

Can Debtors AFFORD STUDENT LOAN Adversaries?

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For years, bankruptcy lawyers and borrowers alike repeated the same refrain: student loans cannot be discharged in bankruptcy. Of course, that was never entirely true. Section 523(a)(8) has long allowed discharge in cases of undue hardship. But in practice, bringing an adversary proceeding was expensive, the process was unpredictable and most borrowers were expected to lose anyway. Over time, that perception became the prevailing reality.

That reality, however, changed on November 17, 2022, with the introduction of the Department of Justice Guidance.¹ Discharges are still not automatic and require litigation, but the process became more standardized, more objective and more cost-effective than it'd been before. Just as importantly, the results began to change. The *New York Times* recently reported that 87% of these adversary proceedings are achieving

success.² An 87% success rate is significant and should change the way debtors and their lawyers view these cases. After all, millions of borrowers continue to struggle with significant student loan debt, and an 87% success rate suggests that more debtors should be pursuing adversary proceedings.

And yet, even with the new Guidance and its ensuing success, filings remain lower than one might expect.

To be clear, attorneys have started to take notice, and more cases are being filed. But one obstacle remains stubbornly in place: many clients are still reluctant to pay for the adversary proceeding, opting instead to take a wait-and-see approach. Bankruptcy lawyers, no matter how committed they are to helping distressed debtors, can't afford to handle these cases for free. As a result, filings remain far lower than the law and the current results would seem to justify.

That, in turn, raises a related question: why do so many borrowers still feel so little urgency about their student loans in the first place? The answer is fairly simple. For years,





they were conditioned to. Many borrowers haven't had to make a meaningful payment since the first COVID relief measures in March 2020. Layer on the repeated pauses in payment obligations, interest accrual and collections, and it's no surprise that many debtors don't feel any urgency to address student-loan debt. In practical terms, they're comparing an attorney's fee to what they have recently been paying: nothing.

That comparison, however, was always shaped by an unusual and temporary policy environment.

For years, the federal system sent the message that nonpayment wouldn't trigger the ordinary consequences. Then came repeated public expectations of broad cancellation. But that environment has changed. The Supreme Court struck down the Biden administration's mass cancellation plan in 2023. The SAVE Plan is gone. Other repayment options have narrowed. The assumption that relief will simply arrive without action is no longer a sound strategy.

As these protections recede and collections resume, the cost of inaction becomes much easier to see.

The cost of continued inaction for many borrowers will be costly. Consider a representative debtor with approximately \$100,000 in federal student loans, a household of three and gross monthly income of about \$7,000. Under the repayment landscape as of July 1, 2026, that borrower could be facing roughly \$675 per month for 20 years, more than \$8,100 per year and approximately \$162,000 in total payments. A repayment-assistance option may look better in the short term, but even that could still amount to about \$441 per month for 30 years, more than \$5,200 per year and roughly \$159,000 overall. And if the borrower does nothing and ends up in unresolved default, wage garnishment could approach \$900 per month at that income level. The precise numbers will vary from borrower to borrower, but the broader point won't: not taking any action can mean paying hundreds of dollars every month, year after year, for decades.

Once those numbers are actually put on the table, the objection to attorney's fees starts to look very different. A debtor may understandably hesitate at the prospect of paying additional legal fees during or after a bankruptcy case. But the comparison is no longer between paying a lawyer and paying nothing. The real comparison is between a one-time, finite fee to pursue discharge and a long stream of future payments that may exceed \$150,000—or worse, the prospect of wage garnishment that follows the debtor long after the bankruptcy case ends. For many debtors, the legal fee is not the expensive option. It's the cheaper one.

That's the conversation bankruptcy lawyers should be having more directly. The 2022 Guidance didn't eliminate litigation, but it made these cases more predictable, more standardized and less risky. At the same time, the policy environment that once allowed borrowers to ignore student loans has come to an end. The pauses are over. The hopes of broad cancellation have faded. Repayment options are shrinking. Collections are back in the picture.

In that setting, a debtor who qualifies for discharge often **can't afford not to pursue it**. Once the numbers are viewed honestly, that conclusion isn't aggressive. It's simply economic common sense. ■

ENDNOTES

- 1. www.justice.gov/ust/student-loan-guidance.
- 2. www.nytimes.com/2025/12/27/business/student-loans-bankruptcy.html.