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Student Loans in 2026: [Not So] Untouchable

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STUDENT LOANS IN 2026 – [NOT SO] UNTOUCHABLE

SPEAKERS



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STUDENT LOAN DEBT CRISIS IN AMERICA



Today, Americans owe more than **\$1.8 trillion** in student loan debt.¹

Over \$1.6 trillion (91%) is federal student loan debt, owed by more than 42.5 million borrowers.

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HOW DID WE GET HERE?



Before 1976, student loan debt could be discharged like any other unsecured debt.

Why did this change?

Perception: Debtors with professional degrees and well-paying jobs were filing bankruptcy soon after graduation, to get a “free education” and then reap the rewards of their degree.

Reality: Less than 1% of all student loans debts had been discharged.

What did Congress do?

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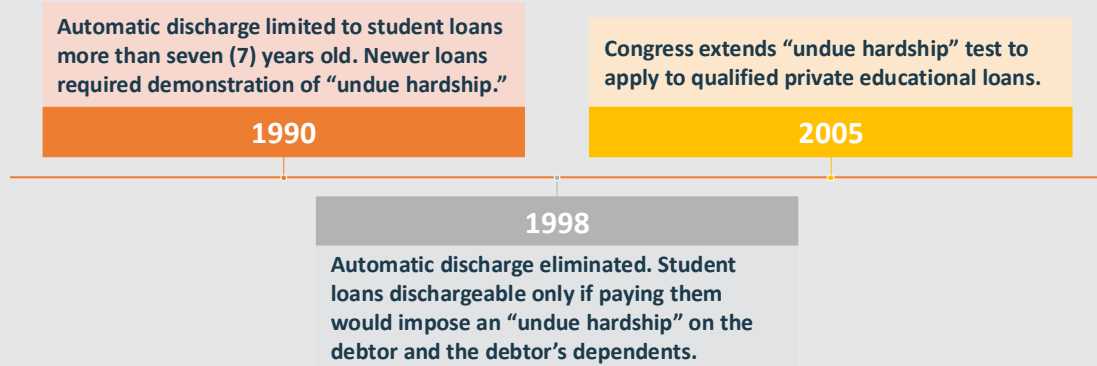
ENACTMENT OF 11 U.S.C. § 523(a)(8)

In 1976, Congress amended Higher Education Act. In 1978, 11 U.S.C § 523(a)(8) was enacted. Under newly enacted § 523(a)(8),

- Student loans could be discharged automatically discharged if more than **five (5) years old**.
- For student loans less than (5) years old, a debtor would need to demonstrate “**undue hardship.**”

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KEY AMENDMENTS TO § 523(a)(8)



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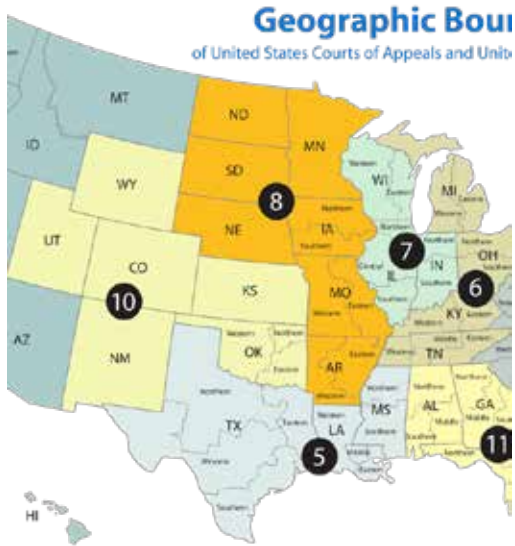
11 U.S.C. § 523(a)(8)



11 U.S.C. § 523(a) provides:

- (a) A discharge under ... 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 International Revenue Code of 1986, incurred by a debtor who is an individual.

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BRUNNER TEST ADOPTED BY MOST DISTRICTS

When *Brunner* was decided, student loan debts older than five (5) years were automatically discharged, but 40 years later “*undue hardship*” test remains the same.

“*Brunner Test*” utilized by all Circuits except 1st & 8th, which apply a “*totality of circumstances*” test.

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IS BRUNNER TEST TOO HARSH?



In re Long:

The 8th Circuit has stated that the *Brunner* test is not appropriate, because it is too restrictive and limits a Court’s discretion to discharge student loan debt. *Long V. Educ. Credit Mgmt. Corp.*, 322 F.3d 549, 554-555 (8th Cir. 2003).

In re Love:

In the 9th Circuit, a recent trial court decision granting a discharge to a debtor of her student loans critically examined the applicability of the *Brunner* test. *Love v. U.S. Dept. of Education*, 649 B.R. 556 (Bankr. E.D. Cal. 2023).

* Example of two cases critical of the *Brunner* Test.

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ENACTMENT OF DEPARTMENT OF JUSTICE (DOJ) GUIDANCE

The DOJ issued guidance, which became effective for adversaries filed after

November 17, 2022.

DOJ guidance streamlined the process and encouraged Debtors to file student loan adversary proceedings.

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GOALS OF DOJ GUIDANCE



Provide	Establish	Reduce	Increase
Clarity, Transparency & Consistency	Clear objective criteria for each element of the Brunner test to ensure consistent softer “undue hardship” threshold	Burden & Simplify Process <ul style="list-style-type: none"> Debtor submits Attestation Form avoiding burden of full discovery. DOJ reviews and makes recommendation to Department of Education (DOE). 	Number of Stipulated Discharges <ul style="list-style-type: none"> DOJ and Debtor can stipulate to facts that student loans impose “undue hardship” and should be fully or partially discharged.

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HOW DOES DOJ GUIDANCE PROCESS COMMENCE?



- Debtor files and properly serves DOJ with adversary proceeding seeking discharge of student loans
- Serve Department of Education in D.C., and local AUSA
- The government will not answer if not properly served, in most districts
- Can debtor seek discharge under DOJ Guidance without filing bankruptcy? **NO**

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MDFL – ORLANDO DIVISION SERVICE

1. Attorney General of the United States

U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

2. United States Attorney's Office, MDFL

Attn.: Civil Division-Bankruptcy
400 W. Washington Street Suite 3100
Orlando, FL 32801

3. Office of the General Counsel

U.S. Department of Education
Attn.: Deputy General Counsel
LBJ Department of Education Building
400 Maryland Avenue, SW
Washington, DC 20202

THE ADDRESS TO SERVE THE AUSA WILL BE DIFFERENT IN EACH COURT

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DOJ ATTESTATION FORM

After DOE is served, DOJ attorney will contact Debtor or Debtor's counsel.

DOJ then provides Debtor or Debtor's counsel with Debtor's Student Loan Account History and Details.

Good practice to have attestation, income docs, any additional documents to explain expenses, medical condition, etc, ready.

DO NOT FILE ATTESTATION WITH COURT. It contains personally identifiable information such as birthdates, dependent's names.

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AFTER DOJ RECIEVES COMPLETED ATTESTATION FORM



DOJ sends Attestation Form to DOE with recommendation. DOE determines if evidence submitted supports undue hardship determination.

If DOE makes undue hardship determination, the recommendation is then made to court by filing stipulation and proposed order supporting undue hardship determination for full or partial discharge

Some courts go straight to agreed final judgment

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ROLE OF THE COURTS?

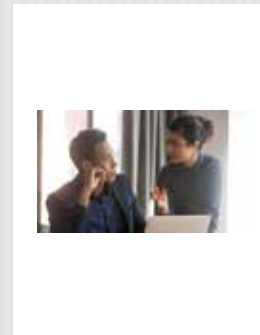
Does DOJ recommendation bind the court? **NO, the law has not changed.**

Have most courts welcomed DOJ guidance? **YES**

Some districts, including Central District of California, have adopted Guidelines where both parties stipulate to extend discovery deadlines during Attestation review period.

Other districts have informally adopted the removal of discovery during these proceedings and hold status conferences.

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ARE YOU CONSIDERING TAKING YOUR FIRST CASE?

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ETHICAL OBLIGATIONS

Advising clients that federal student loan may be dischargeable through the Attestation Process

Referring clients to attorneys who handle student loan dischargeability action



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ATTORNEY RETENTION PROCESS



Initial Client Meeting

Identifying viable candidates for student loan discharge

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SCREENING PROCESS

Develop Screening
Process of Potential clients

Explain DOJ Guidance

Manage Expectations

Explore software options



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ATTORNEY RETENTION PROCESS

Retainer Agreement

- Client responsibilities
- Attorney responsibilities
- Fees during & after Attestation Process

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QUESTIONS

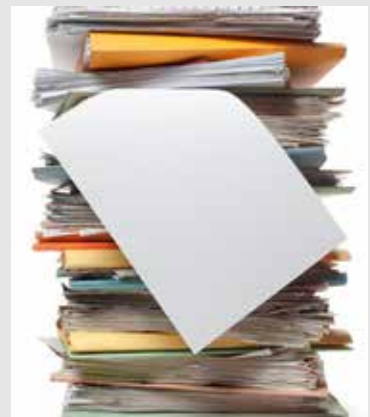


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DOCUMENT GATHERING PROCESS

Document Gathering Process

1. What you need to gather
2. Making process efficient & cost effective
3. Typical roadblocks
4. Do's and Dont's



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ATTESTATION FORM & DOCUMENTATION

- **Submit Attestation with documentation to DOJ**
 - **Proof of Income**
 - **Proof of expenses that are higher than IRS standards**
 - **Medical records showing diagnosed conditions such as autism, disability**
 - **Tax returns**
 - **Attempts to gain employment in field of study**



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TIPS FOR LESS-CONTENTIOUS ADVERSARY PROCEEDINGS

Attestation Form should be completed and executed under oath by Debtor *before* adversary proceeding is filed; incorporate key portions into Complaint.

Cooperate with AUSA, including request for proof of expense, and stipulated extensions of deadlines if necessary.



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QUESTIONS



SUCCESS STORIES

BRANSON AINSWORTH ATTESTATION OUTCOMES

Ages: ranged from 40 to 74 years of age

Most in their 40's

Largest amount discharged \$617,888 to lowest \$10,299; average \$100,000.00.

\$2,433,296.57 discharged to date.

Teachers, call center works, lawyers, profession doesn't factor in

In 2025 to present averaged 9.25 months

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EFFECTIVENESS OF DOJ GUIDANCE IS A GAME CHANGER



- Courts accepted DOJ recommendations for full or partial discharges of student loan debts in **98%** between Nov. 2022 and Mar. 2024.
- Approximately **85%** of borrowers using DOJ Guidance receive recommendations for full or partial discharge of student loan debts.
- Before DOJ Guidance, only **0.1%** of borrowers who filed bankruptcy between 2011 and 2019 discharged their student loan debts.

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QUESTIONS



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THANK YOU!



UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In re:

Ingrid Joyce Cotton,

Chapter 7

Case No.: 8:24-bk-05936-CPM

Debtor.

_____ /
Ingrid Joyce Cotton,

Plaintiff,

v.

Adv. Pro. No.: 8:25-ap-00196-CPM

United States Department of Education,

Defendant.

_____ /
**JOINT STIPULATION OF UNDUE HARDSHIP IN SUPPORT
OF DISCHARGE OF STUDENT LOANS HELD BY DEFENDANT**

Defendant United States Department of Education (“DOE”) and Plaintiff

Ingrid Joyce Cotton jointly stipulate to a finding and conclusion of undue hardship under 11 U.S.C. § 523(a)(8). *See* Dep’t of Justice, *Guidance for Dep’t Attorneys Regarding Student Loan Bankr. Litig.*, (Nov. 17, 2022).¹ Specifically—based on the *Guidance* issued by the U.S. Department of Justice—the parties stipulate that the Court should find that requiring Plaintiff to repay the outstanding student loan debt owed to DOE would

¹ <https://www.justice.gov/ust/student-loan-guidance> (last visited Feb. 26, 2026).

impose an undue hardship on her. *See* 11 U.S.C. § 523(a)(8). This Stipulation is supported by Plaintiff's Attestation Form (Ex. 1), along with other documents and information provided to DOE during this adversary proceeding. Should the Court require additional information, the parties will provide any further necessary documentation.

Based on the foregoing, the parties jointly stipulate to a full discharge of Plaintiff's outstanding student loan debt held by DOE at issue in this action—specifically, NSLDS Loans 40 and 41 in the amount of \$200,261.46, plus any applicable interest. The parties also ask the Court to enter the contemporaneously submitted Agreed Order adopting this Stipulation.

Respectfully submitted,

ARKOVICH LAW, P.A.

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Tampa, FL 33606
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GREGORY W. KEHOE

United States Attorney

/s/ Somadina I. Sullins
By: Somadina I. Sullins
Assistant United States Attorney
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400 N. Tampa Street, Suite 3200
Tampa, FL 33602
Telephone No.: (813)-274-6000
Facsimile No.: (813) 274-6198
soma.nwokolo@usdoj.gov



Discharge Application: Total And Permanent Disability Direct Loan Program / FFEL Program / Perkins Loan Programs

OMB No. 1845-0065
Form Approved
Exp. Date: 02/28/2027

Total and Permanent Disability (TPD) Discharge

This is an application for a TPD discharge of federal student loans you received under the William D. Ford Federal Direct Loan Program (Direct Loan Program), the Federal Family Education Loan Program (FFEL Program), or the Federal Perkins Loan Program (Perkins Loan Program), and/or your Teacher Education Assistance for College and Higher Education Grant Program (TEACH Grant Program) service obligation.

The **Direct Loan Program** includes Direct Subsidized Loans, Direct Unsubsidized Loans, Direct PLUS Loans, and Direct Consolidation Loans.

The **FFEL Program** includes Federal Stafford Loans (both subsidized and unsubsidized), Federal PLUS Loans, Federal Consolidation Loans, and Federal Supplemental Loans for Students (SLS).

The **Perkins Loan Program** includes Federal Perkins Loans, National Direct Student Loans (NDSL), and National Defense Student Loans (Defense Loans).

The **TEACH Grant Program** requires individuals to complete a teaching service obligation as a condition for receiving a TEACH Grant.

If you receive a TPD **discharge of a loan**, this means that you do not have to repay the remaining balance of the loan. If you receive a TPD discharge of a Direct PLUS Loan or Federal PLUS Loan that you obtained with an endorser (an endorser is someone who agrees to repay a PLUS loan if the borrower does not repay it), the discharge also cancels the endorser's obligation to repay the loan.

If you receive a TPD **discharge of a TEACH Grant service obligation**, this means that you are no longer required to complete the teaching service that you agreed to perform as a condition for receiving a TEACH Grant.

REQUIREMENTS TO QUALIFY FOR TPD DISCHARGE

To qualify for TPD discharge, you must have a **total and permanent disability**. You are considered to have a total and permanent disability if:

1. You are a veteran who has been determined by the U.S. Department of Veterans Affairs to be unemployable due to a service-connected disability; or
2. You are unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment that can be expected to result in death, or that has lasted for a continuous period of not less than 60 months, or that can be expected to last for a continuous period of not less than 60 months.

To show that you have a total and permanent disability, you must submit certain documentation from **one** of the following sources:

1. The U.S. Department of Veterans Affairs (VA);
2. The Social Security Administration (SSA); or
3. Certain licensed or certified medical professionals.

The specific types of documentation you must provide are explained in Sections 6 and 7. Except for VA or SSA determinations as described in Sections 8 and 9, a disability determination by another federal or state agency does not qualify you for this discharge.

Note: If you qualify for TPD discharge by providing documentation from the VA or the SSA, you are not required to have a medical professional complete Section 6 of this application.

IMPORTANT TAX INFORMATION

Loan amounts discharged due to TPD are not considered taxable income by the Internal Revenue Service (IRS) for federal tax purposes. However, some states may consider the discharged loan amount to be income for state tax purposes. If you receive a TPD discharge of a loan, check with your state tax office or a tax professional before filing your state tax return.

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WARNING/IMPORTANT: Any person who knowingly makes a false statement or misrepresentation on this form or on any accompanying document is subject to penalties that may include fines, imprisonment, or both, under the U.S. Criminal Code and 20 U.S.C. 1097.

Section 1: Return the completed form and any documentation to:

U.S. Department of Education – TPD Servicing
P.O. Box 300010
Greenville, TX 75403
Fax: 540-212-2415

Section 2: If you need help completing this form, contact us:

Phone: 1-888-303-7818
Website: StudentAid.gov/disabilitydischarge

Section 3: Applicant Information

Please enter or correct the following information.

Check this box if any of your information has changed.

Social Security Number (SSN): _____

Date of Birth: _____

Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Phone - Primary: _____

Phone - Alternate: _____

Email: _____

Borrower Name: _____ Borrower SSN: _____

Section 4: Total and Permanent Disability Information

Carefully read the entire application before you complete this section. Sign and date the application in Section 5.

1. Are you a veteran who has received a determination from the U.S. Department of Veterans Affairs (VA) that (A) you have a service-connected disability (or disabilities) that is 100% disabling, or (B) you are totally disabled based on an individual unemployability rating?
 - Yes - Attach documentation of the VA determination and complete Section 5. Send pages 3 and 4 with the required VA documentation to the address shown in Section 1. **You do not need to have an authorized medical professional complete Section 6.**
 - No - Continue to Question 2.

2. Are you currently receiving SSDI or SSI benefits, or SSA retirement benefits, and does your most recent SSA notice of award, SSA Benefits Planning Query (BPQY), or other documentation show that you meet one of the requirements A through E listed below?
 - A. You qualify for SSDI or SSI based on disability, and your next scheduled disability review is between 5 and 7 years from the date of your last SSA disability determination;
 - B. You qualify for SSDI or SSI based on disability and your next continuing disability review has been scheduled at 3 years;
 - C. You have an established onset date for SSDI or SSI of at least 5 years before the date of your application for TPD discharge, or you have been receiving SSDI or SSI based on disability for at least 5 years before the date of your application for TPD discharge;
 - D. You qualify for SSDI or SSI based on a compassionate allowance; or
 - E. You are currently receiving SSA retirement benefits, and before you qualified for SSA retirement benefits, you met one of the requirements described in paragraphs A through D above.
 - Yes - Attach a copy of your most recent SSA notice of award or BPQY, or other documentation showing that you meet one of the requirements listed above and complete Section 5. If you submit documentation other than a notice of award or BPQY, it will be accepted only if it provides sufficient information to determine that you meet the requirements above. Send pages 3 and 4 with the required SSA documentation to the address shown in Section 1. **You do not need to have an authorized medical professional complete Section 6.**
 - No - Complete Section 5 and have an authorized medical professional complete and sign Section 6. Send pages 3 through 9 to the address shown in Section 1.

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Borrower Name: _____ Borrower SSN: _____

Section 5: Borrower Requests, Understandings, Authorization, and Certification

I request that the U.S. Department of Education discharge my Direct Loan, FFEL, and/or Perkins Loan program loan(s), and/or my TEACH Grant service obligation.

I authorize any authorized medical professional (as defined in Section 9), hospital, or other institution having records about the disability that is the basis for my request for a discharge to make information from those records available to the U.S. Department of Education.

I authorize the organization I submit this request to and its agents to contact me regarding my request or my loans at the cellular telephone number that I provide now or in the future using automated telephone dialing equipment or artificial or prerecorded voice or text messages.

I understand that:

1. If I am applying for a discharge based on an authorized medical professional’s certification in Section 6, I must submit this application to the U.S. Department of Education within 90 days of the date of the authorized medical professional’s signature in Section 6; and
2. If I am a veteran who answered No to Questions 1 and 2 in Section 4, and I am applying for TPD discharge based on a certification from an authorized medical professional in Section 6, that certification is only for purposes of determining my eligibility for a discharge of my loans or TEACH Grant service obligation, and is not for purposes of determining my eligibility for, or the extent of my eligibility for, VA benefits.

I certify that:

1. I have a total and permanent disability, as defined in Section 3;
2. If I am a veteran applying for TPD discharge based on a qualifying VA disability determination, I have read and understand the information in Section 8; and
3. If I am applying for TPD discharge based on a qualifying SSA disability determination or a certification from an authorized medical professional, I have read and understand the information in Section 9.

Applicant’s or Representative’s Signature _____ **Date** _____

Representative Name (if applicable) _____

NOTE: You may designate someone to represent you in matters related to your application. If you wish to designate a representative, you must complete the **Applicant Representative Designation: Total and Permanent Disability** form.

Section 6: Authorized Medical Professional Certification

The individual who has asked you to complete this section of the form (“applicant”) has applied for discharge of their federal student loans and/or their TEACH Grant service obligation based on total and permanent disability (TPD), as authorized under federal law and the U.S. Department of Education’s regulations.

One means by which a federal student loan borrower or TEACH Grant recipient can show that they are totally and permanently disabled for purposes of TPD discharge is to have an authorized medical professional certify that they are unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment that **(1)** can be expected to result in death; **(2)** has lasted for a continuous period of at least 60 months; or **(3)** can be expected to last for a continuous period of at least 60 months. **Substantial gainful activity** means a level of work performed for pay or profit that involves doing significant physical or mental activities, or a combination of both. **Note:** This does not mean that the applicant must be unable to work at all. The applicant must be unable to perform a level of work for pay or profit that involves doing **significant** physical and/or mental activities.

To complete this section of the application, you must be one of the following:

- A doctor of medicine or doctor of osteopathy legally authorized to practice in a state;
- A nurse practitioner licensed by a state;
- A physician assistant licensed by a state; or
- A certified psychologist at the independent practice level who is licensed to practice in the United States.

The terms “state” and “United States” as used above include the 50 United States, the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, Guam, the U.S. Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

Complete Items 1 through 11 below and on page 7. **Do not use abbreviations or insurance codes.** Print legibly and initial any changes.

Return the form to the applicant or the applicant’s representative, or send it directly to the U.S. Department of Education at the address shown in Section 1.

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Borrower Name: _____ Borrower SSN: _____

1. Provide the name and date of birth of the applicant:

Name _____

Date of Birth _____

2. Does the applicant have a medically determinable physical or mental impairment that prevents the applicant from engaging in any **substantial gainful activity** (see above)? If the applicant is able to engage in any substantial gainful activity in any field of work, you must answer "No."

Yes - Continue to Item 3.

No - **Do not complete this application.**

3. Is the applicant's impairment expected to result in death?

Yes - Skip to Item 5.

No - Continue to Item 4.

4. Has the applicant's impairment lasted or is it expected to last for a continuous period of at least 60 months?

Yes - Continue to Item 5.

No - **Do not complete this application.**

5. Provide your diagnosis of the applicant's impairment (do not use insurance codes or abbreviations):

6. Describe the severity of the applicant's impairment, including, if applicable, the phase of the impairment:

CONSUMER PRACTICE EXPERIENCE 2026

Borrower Name: _____ Borrower SSN: _____

Explain in Items 7 through 11 how the condition prevents the applicant from engaging in **any** substantial gainful activity in **any** field of work. Attach additional pages if needed. Enter "N/A" if not applicable. You may include additional information you believe is helpful in understanding the applicant's condition, such as medications or procedures used to treat the condition.

7. Limitations on sitting, standing, walking, or lifting:

8. Limitations on activities of daily living:

9. Residual functionality:

10. Social/behavioral limitations (if any):

11. Global Assessment Function Score (for psychiatric conditions):

Authorized Medical Professional's Certification

I **certify** that, in my best professional judgment, the applicant identified in Item 1 on page 7 has a medically determinable physical or mental impairment consistent with my responses in Items 2 through 11. I **understand** that an applicant who is currently able to engage in any substantial gainful activity in any field of work does not have a total and permanent disability as defined on this form.

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Borrower Name: _____ **Borrower SSN:** _____

I am a:

- doctor of medicine legally authorized to practice in a state
- doctor of osteopathy/osteopathic medicine legally authorized to practice in a state
- nurse practitioner licensed by a state
- physician assistant licensed by a state
- certified psychologist at the independent practice level licensed to practice in the United States

State Where Legally Authorized to Practice or Licensed* _____

Professional License Number (subject to verification; stamp is acceptable) _____

*If you are licensed to practice in American Samoa, Puerto Rico, the U.S. Virgin Islands, the Northern Mariana Islands, the Marshall Islands, Micronesia, or Palau, attach a copy of your professional license that clearly shows the expiration date.

Signature (a stamp is not acceptable) _____ **Date(mm-dd-yyyy)** _____

Name (First, Middle, Last) _____

Address (a stamp is acceptable) _____

Email _____ **Telephone** _____ **Fax** _____

Please omit pages 10–19 when mailing or faxing back.

Section 7: Applying for Discharge

The information in Section 7 applies to ALL applicants.

TPD DISCHARGE SERVICER

The U.S. Department of Education (ED) uses a TPD Discharge Servicer to help process TPD discharge applications. Our TPD Discharge Servicer's address, and contact information are shown below. In this application, the words "we," "us," and "our" refer to ED or our TPD Discharge Servicer.

Telling us that you plan to apply

Contact us as soon as you know that you plan to apply for TPD discharge. To give you time to complete your application, we will then instruct your federal student loan holders to stop requiring you to make loan payments for up to 120 days. If we don't receive your application within 120 days, you will have to resume making loan payments.

Your **loan holder** is the organization to which you send your loan payments. The holder of your Direct Loan Program loans or your TEACH Grant Agreement to Serve or Repay (TEACH Grant Agreement) is ED. The holder of your FFEL Program loans may be a lender, a guaranty agency, or ED. The holder of your Perkins Loan Program loans may be a school you attended or ED. Your loan holder may use a servicer to handle billing and other loan matters. In this application, the term "holder" means either your loan holder or loan servicer.

Designating someone to represent you

You can designate someone to represent you in matters related to your discharge request. This can be a family member, attorney, law firm or legal aid society, or other individual or organization authorized to act on your behalf in connection with your application. To designate a representative, you must complete the Applicant Representative Designation: Total and Permanent Disability form. Contact us to obtain this form.

Submitting your discharge application

Make sure that all requested information is included. If your application is incomplete, it may be rejected, or the processing of your application may be delayed. Send your completed application and any required documentation to us at the address shown below. After we receive your application, we will send you a notice that will:

- Confirm that we received your application;
- Explain our application review process; and
- Explain that you are not required to make any loan payments while we review your application.

If you do not submit an application within 120 days of notifying us that you intend to do so, you will have to resume making payments on your loans. If you have a FFEL Program loan and the holder of the loan is a lender, the lender may capitalize any unpaid interest that accrued during the period when you were not required to make payments. This means that the unpaid interest will be added to the principal balance of your loan, and interest will then be charged on the increased loan principal amount. If you have a Direct Loan, a FFEL Program loan that is held by ED or by a guaranty agency, or a Federal Perkins Loan, unpaid interest will not be capitalized.

Section 8: TPD Discharge Based on Documentation from the Department of Veterans Affairs

The information in Section 8 applies ONLY if you are a veteran applying for TPD discharge based on documentation from the U.S. Department of Veterans Affairs (VA).

Required Documentation to Qualify

If you are a veteran, you are considered to have a total and permanent disability if the VA has determined that you are unemployable due to a service-connected disability. Generally, you can meet this standard by providing documentation from the VA showing that you have received one of the following two types of VA disability determinations:

1. A determination that you have a service-connected disability (or disabilities) that is 100% disabling; or
2. A determination that you are totally disabled based on an individual unemployability rating.

You do not qualify for discharge based on a VA determination if your disability is not service-connected.

If you are applying for TPD discharge based on VA documentation as described above, you are NOT required to have a medical professional complete Section 6.

Our review of your discharge application

We will review the documentation from the VA to determine if you are totally and permanently disabled based on a determination by the VA that you are unemployable due to a service-connected disability.

Determination of your eligibility for discharge

If we determine that you are **not** totally and permanently disabled, you will be notified. The notification will tell you why we denied your application and will explain the following:

- You must repay your loans under the terms of your promissory notes, and your loans will return to the status they were in at the time you applied for a TPD discharge.
- Your loan holder will tell you when you must resume making loan payments.

- If you applied for a discharge of a TEACH Grant service obligation, you must comply with all terms of your TEACH Grant Agreement.
- You may ask us to re-evaluate your discharge application by providing additional documentation from the VA supporting your eligibility for TPD discharge. If you provide this documentation within 12 months of the date of our notification that you are ineligible for discharge, you do not have to submit a new application. After 12 months, you must submit a new application.
- If the documentation from the VA does not indicate that you are unemployable due to a service-connected disability, you may reapply for discharge by submitting a new application with documentation from the SSA or an authorized medical professional's certification (see Section 9).

Eligibility for future loans or TEACH Grants

After receiving a TPD discharge, you are not eligible to receive future Direct Loans or TEACH Grants unless you:

- Obtain a certification from a physician that you are capable of substantial gainful activity (see below); and
- Sign a statement acknowledging that the new loan or TEACH Grant service obligation cannot be discharged in the future based on any injury or illness present when the new loan or TEACH Grant is made, unless your condition substantially deteriorates so that you are again totally and permanently disabled.

Substantial gainful activity means a level of work performed for pay or profit that involves doing significant physical or mental activities, or a combination of both.

Section 9: TPD Discharge Based on Documentation from the Social Security Administration or an Authorized Medical Professional's Certification

The information in Section 9 applies **ONLY** if you are applying for TPD discharge based on documentation from the Social Security Administration (SSA) or a certification from an authorized medical professional in Section 6.

REQUIRED DOCUMENTATION TO QUALIFY

Social Security Administration (SSA) documentation

If you are eligible for Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI), you are considered to have a total and permanent disability if you provide a copy of your SSA notice of award, SSA Benefits Planning Query (BPQY) or other acceptable documentation (as determined by ED) showing that you meet one of the following requirements:

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1. You qualify for SSDI or SSI based on disability, and your next scheduled disability review has been scheduled between 5 to 7 years from the date of your last SSA disability determination;
2. You qualify for SSDI or SSI based on disability and your next continuing disability review has been scheduled at 3 years;
3. You have an established medical onset date for SSDI or SSI of at least 5 years before the date of your application for TPD discharge, or you have been receiving SSDI or SSI based on disability for at least 5 years before the date of your application for TPD discharge;
4. You qualify for SSDI or SSI based on a compassionate allowance; or
5. You are currently receiving SSA retirement benefits, and immediately before you qualified for SSA retirement benefits, you met one of the requirements described in paragraphs 1 through 4 above.

If you want to submit a BPQY but do not have one, contact the SSA office that issued your award and request form SSA-2459. You may also request a BPQY by calling 1-800-772-1213 or by visiting www.ssa.gov. If you submit documentation other than a notice of award or BPQY, we will review the documentation and will accept it only if it provides sufficient information to determine that you meet the requirements above.

If you are applying for TPD discharge based on SSA documentation as described above, you are not required to have a medical professional complete Section 6.

Certification from an authorized medical professional

You are also considered to have a total and permanent disability if you have an authorized medical professional (see below) certify in Section 6 of this application that you are unable to engage in any substantial gainful activity (see below) because of a medically determinable physical or mental impairment that:

1. Can be expected to result in death;
2. Has lasted for a continuous period of at least 60 months; or
3. Can be expected to last for a continuous period of at least 60 months.

An **authorized medical professional** who may complete Section 6 of this application is:

1. A doctor of medicine or doctor of osteopathy legally authorized to practice in a state;
3. A nurse practitioner licensed by a state;
4. A physician assistant licensed by a state; or
5. A certified psychologist at the independent practice level who is licensed to practice in the United States.

The terms **state** and **United States** as used above include the 50 United States, the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, Guam, the U.S. Virgin Islands, the

Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

Substantial gainful activity means a level of work performed for pay or profit that involves doing significant physical or mental activities, or a combination of both.

Our review of your discharge application

If you submit a discharge application accompanied by an award of benefits notice from the SSA, SSA Benefits Planning Query (BPQY), or other acceptable documentation, we will review that documentation to determine if it meets the requirements described above under **Social Security Administration documentation**.

If you submit a discharge application supported by an authorized medical professional's certification in Section 6, we will review the certification and any accompanying documentation to determine if you are totally and permanently disabled as described above under **Certification from an authorized medical professional**. We may also contact the authorized medical professional for additional information, or may arrange for an additional review of your condition by an independent physician or other medical professional at our expense. Based on the results of this review, we will determine your eligibility for a discharge.

If you are applying for TPD discharge based on a certification from a medical professional, you must submit your application within 90 days of the date of the medical professional's signature in Section 6.

If we determine during our review of your application that you received a Direct Loan or a TEACH Grant before the date we received the SSA documentation, or before the date the authorized medical professional certified your application in Section 6, and a disbursement of that loan or grant is made after that date, but before we have granted a discharge, we will stop processing your discharge application until you ensure that the full amount of the disbursement is returned to us.

If we determine during our review of your application that a new Direct Loan or a new TEACH Grant was made to you on or after the date we received the SSA documentation, or on or after the date the authorized medical professional certified your application in Section 6, but before we have granted a discharge, we will deny your discharge request. You will have to resume making loan payments and you will again be responsible for complying with the terms of your TEACH Grant Agreement.

Determination of your eligibility For Discharge

If we determine that you are totally and permanently disabled, we will notify you that your loans and/or TEACH Grant service obligation have been discharged, and that you will be subject to a **post-discharge monitoring period** (see below) for three years beginning on the discharge date. The notification of discharge will explain the condition under which we will reinstate your obligation to repay your loan or to complete your TEACH Grant service obligation. The discharge will be reported

to nationwide consumer reporting agencies (credit bureaus), and any loan payments received on or after the date we received the SSA documentation or after the date the authorized medical professional certified your discharge application will be refunded to the person who made the payments.

If we determine that you are **not** totally and permanently disabled, you will be notified. The notification will tell you why we denied your application and will explain the following:

- You must repay your loans to your loan holder under the terms of the promissory note you signed, and your loans will return to the status they were in at the time you applied for TPD discharge.
- Your loan holder will notify you of the date you must resume making payments on your loans.
- If you applied for a discharge of a TEACH Grant service obligation, you must comply with all terms of your TEACH Grant Agreement.
- You may ask us to re-evaluate your discharge application by providing additional information regarding your disabling condition that supports your eligibility for discharge. If you provide this documentation within 12 months of the date of our notification that you are ineligible for discharge, you do not have to submit a new application. After 12 months, you must submit a new application.
- If you request a re-evaluation of your TPD discharge application or submit a new TPD discharge application, as described above, your request must include new information regarding your disabling condition that was not provided to us in connection with your prior application for discharge.

Post-discharge monitoring period

If you receive a TPD discharge based on SSA documentation or a certification from an authorized medical professional, you will have to complete a 3-year post-discharge monitoring period that begins on the date the discharge is granted. During this monitoring period we will check to see if you receive any new Direct Loans or new TEACH Grants.

If you receive a new Direct Loan or a new TEACH Grant at any time during the 3-year post-discharge monitoring period, we will reinstate your obligation to repay your discharged loans and/or to complete your discharged TEACH Grant service obligation.

If your loans are reinstated, we will be your loan holder and you will be responsible for repaying your loans to us in accordance with the terms of your promissory notes. Your loans will be returned to the status they were in at the time you applied for TPD discharge. However, you will not be required to pay interest on your loans for the period from the date of the discharge until the date your repayment obligation was reinstated.

If your TEACH Grant service obligation is reinstated, you will again be required to meet all of the terms of your TEACH Grant Agreement and must complete your service obligation within the portion of your 8-year service obligation period that remained after the date of the TPD discharge. If you do not meet the terms of that agreement and the TEACH Grant funds you received are converted to a Direct Unsubsidized Loan, you must repay that loan in full, and interest will be charged from the dates that the TEACH Grant funds were disbursed (paid out).

If your obligation to repay your loans or to complete your TEACH Grant service obligation is reinstated, we will tell you the reason for the reinstatement and will explain:

- For a reinstated loan, the first payment will be due no earlier than 90 days following the date of the notification of reinstatement; and
- How you may contact us if you have questions about the reinstatement or if you believe your obligation to repay a loan or complete your TEACH Grant service obligation was reinstated based on incorrect information.

Eligibility for future loans or TEACH Grants

If you are granted a TPD discharge based on SSA documentation or a certification from an authorized medical professional, you are not eligible to receive future Direct Loans or future TEACH Grants unless you:

- Obtain a certification from a physician that you are able to engage in substantial gainful activity; and
- Sign a statement acknowledging that the new loan or TEACH Grant service obligation cannot be discharged in the future on the basis of any injury or illness present when the new loan or TEACH Grant is made, unless your condition substantially deteriorates so that you are again totally and permanently disabled.

In addition, if you request a new Direct Loan or a new TEACH Grant during the post-discharge monitoring period, you must resume payment on the previously discharged loan or acknowledge that you are once again subject to the terms of your TEACH Grant Agreement before you can receive the new loan.

Section 10: Important Notices

Privacy Act Statement

Authority: The authorities for collecting the requested information from and about you are §421 et seq., §451 et seq., §461, and §420L of the Higher Education Act of 1965, as amended (20 U.S.C. 1071 et seq., 20 U.S.C. 1087a et seq., 20 U.S.C. 1087aa et seq., or 20 U.S.C. 1070g et seq.) and the authorities for collecting and using your Social Security Number (SSN) are §§428B(f) and 484(a)(4) of the HEA (20 U.S.C. 1078-2(f) and 1091(a)(4)) and 31 U.S.C. 7701(b).

Purpose: The principal purposes for collecting the information on the Discharge Application: Total and Permanent Disability, including your Social Security Number (SSN), are to verify your identity, to determine your eligibility to receive a loan or TEACH Grant or a benefit on a loan or TEACH Grant (such as a deferment, forbearance, discharge, or forgiveness) under the William D. Ford Federal Direct Loan (Direct Loan), Federal Family Education Loan (FFEL), Federal Perkins Loan (Perkins Loan), or Teacher Education Assistance for College and Higher Education (TEACH_ Grant programs, to permit the servicing of your loans, to enforce the conditions or terms of a title IV, HEA obligation, to originate, disburse, service, collect, assign, adjust, transfer, refer, furnish credit information for, and discharge a title IV, HEA obligation, to verify whether a title IV, HEA obligation qualifies for discharge, to determine credit balances to be refunded by the U.S. Department of the Treasury (Treasury) to the individual or loan holder, and, if it becomes necessary, to locate you and to collect and report on your loans if your loans become delinquent or default. We also use your SSN as an account identifier and to permit you to access your account information electronically.

Disclosures: The information provided on the Discharge Application: Total and Permanent Disability form will only be disclosed outside of the U.S. Department of Education (Department) with prior written consent or as otherwise allowed by the Privacy Act of 1974, as amended (Privacy Act) (5 U.S.C. 552a). One of the exceptions to the Privacy Act's prior written consent requirement that allows for disclosure, without consent, is for "routine uses" that the Department publishes in our System of Records Notices (SORNs). The Department may disclose, without consent, the information provided on a Discharge Application: Total and Permanent Disability form, on a case-by-case basis or under a computer matching program, to third parties pursuant to the routine uses identified in the "Common Services for Borrowers (CSB) System" (18-11-16) SORN. This notice is available on the Department's "Privacy Act System of Record Notice Issuances (SORN)" webpage located at <https://www2.ed.gov/notices/ed-pia.html>.

These routine uses included, but are not limited to:

- To verify the identity of the individual who records indicate has applied for or received title IV, HEA program funds, disclosures may be made to guaranty agencies, educational and financial institutions, and their authorized representatives; to Federal, State, Tribal, or local agencies, and their authorized representatives; to private parties, such as relatives, business and personal associates, and present and former employers; to creditors; to consumer reporting agencies; to adjudicative bodies; and to the individual whom the records identify as the party obligated to repay the title IV, HEA obligation;
- To determine program eligibility and benefits, disclosures may be made to guaranty agencies, educational and financial institutions, and their authorized representatives; to Federal, State, or local agencies, and their authorized representatives; to private parties, such as relatives, business and personal associates, and present and former employers; to creditors; to consumer reporting agencies; and to adjudicative bodies;

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- To enforce the conditions or terms of a title IV, HEA obligation, disclosures may be made to guaranty agencies, educational and financial institutions, and their authorized representatives; to Federal, State, or local agencies, and their authorized representatives; to private parties, such as relatives, business and personal associates, and present and former employers; to creditors; to consumer reporting agencies; to adjudicative bodies; and to the individual whom the records identify as the party obligated to repay the title IV, HEA obligation;
- To permit originating, disbursing, servicing, collecting, assigning, adjusting, transferring, referring, furnishing of credit information, or discharging title IV, HEA obligations, disclosures may be made to guaranty agencies, educational institutions, or financial institutions that originated, held, serviced, or have been assigned the title IV, HEA obligation, and their authorized representatives; to a party identified by the debtor as willing to advance funds to repay the title IV, HEA obligation; to Federal, State, or local agencies, and their authorized representatives; to private parties, such as relatives, business and personal associates, and present and former employers; to creditors; to consumer reporting agencies; and to adjudicative bodies;
- To investigate possible fraud or abuse or to verify compliance with contractual requirements or Federal, State, local, or Tribal statutory, regulatory, or program requirements, disclosures may be made to guaranty agencies, educational and financial institutions, third-party servicers, and their authorized representatives; to Federal, State, Tribal, or local agencies, and their authorized representatives; to private parties, such as relatives, present and former employers, and business and personal associates; to creditors; to consumer reporting agencies; and to adjudicative bodies;
- To locate a delinquent or defaulted borrower, or an individual who owes a title IV, HEA obligation, disclosures may be made to guaranty agencies,
- To verify whether a title IV, HEA obligation qualifies for discharge, disclosures may be made to guaranty agencies, educational and financial institutions, and their authorized representatives; to Federal, State, or local agencies, and their authorized representatives; to private parties, such as relatives, present and former employers, and business and personal associates; to creditors; to consumer reporting agencies; and to adjudicative bodies;
- To prepare a title IV, HEA obligation for litigation, to provide support services for litigation on a title IV, HEA obligation, to litigate a title IV, HEA obligation, or to audit the results of litigation on a title IV, HEA obligation, disclosures may be made to FFEL loan holders or servicers; Department contractors including but not limited to, Federal Loan Servicers, NFP Federal Loan Servicers, the Federal Perkins Servicer, PCAs and to guaranty agencies and their authorized representatives; Federal, State, Tribal, or local agencies, and their authorized representatives; and to adjudicative bodies.

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For additional routine uses, view the “Common Services for Borrowers (CSB) System” (18-11-16) SORN. This notice is available on the Department’s “Privacy Act System of Record Notice Issuances (SORN)” webpage located at <https://www2.ed.gov/notices/ed-pia.html>.

Consequences of Failure to Provide Information: Participating in the Direct Loan Program, the FFEL Program, the Perkins Loan Program, or the TEACH Grant Program and giving us your SSN are voluntary, but providing the Department your SSN and the requested information is mandatory to participate.

Paperwork Reduction Notice

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1845-0065. Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The obligation to respond to this collection is required to obtain a benefit in accordance with 34 CFR 674.61(b) or (c), 34 CFR 682.402(c)(2) or (c)(9), 34 CFR 685.213(b) or (c), and 34 CFR 686.42(b).

If you have comments or concerns regarding the status of your individual submission of this form, please contact the U.S. Department of Education directly (see **Where to send your completed application** in Section 1).

CONSUMER PRACTICE EXPERIENCE 2026

Client name [REDACTED]
Form Student Loan Questionnaire (Federal) 2025
Matter [REDACTED] - Ch. 13 [REDACTED]
Sent October 23, 2025 at 11:48 AM
Due
Submitted October 23, 2025 at 8:02 PM

Michelle R. Bennett

Date of birth	11/21/1966	Company	[REDACTED]
Home email	[REDACTED]	Home address	[REDACTED]
Home email	[REDACTED]		
Home phone	+1 [REDACTED]		

State of Residence?

Florida

Date of Birth

[REDACTED]/1966

Marital Info:

Married, but seperated

Loan Type

Federal

Do you have a disability or chronic injury that impacts your income potential?

No

Please describe your disability or injury, how it affects your ability to work, and whether you receive any government benefits related to this condition.

Multiple heart attacks with stents and stroke

Household Information

Do any other people live in your household besides you?

No

Employment

Main (Primary) Employment Income

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Are you currently employed?

No

Can a doctor confirm you are not gainfully employable?

Yes

Is your income currently insufficient to pay your student loans, and unlikely to increase enough to allow for substantial payments in the future?

Yes

Explain in detail:

Social Security disability \$1080 per month

Have you been unemployed for at least 5 out of the last 10 years?

Yes

Explain in detail:

Multiple heart attacks on social security disability

Are there any other circumstances that might prevent you from making payments during a significant part of your repayment period?

Yes

Explain in detail:

Unable to work due to heart condition and stroke

Are you working in the field of your degree?

No

How often do you get paid?

Monthly

Income

Gross pay per period:

\$1080 per month

CONSUMER PRACTICE EXPERIENCE 2026

Do you have any other sources of income? If so, please select all that apply

Social Security benefits

Gross monthly amount received

\$1080

Do any other members of your household have additional sources of income? If so, please select all that apply

None

Assets

Do you own any real estate?

Yes

Address

[REDACTED]

Owner(s)

[REDACTED]

Total balance of mortgages and other liens

\$14,000

Do you own or lease any cars?

Yes

Make and model

Dodge Dakota 1997

Fair market value

\$1200

Monthly vehicle payment

0

Total balance of vehicle loans and other liens

0

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Do you own any interests in a corporation, limited liability company, partnership, or other business entity?

No

Are you expecting to receive a tax refund?

No

Expenses

Please enter the average **monthly amount** your household spends on each of the expenses listed below.

Food

100

Housekeeping Supplies

80

Apparel and services

0

Personal care products and non-medical

0

Uninsured medical costs

0

Miscellaneous

0

Payroll Deductions

Enter the monthly amount for each of the deductions below.

Taxes, Medicare and Social Security

0

Contributions to retirement accounts

0

Are these contributions required as a condition of employment?

No

CONSUMER PRACTICE EXPERIENCE 2026

Union dues

0

Life Insurance

0

Are the payments for a term policy covering borrower's life?

No

Court-ordered alimony and child support

0

Health insurance

0

Does policy cover any person other than borrower or borrower's family?

No

Please provide details of any other payroll deductions not already listed

Mortgage or rent

\$505

Property taxes (if paid separately)

600 yearly

Homeowners or renters insurance (if paid separately)

123

Home maintenance and repair (average last 12 months' amounts)

0

Utilities (include monthly gas, electric, water, heating oil, garbage collection, residential telephone service, cell phone service, cable television, and internet service)

226

Monthly average costs of operation of vehicles (including gas, routine maintenance, monthly insurance cost)

25

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Public transportation costs

0

Please provide any additional expenses you have and enter the average monthly amount for each. These may include court-ordered alimony or child support payments (if not deducted from your pay), costs for babysitting, day care, nursery, or preschool, health and life insurance (not deducted from your pay), dependent care for elderly or disabled family members, payments on delinquent federal, state, or local tax debt, payments on student loans you are not seeking to discharge, and any other expenses you believe are necessary to maintain a minimal standard of living

Do you anticipate any additional expenses in the future?

Yes

Explanation

HOA dues to increase January 2026 by \$30 per month

Student Loan Information

Have you made payments on your student loans?

Yes

Estimate how much your payments were

\$1000

Have you contacted your loan servicer or the Department of Education regarding your student loans?

Yes

How many times?

Attorney filed paperwork

School 1 (where you incurred student loan debt you are seeking to discharge)

West Liberty University

Have you enrolled in an IDR?

No

Explain efforts to enroll

Not sure what an IDR is

CONSUMER PRACTICE EXPERIENCE 2026

Please describe any other actions you've taken in good faith to repay your student loans. This may include efforts to find or maintain employment, increase your income, reduce your expenses, apply for federal loan consolidation, respond to outreach from your loan servicer or a debt collector, or work with a third party you believed could help you manage your student loan debt

I didn't plan on having heart problems and a stroke. I have been having memory issues and not sure what I have done regarding my loans

Is the school now closed?

No

Did you graduate?

Yes

Month/year graduated

2013

Degree received

Bachelor

Field of Study

Psychology

Please provide any other details that support your claim of undue hardship.

I receive social security disability benefits

Did someone else other than yourself sign loan papers?

No

Has a judgment been issued against the you for nonpayment of a federal student loan?

No

Is your employer a governmental organization or non-profit?

No

Are you a nurse?

No

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If yes, is your employer a partisan political organization?

No

Were the student loans for an educational benefit? Some student loans can be discharged if they are non-federal loans and weren't for an educational benefit. Let us know if any of your loans were used for any purpose other than educational benefit.

No

Along with answering this intake sheet we will need your current pay stubs or profit and loss if you are self employed and a copy of your most recent tax return.

I receive social security disability and haven't worked since 2019

Thank you for providing this information

Along with this intake sheet, we will need the following supporting documents:

Your current paystub, or a profit and loss statement if you are self-employed and,
A copy of your most recent tax return.

Please send these documents to:

nataly@bransonlaw.com and/or **tammy@bransonlaw.com**.

Let us know if you have any questions or need assistance.

CONSUMER PRACTICE EXPERIENCE 2026

██████████ vs. U.S. Dept. of Education
 Adv. No.: ██████████, Bankr. Case No.: ██████████

Loan Information Relevant to Completing the Attestation

Dear Borrower,

This letter contains information about your student loan payment history and student loan servicing for student loans held by the Department of Education (“ED”). This information has been obtained by ED from its information systems. You may use it, in addition to any information you have, to complete the Attestation. You may rely on the information provided here in completing your Attestation. However, if you believe the information provided here is inaccurate, you should explain that in your Attestation and provide what you believe is the correct information. Also, if you believe the information below is incomplete, please provide any additional relevant information in your Attestation.

Loan Information for Attestation (Attestation Questions 5,6,7)⁴

Monthly payment amount under the Standard Repayment Plan: \$297.90

Loan #	Loan Holder Name/ Servicer	Loan Date	Loan Amount	Loan Type	Loan Status	Principal ⁵	Interest	Date Entered Repayment ⁶
6	DEPT OF ED/ AIDVANTAGE	2014-10-21	\$6,000	DIRECT STAFFORD UNSUBSIDIZED	In Repayment	\$6,273	\$557	07/13/2015
5	DEPT OF ED/ AIDVANTAGE	2014-10-21	\$3,931	DIRECT STAFFORD SUBSIDIZED	In Repayment	\$4,014	\$591	07/13/2015
4	DEPT OF ED/ AIDVANTAGE	2013-10-22	\$6,000	DIRECT STAFFORD UNSUBSIDIZED	In Repayment	\$6,461	\$397	07/13/2015
3	DEPT OF ED/ AIDVANTAGE	2013-10-22	\$4,500	DIRECT STAFFORD SUBSIDIZED	In Repayment	\$4,658	\$564	07/13/2015
2	DEPT OF ED/ AIDVANTAGE	2010-02-02	\$6,000	DIRECT STAFFORD UNSUBSIDIZED	In Repayment	\$5,938	\$46	11/03/2011
1	DEPT OF ED/ AIDVANTAGE	2010-02-02	\$3,500	DIRECT STAFFORD SUBSIDIZED	In Repayment	\$3,534	\$626	11/03/2011

⁴ This chart only includes your loans that are held by the Department of Education. It does not include private loans or commercial FFEL or HEAL loans.

⁵ Amounts rounded to the nearest dollar.

⁶ Periods spent in In-School deferment and Grace period after this repayment date will not count towards calculating the second prong presumption that the loans have been in repayment for more than 10 years.

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Enrollment/Graduation Information for Attestation (Attestation Question 8)⁷

School Name	Most Recent Status	Effective Date
Valencia College	G – GRADUATED	01/12/2015

ED records also contain the following information about your account:

	YES	NO	UNKNOWN
Loans went into repayment more than 10 years ago	X	X	
Made a payment	X		
Applied for deferment or forbearance	X		
Applied for an IDR plan		X	
Applied for federal consolidation		X	

[END OF DOCUMENT]

⁷ ED receives information about a student’s enrollment status from the school. If you believe the information above is incorrect you can provide additional information in the Attestation.

Bankruptcy
Deep Dive

Student Loan Bankruptcy Relief Gains Traction in Few Courts

Jan. 20, 2026, 5:00 AM EST

Since the government rolled out a standardized process for discharging student loan debt in bankruptcy, a small group of law firms is driving much of the increase in filings—but in many states, far fewer attorneys are giving it a try.

The 2022 Education and Justice departments' initiative has helped some struggling borrowers. But the attestation program has failed to overcome skepticism and meaningfully address the nation's \$1.6 trillion federal student loan debt pile.

Student loan discharge petitions have since clustered unevenly across courts. The US Bankruptcy Court for the Middle District of Florida has seen the largest influx, driven largely by two firms—the Independence Law Firm and BransonLaw PLLC—which together accounted for about 13% of about 1,000 nationwide filings last year compiled by Bloomberg Law.

In other bankruptcy courts, proceedings are rare. Texas' four bankruptcy courts combined had fewer cases than the District of Minnesota, according to the data. In Texas, many borrowers represent themselves.

“You may think of this as the same across the country, but that’s not true,” said Brian Miller, founding partner of the Independence Law Firm, which brought the vast majority of the Florida cases.

Easing the Standard

With around 42.5 million student loan borrowers carrying federal debt, using bankruptcy to address the debt of approximately 1,000 people annually is insufficient to the scale of need, said Matthew Bruckner, a Howard University School of Law professor who researches bankruptcy and student loans.

“Very few people who would benefit from addressing their student loans vis-à-vis the new procedures are taking advantage of that opportunity,” Bruckner said.

The Trump administration temporarily delayed collections and wage and tax garnishment efforts announced last year to “implement major student loan repayment reforms.”

For willing attorneys, the approach is pragmatic: check boxes—at least a decade in repayment, 65 years or older, a disability limiting future income, or proof that repayment isn’t feasible after basic monthly expenses.

“You could have a bad story and unfortunate events,” Miller said. “But if your income is too high, we’re not going to get anywhere.”

While the attestation tool was meant to ease the strict standard established under *Brunner v. New York State Higher Education Services Corp.*, some judges still apply it. The test examines income and expenses, future financial prospects, and good-faith efforts to repay.

In North Carolina, for instance, a judge determined that a 76-year-old debtor caring for her ailing husband couldn’t realistically maintain a minimal standard of living while paying the loans and was unlikely to see her finances improve, but denied a lender-approved discharge because she failed to show good faith repayment efforts.

Florida Tops

In Florida, BransonLaw and Independence saw an opportunity to file as many cases as possible.

“If you don’t take your shot, you won’t get anywhere,” BransonLaw founder Robert Branson said. “My theory is we should try them all and see what happens.”

Orlando attorney Alec Solomita said he only has a handful of cases because, as a solo practitioner, he can’t afford to devote the time to litigation. He assesses potential clients on whether they have factors such as age or health issues that increase their likelihood of discharge, or redirects them to another firm.

“You actually have to sue the Department of Education, which is kind of a big deal, but some people take me up on it,” he said. “If I see a client with a lot of debt, I’ll do it.”

Ethical Question

Some borrowers couldn't find a lawyer willing to represent them.

"I asked, 'Is this something we can do?' The lawyer said no," said Meredith, who asked that her last name be withheld because of her case status.

She filed her request in Texas on her own last fall. She has three children and said her seasonal income makes it difficult to cover basic household expenses while keeping up with loan payments.

Meredith doesn't know how her case will turn out, but the chance to shed nearly \$66,000 in student loans, she said, "is absolutely worth it."

Attorneys may not pursue student loan discharge because it requires litigation, they believe the debt isn't dischargeable, or they can't guarantee an outcome.

There's limited awareness among attorneys of the potential to discharge student loans, said Joshua Cohen, a practitioner known as "The Student Loan Lawyer."

"Most bankruptcy attorneys don't believe it or don't know how to sell it," Cohen said.

But over time, not discussing the option with debtors "will become an ethical question," said Igor Roitburg, senior managing director at legal service firm Stretto. "You can't have a debt that's that big and that relevant to the debtor, and not at least have a conversation."

Discharge Requests

Although muted in its uptake nationwide, the process has made some into true believers.

"Once you do a few, you realize it's a great service," said Minneapolis bankruptcy attorney Andrew C. Walker of Walker & Walker Law Offices PLLC.

Walker, who filed dozens of cases last year for clients in Minnesota, has expanded his practice into Ohio.

"I love this program and its results," said restructuring attorney Heather Marx of Cozen O'Connor, who last year assisted law school students discharge about \$750,000 for borrowers pro bono.

Attorneys say 2026 could be busy if the Trump administration moves forward with tougher collection efforts. The temporary wage garnishment pause may slow the program's use after a rush of borrowers sought help when collections were expected to resume.

More people submitted discharge inquiries after the 2025 garnishing announcement, Cohen said.

"All of a sudden, people realized, 'Oh, crap, I'm gonna lose my money,'" he said. "That's what drives bankruptcy."

AMERICAN BANKRUPTCY INSTITUTE

Roitburg said the level of interest in bankruptcy options for student loans “skyrocketed” in the last month and is likely to continue as a “historically high number of borrowers” are squeezed.

Wage garnishments, he said, will add to the pressure.

“That’s going to trigger a lot of people to seek help,” Roitburg said.

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UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

In re:

JENNIFER DARLING,

Case No.: 2:24-bk-01509-FMD
Chapter 7

Debtor.

JENNIFER DARLING,

Plaintiff,

v.

Adv. Pro. No.: 2:24-ap-00028-FMD

UNITED STATES DEPARTMENT
OF EDUCATION,

Defendants.

STIPULATION OF FINDINGS OF FACTS AND CONCLUSIONS OF LAW

The United States, pursuant to 11 U.S.C. § 523(a)(8) and Rule 7052 of the Federal Rules of Bankruptcy Procedure, files this proposed Stipulation of 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 partial discharge of the federal student loan debt of the Debtor, Jennifer Darling. The recommended discharge for National Student Loan Data System (NSLDS) Loans 2-3, 6-7, 37, 40-45 in full, totaling approximately \$617,888.89, plus any additional applicable interest. NSLDS Loan 39, approximately \$14,097.94, will remain unaffected and survive the bankruptcy. Interest on remaining balance will continue to accrue at contract rate.

As grounds, the parties recommend that the Court find that the Debtor's financial circumstances satisfy the three elements of undue hardship under 11 U.S.C. § 523(a)(8) as to the

stipulated partial discharge of her loans; specifically, that: (1) she lacks a current ability to pay all her loans while maintaining “minimal” standard living; (2) her inability to pay the full amount of her loans is likely to persist into the future; and (3) she has made good faith efforts to repay her loans.

I. INTRODUCTION

This matter comes before the Court upon the Debtor’s Complaint, filed on November 2, 2024, which sought to determine that her student loan debt of approximately \$606,297.00 is dischargeable because it would impose an undue hardship on her under 11 U.S.C. § 523(a)(8). *See Darling v. U.S. Dep’t of Educ. et al.*, Case No. 2:24-ap-00028-FMD (Bankr. M.D. Fla. 2024) (“Adversary Proceeding”), Doc. 1. The Debtor is the only source of income in her household. To reduce expenses and maximize her income, the Debtor is currently working in an industry outside of the field in which she obtained her degrees. (Ex. A, Debtor’s Attestation Form at 3.) According to the Debtor she has been unable to secure employment in her field primarily due to being unable to perform the tasks of a chiropractor. The Debtor was diagnosed with autism that limits her abilities. The Debtor received a discharge of her debts on January 3, 2025. *In re: Darling*, Case No. 2:24-bk-01509-FMD (Bankr. M.D. Fla.) (“Bankruptcy Case”), Doc. No. 8.

I. FINDINGS OF FACTS

A. Debtor’s Living Situation

1. The Debtor is an unmarried person, age 40, with one child 16 years of age. (Ex. A, Debtor’s Attestation Form at 2.)
2. The Debtor rents an apartment.

B. Debtor’s Employment

3. The Debtor is currently self-employed as a housekeeper in the Cape Coral area.

Id at 3.

C. Debtor's Gross Income

4. The Debtor's monthly gross household income consists of her average self-employment income of \$1,958.00, child support in the amount of \$1,050.00 and \$1,500.00 family support (not guaranteed). *Id* at 4.

D. Debtor's Expenses

5. Under the 2025 IRS Allowable Living Expenses National Standards. The Debtor's living expenses include the following allowable expenses for two people for a total \$1,649.00.

- a. Food (\$863.00).
- b. Housekeeping Supplies (\$75.00).
- c. Apparel and Services (\$181.00).
- d. Personal care products and services (non-medical) (\$91.00)
- e. Miscellaneous (\$271.00).
- f. Uninsured medical costs (\$168.00)

E. Debtor's Housing Costs

6. Under the IRS's 2025 Allowable Living Housing Standards for Lee County, Florida, the total allowable housing cost for two people is \$ 2,187.00 per month (which includes rent, maintenance, and utilities). The Debtor's rental payment is \$2,100.00 per month, her home maintenance and repair averaged in the last twelve months \$25.00 per month, and her utilities were \$657.00 for a housing cost total of \$2,782.00.

F. Debtor's Transportation Costs

7. Per her Attestation, the Debtor's vehicle payments are \$246.00 per month. (Ex. A, Debtor's Attestation Form, Ex. A at 8). This is below the \$662.00 allowance for vehicle ownership

costs for a single-car household under the IRS national standards for transportation expenses.

8. The Debtor's Attestation states that her average monthly operating costs for her vehicle are \$260.00 per month, which includes gas, routine maintenance, and monthly expenses costs. *Id.* This is below the \$281 allowance for vehicle operating costs under the IRS standards for a single-vehicle household in the South region.

G. Debtor's Assets

9. The Debtor's only asset is her business entity, Jennifer Darling dba Cape Coral Cleaning.

H. Debtor's Education

10. The Debtor attended Palmer College of Chiropractic and Life Chiropractic College West. The Debtor graduated from Palmer University effective December of 2013, with a Doctor of Chiropractic degree.

11. Although the Debtor ultimately obtained a degree, the Debtor is unable to perform chiropractic duties and is not working in this field. She is a housekeeper. (Ex. A, Debtor's Attestation Form, Ex. A at 11.)

I. Debtor's Loan Status

12. As of July 24, 2025, the Debtor's student loan balance totaled \$631,986.83.

13. The standard repayment amount for the Debtor's total student loans would be approximately \$6,080.00 per month.

14. The Debtor has made efforts to address her outstanding loans, including: (1) making payment on her student loans; (2) applying for forbearance or deferments; and (3) applying for an income-driven repayment plan and federal loan consolidation.

II. CONCLUSIONS OF LAW

A. Legal Authority

Section 523(a)(8) of the Bankruptcy Code provides that a discharge under § 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 has 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, 648–49 (11th Cir. 2017); *Wieckiewicz v. Educ. Credit Mgmt. Corp.*, 443 F. App’x 449, 451 (11th Cir. 2011); *Hemar Ins. Corp of America v. Cox (In re Cox)*, 338 F.3d 1238, 1241 (11th Cir. 2003) (citing *Brunner v. N.Y. State Higher Educ. Servs. Corp.*, 831 F.2d 395, 396 (2d Cir. 1987)). To establish undue hardship under the *Brunner* test, a debtor must demonstrate:

- (1) [T]hat 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) [T]hat 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) [T]hat 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. App’x at 648; *Wieckiewicz*, 443 F. App’x at 451; *In re Cox*, 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 In re D’Ettore*, 106 B.R. 715, 718 (Bankr. M.D. Fla. 1989) (stating that it is the debtor’s burden to prove undue hardship).

i. Element One

Under the first element of the *Brunner* test, a debtor is required to show that she cannot maintain, based on her current income and expenses, a “minimal” standard of living for herself if required to repay the student loans. *See In re Cox*, 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 she has maximized her “ability to produce adequate income” and live modestly with reasonable expenses. *See Vuini v. Zions Bank (In re Vuini)*, No. 6:11-ap-00227-KSJ, 2012 WL 5554406, at *4 (M.D. Fla. Nov. 14, 2012).

ii. Element Two

Under the second element of the *Brunner* test, a debtor is required to show that additional circumstances exist outside of her control and that this state of affairs is likely to continue for a significant portion of the repayment period of the student loans. *See In re Cox*, 338 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 responsibility 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.

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.

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.” *In re Mosley*, 494 F.3d at 1327. 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 In re Kidd*, 472 B.R. 857, 862 (Bankr. N.D. Ga. 2012). Further, “[a] factor the [c]ourt must consider when determining whether [a debtor] exhibited good faith when seeking discharge of her student loans is her ‘effort – or lack thereof – to negotiate a repayment plan.’” *In re Brosnan*, 323 B.R. 533, 538 (Bankr. M.D. Fla. 2005).

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

The three *Brunner* elements focus on three different time periods. Specifically, the first element focuses on the Debtor’s present ability to pay the debt; the second element focuses on the Debtor’s future ability to repay the debt; and the third element focuses on the Debtor’s past conduct to determine whether her past actions have manifested a good faith effort to repay her debt. Based on the information the Debtor provided to the United States, Defendant stipulates that the three *Brunner* elements of undue hardship are satisfied sufficiently to support a partial discharge of the Debtor’s loans as set forth more fully below.

i. Brunner Test: Element One

The first *Brunner* element focuses on the 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, the Debtor currently does not have sufficient means to pay her all her student loans while maintaining a minimal standard of living.

The Debtor's gross monthly household income is \$4,508.00. The Debtor's allowable monthly expenses total \$4,342.00. These standard and allowable living expenses are not exorbitant and are thus modest and reasonable. *See In re Vuini*, 2012 WL 5554406, at *4. The Debtor's monthly payment amount under the Standard Repayment Plan would be \$6,080.00. Accordingly, based on her current income and expenses, the Debtor cannot maintain a "minimal" standard of living if required to repay the entire student loan and, therefore, the Debtor meets the first *Brunner* element requirements for partial discharge. *See In re Hemar*, 388 F.3d at 1241.

ii. Brunner Test: Element Two

The second *Brunner* element focuses on the Debtor's future ability to repay the debt, assessing the likelihood or unlikelihood that the Debtor would become able to repay the loan. The Debtor's past supports a presumption that she has a future inability to fully repay her student loans because she is not able to function as a chiropractor, the field in which she obtained her degree.

Importantly, the 2022 Department of Justice Guidance for Department Attorneys regarding Student Loan Bankruptcy Litigation uses presumptions for determining whether inability to repay is likely to persist in the future.¹ As relevant here, a presumption that a debtor's ability to repay debt will persist is to be applied where the debtor has failed to obtain employment in the degree for which the loan was procured.²

The Debtor is autistic and has not been able to work in the field for which she obtained her

¹ https://www.justice.gov/d9/pages/attachments/2022/11/17/student_loan_discharge_guidance_-_guidance_text_0.pdf, p. 4.

² *Id.* at 9.

degree. She currently cleans Airbnb's, receives child support and family support that is not guaranteed.

iii. Brunner Test: Element Three

The third *Brunner* element focuses on the 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. Here, the Debtor has demonstrated a good faith effort, as evidenced by her: (1) payment towards her student loans; (2) efforts to seek out forbearance or deferment on her student loan debt; (3) enrollment in an Income Driven Repayment Plan; and (4) application for federal loan consolidation. *See In re Mosley*, 494 F.3d at 1327. (Ex. A, Debtor's Attestation Form at 12.) Accordingly, based on her efforts described above, the Debtor has demonstrated a good faith effort to pay her debt that is sufficient to satisfy element three of the *Brunner* test with respect to the recommended partial discharge.

III. CONCLUSION

For the above-mentioned reasons, the Defendant has concluded that the Debtor would be entitled to a partial discharge of her student loan debt under § 523(a)(8) because she does satisfy its three elements of undue hardship with respect to part of her outstanding student loan debt in that: (1) she lacks a current ability to pay the full amount of 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 under the *Brunner* test. Accordingly, the parties provide these stipulated findings of facts and conclusions of law herein and recommend that the Court adopt the same in ordering the partial discharge of the Debtor's student loan debt for NSLDS Loans 2-3, 6-7, 37, 40-45 in full, totaling approximately \$617,888.89 plus any additional applicable interest. NSLDS Loan 39, approximately \$14,097.94, will remain unaffected and

survive the bankruptcy. Interest on remaining balance will continue to accrue at contract rate.

CERTIFICATE OF CONFERENCE

Counsel for Defendant certifies that he has conferred with the Debtor and provided this Stipulation of Findings of Facts and Conclusions of Law and the contemporaneously filed proposed Order and proposed Judgment for her review. The Debtor has reviewed and approved these documents. The undersigned is, therefore, authorized to represent that he has obtained the consent of the Debtor to the entry of the proposed order and judgment contemporaneously filed with this Stipulation.

Respectfully submitted,

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FILER'S ATTESTATION

Pursuant to Local Rule 1001-2(g)(3) regarding signatures, Assistant United States Attorney Chad C. Spraker, counsel for Defendant, attests that concurrence in the filing of this paper has been obtained.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 5, 2025, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send notice of the filing to the following CM/ECF participant:

Robert B. Branson
robert@bransonlaw.com
Attorney for Plaintiff

/s/Chad C. Spraker

CHAD C. SPRAKER
Assistant United States Attorney

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

In re:	)	Case No.:
	)	2:24-bk-01509-FMD
JENNIFER DARLING,)	
)	
Plaintiff.)	
)	
_____)	
JENNIFER DARLING,)	
)	
Plaintiff,)	
)	
v.	)	Adv. Pro. No.:
	)	2:24-ap-00028-FMD
)	
UNITED STATES DEPARTMENT)	
OF EDUCATION, NELNET [et al.],)	
)	
Defendant(s).)	
_____)	

STATUS REPORT

Jennifer Darling (the “Plaintiff”) and Defendant United States of America on behalf of the Department of Education, through counsel undersigned file this Status Report as required by the Order Granting Joint Motion to Stay Case (Doc. No. 8).

1. Plaintiff and Defendant continue to progress in investigating a possible stipulation to resolve this case.

Respectfully submitted this 5th day of May, 2025,

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UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In re:

Ashley Beacham

Chapter 7

Case No.: 8:24-bk-06538-CPM

Debtor.

Ashley Beacham,

Plaintiff,

v.

Adv. Pro. No.: 8:24-ap-00378-CPM

United States Department of
Education,

Defendant.

STIPULATION OF FINDINGS OF FACTS AND CONCLUSIONS OF LAW

The United States, pursuant to 11 U.S.C. § 523(a)(8) and Rule 7052 of the Federal Rules of Bankruptcy Procedure, files this proposed Stipulation of 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 partial discharge of the federal student loan debt of the Debtor, Ashley Beacham, in the amount of \$38,188.23, plus any additional applicable interest. As grounds, the parties recommend that the Court find that the Debtor's financial circumstances satisfy the three elements of undue hardship under 11 U.S.C. § 523(a)(8) as to the stipulated partial discharge of her loans; specifically, that: (1) she lacks a current ability to pay all

her loans while maintaining “minimal” standard living; (2) her inability to pay the full amount of her loans is likely to persist into the future; and (3) she has made good faith efforts to repay her loans.

I. INTRODUCTION

This matter comes before the Court upon the Debtor’s Complaint, filed on November 5, 2024, which sought to determine that her student loan debt of approximately \$63,107.04, plus any additional applicable interest, is dischargeable because it would impose an undue hardship on her under 11 U.S.C. § 523(a)(8). *See Beacham v. U.S. Dep’t of Educ.*, Case No. 8:24-ap-00378-CPM (Bankr. M.D. Fla. 2024) (“Adversary Proceeding”), Doc. 1. Notably, the Debtor is the only source of income for her household. To reduce expenses and maximize her income, the Debtor is currently working in an industry outside the field in which she obtained her degrees. (Ex. A, Debtor’s Attestation, p. 11.) According to the Debtor, she has been unable to secure employment in her field primarily due to a decline in the industry—specifically, that the entry-level positions available to her offer salaries that are insufficient to cover both her living expenses and student loan payments. (*Id.*) Moreover, according to her Attestation, many positions in her field require recent, field-specific experience that she was unable to acquire after graduation. (*Id.*) Consequently, the Debtor secured employment in a higher-paying field, but one that is unrelated to her field of study. (*Id.*)

Despite securing affordable housing, the Debtor’s total income from all sources is insufficient to support a minimal standard of living and make her full student loan

payments. To support her claim, the 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. (*See generally* Ex. A.) The Debtor received a discharge of her debts on February 24, 2025. *In re Beacham*, Case No. 8:24-bk-06538-CPM (Bankr. M.D. Fla.) (“Bankruptcy Case”), Doc. 24.

II. FINDINGS OF FACTS

A. Debtor’s Living Situation

1. The Debtor is an unmarried woman, aged 32, with one two-year-old child. (Ex. A, p. 2.)

2. The Debtor rents an apartment for herself and her child in an income-restricted apartment complex¹ in New Tampa. (*See id.*)

B. Debtor’s Employment

3. The Debtor is currently employed as a Transition of Care Specialist at Magellan Healthcare. (*Id.* at 3.)

C. Debtor’s Gross Income

4. The Debtor’s monthly gross household income consists of her wages of \$4,418.00 (*Id.* at 4.)

¹ “Income restricted apartments are housing units where the rent is set based on the area’s median income (AMI). These apartments are part of programs aimed to provide affordable housing to low-income renters who may not be able to afford market rent units. The federal government, through the Department of Housing and Urban Development (HUD), along with local public housing authorities, sets the guidelines for these apartments.” <https://www.rent.com/blog/dictionary/income-restricted-apartments/#:~:text=Income%20restricted%20apartments%20are%20housing,to%20afford%20market%20rent%20units>.

D. Debtor's Expenses

5. The Debtor's allowable payroll deductions include deductions for taxes, Medicare, and Social Security in the amount of \$443.00 and a \$220.00 deduction for health insurance for a total of \$663.00. (*See id.* at 7.)

6. Under the 2024 IRS Allowable Living Expenses National Standards,² the Debtor's living expenses include the following allowable expenses for two people for a total of \$1,411.00:

- a. Food (\$820.00)
- b. Housekeeping Supplies (\$75.00)
- c. Apparel and Services (\$157.00)
- d. Personal care products and services (non-medical) (\$80.00)
- e. Miscellaneous (\$279.00)

7. In her Attestation, the Debtor listed monthly payroll deductions for health insurance in the amount of \$220.00 a month. (*Id.*) According to her Attestation, the Debtor is employed by Magellan Healthcare. (Ex. A, p. 3.) The Debtor has also verified that she has taken advantage of her employer-provided healthcare plan. The 2021 employee benefits guide from Magellan Ascend is available online.³ The benefits guide lists the costs for medical insurance deducted from employees' biweekly

² The 2024 national and local IRS standards were effective April 22, 2024, through April 20, 2025. The 2025 national and local IRS standards did not become effective until April 21, 2025. Because the Debtor submitted her Attestation to the undersigned on December 12, 2024, the 2024 IRS standards were used to assess the Debtor's expenses and, therefore, have been referenced throughout this filing.

³ <https://magellanascend.com/media/3790/2021-honorhealth-benefits-guide-2-23.pdf>.

paychecks under three available plans: the coordinated care plan, the standard plan, and the health savings account plan (HDHP). For a full-time employee plus a child or children, the paycheck deductions for medical insurance range from: (1) \$74.00 per paycheck for an HDHP or a coordinated care plan; and (2) \$175.00 per paycheck for a standard plan. This roughly amounts to a range of \$148.00 to \$350.00 every month for health insurance. As stated on her Attestation, the Debtor has a two-year-old child. (Ex. A, p. 2.) Accounting for inflation since 2021, when the online benefits guide was published, the Debtor's stated payroll deduction of \$220.00 a month for health insurance appears to be towards the low end of her employee's health care ranges and, thus, commensurate with minimal standards of living. Accordingly, the Defendant stipulates that the Debtor's stated payroll deduction of \$220.00 a month for health insurance for a family of two, inclusive of a young child, is a reasonable and allowable household expense.

E. Debtor's Housing Costs

8. Under the IRS's 2024 Allowable Living Housing Standards for Hillsborough County, Florida, the allowable housing cost for two people was \$2,245 per month, to include mortgage or rent payments, property taxes, homeowners' or renters' insurance, home maintenance and repairs, and utilities. Notably, these standards became effective on April 22, 2024, and it is well known that rental prices in the Tampa Bay area have been dramatically increasing in recent years.

9. The Debtor's rental payment is \$2,020 per month, her renter's insurance is \$32.00 per month, and her utilities are \$340.00 per month, for a total housing cost

of \$2,392, which is \$147 per month more than the amount allowed by the IRS local standards. (*See* Ex. A, p. 8.) However, the Defendant stipulates that this expense is reasonable based on the following considerations. First, the difference of \$147 between the IRS local standards and the Debtor's actual housing expenses is reasonable given the rising cost of living in the Tampa Bay area and the rising costs of property insurance in Florida due, in part, to the devastating 2024 hurricane season. Second, the Debtor lives in affordable housing in New Tampa—specifically, in an apartment complex with income restrictions.⁴ As such, it appears that the Debtor has made reasonable efforts to secure affordable housing based on her income.

F. Debtor's Transportation Costs

10. Under the IRS national standards for transportation expenses, allowable operation costs for a single-car household are \$619.00 per month.

11. Under the IRS local standards for transportation expenses in Tampa, allowable operating costs for one vehicle are \$305.00 per month.

12. Per her Attestation, the Debtor's vehicle payments are \$489.00 a month. (Ex. A, p. 8.) This is well below the \$619.00 allowance for vehicle ownership costs for a single-car household under the IRS national standards for transportation expenses. Accordingly, the Defendant stipulates that this expense is reasonable.

13. The Debtor's attestation states that her average monthly operating costs for her vehicle are \$200.00 per month, which includes gas, routine maintenance, and

⁴ *See* <https://www.morgancreekfl.com/floorplans>.

monthly insurance costs. (*Id.*) Again, this is well below the \$305.00 allowance for vehicle operating costs under the IRS local standards for Tampa for a single-vehicle household. Thus, the Defendant stipulates that this expense is reasonable.

G. Debtor's Assets

14. The Debtor's only asset is \$300 in retirement assets. (*Id.* at 14.) The Defendant stipulates that liquidation of the Debtor's minimal retirement assets is not appropriate under the circumstances. According to the 2022 Department of Justice Guidance for Department Attorneys regarding Student Loan Bankruptcy Litigation, liquidating a retirement account is an extreme measure and, therefore, requests to liquidate such assets are exceptionally rare and are not appropriate here, particularly considering the modest amount of this asset.⁵

H. Debtor's Education

15. According to the Defendant's records, the Debtor attended Florida Agricultural & Mechanical University (FAMU), Tallahassee State College, the University of Phoenix, and Florida State University (FSU). The Debtor graduated from Tallahassee State College effective August 9, 2012, with a degree in criminal justice. She also graduated from FSU effective August 4, 2017, with a degree in social science. The Debtor withdrew from FAMU, where she had been pursuing a degree in criminal justice, effective September 20, 2010. The Debtor also withdrew from the University of Phoenix, where she had been pursuing a social science, effective

⁵https://www.justice.gov/d9/pages/attachments/2022/11/17/student_loan_discharge_guidance_-_guidance_text_0.pdf, p. 14.

September 6, 2013.

16. Though the Debtor ultimately obtained degrees in criminal justice and social science from Tallahassee State College and FSU, respectively, the credits that she earned at FAMU and the University of Phoenix for similar degree programs did not transfer to Tallahassee State College or FSU. To corroborate this, the Debtor submitted transcripts to the Defendant from FAMU and the University of Phoenix demonstrating that her credits from these schools did not transfer to the schools where she ultimately obtained her degrees.

I. Debtor's Loan Status

17. According to the Department of Education's ("DOE") account history and loan details, as of June 6, 2025, the Debtor's student loan balance consisted of \$58,568.30 in unpaid principal and \$4,538.74 in accrued interest, for a total of \$63,107.04.

18. According to DOE records, the standard repayment amount for the Debtor's total student loans would be approximately \$364.53 per month.

19. The Debtor has made several efforts to address her outstanding loans, including: (1) making a total of \$4,500 in payments on her student loans; (2) applying for forbearances or deferments and spending a total of 72 months in forbearance or deferment; (3) contacting the DOE regularly regarding various payment options; and (4) applying for an income-driven repayment plan and federal loan consolidation. (*See id.* at 12–13.)

III. CONCLUSIONS OF LAW

A. Legal Authority

Section 523(a)(8) of the Bankruptcy Code provides that a discharge under § 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 has 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, 648–49 (11th Cir. 2017); *Wieckiewicz v. Educ. Credit Mgmt. Corp.*, 443 F. App’x 449, 451 (11th Cir. 2011); *Hemar Ins. Corp of America v. Cox (In re Cox)*, 338 F.3d 1238, 1241 (11th Cir. 2003) (citing *Brunner v. N.Y. State Higher Educ. Servs. Corp.*, 831 F.2d 395, 396 (2d Cir. 1987)). To establish undue hardship under the *Brunner* test, a debtor must demonstrate:

- (1) [T]hat 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) [T]hat 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) [T]hat 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. App’x at 648; *Wieckiewicz*, 443 F. App’x at 451; *In re Cox*, 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 In re D'Ettore*, 106 B.R. 715, 718 (Bankr. M.D. Fla. 1989) (stating that it is the debtor's burden to prove undue hardship).

i. Element One

Under the first element of the *Brunner* test, a debtor is required to show that she cannot maintain, based on her current income and expenses, a “minimal” standard of living for herself if required to repay the student loans. *See In re Cox*, 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 she has maximized her “ability to produce adequate income” and live modestly with reasonable expenses. *See Vuini v. Zions Bank (In re Vuini)*, No. 6:11-ap-00227-KSJ, 2012 WL 5554406, at *4 (M.D. Fla. Nov. 14, 2012).

ii. Element Two

Under the second element of the *Brunner* test, a debtor is required to show that additional circumstances exist outside of her control and that this state of affairs is likely to continue for a significant portion of the repayment period of the student loans. *See In re Cox*, 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 responsibility 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.

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.

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." *In re Mosley*, 494 F.3d at 1327. 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 In re Kidd*, 472 B.R. 857, 862 (Bankr. N.D. Ga. 2012). Further, "[a] factor the [c]ourt must

consider when determining whether [a debtor] exhibited good faith when seeking discharge of her student loans is her ‘effort – or lack thereof – to negotiate a repayment plan.’” *In re Brosnan*, 323 B.R. 533, 538 (Bankr. M.D. Fla. 2005).

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

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

i. *Brunner* Test: Element One

The first *Brunner* element focuses on the 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, the Debtor currently does not have sufficient means to pay her all her student loans while maintaining a minimal standard of living.

The Debtor’s gross monthly household income is \$4,418.00. In applying the IRS national standards to assess a “minimal standard of living,” the Debtor’s allowable monthly expenses total \$5,321.00. These standard and allowable living expenses are not exorbitant and are thus modest and reasonable. *See In re Vuini*, 2012

WL 5554406, at *4. The Debtor's monthly payment amount under the Standard Repayment Plan would be \$346.53. Thus, the total of the Debtor's allowable monthly expenses and her student loan payment would be \$5,667.53, which is \$1,249.53 more than her income. Accordingly, based on her current income and expenses, the Debtor cannot maintain a "minimal" standard of living if required to repay the entire student loan and, therefore, the Debtor meets the first *Brunner* element requirements for partial discharge. See *In re Hemar*, 388 F.3d at 1241.

ii. Brunner Test: Element Two

The second *Brunner* element focuses on the Debtor's future ability to repay the debt, assessing the likelihood or unlikelihood that the Debtor would become able to repay the loan. The Debtor's past supports a presumption that she has a future inability to fully repay her student loans because she has not obtained two of the four degrees for which her loans were procured.

Importantly, the 2022 Department of Justice Guidance for Department Attorneys regarding Student Loan Bankruptcy Litigation uses presumptions for determining whether inability to repay is likely to persist in the future.⁶ As relevant here, a presumption that a debtor's ability to repay debt will persist is to be applied where the debtor has failed to obtain the degree for which the loan was procured.⁷

As stated above, the Debtor incurred student loan debt while enrolled at

⁶ https://www.justice.gov/d9/pages/attachments/2022/11/17/student_loan_discharge_guidance_guidance_text_0.pdf, p. 4.

⁷ *Id.* at 9.

FAMU, Tallahassee State College, the University of Phoenix, and FSU. Notably, Debtor initially pursued a degree in criminal justice at FAMU but later withdrew in September of 2010. The Debtor successfully obtained a criminal justice degree from Tallahassee State College, however, and graduated in August of 2012. The Debtor was also pursued a degree in social science from the University of Phoenix until she withdrew in September of 2013. Ultimately, the Debtor obtained a social science degree from FSU in August 2017. Unfortunately, despite incurring student loan debt at FAMU, the Debtor's criminal justice credits from FAMU did not transfer when she enrolled in the same degree program at Tallahassee State College. Similarly, the Debtor's social science credits were not counted towards the social science degree she obtained from FSU, though she had incurred student loan debt at the University of Phoenix. As such, prong two of the *Brunner* test is partially met here with respect to the student loans that the Debtor incurred while pursuing degrees at FAMU and the University of Phoenix, as she did not complete the degrees for which she incurred the student loans.⁸

⁸ While the presumptions listed in the 2022 Student Loan Discharge Guidance are not the sole basis upon which a future inability to pay may be found, other facts attested to by the Debtor do not support an alternative finding of likely persistence of inability to pay. See https://www.justice.gov/d9/pages/attachments/2022/11/17/student_loan_discharge_guidance_-_guidance_text_0.pdf, at 10. Here, the Debtor's Attestation lists several additional reasons for why she believes her financial circumstances are unlikely to materially improve over a significant portion of the repayment period for her student loans. First, the Debtor represents that she will be unable to meet her student loan payments in the future due to an anticipated significant reduction in income and ability to work overtime hours. (Ex. A, p. 15.) Second, the Debtor represents that having a small child has had a substantial impact on her finances. (*Id.*) Third, the Debtor represents that she works in the public service sector, which traditionally experiences slow wage growth, despite the rising cost of living. (*Id.* at 12.) And fourth, the Debtor attests that her finances are further restrained due to her care-taking responsibilities for her mother, who is ill. (*Id.*) Unfortunately, these circumstances are not sufficient to meet prong two of the *Brunner* test under the relevant case law. See, e.g., *In re Cox*, 338

iii. Brunner Test: Element Three

The third *Brunner* element focuses on the 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. Here, the Debtor has demonstrated a good faith effort, as evidenced by her: (1) multiple payments towards her student loans; (2) efforts to seek out forbearance and deferments on her student loan debt; (3) regular efforts to contact the DOE regarding repayment options; (4) enrollment in an Income Driven Repayment Plan; and (5) application for federal loan consolidation. *See In re Mosley*, 494 F.3d at 1327. Notably, the Debtor's Attestation, as well as her correspondence with the undersigned, demonstrates a clear intention to pay back as much of her student debt as possible. (Ex. A, p. 13.) Consistent with these representations, the

F.3d at 1242 ("The government is not twisting the arms of potential students. The decision of whether or not to borrow for a college education lies with the individual; absent an expression to the contrary, the government does not guarantee the student's future financial success. If the leveraged investment of an education does not generate the return the borrower anticipated, the student, not the taxpayers, must accept the consequences of the decision to borrow. Congress's intent to make it harder for a student to shift his debt responsibility onto the taxpayer is clear from the 1998 amendments."); *In re Matthews-Hamad*, 377 B.R. at 422 ("Several courts have found that the fact that a debtor has a low-paying job without much upside earning potential is not enough to satisfy this prong of the *Brunner* test."); *In re Vuini*, 2012 WL 5554406, at *4, *5 ("The second prong of the Brunner Test, considered the heart of the dischargeability analysis, requires a debtor to establish not just an inability to pay, but an inability to pay that is likely to continue for a significant time. Sometimes this distinction, which recognizes the continued benefit of a college or post-graduate education, is described as the difference between a 'temporary dire financial situation' and a 'certainty of hopelessness.' Utter hopelessness can be difficult to prove because it requires a debtor to show she will never reap the benefits of her education or be able to repay her obligations due to factors outside of her control. Courts do not take this factor lightly, and usually look for a debtor to establish the most of grim circumstances, like an irreversible illness or disability, an utter lack of usable job skills, or the responsibility of caring for a large number of dependents. . . . Being a single parent is not an easy task, and often requires reliance on others to care for a young child. But, plaintiff's situation is not unique, nor is it permanent.").

Debtor has made a total of \$4,500 in payments towards her student loans. (*Id.* at 12.) Accordingly, based on her efforts described above, the Debtor has demonstrated a good faith effort to pay her debt that is sufficient to satisfy element three of the *Brunner* test with respect to the recommended partial discharge.

IV. CONCLUSION

For the above-mentioned reasons, the Defendant has concluded that the Debtor would be entitled to a partial discharge of her student loan debt under § 523(a)(8) because she does satisfy its three elements of undue hardship with respect to part of her outstanding student loan debt in that: (1) she lacks a current ability to pay the full amount of 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 under the *Brunner* test. Accordingly, the United States provides these stipulated findings of facts and conclusions of law herein and recommends that the Court adopt the same in ordering the partial discharge of the Debtor’s student loan debt in the amount of approximately \$38,188.23, plus any additional applicable interest.

CERTIFICATE OF CONFERENCE

Counsel for Defendant certifies that she has conferred with the Debtor and provided this Stipulation of Findings of Facts and Conclusions of Law and the contemporaneously filed proposed Order and proposed Judgment for her review. The Debtor has reviewed and approved these documents. The undersigned is, therefore, authorized to represent that she has obtained the consent of the Debtor to the entry of

the proposed order and judgment contemporaneously filed with this Stipulation.

Respectfully submitted,

GREGORY W. KEHOE
United States Attorney

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FILER'S ATTESTATION

Pursuant to Local Rule 1001-2(g)(3) regarding signatures, Assistant United States Attorney Somadina Nwokolo, counsel for Defendant, attests that concurrence in the filing of this paper has been obtained.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 17, 2025, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system and that, on or about July 17, 2025, I will serve the forgoing document and notice of electronic filing on the plaintiff by mail at the following address, pursuant to Rule 5(b)(2)(C) of the Federal Rules of Civil Procedure, made applicable to these proceedings by Rule 7005 of the Federal Rules of Bankruptcy Procedure:

Ashley Beacham
8464 Emily Wood Circle
Tampa, FL 33647

I will also serve a courtesy copy of the foregoing document on the plaintiff today by email at ashleybeacham@gmail.com.

/s/ Somadina Nwokolo
SOMADINA I. NWOKOLO
Assistant United States Attorney

ORDERED.

Dated: December 19, 2024



 Caryl E. Delano
 Chief United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

In re:

JENNIFER DARLING,

Case No.: 2:24-bk-01509-FMD
Chapter 7

Debtor.

_____ /

JENNIFER DARLING,

Plaintiff,

v.

Adv. Pro. No.: 2:24-ap-00028-FMD

UNITED STATES DEPARTMENT
OF EDUCATION,

Defendants.

_____ /

ORDER GRANTING JOINT MOTION TO STAY CASE

THIS PROCEEDING came on for consideration, without hearing, of the

parties Joint Motion to Stay Case (Doc. 6). After review, the Court grants the Motion.

Accordingly, it is

ORDERED:

1. The Motion is **GRANTED**.
2. The case is **STAYED** and all deadlines **SUSPENDED** for a period of 150 days.
3. On or before May 5, 2025, the parties shall **FILE** a joint status report on their progress in investigating a possible stipulation. At that point, the parties will file a motion to continue the stay or request a pretrial/status conference with the Court.

Attorney Chad Spraker is directed to serve a copy of this Order on interested parties who do not receive service by CM/ECF and to file a proof of service within three days of entry of this Order.

FILED
JEANNE A. NAUGHTON, CLERK

APR 27 2018

U.S. BANKRUPTCY COURT
NEWARK, N.J.
BY  DEPUTY

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In Re: SARAH HUNTER, Debtor.
SARAH HUNTER, Plaintiff, vs. NEW JERSEY HIGHER EDUCATION STUDENT ASSISTANCE AUTHORITY, Defendant.

Case No.: 15-17329-JKS

Adv. Pro. No.: 15-02052-JKS

Judge: Hon. John K. Sherwood

**DECISION AND ORDER GRANTING PARTIAL DISCHARGE OF DEBTOR'S
STUDENT LOAN DEBT PURSUANT TO 11 U.S.C. § 523(a)(8)**

The relief set forth on the following pages, numbered two (2) through nineteen (19), is hereby **ORDERED**.



HONORABLE JOHN K. SHERWOOD
UNITED STATES BANKRUPTCY JUDGE

Dated: April 27, 2018

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Sarah Hunter v. New Jersey Higher Education Student Assistance Authority

Adv. Pro. No.: 15-02052-JKS

Caption of Order: Decision and Order Granting Partial Discharge of Debtor's Student Loan Debt Pursuant to 11 U.S.C. § 523(a)(8)

APPEARANCES:

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New Jersey Higher Education Student Assistance Authority

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Sarah Hunter v. New Jersey Higher Education Student Assistance Authority

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INTRODUCTION

Debtor Sarah Hunter (“Debtor”) filed an adversary complaint against the New Jersey Higher Education Student Assistance Authority (“NJHESAA”) seeking to discharge student loan debt in the amount of \$288,911.15 at the time she filed her bankruptcy petition.¹ Ms. Hunter has a master’s degree and works in the public interest sector, where she earns \$50,000 per year. She is married with a young daughter and has a second child due later this year. Her husband earns approximately \$74,000 per year. Ms. Hunter asserts that repayment of her student loans would cause undue hardship because their joint income is not enough to make her combined monthly student loan payments of \$2,609.24 after deducting expenses necessary to maintain a minimum standard of living for her family.² Based on the evidence in the record and Ms. Hunter’s trial testimony, the Court concludes that requiring Ms. Hunter to repay all of her student loans would cause undue hardship and grants a partial discharge of her student loans as detailed below.

PROCEDURAL HISTORY

On April 22, 2015, the Debtor filed a voluntary petition for relief under chapter 13 of the Bankruptcy Code.³ On July 23, 2015, Ms. Hunter filed an adversary complaint against NJHESAA.⁴ On January 25, 2017, Ms. Hunter filed an amended complaint which contained

¹ Debtor’s Am. Compl., ECF No. 13; Debtor’s Ex. C-O.

² Test. of Sarah Hunter; Debtor’s Ex. Q and O; Although Ex. Q states that Ms. Hunter’s monthly student loan payment would be \$2,609.24 as of February 2015, this amount does not include the Navient loan, which is included in the total amount of Ms. Hunter’s debt with NJHESAA and for which a proof of claim was filed. The monthly amount of \$2,609.24 is what the Debtor owed as of February 2015 and does not reflect compounding interest or other fees which have since accrued.

³ Chapter 13 Voluntary Pet., *In re Sarah Hunter*, No. 15-17329 (JKS), ECF No. 1.

⁴ Debtor’s Adversary Compl., ECF No. 1.

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among its five counts an assertion that repayment of her student loan debt is dischargeable based on undue hardship.⁵ NJHESAA filed an answer to the amended complaint on March 10, 2017.⁶ On January 5, 2018, after oral argument on summary judgment, the Court found that undue hardship was a triable issue of material fact.⁷ Trial took place on February 28, 2018. The Debtor was the only witness.

JURISDICTION

The Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 1334(b), 157(a) and the Standing Order of Reference from the United States District Court for the District of New Jersey dated July 23, 1984, as amended September 18, 2012. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (I). Venue is proper under 28 U.S.C. §§ 1408 and 1409(a).

STATEMENT OF FACTS

Sarah Hunter was a student at Seton Hall University from 2007 through 2013. She graduated with a Bachelor of Science degree in Diplomacy and International Relations and Russian Suburban Studies as well as a Master's in Diplomacy and International Relations. She financed her education with various forms of financial aid, including loan proceeds from NJHESAA.⁸ In addition to her loans with NJHESAA, Ms. Hunter has \$66,000 in federal student loan debt which

⁵ Debtor's Am. Compl., ECF No. 13.

⁶ NJHESAA's Answer to the Am. Compl., ECF No. 16.

⁷ Decision and Order Regarding Pl.'s Mot. for Summ. J. to Discharge Student Loan Debt Pursuant to 11 U.S.C. § 523(a)(8) and Def.'s Cross-Mot. for Summ. J., ECF No. 31.

⁸ Test. of Sarah Hunter.

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may be eligible for income-based and income-contingent repayment plans.⁹ Ms. Hunter's employment with the Global Center for Responsibility may also qualify her student loans for forgiveness under the federal Public Service Loan Forgiveness Program ("PSLF").¹⁰ The Debtor's federal loans are not at issue in this proceeding but are relevant to the discussion of her ability to pay NJHESAA.

On April 22, 2015, Ms. Hunter filed a voluntary petition for relief under chapter 13 of the Bankruptcy Code.¹¹ Between May 14, 2015 and May 28, 2015, NJHESAA filed thirteen claims totaling \$288,911.15, twelve under New Jersey College Loans to Assist State Students ("NJCLASS"), a loan program administered by NJHESAA,¹² and the last through Navient Solutions, Inc. on behalf of NJHESAA.¹³ Ms. Hunter's chapter 13 plan was confirmed by Order dated July 27, 2015 and amended on August 5, 2015.¹⁴ As part of the confirmed plan, Ms. Hunter made payments of \$400 per month for the first five months and is making ongoing payments for the remaining 55 months of \$100 per month to the chapter 13 trustee through May 1, 2020.

⁹ *Id.*; see 34 C.F.R. §§ 685.221 (LEXIS through the Apr. 25, 2018 issue of the Fed. Reg. Title 3 is current through Apr. 6, 2018) (Income-based Repayment Plan) and 685.209 (LEXIS through the Apr. 25, 2018 issue of the Fed. Reg. Title 3 is current through Apr. 6, 2018) (Income-contingent Repayment Plan).

¹⁰ Test. of Sarah Hunter; Pub. Serv. Loan Forgiveness Program, 34 C.F.R. § 685.219 (LEXIS through the Apr. 25, 2018 issue of the Fed. Reg. Title 3 is current through Apr. 6, 2018). A qualifying employer under the PSLF includes governmental entities at any level and not-for-profits that are tax-exempt under § 501(c)(3) of the Internal Revenue Code. The PSLF allows for loan forgiveness if the borrower makes 120 qualifying payments and is not in default on her loans, in addition to other requirements. *See id.* at (c).

¹¹ Chapter 13 Voluntary Pet., *In re Sarah Hunter*, No. 15-17329 (JKS), ECF No. 1.

¹² N.J.S.A. § 18A:71C-21 (LEXIS through N.J. 218th First Ann. Sess., L. 2018, c. 4 and J.R. 4).

¹³ Debtor's Ex. C-O.

¹⁴ Order Confirming Plan, *In re Sarah Hunter*, No. 15-17329 (JKS), ECF No. 31; Am. Order Confirming Plan, *In re Sarah Hunter*, No. 15-17329 (JKS), ECF No. 33.

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Through the end of 2017, \$1,368.85 of the plan payments have been disbursed to NJCLASS and NJHESAA.¹⁵

Ms. Hunter is employed as a research analyst in New York City at the City University of New York (CUNY) Global Center for Responsibility and earns approximately \$50,000 a year.¹⁶ At the time she filed her bankruptcy petition, she lived with her boyfriend and daughter in a rented townhouse in Jamesburg, New Jersey. She and her boyfriend have since married. They continue to live in the Jamesburg townhouse and are expecting a second child in September 2018.¹⁷ Ms. Hunter testified at trial that her husband works full time as a project manager at an audio-visual installation company and once a week as a bartender. His gross income is about \$74,000 per year.¹⁸ Although both contribute toward their living expenses, Ms. Hunter and her husband maintain separate checking accounts from which they pay their household expenses. Ms. Hunter estimated that she takes home \$2,000 per month.¹⁹ She testified that she spends \$900 for groceries, \$293 for clothing, \$77 for personal care items, and \$385 for her New Jersey Transit train pass. The Debtor also pays \$100 per month to the Chapter 13 trustee. Comparing these expenses to Ms. Hunter's take-home pay of \$2,000 per month, she has about \$245 of discretionary income at the end of each month. Her husband pays for all other expenses, including rent of \$1,500 per month, condominium fees of \$185 per month, car payment of \$440 per month, car insurance of \$85 per

¹⁵ Chapter 13 Trustee Ann. Rep., No. 15-17329 (JKS), ECF No. 48.

¹⁶ Debtor's Ex. B.

¹⁷ Test. of Sarah Hunter.

¹⁸ *Id.*

¹⁹ *Id.*

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month, gas at \$200 per month and day care of \$507 per month.²⁰ The sum of these monthly expenses is \$2,917. Assuming her husband's take-home pay is approximately \$3,500 per month, he would have about \$583 remaining per month. Ms. Hunter also testified that her husband has \$2,500 in credit card debt as well as \$4,000 in medical debt of which he pays about \$400 a month as part of a repayment plan.

Ms. Hunter has been employed with the Global Center for five years. The Center is a non-profit organization with approximately eight to ten employees. Ms. Hunter currently receives an annual 2% salary increase but believes that any pay increase resulting from a promotion would be insignificant with respect to her ability to repay her loans. She testified that the individuals in the next two senior positions earn an estimated \$58,000 to \$75,000 per year. However, due to the small size of the organization, someone of seniority must leave the organization for a junior employee to be able to advance. At the top of the non-profit organization, the director makes "above six figures," but also has at least 30 years' experience in the field according to Ms. Hunter's testimony. Ms. Hunter testified that she feels unqualified to advance into a director position and, in general, that higher paying positions and job openings within this specialized field are scarce.²¹

For about six months during 2014, Ms. Hunter looked for work outside of the field of international relations and applied for four general administrative positions near her home with the goal of cutting back on transportation costs, but did not receive any offers of employment.²²

²⁰ *Id.*

²¹ *Id.* Ms. Hunter gave Human Rights Watch and Amnesty International as examples of other organizations that might consider her for employment given her experience and education.

²² *Id.*

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Ms. Hunter has not sought full-time employment outside the field of international relations since 2014 but bartended once a week in addition to her full-time job at the Center until six months into her pregnancy with her first child.²³

Ms. Hunter has \$288,911.15 in student loan debt with NJHESAA,²⁴ \$285,461.63 of which is attributable to NJCLASS loans.²⁵ The remaining \$3,449.52 stems from a Federal Stafford Loan disbursed by NJHESAA and now held by Navient Solutions, Inc. Since the Navient loan is a Federal loan, it would provide for income-based repayment options.²⁶

The table below was prepared based on the proofs of claim filed by NJCLASS and reflects the Debtor's monthly student loan payments due as of February 2015.²⁷

Outstanding Balance ²⁸	Origination Date	Monthly Payment	Maturation Date
\$37,966.05	09/04/2007	\$365.66	09/04/2027
\$57,961.83	09/11/2008	\$571.31	09/11/2028
\$16,258.07	10/06/2008	\$159.72	10/06/2028
\$15,086.96	01/20/2009	\$146.79	01/20/2029
\$43,972.70	09/10/2009	\$417.55	09/10/2029
\$11,428.28	05/21/2010	\$106.09	05/21/2030
\$37,656.57	10/14/2010	\$343.08	10/14/2030
\$10,690.58	01/26/2012	\$84.78	01/26/2037
\$9,283.77	06/22/2012	\$71.57	06/22/2037
\$24,725.05	09/06/2012	\$185.44	09/06/2037
\$10,264.41	05/30/2013	\$76.05	05/30/2038
\$10,167.36	09/04/2013	\$81.20	09/04/2038
\$285,461.63		\$2,609.24	

²³ Test. of Sarah Hunter.

²⁴ See Debtor's Ex. C-O.

²⁵ See Debtor's Ex. C-N.

²⁶ Debtor's Ex. O.

²⁷ Debtor's Ex. C-N; Q.

²⁸ Outstanding balance includes outstanding principal and interest at the time the bankruptcy petition was filed.

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The maturity dates for the NJCLASS loans range from 2027 to 2038. NJHESAA granted the Debtor a post-undergraduate deferment on her loans from May 2011 through December 2011. Deferment was extended throughout her graduate studies and six months immediately thereafter, from January 2012 through July 2014. Interest continued to accrue on the loans during the deferment period.²⁹ Although no payments were due during this period, Ms. Hunter did make payments on her NJCLASS loans totaling \$21,690.06.³⁰ In July 2014, at the end of her deferment period, Ms. Hunter was granted forbearance on her student loans. The terms of the forbearance still obligated Ms. Hunter to make interest-only payments on her loans through January 2015 that totaled \$3,983.82, of which Ms. Hunter paid \$1,218.80.³¹ NJHESAA also warned that “the monthly principal and interest payment will increase after the expiration of the deferment or forbearance period.”³² In other words, although forbearance would provide short-term relief from payment, it would result in higher future monthly payments due to the accumulation of deferred principal against a maturity date that cannot be extended.

The provisions of N.J.A.C. § 9A:10-6.11 restrict NJHESAA's ability to provide flexible repayment options, as the regulation requires that student loans “be paid in full within the amount of years from the date of disbursement as specified in the NJCLASS Application, Promissory Note, and disclosures.”³³ In response to Ms. Hunter's inquiry into any long-term lower monthly payment options, NJHESAA informed the Debtor that “the only long term option HESAA has for lowering

²⁹ Debtor's Ex. Q.

³⁰ Debtor's Ex. C-N.

³¹ Debtor's Ex. Q.

³² *Id.*

³³ N.J.A.C. § 9A:10-6.11(e) (LEXIS through the N.J. Reg., Vol. 50 No. 8, Apr. 16, 2018).

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monthly payments is through the NJCLASS Consolidation program” and advised that she could also seek consolidation through a private lender. Furthermore, due to NJHESAA’s inability to modify the loans, one representative advised Ms. Hunter that her options were to make more money and reduce her expenses.³⁴

Ultimately, Ms. Hunter chose not to seek an additional forbearance because she could not afford to make the resulting interest payment. She also decided not to consolidate because it would not have resulted in an affordable payment.³⁵ Without any other options, Ms. Hunter seeks to discharge these loans in bankruptcy.

DISCUSSION

The Third Circuit has adopted the *Brunner* test to measure whether a debtor has suffered “undue hardship” and may be eligible for a discharge of student loan debt.³⁶ Under the *Brunner* test, the debtor must prove by a preponderance of the evidence: “(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 for student loans; and (3) that the debtor has made good faith efforts to repay the loans.”³⁷ The debtor must satisfy all three elements. If one element is not sufficiently proven the inquiry cannot continue

³⁴ Test. of Sarah Hunter.

³⁵ *Id.*

³⁶ *Pa. Higher Educ. Assistance Agency v. Faish (In re Faish)*, 72 F.3d 298, 306 (3d Cir. 1995).

³⁷ *Id.* at 304-05.

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and discharge shall be denied without consideration of “equitable concerns or other extraneous factors.”³⁸

A. UNDUE HARDSHIP UNDER THE *BRUNNER* TEST

1. The Debtor Cannot Maintain a Minimal Standard of Living Based on Current Income and Expenses

The first prong of the *Brunner* test requires that a debtor prove, based on her current income and expenses, that she cannot “maintain a ‘minimal’ standard of living for herself and her dependents if forced to repay the loans.”³⁹ Although the Third Circuit has not defined the term “minimal standard,” it has established that a debtor seeking to prove undue hardship must show that undue hardship would mean more than a mere tightening of finances.⁴⁰ However, a debtor is not required to live in poverty to satisfy the first prong.⁴¹ Rather, “the proper inquiry is whether it would be ‘unconscionable’ to require [the debtor] to take any available steps to earn more income or to reduce her expenses.”⁴²

Based on the Debtor’s testimony, and without considering adjustments, she has \$245 available monthly after payment of expenses and her husband has \$583. The Debtor’s total monthly student loan bill was \$2,609.24 as of February 2015.⁴³ Based on these numbers, the Debtor and her husband are (and were) operating at a deficit of almost \$2,000 per month. The

³⁸ *Id.* at 306.

³⁹ *Id.* at 304-05.

⁴⁰ *Id.* at 306.

⁴¹ *Hoyle v. Pa. Higher Educ. Assistance Agency (In re Hoyle)*, 199 B.R. 518, 523 (Bankr. E.D. Pa. 1996); *McCormack v. Educ. Credit Mgmt. Corp. (In re McCormack)*, 2000 WL 33710278, at *4 (Bankr. D.S.C. July 3, 2000); *In re Vasilyeva*, 2008 WL 5954678 at *3 (Bankr. D.N.J. Dec. 12, 2008).

⁴² *In re Faish*, 72 F.3d at 307; *Rumer v. Am. Educ. Servs. (In re Rumer)*, 469 B.R. 553, 564 (Bankr. M.D. Pa. 2012).

⁴³ Debtor’s Ex. Q.

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evidence indicates that this substantial deficit cannot be made up entirely by cost cutting or that the Debtor and her husband have the capacity to earn enough to cover it.

But certain adjustments to the numbers are warranted. First, Ms. Hunter's itemized monthly expenses include \$900 for groceries, \$293 for clothing and \$77 for personal care products. The Court finds that the Debtor's expenses may be reasonably reduced by \$200 for these items collectively, bringing her available funds up from \$245 to \$445. Otherwise, her budget does not appear to contain any unnecessary or frivolous expenses.⁴⁴ As to the husband's "free funds" after expenses in the amount of \$583, this amount seems overstated. It does not include utilities or payment of his own credit card and medical debt of approximately \$400 per month. And, in September of 2018, the child care expense will probably increase by \$500. These items alone turn the husband's "surplus" into a deficit.

Based on these figures and adjustments, the Court concludes that the Debtor could reasonably afford to pay approximately \$450 per month on her student loan debt. Payment of this reduced amount will require personal sacrifice and strict financial discipline on the part of Ms. Hunter and her husband.⁴⁵

The Debtor's realistic surplus of approximately \$450 per month does not come close to being enough to satisfy her monthly obligation to NJHESAA. Again, the monthly payment was \$2,609 in February 2015 and is probably close to \$3,000 now. The Debtor works in New York

⁴⁴ *In re Hoyle*, 199 B.R. at 523 ("[W]here a family earns a modest income and the family budget, which shows no unnecessary or frivolous expenditures, is still unbalanced, a hardship exists from which a debtor may be discharged of his student loan obligations" (quoting *Correll v. Union Nat'l Bank of Pittsburgh (In re Correll)*, 105 B.R. 302, 306 (Bankr. W.D. Pa. 1989))).

⁴⁵ See *Sperrazza v. Univ. of Md.*, 2008 WL 818616 at *2 (E.D. Pa. Mar. 24, 2008).

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City and lives in New Jersey where the cost of living is high. Ms. Hunter and her husband both already work full time and her husband also works an additional part-time job. They have one child and one on the way. Given the overall reasonableness of their household budget, it would be unrealistic to require Ms. Hunter to further minimize her household expenses or increase her income beyond what has been suggested above. Thus, Ms. Hunter has satisfied the first prong of the *Brunner* test because she cannot maintain a minimal standard of living if required to repay her student loans in full.

2. The Debtor Has Shown that Additional Circumstances Exist Indicating the State of Affairs is Likely to Persist for a Significant Portion of the Repayment Period

To satisfy the second prong of the *Brunner* test, a debtor must prove that additional circumstances exist beyond her control that will prevent her situation from improving for a significant portion of the loan repayment period.⁴⁶ Dischargeability is based on the certainty of hopelessness of repayment, not merely on current inability to repay.⁴⁷ “The second prong of the *Brunner* test recognizes that the borrower’s education should, in most cases, provide increased income that will allow the loan to be repaid, even though immediately after graduation a student borrower’s assets may be dwarfed by the size of the loan.”⁴⁸

Here, Ms. Hunter is in a unique situation where her education is unlikely to materially improve her financial situation over the lifetime of the loan. Ms. Hunter testified at trial that a master’s degree is a minimum qualification to enter the field of international relations. As

⁴⁶ *In re Faish*, 72 F.3d at 305.

⁴⁷ *In re Williams*, 296 B.R. 128, 134 (Bankr. D.N.J. 2003).

⁴⁸ *In re Hoyle*, 199 B.R. at 523 (quoting *Elebrashy v. Student Loan Corp.*, 189 B.R. 922, 927 (Bankr. N.D. Ohio 1995)).

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previously noted, she earns about \$50,000 per year and the two senior staffers directly above her at the Global Center earn approximately \$58,000 and \$75,000. Her employer is a non-profit institution that relies on outside funding for its operations. There are few positions in the field or at the Center that Ms. Hunter may seek to earn more money. A senior employee would have to leave for a junior employee to advance. Her annual 2% salary increase is insufficient to materially improve her financial situation. Even if Ms. Hunter sought and gained employment outside the field of international relations, it is unlikely that the administrative positions that she applied for in 2014 would provide enough of a pay increase to enable her to make her full monthly student loan payment. The work for which Ms. Hunter's advanced degree qualifies her is so specialized that she is unlikely to leverage her education and experience into a higher-paying job outside of the field of international relations.

As discussed above, the Debtor also has \$66,000 in federal student loan debt, which may be eligible for income-based and income-contingent repayment plans.⁴⁹ Under these federal programs, as the Debtor earns more money, more of her income will be directed toward repayment of her federal loans, leaving her in no better financial position. Also, requiring the Debtor to leave the public sector might leave her worse off financially because it may disqualify her from the PSLF, potentially causing her to have to repay her federal loans over a longer period.⁵⁰

In addition, each NJCLASS loan balance and monthly payment will increase every month a full payment is not made, which will further eat into Ms. Hunter's net household income.

⁴⁹ 34 C.F.R. §§ 685.221 (Income-based Repayment Plan) and 685.209 (Income-contingent Repayment Plan).

⁵⁰ Pub. Serv. Loan Forgiveness Program, 34 C.F.R. § 685.219.

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Ms. Hunter has shown that her net household income is unlikely to substantially improve during the 10- to 20-year repayment periods due to circumstances beyond her control and has satisfied the second prong of the *Brunner* test.

3. The Debtor Made a Good Faith Effort to Repay NJHESAA

The final prong of the *Brunner* test requires a debtor to have made a good faith effort to repay her loans. “Undue hardship encompasses a notion that the debtor may not willfully or negligently cause [her] own default, but rather [her] condition must result from ‘factors beyond [her] reasonable control.’”⁵¹ Ms. Hunter applied for administrative positions outside of her chosen field of work and worked a second, part-time job as a bartender until several months into her first pregnancy. Although Ms. Hunter did not apply for many positions outside of her chosen field, her degree is sufficiently specialized that the Court has found it unlikely to lead to higher paying positions outside of the field of international relations. Ms. Hunter made \$21,690.06 in payments on her loans during the deferment period, not an insignificant sum.⁵² She also borrowed money from other people to repay the interest due at the end of her forbearance and asked NJHESAA for repayment assistance.⁵³ However, as stated above, NJHESAA is limited by state regulation to the repayment options available under N.J.A.C. § 9A:10-6.11. Instead of offering payment assistance or an opportunity to modify the loans beyond general consolidation, NJHESAA suggested that Ms. Hunter must lower her expenses or increase her income.⁵⁴

⁵¹ *In re Faish*, 72 F.3d at 304.

⁵² Debtor's Ex. C-N.

⁵³ Test. of Sarah Hunter.

⁵⁴ *Id.*; Debtor's Ex. Q.

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N.J.A.C. § 9A:10-6.11 provides that a borrower may choose from three repayment options when applying for an NJCLASS loan. Ms. Hunter chose to defer payment of the principal and interest until after she graduated.⁵⁵ After the deferment period ended, she was prohibited from making lower monthly payments over a longer period. The regulation provides that the borrower's minimum payment must be "the amount required to fully repay an NJCLASS Loan Program loan in the maximum repayment period," and, as noted above, that "[n]otwithstanding any periods of deferment or forbearance, NJCLASS Loan Program loans shall be paid in full within the amount of years from the date of first disbursement as specified in the NJCLASS Application, Promissory Note, and disclosures. The amount of years in which a loan is to be repaid is determined by the indentures for the bonds or notes whose proceeds are funding the loan."⁵⁶ The regulatory requirement that NJCLASS loans be repaid by the maturation date is a "factor beyond [the Debtor's] reasonable control,"⁵⁷ which works against her efforts to negotiate a way to repay her loans. That Ms. Hunter filed for bankruptcy within two years of completing her master's degree program is not a sign of lack of good faith considering the significant disparity between her income and expenses, her attempts to maximize her income and repay her loans, and NJHESAA's inability to negotiate more affordable repayment terms. The Court finds Ms. Hunter made a good faith effort to repay her loans and has satisfied the third prong of the *Brunner* test.

⁵⁵ Test. of Sarah Hunter.

⁵⁶ N.J.A.C. § 9A:10-6.11(d) and (e).

⁵⁷ *In re Faish*, 72 F.3d at 304.

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B. DISCHARGEABILITY

Having determined that Ms. Hunter has proven that repayment of all her loans would constitute an undue hardship, the Court now turns to the dischargeability of the debt. The Third Circuit has not addressed whether section 523(a)(8) requires complete discharge of student loan debt or permits partial discharge. Other circuits are divided on this issue. Some courts hold that section 523(a)(8) requires either a complete discharge or no discharge at all. Others justify partial discharge of either the aggregate debt or of individual loans on various grounds.⁵⁸ Courts adhering to the so-called “hybrid approach” construe section 523(a)(8) as allowing the discharge of individual student loans on a loan-by-loan basis, thereby harmonizing the statute’s language with its intent to relieve hardship and the Code’s objective of providing a fresh start.⁵⁹ “Partial dischargeability or other modification of a student loan debt accomplishes Congress’ purpose of providing debtors with a ‘fresh start’ while maximizing the repayment of the debt Financial hardship is not all-or-nothing, but is more or less. The load may be made more bearable by reducing, rather than eliminating it.”⁶⁰ At least one court within the Third Circuit has adopted this approach and this Court agrees.⁶¹ Ms. Hunter incurred a massive amount of student loan debt to finance her education. It is fair to request her to repay this debt to the fullest extent possible, even if it means that she will have to endure financial hardship.

⁵⁸ See *In re Lamanna*, 285 B.R. 347, 350-52 (Bankr. D.R.I. 2002) for a discussion of the three approaches to discharge of student loan debt.

⁵⁹ *Grigas v. Sallie Mae Servicing Corp. (In re Grigas)*, 252 B.R. 866, 873-74 (Bankr. D.N.H. 2000).

⁶⁰ *Mosko v. Am. Educ. Servs.*, 2005 WL 2413582 at *9 (Bankr. M.D.N.C. Sept. 29, 2005) (quoting *Educ. Credit Mgmt. Corp. v. Jones*, 1999 WL 1211797 at *3 (E.D. Va. July 14, 1999)).

⁶¹ See *Allen v. Am. Educ. Servs. (In re Allen)*, 329 B.R. 544, 549-50 (Bankr. W.D. Pa. 2005).

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The Debtor unequivocally cannot afford to pay her full monthly student loan bill of \$2,609.24, but she has a monthly surplus of about \$450 and can afford to pay a portion of it. She will also be better able to pay over time, assuming she continues to receive annual pay increases and her husband’s earning capacity grows.

Therefore, based on the Debtor’s showing of undue hardship, the Court applies the undue hardship test to each loan held by NJHESAA and orders the discharge of loans maturing before June 2037.⁶² The Debtor must repay the last four loans listed in the chart below. This would leave the Debtor with a monthly student loan payment of \$414.26 as of February 2015 plus accrued and unpaid interest on those loans.

Outstanding Balance ⁶³	Origination Date	Monthly Payment	Maturation Date
\$37,966.05	09/04/2007	\$365.66	09/04/2027
\$57,961.83	09/11/2008	\$571.31	09/11/2028
\$16,258.07	10/06/2008	\$159.72	10/06/2028
\$15,086.96	01/20/2009	\$146.79	01/20/2029
\$43,972.70	09/10/2009	\$417.55	09/10/2029
\$11,428.28	05/21/2010	\$106.09	05/21/2030
\$37,656.57	10/14/2010	\$343.08	10/14/2030
\$10,690.58	01/26/2012	\$84.78	01/26/2037
\$9,283.77	06/22/2012	\$71.57	06/22/2037
\$24,725.05	09/06/2012	\$185.44	09/06/2037
\$10,264.41	05/30/2013	\$76.05	05/30/2038
\$10,167.36	09/04/2013	\$81.20	09/04/2038
\$285,461.63		\$2,609.24	

NJHESAA shall provide the Debtor with updated monthly payment amounts for these four loans and repayment shall commence immediately.

⁶² Debtor’s Ex. C-N; Q.

⁶³ Outstanding balance includes outstanding principal and interest at the time the bankruptcy petition was filed.

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C. DEBTOR'S REQUEST FOR RELIEF UNDER 11 U.S.C. § 524(m)

Ms. Hunter has also asked this Court to adopt an alternative test for undue hardship set forth under section 524(m). This request is denied as the Court believes that the *Brunner* test is applicable.

CONCLUSION

The Court hereby orders the discharge of loans maturing before June 2037 as set forth above.

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

In re:

JENNIFER DARLING,

Case No.: 2:24-bk-01509-FMD
Chapter 7

Debtor.

_____ /

JENNIFER DARLING,

Plaintiff,

v.

Adv. Pro. No.: 2:24-ap-00028-FMD

UNITED STATES DEPARTMENT
OF EDUCATION,

Defendants.

_____ /

Joint Motion to Stay Case

Defendant United States of America on behalf of the Department of Education (“DOE”) and Plaintiff-Debtor Jennifer Darling request the Court to stay this case for 150 days. Specifically, the parties ask the Court to withhold a scheduling order and excuse compliance with any deadlines while the parties determine whether they can reach a stipulation regarding undue hardship.

This is an action to discharge Darling’s student loan debt. As the Court is aware, the DOJ has released guidance on how it will proceed in these actions. The process detailed by the guidance proceeds in six steps: (1) the government attorney

provides a DOJ attestation form; (2) debtor-plaintiff completes the attestation and provides necessary documentation; (3) the government attorney reviews the attestation, follows up with any questions, makes a recommendation, then forwards the packet to DOE; (4) DOE analyzes the packet and makes its recommendation; (5) the file returns to the DOJ for a final decision on whether to stipulate; and (6) the parties return to the Court, which retains ultimate authority to decide the undue hardship issue.

This process preserves the resources of the Court and parties alike. In particular, the guidance allows an early opportunity to address the matter of any undue hardship. Given DOE's significant workload, however, it requires time to make a recommendation. As a result, the parties move for a stay of all deadlines for 150 days to allow them to consider an attestation.

Notably, the parties have been diligent in this action. The case is approximately five weeks old. In that time, Darling served DOE, and DOJ has provided Darling the attestation, guidance, and loan information. Darling now intends to complete the attestation as outlined in the guidance.

CONCLUSION

The parties request the Court stay this case for 150 days.

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///

DATED this 10th day of December, 2024.

Respectfully submitted,

ROGER B. HANDBERG
United States Attorney

By: /s/ Chad C. Spraker
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Counsel for Debtor-Plaintiff

ORDERED.

Dated: August 06, 2025



 Grace E. Robson
 United States Bankruptcy Judge

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

In re:

CORRINNE LEIGH DOWNEY,

Debtor.

CORRINNE LEIGH DOWNEY,

Plaintiff,

v.

UNITED STATES DEPARTMENT
OF EDUCATION.

Defendant.

Case No.: 6:24-bk-02114-GER
Chapter 7

Adv. No.: 6:24-ap-00040-GER

AGREED FINAL JUDGMENT

THIS PROCEEDING came before the Court without a hearing upon the *Complaint to Determine Dischargeability of Student Loans* (Doc. No. 1) filed by Plaintiff Corrine Leigh

Downey (“Plaintiff”), seeking to determine the dischargeability of the claim(s) of Defendant United States Department of Education (“Defendant”) pursuant to 11 U.S.C. §523 (a)(8). Defendant does not contest the discharge of Plaintiff’s debt at issue in this proceeding. By submission of this final judgment for entry, the submitting counsel represents that the opposing party consents to its entry. Accordingly, it is

ORDERED:

1. Judgment is entered in favor of the Plaintiff.
2. Plaintiff’s student loan debt at issue in this proceeding is declared dischargeable in full pursuant to 11 U.S.C. §523 (a)(8).
3. The Clerk is directed to close this proceeding.

###

Clerk to serve.

ORDERED.

Dated: September 09, 2025



Caryl E. Delano
Chief United States Bankruptcy Judge



UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

In re:

JENNIFER DARLING,

Case No.: 2:24-bk-01509-FMD
Chapter 7

Debtor.

_____ /

JENNIFER DARLING,

Plaintiff,

v.

Adv. Pro. No.: 2:24-ap-00028-FMD

UNITED STATES DEPARTMENT
OF EDUCATION,

Defendants.

_____ /

FINAL JUDGMENT IN FAVOR OF DEBTOR JENNIFER DARLING

THIS PROCEEDING came on for consideration of the United States Department of Education’s (“DOE”) agreed *Stipulation of Findings of Fact and Conclusions of Law* (Doc. 14)

(“the Stipulation”) and the Court’s Order Finding Undue Hardship and Partially Discharging Debtor’s Student Loan Debt adopting the stipulated findings and conclusions.

Accordingly, it is **ORDERED**:

1. Judgment is entered in favor of Plaintiff Jennifer Darling and against the United States Department of Education.

The debt of National Student Loan Data System (NSLDS) Loans 2-3, 6-7, 37, 40-45 in full, totaling approximately \$617,888.89, plus any additional applicable interest, owed by the Debtor to the U.S. Department of Education is dischargeable under 11 U.S.C. § 523(a)(8) as constituting an undue hardship and is discharged. NSLDS Loan 39, approximately \$14,097.94, will remain unaffected and survive the bankruptcy. Interest on remaining balance will continue to accrue at contract rate.

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

BRANSON AINSWORTH

April 27, 2026

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VIA E-mail:

Client

Re: Engagement Letter Agreement

Dear ,

This letter **confirms** (“client” “you” or “your”) has engaged Branson Ainsworth, PLLC. (hereinafter, the “Firm,” “we” or “us”) to perform the legal services described below and, when signed by you, will evidence our agreement with respect to those services. Although we regret the length and formality of this Engagement Letter Agreement (“Agreement”), it is important that we have a clear understanding of our working relationship going forward.

Scope of Our Services

This Agreement confirms the terms of this matter. The scope of the representation that you have asked the Firm to undertake is limited to representing you in: **(i) Preparation and Filing of Adversary Proceeding against the Department of Education** (the “Matter”). Our representation is limited to this matter and all issues attendant thereto. **THIS DOES NOT INCLUDE AN ADVERSARY PROCEEDING FOR PRIVATE LOANS.** Should we be engaged by you to represent you in any issue beyond the scope of this matter, we will need to execute a separate engagement letter to clarify the terms of that engagement.

You acknowledge that we have made no promises or guarantees regarding the outcome of the services to be performed by the Firm. Rather, we have discussed with you the unpredictability of most legal matters.

Mutual Responsibilities of the Firm and the Client

In order to protect and further your interests with respect to this engagement, the Firm will require your assistance. Examples of the assistance, that the Firm looks to you to provide, include information and access to records, being available for consultations, and actively participating in the decision-making process. Your responsibilities also include prompt payment of our fees and costs.

Fee, Other Charges, and Billing

The Firm’s current Attorney rates are \$315.00 to \$655.00 per hour,

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subject to annual adjustment on a yearly basis effective as of the first of the calendar year. My standard hourly rate is \$615.00 but have agreed to reduce the hourly fee to \$450.00. The Firm's current Paralegal hourly rates range from **\$150.00 to \$285.00 per hour**, subject to annual adjustment on a yearly basis effective as of the first of the calendar year. Because the time spent by attorneys in performing services on your behalf is the most significant element in determining the amount of our fees, the Firm cannot predict in advance what the total amount of your fees will be for this engagement. Any fees and costs we might have previously discussed are estimates only. You also understand that the payment of the Firm's fees and costs is not contingent upon the outcome of the Matter.

A retainer of \$3,500.00 will be provided for this representation. You agree to payment of \$750.00 for the initial analysis which will be deducted from the retainer. If the case goes beyond the current non-litigious attestation process and requires discovery and trial preparation, you will be billed on a monthly basis for services rendered on your behalf, and the Firm will apply the retainer to the payment of the bill. You agree to replenish the retainer upon request by the Firm. You agree to provide payment within seven (7) days from the date of the invoice. If the Firm requests the retainer to be replenished and you fail to do so, you agree that the Firm may withdraw from representing you.

With respect to costs, it is the Firm's policy to bill only for charges it incurs with third-party vendors and for actual out-of-pocket expenses, including but not limited to travel expenses.

Conflicts of Interest

We have checked our records based on the information you have provided to us at this time. Our search also includes the names of business entities, if any, about which you have informed us of an affiliation that could give rise to significant concerns if we should be involved in matters for other clients directly adverse to such business entities. We are not aware of any conflicts of interest or relationships that would preclude us from working on the Matter.

This Agreement creates an attorney/client relationship only between the Firm and **client**. Therefore, you agree that this engagement does not create an attorney/client relationship between the Firm and any business entity or person with which you are affiliated unless and subject to a separate engagement agreement. You will not provide the Firm with any confidential information about any other individuals, subsidiaries, or affiliates, and the Firm will not provide services to your subsidiaries, affiliates, or individuals unless the Firm represents such subsidiary or affiliate. You agree that our representation of you will not create any conflicts of interest in the event that other clients of the Firm are averse to an individual, subsidiary, or affiliate of you (unless that individual, subsidiary, or affiliate is also represented by the Firm).

Advance Waiver of Conflict

You agree that the Firm may represent current or new clients in work directly adverse to you and may be averse to business entities with which you are affiliated, provided such work is not substantially related to the Matter and the Firm does not use any of your confidential information in representing such clients. This consent includes our being trial counsel in litigation adverse to you. In addition, you agree that, even though the Firm represents you in this

CONSUMER PRACTICE EXPERIENCE 2026

Matter, the Firm may represent in the future other parties who are adversely involved in the Matter, or who may later become involved in the Matter. The Firm agrees that it will not use any of your confidential information in representing such other clients and, when needed, we will establish an ethical wall to assure that confidential information is not exchanged between those working on the Matter and those working for such other clients.

Our Firm policy requires that any advance waiver of future conflicts be in writing, and by signing and returning a copy of this Agreement, you agree to this advance waiver.

Settlement

The Firm will not settle any claim without your prior approval, and you shall have the absolute right to accept or reject any settlement proposal.

Termination

It is understood that you may discharge the Firm at any time by written notice, effective when received by the Firm. Unless specifically agreed by both of us, the Firm will provide no further services and advance no further costs on your behalf after receipt of the notice. It is further understood that the Firm may withdraw at any time permitted under the Rules of Professional Conduct of the Florida Bar. Notwithstanding the Firm's withdrawal or discharge, you will remain obligated to pay the Firm its attorneys' fees and costs incurred in the matter. In the event, you request that the Firm transfer possession of your case file to your or a third party, the Firm is authorized to retain copies of the file for the Firm's use at your expense.

Communication

You agree that we may communicate with you by electronic mail, text messaging, or telephonically on an unencrypted basis.

Either at the beginning or during representation, we might express opinions or beliefs concerning the Matter and the results that might be anticipated. Any such statement made by use is an expression of opinion only and is not a promise or guarantee of results.

General Provisions

This letter contains the entire agreement between us and is intended to supersede any other agreements or understandings made before the signing of this letter. This agreement may be modified, but only if those modifications are in writing and signed by both you and the Firm.

As part of our commitment to providing high-quality legal services, our firm utilizes advanced technologies, including Artificial Intelligence (AI), to enhance our efficiency and effectiveness. These may include legal research, document review, drafting assistance, and internal administrative functions

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This agreement will be effective when you sign it. However, this agreement will apply to any services the Firm provides in connection with the engagement before the effective date.

You also have the right to seek independent counsel as to the terms of this agreement. We appreciate your expression of confidence in our work and assure you that we will strive to obtain a resolution of this matter in a professional and cost-effective manner.

Please confirm your approval of this Agreement by signing and returning the Agreement. If you have any questions, or if this Agreement does not accurately set forth our arrangement, please let me know,

We look forward to working with you on this Matter.

Very Truly Yours,
Branson Ainsworth PLLC.

By: _____
Robert B. Branson

AGREED AND ACCEPTED:

By: Client _____ Date _____

Arkovich Law, P.A.

Attorneys at Law

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Tampa, Florida 33606
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info@christiearkovich.com
Arkovichlaw.com

**CONTRACT FOR LEGAL REPRESENTATION
FOR STUDENT LOAN SERVICES IN BANKRUPTCY**

IF YOU HAVE ALREADY FILED A BANKRUPTCY OR ANOTHER ATTORNEY WILL BE RETAINED FOR THAT, WE WILL BE HANDLING THE STUDENT LOAN ISSUES ONLY. IF YOU ARE FILING BANKRUPTCY THROUGH US, THE STANDARD FEES FOR A CHAPTER 7 OR 13 ALSO APPLY. OUR FEES FOR JUST THE STUDENT LOAN PORTION ARE NOTED BELOW.

Adversary Proceeding for Partial or Full Discharge:

For the Adversary Proceeding for discharge (partial or full) of your federal student loans under the Department of Justice's Guidelines, there is an \$2,500 flat fee retainer. If your Chapter 13 Trustee will not permit plan payments to us, then our fees will be quoted for payment up front. This flat fee will cover all pre-filing work, and all litigation up through and including trial. Any appeal would need a separate retainer agreement and fees.

The attorney's fees quoted above are intended to be a flat fee to represent you in the adversary proceeding in your bankruptcy proceeding. All monies paid are deemed earned on receipt by the attorney upon payment by the client and are **NON-REFUNDABLE**. To that end, the Client agrees to waive any credit card chargeback rights or any claims for refund from their credit card company. Upon agreement by the undersigned with your bankruptcy counsel, all or a portion of the fees above may be paid in the Chapter 13 Plan.

** For all additional work, Client agrees to an hourly rate of \$475.00 for the attorney and \$175.00 hourly for all work performed by a paralegal. For any disputes arising relating to accounting (i.e. IRS, valuation, accounting audits) Client shall be expected to retain a professional accountant or appraisal to provide these services. If matters arise that require non-bankruptcy expertise, Client may be requested to retain separate counsel for securities, criminal or other matters.

Accuracy of Information: Client agrees that all information disclosed to the Law Firm is accurate, and that Client shall not withhold any information responsive to questions asked by the attorney either in person or through staff, or on documents from the Firm. Any material misrepresentation or failure to disclose relevant information will be grounds for the Firm to cancel the representation, and withdraw from the case to comply with ethical obligations to the Court, and may result in loss of all fees paid or additional fees. The fees set forth above are based upon the Client's circumstances at the time of our

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consultation. If those circumstances substantially change prior to the actual filing of the case, additional fees may apply.

Creditor Information: Client understands that the Law Firm will do its best to identify the student loan creditor(s) and loans – please provide as much information as possible about your student loans including any promissory notes, assignments, statements and bills to help with this process.

Email communications: Client consents to the use of email to communicate with the Law Firm. Although email is a convenient and effective way of communicating, unless Client receives a response in a reasonable time from the Law Firm, Client should not assume that the Law Firm received every email transmitted. Client should also be aware that email and voicemail are not completely secure methods of communicating and take appropriate care when sharing email or allowing others access to your emails such as employers or family members. The Law Firm utilizes software to automate client information as much as possible and requests that Client review each email and do not opt out of our system until our representation is concluded.

Document Retention: Client agrees that no ORIGINAL documents will be stored in the file maintained with the law firm. Client further understands and consents to their case file being destroyed six months after the entry of their Discharge or Order Dismissing Case without further notice. In the event that Client’s file is still available, any requests for documents more than six months following the Discharge will be billed in advance at \$50 to offset storage retention and retrieval costs.

The attorney is authorized by this Agreement to state to creditors that we have been retained by you to represent your interests regarding the student loans in your bankruptcy and to take any action considered necessary to protect the Client’s interest. Because the outcome of negotiations and litigation is subject to unforeseen factors, Client acknowledges that the Law Firm has made no promises or guarantees to Client concerning the outcome and is unable to do so. Client understands that services will be rendered by the Attorney and other non-attorney staff members in connection with Client’s case, but specific legal advice may be rendered only by the Attorney. Clients represent that they have read and understood the agreement as set forth above and have received a copy.

ARKOVICH LAW, P.A.

CLIENT: _____

Print Name

Print Name:

**APPENDIX B:
Debtor Example Scenario**

On January 3, 2022, Jane Smith filed a chapter 7 bankruptcy case in Maryland. She later filed a complaint to seek to discharge approximately \$26,000 in student loans. The complaint and summons were served on February 12, 2022. In the complaint, Ms. Smith pleads that her student loan debt should be discharged because requiring payment will cause an “undue hardship” for her and her ten-year-old daughter, Sarah. Ms. Smith’s bankruptcy attorney forwards a signed Attestation to the Department Attorney with a copy of Ms. Smith’s 2020 tax return. (She has not yet completed the 2021 return). Pursuant to the Guidance, the Department Attorney would evaluate the information provided in the Attestation as follows to determine if the facts in Ms. Smith’s case justify stipulating that she has shown an undue hardship within the meaning of Section 523(a)(8) of the Bankruptcy Code.

Part I: Personal Information

Part I of Ms. Smith’s Attestation lists relevant background information. It shows that she lives in Baltimore County, Maryland, in a household consisting of herself (age 30) and her daughter (age 10). She lists a student loan balance of \$26,369 and indicates her loan has been in default since June 2012. Part I also shows that Ms. Smith incurred her student loans to attend John Doe Community College, seeking a nursing degree, but that Ms. Smith left school in December 2010 and did not receive a degree. Ms. Smith is currently employed as a nursing assistant at Baltimore County Hospital in Baltimore.

Part II: Present Ability to Pay

Ms. Smith provided information about her income and expenses in Part II of the Attestation. Ms. Smith has reported on her Attestation that she earns \$3900 per month and has current monthly expenses of \$3857, including \$600 that is deducted from her paycheck for taxes, Medicare, Social Security, and health insurance. Ms. Smith has indicated that she resides in inadequate housing and needs to incur additional housing expenses to achieve a minimal standard of living which will increase her total expenses by \$800 (for a total expense amount of \$4657). Below are the steps the Department attorney, in consultation with Education, takes in analyzing Ms. Smith’s income and expenses:

- (1) The Department attorney checks Ms. Smith’s submitted tax return to determine if it is consistent with her stated monthly gross income (\$3900). Ms. Smith has not yet filed her 2021 tax return, so the only income the Department attorney can review is from her 2020 return. That return shows Adjusted Gross Income of \$45,952. This amount divided by 12 is \$3829, a monthly average which is consistent with (and slightly less) than the \$3900 Ms. Smith has listed on the Attestation. The income stated on the Attestation thus appears correct.¹

¹ The Department attorney may request further corroboration if necessary, for example, where a debtor’s bankruptcy filings in total reflect unexplained inconsistencies.

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(2) The Department attorney should use the IRS standards to determine Ms. Smith's allowable expenses:

- (a) Payroll deductions. Ms. Smith's payroll deductions of \$600 are almost certainly allowable. She has deducted \$400 for taxes, Medicare, and Social Security expenses, which are generally allowed under the IRS Standards, and the Department attorney should accept the amount of tax withholdings as an expense unless there is an obvious pattern of over withholding. In general, excessive withholding will be accompanied by a significant tax refund; however, Ms. Smith's most recent tax refund is \$3000² (which averages to a hypothetical \$250 in monthly income) an amount which is not significant. Accordingly, there is no basis to conclude that Ms. Smith has engaged in excessive withholding.

Ms. Smith's payroll deduction for health insurance of \$200 (Line 15(a)(vi)) is also almost certainly allowable. The Department attorney should generally allow health insurance expenses (whether payroll deductions or not) as long as the debtor indicates the policy covers only family members and not others. Here, Ms. Smith has indicated this on Line 15(a)(vi), and the deduction therefore appears appropriate.

- (b) Living Expenses (National and Local Standards).

Line 14(a) of the Attestation asks the debtor to confirm whether certain expenses are within amounts allowed under the IRS National Standards. Here, Ms. Smith has confirmed that her household monthly expenses do not exceed the allowed amounts for the following categories, nor the aggregate amount for these categories. The Department attorney should allow the full amount for these categories (for a household of two):

Food: \$779
Housekeeping supplies: \$82
Apparel & Services: \$161
Personal care products and services: \$82
Miscellaneous: \$306
Total: \$1410

Ms. Smith has indicated that her uninsured medical costs are \$225, an amount which exceeds the IRS allowed amount of \$75 per household member under age 65. However, she has explained that her daughter requires medication and an inhaler, and the total cost not covered by

² The Department attorney may review the debtor's most recent tax return to assess whether a listed refund suggests potential over-withholding.

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insurance is \$150. Because Ms. Smith has reasonably explained why she needs this excess expense in order to meet her daughter’s health care needs, she should be allowed her actual expense amount of \$225, including \$75 for her uninsured medical costs and \$150 for her daughter’s.

Lines 15(a) and (b) of the Attestation allow the debtor to list living expenses in categories corresponding to the IRS Local Standards. The following chart compares Ms. Smith’s listed expenses to those allowed under the Local Standards for a family of two based on her locality. The final column shows the amount—typically, the lesser of the IRS Local Standards expense and Ms. Smith’s actual expense in the category—that the Department attorney may treat as allowed, unless the Department attorney finds the higher amount within specific categories is justified.

Expense	Ms. Smith’s Actual Expense	IRS Allowed Amount	Department Attorney Allowed Amount
Housing & Utilities	\$765	\$2233	\$765
Vehicle Payments	\$400	\$588	\$400
Average costs of operating vehicles	\$350	\$307	\$307
TOTAL	\$3290	\$4232	\$1472

Ms. Smith’s actual expenses in each category other than “vehicle operating costs” are less than the amount allowed by the IRS Local Standards. Accordingly, they are consistent with a minimal standard of living. Ms. Smith exceeds the IRS Local Standards amount for vehicle operating costs. The Department attorney should generally limit the debtor’s allowable expenses to the IRS Standard expenses amount, unless allowing the additional expenses is warranted by the debtor’s circumstances.³

- (c) Other Necessary Expenses. Line 15(c) allows a debtor to list expenses consistent with the IRS Other Necessary Expenses categories. Ms. Smith has listed only one expense, \$150 per month for babysitting, day care or nursery and preschool costs. The Other Necessary Expenses categories require explanation of the necessity for these expenditures, and Ms. Smith explains that she needs to pay for her daughter to attend before and after care because her daughter’s school schedule conflicts with her work schedule. Because Ms. Smith must pay this expense in order to

³ The Department attorney may ask the debtor to provide an explanation for any expenses over the standard expense amount, but the Department attorney need not do so where, as shown below, the debtor’s aggregate expenses as limited still show an inability to make student loan payments.

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maintain her job, and it is reasonable that she use the services provided by her daughter's school, this expense is "reasonable and necessary."

- (d) Expenses for Unmet Needs. The expenses calculated above total \$3857, an amount less than Ms. Smith's income. However, the Department attorney should also consider anticipated expenses that the debtor has identified on Line 17 of the Attestation. Ms. Smith has explained in Line 17 that she currently lives in her mother's basement apartment, but that this living situation is not sustainable. She has located an apartment for \$1300 per month where she intends to move within a few months, increasing her total housing and utilities expense by \$800. Because Ms. Smith will need to incur this additional expense in order to meet basic housing needs for her and her daughter, the Department attorney should consider Ms. Smith's anticipated rent increase when calculating her total expenses.

(e) Ms. Smith's allowable expenses (including the additional housing expense) total \$4657:

- \$600 – Payroll deductions
- \$1635 – National Standards
- \$1472 - Local Standards (without additional future housing expense)
- \$150 – Other Necessary Expenses
- \$800 – future expenses (additional housing expense)

- (3) Comparison to income. Ms. Smith's allowed expenses of \$4657 exceed her monthly income of \$3829, which has been verified by her tax returns. Because her allowed expenses exceed her income, the Department attorney should find she currently does not have sufficient means to pay her student loans while maintaining a minimal standard of living.

Part III: Future Circumstances

Part III of the Attestation allows a debtor to attest to matters showing that the inability to pay will persist into the future. In Line 18, the debtor can attest to two circumstances that justify a *presumption* of a future inability to pay. Ms. Smith has indicated that her student loan went into repayment more than 10 years ago.⁴ She has also indicated she did not complete the degree for which she incurred the student loans. Accordingly, she is entitled to a presumption that she will remain unable to repay the loan in the future.

Although the presumption of future inability to pay is rebuttable, those circumstances should be infrequent. Illustratively, Ms. Smith has not provided any information in her Attestation that indicates a likely future ability to pay or that her financial circumstances are likely to change. The Attestation, as a whole, supports her claim that she will remain unable to

⁴ This assertion is supported by Ms. Smith's statement in the Attestation that her loans entered repayment in June 2011, more than 10 years before she filed her bankruptcy case.

pay. She has indicated on Lines 18 and 19 that she (1) was forced to drop out of nursing school to care for her infant daughter, (2) she cannot obtain employment as a nurse because she did not obtain her degree, (3) her current job does not offer significant raises or promotions, and (4) she has been unable to obtain a second job and likely could not do so because her daughter suffers from asthma. None of that information provides a basis to rebut the presumption of future inability to pay. Indeed, this information would appear to support a conclusion that she lacks a future ability to pay even in the absence of any presumption. In this situation, there does not appear to be a need for the attorney to investigate further. Although there are circumstances where the Department attorney may reasonably make inquiry to supplement or elucidate statements in the Attestation, that need may be infrequent. In this example, the Department attorney should conclude that Ms. Smith's inability to pay will continue for a significant portion of the repayment period.

Part IV: Prior Efforts to Repay Loans

Part IV of the Attestation provides information the Department attorney should use to determine if Ms. Smith has made a good faith effort to repay her loans. In this case, good faith should likely be found, because the information provided on Ms. Smith's Attestation reflects that she has maximized income by obtaining full-time employment, minimized expenses, and has not willfully attempted to avoid repaying her loans.

Ms. Smith reports that she has made no payments on her loans (Line 21). Indeed, her responses on Part I of the Attestation show that the loans went into repayment in May 2011 and went into default in June 2012. While these facts are relevant to the "good faith" determination, the failure to make payments alone does not justify finding a lack of good faith. Here, Ms. Smith has offered an explanation for her failure to make payments (Line 26). She left school when her daughter was less than one year old. She had no support from the child's father and initially was unable to obtain part-time employment. Since that time, she has never obtained employment permitting her to pay her student loans.

Ms. Smith also indicates she has not enrolled in an IDR (Line 25). Failure to enroll in an IDR, however, is not dispositive of a lack of good faith. Here, Ms. Smith attests that she contacted her loan servicer to discuss IDRs. The servicer did not explain the process for enrolling and stated to Ms. Smith that she would pay a heavy tax burden if she completed a payment plan. Given the circumstances, as well as Ms. Smith's extremely limited income preventing any substantial payments under an IDR, nothing in the Attestation suggests she acted "willfully" by not enrolling in an IDR or was disinterested in repaying her loans. Rather, her lack of enrollment was reasonable in light of her confusion over the process as well as her concerns about tax consequences.

The Attestation also shows that Ms. Smith sought to maximize income and minimize expenses. On Line 26, she states that she continually worked full-time after her daughter started school, and that she cannot work more hours due to the need to care for her daughter. She also states she could not find higher paying work due to her lack of a degree. Line 26 presents information about minimization of expenses, including that Ms. Smith has lived with her mother for four years to reduce expenses. Finally, while Ms. Smith acknowledges she has acquired a

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vehicle with a car payment, she explains the need for reliable transportation. In addition, the vehicle payment is within the Local Standards above. Obtaining the vehicle is not evidence of a refusal to minimize expenses.

Part V: The Debtor's Assets

Ms. Smith's only asset is a 2018 Toyota Camry with approximately \$5000 in equity (Line 28). Even if Ms. Smith did not claim an exemption for her car, it would be unreasonable to expect Ms. Smith to liquidate this asset in order to pay her student loan. Ms. Smith's Attestation demonstrates that she needs her vehicle to maintain a minimal standard of living for herself and her daughter. Ms. Smith would therefore have to purchase a new vehicle if this asset were liquidated. Additionally, requiring Ms. Smith to pay down the student loan would still leave approximately \$20,000 due, and there is no showing that Ms. Smith would have the ability to satisfy this part of the student loan after liquidating the vehicle and paying \$5000. For these reasons, liquidation of the asset would be inappropriate.

Conclusion

Based on review of the Attestation, it is appropriate for the Department attorney to conclude that Ms. Smith is entitled to a discharge of her student loans. She does not have a current ability to pay her loans while maintaining a minimal standard of living; this inability is likely to persist into the future; and she has made good faith efforts to repay her loans. In addition, she does not have any assets that are reasonably available for liquidation.

The Department attorney should contact Ms. Smith's counsel and indicate the United States would be willing to enter into a stipulation that Ms. Smith has shown undue hardship under Section 523(a)(8) and recommend the Court grant her a judgment discharging her loans.

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[Updated January 2023]

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND

In re:)	
)	
JANE SMITH,	)	Case No. 22-00000
	)	Chapter 7
Debtors.)	
)	
_____)	
)	
JANE SMITH,)	
)	
Plaintiff,	)	Adversary Pro.22-0000
)	
v.)	
)	
UNITED STATES DEPARTMENT)	
OF EDUCATION,)	
)	
Defendant.)	
_____)	

ATTESTATION OF JANE SMITH IN SUPPORT
OF REQUEST FOR STIPULATION CONCEDING
DISCHARGEABILITY OF STUDENT LOANS

PLEASE NOTE: This Attestation should be submitted to the Assistant United States Attorney handling the case. It should not be filed with the court unless such a filing is directed by the court or an attorney.

I, **JANE SMITH**, 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 123 Main Street, Towson MD 20204, in Baltimore County, Maryland.

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[Updated January 2023]

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

Jane Smith	30 years	[self]
Sarah Smith	10 years	daughter

Questions four through eight 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 and complete: YES / NO/ No Information Provided [If you answered anything other than “YES,” you must answer questions five through eight].

5. The outstanding balance of the student loan[s] I am seeking to discharge in this adversary proceeding is \$26,369.

6. The current monthly payment on such loan[s] is \$132. The loan[s] are scheduled to be repaid in ??? [month and year] [OR] ____ My student loan[s] went into default in June 2012 [month and year].

7. I incurred the student loan[s] I am seeking to discharge while attending John Doe Community College, where I was pursuing a nursing degree with a specialization in n/a.

8. In _____ [month and year], I completed my course of study and received a _____ degree [OR] In December 2010 [month and year], I left my course of study and did not receive a degree.

[Updated January 2023]

9. I am currently employed as a certified nursing assistant. My employer’s name and address is Baltimore County Hospital, Baltimore MD [OR] _____ I am not currently employed.

II. CURRENT INCOME AND EXPENSES

10. I do not have the ability to make payments on my student loans while maintaining a minimal standard of living for myself and my household. I submit the following information to demonstrate this:

A. Household Gross Income

11. My current monthly household **gross** income from all sources is \$3900.¹ This amount includes the following monthly amounts:

- \$ 3900 my **gross** income from employment (if any)
- \$ _____ my unemployment benefits
- \$ _____ my Social Security Benefits
- \$ _____ my _____
- \$ _____ my _____
- \$ _____ my _____
- \$ _____ **gross** income from employment of other members of household
- \$ _____ unemployment benefits received by other members of household
- \$ _____ Social Security benefits received by other members of household
- \$ _____ other income from any source received by other members of household

12. The current monthly household gross income stated above (select which applies):

¹ “Gross income” means your income before any payroll deductions (for taxes, Social Security, health insurance, etc.) or deductions from other sources of income. You may have included information about your gross income on documents previously filed in your bankruptcy case , including Form B 106I, Schedule I - Your Income (Schedule I). If you filed your Schedule I within the past 18 months and the income information on those documents has not changed, you may refer to that document for the income information provided here. If you filed Schedule I more than 18 months prior to this Attestation, or your income has changed, you should provide your new income information.

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[Updated January 2023]

 X Includes a monthly average of the gross income shown on the most recent tax return[s] filed for myself and other members of my household, which are attached, and the amounts stated on such tax returns have not changed materially since the tax year of such returns; OR

 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/do not exceed the amounts listed below based on the number of people in my household for the following categories:

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[Updated January 2023]

(a) Living Expenses²

- i. My expenses for food do exceed do not exceed
\$431 (one person)
\$779 (two persons)
\$903 (three persons)
\$1028 (four persons)

- ii. My expenses for housekeeping supplies do exceed do not exceed
\$40 (one person)
\$82 (two persons)
\$74 (three persons)
\$85 (four persons)

- iii. My expenses for apparel & services do exceed do not exceed
\$99 (one person)
\$161 (two persons)
\$206 (three persons)
\$279 (four persons)

- iv. My expenses for (non-medical) personal care products and services do exceed do not exceed
\$45 (one person)
\$82 (two persons)
\$78 (three persons)
\$96 (four persons)

- v. My miscellaneous expenses (not included elsewhere on this Attestation) do exceed do not exceed
\$170 (one person)
\$306 (two persons)
\$349 (three persons)
\$412 (four persons)

- vi. My total expenses in these categories do exceed do not exceed
\$785 (one person)
\$1,410 (two persons)
\$1,610 (three persons)
\$1900 (four persons in household)
Add \$344 per each additional member if more than four in household.

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.

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[Updated January 2023]

If you answered that your total expenses for any of the categories (i) through (v) exceed the applicable amount listed in those categories, and you would like the AUSA to consider your additional expenses for any such categories as necessary, you may list the total expenses for any such categories and explain the need for such expenses here: (You do not need to provide any additional information if you answered that your total expenses did not exceed the applicable amount listed in subsection (vi)).

(b) Uninsured medical costs:

My uninsured, out of pocket medical costs do exceed do not exceed

\$75 (per household member under 65)

\$153 (per household member over 65)

If you answered that your uninsured, out of pocket medical costs exceed the listed amounts for any household member, and you would like the AUSA to consider such additional expenses as necessary, you may list the household member’s total expenses and explain the need for such expenses here.

My total uninsured medical costs are \$225. I buy inhalers and medications for my daughter, who has asthma, and the total cost not covered by insurance for her expenses is approximately \$150 per month. I have \$75 in uninsured medical costs for myself.

[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

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

(a) Payroll Deductions

- i. Taxes, Medicare and Social Security \$400
[You may refer to line 16 of the Means Test or Schedule I, line 5]
- ii. Contributions to retirement accounts \$0

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.

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[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? YES / NO

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

iv. Life insurance \$ n/a
[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 \$ 200
[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? YES / NO

vii. Other payroll deductions
_____ \$ n/a
_____ \$ _____
_____ \$ _____

(a) Housing Costs⁴

i. Mortgage or rent payments \$ 500
ii. Property taxes (if paid separately) \$ n/a
iii. Homeowners or renters insurance \$ 15
(if paid separately)
iv. Home maintenance and repair \$ n/a
(average last 12 months' amounts)
v. Utilities (include monthly gas, electric) \$ 250

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

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water, heating oil, garbage collection, residential telephone service, cell phone service, cable television, and internet service).

(b) Transportation Costs

- i. Vehicle payments (itemize per vehicle) \$400
- ii. Monthly average costs of operating vehicles \$350
(including gas, routine maintenance, monthly insurance cost)
- iii. Public transportation costs \$ n/a

(c) Other Necessary Expenses

- i. Court-ordered alimony and child support payments \$ n/a
(if not deducted from pay)
[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 costs \$150
[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:

I have to send my daughter to before care and after care for school because her school day is from 7:45-3:00 but I work from 7:00-3:30. This is what her school charges.

- iii. Health insurance \$ n/a
(if not deducted from pay)
[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

- 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]

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

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

- v. Dependent care (for elderly or disabled family members). \$ n/a
[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 tax debt \$ n/a
[You may refer to line 35 of the Means Test or Schedule J, line 17]

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

- vii. Payments on other student loans I am not seeking to discharge \$ n/a

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

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 \$0 remaining income.

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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 which are currently not met.⁶

These include the following:

I live in a basement apartment at my mother's house, but it is not possible to live there anymore with my daughter turning 10 years old. We don't have our own kitchen and the living space is too small. I have found an apartment in our area near where I work for \$1300 per month. We are hoping to move there in a few months.

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 age 65 or older.

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

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

Describe how not completing your degree has inhibited your future earning capacity:

I was in nursing school but had to drop out to care for my daughter. Without a degree, I cannot obtain employment as a nurse and cannot increase my income.

I have a disability or chronic injury impacting my income potential.

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:

⁶ If you have forgone 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.

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I have been unemployed for at least five of the past ten years.
Please explain your efforts to obtain employment.

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 the student loans I am seeking to discharge in pursuit of a degree from an institution that is now closed.

Describe how the school closure has inhibited your future earning capacity:

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 was in nursing school but did not complete my degree, so I cannot get a job as a nurse. I work as a nursing assistant.

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:

I have looked for other jobs that pay more, but they require a degree. My current job does not offer any significant raises or promotions. I also need to work during the hours that my daughter is in school, so I can't work the night or weekend shifts at my current job even though it would pay more.

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

Explain these circumstances:

My daughter is ten years old. She has severe asthma, requiring inhalers and other medication. Because of these conditions, working a second job is not possible for me. I need to be at home to ensure she is safe after school, and I can't afford a babysitter or additional after school care.

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 a total of \$ 0 in payments on the loans, including the following:

 regular monthly payments of \$ each.

 additional payments, including \$, \$, and \$.

22. I have applied for 0 forbearances or deferments. I spent a period totaling 0 months in forbearance or deferment.

23. I have attempted to contact the company that services or collects on my student loans or the Department of Education regarding payment options, forbearance and deferment options, or loan consolidation at least 10 times.

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

Description of efforts:

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

I had heard of repayment plans, but I was confused when I tried to ask my servicer about the plans. They did not explain how to sign up, and they told me I might end up paying a lot of taxes if I did a payment plan. I can't afford to pay additional taxes.

26. Describe any other facts indicating you have acted in good faith in the past in attempting to repay the student loan(s) you are seeking to discharge. These may include efforts to obtain employment, maximize your income, or minimize your expenses. They also may include any efforts you made to apply for a federal loan consolidation, respond to outreach from a loan servicer or collector, or engage meaningfully with a third party you believed would assist you in managing your student loan debt.

I've always worked full time after my daughter was old enough to go to school. I can't work more hours because I have to take care of her on the weekends and after school. I have looked for higher paying jobs, but they all require degrees.

I drove a used car for a long time, but I had to buy a new car a few years ago because my old one was starting to need a lot of repairs and I needed a reliable car to get to work and take my daughter to school, doctors etc. I've been living with my mother for the past 4 years to try and save expenses, but I need to move to an apartment. I'll need to stay in this area, though, because this is where my job and my daughter's school are.

All of my paycheck goes toward providing my daughter and myself with our necessities, including groceries, clothes for her, and her school supplies.

V. CURRENT ASSETS

27. I own the following parcels of real estate:

Address: None

[Updated January 2023]

Owners:⁷ _____

Fair market value: _____

Total balance of mortgages and other liens. _____

28. I own the following motor vehicles:

Make and model: 2018 Toyota Camry

Fair market value: \$25,000

Total balance of Vehicle loans And other liens \$20,000

29. I hold a total of \$ 0 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 ⁹ and %age Interest
_____	_____	_____

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.

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31. I currently am anticipating receiving a tax refund totaling \$3,000

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):

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

/s/ Jane Smith
Signature:

Jane Smith
Name:

Date: February 25, 2022

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 Jespersion*, 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).

1. 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.

At a Glance: Department of Justice’s New Process for Student Loan Bankruptcy Discharge Cases

Each year, individuals in the bankruptcy process seek to discharge student loan debt in order to get the “fresh start” envisioned by the bankruptcy code. Congress has set a higher bar for discharging student loan debt compared to other debt—debtors who seek to discharge student loans must prove in a separate “adversary proceeding” that paying their student loans would impose an “undue hardship.” But that higher bar need not be an insurmountable barrier for debtors who cannot afford to pay their student loans.

The Department of Justice, in close coordination with the Department of Education, is implementing a new process at the outset of adversary proceedings in which debtors seek to discharge federal student loans in bankruptcy. While the bankruptcy judge makes the final decision whether to grant a discharge, the Justice Department can play an important role in that decision by supporting discharge in appropriate cases. The new process will help ensure transparent and consistent expectations for the discharge of student loan debt in bankruptcy; reduce the burden on debtors of pursuing such proceedings; and make it easier for Justice Department attorneys to identify cases where discharge is appropriate.

Under the Justice Department’s new process, debtors will complete an attestation form to assist the government in assessing the discharge request. The Justice Department, in consultation with the Department of Education, will review the information provided, apply the factors that courts consider relevant to the undue-hardship inquiry, and determine whether to recommend discharge. Even where the applicable factors may not support a complete discharge, where appropriate, the Justice Department will consider supporting a partial discharge.

Justice Department attorneys will assess the undue-hardship factors in the following manner:

Present Ability to Pay – Using existing standards developed by the IRS and the information provided by the debtor, the Justice Department attorney will calculate a debtor’s expenses and compare those expenses to the debtor’s income. If a debtor’s expenses equal or exceed the debtor’s income, the Department will determine that the debtor lacks a present ability to pay.

Future Ability to Pay – The Department will then assess whether the debtor’s present inability to pay is likely to persist in the future. The Department attorney will presume a debtor’s financial circumstances are not likely to change if certain factors—such as retirement age, disability or chronic injury, protracted unemployment history, lack of degree, or extended repayment status—are present. Where such factors are not present, the Department attorney will assess the facts showing whether the debtor’s present inability to pay is likely to persist.

Good Faith Efforts – In assessing what courts call the “good faith” standard, the Department will focus on objective criteria reflecting the debtor’s reasonable efforts to earn income, manage expenses, and repay their loan. The Department attorney will consider, for example, whether the debtor contacted the Department of Education or their loan servicer regarding payment options for their loan. A debtor will not be disqualified based on past non-payment if other evidence of good faith exists. A debtor also will not be disqualified based on their not enrolling in an income driven repayment plan where the debtor was deterred from participating in such a plan or otherwise provides a reasonable explanation for non-enrollment.

**The Art Institutes
Borrower Defense Executive Summary**

The U.S. Department of Education (ED) has determined that all borrowers who enrolled at any Art Institutes campus on or after Jan. 1, 2004, through Oct. 16, 2017, are eligible for an automatic discharge of their related federal student loans. This group discharge will provide relief to borrowers harmed by The Art Institutes' actions, including borrowers who have not yet applied for borrower defense. **Borrowers do not need to take any action to receive their discharge.**

This group discharge is based on ED's finding that The Art Institutes and its parent company, Education Management Corporation (EDMC), made pervasive and widespread substantial misrepresentations that borrowers relied on to their detriment. ED relied heavily on evidence provided by the attorneys general offices of Pennsylvania, Massachusetts, and Iowa, which conducted multi-year investigations into, and brought lawsuits against, The Art Institutes and EDMC. As discussed in more detail below, ED's independent review of this evidence resulted in ED's finding that, between at least 2004 and 2017, The Art Institutes engaged in substantial misrepresentations related to employment rates, salaries, and career services.

- **Employment Rate Misrepresentations:**

- The Art Institutes advertised the percentage of its graduates who obtained employment related to their fields of study within six months of graduation. These advertised rates were often above 80%. The employment rates were advertised to prospective students on The Art Institutes' websites and through centrally created and distributed brochures. Recruiters distributed these brochures to prospective students during in-person campus tours as part of standardized presentations.
- However, The Art Institutes' own records demonstrate that it inflated the advertised employment rates. For example, it counted graduates as employed in-field when The Art Institutes did not know the graduates' job titles or when the job title was unrelated to the degree program. These schools also excluded some graduates with out-of-field jobs because they would have lowered the in-field employment rate. When recalculated to account for these issues, The Art Institutes' average in-field employment rate dropped from 82% to no higher than 57%. The true average rate was lower than 57% because The Art Institutes also falsified at least some of its internal data to make the graduates appear to be working in-field when they were not.
- When The Art Institutes advertised these employment rates—and when school representatives made oral promises of employment based on these rates—it led prospective students to believe they were likely to obtain in-field employment by attending and graduating from The Art Institutes, when the real data did not support that conclusion.

- **Salary Misrepresentations:** The same advertisements promoting The Art Institutes’ employment rates also displayed the purported average salaries that graduates earned in their in-field positions. The advertised salaries were inaccurate because they were based on the same flawed data as The Art Institutes’ employment rates. In addition, testimony from former high-ranking school officials supports findings that The Art Institutes personnel estimated graduate earnings, annualized the actual or estimated income of graduates working in temporary positions, included high-earning outliers in its averages, and falsified the income it reported for graduates. For example, one Art Institute campus included professional tennis player Serena Williams’ annual income to “skew the statistics and overinflate potential program salaries,” according to a former employee. Another former employee described witnessing a coworker use salary.com to determine that a graduate’s salary was \$25,000, when the graduate actually reported earning only \$8,000 a year. When The Art Institutes advertised these inflated salaries as if they were average salaries—and when school representatives made oral salary promises based on those averages—it led prospective students to believe that graduating from The Art Institutes would lead to paid, in-field employment in a certain salary range, when The Art Institutes’ own data did not support those claims.
- **Misrepresentations about Employment Connections, Ongoing Career Services:** The Art Institutes represented to prospective students that it had partnerships with employers and offered ongoing career services postgraduation. These representations were made on the school’s website, in advertisements distributed to prospective students during tours and admissions interviews, and through oral statements. However, the evidence showed that The Art Institutes exaggerated its relationships with employers. In fact, it had a negative reputation in the industry, so companies generally did not want to hire Art Institute graduates. Former employees also described that graduates did not have access to ongoing career services after leaving school. For example, once students graduated, school staff did not return their phone calls.

The Art Institutes communicated these three substantial misrepresentations to prospective students through its website and print materials, and admissions personnel distributed misleading messages to prospective students before and during the admissions process.

Prospective students relied on The Art Institutes’ misrepresentations when deciding to enroll. Borrowers attended The Art Institutes because they wanted to obtain jobs in creative fields and make more money. The Art Institutes heavily marketed itself as a career-focused school providing students the education they would need to obtain employment in creative fields. The Art Institutes knew that information about the school’s employment rates, graduate salaries, and career services was important to prospective students. The school habitually rushed prospective students through the enrollment process and related paperwork, and it did not make its underlying data publicly available. Furthermore, The Art Institutes targeted individuals for enrollment who would be particularly susceptible to promises of better employment and increased earnings—such as individuals with low socioeconomic status and homeless individuals.

The Art Institutes' misconduct harmed borrowers because it left them with high amounts of debt and without the promised earning capacity or employment necessary to pay for their education. Many Art Institute borrowers also dropped out of their programs and defaulted on their loan payments. Additionally, borrowers who enrolled based on The Art Institutes' career services promises did not receive the promised benefits, which impacted their ability to obtain employment, even if they did complete their Art Institute program.

ED's findings are based on its independent review of materials provided by the attorneys general of Pennsylvania, Massachusetts, and Iowa, and ED's Investigations Group. The attorneys general of Pennsylvania and Iowa provided materials obtained as a part of a multi-state investigation into EDMC and The Art Institutes, including internal employment data, admissions training manuals, and the school's employment advertisements. The Massachusetts attorney general also provided information it obtained during an investigation and lawsuit into the New England Institute of Art—the Massachusetts Art Institute campus—including internal employment verification forms, other internal records of graduate employment outcomes, advertisements, and statements from former students and employees.

Due to the overall lack of value of an Art Institute education and The Art Institutes' failure to rebut ED's presumption of 100% relief, ED determined that 100% relief is appropriate for Art Institute borrowers who enrolled within the eligible time period.

Due to its pervasive and widespread substantial misrepresentations that borrowers relied on to their detriment, ED concluded that The Art Institutes' misrepresentations likely would have negatively affected all or nearly all students who enrolled on or after Jan. 1, 2004, through Oct. 16, 2017, and thus a group discharge is appropriate. EDMC sold its remaining Art Institute campuses on Oct. 17, 2017, and all remaining Art Institutes campuses closed under separate ownership in September 2023.

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

In re:)	
)	
GERTRUDE J CHAPMAN,	)	Case No. 6:24-bk-02236-GER
	)	Chapter 13
Plaintiff(s).)	
)	
_____)	
GERTRUDE J CHAPMAN,)	
)	
Plaintiff,	)	Adv. Pro. No. 6:24-ap-
)	
v.)	
)	
UNITED STATES DEPARTMENT)	
OF EDUCATION,)	
)	
Defendant.)	
_____)	

COMPLAINT TO DETERMINE DISCHARGEABILITY OF STUDENT LOANS

Plaintiff, GERTRUDE J CHAPMAN, through undersigned counsel files the following complaint and alleges as follows:

I. NATURE OF CASE

1. This is an action to declare the Plaintiff’s student loan debt to Defendant, the United States Department of Education (“US DOE”), dischargeable as an undue hardship under 11 U.S.C. § 523(a)(8).

II. JURISDICTION AND VENUE

2. On May 3, 2024, Plaintiff filed for relief under a voluntary 13 bankruptcy proceeding, Case Number 6:24-bk-02236-GER.

3. The Court has jurisdiction pursuant to 28 U.S.C. §§ 1334 and 157. This is an action to determine the dischargeability of a debt under 11 U.S.C. § 523(a)(8), and as such, this is a core proceeding under 28 U.S.C. §157(b)(2)(I). The Plaintiff consents to the Bankruptcy Court's entry of a final order.

4. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1409(a).

5. This is an adversary proceeding as defined by Fed. R. Bankr. P. 7001(6).

III. PARTIES

6. Plaintiff is a resident at 308 Appaloosa Ct, Sanford, Florida.

7. Defendant is a qualifying governmental institution in the business of making, insuring, and guaranteeing student loans. Defendant's mailing address is United States Department of Education, 400 Maryland Ave., SW, Washington, DC 20202.

IV. STATEMENT OF FACTS

8. Prior to filing bankruptcy, in the course of Plaintiff's education, Plaintiff borrowed student loans from Defendant in order to finance Plaintiff's education. The current outstanding balance of the student loan(s) is approximately \$25,330.00. A list of the loans with current balances is attached as Exhibit #1.

9. Plaintiff left their course of study in approximately 2004 and did not receive a degree.

10. Under the terms of the loans, Plaintiff was required to begin payments six months after enrollment in the school ended.

11. Under the U.S. Department of Education's Standard Repayment Plan, Plaintiff would be required to maintain monthly payments of \$292.54 for ten years in order to pay off the balance of the student loans.

12. Since repayment on the student loans began, the debtor has:

- a. Made approximately 0 payments on the loans, totaling approximately \$0
- b. Received 28 cumulative forbearances & deferments totaling 249.1 months
- c. Applied for a federal consolidation loan

13. Plaintiff is not currently employed.

14. Plaintiff's current monthly household income is \$2,209.75. Plaintiff's current monthly household expenses, including payroll deductions, are \$2,923.33.

V. DETERMINATION OF DISCHARGEABILITY

15. 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).

16. To discharge a student loan 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.

17. Plaintiff is unable to make payments on her student loans. After deducting Plaintiff's reasonable and necessary expenses from her income, Plaintiff's discretionary income is insufficient to make student loan payments as required under the loan agreement.

18. Plaintiff is a widow and her current state of affairs is likely to persist, and her financial circumstances are unlikely to materially improve, for a significant portion of the debt repayment period.

19. Plaintiff has made good faith efforts to repay the student loans at issue in this proceeding.

20. Based upon the foregoing facts and circumstances, Plaintiff cannot maintain a minimal standard of living if forced to repay the student loans.

WHEREFORE, Plaintiff respectfully requests this Court to enter an order finding that excepting her student loans from discharge would impose an undue hardship as provided in 11 USC §523(a)(8), declaring the student loans to be included in Plaintiff's discharge under §727(a)/1328(a), and for any other relief as the Court deems just and proper.

Respectfully Submitted,

By: /s/ Robert B. Branson

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(407) 894-6834
robert@bransonlaw.com

AMERICAN BANKRUPTCY INSTITUTE

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Exhibit #1

List of loans with current balances

Loan Type (Loan Holder/Service)	Principal Balance	Accrued Interest	Status
DIRECT CONSOLIDATED UNSUBSIDIZED(DEPT OF ED/NELNET)	\$ 14,969.00	\$ 747.00	BANKRUPTC Y CLAIM, ACTIVE
DIRECT CONSOLIDATED SUBSIDIZED(DEPT OF ED/NELNET)	\$ 9,157.00	\$ 457.00	BANKRUPTC Y CLAIM, ACTIVE

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

In Re:

INGRID JOYCE COTTON

CASE NO. 8:24-bk-05936-CPM
CHAPTER 7

Debtor(s).

_____ /

INGRID JOYCE COTTON

Plaintiff

vs.

UNITED STATES DEPARTMENT
OF EDUCATION,

ADV. PRO. CASE NO:

Defendant.

_____ /

**Debtor's Complaint to Determine Federal Student Loans Dischargeable
For "Undue Hardship" under 11 U.S.C. § 523(a)(8)**

Plaintiff, INGRID JOYCE COTTON ("COTTON"), by and through the undersigned counsel, files this Complaint against UNITED STATES DEPARTMENT OF EDUCATION ("ED"), on personal knowledge as to those matters within his capacity, and information and belief as to all other matters, as follows:

Nature of Action

1. This is an adversary proceeding by which the Debtor seeks a declaration that Federal student loans constitute an undue hardship for the Debtor and should be discharged pursuant to section 523(a)(8) of the Bankruptcy Code.

Jurisdiction and Venue

2. On October 4, 2024, the Debtor filed a voluntary petition in the United States Bankruptcy Court for the Middle District of Florida for relief under 11 U.S.C. § 727, Chapter 7 of the Bankruptcy code.
3. The Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 1334 and 157(a).
4. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
5. Venue is proper in this district pursuant to 28 U.S.C § 1409.

Parties

6. Plaintiff, **INGRID JOYCE COTTON**, is the Debtor in the above captioned case. She is the recipient of Federal student loans.
7. Defendant, United States Department of Education (ED), is a Federal agency that oversees and originates Federal student loans. It is the originator and holder of the loans at issue.

Factual Allegations

8. Cotton is a resident of Hillsborough County, Florida. She is 63 years old.
9. Currently there are two Direct Consolidation loans, held by ED in an amount that exceeds \$185,955.68.
10. The loans were originated between 2006 – 2013. They entered repayment in 2014.
11. The Standard payment on the loans is \$1,986.00 per month.
12. Cotton is unable to afford the standard payment as her expenses exceed her income.
13. Cotton filed bankruptcy to free herself of financial burden to enable her to maintain a basic sense of living.
14. Cotton has maximized her income while reducing her expenses as best possible.
15. Her current employment is not likely to increase in income to the point that this loan will be affordable, especially considering that she is nearing retirement age.
16. Cotton's mental and emotional state is also declining due to the burden of her student loan debt.

Claims for Relief

*Declaration that Any Federal Student Loan Obligations Should be
Discharged Pursuant to Section 523(a)(8)*

17. Cotton repeats and realleges the allegations contained in paragraphs 1 through 16 of this Complaint as if fully set forth herein.
18. The repayment of Federal student loans made to Cotton would be an undue hardship to her.
19. As a result, Cotton's Federal student loan obligation should be discharged pursuant to Bankruptcy code section 523(a)(8).

WHEREFORE, the Debtor demands judgment declaring that her Federal student loan is discharged pursuant to Bankruptcy Code section 523(a)(8).

Dated at Tampa, Florida, this May 22, 2025.

Respectfully submitted,

/s/ Barbara C. Leon, Esq _____

Barbara C. Leon, Esq.

Florida Bar No. 582115

Christie D. Arkovich, Esq.

Florida Bar No. 963690

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Attorneys for Debtor(s)

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

“Student Loan Guidelines”

**Guidelines for Adversary Proceedings to Determine Dischargeability of
Educational Loans Held by the Department of Justice [11 U.S.C. § 523(a)(8)]**

Under 11 U.S.C. § 523(a)(8), individual debtors may seek a judgment to discharge student loans where such student loans would impose an undue hardship on the debtor and the debtor’s dependents.

On January 27, 2022, the United States Department of Justice (“DOJ”), in cooperation with the United States Department of Education (“DOE”), announced guidance with respect to student loan bankruptcy litigation (the “DOJ Guidance”).¹ On November 17, 2022, the DOJ Guidance became effective and applies **ONLY** to student loans in proceedings in which the DOE is a defendant (“DOE Student Loans”).²

To assist parties with following the DOJ Guidance, our court provides these Guidelines for the Central District of California (“Student Loan Guidelines”). The Student Loan Guidelines apply *only* to adversary proceedings under 11 U.S.C. § 523(a)(8) the DOE is a defendant.

I. Summary of DOJ Guidance

The DOJ Guidance applies to future bankruptcy cases and proceedings, as well as (wherever practical) to pending matters. Given that the DOJ Guidance is an internal DOJ policy, it does not create any substantive or procedural rights enforceable at law. The Guidance seeks to promote three goals:

- 1) To set clear, transparent, and consistent expectations for discharging DOE student loans that debtors can understand whether they are represented by counsel or are self-represented litigants;
- 2) To reduce debtors’ burden in filing adversary proceedings to discharge of DOE Student Loans by simplifying the fact-gathering process; **and**
- 3) Where the facts support it, to increase the number of proceedings in which the DOE stipulates to facts demonstrating the existence of undue hardship and then recommends that the court discharge a debtor’s DOE Student Loans.

¹ [Justice Department and Department of Education Announce a Fairer and More Accessible Bankruptcy Discharge Process for Student Loan Borrowers | OPA | Department of Justice](#)

² [Student Loan Discharge Guidance -- Fact Sheet \(justice.gov\)](#)

CONSUMER PRACTICE EXPERIENCE 2026

After a debtor commences an adversary proceeding under 11 U.S.C. § 523(a)(8), the DOJ attorney assigned to the proceeding will provide debtor/plaintiff with an “Attestation Form.”³ The DOJ attorney will also provide debtor with the debtor’s Student Loan account history and details, which the DOJ obtained from the DOE.

The Attestation consists of a lengthy form to be prepared by the debtor under penalty of perjury. The Attestation requires debtor to provide detailed information concerning the following:

- 1) debtor’s current income and expenses,
- 2) debtor’s future inability to repay their Student Loans,
- 3) debtor’s prior efforts to repay their Student Loans,
- 4) debtor’s current assets, and
- 5) any additional circumstances demonstrating debtor’s undue hardship.

The Attestation also requests that debtor provide documentation supporting debtor’s stated income. The DOJ may request additional evidence where necessary to verify the information described in debtor’s Attestation.

The DOJ Guidance offers detailed instructions for evaluating an Attestation and its supporting documentation, focusing on the factors relevant to a court’s determination of dischargeability under *Brunner v. New York State Higher Educ. Svcs. Corp.*, 831 F.2d 395 (2d Cir. 1987), which applies in the Ninth Circuit pursuant to *In re Pena*, 155 F.3d 1108, 1112 (9th Cir. 1998). The DOJ Guidance also requires the DOJ to consult with the DOE in reviewing debtor’s Attestation and verifying documents and/or evidence provided by debtor when determining an appropriate course of action in each proceeding.

Next, the DOJ and DOE determine whether debtor has demonstrated that:

- (a) absent a discharge of DOE Student Loans, debtor and the debtor’s dependents would suffer undue hardship;
- (b) debtor presently lacks an ability to repay DOE Student Loans;
- (c) debtor’s ability to pay DOE Student Loans is likely to persist in the future; **and**
- (d) debtor has acted in good faith in the past in attempting to repay DOE Student Loans.

If a debtor has demonstrated the above, the DOJ Guidance advises DOJ attorneys to stipulate to the established facts and to recommend that the court issue a partial or full discharge of the debtor’s DOE Student Loans. DOJ must advise debtors that its stipulation and recommendation do not bind the court, which will render its own determination as to whether the DOE Student Loans are dischargeable.

The DOJ Guidance provides encouragement to debtors and DOE attorneys to cooperate in filing the appropriate documents to enable the court to consider whether to issue an order to discharge DOE Student Loans.

³ Link to Department of Justice website where Attestation can be accessed at: [Student Loan Discharge Guidance -- Guidance Text \(justice.gov\)](#)

II. This Court's Guidelines for 11 U.S.C. § 523(a)(8) Adversary Proceedings

A. Current Deadlines per FRBP and FRCP

Once a debtor commences an adversary proceeding under 11 U.S.C. §523(a)(8), there are related preliminary deadlines set forth in the FRBP and FRCP.⁴ First, the debtor must timely serve the DOE with process⁵, i.e. a summons and the complaint. Assuming timely, proper service of process, the DOE must answer or otherwise respond to the complaint within 35 days after service of the summons.⁶ The court must generally issue a scheduling order within 90 days following service of the complaint.⁷ And, within 21 days prior to the initial scheduling conference or the deadline for issuing a scheduling order, the parties must convene a discovery conference, exchange the material described in FRBP Rule 26(a)(1)(A), and file a discovery plan.

B. Solving Challenges of Deadlines

1. Challenges. Deadlines set forth in the FRBP, FRCP and the LBR⁸ do not allow sufficient time to accomplish requirements of the DOJ Guidance, namely for (1) the DOE to provide the DOJ with the history and account details of the debtor/plaintiff's DOE Student Loan, (2) for transmittal of that information and the Attestation to the debtor, (3) for the debtor to gather the necessary documentation to complete the Attestation, (4) for the DOJ and DOE to analyze the debtor's Attestation and corroborating documents, and (5) for the DOJ to make its recommendation to the court.

2. Court's Student Loan Guidelines. The court believes that allowing time for the parties to comply with the with the DOJ Guidance will save resources of the parties' and the court, and will make management of adversary proceedings under 11 U.S.C. § 523(a)(8) efficient and fair. Thus, the Court adopted these Student Loan Guidelines, which apply to adversary proceedings for the discharge of student loans under Section 523(a)(8) where DOE is a defendant and to which the Guidance applies.

3. Stipulation After Service of Summons and Complaint. After the Debtor/Plaintiff files the complaint and serves the DOE with process⁹, if the parties want the court to order sufficient time to follow the DOJ Guidance, the parties must file a stipulation that conforms to the stipulation attached as **Exhibit A** ("Student Loan Stipulation"). The Student Loan Stipulation sets forth the parties' agreement to, and requests the court's approval of, the following:

- a. Extend by 120-days the deadline by which DOE must answer or otherwise respond to the Debtor/Plaintiff's complaint ("DOE Extended Response Deadline");
- b. Set or continue the status conference to a date that is 60 or more days from the date the adversary proceeding was filed, at which the parties will discuss the DOJ Guidance and inform the Court about the status of the Student Loan Stipulation;

⁴ All references to FRBP or FRCP refer to the Federal Rules of Bankruptcy Procedure or Federal Rules of Civil Procedure.

⁵ FRBP 7004(e)

⁶ FRBP 7012(a)

⁷ FRBP 7016 and FRCP 16(b)(2).

⁸ Local Bankruptcy Rules for the Central District of California

⁹ FRBP 7004(e)

- c. Agree that calculation of the deadlines¹⁰ set forth in FRBP Rules 26(a)(1)(C) (exchange of initial disclosures), 26(f)(1) (conduct discovery conference), and 26(f)(2) (filing a discovery plan), which apply to sections under 11 U.S.C. § 523(a)(8) pursuant to FRBP Rule 7026, from the date of the continued scheduling conference; **and**
 - e. Agree that good cause exists for delay in issuing a scheduling order after the deadline set forth in FRCP Rule 16(b)(2), which applies to adversary proceedings pursuant to FRBP Rule 7016.
- C. **Additional Provisions.** An order approving the Stipulation must conform to the example attached as **Exhibit B**. Related FRBP and LBR apply to (a) filing documents and lodging a judgment or other order if the parties reach an agreement about dischargeability.

¹⁰ See FRCP 16(b), 26(a)(1)(A), 26(a)(1)(C), 26(f)(1), and 26(f)(2); and FRBP 7016 and 7026.

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**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA**

**IN RE: GUIDELINES FOR ADVERSARY)
PROCEEDINGS UNDER 11 U.S.C. §)
523(a)(8) FOR STUDENT LOANS HELD) GENERAL ORDER 23-03
BY THE DEPARTMENT OF)
EDUCATION)**

The United States Department of Justice ("DOJ"), in cooperation with the United States Department of Education ("DOE"), announced guidance regarding student loan bankruptcy litigation ("DOJ Guidance") which applies only to student loans held by the DOE, and which became effective on November 17, 2022.

The DOJ Guidance seeks to: (1) set clear, transparent, and consistent expectations for discharging DOE student loans that debtors represented by counsel and self-represented litigants can understand; (2) simplify the fact-gathering process and reduce debtors' burden in filing adversary proceedings aimed at getting a discharge of DOE Student Loans; and (3) increase the number of proceedings where the DOE stipulates to facts demonstrating the existence of


1 undue hardship, where facts support it, and recommends the court discharge a
2 debtor's DOE Student Loans.

3 The Federal Rules of Civil Procedure do not allow enough time for the DOE to
4 provide DOJ with all the information and documentation necessary to make its
5 recommendation to the court as required by the DOJ Guidance.
6

7 The U.S. Bankruptcy Court for the Central District of California (the "Court")
8 believes that allowing time for parties to comply with the DOJ Guidance will save
9 resources of the parties and the Court and will make management of adversary
10 proceedings relating to DOE Student Loans under 11 U.S.C. § 523(a)(8) efficient and
11 fair. The Court prepared its own "GUIDELINES FOR ADVERSARY PROCEEDINGS
12 UNDER 11 U.S.C. § 523(a)(8) FOR STUDENT LOANS HELD BY THE DEPARTMENT
13 OF EDUCATION" which apply only to student loans held by the DOE in adversary
14 proceedings under 11 U.S.C. § 523(a)(8). These guidelines are posted in The Central
15 Guide and are adopted by the Court by this general order.
16
17

18
19 **IT IS SO ORDERED.**

20
21 DATED: September 25, 2023

22
23 
24 THEODOR C. ALBERT
25 Chief Judge
26 United States Bankruptcy Court
27
28

AMERICAN BANKRUPTCY INSTITUTE

[Updated May 2025]

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE _____ DISTRICT OF _____

In re:)	
)	
	)	Case No. _____
	)	Chapter [7]
Debtors.)	
_____)	
)	
)	
Plaintiff,	)	Adversary Pro. _____
)	
v.)	
)	
UNITED STATES DEPARTMENT)	
OF EDUCATION, [et al.],)	
)	
Defendant[s].)	
_____)	

ATTESTATION OF [_____] IN SUPPORT
OF REQUEST FOR STIPULATION CONCEDING
DISCHARGEABILITY OF STUDENT LOANS

PLEASE NOTE: This Attestation should be submitted to the Assistant United States Attorney handling the case. It should not be filed with the court unless such a filing is directed by the court or an attorney.

I, [_____] 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

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

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[Updated May 2025]

2. I reside at _____ [address], in _____ County,
_____ [state].

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

- _____ [full name] _____ [age] _____ [self]
- _____ [full name] _____ [age] _____ [relationship]
- _____ [full name] _____ [age] _____ [relationship]
- _____ [full name] _____ [age] _____ [relationship]
- _____ [full name] _____ [age] _____ [relationship]
- _____ [full name] _____ [age] _____ [relationship]

Questions four through eight 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 and complete: YES NO No Information Provided

[If you answered anything other than “YES,” you must answer questions five through eight].

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

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[Updated May 2025]

6. The current monthly payment on such loan[s] is _____. The loan[s] are scheduled to be repaid in _____ [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 _____, where I was pursuing a _____ degree with a specialization in _____.

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

9. I am currently employed as a _____. My employer’s name and address is _____ [OR] I am not currently employed.

II. CURRENT INCOME AND EXPENSES

10. I do not have the ability to make payments on my student loans while maintaining a minimal standard of living for myself and my household. I submit the following information to demonstrate this:

A. Household Gross Income

11. My current monthly household **gross** income from all sources is \$ _____.¹

This amount includes the following monthly amounts:

¹ “Gross income” means your income before any payroll deductions (for taxes, Social Security, health insurance, etc.) or deductions from other sources of income. You may have included information about your gross income on documents previously filed in your bankruptcy case , including Form B 106I, Schedule I - Your Income (Schedule I). If you filed your Schedule I within the past 18 months and the income information on those documents has not changed, you may refer to that document for the income information provided here. If you filed Schedule I more than 18 months prior to this Attestation, or your income has changed, you should provide your new income information.

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[Updated May 2025]

_____ my **gross** income from employment (if any)
_____ my unemployment benefits
_____ my Social Security Benefits
_____ my _____
_____ my _____
_____ my _____
_____ **gross** income from employment of other members of household
_____ unemployment benefits received by other members of household
_____ Social Security benefits received by other members of household
_____ other income from any source received by other members of household

12. The current monthly household gross income stated above (select which applies):

Includes a monthly average of the gross income shown on the most recent tax return[s] filed for myself and other members of my household, which are attached, and the amounts stated on such tax returns have not changed materially since the tax year of such returns; OR

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].

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[Updated May 2025]

B. Monthly Expenses

14. My current monthly household expenses do/do not exceed the amounts listed

below based on the number of people in my household for the following categories:

(a) Living Expenses²

- i. My expenses for food do exceed do not exceed
\$497 (one person)
\$863 (two persons)
\$1,068 (three persons)
\$1,255 (four persons)

- ii. My expenses for housekeeping supplies do exceed do not exceed
\$45 (one person)
\$75 (two persons)
\$82 (three persons)
\$91 (four persons)

- iii. My expenses for apparel & services do exceed do not exceed
\$93 (one person)
\$181 (two persons)
\$188 (three persons)
\$276 (four persons)

- iv. My expenses for (non-medical) personal care products and services do exceed do not exceed
\$50 (one person)
\$91 (two persons)
\$94 (three persons)
\$117 (four persons)

- v. My miscellaneous expenses (not included elsewhere on this Attestation) do exceed do not exceed
\$154 (one person)
\$271 (two persons)
\$321 (three persons)
\$390 (four persons)

- vi. My total expenses in these categories do exceed do not exceed
\$839 (one person)

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.

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[Updated May 2025]

\$1,481 (two persons)
\$1,753 (three persons)
\$2,129 (four persons in household)
Add \$394 per each additional member if more than four in household.

If you answered that your total expenses for any of the categories (i) through (v) exceed the applicable amount listed in those categories, and you would like the AUSA to consider your additional expenses for any such categories as necessary, you may list the total expenses for any such categories and explain the need for such expenses here. (You do not need to provide any additional information if you answered that your total expenses did not exceed the applicable amount listed in subsection (vi)).

(b) Uninsured medical costs:

My uninsured, out of pocket medical costs do exceed do not exceed

\$84 (per household member under 65)
\$149 (per household member 65 or older)

If you answered that your uninsured, out of pocket medical costs exceed the listed amounts for any household member, and you would like the AUSA to consider such additional expenses as necessary, you may list the household member's total expenses and explain the need for such expenses here.

[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

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

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[Updated May 2025]

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

(a) Payroll Deductions

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

ii. Contributions to retirement accounts \$ _____
[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? YES [] / NO []

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

iv. Life insurance \$ _____
[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 \$ _____
[You may refer to line 19 of the Means Test or Schedule I, line 5]

vi. Health insurance \$ _____
[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? YES [] / NO []

vii. Other payroll deductions
\$ _____
\$ _____
\$ _____

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.

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[Updated May 2025]

(b) Housing Costs⁴

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

(c) Transportation Costs

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

(d) Other Necessary Expenses

- i. Court-ordered alimony and child support payments \$ _____
(if not deducted from pay)
[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 costs \$ _____
[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:

⁴ You should list the expenses you actually pay in Housing Costs and Transportation Costs 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 educational expenses for your children here, aside from necessary nursery or preschool costs.

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[Updated May 2025]

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

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

iv. Life insurance \$ _____
(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 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 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 \$ _____
I am not seeking to discharge

viii. Other expenses I believe necessary for \$ _____
a minimal standard of living.

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

[Updated May 2025]

16. After deducting the foregoing monthly expenses from my household gross income, I have _____ [no, or amount] 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 age 65 or older.

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 degree for which I incurred the student loan[s].

Describe how not completing your degree has inhibited your future earning capacity:

I have a disability or chronic injury impacting my income potential.

⁶ If you have forgone 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.

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[Updated May 2025]

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.

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 the student loans I am seeking to discharge in pursuit of a degree from an institution that is now closed.

Describe how the school closure inhibited your future earnings capacity:

- 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:

[Updated May 2025]

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:

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 a total of \$_____ in payments on the loans, including the following:

___ regular monthly payments of \$_____ each.

___ additional payments, including \$_____, \$_____, and \$_____.

22. I have applied for ___ forbearances or deferments. I spent a period totaling ___ months in forbearance or deferment.

23. I have attempted to contact the company that services or collects on my student loans or the Department of Education regarding payment options, forbearance and deferment options, or loan consolidation at least _____ times.

[Updated May 2025]

24. I have sought to enroll in one or more “Income Driven 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 Driven 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 student loan(s) you are seeking to discharge. These may include efforts to obtain employment, maximize your income, or minimize your expenses. They also may include any efforts you made to apply for a federal loan consolidation, respond to outreach from a loan servicer or collector, or engage meaningfully with a third party you believed would assist you in managing your student loan debt.

[Updated May 2025]

V. CURRENT ASSETS

27. I own the following parcels of real estate:

Address: _____

Owners:⁷ _____

Fair market value: _____

Total balance of mortgages and other liens. _____

28. I own the following motor vehicles:

Make and model: _____

Fair market value: _____

Total balance of Vehicle loans And other liens _____

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:

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

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[Updated May 2025]

Name of entity	State incorporated ⁸	Type ⁹ and %age 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):

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

Signature:

Name:

Date:

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.

CONSUMER PRACTICE EXPERIENCE 2026

[Updated May 2025]

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

In re:)	
)	
Corrinne Downey	)	Case No. 6:24-bk-02114-GER
	)	Chapter 7
Debtors.)	
)	
_____)	
)	
Corrinne Downey)	
)	
Plaintiff,	)	Adversary Pro. 6:24-ap-00040-GER
)	
v.)	
)	
UNITED STATES DEPARTMENT)	
OF EDUCATION, [et al.],)	
)	
Defendant[s].)	
_____)	

ATTESTATION OF Corrinne Downey
IN SUPPORT OF REQUEST FOR STIPULATION CONCEDING
DISCHARGEABILITY OF STUDENT LOANS

PLEASE NOTE: This Attestation should be submitted to the Assistant United States Attorney handling the case. It should not be filed with the court unless such a filing is directed by the court or an attorney.

I, Corrinne Downey, 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

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

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[Updated May 2025]

2. I reside at 928 Grovesmere Loop, Ocoee [address],
in Orange County, Florida [state].

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

NAME:	AGE:	RELATIONSHIP:
Corrinne Downey	58	[self]



Questions four through eight 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 and complete: YES NO No Information Provided

[If you answered anything other than “YES,” you must answer questions five through eight].

5. The outstanding balance of the student loan[s] I am seeking to discharge in this adversary proceeding is \$ 131,730.46.

CONSUMER PRACTICE EXPERIENCE 2026

[Updated May 2025]

6. The current monthly payment on such loan[s] is 1,076.74.^{*} The loan[s] are scheduled to be repaid in 01/2027 ^{according to a recent statement} [month and year] [OR] My student loan[s] went into default in _____ [month and year].^{**}

7. I incurred the student loans I am seeking to discharge while attending Joliet Junior College, College of DuPage, Devry University, Illinois Benedictine University, National Louis University, where I was pursuing a Bachelors in Organizational Leadership and Masters in Human Resource Management and Development.

8. In 06/2000, I completed my course of study and received a Bachelors Degree. In 12/2009, I completed my course of study and received a Masters Degree.

9. I am currently employed as a Account Specialist I. My employer's name and address is JP Morgan Chase, Heathrow, Florida 32746.

II. CURRENT INCOME AND EXPENSES

10. I do not have the ability to make payments on my student loans while maintaining a minimal standard of living for myself and my household. I submit the following information to demonstrate this:

A. Household Gross Income

11. My current monthly household **gross** income from all sources is \$ 4,047.00.¹ This amount includes the following monthly amounts:

¹ "Gross income" means your income before any payroll deductions (for taxes, Social Security, health insurance, etc.) or deductions from other sources of income. You may have included information about your gross income on documents previously filed in your bankruptcy case, including Form B 106I, Schedule I - Your Income (Schedule I). If you filed your Schedule I within the past 18 months and the income information on those documents has not changed, you may refer to that document for the income information provided here. If you filed Schedule I more than 18 months prior to this Attestation, or your income has changed, you should provide your new income information.

^{*}Current monthly payment computed based on 10-year Standard Repayment Plan as of the date of the Attestation.

^{**}Default date reflects first default of any loan.

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[Updated May 2025]

- \$ 4,047.00 my **gross** income from employment (if any)
- \$ _____ my unemployment benefits
- \$ _____ my Social Security Benefits
- \$ _____ my _____
- \$ _____ my _____
- \$ _____ my _____
- \$ _____ **gross** income from employment of other members of household
- \$ _____ unemployment benefits received by other members of household
- \$ _____ Social Security benefits received by other members of household
- \$ _____ other income from any source received by other members of household

12. The current monthly household gross income stated above (select which applies):

Includes a monthly average of the gross income shown on the most recent tax return[s] filed for myself and other members of my household, which are attached, and the amounts stated on such tax returns have not changed materially since the tax year of such returns; OR

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].

CONSUMER PRACTICE EXPERIENCE 2026

[Updated May 2025]

B. Monthly Expenses

14. My current monthly household expenses do/do not exceed the amounts listed

below based on the number of people in my household for the following categories:

(a) Living Expenses²

- i. My expenses for food do exceed do not exceed
\$497 (one person)
\$863 (two persons)
\$1,068 (three persons)
\$1,255 (four persons)
- ii. My expenses for housekeeping supplies do exceed do not exceed
\$45 (one person)
\$75 (two persons)
\$82 (three persons)
\$91 (four persons)
- iii. My expenses for apparel & services do exceed do not exceed
\$93 (one person)
\$181 (two persons)
\$188 (three persons)
\$276 (four persons)
- iv. My expenses for (non-medical) personal care products and services do exceed do not exceed
\$50 (one person)
\$91 (two persons)
\$94 (three persons)
\$117 (four persons)
- v. My miscellaneous expenses (not included elsewhere on this Attestation) do exceed do not exceed
\$154 (one person)
\$271 (two persons)
\$321 (three persons)
\$390 (four persons)
- vi. My total expenses in these categories do exceed do not exceed
\$839 (one person)

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.

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[Updated May 2025]

\$1,481 (two persons)
\$1,753 (three persons)
\$2,129 (four persons in household)
Add \$394 per each additional member if more than four in household.

If you answered that your total expenses for any of the categories (i) through (v) exceed the applicable amount listed in those categories, and you would like the AUSA to consider your additional expenses for any such categories as necessary, you may list the total expenses for any such categories and explain the need for such expenses here. (You do not need to provide any additional information if you answered that your total expenses did not exceed the applicable amount listed in subsection (vi)).

When we need to purchase food, groceries, or entertainment.

(b) Uninsured medical costs:

My uninsured, out of pocket medical costs do exceed do not exceed

\$84 (per household member under 65)
\$149 (per household member 65 or older)

If you answered that your uninsured, out of pocket medical costs exceed the listed amounts for any household member, and you would like the AUSA to consider such additional expenses as necessary, you may list the household member’s total expenses and explain the need for such expenses here.

[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

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

CONSUMER PRACTICE EXPERIENCE 2026

[Updated May 2025]

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

(a) Payroll Deductions

i. Taxes, Medicare and Social Security \$ 628.00
[You may refer to line 16 of the Means Test or Schedule I, line 5]

ii. Contributions to retirement accounts \$ 0.00
[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? YES [] / NO [X]

iii. Union dues \$ 0.00
[You may refer to line 17 of the Means Test or Schedule I, line 5]

iv. Life insurance \$ 64.92
[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 [X]

v. Court-ordered alimony and child support \$ 0.00
[You may refer to line 19 of the Means Test or Schedule I, line 5]

vi. Health insurance \$ 98.00
[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? YES [] / NO [X]

vii. Other payroll deductions
\$ _____
\$ _____
\$ _____

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.

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[Updated May 2025]

(b) Housing Costs⁴

i.	Mortgage or rent payments	\$ 0.00
ii.	Property taxes (if paid separately)	\$ 0.00
iii.	Homeowners or renters insurance (if paid separately)	\$ 0.00
iv.	Home maintenance and repair (average last 12 months' amounts)	\$ 0.00
v.	Utilities (include monthly gas, electric water, heating oil, garbage collection, residential telephone service, cell phone service, cable television, and internet service)	\$ 430.13

(c) Transportation Costs

i.	Vehicle payments (itemize per vehicle)	\$ 0.00
ii.	Monthly average costs of operating vehicles (including gas, routine maintenance, monthly insurance cost)	\$ 548.58 (See Schedule 15)
iii.	Public transportation costs	\$ 0.00

(d) Other Necessary Expenses

- i. Court-ordered alimony and child support payments \$ _____
(if not deducted from pay)
[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 costs \$ _____
[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:

⁴ You should list the expenses you actually pay in Housing Costs and Transportation Costs 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 educational expenses for your children here, aside from necessary nursery or preschool costs.

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[Updated May 2025]

iii. Health insurance \$ 98.00
(if not deducted from pay)
[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 []

iv. Life insurance \$ 64.92
(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 covering your life? YES [] / NO [x]

v. Dependent care (for elderly or disabled 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:

[Empty text box for explanation]

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

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

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

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

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

[Empty text box for explanation]

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[Updated May 2025]

16. After deducting the foregoing monthly expenses from my household gross income, I have \$-1,367.63 [no, or amount] remaining income. (See Schedule 16)

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:

\$2,000.00 - At some point in the near future I will need to find a place of my own to live. I live with my parents presently. I also need to start saving for retirement.

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 age 65 or older.
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 degree for which I incurred the student loan[s].

Describe how not completing your degree has inhibited your future earning capacity:

- I have a disability or chronic injury impacting my income potential.

6 If you have forgone 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.

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[Updated May 2025]

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 diagnosed with Bipolar I with anxiety disorder, which causes periods of severe depression and mania, since 2005 to 2006. This condition affects my ability to concentrate, maintain energy, regulate mood, and manage stress. All of which are critical and interfere with my ability to work from time to time. I have good days, and I have bad days, I haven't worked 4 out of the last five years. It is unknown on a daily basis if I will be able to continue working. I'm trying my best.

In addition, I'm currently experiencing symptoms of chronic nausea, fatigue, voice issues including chronic laryngitis, and persistent pain related to piriformis syndrome. Due to the severity and variability of these symptoms, I have initiated FMLA leave starting 07/14/25, during this leave, I am being forced to use "entitlements" including sick and vacation time per company policy. I took my last sick day today and the remaining vacation time (63 hours) will be deducted. If I am let go in 2025 or 2026, I may be required to repay wages paid for sick/vacation time that was used before it was officially earned.



I have been unemployed for at least five of the past ten years. Please explain your efforts to obtain employment.

I did not work the years of 2020, 2021, 2022 (only \$96) and 2023. In 2020 when the COVID pandemic occurred I lost my employment. In 2021 I was placed on leave through the federal family medical leave act. In 2023 I was baker acted and unable to work.

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 the student loans I am seeking to discharge in pursuit of a degree from an institution that is now closed.

Describe how the school closure inhibited your future earnings capacity:

[Empty text box]



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 work in as a call center customer representative and a degree is not required for my position.

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[Updated May 2025]

- 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:

I barely get by covering my basic needs. I do not have funds leftover to pay my student loans after my expenses. I live with my parents, they are in their 80's and I will need to find my own place in the future and my expenses will increase.

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

Explain these circumstances:

I have been diagnosed with Bipolar I disorder and anxiety, which include episodes of depression and mania. I'm concerned that these conditions, along with physical health challenges and medication side effects, will continue to interfere with my ability to work full time and maintain consistent income

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 a total of \$ 5,000.00 in payments on the loans, including the following:

100 regular monthly payments of \$ 50.00 each.
0 additional payments, including \$ _____, \$ _____, and \$ _____ (See Schedule 21 for details).

22. I have applied for 0 forbearances or deferments. I spent a period totaling 0.0 months in forbearance or deferment. (months reflects SUM TOTAL of all forbearances/deferments for EVERY loan; see Schedule 22)

23. I have attempted to contact the company that services or collects on my student loans or the Department of Education regarding payment options, forbearance and deferment options, or loan consolidation at least 8 times.

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[Updated May 2025]

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

Description of efforts:

Debtor enrolled in IDR 5/2015

25. [If you did not enroll in such a program]. I have not enrolled in an “Income Driven 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 student loan(s) you are seeking to discharge. These may include efforts to obtain employment, maximize your income, or minimize your expenses. They also may include any efforts you made to apply for a federal loan consolidation, respond to outreach from a loan servicer or collector, or engage meaningfully with a third party you believed would assist you in managing your student loan debt.

I have tried to earn more money and reduce expenses.

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[Updated May 2025]

V. CURRENT ASSETS

27. I own the following parcels of real estate:

Address:

Owners:⁷

Fair market value:

Total balance of mortgages and other liens.

28. I own the following motor vehicles:

Make and model: _____

Fair market value: _____

Total balance of Vehicle loans And other liens _____

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:

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

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[Updated May 2025]

Name of entity	State incorporated ⁸	Type ⁹ and %age 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 am currently facing challenges in managing my medications and maintaining employment. Since graduating, I have encountered numerous obstacles in life. I don't foresee being able to pay my student loans payments. I seem to barely meet my minimal expenses.

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

Signature: _____

Corrinne L Downey

Name: _____

07 / 14 / 2025

Date: _____

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.

Schedule 15

List of Expenses that Exceed IRS Local Standards

Monthly Average Costs Payments - I do not own a car, my son does. I pay for gas, tolls for him to drop me off and maintaining the vehicle.

CONSUMER PRACTICE EXPERIENCE 2026

**Schedule 16
Income and Expense Details**

Expense Details:

Expense	Borrower's Reported Amount	IRS Allowed Amount	Department Attorney Expected Allowed Amount*
Living Expenses			
Food	\$863.00	\$863.00	\$863.00
Housekeeping supplies	\$75.00	\$75.00	\$75.00
Apparel & Services	\$181.00	\$181.00	\$181.00
Personal care products and Services	\$91.00	\$91.00	\$91.00
Uninsured medical costs	\$168.00	\$168.00	\$168.00
Miscellaneous expenses	\$271.00	\$271.00	\$271.00
Total Living Expenses	\$1,649.00	\$1,649.00	\$1,649.00
Payroll Deduction			
Taxes, Medicare and Social Security	\$628.00	-	\$628.00
Contributions to retirement accounts	\$0.00	-	\$0.00
Union dues	\$0.00	-	\$0.00
Life insurance	\$0.00	-	\$0.00
Court-ordered alimony and child support	\$0.00	-	\$0.00
Health insurance	\$94.00	-	\$94.00
Other payroll deduction #1		-	
Other payroll deduction #2		-	
Other payroll deduction #3		-	
Total Payroll Deductions	\$722.00	-	\$722.00
Housing Costs			
Mortgage or rent payments	\$0.00	\$1,650.00	\$0.00
Property taxes (if paid separately)	\$0.00	-	\$0.00
Homeowners or renters insurance (if paid separately)	\$0.00	-	\$0.00
Home maintenance and repair (avg last 12 months)	\$0.00	-	\$0.00
Utilities	\$430.13	\$685.00	\$430.13
Total Housing Costs	\$430.13		\$430.13

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Expense	Borrower's Reported Amount	IRS Allowed Amount	Department Attorney Expected Allowed Amount*
Transportation Costs			
Vehicle payments	\$0.00	\$662.00	\$0.00
Monthly average costs of operating vehicles	\$548.58	\$281.00	\$281.00 - \$548.58
Public transportation costs	\$0.00	\$244.00	\$0.00
Total Transportation Costs	\$548.58	\$1,187.00	\$281.00 - \$548.58
Other Necessary Expenses			
Court-ordered alimony and child support payments (if not deducted from pay)	\$0.00	-	\$0.00
Babysitting, day care, nursery and preschool costs	\$0.00	-	\$0.00
Health insurance (if not deducted from pay)	\$0.00	-	\$0.00
Life insurance (if not deducted from pay)	\$64.92	-	\$64.92
Dependent care (for elderly or disabled family)	\$0.00	-	\$0.00
Delinquent federal, state or local tax debt	\$0.00	-	\$0.00
Other student loans (not being discharged)	\$0.00	-	\$0.00
Other expenses	\$0.00	-	\$0.00
Expenses not incurred	\$2,000.00	-	
Total Other Necessary Expenses	\$2,064.92	-	\$2,064.92
TOTAL EXPENSES	\$5,414.63		

Net Income Analysis:

Total Gross Income	\$4,047.00
Total Expenses**	\$5,414.63
Net Income	\$-1,367.63

*AUSA to review debtor's explanations for why any actual expenses may exceed IRS Standards. Per DOJ Guidance, AUSA should accept debtor's reported amount if it is warranted by debtor's circumstances and would "comport with a 'minimal standard of living'".

** Assumes AUSA accepts all expenses including those which may exceed IRS Standards.

Schedule 21

Additional Student Loan Payments Made

Number of Payments	Amount
0	\$ 0.00

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



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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

“
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/dlil/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,prevented%20from%20starting%20a%20business.>

Share your thoughts

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



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FEATURE: DISCHARGING DESPAIR

Discharging Despair:

How Bankruptcy Attorneys Can Turn Student Loan Nightmares into New Beginnings

BY IGOR ROITBURG, SENIOR MANAGING DIRECTOR, STRETTO AND ROBERT AND TAMMY BRANSON, BRANSON LAW PLLC



The statistics are staggering and heartbreaking. According to recent studies, one in 16 student-loan-borrowers has experienced suicidal ideations directly attributed to their student loans.¹ Nearly 80% report chronic anxiety,² while 56% suffer from debt-induced panic attacks and sleepless nights.³ A comprehensive analysis of over 85,000 social media comments revealed a devastating portrait of despair, with borrowers expressing feelings of hopelessness, anger and profound fear about their financial futures.⁴ Student loans are far more than a debt crisis—they represent a full-scale mental health emergency affecting millions of Americans. Bankruptcy could ease this crisis.

The psychological toll of student loan debt manifests itself in countless ways. For instance, it's common for borrowers to delay major life decisions because of crushing monthly payments, such as getting married, purchasing a home or having children. Young professionals may accept jobs they despise, trapped by the need to service debt rather than pursue their passions, often not earning sufficient income to pay their student loans. Frustration compounds financial stress, creating a vicious cycle where mental health deteriorates. This cycle affects job performance and earning potential, which in turn makes the debt even more insurmountable. The American dream drifts away.

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The mental health crisis triggered by student loan debt isn't just emotional—it's physical as well. Individuals carrying student loan debt into early middleage face a higher risk of cardiovascular illness.⁵ A 2013 study from Northwestern University found that feelings of significant indebtedness were associated with higher diastolic blood pressure, which can increase the risk of hypertension and stroke.⁶ More recently, a 2023 study in *Addictive Behaviors* found that higher levels of student debt were associated with increased substance use.⁷

Surprisingly, most borrowers, and many bankruptcy attorneys, still don't realize that borrowers may be able to avoid these

consequences by discharging their student loans in bankruptcy. It's now not only possible, but predictable, to discharge federal student loans because of the November 2022 Department of Justice Guidance (the Guidance).⁸ The Guidance is a game changer and shouldn't be ignored. The law hasn't changed; but, under this new Guidance, the process in which federal student loan cases are reviewed for "undue hardship" has been streamlined. This streamlining makes it easier to discharge federal student loans. The Guidance did not just tweak the rules; it revolutionized the entire paradigm of student loan bankruptcy discharge. By focusing on clear, objective criteria that are easy to understand, rather than the subjective "certainty of hopelessness," the Guidance allows debtors and their attorneys a path to recognize which cases meet the criteria to proceed. What was once considered virtually impossible has become remarkably achievable. The data speaks volumes, with success rates of 87% for those using the new attestation process.⁹ This is a complete reversal of the near-zero success rates of the past.

What makes the DOJ Guidance so groundbreaking is that it doesn't just break the chains of never-ending debt; it also breaks the psychological chains that bind borrowers to despair. There's emerging evidence that demonstrates improvements in health and well-being when unsecured debt like student loans is discharged or reduced.¹⁰ When attorneys secure student loan discharges, they're not just changing financial well-being, they're helping clients improve their mental health by removing a seemingly permanent burden.

Yet, despite this game changing and potentially life-changing effects a discharge could have on a debtor's life (financially and emotionally), most bankruptcy attorneys haven't fully embraced this opportunity. Many still operate under outdated assumptions regarding student loan discharge, afraid to even explore the Guidance, let alone recommend it to their clients. This failure represents both a tragedy for struggling borrowers and a massive, missed opportunity for bankruptcy attorneys.

The bankruptcy bar must reevaluate their approach and handling of student loan debt. Bankruptcy attorneys have the power to address one of the most pressing mental health crises of our time. The 87% success

rate is not just a statistic—it represents hundreds of thousands of Americans who could reclaim their mental health, their dreams and their futures. Helping emancipate debtors from their student loan debt is not just altruistic. Attorneys taking up the cause are also opening new revenue streams for their firms. Most debtors were unable to afford the fees associated with adversary proceedings before this new guidance. Removing the litigation and discovery aspects of these cases has made a path for attorneys to affordably represent debtors.

As student loan collections resume, credit reporting and wage garnishments leave millions of borrowers struggling to make ends meet, the need has never been more urgent. Bankruptcy attorneys stand at the intersection of law and public health, uniquely positioned to deliver both financial and psychological liberation. The DOJ Guidance hasn't just changed the rules—it's created a new model where bankruptcy attorneys can be genuine advocates of transformation, turning despair into hope, one discharge at a time. The question is not whether to embrace this opportunity but how quickly can we scale it to meet the overwhelming need. ■

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Full Discharge Ahead?
An Empirical First Look at the New Student Loan Discharge Process in Bankruptcy
Belisa Pang, Dalié Jiménez, & Matthew Bruckner*

The legal framework for discharging student loan debt held bankruptcy filers cases changed in November 2022 with the Biden Administration’s Department of Justice issuing its “Guidance for Department Attorneys Regarding Student Loan Bankruptcy Litigation,” fundamentally altering the legal framework for discharging student loan debt in bankruptcy cases. The Guidance aims to enhance consistency and equity by (1) ensuring transparent and consistent expectations, (2) reducing the burden on debtors, and (3) making it easier for DOJ attorneys to recommend discharging a debtor’s student loans. The DOJ has touted the new Guidance as having “made a real difference in borrowers’ lives,” comprehensive analysis has been lacking.

This Article empirically assesses whether the Guidance has achieved its objectives by analyzing student loan litigation in bankruptcy. Our findings reveal that, 23 months after the Guidance was announced, 2,514 new student loan adversary proceedings (SLAPs) were filed – a 330% increase compared to a similar period before the Guidance – with a third of these proceedings stemming from prior bankruptcies. Despite this significant increase, we find that this still means that fewer than 1% of bankruptcy filers with student loans seek to discharge them in bankruptcy. Notably, borrowers with smaller student loan debts become more likely to seek relief, indicating the Guidance may have lowered barriers for this group. Additionally, the increase in SLAP filings is regionally concentrated, suggesting that certain courts or consumer bankruptcy attorneys are “early adopters” of the new legal regime. Case processing times were initially slower but are returning to historical levels.

Our data suggests that while the Guidance has positively impacted the willingness of borrowers to seek the discharge of their student loans once in bankruptcy, overall use of this relief remains negligible relative to the total number of bankruptcy cases, indicating that additional efforts are needed to enhance access and awareness. Until Congress amends the Bankruptcy Code by removing Section 523(a)(8), the new Guidance serves as a beacon of hope for struggling borrowers seeking relief through bankruptcy.

* Belisa Pang [will soon be an] assistant professor [at amazing school]. Dalié Jiménez is Professor of Law and Director of the Student Loan Law Initiative at the University of California Irvine School of Law. Matthew Bruckner is Professor of Law at Howard University School of Law. The authors would like to thank Edward Boltz, Joshua Cohen, Norma Hammes, and John Rao for their ideas, comments, and suggestions. Thank you also to the editors of the Emory Bankruptcy Developments Journal for their editorial assistance. This paper also benefited from comments received from participants at the Harvard-Wharton Insolvency and Restructuring Conference. And because it never gets old for one’s children to see their name in print, thank you to Arden, Ellyn, and Henry for being such wonderful kids.

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I. Introduction

From 2004-06, Aria Whitmore “studied emergency medicine and medical terminology and pharmacology” at Pueblo Community College in Colorado.¹ Despite attending for two years, she didn’t finish a degree there.² Years later, she returned to college, but she

¹ Note that the name has been changed to protect anonymity.
² Complaint at 3, No. 23-01009-KHK (Bankr. E.D. Va. Mar. 20, 2023), ECF No. 1..

“was not able to finish school to the point of receiving any degrees.”³ Now, Ms. Whitmore works “two jobs and over 60 hours per week” as a medical coder at a diabetes and thyroid center.⁴ But she’s never made enough to repay the \$13,375 she borrowed to attend college (almost \$18,000 with accrued interest).⁵ After struggling to repay her student loans for more than a decade, she filed for bankruptcy in October 2022 and initiated an adversary proceeding to address her student loan debt in March 2023.

Ms. Whitmore’s case is a success story for a new bankruptcy process to address student loans.⁶ The government quickly responded to her complaint and by early April had already encouraged her to fill out the paperwork to prove she was eligible for relief under their new process, even though her underlying bankruptcy case was initiated before this new guidance was put in place.⁷ Less than four months after her adversary proceeding was initiated, the government consented to a full discharge of all Ms. Whitmore’s student loans.⁸

While this one case was successful, this Article seeks to determine whether this case is an outlier or an exemplar of how the bankruptcy system treats student loan debt. This is newly relevant because of changes to the legal framework surrounding federal student loan debt in bankruptcy that occurred in November 2022 when the Biden Administration’s Department of Justice issued its “Guidance for Department Attorneys Regarding Student Loan Bankruptcy Litigation” (the Guidance).⁹ The Administration established a new process for bankruptcy cases where borrowers seek to discharge their student loans. This new process could have wide-ranging relevance because, as of

³ Complaint at 3, 23-01009-KHK (Bankr. E.D. Va. Mar. 20, 2023), ECF No. 1.

⁴ See Complaint at 3, 23-01009-KHK (Bankr. E.D. Va. Mar. 20, 2023), ECF No. 1.

⁵ See Complaint at 3, 23-01009-KHK (Bankr. E.D. Va. Mar. 20, 2023), ECF No. 1.

⁶ See *infra* Section II. C for more information about the new Guidance.

⁷ Consent Motion to Stay Adversary Proceeding and Memorandum in Support Thereof, ADV. PROC. NO. 23-01009-KHK, Dkt #6 (filed 4/4/23) (reporting to the court that the government had “already forwarded to Plaintiff’s counsel the Attestation Form described in the Guidance used to consider requests to discharge student loans” even though her bankruptcy was filed pre-Guidance).

⁸ See Consent Order at 1-2, No. 23-01009-KHK (Bankr. E.D. Va. July 14, 2023), ECF No. 11.

⁹ Department Guidance Memorandum from U.S. Dep’t of Just., Guidance for Department Attorneys Regarding Student Loan Bankruptcy Litigation, at 1 (Nov. 17, 2022), [hereinafter *New Guidance Memorandum*] <https://www.justice.gov/civil/file/1553726/dl?inline>. Cf. Daniel Mangrum et al., *Three Key Facts from the Center for Microeconomic Data’s 2022 Student Loan Update*, FED. RESERVE BANK OF N.Y.: LIBERTY ST. ECON. (Aug. 9, 2022), <https://libertystreeteconomics.newyorkfed.org/2022/08/three-key-facts-from-the-center-for-microeconomic-datas-2022-student-loan-update/> (stating that “[o]ver the past decade (but prior to the COVID-19 pandemic), the share of borrowers in each of these categories was relatively stable—around 37 percent of borrowers had declining balances, around 47 percent of borrowers had either flat or increasing balances, and around 15 percent of borrowers were in delinquency or default”).

December 31, 2021, there were approximately 215,000 federal student loans in open bankruptcy cases.¹⁰

This Article begins to examine the question of whether the new Guidance was as successful for others as it was for Ms. Whitmore.¹¹ The stated goals for this guidance were to “enhance consistency and equity in the handling of these cases” by (1) ensuring transparent and consistent expectations, (2) reducing the burden on debtors, and (3) making it easier for Department of Justice (DOJ) attorneys to identify appropriate cases where they can stipulate to the facts demonstrating a debt would impose an undue hardship and recommend to the court that a debtor’s student loans be discharged.¹² While the Department claims that the new guidance has “made a real difference in borrowers’ lives,” no one had provided a deep dive into these cases.¹³ And so we’ve decided to do so.

This Article presents the most comprehensive data of student loan adversary proceedings published to date.¹⁴ Using four different datasets, we have undertaken an empirical analysis of student loan litigation in bankruptcy, including a comparison between the cases brought pre- and post-Guidance. Here’s what we know so far: twenty-three months after the new guidance was rolled out, 2,523 adversary proceedings had been filed where a debtor was eligible to use the Guidance procedures and only 2,225 had filed their adversary proceeding after the Guidance. This represents an almost 330 percentage

¹⁰ This is exclusive of Perkins loans. See Letter from Sandra Lewandowski, Gov’t Info. Specialist, Off. of the Sec’y of Educ., to Matthew Adam Bruckner, Assoc. Professor, Howard Univ. Sch. of Law, (May 12, 2023) (on file with author).

¹¹ In full disclosure, two of this Article’s authors were part of an ad hoc group that liaised with officials at the Department of Education as this Guidance was taking shape. It began in May 2018 when we submitted a comment to the Department of Education (with forty-one nonauthor signatories). See generally Dalié Jiménez et al., *Comments of Bankruptcy Scholars on Evaluating Undue Hardship Claims in Bankruptcy*, 21 J. CONSUMER & COM. L. 114, 114–24 (2018). Two years later, we published an article calling for a new streamlined procedure of consent settlements. See generally Matthew Bruckner, Brook Gotberg, Dalié Jiménez & Chrystin Ondersma, *A No-Contest Discharge for Uncollectible Student Loans*, 91 COLO. L. REV. 183, 190–91 (2020).

¹² *New Guidance Memorandum*, at 1–2 (Nov. 17, 2022), <https://www.justice.gov/civil/file/1553726/dl?inline>.

¹³ Press Release, Off. of Pub. Affairs U.S. Dep’t of Just., Justice Department and Department of Education Announce Successful First Year of New Student-Loan Bankruptcy Discharge Process (Nov. 16, 2023), [hereinafter *DOJ Press Release*] <https://www.justice.gov/opa/pr/justice-department-and-department-education-announce-successful-first-year-new-student-loan>. [https://perma.cc/9NPA-W5FE]

¹⁴ See, e.g., Aaron N. Taylor & Daniel J. Sheffner, *Oh, What a Relief It (Sometimes) Is: An Analysis of Chapter 7 Bankruptcy Petitions to Discharge Student Loans*, 27 STAN. L. & POL’Y REV. 295 (2016); Rafael I. Pardo & Michelle R. Lacey, *Undue Hardship in the Bankruptcy Courts: An Empirical Assessment of the Discharge of Education Debt*, 74 U. CIN. L. REV. 405 (2005); Jason Iuliano, *The Student Loan Bankruptcy Gap*, 70 DUKE L.J. 497 (2020). See also Daniel A. Austin, *Student Loan Debt in Bankruptcy: An Empirical Assessment*, 48 SUFFOLK U. L. REV. 577, 577–80 (2015).

increase relative to the number of Student Loan Adversary Proceedings (SLAPs) filed in a comparable period.¹⁵ However, it is still small in absolute numbers – we estimate this involves between 0.5-0.8% of all debtors who filed bankruptcy with student debts.¹⁶

The rest of this Article proceeds as follows. In Part II, we discuss the history of § 523(a)(8) and how it has grown more restrictive over time. We also note the traditional process for discharging student loans in bankruptcy and how that changed with the new Guidance. In Part III, we discuss our data and methodology. In Part IV, we report our findings. These include data on the changes wrought by the new Guidance, including more filers seeking to discharge student loans in bankruptcy, more adversary proceedings being filed for older bankruptcies, and the geographic concentration of these cases. We also report on the characteristics of people who seek to discharge their student loans, including their likelihood of being represented by an attorney and on their financial situation. Finally, we find that the post-Guidance cases are taking longer to resolve in the first few months, but that this difference disappears once we look at ten months after filing. Part V provides our thinking on these results and recommendations for further action. A conclusion follows.

II. A Brief History and Background on the New Guidance

The Bankruptcy Code provides a path for debtors to discharge (cancel) their personal liability for a wide range of debts. The bankruptcy discharge has numerous exceptions, most of which have been criticized.¹⁷ This Article focuses on section 523(a)(8) of the Bankruptcy Code, which provides that a bankruptcy discharge “does not discharge an individual debtor from any debt unless excepting such debt from discharge under this

¹⁵ $100 * ((585 \text{ (number of filings pre-guidance)} / 2514 \text{ (number of filings post-guidance)}) - 585 \text{ (number of filings pre-guidance)})$.

¹⁶ DOJ Press Release (Nov. 16, 2023), <https://www.justice.gov/opa/pr/justice-department-and-department-education-announce-successful-first-year-new-student-loan>.

¹⁷ For work arguing that all or most of section 523 (“Exceptions to Discharge”) should be completely stricken from the Bankruptcy Code, see Nicole Langston, *Discharging Government Debt*, 78 VAND. L. REV. (forthcoming 2025); Nicole Langston, *Welfare Debt*, 113 CAL. L. REV. (forthcoming 2025); Nicole Langston, *Discharge Discrimination*, 111 CAL. L. REV. 1031, 1150–61 (Aug. 2023). For work arguing that the student loan exception to discharge should be abolished, see *Written Testimony of Dalie Jimenez Before the H. Judiciary Subcomm. on Antitrust, Com., and Admin. Law*, 116th Cong. (Jun. 25, 2019) (written statement of Dalie Jiménez, Professor of Law, U. Cal. Irvine School of Law).

paragraph would impose an undue hardship on the debtor and the debtor's dependents, for [certain qualifying obligations.]"¹⁸

This exception was first enacted before the modern Bankruptcy Code and revised several times since. The history of this section has been called "tortuous," and is detailed fully elsewhere.¹⁹ While the loans that were subject to discharged changed significantly between 1978 and 2005, when the last amendment was enacted, the concept of "undue hardship" and the lack of Congressional explanation of it, has remained. Without a statutory definition, courts defined this phrase themselves.²⁰ Most notably, a 1985 case from the Southern District of New York called *Brunner v. N.Y. State Higher Education Services Corporation* (*In re Brunner*) defined the phrase and is now widely used, although some courts use the "totality-of-the-circumstances" test instead.²¹

The Brunner test sets forth three factors for courts to consider when deciding whether repayment of student loans would cause an "undue hardship," including: whether

¹⁸ 11 U.S.C. § 523(a)(8); see also Jason Iuliano, *Student Loan Bankruptcy and the Meaning of Educational Benefit*, 93 AM. BANKR. L.J. 277, 281 (2019) (arguing that the language of section 523(a)(8) is less expansive than usually thought). The burden of proving undue hardship by a preponderance of the evidence falls on the debtor. Rafael I. Pardo, *The Undue Hardship Thicket: On Access to Justice, Procedural Noncompliance, and Pollutive Litigation in Bankruptcy*, 66 FLA L. REV. 2101, 2110-11 (2014)

¹⁹ See Dalié Jiménez, *A Tortuous History: The Student Loan Exception to Discharge* 5-6 (Apr. 10, 2014) (unpublished manuscript), <https://papers.ssrn.com/abstract=3544267>; Bruce Grohsgal, *Can Student Loans Be Discharged in Bankruptcy?*, 90 MISS. L.J. 35, 47 (2020); W. Shane Mackey, *The discharge ability of educational loans as an undue hardship pursuant to the United States Bankruptcy Code: Legislative history of 11 USC § 523 (A) (8) and analysis of interpretive Sixth Circuit precedent* 4 (2005) (Senior Honors Theses & Projects, E. Mich. U.), <https://commons.emich.edu/cgi/viewcontent.cgi?article=1079&context=honors>;

²⁰ Jason Iuliano, *The Student Loan Bankruptcy Gap*, 70 DUKE L.J. 497, 503 (2020) ("Because Congress has never defined 'undue hardship,' the judiciary has been forced to flesh out the meaning of the phrase. To that end, most courts have coalesced around a test first set forth in *Brunner v. New York State Higher Education Services Corp.*"); John Patrick Hunt, *Student Loan Purpose and the Brunner Test*, 15 HARV. L. & POL'Y REV. 237, 254 (2020).

²¹ See *Brunner v. N.Y. State Higher Educ. Servs. Corp. (In re Brunner)*, 46 B.R. 752, 755-56 (S.D.N.Y. 1985); see also Matthew Bruckner, Brook Gotberg, Dalié Jiménez & Chrystin Ondersma, *A No-Contest Discharge for Uncollectible Student Loans*, 91 U. COLO. L. REV. 183, 194-95 ("The bankruptcy courts have generally coalesced around the *Brunner* test, though some use the 'totality of the circumstances' test instead."); Carissa Sterling, *DOJ Provides Guidance on Evaluating Federal Student Loan Discharge Requests in Bankruptcy*, AM. BANKR. INST. J., Apr. 2023, at 14, https://s3.amazonaws.com/abi-org-corp/journals/consumer_04-23_0.pdf. (arguing that a minority of courts follow the quite-similar, "totality-of-the-circumstances" test, which analyzes "(1) the debtor's past, present, and reasonably reliable future financial resources; (2) calculation of the debtor's and his dependents' reasonable necessary living expenses; and (3) any other relevant facts and circumstances surrounding each particular bankruptcy case."); *Andresen v. Neb. Student Loan Program, Inc. (In re Andresen)*, 232 B.R. 127, 139 (B.A.P. 8th Cir. 1999); *Long v. Educ. Credit Mgmt. Corp. (In re Long)*, 322 F.3d 549, 553 (8th Cir. 2003); Rafael I. Pardo & Michelle R. Lacey, *Undue Hardship in the Bankruptcy Courts: An Empirical Assessment of Educational Debt*, 74 U. CIN. L. REV. 405, 488 n.348 (2005).

(1) the debtor cannot maintain based on the current income and expenses, a ‘minimal’ standard of living for herself and her dependents if forced to repay the loans; (2) . . . this state of affairs is likely to persist for a significant of the repayment period of the student loans; and (3) that the debtor has made good faith efforts to repay the loans.²²

Although 523(a)(8) was amended several times after *Brunner*, courts have adopted its language without considering these amendments, in most cases interpreting “undue hardship” in a very restrictive fashion.²³ The test has been the subject of withering criticism for being “random, arbitrary and unfair”^{24ab} and judicial opinions applying the standard have been called “haphazard” and “inconsistent and unprincipled”.²⁵

Possibly as a response to the criticisms,²⁶ in November 2022, the DOJ announced a new process for assessing the merits of discharging student loans in bankruptcy cases.²⁷ The Guidance seeks to promote three goals:

²² See *Brunner v. N.Y. State Higher Educ. Servs. Corp.*, 831 F.2d 395, 396 (2d Cir. 1987).

²³ See Matthew Bruckner, Brook Gotberg, Dalié Jiménez & Chrystin Ondersma, *A No-Contest Discharge for Uncollectible Student Loans*, 91 U. COLO. L. REV. 183, 190 (2020); John Patrick Hunt, *Student Loan Purpose and the Brunner Test*, 15 HARV. L. & POL’Y REV. 237, 254 (2020).

²⁴ Rafael I. Pardo & Michelle R. Lacey, *Undue Hardship in the Bankruptcy Courts: An Empirical Assessment of the Discharge of Educational Debt*, 74 U. CIN. L. REV. 405, 480 (2005); Bruce Grohsgal, *Can Student Loans Be Discharged in Bankruptcy?*, 90 MISS. L. J. 35, 39 (2020) (concluding that “opinions since *Brunner* have raised the wall to a discharge under section 523(a)(8) so high that for every abusive debtor who may slip under it, hundreds of honest and deserving debtors likely cannot climb over it.”). In a prior article, two of us argued that “some bankruptcy courts have gone further than what *Brunner* requires and arguably further than what section 523(a)(8) permits.” Matthew Bruckner, Brook Gotberg, Dalié Jiménez & Chrystin Ondersma, *A No-Contest Discharge for Uncollectible Student Loans*, 91 U. COLO. L. REV. 183, 197 (2020).

²⁵ Rafael I. Pardo & Michelle R. Lacey, *Undue Hardship in the Bankruptcy Courts: An Empirical Assessment of the Discharge of Educational Debt*, 74 U. CIN. L. REV. 405, 480 (2005); Bruce Grohsgal, *Can Student Loans Be Discharged in Bankruptcy?*, 90 MISS. L. J. 35, 39 (2020) (concluding that “opinions since *Brunner* have raised the wall to a discharge under section 523(a)(8) so high that for every abusive debtor who may slip under it, hundreds of honest and deserving debtors likely cannot climb over it.”). In a prior article, two of us argued that “some bankruptcy courts have gone further than what *Brunner* requires and arguably further than what section 523(a)(8) permits.” Matthew Bruckner, Brook Gotberg, Dalié Jiménez & Chrystin Ondersma, *A No-Contest Discharge for Uncollectible Student Loans*, 91 U. COLO. L. REV. 183, 197 (2020).

²⁶ The changes may have begun during the first Trump administration when the Department of Education, under Betsy DeVos, issued a Request for Information (“RFI”) regarding Evaluating Undue Hardship Claims in Adversary Actions Seeking Student Loan Discharge in Bankruptcy Proceedings (Docket No. ED-2017-OPE-0085). Two of this Article’s co-authors, were part of a group that provided a response to this RFI. See Matthew Bruckner, Brook Gotberg, Dalié Jiménez & Chrystin Ondersma, *A No-Contest Discharge for Uncollectible Student Loans*, 91 U. COLO. L. REV. 183, 242 n.260–61 (2020).

²⁷ See generally *New Guidance Memorandum*, at 1 (Nov. 17, 2022), <https://www.justice.gov/civil/file/1553726/dl?inline>. See also Carissa Sterling, *DOJ Provides Guidance on*

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; [and]
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.²⁸

Although there are many others, we highlight two notable elements of the new process.²⁹ Once a student loan debtor initiates an adversary proceeding,³⁰ ED is supposed to provide the Assistant United States Attorney (AUSA) representing ED in the adversary proceeding with a "litigation report" containing information about the "debtor's account history, loan details, and—where available—educational history[.]"³¹ ED is also supposed to include any data it has relating "to the debtor's future financial circumstances and whether the debtor has made good faith efforts in repaying the loans."³²

Another novel aspect of the revised process is that instead of litigating a full federal lawsuits, debtors are invited to complete an attestation form³³ that the AUSA is supposed

Evaluating Federal Student Loan Discharge Requests in Bankruptcy, AM. BANKR. INST. J., Apr. 2023, at 15, https://s3.amazonaws.com/abi-org-corp/journals/consumer_04-23_0.pdf; Pamela Foohey, *DOJ and DOE New Guidelines for Supporting Student Loan Discharge in Bankruptcy = More Student Loan Discharges?*, CREDIT SLIPS (Nov. 18, 2022, 10:07AM), <https://www.creditslips.org/creditslips/2022/11/doj-and-doe-new-guidelines-for-supporting-student-loan-discharge-in-bankruptcy-more-student-loan-dis.html>; John Rao, *New Process to Discharge Student Loans in Bankruptcy*, NAT'L CONSUMER L. CTR. (updated Mar. 7, 2023), <https://www.nclc.org/wp-content/uploads/2022/12/NCLC-ED-DOJ-Undue-Hardship-Guidance-article-3.7.23.pdf>.

²⁸ *New Guidance Memorandum* (Nov. 17, 2022), <https://www.justice.gov/civil/file/1553726/dl?inline>.

²⁹ For more detail on the new guidance see Matthew Adam Bruckner, *New Guidance on Student Loan Relief*, __ NORTON J. OF BANKR. L. __ (forthcoming 2024).

³⁰ See *New Guidance Memorandum*, at 15 (Nov. 17, 2022), <https://www.justice.gov/civil/file/1553726/dl?inline>. See also Matthew A. Bruckner, *Improving Bankruptcy Sales by Raising the Bar: Imposing a Preliminary Injunction Standard for Objections to § 363 Sales*, 62 CATH. U. L. REV. 1, 14 (2012) (describing adversary proceedings as "similar to civil actions in federal district court and require the filing of a complaint, answer, counterclaim, crossclaim, . . .").

³¹ *New Guidance Memorandum*, at 2 (Nov. 17, 2022), <https://www.justice.gov/civil/file/1553726/dl?inline>.

³² John Rao, *New Process to Discharge Student Loans in Bankruptcy*, NAT'L CONSUMER L. CTR. (updated March 7, 2023), <https://www.nclc.org/wp-content/uploads/2022/12/NCLC-ED-DOJ-Undue-Hardship-Guidance-article-3.7.23.pdf>.

³³ See *Bankruptcy Court Attestation Form*, DEP'T OF JUST. (updated May 2024), <https://www.justice.gov/d9/2024-05/StudentLoanAttestationFillableForm.pdf>.

to use (along with the information provided by ED) when deciding whether to settle the debtor's undue hardship claims.³⁴ Between the litigation report and attestation form, AUSAs should have most of the information they need to determine whether to stipulate to the debtor's undue hardship discharge.³⁵

III. Data and Methodology

We use four different sources of data in this Article: information generated from the Public Access to Court Electronic Records (PACER) and Bloomberg's Dockets Search was used to generate the list of SLAPs and characteristics about them. We merged this data with the Federal Judicial Center's Integrated Database (the FJC Dataset), which offers detailed quantitative information on cases filed in U.S. courts.³⁶ The dataset includes key

³⁴ *New Guidance Memorandum*, at 1 (Nov. 17, 2022), <https://www.justice.gov/civil/file/1553726/dl?inline>, (stating that “[t]o assist the Department attorney in evaluating each of [the undue hardship] factors, a debtor will typically be asked to provide relevant information to the government by completing an attestation form (Attestation).”); John Rao, *New Process to Discharge Student Loans in Bankruptcy*, NAT’L CONSUMER L. CTR. (updated Jan., 2023), <https://library.nclc.org/article/new-process-discharge-student-loans-bankruptcy> (stating that “[t]he key to the new process is bankruptcy debtors completing an Attestation Form to seek the DOJ’s agreement to settle the debtor’s undue hardship discharge proceeding.”); Pamela Foohey, *DOJ and DOE New Guidelines for Supporting Student Loan Discharge in Bankruptcy = More Student Loan Discharges?*, CREDIT SLIPS (Nov. 18, 2022, 10:07AM), <https://www.creditslips.org/creditslips/2022/11/doj-and-doe-new-guidelines-for-supporting-student-loan-discharge-in-bankruptcy-more-student-loan-dis.html> (stating that “[i]n short, the new process requires the debtor to submit an attestation form with information that will allow the DOJ and DOE to assess the three prongs of the Brunner test.”); see also Carissa Sterling, *DOJ Provides Guidance on Evaluating Federal Student Loan Discharge Requests in Bankruptcy*, AM. BANKR. INST. J., Apr. 2023, at 14–15, https://s3.amazonaws.com/abi-org-corp/journals/consumer_04-23_0.pdf.

The DOJ attorney will then contact the debtor or debtor's counsel to provide the debtor with the opportunity to complete the attestation, which seeks information to aid the DOJ attorney's evaluation of the debtor's financial circumstances. The debtor will receive the information provided by the DOE when included with the attestation. A debtor submitting an attestation is doing so under oath and under the penalty of perjury. When submitting the attestation, a debtor is also required to provide the documents that support his/her income.

³⁵ The goal is to shift some of the burden from the debtor and onto the creditor instead. As the *Brunner* test has evolved, the proof that debtors must offer “has become quite complex—to wit, multifactor considerations proliferating within a multifactor test.” Cf. Rafael I. Pardo & Michelle R. Lacey, *Undue Hardship in the Bankruptcy Courts: An Empirical Assessment of the Discharge of Educational Debt*, 74 U. CIN. L. REV. 405, 488 n.348 (2005).

³⁶ *Integrated Database (IDB)*, FED. JUD. CTR., <https://www.fjc.gov/research/idb> (last visited Dec. 11, 2024). This information is obtained from the Administrative Office of the United States Courts (AOUSC) NewSTATS (New Streamline Timely Access to Statistics) Database. The current codebook can be found here. *Bankruptcy Petition NewSTATS Snapshots Database BPNS Database Codebook*, FED. JUD. CTR., (Feb. 2023), https://www.fjc.gov/sites/default/files/idb/codebooks/Bankruptcy_IDB_Online_Codebook_rev_02282023.pdf. See also *The Integrated Database: A Research Guide*, FED. JUD. CTR., <https://www.fjc.gov/sites/default/files/IDB-Research-Guide.pdf>.

data points such as the reported values of debtors' assets and liabilities, their monthly income and expenses, and other pertinent case details.

Finally, we use the University of California Consumer Credit Panel (UC-CCP), a recently developed dataset that provides de-identified consumer credit information, to approximate the number of student loan borrowers who filed bankruptcy.³⁷ While the UC-CCP was initially created to examine the financial health of California households, it also includes a national dataset.³⁸ This national dataset offers quarterly snapshots of credit reports for a randomly selected 2% of the U.S. population from 2004 to 2024Q2. Each credit report snapshot is paired with a corresponding public record snapshot, which details the individual's bankruptcy filing history over the past 7 years for Chapter 13 filings and the past 10 years for Chapter 7 filings. While this dataset enables us to directly observe student loans, it cannot be linked to the abovementioned bankruptcy datasets at the individual level. Nonetheless, we were able to perform some analysis using aggregated data.

We generated our list of student loan adversary proceedings directly from each bankruptcy court's PACER website, focusing specifically on student loan-related cases identified by their Nature of Suit as "63 (Dischargeability - 523(a)(8), student loan)," a classification selected by the plaintiffs.³⁹ These records provide the adversary proceeding case number, case name, the lead bankruptcy case associated with the adversary proceeding, and the filing and closing dates.

The availability of these records varies by district, but our dataset encompasses all student loan adversary proceedings filed between January 1, 2008 and October 15, 2024.⁴⁰ We collected records from all 94 districts in the United States, including all territories.⁴¹

To gain deeper insights our list of student loan adversary proceedings, we obtained the docket entries for all adversary proceedings on our list that were filed after 2015 and closed by December 31, 2023. Initially, we retrieved the docket sheets for slightly less than half of the cases directly from PACER. To reduce data collection costs, we subsequently

³⁷ *University of California Consumer Credit Panel*, CAL. POL'Y LAB., <https://capolicylab.org/data-resources/university-of-california-consumer-credit-panel/> (last visited Dec. 11, 2024).

³⁸

³⁹ Pang and Bruckner have fee exemptions for this research covering 70 PACER districts. We paid to run these searches in the remaining courts.

⁴⁰ The coverage dates for PACER by district can be found on PACER's official website: *Court Information*, PUB. ACCESS TO CT. ELEC. RECS., <https://pcl.uscourts.gov/pcl/pages/courtInformation.jsf> (last visited Dec. 11, 2024).

⁴¹ Pang and Bruckner have fee exemptions for this research covering most bankruptcy courts. We paid to run these searches in the remaining courts.

obtained the remaining cases from Bloomberg Dockets Search. It is important to note that Bloomberg's docket database does not always provide a comprehensive list of cases or complete docket sheets unless a user manually updates the docket for a particular case.⁴² Therefore, for cases obtained from Bloomberg, we first updated the docket sheets before downloading the information.

These docket sheets include all docketed information, such as case outcomes, attorney names, judge and trustee assignments, and a list of pleadings. Based on these docket sheets, we have also obtained and referenced several pleadings throughout this paper.

IV. Findings

We report our findings in this section. In Part A, we discuss the changes wrought by the new Guidance, including more filers seeking to discharge student loans in bankruptcy, more adversary proceedings being filed for older bankruptcies, we investigate whether the guidance led to more bankruptcy filings, and the geographic concentration of these cases. In Part B, we report on the characteristics of people who seek to discharge their student loans, including their likelihood of being represented by an attorney and on their financial situation. Finally, in Part C, we report that these cases are, unexpectedly, taking longer post-Guidance than they did pre-Guidance.

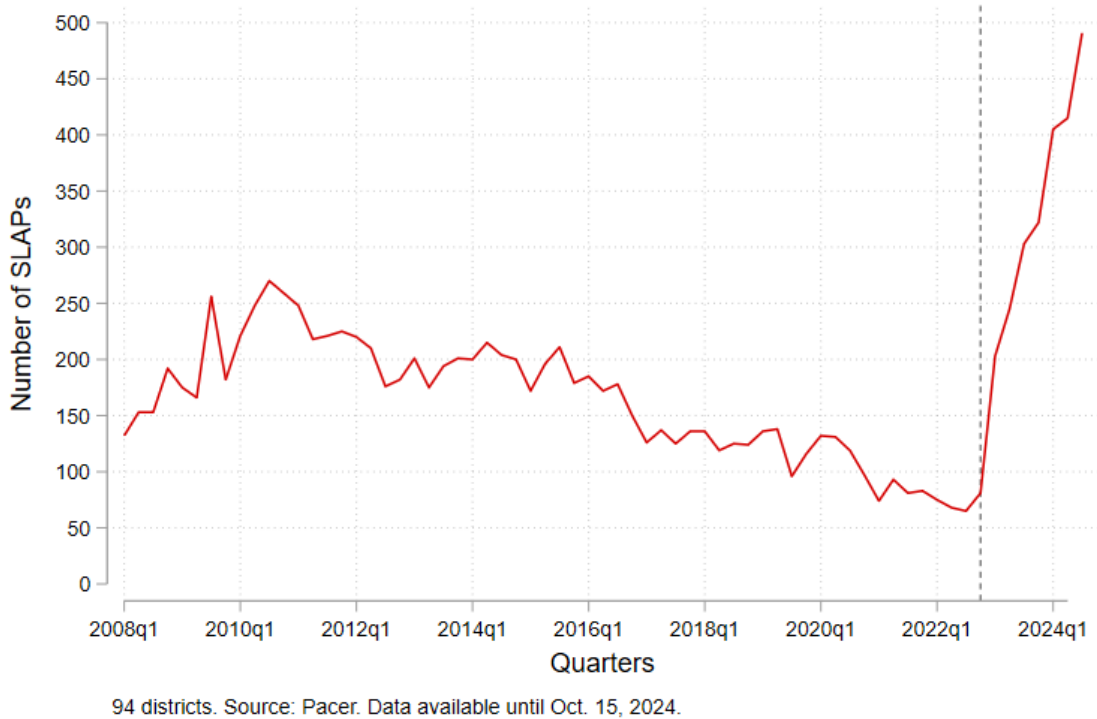
A. Impact of the Guidance on SLAP Filings

1. More Filers Seek to Discharge Student Loans, But Total Numbers Still Miniscule

Our first finding is that there were significantly more SLAPs filed after the new Guidance was announced. Figure 1 (below) shows the volume of SLAP filings between 2008 and the third quarter of 2024 on the y-axis, with the x-axis showing the SLAP filing dates. As shown in this figure, there is an obvious spike following the introduction of the Guidance, indicated by a dashed line in November 2022. This spike comes after a marked and steady decline in SLAPs beginning in 2011. Also notable is that the absolute numbers remain quite low (fewer than 500 new SLAPs quarterly), despite observing an over five-fold increase in SLAPs filed during a quarter after the Guidance was issued.

⁴² In other words, had we not started by searching all 94 bankruptcy districts PACER websites, we would be missing student loan adversary proceedings. See Jason Iuliano, *The Student Loan Bankruptcy Gap*, 70 DUKE L.J. 497, 514 (2020) (searching Bloomberg Law only).

Figure 1 – Quarterly Volume of Student Loan Adversary Proceedings (SLAP) by SLAP Filing Date. Dotted line represents issuance of DOJ/ED Guidance on SLAPs.⁴³

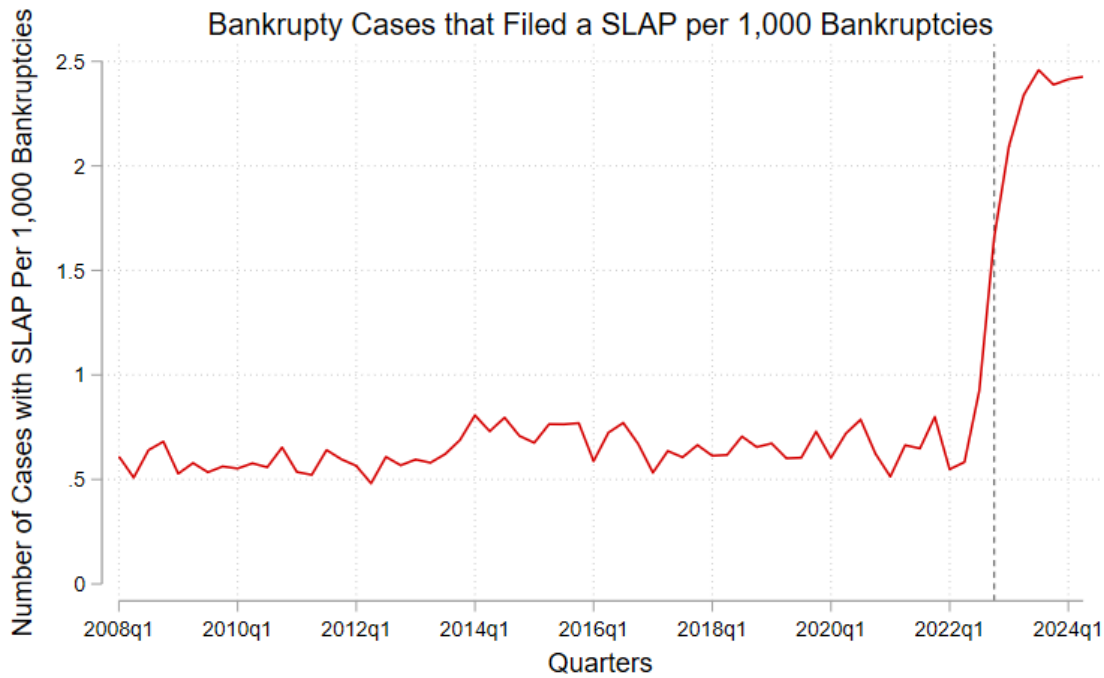


While the total numbers in Figure 1 are informative, they do not account for fluctuations in the overall number of bankruptcy cases. To provide a clearer picture, Figure 2 presents the number of student loan adversary proceedings per 1,000 bankruptcy cases. For both this figure and the subsequent one, we only counted the first student loan adversary proceeding filed for each case. The x-axis reflects the filing date of the bankruptcy case, rather than the date of the adversary proceeding.

Figure 2 shows that the frequency of student loan adversary proceedings remained relatively stable in relation to the total number of cases, until the introduction of the Guidance, which led to a sharp increase in the use of these proceedings.

⁴³ This graph counts every SLAP filed, even if several SLAPs were connected to one bankruptcy case.

Figure 2 – Quarterly Volume of Bankruptcy Cases that Filed a SLAP as Share of Bankruptcy Cases, by Date of Filing of Bankruptcy Case



94 districts. Source: Pacer and FJC Dataset. FJC Dataset ends in the second quarter of 2024.

A limitation of Figure 2 is that not all bankruptcy cases involve student loan borrowers, so the denominator of “all bankruptcies” undercounts the impact of the Guidance. We employed two methods to better estimate how often student loan borrowers who have filed for bankruptcy proceed with filing SLAPs.

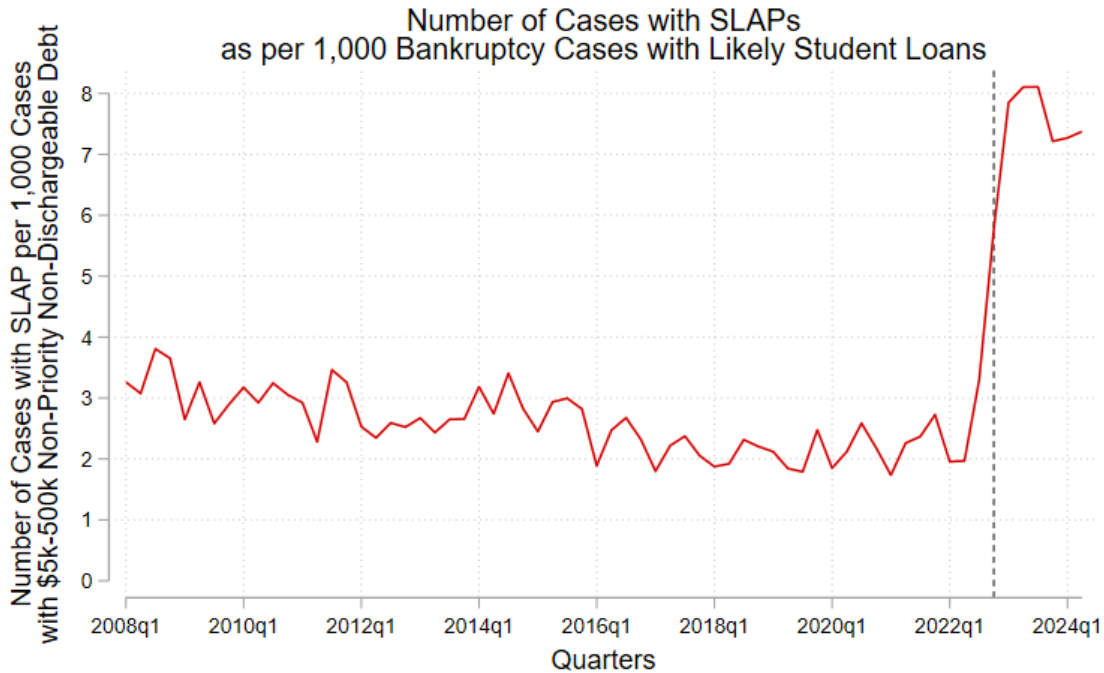
Figure 3 illustrates the first method, in which we calculated the amount of non-dischargeable, non-priority debt using the FJC Dataset. Since student loans are the most common type of this debt, we used it as a proxy to identify student loan borrowers.⁴⁴ We then adjusted the denominator from Figure 2 to reflect the number of cases with between \$5,000 and \$500,000 in such debt. Throughout this Article, we refer to this calculation as a “likely student loan.”

Using this method, we observe a trend like that in Figure 2, but the frequency is approximately three times higher. Even after the Guidance, fewer than 8 out of every 1,000 bankruptcy cases filed by these borrowers resulted in SLAPs, underscoring that,

⁴⁴ All the cases in our SLAP sample have between \$1,000–\$500,000 in nonpriority nondischargeable debt according to the FJC Database.

despite the sharp increase prompted by the Guidance, attempts to discharge student debt in bankruptcy remain very low.⁴⁵

Figure 3 – Cases with SLAPs as Share of Bankruptcy Cases with \$5,000 to \$500,000 Non-Priority Non-Dischargeable Debt, A Proxy for Student Loans



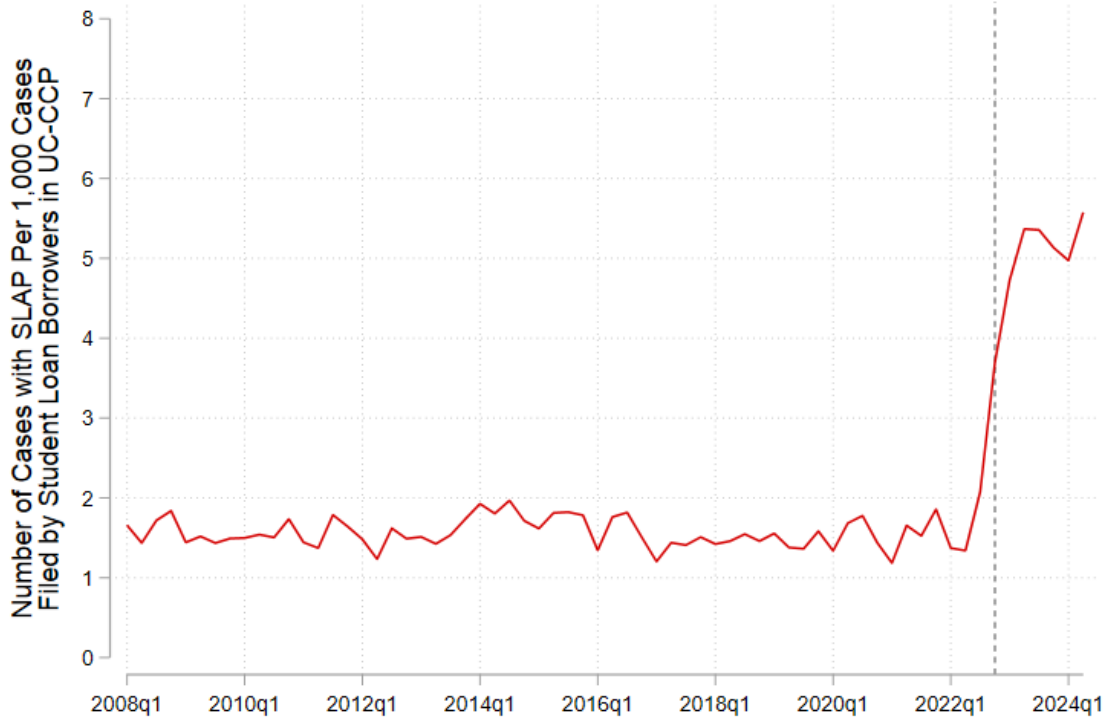
94 districts. Source: Pacer and FJC Dataset. FJC Dataset ends in the second quarter of 2024.

The second method we used to estimate the frequency of SLAPs among student loan borrowers involves combining the UC-CCP and our bankruptcy datasets at an aggregate level. Figure 4 mirrors Figure 3 but uses a different denominator for calculating relative frequency. Instead of using non-dischargeable, non-priority debt as a proxy to identify borrowers who likely have student loans, this plot uses the UC-CCP to estimate the actual number of individuals with student loans who filed a bankruptcy petition and used this number as the denominator.⁴⁶

⁴⁵ At less than 0.008, this estimate is substantially higher than reported in prior work. See Jason Juliano, *An Empirical Assessment of Student Loan Discharges and the Undue Hardship Standard*, 86 AM. BANKR. L.J. 495, 505 (2012) (estimating that 0.1 percent of debtors who filed bankruptcy in 2007 attempted to discharge their student loans).

⁴⁶ We excluded de minimis tradelines with less than \$100 in balance as part of the data cleaning process.

Figure 4 – Cases with SLAPs as Share of Individuals Who Filed for Bankruptcy with Over \$100 Student Loans in their credit report as reported by the UC-CCP



There are three caveats with this calculation. First, the UC-CCP data is drawn from one of the three major credit bureaus, which likely does not capture the entire universe of student loans,⁴⁷ potentially leading to an overestimation.⁴⁸ Second, the denominator represents individual bankruptcy filers, while the numerator counts adversary proceedings, which could cause underestimation if multiple individuals are involved in a single adversary proceeding. Third, certain kinds of “student loans” classified as such by the UC-CCP credit bureau could be automatically discharged in bankruptcy.⁴⁹ Likely

⁴⁷ Lenders and servicers can choose to report to a credit bureau that is not included in the dataset, or they can choose to not report to any credit bureau at all.

⁴⁸ In other words, it is possible that we do not observe all cases with student loans, which can lead to an underestimation of the denominator used to calculate these percentages. Another issue is that the UC-CCP is drawn from a random sample of two percent of the population. This is less of a concern given that one in four adults under forty have student loans. Richard Fry & Anthony Cilluffo, *5 Facts About Student Loans*, PEW RSCH. CTR. (Sept. 18, 2024), <https://www.pewresearch.org/short-reads/2024/09/18/facts-about-student-loans/>.

⁴⁹ Only debts that meet the definition of 11 U.S.C. § 523(a)(8) are presumptively nondischargeable in bankruptcy. That section never uses the term “student loan” and so things that might be classified as

because of these nuances, the percentages in this plot are slightly lower than those in the previous plot, but the overall trend remains almost identical. Again, it shows that the Guidance has significantly increased the use of SLAPs among student loan borrowers, but the absolute level of the frequency remains extremely low.

We estimate that in 2023, between 5 and 8 out of every 1,000 bankruptcy cases filed by student loan borrowers (0.5%–0.8%) included an adversary proceeding to discharge student loan debt—a three- to four-fold increase from the SLAP filing rate in 2021, prior to the Guidance.⁵⁰ While this is news to celebrate, it also shows just how much work needs to be done.

2. Many SLAPs Filed for Older Bankruptcies After the Guidance

There is no specific time limit for when an adversary proceeding must be filed after a bankruptcy is filed.⁵¹ Before the Guidance, the average adversary proceeding seeking to discharge a student loan was filed within 3 quarters of the initial bankruptcy.⁵² Filing a SLAP long after the initial bankruptcy filing happened, but fewer than 9.5% of SLAPs before the Guidance involved a bankruptcy older than 2.5 years.⁵³ The post-Guidance period saw a modest increase to 11.8% of SLAPs being older than 2.5 years. Attorneys in these cases seem to have learned of the Guidance and advised their clients to file a SLAP to discharge their debts. We attribute much of this increase to the work of the Department of Justice in conjunction with organizations like the National Association of Consumer

student loans by lenders when reporting to credit bureaus might nevertheless be discharged in bankruptcy automatically. See Jason Iuliano, *Student Loan Bankruptcy and the Meaning of Educational Benefit*, 93 AM. BANKR. L.J. 277, 279–80 (2019).

⁵⁰ And a five- to eight-fold increase from amounts previously estimated. See Jason Iuliano, *An Empirical Assessment of Student Loan Discharges and the Undue Hardship Standard*, 86 AM. BANKR. L.J. 495, 505 (2012) (estimating that 0.1 percent of debtors who filed bankruptcy in 2007 attempted to discharge their student loans). Our estimates from PACER for 2007 are about twice as much as Iuliano estimated—0.2 percent—still infinitesimal.

⁵¹ FED. R. BANK. PROC. 4007(b) (“A complaint other than under §523(c) may be filed at any time. A case may be reopened without payment of an additional filing fee for the purpose of filing a complaint to obtain a determination under this rule.”). See Decision and Order, *In re Kumm*, No. 23-22866-gmh, (E.D. Wis. Bankr. Aug. 23, 2024), <https://www.wieb.uscourts.gov/opinions/?file&id=682> [<https://perma.cc/R4LJ-SR57>] (discussing that bankruptcy cases do not need to be reopened for an adversary proceeding to be filed).

⁵² In our sample, for adversary proceedings filed before the Guidance, the average number of quarters a SLAP was filed after the bankruptcy case was filed was 2.86 (filtering on bankruptcies filed after 2008 but before the Guidance). For SLAPs filed after the Guidance, the average number of quarters between the bankruptcy and the SLAP was 3.85 if we include bankruptcy cases post Guidance. Excluding those, the average SLAP was filed 10.3 quarters after the bankruptcy.

⁵³ The longest difference between bankruptcy and SLAP filing in our sample (Jan. 1, 2008–Oct. 15, 2024) was 14.5 years.

Bankruptcy Attorneys, American Bankruptcy Institute, National Consumer Law Center, and the National Association of Chapter 13 Trustees.^{54ab}

The Guidance states that it “applies only to future bankruptcy proceedings, as well as (wherever practical) matters pending as of the date of this Guidance.”⁵⁵ Bankruptcy “proceedings” presumably encompasses more than bankruptcy filings and covers SLAPs that were pending as of the date of the Guidance as well as SLAPs filed after the Guidance, regardless of when the bankruptcy was filed. We estimate that approximately 2,523 SLAPs were eligible for the Guidance by October 15, 2024 using this logic, as shown on Figure 5.⁵⁶ This includes 298 SLAPs that were pending at the time of the Guidance, 509 SLAPs filed after the Guidance connected to bankruptcy cases filed before it, and 1,716 SLAPs where both the bankruptcy and SLAP were filed after the Guidance.⁵⁷ These are necessarily upper bounds, as SLAPs may be filed for non-federal loans, and those would not be eligible for the Guidance. That said, private loans are a small portion of the total outstanding student debt. In future work, we hope to refine these numbers further by delving into the names of the defendants in these cases.⁵⁸

⁵⁴ Press Release, U.S. Dept of Just., *Justice Department and Department of Education Announce Successful First Year of New Student-Loan Bankruptcy Discharge Process* (November 16, 2023), <https://www.justice.gov/opa/pr/justice-department-and-department-education-announce-successful-first-year-new-student-loan>. See, e.g., Nat’l Ass’n of Consumer Bankr. Att’y, *New DOJ/ED Guidance on Undue Hardship Discharge of Student Loans in Bankruptcy* (Dec. 8, 2022), <https://nacba.org/store/viewproduct.aspx?id=21186111>.

⁵⁵ *New Guidance Memorandum*, at 16 n.22 (Nov. 17, 2022).

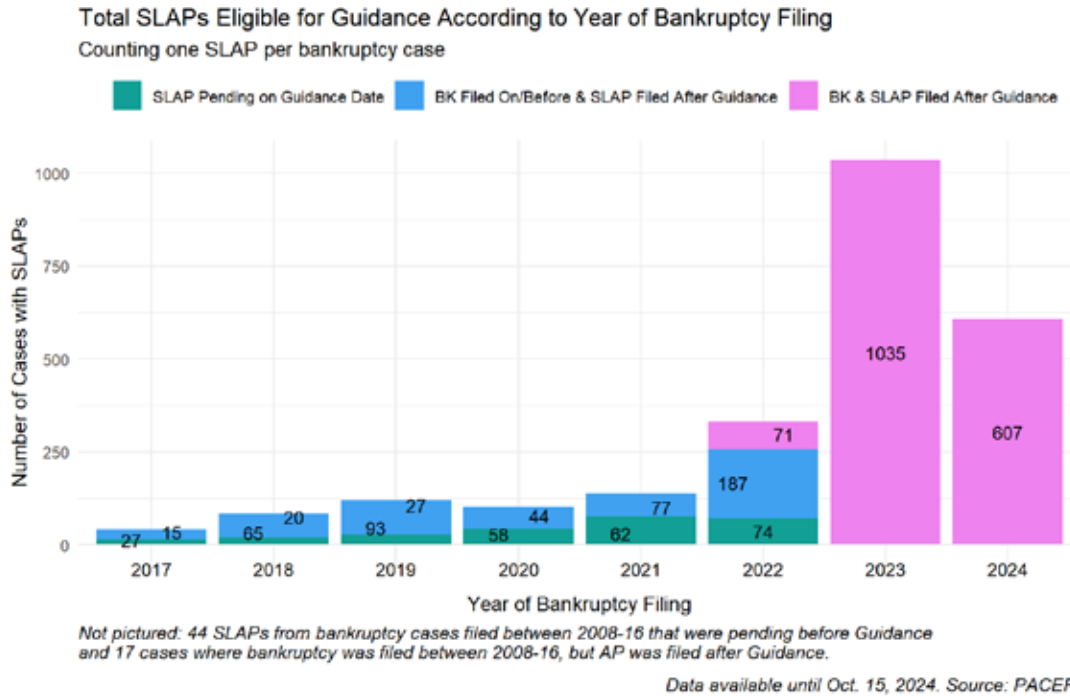
This memorandum applies only to future bankruptcy proceedings, as well as (wherever practical) matters pending as of the date of this Guidance. This Guidance is an internal Department of Justice policy directed at Department components and employees. Accordingly, it is not intended to and does not create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

⁵⁶ We exclude pending cases before 2008 because the FJC data is not reliable for previous years. While there is at least one SLAP pending in every year we have data (ranging from 1 in 2008 to 16 in 2017 and 2008), we believe it would be unlikely for the DOJ to apply the Guidance in cases that have been pending more than 15 years.

⁵⁷ A year after the Guidance, the Department of Justice issued a press release stating that “632 cases were filed in the first 10 months of the new process (November 2022 through September 2023).” Press Release, U.S. Dept of Just., *Justice Department and Department of Education Announce Successful First Year of New Student-Loan Bankruptcy Discharge Process* (November 16, 2023), <https://www.justice.gov/opa/pr/justice-department-and-department-education-announce-successful-first-year-new-student-loan>. According to our data, 791 new SLAPs were filed between November 23, 2022 and September 30, 2023, inclusive. The discrepancy is likely because Justice obtained this data by surveying local AUSAs about their dockets, something we learned in conversations with staff from the Office of the Associate Attorney General.

⁵⁸ This will require us to download and process all of the docket sheets for these cases.

Figure 5 – Number of SLAPs that were potentially Guidance-eligible and when their original bankruptcy case was filed (for bankruptcy cases filed between 2008-June 30, 2024). We estimate that as of October 15, 2024, at most 2,523 student loan adversary proceedings were eligible under the Guidance.⁵⁹



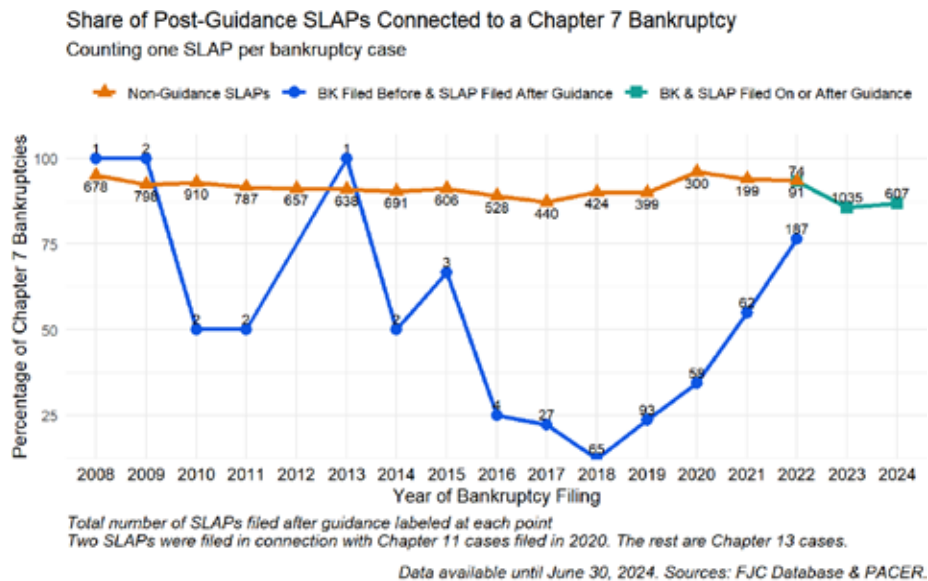
It is not clear whether debtors in these cases have tried to use the Guidance process. This is not something that is typically ascertainable even from a close examination of the SLAP dockets themselves. The marker of the process, the submission of an attestation with detailed information about the debtor, is not typically filed with the court. This makes sense given the often-sensitive nature of the information it contains. So, while we cannot say how many of these debtors are trying to use the Guidance process, these numbers represent an upper bound estimate of cases that might be eligible to do so, as of December 31, 2023.

One more feature of post-Guidance SLAPs is noteworthy. Post-Guidance, debtors were more likely to file a SLAP related to a chapter 13 case than they were pre-Guidance. SLAPs concluded pre-Guidance were filed in connection with a chapter 7 bankruptcy case, 91.5% of the time but post-Guidance SLAPs were only filed in connection with a

⁵⁹ 105 cases filed after the Guidance were second or third SLAPs filed in connection to a single bankruptcy case. The additional cases tend to be ones against different defendants, such as private lenders, although debtors do not need to file these cases separately procedurally. A few of them are duplicates filed in error.

chapter 7 bankruptcy 86.4% of the time.⁶⁰ The major driver of this difference were 361 SLAPs filed after the Guidance in connection to a chapter 13 case that was filed before the Guidance but was pending when the Guidance was announced. As shown on Figure 6, the composition of Guidance-eligible cases is quite different depending on when the underlying bankruptcy was filed. If the bankruptcy was filed post-Guidance, it more likely to have involved a chapter 13 case, whereas pre-Guidance SLAPs stemming from a chapter 13 bankruptcy were rare.

Figure 6 – Share of SLAPs that Began as Chapter 7 Bankruptcies. The numbers at each point display the absolute number of SLAPs filed post Guidance, presented by the filing year of the original bankruptcy.



These post-Guidance SLAPs cases connected to pre-Guidance bankruptcies appear to be the type of case in which the attorney was still likely in regular contact with the debtor, which would have made it more likely they could recommend that the debtor file a SLAP. It is still possible for debtors in discharged bankruptcies to file an adversary proceeding. It remains to be seen whether as more attorneys (and debtors) learn about the Guidance, they will move to reopen or otherwise file adversary proceedings on their student loans.

3. Did the Guidance Lead to More Filings?

Figure 3 and Figure 4 in Part IV.A.1 (above) show that student loan borrowers who have filed for bankruptcy are significantly more likely to seek to discharge their debt through

⁶⁰ This difference is statistically significant according to a 2-sample test for equality of proportions (95% CI: 3.8% to 7.3%, $X^2 = 51.4$, $p < 0.000$).

SLAPs following the new Guidance. This trend could be due to least two reasons. First, the Guidance may have made student loan borrowers more inclined to file SLAPs once they are in bankruptcy. Second, it may have attracted individuals who might not have otherwise filed for bankruptcy, encouraging them to enter the system to take advantage of the new Guidance. We find evidence that once in bankruptcy, debtors are more likely to file a SLAP post-Guidance. However, it is less clear that the Guidance is causing more individuals to file for bankruptcy specifically to discharge their student loans.

It is worth noting that, in recent years, the percentage of bankruptcy filers having student loan debt has rapidly increased. Figure 7 charts the percentage of bankruptcy cases filed by individuals who had more than \$100 in student loans listed on their quarterly credit report with a large credit reporting agency prior to filing for bankruptcy. This plot includes all bankruptcy cases so there may be multiple cases filed by the same borrower.⁶¹ It shows a decrease during the COVID-19 pandemic and the student loan payment pause, but levels returned to previous rates within two years. Therefore, it would be challenging to disentangle the increasing bankruptcy filings of individuals with student debt from this preexisting trend.

⁶¹ It is also at the person-level rather than bankruptcy case level, so it might double count joint cases.

Figure 7 – Share of Bankruptcy Cases Filed by Student Loan Borrowers (percentage) Identified by Credit Reporting Data (UC-CCP)

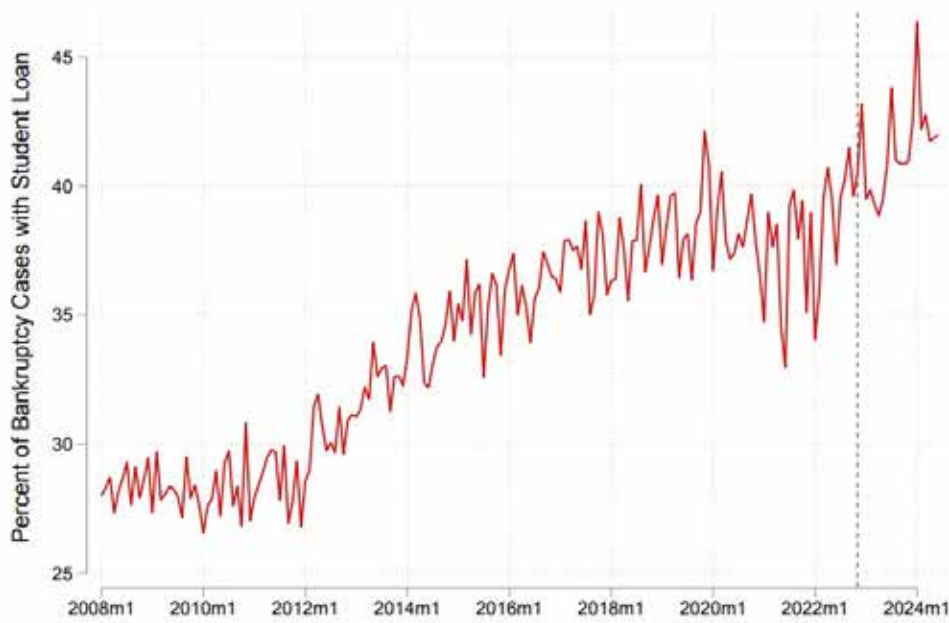
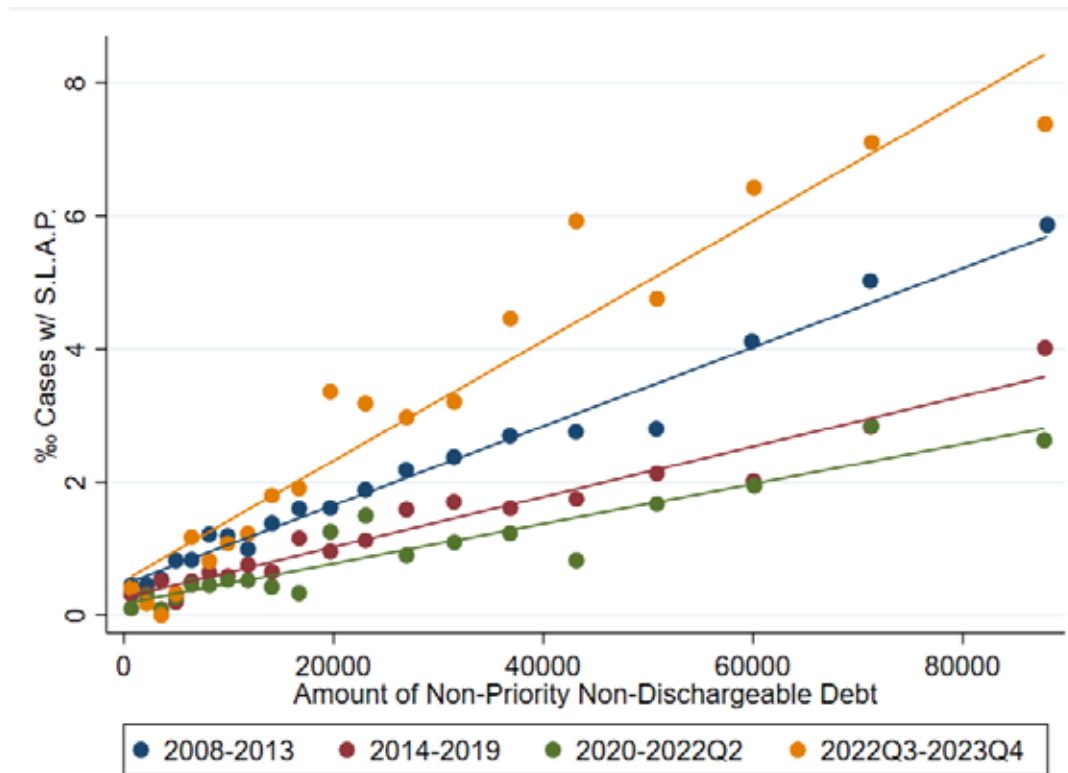


Figure 7 evaluates the question of whether once in bankruptcy, filers are more likely to attempt to discharge their student loans since the new Guidance was announced.

Figure 8 – Likelihood of Filing SLAP Among People with Different Levels of Non-Priority Non-Dischargeable Debt



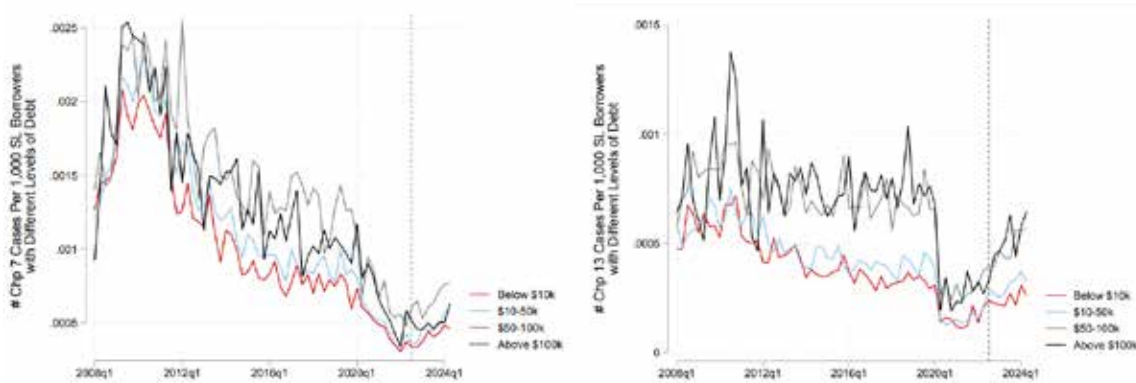
It does appear that once in bankruptcy, student loan borrowers are more likely to file an adversary proceeding after the Guidance was announced. Comparing the line covering the post Guidance period (2022Q3-2023Q4) which has the highest rates of filing to the period just before it (2020-2022Q2), which has the lowest, supports this observation. However, this comparison alone cannot fully determine whether the increased filings are due to the Guidance. That said, given the historical SLAP filing rates of the previous fourteen years from Figure 1, we interpret it as strong evidence.

To evaluate the second hypothesis – whether the Guidance has prompted student loan borrowers who otherwise would not have filed for bankruptcy to do so, Figure 8 graphs the number of bankruptcies filed by debtors whom we estimate to have likely student debt, broken down by filing chapter and student debt levels.⁶² There is a small uptick around the time when the new Guidance was introduced, more noticeable among chapter 13 filers. The increase is minimal, making it apparent that the Guidance has not

⁶² Debt levels here and elsewhere are estimated using the FJC Database numbers for nondischargeable and priority debts.

encouraged a surge of new bankruptcy filings. Although there is an upward trend, it can be driven by the post-pandemic macroeconomic environment rather than the policy, as there is little discernible discontinuity in the quarter when the policy was introduced.

Figure 9 – Number of Chapter 7 and Chapter 13 Bankruptcy Cases Filed in Each Quarter Per 1,000 Student Loan Borrowers, Grouped by Amount of Student Loans (only the first Chapter 7 or Chapter 13 bankruptcy in each quarter is counted for each case)



4. Some Districts See Dramatic Rise in SLAPs

We looked at where cases with SLAP have been filed and compared them to the equivalent period just before the Guidance date. This revealed that they are highly concentrated in just a few districts. See Figure 10 below. In other words, it appears that lawyers in some jurisdictions appear to be early movers. Whether lawyers in other jurisdictions will begin filing SLAPs under the new Guidance remains to be seen.

Minnesota had the most filings in the post-Guidance period, with 244 cases (only 8 had been filed in the equivalent time before the period). Seven jurisdictions had no SLAPs in the pre-period but saw a change in the post-Guidance period. Most notable in this group is the District of Tennessee, which had 56 SLAPs filed in the post-Guidance period studied, tying for the ninth rank in terms of number of SLAPs filed, as shown in Table 1. Seven jurisdictions saw the same or a smaller number of cases filed in the post-Guidance period, including the Eastern District of Missouri, which went from 12 cases to 3 post-Guidance. Finally, a few jurisdictions saw no SLAPs filed either period: South Dakota, and the territories of the US Virgin Islands, Guam, and the Northern Mariana Islands.⁶³

⁶³ We note that we cannot verify that the U.S. Virgin Islands, Guam, or the Northern Mariana Islands keep track of student loan adversary proceedings on PACER in the same way as other districts. While the rest of their PACER website works similarly, neither territory appears to have ever had a student loan adversary proceeding filed in their jurisdiction as far as the PACER website is concerned.

Figure 10 – This graph compares the post-Guidance data available (Nov. 18, 2022-Oct. 15, 2024) to the equivalent length of time before the Guidance. A handful of districts have the same number of filings or fewer, but the majority see a large increase, including nine districts that had no filings in the pre-Guidance comparison period. South Dakota is the only district with no filings in either period.⁶⁴

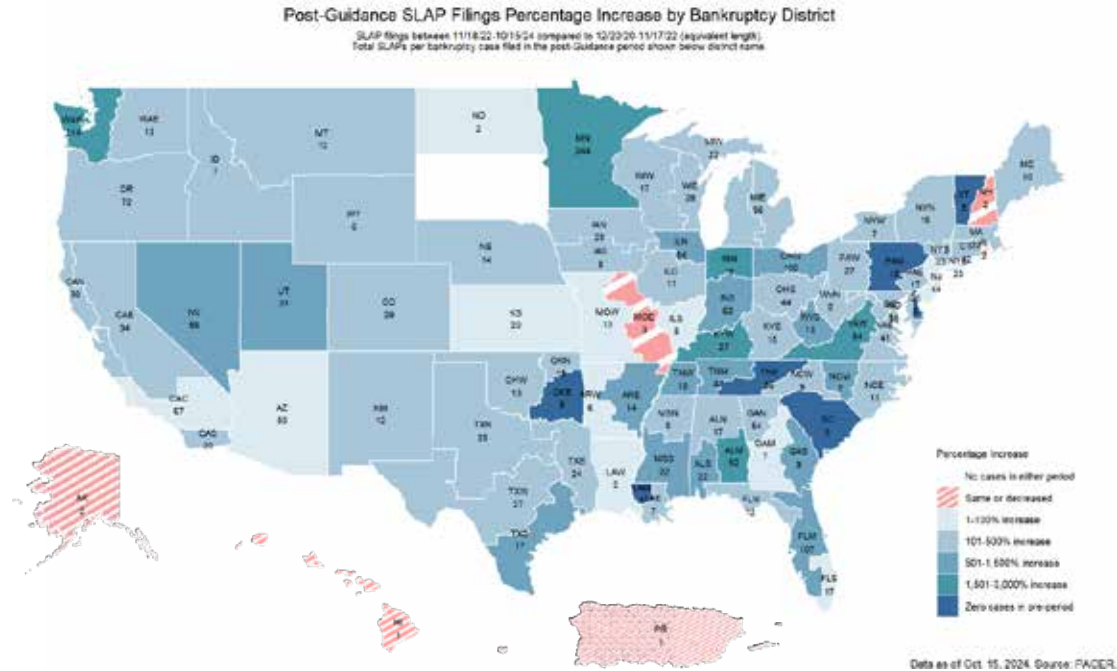


Table 1 lists the top districts with the most SLAPs filed in the post-Guidance period and compares them to the number of cases filed in those districts in the equivalent time pre-Guidance. The total number of SLAPs that could potentially be filed would of course depend upon the number of persons who file bankruptcy and have student loan debt plus might meet the elements of dischargeability. To the extent that the composition of bankruptcy filers with student loan debt did not significantly change in the pre- and post-periods, the percentage increase would likely be driven by the Guidance.

⁶⁴ Note that here and in Table 1 we only count one SLAP per bankruptcy case. There are a few bankruptcy cases where the debtor files more than one SLAP. Sometimes this is because of a dismissal and refile; other times it is different cases against different defendants.

Table 1 – Number of SLAPs pre- and post-Guidance for top 15 post-Guidance SLAP districts

District	Post- Guidance Nov. 18, 2022- Oct. 15, 2024		Pre- Guidance Dec. 20, 2020- Nov. 17, 2022	Percentage Increase After Guidance
	Ranked by Most SLAPs Filed	Total SLAPs.	Total SLAPs	
Minnesota	1	244	8	2,950%
Washington - Western	2	114	4	2,750%
Florida - Middle	3	107	13	723%
Ohio - Northern	4	100	14	614%
Illinois - Northern	5	84	12	600%
Oregon	6	72	12	500%
California - Central	7	67	34	97%
Indiana - Southern	8	63	7	800%
Michigan - Eastern	9	56	22	155%
Tennessee - Eastern		56	0	—
Nevada	11	43	6	817%
Georgia - Northern	12	54	13	315%
Virginia - Western		54	3	1,700%
Alabama - Middle	14	52	2	2,500%
Arizona	15	50	28	79%

B. Characteristics of SLAP Filers

1. Attorney Representation

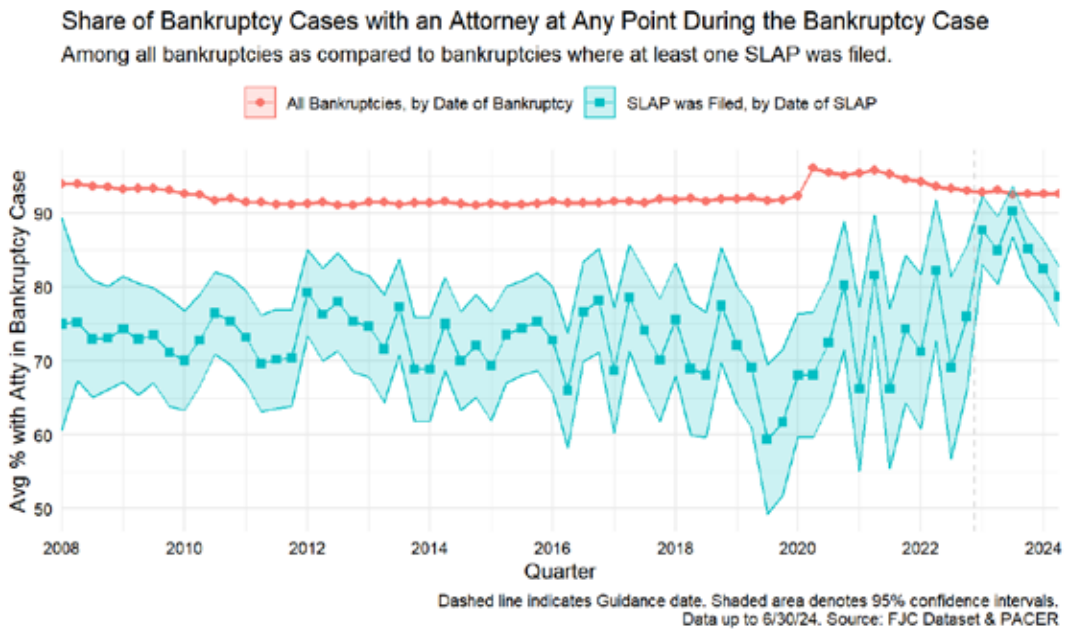
Our analysis reveals that SLAP filers, compared to general bankruptcy filers, are more likely to file their underlying bankruptcy cases pro se (without an attorney). Interestingly, we also observed that borrowers who filed a SLAP after the implementation of the new Guidance were significantly more likely to do so with the assistance of an experienced student loan attorney for their SLAP proceedings.

Figure 11 illustrates the contrast between the proportion of SLAP filers who had legal representation in their underlying bankruptcy case and the proportion of overall bankruptcy filers represented by an attorney.⁶⁵ Each data point in the figure represents

⁶⁵ The overall bankruptcy line includes the SLAP filer original cases, as these are less than 1% of the total.

the average percentage of cases where at least one debtor was recorded as having legal representation at any stage during the proceedings. The distribution of representation differs markedly between SLAP filers and the general bankruptcy population. Whereas upwards of 90% of all bankruptcy cases are filed by an attorney, the bankruptcy cases which eventually filed a SLAP were represented by an attorney 75-80% of the time most years. This latter proportion approached the general trend for at least a few quarters after the Guidance. One hypothesis is that this post-Guidance spike represents chapter 13 cases that were pending before the Guidance where the attorneys learned of the guidance and advised the debtor to file a SLAP, as shown in Figure 6.

Figure 11 – Share of Bankruptcy Cases Where at least one Debtor Was Represented by an Attorney in their Bankruptcy Case. This graph compares representation rates in all bankruptcies to the subset of bankruptcies in which the debtor(s) filed a SLAP.

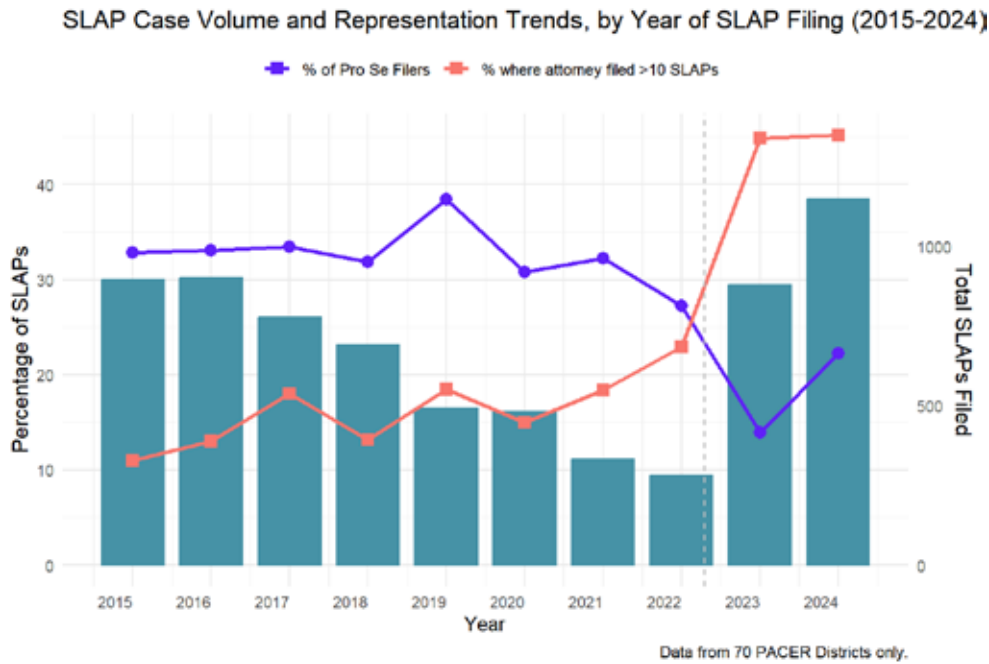


The data for Figure 11 ends on June 30, 2024, since that is the last update of the FJC Database. The last two quarters available seem to suggest that the slight trend towards increasing representation for SLAP filers in their original bankruptcy case will be broken, but it is too early to tell.

Figure 12 charts the volume of SLAP filings for 2015-23, the period in which we also have information about whether a debtor filed their adversary proceeding pro se or was represented by an attorney for closed cases. This information was downloaded from the adversary proceeding court dockets through PACER or Bloomberg. We categorized

debtors as “pro se” if they were listed as “pro se” or N/A on the dockets.⁶⁶ Some debtors retained multiple attorneys, either because they replaced their attorney or because they had multiple individuals or firms representing them.

Figure 12 – Annual volume of SLAPs (bar graphs) with line graphs for percentage of SLAP filers who file a SLAP pro se or who file with an attorney or firm that has filed 10 or more SLAPs during the period. The dotted line represents the Guidance.⁶⁷



The dataset used to create Figure 12 includes docket information on all SLAPs that were filed between January 1, 2015 and October 15, 2024 in one of the 69 bankruptcy districts from which we obtained a fee waiver.

The share of SLAPs filed by self-represented debtors decreases dramatically from 27.23% in 2022 to 13.72% in 2023. However, the following year the pro se filing rate increases to almost pre-Guidance levels at 22.25%. We barely have two years of post-Guidance data, but this data is consistent with a story of attorneys ????

⁶⁶ On the header of the PACER docket, only the latest representation status is recorded. Bloomberg dockets save previous statuses, and we kept only the latest (meaning if a debtor started as pro se but later retained an attorney, they would be characterized as being represented). In all cases in our sample, debtors who started out as pro se remained so throughout the case.

⁶⁷ Note that this graph only includes data from 69 out of the 94 bankruptcy districts from which we were able to obtain a fee waiver.

The data also shows a dramatic increase in the share of debtors who filed with the help of an “experienced” attorney, defined as one who had filed more than ten SLAPs in our dataset. In 2022, 22.76% of cases were filed where at least one of the plaintiff’s attorneys had filed more than 10 cases during the time period. By 2024, this figure had nearly doubled to 44.85%. For context, the dataset includes 3,238 different attorneys, but only 73 attorneys (2.25% of the total) filed more than 10 cases.

This trend towards specialization is not surprising, given the complex nature of student loan discharge cases in bankruptcy. Historically, consumer bankruptcy attorneys have been hesitant to pursue student loan discharges due to the perceived difficulty and low success rates.⁶⁸ However, the increasing number of experienced attorneys in this field suggests a growing expertise and potentially improved outcomes for debtors seeking student loan relief through bankruptcy.

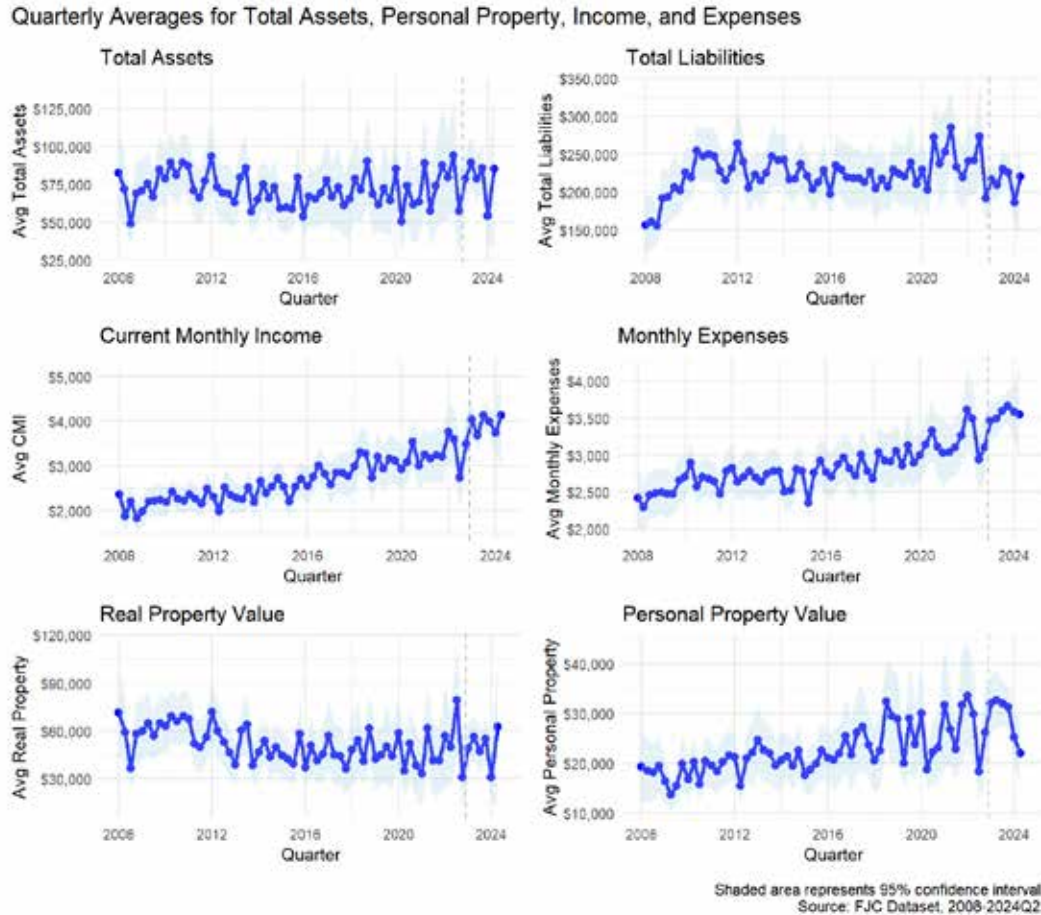
2. Financial Situation of SLAP Filers

We were interested to investigate if those who filed adversary proceedings after the Guidance were similarly situated from pre-Guidance filers. The FJC Dataset contains information on several variables culled from the bankruptcy schedules and updated quarterly. Post-Guidance filers reported similar amounts of assets, income, expenses, and values of real and personal property as pre-Guidance filers. The one area where they differed from pre-Guidance filers was in the total amount of debts when they entered bankruptcy. Post-Guidance filers reported owing less overall than those who filed before the Guidance. This could be driven by post-Guidance filers entering bankruptcy with less student debt, as shown in Figure 14.

Figure 13 presents a panel of six financial condition variables available from the FJC Database.

⁶⁸ Jason Iuliano, *The Student Loan Bankruptcy Gap*, 70 DUKE L.J. 497, 500 (2020).

Figure 13 – Quarterly averages for data available from the Federal Judicial Center database: total assets, total liabilities, current monthly income, monthly expenses, and the value of real and personal property.



As discussed in Section A.1, the Guidance has increased the rate of SLAPs among student loan borrowers who filed for bankruptcy. This rise appears to be driven by individuals with smaller student loan balances compared to the typical pre-Guidance SLAP filer. This appears to be largely because our estimates are that post-Guidance SLAP filers have far less student debt that they seek to discharge.

Figure 14 illustrates this change by showing the average amount of non-dischargeable, non-priority loans (i.e., likely student debt) among SLAP filers and all bankruptcy filers, categorized by filing chapter. For both groups, the average student loan debt follows a steady upward trend prior to the Guidance. However, after the Guidance took effect, SLAP filers experienced a lower-than-predicted average, while the trends for the broader bankruptcy population (shown in the bottom panel) continued upward. This

suggests that the change is not driven by macroeconomic factors, such as the end of the COVID-19 pandemic, but rather by the Guidance, which likely caused a decrease in the average student loan debt among SLAP filers.

Figure 14 – Average Likely Student Debt (proxied using FJC data) for all filers of SLAPs (top row) versus all bankruptcy filers (bottom row) by bankruptcy chapter. The y axis denotes the quarter in which the SLAP or bankruptcy was filed.

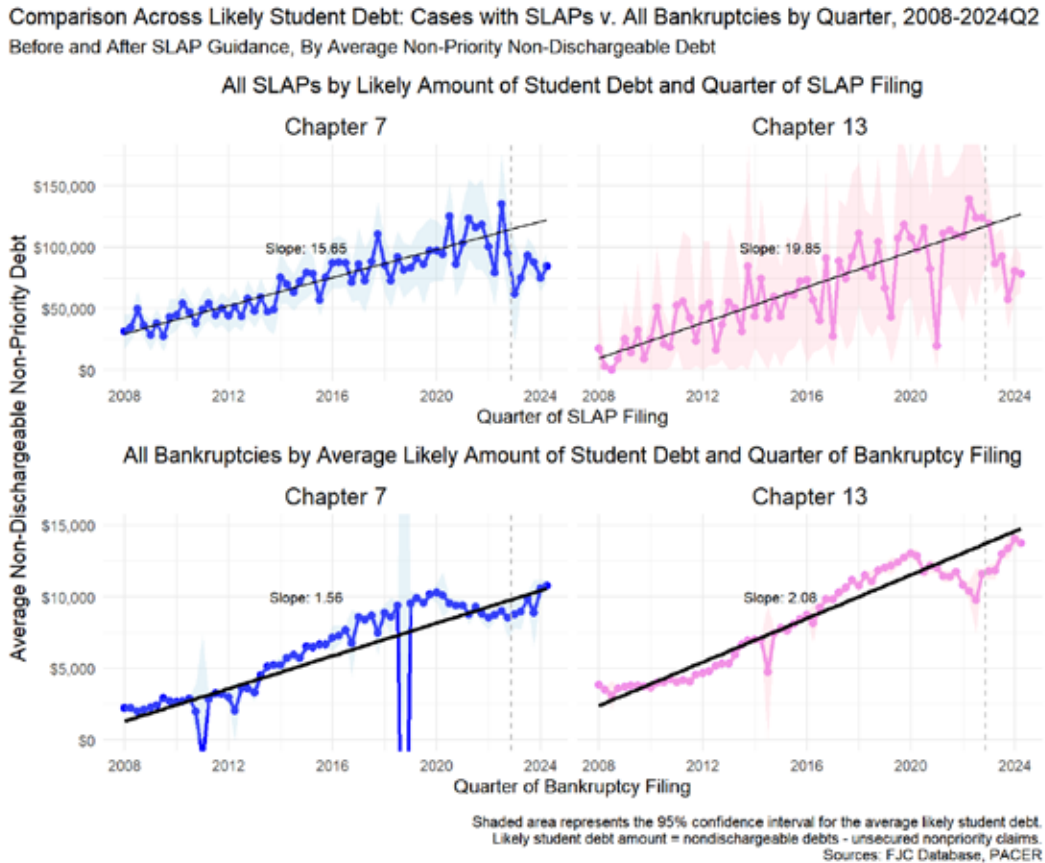


Figure 14 breaks out the average likely student debt by filers who filed a SLAP (first row) versus all filers (second row) by bankruptcy filing chapter. Debtors who filed a SLAP have on average more than 10 times the estimated amount of student debt versus the estimate of the student debt in the general bankruptcy population during the same period (comparing bankruptcy case filing dates to SLAP filing dates).⁶⁹ The growth of average debt is also ten times as much as for non-SLAP filers, as denoted by the slope of the best

⁶⁹ The “all bankruptcies” graphs include the bankruptcies of those who filed SLAPs, but since fewer than 1% of student loan borrowers file SLAPs this does not skew the data very much.

fit line.⁷⁰ This massive difference between the two groups along the category of what we've termed "likely student debt" (nonpriority nondischargeable debt reported on the FJC Database) provides support for this proxy.

C. Post-Guidance SLAPs Take Longer to Close, at First

Our evaluation of the Guidance procedure for student loan relief is still in its early stages, with data only available for about 23 months after its issuance. Unfortunately, we also do not yet have data on the substantive resolution of these cases. We do have one (flawed) but important data point: how long it takes for an adversary proceeding to close. Courts pay attention to these metrics, and they provide some insight across time. We observe a small decline in the speed of resolution in the post-Guidance cases relative to student loan adversary proceedings filed pre-Guidance, especially in the first seven months after filing. By the eleventh month after case filing, however, the trends between this post-Guidance and pre-Guidance periods are similar—upwards of 60% of cases have closed by this time.^{71ab}

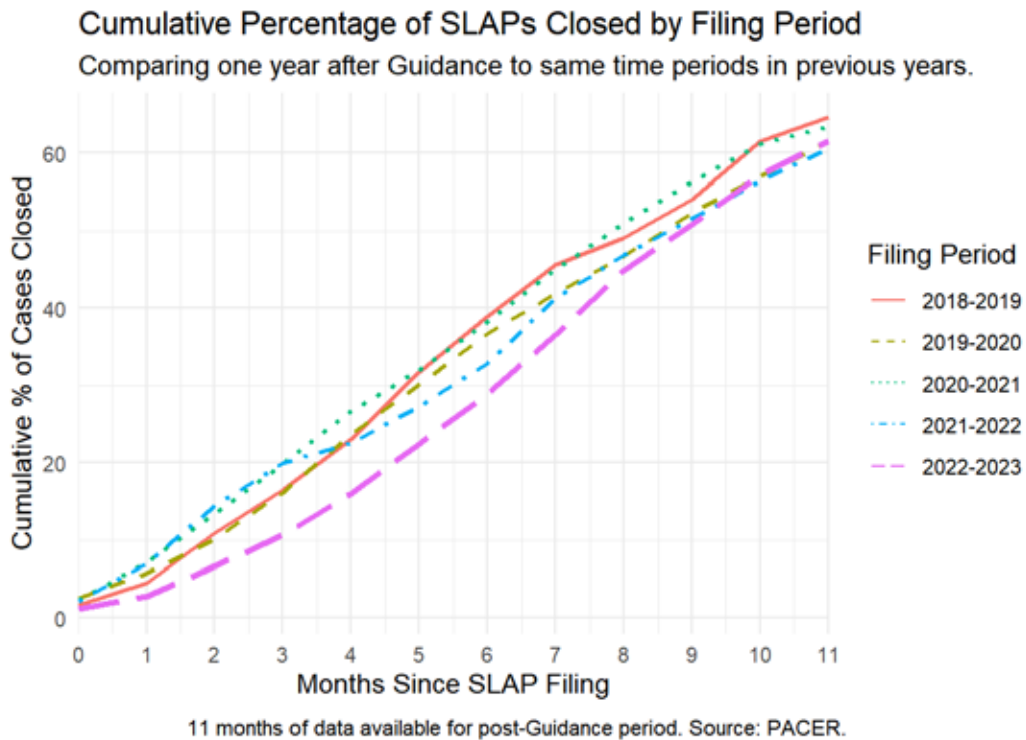
Figure 15 compares all SLAPs filed between Nov. 18, 2022 (day after the Guidance was issued) and Nov. 17, 2023 (one year later) to cases filed in previous periods of equal duration.⁷² Because we only have data available until October 15, 2024, roughly 23 months after the Guidance was issued, we limit our analysis to the following cases filed in the first year of the Guidance for 11 months. To make the comparisons to earlier periods fair, we cut off their graphs at 11 months as well.

⁷⁰ Remarkably, one has to look to the third decimal point to learn that the slopes are not just the same divided by 10.

⁷¹ See Rafael I. Pardo, *The Undue Hardship Thicket: On Access to Justice, Procedural Noncompliance, and Pollutive Litigation in Bankruptcy*, 66 FLA. L. REV. 2102, 2108 (2014) (The average duration of an undue hardship adversary proceeding in the Western District of Washington from 2002 through 2006 was just under 10 months). And even early (1993-220), Baird and Morrison found that the average duration for all adversary proceedings (i.e. not just SLAPs) was six to ten months. Douglas G. Baird & Edward R. Morrison, *Adversary Proceedings in Bankruptcy: A Sideshow*, 79 AM. BANKR. L.J. 951, 966 (2005).

⁷² For example, the 2021-2022 period includes cases filed between Nov. 18, 2021, and Nov. 17, 2022.

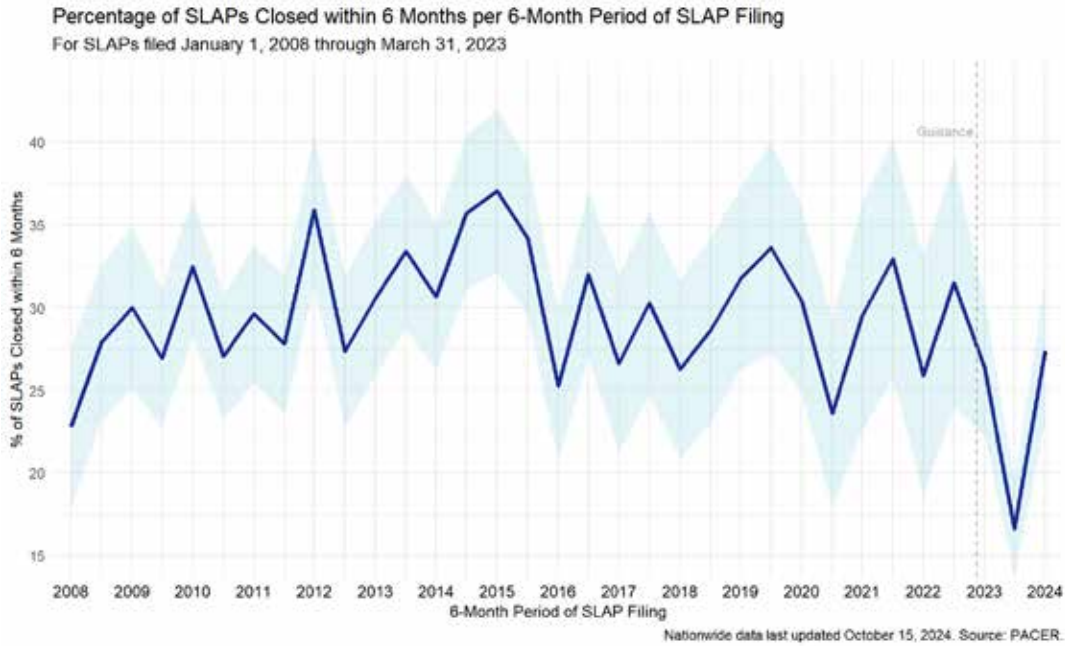
Figure 15 – Cumulative Percentages of SLAPs Closed by Filing Period by Month after SLAP Filing.



Initially, the 2022-2023 period had a slower closure rate, resulting in fewer cases closed at earlier months compared to previous periods. Over time, the closure activity in 2022-2023 appears to have accelerated, closing the gap with previous periods. By month 10, the cumulative effect of the initial delay appears to have been essentially neutralized, and the proportion of cases closed matches that of previous periods (61.5% in 2020-23, 64% in 2018-19, and 60.1% in 2021-22, for example).

Figure 16 looks at the percentage of SLAPs that closed within six months, a common “breaking point” where historically about 30% of cases had been closed. It echoes the gap seen in Figure 15 by showing noticeable dip in the percentage of cases resolved within six months after the implementation of the Guidance. Figure 16 also shows a recovery in cases filed in the first half of 2024 (which are not shown in Figure 15).

Figure 16 – Percentage of SLAPs Closed within Six Months, by Six Month Filing Period between January 1, 2008-March 31, 2024 (nationwide data last updated October 15, 2024).



All new processes take time to learn, and the slower resolution times could change as staff grow more experienced in using the new processes. Alternatively, slower resolution times could indicate that cases are being reviewed more thoroughly or that the new procedure involves more complex evaluations. Cases might also move more slowly if debtors are slow to fully follow the procedure set out by the Guidance. Resolution times may improve as both legal professionals and debtors become more familiar with the Guidance procedures, as may already be occurring.

V. Discussion & Recommendations

Student loan discharges in bankruptcy are near-mythical.⁷³ For many years, “the conventional wisdom has been that student loans are impossible to discharge in bankruptcy.”⁷⁴ And so many advocates had high hopes when the Department promised

⁷³ Jason Iuliano, *The Student Loan Bankruptcy Gap*, 70 DUKE L.J. 497, 499 (“[N]early everyone has bought into the myth that student loans are not dischargeable[.]”).

⁷⁴ Aaron N. Taylor & Daniel J. Sheffner, *Oh, What a Relief It (Sometimes) Is: An Analysis of Chapter 7 Bankruptcy Petitions to Discharge Student Loans*, 27 STAN. L. & POL’Y REV. 295, 297 n.1 (2016) (citing numerous stories about this conventional wisdom); see also Ron Lieber & Tara Siegel Bernard, *For Millions Deep in Student Loan Debt, Bankruptcy Is No Easy Fix*, N.Y. TIMES, (last updated Sept. 10, 2021), <https://www.nytimes.com/2020/11/07/your-money/student-loans-bankruptcy.html>.

to issue new Guidance to reduce the burden on debtors and encourage DOJ attorneys to recommend student loans be discharged.

In this section, we report as follows. In Part A, we report that very few debtors are filing adversary proceedings to discharge their student debt. While there was a substantial uptick in SLAPs, the overall rate remains abysmal, underscoring the persistent challenges borrowers face in seeking relief. In Part B, we offer some cause to hope that change will occur. Part B reports our finding that the growth in SLAPs has been heavily concentrated in a few bankruptcy districts. If this is caused by a few attorneys having greater awareness of the Guidance, the abysmal SLAP rate in other jurisdictions could improve as attorneys there gain awareness about the likelihood of success in SLAP cases.

In Part C, we report our findings on loan size, default risk, and the influence of attorney representation in SLAPs. Post-Guidance SLAPs involve filers with smaller student loan balances, which reflect that the Guidance has made the adversary proceeding process more accessible to a broader range of borrowers. We saw a large drop in pro se, post-Guidance SLAP filings. Finally, we report in Part D that cases are generally taking longer to resolve. Each finding is discussed in more detail below.

A. Very Few Debtors File Adversary Proceedings to Discharge their Student Debt

Like all previous work examining adversary proceedings, we find that it is “exceedingly rare” for student loan debtors in bankruptcy to file adversary proceedings seeking to discharge their student loans.⁷⁵ While SLAPs have risen more than four times from the year before the Guidance—fewer than 1 percent of bankruptcy filers with student loans attempt to discharge them.⁷⁶ Although not all student loan borrowers in bankruptcy may meet the burden of “undue hardship,” SLAP filers appear to be similarly situated to student loan borrowers who do not file adversary proceedings along several financial dimensions.⁷⁷ This is not all that is required to show undue hardship, but it is telling. The

⁷⁵ Aaron N. Taylor & Daniel J. Sheffner, *Oh, What a Relief It (Sometimes) Is: An Analysis of Chapter 7 Bankruptcy Petitions to Discharge Student Loans*, 27 STAN. L. & POL’Y REV. 295, 315 (2016) (“[i]t is exceedingly rare for Chapter 7 debtors to seek discharge of student loans.” They estimated that “[o]nly about one-tenth of one percent of these debtors in the First and Third Circuits sought discharge during the four-year period, 2011-2014.”). See also Jason Iuliano, *The Student Loan Bankruptcy Gap*, 70 DUKE L.J. 497, 524 (2020) (“In 2017, there were 241,000 student loan debtors who filed for bankruptcy. Of those, however, only 447 filed an adversary proceeding to request an undue hardship determination.”).

⁷⁶ See *supra* Part IV.A.1.

⁷⁷ See *supra* Part IV.B.2.

continuing abysmal rate underscores the persistent challenges borrowers face in seeking relief.⁷⁸

In *The Student Loan Bankruptcy Gap*, Professor Iuliano pointed to the public discourse around student loans and bankruptcy as being quite discouraging for debtors, despite what he found as the reality (that many debtors who filed a SLAP achieved some relief through a settlement).⁷⁹ While settlements are of course non-precedential and often confidential, the public record was far more dispiriting: courts ruled against debtors in 85% adversary proceedings decided on the merits.⁸⁰ Iuliano argued that student loan creditors perpetuate the myth that student loans are impossible to discharge in bankruptcy by “both aggressively litigating cases that they believe they will win and quickly settling cases that may yield adverse precedent.”⁸¹ Similarly, Professor Pardo contended that creditors engage in “pollutive litigation.”⁸² Regardless of whether one accepts Iuliano’s explanation for the scarcity of undue hardship determinations, the fact remains that such determinations are exceedingly rare.⁸³

The Department of Justice, the Department of Education, and we ourselves hope that, in the wake of the new Guidance, attorneys surveying the bankruptcy discharge landscape will no longer see only “precedent that is stacked against debtors” and will not prematurely conclude that their clients cannot prove undue hardship.⁸⁴ Instead of facing

⁷⁸ We do find as much as a 700% increase from that reported by Jason Iuliano. Jason Iuliano, *The Student Loan Bankruptcy Gap*, 70 DUKE L.J. 497, 515 n.74, 524 (2020) (“In 2017, there were 241,000 student loan debtors who filed for bankruptcy. Of those, however, only 447 filed an adversary proceeding to request an undue hardship determination.” and barely “.01 percent of student loan debtors in bankruptcy sought to discharge their educational debts[.]”).

⁷⁹ Jason Iuliano, *The Student Loan Bankruptcy Gap*, 70 DUKE L.J. 497, 524 (2020).

⁸⁰ Jason Iuliano, *The Student Loan Bankruptcy Gap*, 70 DUKE L.J. 497, 524 (2020).

⁸¹ Jason Iuliano, *The Student Loan Bankruptcy Gap*, 70 DUKE L.J. 497, 525 (2020).

⁸² See generally Rafael I. Pardo, *The Undue Hardship Thicket: On Access to Justice, Procedural Noncompliance, and Pollutive Litigation in Bankruptcy*, 66 FLA. L. REV. 2102 (2014)

⁸³ See also Aaron N. Taylor & Daniel J. Sheffner, *Oh, What a Relief It (Sometimes) Is: An Analysis of Chapter 7 Bankruptcy Petitions to Discharge Student Loans*, 27 STAN. L. & POL’Y REV. 295, 318–19 (2016)

The infrequency of undue hardship determinations is particularly apparent when trends among the individual districts within each circuit are tracked. In the First Circuit, the Puerto Rico and Rhode Island districts had no undue hardship determinations between 2005 and 2014; the District of Maine had one. In the Third Circuit, the District of Delaware had only one determination; the Middle District of Pennsylvania had two. Just three of the ten districts—Massachusetts, New Jersey, and Pennsylvania-Western—accounted for 73% of the total undue hardship determinations in the First and Third Circuits collectively.

⁸⁴ Jason Iuliano, *The Student Loan Bankruptcy Gap*, 70 DUKE L.J. 497, 525 (2020) (envisioning the following process, which he argued led to a severe shortfall in undue hardship cases:

“pollutive litigation,” attorneys should recognize the Guidance’s efforts to streamline and improve the SLAP process with the goal of “making it easier for DOJ attorneys to recommend to the court that a debtor’s student loans be discharged.”⁸⁵ This shift aims to encourage attorneys to undertake these cases and empower debtors to learn about the process.

However, the uneven uptake addressed more fully in the next sub-section suggests that these changes have not been uniformly effective across all districts. A significant factor may be that debtors are not filing these cases. Several reasons could explain this reluctance. First, and most likely, many debtors (and their attorneys) might be unaware of the new Guidance and its potential benefits, especially if they lack access to legal resources or informational outreach has been insufficient. Second, there may be skepticism among debtors (or their attorneys) about the effectiveness of the Guidance, possibly due to longstanding beliefs that discharging student loans in bankruptcy is nearly impossible. Third, finding attorneys experienced in handling SLAPs can be challenging, particularly in districts where such cases have historically been rare. Without legal representation, debtors may feel ill-equipped to navigate the process on their own. Additionally, the costs associated with filing a SLAP—even with simplified procedures—may be prohibitive for those already experiencing financial hardship. These barriers suggest that further efforts are needed to raise awareness and make the process more accessible to ensure the Guidance achieves its intended impact across all districts.⁸⁶

B. Regional Disparities Present Opportunities

While the overall number of SLAPs filed remains small, the numbers have grown dramatically in some districts. Earlier, we showed dramatic growth in only some bankruptcy districts.⁸⁷ This suggests that attorneys in certain jurisdictions are acting as early adopters of the new procedures, potentially due to greater awareness, resources, or a more proactive legal community. In contrast, the absence or low number of SLAP filings

(1) any attorney who reviews the case law sees precedent that is stacked against debtors and concludes that few borrowers can prove undue hardship; (2) based on the judicial rulings, attorneys counsel their clients not to pursue student loan discharges; and (3) student loan debtors follow their attorneys’ advice and decide not to file adversary proceedings. Those steps lead to the current situation where almost no one pursues undue hardship relief.

⁸⁵ *New Guidance Memorandum*, (Nov. 17, 2022)

⁸⁶ See e.g., Tina Tran, *Can you File Bankruptcy on Student Loans?* UPSOLVE, (last updated Dec. 9, 2024) [https://upsolve.org/learn/bankruptcy-eliminate-student-debt/\[https://perma.cc/5LTF-KCH3\]](https://upsolve.org/learn/bankruptcy-eliminate-student-debt/[https://perma.cc/5LTF-KCH3]).

⁸⁷ See *supra* Figure 10 and Table 1 in Part IV.A.4.

in other districts may reflect a lack of awareness among attorneys and debtors about the new Guidance, or perhaps lingering skepticism about the likelihood of success in these cases. Finally, it could be the case that judges are reacting differently (or are expected by attorneys to react differently) to the Guidance.

Some courts appear to have reacted to the Guidance while others are silent. For example, the Western District of Washington and the Northern District of California both have a page on their site devoted to information about the Guidance.⁸⁸ At least one judge in the Southern District of Texas has information on their website, although other judges do not.⁸⁹ On the other hand, Florida Northern District had put in place an order for streamlining the student loan process in early October 2022, a little over a month before the guidance was issued.⁹⁰ Two years later, the court website still only contains information about the court order and its process, with no information about the DOJ Guidance available anywhere.⁹¹

Whether lawyers in the districts with low SLAP filings will begin to utilize the new Guidance remains to be seen. Increased education and outreach may be necessary to

⁸⁸ Latife Neu, *Navigating the New Student Loan Discharge Process: Overview and Additional Resources*, U.S. BANKR. CT. W.D. WASH. <https://www.wawb.uscourts.gov/content/navigating-new-student-loan-discharge-process-overview-and-additional-resources> (last visited Dec. 11, 2024) [https://perma.cc/EGU6-UVBC]. See also *For Debtors*, U.S. BANKR. CT. W.D. WASH. <https://www.wawb.uscourts.gov/content/debtors> (last visited Dec. 11, 2024) [https://perma.cc/MLA4-C2P9]; *Guidelines for Adversary Proceedings under 11 U.S.C. § 523(a)(8) in which the United States is a Defendant*, U.S. BANKR. CT. N.D. CAL., (last updated Dec. 11, 2024 12:45 PM) <https://www.canb.uscourts.gov/procedure/guidelines-adversary-proceedings-under-11-usc-%C2%A7-523a8-which-united-states-defendant> [https://perma.cc/TK8H-CV2N]. See also *Student Loan Program (SLP)*, U.S. BANKR. CT. S.D. FLA. <https://www.flsb.uscourts.gov/student-loan-program-slp> (last visited Dec. 11, 2024) (linking to the NCLC page on the new Guidance); *Student Loan Discharge Materials*, U.S. BANKR. CT. S.D. ALA., <https://www.alsb.uscourts.gov/student-loan-discharge-materials> (last visited Dec. 11, 2024) (linking to the Guidance and related materials in the “Attorneys” section of the website, but not in the debtor section), *Resources for Debtors with Federal Student Loans*, U.S. BANKR. CT. S.D. ALA. <https://www.alsb.uscourts.gov/resources-debtors-federal-student-loans> (last visited Dec. 11, 2024).

⁸⁹ *United States Bankruptcy Judge Jeffrey P. Norman*, U.S. BANKR. CT. S.D. TEX. <https://www.txs.uscourts.gov/page/united-states-bankruptcy-judge-jeffrey-p-norman> (last visited Dec. 11, 2024) (linking to the Guidance, a blank complaint, and the student loan attestation form).

⁹⁰ *Administrative Order Prescribing Procedures for Student Loan Management Program in All Bankruptcy Cases Effective Oct. 5, 2022, In re Proc. for Student Loan Mgmt. Program, No. 22-002* (Bankr. N.D. Fla. Oct. 4, 2022), <https://www.flnb.uscourts.gov/sites/flnb/files/general-orders/ao22-002.pdf> [https://perma.cc/FX2J-K3HC]. Florida’s Northern District had 5 SLAPs filed between 2020–2022, all before the Guidance. It’s had 12 cases filed since the Guidance.

⁹¹ *Student Loan Management Program*, U.S. BANKR. CT. N.D. FLA., <https://www.flnb.uscourts.gov/student-loan-management-program> (last visited Dec. 11, 2024) [https://perma.cc/Y4EZ-4UPG] (linking to order of Oct. 22, 2022 and to the “Default Mitigation Management” portal). See Search for “guidance” yielded no relevant results, U.S. BANKR. CT. N.D. FLA. <https://www.flnb.uscourts.gov/search/node/guidance> (last visited Dec. 11, 2024) [https://perma.cc/XG8D-QKPW].

ensure that debtors nationwide can benefit from the intended simplifications of the bankruptcy discharge process. Addressing these disparities is crucial for fulfilling the Guidance's objective of making relief more accessible to all debtors experiencing undue hardship due to student loan debt.

C. Loan Size, Default Risk, and the Influence of Attorney Representation in SLAPs

While debtors with large student loan balances may monopolize our imaginations, it is folks with smaller debts that are more likely to default.⁹² This may be because people with larger loan balances are more likely to have completed their degree and received a wage boost in their next job. In contrast, those who attended college only for a semester or two without graduating may have incurred educational debt without receiving a corresponding increase in earnings.⁹³

Our findings support this observation. After the implementation of the new Guidance, there has been a noticeable shift in the profile of SLAP filers. Specifically, post-Guidance SLAP filers report owing less in total debts than those who filed before the Guidance.⁹⁴ Despite having similar amounts of assets, income, expenses, and values of real and personal property, post-Guidance filers carry smaller student loan balances into bankruptcy.⁹⁵ This suggests that the Guidance may have lowered barriers for borrowers with smaller debts to seek relief through bankruptcy proceedings, a welcome change.

Moreover, the decrease in average student loan debt among SLAP filers post-Guidance indicates that the policy change has made the adversary proceeding process more accessible to a broader range of borrowers. Previously, individuals with smaller loan balances might have perceived the effort and cost of filing a SLAP as disproportionate to

⁹² "Typical media narratives portray borrowers with large debts as those most likely to struggle. While these individuals may have trouble affording their payments, they are not at as great a risk of default as those with smaller loan balances." Ben Miller, *Who Are Student Loan Defaulters?*, CTR. FOR AM. PROGRESS (Dec. 14, 2017), <https://www.americanprogress.org/issues/education-postsecondary/reports/2017/12/14/444011/student-loan-defaulters/> ("The median defaulter takes out slightly over \$9,600—just more than one-half of what the median nondefaulter borrows.")

⁹³ See Katherine M. Porter, *College Lessons: The Financial Risks of Dropping Out*, in *BROKE: HOW DEBT BANKRUPTS THE MIDDLE CLASS 85–100* (Katherine M. Porter ed., 2012) (explaining that incurring educational debt without earning a degree can lead to bankruptcy).

⁹⁴ See *supra* Figure 13 and accompanying discussion.

⁹⁵ See *supra* Figures 13 and 14 and accompanying discussion.

the potential benefit. The new Guidance appears to have shifted this calculation, encouraging more borrowers to consider this option regardless of their loan size.

Attorney representation has also played a significant role in this landscape. Our analysis shows a dramatic increase in the proportion of debtors who filed SLAPs with the assistance of experienced attorneys after the Guidance was issued. In 2023, 30.5% of SLAP filers were represented by attorneys who had filed at least ten adversary proceedings, up from 21.6% in 2022. Conversely, the percentage of debtors filing SLAPs *pro se* decreased from 26.7% in 2022 to 15.5% in 2023.

This trend suggests a growing specialization among attorneys in handling student loan discharge cases. As more legal professionals become familiar with the intricacies of the Guidance and its application, they are better equipped to navigate the process efficiently. For borrowers, especially those with limited resources and smaller debts, access to knowledgeable legal representation can significantly impact their ability to successfully discharge student loans through bankruptcy. Of course, this representation is not free. To the extent that the decrease in *pro se* filings is because the Guidance process feels too complicated to navigate without an attorney, this is unfortunate.

The increased involvement of experienced attorneys may also contribute to the rising number of SLAP filings among borrowers with smaller debts. Attorneys adept in this area might be more proactive in identifying eligible clients and advising them on the potential benefits of filing a SLAP. This professional guidance can demystify the process for borrowers who might otherwise be unaware of their options under the new Guidance.

In summary, the post-Guidance period has been, in some ways, a democratization of access to student loan discharge through bankruptcy. Borrowers with smaller loan balances, who are often more vulnerable to default and financial hardship, are increasingly utilizing SLAPs to seek relief. The combination of policy changes and enhanced attorney representation appears to be lowering the threshold for engaging with this legal remedy. However, despite these positive developments, the overall utilization of SLAPs remains low, indicating that further efforts are necessary to raise awareness and reduce barriers for all eligible borrowers, including (potentially) the cost of attorney representation in SLAPs or the creation of tools that would allow more debtors to use the Guidance process without hiring an attorney.⁹⁶

⁹⁶ Cf. D. James Greiner, Dalié Jiménez, & Lois Lupica, *Self-Help, Reimagined*, 92 INDIANA L.J. 1119 (2017) (discussing the creation (and reimagining) of self-help materials in various civil legal settings).

D. Some Cases Take Longer to Resolve, But May Do So Positively

The Guidance sought to “(1) ensur[e] transparent and consistent expectations, (2) reduc[e] the burden on debtors, and (3) mak[e] it easier for DOJ attorneys to recommend to the court that a debtor’s student loans be discharged.” During our study period, however, we noted that cases filed in the first year after the Guidance was released took longer to resolve than before. This delay could be attributed to various factors, debtors taking long to complete the attestation form, delays in DOJ receiving the “Education litigation report” from ED—potentially caused by ED needing to obtain data from old servicer systems,⁹⁷ challenges with the consultation process between DOJ and ED,⁹⁸ challenges in the consultation process between the DOJ and ED, or insufficient attorney or staff resources to handle the increased volume of cases—a volume that has suddenly quadrupled.

One interpretation is that while the Guidance may be successfully reducing the burden on debtors, it has inadvertently increased the workload for Assistant United States Attorneys (AUSAs) and the ED, leading to a slower overall process. For example, in the case of Mario Sweet, the government requested multiple extensions partly due to receiving 1,200 pages of documents from the debtor through the attestation process.⁹⁹

This could mean that the Guidance is working to reduce the burden on debtors but has increased the burden on AUSAs or ED, such that the process has slowed down. For example, in the case of Mr. Sweet, the government sought multiple extensions owing, in

⁹⁷ *New Guidance Memorandum*, at 2.

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.

⁹⁸ *New Guidance Memorandum*, at 2 (“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.”)

⁹⁹ As noted in the introduction, the name has been changed to protect anonymity. Stipulation and Joint Motion for Order Determining Dischargeability at 7–8, No. 22-12523-HAC-7 (Bankr. S.D. Ala. Feb. 21, 2024) (“Consistent with the new Department of Justice guidance on student loan dischargeability determinations, the undersigned produced Sweet’s account information totaling more than 1200 pages. To allow Sweet time to prepare an attestation and the parties time to determine whether this case qualifies for a possible stipulated proposal to the Court, the United States respectfully requests that the current deadline to answer or otherwise respond be extended to April 28, 2023.”). Mr. Sweet eventually received a partial discharge on his student loans. Stipulation and Joint Motion for Order Determining Dischargeability at 7–8, No. 22-12523-HAC-7 (Bankr. S.D. Ala. Feb. 21, 2024).

part, to the 1200 pages of documents they received through the attestation process. So, it may be that some work has shifted from debtors to the government, fulfilling the second goal of the Guidance, but has done so at the expense of quicker resolutions. Less optimistically, it's possible that the new Guidance is taking longer because it failed to "(1) ensur[e] transparent and consistent expectations[.]" And the ultimate goal of having the DOJ more often "recommend to the court that a debtor's student loans be discharged[]" will remain the ultimate test for the Guidance's success (but, unfortunately, this is an evaluation we must leave for a future paper).

The duration of a case is not necessarily indicative of its outcome. Cases with longer timelines may still result in favorable resolutions for borrowers, potentially leading to complete loan discharges through mutual agreement. This aligns with the DOJ's press release one year after implementing new guidance.¹⁰⁰ Most debtors would likely prefer a longer wait if it meant achieving full debt relief. However, the extent of their patience may vary depending on the length of the delay. The trade-off between waiting time and the potential for complete loan forgiveness is a crucial consideration for borrowers navigating this process.

VI. Conclusion

Over a period of seven years, Mario Sweet attended the University of Mobile, borrowing almost \$100,000 in the process.¹⁰¹ The debt service payments on his student loans under the "standard [10-year] repayment plan would be approximately \$1,374.76[.]"¹⁰² He worked as an in-home therapist, was married to a working waitress, and shared living space with roommates to defray their living expenses.¹⁰³ He made a competitive salary

¹⁰⁰ "In 99% of cases where courts have entered orders or judgments to date, the government recommended, and the court agreed to, a full discharge or partial discharge." Press Release, Off. of Pub. Affairs U.S. Dep't of Just., Justice Department and Department of Education Announce Successful First Year of New Student-Loan Bankruptcy Discharge Process (Nov. 16, 2023), <https://www.justice.gov/opa/pr/justice-department-and-department-education-announce-successful-first-year-new-student-loan>. Although we note that DOJ's number on the total number of cases subject to the guidance are significantly different from the ones we report in Figure 5.

¹⁰¹ He borrowed \$98,750.00 to cover his cost of attendance. As of January 13, 2023, Plaintiff's total student debt was \$126,001.45. See Stipulation and Joint Motion for Order Determining Dischargeability at 2, No. 22-12523-HAC-7 (Bankr. S.D. Ala. Feb. 21, 2024).

¹⁰² Stipulation and Joint Motion for Order Determining Dischargeability at 2, No. 22-12523-HAC-7 (Bankr. S.D. Ala. Feb. 21, 2024).

¹⁰³ Stipulation and Joint Motion for Order Determining Dischargeability at 3, No. 22-12523-HAC-7 (Bankr. S.D. Ala. Feb. 21, 2024).

for his region but there was little opportunity to make additional income in the future.¹⁰⁴ At most, the debtor had only \$316.19 in disposable monthly income and so he filed bankruptcy to address his student loan debt.¹⁰⁵

Mr. Sweet “filed his voluntary chapter 7 bankruptcy petition on December 9, 2022.”¹⁰⁶ Soon thereafter, he filed an adversary proceeding seeking to discharge his student loan debt to ED.¹⁰⁷ In May, the government sought a second extension of time to answer Mr. Sweet’s complaint and to process the attestation form he provided them.¹⁰⁸ In February 2024—almost 14 months after Mr. Sweet sought to discharge his student loans, the government agreed to stipulate to a partial discharge of Mr. Sweet’s student loans. Whether the new Guidance leads to more cases like Mr. Sweet’s or Ms. Whitmore’s (discussed in the introduction), remains to be seen.

One of the Guidance’s objectives was to “reduce debtor’s burdens” seeking to discharge their student loans “by simplifying the fact-gathering process.”¹⁰⁹ When two of us coauthored a comment to the Department of Education recommending a streamlined process like the Guidance, we argued that “[t]he dual aims of our clear-cut procedures are to encourage individuals suffering undue hardship to seek a discharge and to avoid the need for an attorney.”¹¹⁰ The first aim—encouraging more filers—has achieved modest success, though substantial room for growth remains. The second aim—minimizing the necessity for legal representation—has not been achieved. Borrowers

¹⁰⁴ Stipulation and Joint Motion for Order Determining Dischargeability at 3, No. 22-12523-HAC-7 (Bankr. S.D. Ala. Feb. 21, 2024).

¹⁰⁵ Stipulation and Joint Motion for Order Determining Dischargeability at 3–4, No. 22-12523-HAC-7 (Bankr. S.D. Ala. Feb. 21, 2024). Debtor argued that this amount is substantially less because his family devoted \$300 per month to his wife’s bills, including paying the minimum amounts on her credit cards. But ED refused to credit those obligations—even though the debtor’s living expenses were well below the allowed amounts for his region—because “Credit card payments are not generally considered as reasonable and necessary expenses.” Debtor also asserted that he’d like to save for a home someday and cease living with roommates but, apparently, that did not justify an upward deviation in his allowed expenses or justify paying any less toward his student loan debt.

¹⁰⁶ Stipulation and Joint Motion for Order Determining Dischargeability at 1, No. 22-12523-HAC-7 (Bankr. S.D. Ala. Feb. 21, 2024).

¹⁰⁷ Stipulation and Joint Motion for Order Determining Dischargeability at 2, No. 22-12523-HAC-7 (Bankr. S.D. Ala. Feb. 21, 2024).

¹⁰⁸ Once again, the government allowed Mr. Sweet to use the attestation process set forth in the Guidance even though his underlying bankruptcy case was filed pre-Guidance and only the SLAP was filed post-Guidance.

¹⁰⁹ *New Guidance Memorandum*, *supra* note 9 at 2.

¹¹⁰ See Dalié Jiménez et al., *Comments of Bankruptcy Scholars on Evaluating Hardship Claims in Bankruptcy*, 21 J. CONSUMER & COM. L. 114, 115 (2018); see also Matthew Bruckner, Brook Gotberg, Dalié Jiménez & Chrystin Ondersma, *A No-Contest Discharge for Uncollectible Student Loans*, 91 COLO L. REV. 183 (2020).

who filed a SLAP after the Guidance are more likely to have enlisted an experienced student loan attorney.¹¹¹

Our study reveals that the issuance of the new Guidance by the Department of Justice and the Department of Education has led to a significant increase in the number of student loan adversary proceedings (SLAPs) filed in bankruptcy cases. Specifically, we observed an over 330 percentage increase in SLAP filings following the announcement of the Guidance, marking a notable reversal from the steady decline that began in 2011. However, despite this substantial relative increase, the absolute numbers remain low – only around 500 new SLAPs are filed monthly even at their peak, and in 2023, only between 0.5% and 0.8% of bankruptcy cases filed by student loan borrowers included an adversary proceeding to discharge student loan debt. This indicates that while the Guidance has positively impacted the willingness of borrowers to seek discharge of their student loans once in bankruptcy, the overall utilization of this relief remains minimal, suggesting that additional efforts are needed to enhance access and awareness.

Furthermore, our findings suggest (but cannot prove) that the Guidance has not significantly prompted individuals to file for bankruptcy, specifically to discharge their student loans. Instead, it appears to have encouraged more borrowers who are already in bankruptcy to pursue SLAPs. The increase in SLAP filings is also highly concentrated in certain districts, indicating regional disparities in the adoption of the Guidance. Post-Guidance SLAP filers tend to have lower student loan balances and are more likely to be represented by experienced attorneys compared to pre-Guidance filers. Additionally, while there was an initial slowdown in the resolution of SLAPs after the Guidance was implemented – likely due to the learning curve associated with the new procedures – resolution times have improved over time as legal professionals and debtors become more familiar with the process. The new Guidance makes significant strides towards simplifying goal by establishing presumptions upon which student loan borrowers in bankruptcy can rely. While these efforts represent a positive step forward in simplifying the process, some borrowers may still find it challenging to navigate effectively.

Canceling student debt has demonstrably positive effects on borrowers, alleviating financial burdens and fostering economic stability.^{112ab} Until Congress decides to act by

¹¹¹ See Fig. 11, *supra* at page 30.

¹¹² See Marshall Steinbaum et al., *Student Loan Borrowers and Pandemic-Era Interventions in California*, UNIV. CAL. STUDENT LOAN L. INITIATIVE, <https://www.slli.org/databrief4> (last visited Dec. 11, 2024) (reporting on results from a qualitative study of borrowers in California who received student loan forgiveness and reported increase savings, better mental wellbeing, and increased freedom to plan for a family, among

removing Section 523(a)(8) from the Bankruptcy Code, the new Guidance can at least serve as a beacon of hope for struggling borrowers seeking relief through bankruptcy.¹¹³

For further reading, see <https://www.newsweek.com/woman-cleared-student-loan-debt-bankruptcy-forgiveness-1867424>

other outcomes); Daniel A Collier et al., *Dub Thee, The Forgiven: A Qualitative Exploration of What Achieving Forgiveness Through PSLF Means to Borrowers*, UNIV. CAL. STUDENT LOAN L. INITIATIVE (2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4812638 [<https://perma.cc/7ZTH-V33P>] (nationwide sample of borrowers receiving Public Service Loan Forgiveness with similar findings).

¹¹³ See Ranking Members Nadler and Correa Re-Introduce the Student Borrower Bankruptcy Relief Act of 2024 to Assist Insolvent Student Borrowers, U.S. H. COMM. JUD. (Sept. 30, 2024), <https://democrats-judiciary.house.gov/news/documentsingle.aspx?DocumentID=5394>; *Written Testimony of Dalie Jimenez Before the H. Judiciary Subcomm. on Antitrust, Com., and Admin. Law*, 116th Cong. (Jun. 25, 2019) (written statement of Dalié Jiménez, Professor of Law, U. Cal. Irvine School of Law).

Faculty

Hon. Magdalena Reyes Bordeaux is a U.S. Bankruptcy Judge for the Central District of California in Riverside, appointed on Jan. 18, 2022. Before her appointment, she was a supervising senior staff attorney with Public Counsel's Debtor Assistance Project, where she managed the nation's largest bankruptcy *pro bono* project. Judge Bordeaux was a Ninth Circuit Lawyer Representative and served as an elected member of the Ninth Circuit Judicial Conference Executive Committee. She also was an adjunct professor at Loyola Law School, an executive board member of the California Lawyers Association's Business Law Section, and a board member of the Latina Lawyers Bar Association. Judge Bordeaux has written numerous articles on bankruptcy issues, and she has received several awards recognizing her work and scholarship in bankruptcy law, including the President Emeritus Henry J. Sommer Scholarship Award and the Thomas B. Donovan Public Excellence Award. She received her B.A. from the University of California, Irvine and her J.D. from UCLA School of Law.

Robert B. Branson is an attorney with BransonLaw, PLLC in Orlando, Fla., who has focused on consumer and small business bankruptcy rights for more than 30 years. He is a member of the Central Florida Bankruptcy Law Association and former chair of the Orange County Bankruptcy Committee. Mr. Branson is a mediator with the U.S. Bankruptcy Court and has performed more than 600 mortgage mediations. As debtor's counsel, he has completed more than 500 mortgage modifications since the program's inception. Mr. Branson spoke at the National Bankruptcy Judge Conference in 2016 and 2018, at ABI's Annual Spring Meeting in 2015 and at ABI's Southeast Bankruptcy Workshop in 2016 and Paskay Memorial Conference in 2019, and at the National Association of Chapter Thirteen Trustees Annual Conference in 2014. His firm also assisted with the formation of the Middle District of Florida, Orlando Division *Pro Se* Clinic. Mr. Branson served in the U.S. Army from 1978-83. He received his B.A. from the University of Central Florida in 1985 and his J.D. from the University of Florida College of Law in 1988.

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Barbara C. Leon is a managing attorney with Arkovich Law in Tampa, Fla., and has been a Florida licensed attorney for more than 20 years. Her practice includes bankruptcy, foreclosure defense, consumer collections litigation, debt defense and student loans. Ms. Leon previously worked in consumer bankruptcy practice for approximately five years, representing both individual and corporate debtors in chapters 7, 11 and 13, then spent some time in creditor practice before returning to bank-

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