

# Crushing student loan debt: there is hope



By Andrea Burton, managing attorney

On the heels of the COVID-19 pandemic, momentum is gathering around forgiveness and discharge of the crippling student loan debt many Americans carry. The pandemic opened our eyes to the everyday realities of U.S. households that struggle financially. The skyrocketing costs of American higher education have resulted in the average college student graduating with around \$25,000 in debt. Studies show this debt burdens both middle-class and low-income borrowers tremendously - broadly resulting in loan default; wage garnishment; poor credit scores; and the inability to buy a home, save, and build wealth. The burden [disproportionately impacts borrowers of color](#), with Black borrowers owing on average \$25,000 more than white borrowers due to the [systemic wage and employment inequities they face](#).

Do borrowers have any hope to get out from under this crushing debt?

Yes, but maybe not in the way you think.

Since August, millions of low- and middle-income student loan borrowers have been anxiously watching and waiting to see what will come of the [Biden administration's intent to forgive an estimated \\$430 billion in federal student loan debt](#). The relief was meant to provide up to \$20,000 in debt cancellation depending on loan type and income.

The fate of the student debt relief plan, for now, rests in the hands of the Supreme Court. In October, a lower federal court issued a nationwide injunction halting the program. On Tuesday, the Justices heard oral arguments in two cases challenging the plan. The Supreme Court is expected to make its decision by June.

In the face of these roadblocks, and in the spirit of the student debt relief plan, the federal government announced another significant shift to reduce the heavy burden student loan debt places on many low-income borrowers. In November 2022, the Department of Justice and the Department of Education announced a new process to make it easier to discharge student loan debt in bankruptcy proceedings. While this new process will have less potential reach than the student debt relief plan, it will have a life-changing impact on student loan borrowers who have no prospect of ever being able to pay off their loans.

Student loan debts have always been dischargeable in bankruptcy - in theory. To be successful, however, debtors had to show that repayment of the loans created "undue hardship." Undue hardship is not defined in the bankruptcy code. The Supreme Court's interpretation of undue hardship made it extremely difficult for most debtors to prove. In practice, debtors must show they have permanent disability - something for which very few debtors qualify. Until the new guidance

was issued, the bankruptcy court's test for undue hardship was considered essentially insurmountable. As a result, a study by the American Bankruptcy Law Journal found that fewer than 0.1% of debtors even attempt student loan discharge.

According to the [National Consumer Law Center](#), the new guidance "seeks to rectify this by setting 'clear, transparent, and consistent expectations' for discharge, reducing burdens on debtors by simplifying the process, and increasing the number of cases in which (the Department of Education) agrees to support a discharge." Borrowers seeking to discharge federal student loan debt can now complete a standardized attestation form that will be assessed using clear standards.

While there can be no certain way to predict how these changes will play out in practice, it's hoped they will result in successful discharge of student loan debt for many more bankruptcy debtors experiencing disability, financial inability, and the inability to secure adequate work in their fields. What about individuals with disabilities that impact their ability to work but don't rise to the level of total disability? Or those suffering chronic health challenges not technically considered a disability? What about borrowers who can work in their fields of education but still can't earn enough to cover their loan payments? In the past, these debtors were likely to be unsuccessful in discharging their student loan debt. Now, they may have a real chance at a fresh start.

Because these guidelines are so new, and because they are subject to interpretation by the federal courts, it will take some time to know how truly impactful they will be. But advocates are hopeful. Community Legal Aid has accepted its first case to test the new guidelines. The debtor has strong arguments to support her claim of undue hardship.

For community members working with individuals who struggle with student loan payments or are considering bankruptcy, it is important to share this information. Many are aware of the federal loan forgiveness initiative and the legal challenges it

has faced, but fewer know about these changes in the bankruptcy arena. Additionally, a good first step for most borrowers is to consolidate their student loans. This can help lower and simplify payments and help position the borrower if bankruptcy is needed down the road. Many can also seek help at free financial wellness seminars offered at libraries across the state.

This will not be the last we share on the topic of student loan forgiveness and discharge. Many developments are expected in the coming months - as the Supreme Court cases play out and bankruptcy decisions are made under new guidelines. But today, amidst the ups and downs, advocates are hopeful and set to fight for some very real impact for our lowest income neighbors facing student loan debt and bankruptcy.

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Last updated on March 01, 2023.

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