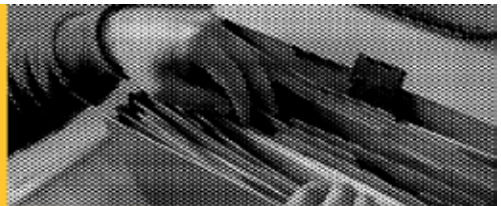
How the Attestation Process Works

1. File adversary proceeding (§523(a)(8) complaint)
2. Joint stipulation to extend deadlines / stay discovery
3. Submit Attestation Form & supporting docs (income, expenses, health, payments)
4. DOJ/ED review & consultation
5. Resolution:
 - Stipulated full discharge
 - Stipulated partial discharge
 - If no agreement → discovery, motion, or trial

Source: DOJ/ED Guidance (Nov. 2022)

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What's Working – Evidence That Persuades



What Moves the Needle (and What Sinks It)

- **Persuasive Evidence**
- **Present Circumstances**
 - Negative/break-even cash flow
 - Itemized budget (explain big expenses)
- **Future Inability to Pay**
 - Age 65+ or chronic health limits
 - SSA/VA disability determinations
 - Treating physician letters
- **Good Faith Efforts**
 - Payment history (even partial)
 - Attempts at IDR, deferment, PSLF
 - Consistent servicer contact

Source: DOJ Guidance (2022)

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What's *Not* Working – Gaps that Undermine



Red Flags That Hurt

- Voluntary underemployment / job quitting
- Luxury or high discretionary spend (e.g., entertainment, late-model cars)
- Refusal to explore any repayment options
- Vague health claims without corroboration

Source: DOJ Guidance (2022)

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When Budgets Pass — and When They Fail



Budgets Judges Believe (and Don't)

Approved Budget (Case A)

- **Case posture:** Debtor, age 79, reopened Chapter 7 to discharge a Parent PLUS loan.
- **Loan history:** Consolidated \$58,733 in 2005. Balance grew to \$63,800 by 2025. Paid \$37,769 over 20 years.
- **Income/Expenses:** Household income \$6,143/month from Social Security and small pension. Expenses \$6,116/month. No assets.
- **Repayment options:** IDR payment set at \$271/month. Mostly applied to interest, not principal.
- **Court's analysis:** Budget already balanced with only \$27 surplus. Health limits prevent work. Circumstances will persist. Long history shows good faith.
- **Outcome: Loan discharged.** Court found all Brunner prongs satisfied and repayment an undue hardship.

Source: Rosen (W.D. Virginia, Adv. No. 24-06016)

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When Budgets Pass — and When They Fail



Budgets Judges Believe (and Don't)

Denied Budget (Case B)

- **Case posture:** Debtor, age 53, sought to discharge \$99,112 in federal student loans.
- **Household:** Raising 17-year-old granddaughter; not enforcing \$200 monthly child support order.
- **Income/Expenses:** Works at \$22/hour. Car payment reduced from \$389 to ~\$150. Budget included \$200 entertainment.
- **Repayment options:** Income-driven repayment (IDR) under SAVE Plan (\$56/month) or REPAYE (\$195/month).
- **Court's analysis:** Expenses could be trimmed. Granddaughter reaching majority soon lowers costs. Employment history showed voluntary job exits.
- **Outcome: Consent judgment denied.** Loans nondischargeable. Court found no undue hardship under Brunner.

Source: Garcia (W.D. Texas, Adv. No. 24-05067-MMP)

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What's Working — Partial Discharge Structures



When Partial Relief Makes Sense

- **When DOJ/ED agrees debtor can pay something:**
 - Forgive all accrued interest
 - Discharge large portion of principal
 - Leave small, fixed balance (non-interest bearing)
- **Key Order Terms to Negotiate:**
 - "No interest accrues on surviving balance"
 - "No capitalization of discharged interest"
 - "Default does not revive discharged portion"
 - "Servicer transfers do not alter terms"
- **Common structures:**
 - Balance reduced by 50–80%
 - Payment horizon aligned with debtor's income ceiling

Source: DOJ Guidance (2022)

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Court by Court Realities — Procedural Differences By Court



Common Themes

- Courts will pause deadlines for DOJ review
- Discovery often stayed or limited if stipulation likely
- Stipulated orders must be precise on scope of discharge
- Pro hac vice requirements vary by district

Source: DOJ Guidance (2022)

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Procedural Realities — Discovery & Mediation



What happens after filing (if it doesn't settle)

Discovery

- Rare post-2022 (most settle via attestation)
- If contested: limited interrogatories, targeted requests
- Courts expect proportionality — no fishing expeditions

Mediation

- Historically used in some districts
- Now rare — DOJ attestation works as built-in settlement
- W.D. Mo. mediation rules exist but seldom invoked

Source: DOJ Guidance 2022 (hardship factors); OBBBA 2025 (program changes).

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Policy Shift — The One Big Beautiful Bill



Who's pushed towards bankruptcy now?

| Borrower Group | Post-OBBA Options | Bankruptcy Push? |
|--------------------------------|--|--|
| Low-income (formerly \$0 SAVE) | RAP = \$10/mo min, 30 yrs, no interest accrual | Yes – no \$0 safety net |
| Older borrowers (65+) | Longer horizon, fixed incomes | Yes – DOJ presumption of hardship |
| Parent PLUS | Locked out of IDR unless consolidate by 2026 | Yes – often only relief left |
| Defrauded / closed-school | Harder admin discharge post-OBBA | Yes – more AP filings expected |
| Mid-income, high-debt grads | Higher RAP payments, 30 years | Maybe – partial discharges more likely |

Source: OBBA (P.L. 119-21, 2025); NCLC analysis 2025; DOJ Guidance 2022

Policy Shift — Decision Tree



Administrative relief or bankruptcy?

Step 1: Is an affordable admin plan available? SAVE (until 2028) or IBR/RAP?

- **Yes** → Advise client to document enrollment/attempts (good faith evidence).
- **No / unaffordable** → Go to Step 2.

Source: OBBA (P.L. 119-21, 2025); NCLC analysis 2025; DOJ Guidance 2022

Policy Shift — Decision Tree



Administrative relief or bankruptcy?

Step 2: Does borrower meet DOJ hardship flags? Age 65+, health issues that impact the ability to work, chronic negative cash flow

- **Yes** → Strong AP candidate now.
- **No / borderline** → Weigh administrative path first, then reassess.

Source: OBBBA (P.L. 119-21, 2025); NCLC analysis 2025; DOJ Guidance 2022

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Policy Shift — Decision Tree



Administrative relief or bankruptcy?

Step 3: Any red flags? E.g., voluntary underemployment, luxury spending, refusal to engage with servicer, etc.?

- **If present** → Fix/document before AP.
- **If absent** → File AP with attestation.

Source: OBBBA (P.L. 119-21, 2025); NCLC analysis 2025; DOJ Guidance 2022

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Capacity & Execution — Intake Triage



The 5-Question Filter for Student Loan Aps

- **Disposable income:** Does the budget show any true surplus?
- **Persistence:** Are limits (age, health, caregiving) long-term?
- **Good faith:** Has borrower made payments, tried IDR, or contacted servicers?
- **Admin options:** Is there a viable, affordable repayment plan post-OBBB?
- **Red flags:** Any voluntary underemployment, luxury spend, or refusal to engage?

Source: DOJ Guidance 2022 (hardship factors); OBBBA 2025 (repayment changes).

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Capacity & Execution — File Architecture



Pre-Build the AP File Before Filing

Must-Have Before Filing AP:

- Draft Complaint (§523(a)(8))
- Completed Attestation Form
- NSLDS file (federal loan data)
- 3 years of tax transcripts
- Most recent pay stubs/income proof
- Detailed monthly budget worksheet
- 3 months of bank statements
- SSA/VA disability letters or doctor's letter (if applicable)
- Job search log (if unemployed)
- Childcare / transport invoices
- Variance table (year-over-year expenses)
- Exhibit index (organized by DOJ categories)

Source: DOJ Guidance 2022 (hardship factors); OBBBA 2025 (repayment changes).

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Lightning FAQs



Do I need live medical testimony?

No. Treating-physician letters + records usually suffice.

Will DOJ agree to partials?

Yes. Typical terms: strip interest, forgive chunk of principal, leave small fixed balance.

What if client refused IDR on principle?

Not fatal. Show other good-faith efforts (payments, deferments, servicer contact).

Can sensitive docs be sealed?

Yes. Courts routinely grant protective orders for medical/tax info.

Source: DOJ Guidance 2022

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Key Takeaways & Tools



- Attestation process flipped the script — most cases resolve by stipulation.
- Outcomes hinge on: credible budgets, persistent hardship, and good faith history.
- OBB shifts who files — except more older, low-income, and Parent PLUS borrowers.

Source: Compiled from DOJ/ED guidance, OBBBA, local rules, and case dockets (2023–25).

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Thank you!

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Heather L. Marx is the co-managing partner of Cozen O'Connor's Minneapolis office and vice-chair of the firm's Customs, Imports and Trade Remedies practice. Her practice includes the representation of corporations and individuals in corporate contractual and partnership disputes, customs, imports and trade matters, real estate and leasing issues, and litigation related to leases and guaranties, bankruptcy adversary proceedings, commercial transactions and disputes, and issues of employment law and benefits. Ms. Marx handles contract disputes, commercial and private loan disputes, business liquidation priority issues, lease obligations, receivership appointments, real estate transactions, insurance claims, import/export contracts and litigation, and employment and labor disputes. Her experience in bankruptcy litigation includes years of representing both debtors and creditors in significant adversary disputes and workouts, including clawback litigation both in Minnesota and other states. Ms. Marx advises both domestic and international clients on strategies for foreign-based manufacture, importation and distribution of goods, and how to safeguard against anti-competitive trade barriers, regulatory systems and trade remedies. She represents clients in matters before U.S. Customs and Border Protection, the U.S. Department of Commerce, the International Trade Administration and the U.S. Trade Representative in the U.S. District Courts, the U.S. Court of International Trade and the Court of Appeals for the Federal Circuit. Ms. Marx is involved in all aspects of litigation, from initial pleadings through discovery, motion practice, negotiated resolution, trial and any necessary appeals. She has authored numerous articles detailing both litigation mechanics and emerging issues in litigation involving business clients, and she frequently leads seminars for human resource professionals in regard to cutting-edge human resources developments. Ms. Marx was named to the 2023 *Minnesota Lawyer* magazine's "Top Women in Law" list, and in 2021, *The American Lawyer* named her to its inaugural Midwest Trailblazer list. She also has been recognized by *Minnesota Law & Politics* as one of its Rising Stars and by *Minneapolis/St. Paul Magazine* as one of the Top Women Attorneys in Minnesota. For her *pro bono* work, she has been consistently recognized since 2016 with a North Star Lawyer distinction from the Minnesota State Bar for providing more than 50 hours of *pro bono* legal service annually to the community. Ms. Marx is an adjunct professor at the University of St. Thomas Law School, where she teaches its bankruptcy litigation clinic. She received her B.A. in 1999 from Gustavus Adolphus College and her J.D. in 2002 from Georgetown University Law Center.

Stanley L. Tate is a sole practitioner with Tate Law LLC in St. Louis, Mo., and focuses on student loan law. His law firm offers a variety of student loan debt solutions, from eliminating defaults, negotiating settlements, defending lawsuits and lowering monthly payments to pursuing discharges in bankruptcy. Mr. Tate has been featured in *The New York Times*, *The Wall Street Journal* and *The Washington Post*. He also has been named a *Missouri Super Lawyers* "Rising Star" several times. Previously, Mr. Tate was a paralegal with the U.S. Army. He received his B.S. in management in 2004 from Southern Illinois University, Carbondale and his J.D. in 2013 from Texas Southern University Thurgood Marshall School of Law.