



# DISCHARGING STUDENT LOANS IN BANKRUPTCY

## Why the 2022 DOJ Guidance is Likely Here to Stay

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**F**or decades, discharging student loan debt in bankruptcy has been functionally impossible for most borrowers, requiring an often insurmountable showing of “undue hardship.” That changed on Nov. 17, 2022, when the Department of Justice (“DOJ”), in collaboration with the Department of Education (“ED”), issued new guidance (“Guidance”) aimed at standardizing and simplifying how federal student loan discharge proceedings are handled in bankruptcy court.

The Guidance fundamentally realigns the process for discharging federal student loans. It allows debtors to submit a detailed attestation form ("Attestation") describing their financial circumstances, past efforts to repay and future income prospects. The DOJ and ED then review this information against standardized criteria and, where appropriate, stipulate to discharge. This replaced a previously expensive, lengthy and inconsistent system that left outcomes largely dependent on the discretion of individual U.S. Attorney's Offices. The result has been a fairer, more transparent process—with over 85% of applicants receiving full or partial relief under the Guidance.<sup>1</sup>

Despite its success, some have expressed concern that the Guidance might be reversed following the return of Donald Trump to the presidency. That concern, however, overlooks several key indicators suggesting the Guidance is likely here to stay.

#### EVIDENCE FROM THE PREVIOUS TRUMP ADMINISTRATION (2017-2021)

Notably, the first Trump administration had already identified bankruptcy reform as part of the solution to the student loan crisis. In February 2018, under Secretary Betsy DeVos, the Department of Education issued a Request for Information (Docket ID ED-2017-OPE-0085), specifically asking whether the government's approach to evaluating undue hardship claims was too rigid and in need of reform.

This RFI invited comments on whether ED should "develop a policy that supports a position that certain borrowers should qualify for undue hardship discharge," and even asked whether ED's litigation stance had become "overly rigid or lacking in compassion." The very issuance of this RFI demonstrated recognition of problems with the existing bankruptcy framework for student loans and active exploration of reforms to make the process more accessible and consistent.

Many comments were submitted in response to the RFI, including from consumer advocates, bankruptcy judges, attorneys and ordinary borrowers. These comments urged a streamlined approach, echoing themes that ultimately formed the foundation of the 2022 Guidance. Although no formal policy was adopted during the remainder of the first term, the signal was clear—there was openness to reform of how student loans are treated in bankruptcy.

#### THE TARGETED NATURE OF THE GUIDANCE

While high-profile attempts at student loan cancellation have faced significant legal challenges—most notably the Supreme Court's 2023 *Biden v. Nebraska* decision striking down broad forgiveness plans—the Guidance takes a fundamentally different approach. It does not change existing statutes or case law. Nor does it grant automatic cancellation to millions of borrowers without review. Instead, it requires an individual assessment of each borrower's situation and balances creditor and debtor rights within an established legal framework. In contrast to virtually every other attempted student loan reform, no legal challenges have been raised to the Guidance.

Under the Guidance, the DOJ and ED simply help debtors better understand what factors are relevant to establishing "undue hardship" under current bankruptcy law and provide a clear, direct path for demonstrating these factors. The Guidance allows bankruptcy to function as intended: providing a structured, legal process for debtors overwhelmed by student debt to reach resolution with their creditors and achieve a fresh start when repayment is truly impossible. It makes federal enforcement of the Bankruptcy Code more consistent, equitable and cost-effective for all parties involved.

For precisely this reason, key policy advisors affiliated with the Trump administration have expressed support for the bankruptcy process, noting that "student loan debt [should be] dischargeable on an individualized basis in bankruptcy."<sup>2</sup>

#### RECENT ACTIONS SUPPORT CONTINUITY

Significantly, the current administration has already taken concrete steps that signal continuity for the Guidance. Within weeks of President Trump's inauguration in January 2025, Assistant U.S. Attorneys (AUSAs) reported that they were temporarily instructed to pause reviewing student loan discharge cases under the Guidance. Many expressed concern that this signaled the end of the program.

However, by mid-February 2025, AUSAs were given permission to resume processing Attestations and discharge stipulations. This pattern—a brief pause for review followed by continuation—suggests that after careful consideration, the administration has found value in maintaining the Guidance.

The fact that the current administration affirmatively reviewed and agreed to proceed with the Guidance process is particularly encouraging. This wasn't a case of policy continuing through neglect or oversight. Rather, it represents a deliberate decision to allow the process to continue after evaluation.

#### PRACTICAL BENEFITS SUPPORT CONTINUATION

Several practical considerations further support the likelihood of the Guidance remaining in place:

1. **Administrative Efficiency:** The Guidance reduces government resources spent contesting bankruptcy cases with limited chances of recovery.
2. **Individual Assessment:** Unlike broad forgiveness programs, the Guidance requires case-by-case evaluation, maintaining the integrity of the bankruptcy system.
3. **Existing Legal Framework:** The approach works within established bankruptcy law rather than creating new programs.
4. **Bipartisan Appeal:** The Guidance addresses concerns from across the political spectrum about the challenges faced by genuinely distressed borrowers.

#### CONCLUSION

While the Guidance was formally adopted in November 2022, efforts to redefine and improve prospects for student loan discharges in bankruptcy were already underway in 2018. These earlier efforts, coupled with the fact that the Guidance offers a targeted approach to loan discharge within an existing legal framework—plus the affirmative steps already taken in early 2025—strongly suggest that the Guidance is well-positioned to remain in place regardless of changes in political leadership.

For distressed borrowers seeking relief through bankruptcy, this continuity offers a promising path forward after decades of nearly impossible barriers to discharge. ■

#### FOOTNOTES

1. Letter dated 10/28/24 from Senators Warren, Whitehouse, Durbin and Warnock to Merrick Garland and Miguel Cardona.
2. <https://townhall.com/columnists/michael-faulkender/2023/07/07/biden-administration-loses-student-loans-battle-in-court-promises-to-try-again-n2625403>