



STUDENT LOANS IN 2023: IS BANKRUPTCY FINALLY A VIABLE OPTION?

AMERICAN BANKRUPTCY INSTITUTE
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- ▶ The Undue Hardship Standard: a heightened standard for discharge of student loans
- ▶ 11 U.S.C. Section 523(a)(8)
 - ▶ Student loans may not be discharged “unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor’s dependents”.
 - ▶ Brunner Test (3 prongs consider past, present and future)
 - ▶ Totality of the Circumstances Test
 - ▶ Adversarial process lengthy, expensive, hard to prove

BRUNNER TEST REMAINS

**Cannot maintain minimal
standard of living**

**Likely to persist for repayment
period**

Good faith efforts to repay

**Majority of courts follow this test
today – Adversary expensive**

UNDUE HARDSHIP: BRUNNER TEST 1987

- ▶ Clarity, transparency and consistency
- ▶ Reduce burdens by simplifying the fact gathering process through a form Attestation
- ▶ Allow a government stipulation to facts alleging a full or partial undue hardship
- ▶ Open communication between parties to reduce litigation burdens
- ▶ Court must ultimately make a finding, regardless of guidance

NEW DOJ GUIDANCE GOALS

- ▶ Attestation form
- ▶ Send to AUSA – not file
- ▶ Encourage early but can be used anytime during the case
- ▶ Excluded from reopened cases
- ▶ DOJ can ask for supporting documentation

ATTESTATION PROCESS

- ▶ Personal information
- ▶ Current income and expenses
- ▶ Future inability to repay student loans
- ▶ Prior efforts to repay student loans
- ▶ Current assets
- ▶ Additional circumstances

SIX PART ATTESTATION

- ▶ Meaningful engagement with servicer
- ▶ Past payments
- ▶ Applications for deferment or forbearance
- ▶ IDR consideration or enrollment
- ▶ Past failure to make payments not dispositive
 - ▶ Debtor debt management in other areas
 - ▶ Personal or family considerations

PAST, PRESENT AND FUTURE

- ▶ The Guidance creates presumptions that the inability to repay will persist if:
- ▶ The debtor is 65 or older;
- ▶ The debtor has a disability or injury impacting income potential;
- ▶ The debtor has been unemployed for at least 5 of the last 10 years;
- ▶ The debtor failed to obtain degree for which loan was procured;
- ▶ The debtor's loan has been in repayment status for 10 years.

Presumptions are rebuttable if there is concrete evidence that the debtor would have the future ability to pay.

PRESUMPTIONS OF DISCHARGE

- ▶ Guidance asks whether there is a reasonable explanation for non-enrollment rather than a willful attempt to avoid repayment.
 - ▶ The debtor was discouraged from enrolling or denied access
 - ▶ The debtor was given inaccurate information
 - ▶ The debtor held a plausible belief that an IDR would not improve their circumstances
 - ▶ The debtor was unaware of IDR options despite engagement
 - ▶ The debtor was concerned about tax implications

NON-ENROLLMENT IN IDR NOT PER SE
LACK OF GOOD FAITH

- ▶ Discharge may not be appropriate where Debtor retains significant assets inconsistent with a minimal standard of living
- ▶ Exempt assets not dispositive if can be converted to cash
- ▶ Guidance provides for whether asset is necessary for minimal standard of living
- ▶ Including residence or retirement assets should be an “extreme measure” and “exceptionally rare”.

ASSETS MATTER

- ▶ The Guidance encourages partial discharge where a Debtor satisfies the undue hardship elements but has some ability to make payments.
- ▶ If Debtor has significant assets or disposable income to pay part of the loan(s)
- ▶ Tailored to leave only a balance the Debtor can pay over the remaining loan term
- ▶ Case law in some jurisdictions may NOT allow partial discharge

PARTIAL DISCHARGE

- ▶ Must still file and serve an adversary complaint
 - ▶ Attorney fees – Two part RA, disclosure
 - ▶ Litigation
 - ▶ Deadlines
 - ▶ Motion for Stay (litigation and discovery)
 - ▶ Administrative discharge versus voluntary dismissal
 - ▶ Private student loans (non-qualified education loans)

ADVERSARIAL PROCESS

- ▶ DOJ guidance available in all chapters
- ▶ Chapter 13 concerns:
 - ▶ Delay in confirmation while awaiting AUSA's guidance
 - ▶ Case law requiring adversary near end of plan
 - ▶ Plan language

CHAPTER 13 CONCERNS

- ▶ IDR Waiver for old loans, make sure consolidated to Direct Loans by May 1, 2023 for automatic recount
- ▶ New Repaye will likely be very low payment for federal Direct loans
- ▶ 10k/20k Forgiveness on appeal with U.S. Supreme Court
- ▶ Total and Permanent Disability
- ▶ Borrower Defense to Repayment
- ▶ Fresh Start Initiative to cure default
- ▶ Public Service Loan Forgiveness
- ▶ Private loan settlement – tax free thru 12/31/25

OTHER AVENUES FOR RELIEF

- ▶ Studentaid.gov NSLDS report
- ▶ Consolidation to Direct (guidance will be out soon for FFEL loans)
- ▶ Attorney's fee provisions
- ▶ Know your court
- ▶ File on good facts
- ▶ High wage earner (Chapter 13 issues)
- ▶ Avenues for student loan relief outside of bankruptcy

PRE-FILING TIPS



STUDENT LOAN SIDEBAR - UPDATES

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/c/arkovichlaw](https://www.youtube.com/c/arkovichlaw)

Blog:
Christiearkovich.com

Tampa Bay Bankruptcy
Bar Association
Cramdown Column

Studentaid.gov repayment calculator

Department of Education Ombudsman (877-557-2575)

Studentaid.gov/fsa-id/sign-in/landing (lists federal student loan detail, loan types, status)

NCLC site: www.studentloanborrowerassistance.org

ADDITIONAL RESOURCES

- ▶ Arkovich Law, P.A.
- ▶ Tampa, Florida
- ▶ Christiearkovich.com
- ▶ info@christiearkovich.com
- ▶ (813) 258-2808
- ▶ Student Loan Sidebars
- ▶ www.youtube.com/c/arkovichlaw
- ▶ Cramdown quarterly for attorneys



Student Loan Solutions

Arkovich Law, P.A.

HELP ELIMINATE STUDENT LOAN DEBT!

- ▶ Van Horn Law Group P.A.
- ▶ Fort Lauderdale, FL
- ▶ ChadVanHorn.com
- ▶ chad@cvhlawgroup.com
- ▶ 954-765-3166



**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 Jesperson*, 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 Jesperson*, 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." *Jesperson*, 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 Jesperson*, 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 determinations, 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 IDR, the Department attorney should give significant weight to the fact that, as noted, Education has found widespread problems with IDR servicing. In particular, Education has advised that IDRs 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 IDR 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 IDRs, 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 IDR, 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 IDR. Acceptable explanations or evidence could include, for example:

- that the debtor was denied access to, or diverted or discouraged from using, an IDR, 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 IDR;
- that the debtor had a plausible belief that an IDR would not have meaningfully improved their financial situation;
- that the debtor was unaware, after reasonable engagement, of the option of an IDR 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 IDR.

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 IDR 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.

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

In re:)	
)	
GEMBER BERUK	)	Case No. 22-10913-BFK
)	
<hr/>)	
)	
GEMBER BERUK	)	AP No. 22-01050-BFK
)	
Plaintiff)	
)	
v.)	
)	
UNITED STATES DEPARTMENT OF EDUCATION, et al.,)	
)	
Defendants)	
<hr/>)	

**ATTESTATION OF GEMBER BERUK IN SUPPORT
OF REQUEST FOR STIPULATION CONCEDING
DISCHARGEABILITY OF STUDENT LOANS**

I, GEMBER BERUK, 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 7832 Mount Woodley Pl., Alexandria, VA, 22306, in Fairfax County, Virginia. I reside with my parents, who provide my support.
3. My household includes the following persons (including myself):
Gember Beruk, age 44 (self); DR, age 69, Father|

SB [full name] 53 [age] Mother [relationship]
_____ [full name] _____ [age] _____ [relationship]

Questions four through nine 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: YES / NO [If you answered "NO," you must answer questions five through nine].

5. The outstanding balance of the student loan[s] I am seeking to discharge in this adversary proceeding is \$ 57,458.78.

6. The current monthly payment on such loan[s] is 0.00. The loan[s] are scheduled to be repaid in unknown [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 NOVA Comm. Col. George Mason U., where I was pursuing a Bachelor of Science degree with a specialization in Accounting, ISOM.

8. In May 2015 [month and year], I completed my course of study and received a Bachelor of Science 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 Unemployed. My employer's name and address is N/A [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 \$ 250 SNAP.¹

This amount includes the following monthly amounts:

<u> </u>	my gross income from employment (if any)
<u> </u>	my unemployment benefits
<u> </u>	my Social Security Benefits
<u>\$ 250</u>	my SNAP benefit
<u> </u>	my <u> </u>
<u> </u>	my <u> </u>
<u> </u>	gross income from employment of other members of household
<u> </u>	unemployment benefits received by other members of household
<u> </u>	Social Security benefits received by other members of household
<u> </u>	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.

_____ 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

X 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:

Notice on action of benefits

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 not exceed the amounts listed below based on the number of people in my household for the following categories [Indicate “yes” if your expenses do not exceed the referenced amounts]:

(a) Living Expenses²

- i. Food
\$431 (one person)

☒ YES / NO

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.

- \$779 (two persons)
\$903 (three persons)
\$1028 (four persons)
- ii. Housekeeping supplies ☒ YES / NO
\$40 (one person)
\$82 (two persons)
\$74 (three persons)
\$85 (four persons)
- iii. Apparel & Services ☒ YES / NO
\$99 (one person)
\$161 (two persons)
\$206 (three persons)
\$279 (four persons)
- iv. Personal care products and services ☒ YES / NO
(non-medical)
\$45 (one person)
\$82 (two persons)
\$78 (three persons)
\$96 (four persons)
- v. Uninsured medical costs ☒ YES / NO
\$75 (per individual under 65)
\$153 (per individual over 65)
- vi. Miscellaneous expenses ☒ YES / NO
not included elsewhere on this Attestation:
\$170 (one person)
\$306 (two persons)
\$349 (three persons)
\$412 (four persons)

(b) Households Greater Than Four Persons

If your household consists of more than four people, please provide your *total* expenses for the categories in Question 14(a): \$ _____

[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 other expense categories below. If you did not file a Means Test, you may refer to your Schedule

(c) Excess Expenses

If your current monthly household expenses exceed the amounts listed above for any of the categories in Question 13(a) and you would like the AUSA to consider such additional expenses as necessary, you may list those expenses and explain the need for such expenses here.

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]

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.

- 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

_____ \$ _____
\$ _____
\$ _____

(d) 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)

(e) Transportation Costs

- i. Vehicle payments (itemize per vehicle) \$ _____
ii. Monthly average costs of operating vehicles \$ 90
(including gas, routine maintenance,
monthly insurance cost)
iii. Public transportation costs \$ _____

(f) 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]

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).

- 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:

- 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:

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.

- 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:

16. After deducting the foregoing monthly expenses from my household gross income, I have 0.00 [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:

I hope to someday being able to work and pay for my own expenses but currently I depend on my parents

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.

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 over the age of 65.
- ☐ 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 education for which I incurred the student loan[s].
- ☒ I have a permanent disability or chronic injury which renders me unable to work or limits my ability to work.

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 suffer from Lupus, chronic Gastroparesis and other health ailments which makes it difficult to be able to work. These severe health issues have been going on since September 2016

- ☒ I have been unemployed for at least five of the past ten years.

Please explain your efforts to obtain employment.

I have applied and started working at a few places but due to my health conditions I was not able to keep the jobs. However, I also tried to obtain work I could do from home but I am not able to perform the work again due to health issues

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 student loans I am seeking to discharge in pursuit of a degree I was unable to complete for reasons other than the closure of the educational institution.

Describe your reasons for being unable to complete the degree:

☒ 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 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: _____

I have been sick for a long time now and still under doctors care and besides the
Lupus and Gastroparesis they are still investigating what other diseases are affecting my health.

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 \$ 1,755.08 in payments on the loans, including the following:

7 regular monthly payments of \$ 133.17 each.

4 additional payments, including \$ 742.40, \$ 66.83, and \$ 6.83 (2x).

22. I have received 1 forbearances or deferments, for a period totaling 74 months.

23. I have attempted to contact the company that services or collects on my student loans or the Department of Education at least N/A times.

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

Description of efforts:

I applied my original loan payment was supposed to be \$ 609 per month. In Febryary 2016 I
applied for IDRPs and was accepted with my monthly payment being \$ 133.17. I made those payment
plus some extra payments from April 2016 through September 2016. Whe I became too sick to work
I applied for forbearance.

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

[Updated November 2022]

26. Describe any other facts indicating you have acted in good faith in the past in attempting to repay the loan, including efforts to obtain employment, maximize your income, or minimize your expenses:

V. CURRENT ASSETS

27. I own the following parcels of real estate:

Address: N/A

Owners:⁷ N/A

Fair market value: N/A

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

Total balance of mortgages and other liens. N/A

28. I own the following motor vehicles:

Make and model: Toyota Corolla

Fair market value: 4000

Total balance of Vehicle loans And other liens N/A

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:

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):

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.

[Updated November 2022]

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

Gember Beruk

Signature:

Gember Beruk

Name:

12/01/2022

Date:

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

In re:)	
)	
GEMBER BERUK	)	Case No. 22-10913-BFK
)	
<hr/>)	
)	
GEMBER BERUK	)	AP No. _____
)	
Plaintiff)	
)	
v.	)	COMPLAINT TO
	)	DETERMINE
U.S. DEPARTMENT OF EDUCATION	)	DISCHARGEABILITY
	)	OF STUDENT LOAN
SERVE: Lisa Brown, General Counsel	)	DEBT UNDER
US Department of Education	)	11 U.S.C. §523(a)(8)
400 Maryland Avenue SW)	
Washington, DC 20202)	
)	
United States Attorney)	
Eastern District of Virginia)	
2100 Jamieson Ave.)	
Alexandria, VA 22314)	
)	
United States Attorney General)	
10th St & Constitution Ave, NW)	
Rm. 6313)	
Washington, DC 20530)	
)	
And)	
)	
GREAT LAKES EDUCATIONAL LOAN)	
SERVICES, INC.)	
)	
SERVE: C T CORPORATION SYSTEM)	
4701 Cox Rd Ste 285)	
Glen Allen, VA 23060-6808)	
)	
Defendants)	
<hr/>)	

**COMPLAINT TO DETERMINE DISCHARGEABILITY
OF STUDENT LOANS UNDER 11 U.S.C. §523(a)(8)**

JURISDICTION

1. The United States District Court for the Eastern District of Virginia has jurisdiction of this action pursuant to 28 U.S.C. § 1334 because plaintiff's dischargeability complaint arises under Title 11.

2. The United States Bankruptcy Court for the Eastern District of Virginia has jurisdiction of this action pursuant to 28 U.S.C. § 157 and Rule 7001 of the Federal Rules of Bankruptcy Procedure, in that it arises under plaintiff's bankruptcy case number 22-10913-BFK filed under Chapter 7 of Title 11 in this United States Bankruptcy Court for the Eastern District of Virginia (Alexandria Division).

3. Plaintiff's dischargeability complaint is a core proceeding under 28 U.S.C. §157(b)(2), and plaintiff consents to entry of final orders and judgment by the bankruptcy judge in this adversary proceeding.

4. Venue is proper in this district because plaintiff resides in Alexandria, Virginia in this district and filed her bankruptcy in this Alexandria Division.

5. The relief requested in this Complaint is predicated upon section 523(a)(8) of the Bankruptcy Code, 11 U.S.C. § 523(a)(8), and Rule 7001 of the Federal Rules of Bankruptcy Procedure,.

PARTIES

6. Gember Beruk ("plaintiff") is an individual living in Alexandria, Virginia. Plaintiff's educational debts to defendants are collectively referred to as her "student loans" in this complaint.

7. Defendant United States Department of Education (“DOE”) is the owner of all of plaintiff’s outstanding Stafford student loans.

8. Defendant Great Lakes Educational Loan Services, Inc. (“Great Lakes”) is a nonprofit corporation authorized to conduct business in Virginia. Great Lakes is the loan servicer for all of plaintiff’s student loans.

FACTS

9. Plaintiff attended Northern Virginia Community College (hereinafter “NVCC”) from 2009 through 2011 and received an Associate of Science in Business Administration degree in May 2011.

10. Plaintiff attended George Mason University from fall 2011 through May 2015, when she received a Bachelor of Science in Accounting and a Bachelor of Science in Information Systems Operations Management in May 2015.

11. To finance her education, plaintiff borrowed a total of \$54,000 in federal Stafford loans, with interest rates ranging from 3.4% to 6.8%. No payments were due on these loans while plaintiff was a full-time student.

12. The current cumulative balance on these loans is \$57,458.78.

13. Under the original terms of the student loans, plaintiff was required to resume payments six months after graduation (around November 2015), and her monthly payment required to pay off all loans during the standard loan repayment period would have ranged between \$609.00 and \$684.00 for a period of ten (10) years, or until November 2025.

14. Plaintiff was unable to find a job immediately after graduation. She applied and interviewed for many jobs but was unable to get a job in her field of study because she lacked previous work experience.

15. Plaintiff eventually found a job as an Office Manager at Crescent Property Management in Washington, DC. Her starting wages were \$12 per hour and eventually her wages were raised to \$14 per hour.

16. Plaintiff could not afford to start making payments of \$609 per month in November 2015 as required. On February 13, 2016, she applied for and was accepted into DOE's income-based repayment ("IBR") program, with her required payment being \$133.17 per month.

17. Plaintiff has made a good faith attempt to repay her student loans. Once she was accepted into the IBR program, plaintiff made the following payments:

04/09/2016	\$133.17
05/09/2016	\$133.17
06/09/2016	\$133.17
06/17/2016	\$875.57
07/08/2016	\$200.00
08/08/2016	\$140.00
09/08/2016	\$140.00

18. After September 2016, plaintiff became unable to make further payments because she developed debilitating health issues that made her unable to work because of them. She applied for and was granted forbearance from DOE; her interest payments were government-subsidized from October 2016 through March 2021, when DOE stopped all student loan payments due to the COVID-19 pandemic.

19. Plaintiff's student loans have never gone into default. She meticulously monitors her student loan account and status to ensure she has always kept her student loan account in good standing. Her current loan forbearance period will end on January 11, 2023.

20. Special circumstances exist that indicate plaintiff's inability to repay her student loans will continue through the loan repayment period. Plaintiff's medical issues have never been resolved and she continues to be unable to work because of them. She does not have a definitive diagnosis even though she has seen several different types of medical specialists and has been referred to and participated in studies at the National Institutes of Health.

21. Due to her medical issue, plaintiff has been forced to move back in with her parents, who support her financially. She receives limited public benefits of Medicaid medical insurance and SNAP (food stamps) of \$250 per month.

22. Plaintiff has been ill and unable to work since September 2016. She does not know if or when she will ever be able to return to work in any capacity. Her original loan repayment period will be done in November 2025, though she was recently advised of a new program that offered her lower initial payments for two years with a payback period that would stretch into 2033.

23. Plaintiff cannot maintain a minimal standard of living if required to repay her student loans to defendants.

24. Even if plaintiff were able to return to work, it would be impossible for her to pay off her loan balance within the repayment term of the loan.

25. Plaintiff has made all reasonable efforts to maximize her income after graduating from school. Her current medical condition prevents her from being able to have any gainful employment now or in the foreseeable future.

CAUSE OF ACTION

26. Plaintiff incorporates the above allegations by reference.

27. Plaintiff has established that requiring her to repay her student loans would impose an undue hardship on plaintiff:

- Plaintiff cannot maintain a minimal standard of living for herself if forced to repay her student loans;
- Due to her medical condition, plaintiff's current financial situation is likely to continue during the repayment period;
- Plaintiff has made a good-faith effort to repay her student loans.

WHEREFORE, plaintiff requests:

1. An order determining plaintiff's debts to defendants as alleged above are discharged pursuant to 11 U.S.C. §523(a)(8) because excepting plaintiff's debts to defendants from discharge would impose an undue hardship on plaintiff under the three-prong Brunner test;
2. For other equitable relief this Court may determine is fair and just.

Dated: October 18, 2022

Respectfully submitted,

/s/ Nancy O. Ryan
Nancy O. Ryan, VSB 22196
Kaitlin Millie Walker, VSB 91153
Attorneys for Plaintiff
Legal Services of Northern VA
10700 Page Avenue, Ste 100
Fairfax, VA 22030
NRyan@lsnv.org
703-504-9142; fax 571-386-0614

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

IN RE:)	
)	
GEMBER BERUK,)	CASE NO. 22-10913-BFK
)	
Debtor.)	
_____)	
)	
GEMBER BERUK,)	
)	
Plaintiff,)	
)	
v.)	AD. PRO. NO. 22-01050-BFK
)	
U.S. DEPARTMENT OF EDUCATION, ET AL.,)	
)	
Defendants.)	

CONSENT ORDER

UPON CONSIDERATION of the Consent Motion for Entry of Order filed by the United States and with the consent of the Plaintiff, as evidenced by the signatures of counsel, below,

IT IS HEREBY ORDERED THAT:

1. The student loan obligations of the Plaintiff to the Defendant U.S. Department of Education at issue in the above-captioned adversary proceeding are hereby discharged pursuant to 11 U.S.C. Sec. 523(a)(8).
2. The requirement that the parties file a joint status report on or before February 10, 2023, and the February 21, 2023, Status Conference are hereby removed.
3. The above-captioned adversary proceeding is hereby dismissed.

Robert K. Coulter
Assistant United States Attorney
VSB: 42512
2100 Jamieson Avenue
Alexandria, Virginia 22314
Tel: (703) 299-3745
Counsel for the United States of America

4. The clerk will mail a copy of this order, or give electronic notice of its entry, to the parties listed below.

Date:

Jan 25 2023

/s/ Brian F Kenney

HON. BRIAN F. KENNEY
United States Bankruptcy Judge

Entered On Docket: January 25, 2023

Copies to:

Robert K. Coulter
Assistant United States Attorney
2100 Jamieson Avenue
Alexandria, Virginia 22314

Nancy O. Ryan, VSB 22196
Kaitlin Millie Walker, VSB 91153
Legal Services of Northern Virginia
10700 Page Avenue, Ste 100
Fairfax, VA 22030

I ASK FOR THIS:

/s/ Robert K. Coulter

Robert K. Coulter

Assistant United States Attorney, VSB:42512

2100 Jamieson Avenue

Alexandria, Virginia 22314

Tel: (703) 299-3745

Telefax: (703) 299-2584

Counsel for United States of America

SEEN AND AGREED:

/s/ Nancy O. Ryan

By RKC with permission via email dated 1/24/2023

Nancy O. Ryan, VSB 22196

Kaitlin Millie Walker, VSB 91153

Legal Services of Northern Virginia

10700 Page Avenue, Ste 100

Fairfax, VA 22030

Tel: (703) 504-9142

Fax: (571) 386-0614

Counsel for the Debtor

LOCAL RULE 9022-1(C) CERTIFICATION

I hereby certify that the foregoing proposed Order has been signed by all necessary parties.

Date:

/s/ Robert K. Coulter
Robert K. Coulter
Assistant United States Attorney

DISMISSED

**U.S. Bankruptcy Court
Eastern District of Virginia (Alexandria)
Adversary Proceeding #: 22-01050-BFK**

Assigned to: Brian F. Kenney
Lead BK Case: 22-10913
Lead BK Title: Gember Beruk
Lead BK Chapter: 7
Demand:

Date Filed: 10/18/22
Date Dismissed: 01/25/23

Nature[s] of Suit: 63 Dischargeability - 523(a)(8), student loan

Plaintiff

Gember Beruk
7832 Mount Woodley Pl
Alexandria, VA 22306
703-473-9624
SSN / ITIN: xxx-xx-9246

represented by **Nancy Olszewski Ryan**
Legal Services of Northern Virginia
4080 Chain Bridge Road, 2nd Floor
Fairfax, VA 22030
703-504-9142
Fax : 571-386-0614
Email: nryan@lsnv.org

Kaitlin Millie Walker
Legal Services of Northern Virginia
9240 Center Street
Manassas, VA 20110
(703) 504-9156
Fax : 5713860627
Email: kwalker@lsnv.org
LEAD ATTORNEY

V.

Defendant

U.S. Department of Education
400 Maryland Ave. SW
Washington, DC 20202

represented by **Robert K. Coulter**
Office of the US Attorney
2100 Jamieson Avenue
Alexandria, VA 22314
(703) 299-3745
Fax : 703-299-2584
Email: robert.coulter@usdoj.gov

Defendant

Great Lakes Educational Loan Services
c/o C T Corporation System

represented by **Great Lakes Educational Loan Services**
PRO SE

4701 Cox Rd Ste 285
Glen Allen, VA 23060-6808

Defendant

Kevin R. McCarthy
8508 Rehoboth Court
Vienna, VA 22182
7037709261

represented by **Kevin R. McCarthy**
PRO SE

Defendant

Michael T. Freeman
Office of the U.S. Trustee
1725 Duke Street, Suite 650
Alexandria, VA 22314

represented by **Michael T. Freeman**
PRO SE

Filing Date	#	Docket Text
10/18/2022	<u>1</u> (6 pgs)	Adversary case 22-01050. Complaint against U.S. Department of Education, Great Lakes Educational Loan Services, Kevin R. McCarthy, Michael T. Freeman (Fee Amount of \$350 is Exempt) filed by Gember Beruk. Nature of Suit: (63 (Dischargeability - 523(a)(8), student loan)) Associated Bankruptcy Case Number: 1:22-bk-10913 (Ryan, Nancy)
10/18/2022	<u>2</u> (3 pgs; 2 docs)	Summons and Notice of Pre-Trial Conference. Summons Issued to Michael T. Freeman Answer Due 11/17/2022; Great Lakes Educational Loan Services Answer Due 11/17/2022; Kevin R. McCarthy Answer Due 11/17/2022; U.S. Department of Education Answer Due 11/17/2022 (Re: related document(s) <u>1</u> Complaint filed by Gember Beruk) Pre-Trial Conference set for 3/13/2023 at 09:30 AM at Judge Kenney's Courtroom, 200 S Washington St, 2nd Flr, Courtroom I, Alexandria, VA, (Chandler, Kimberly)
10/18/2022	<u>3</u> (5 pgs; 2 docs)	Initial Scheduling Order (Re: related document(s) <u>1</u> Complaint filed by Gember Beruk) (Chandler, Kimberly)
10/27/2022	<u>4</u> (1 pg)	Certificate of Service (Re: related document(s) <u>2</u> Summons and Notice of Pre-Trial Conference) filed by Nancy Olszewski Ryan of Legal Services of Northern Virginia on behalf of Gember Beruk. (Ryan, Nancy)
10/27/2022	<u>5</u> (1 pg)	Certificate of Service (Re: related document(s) <u>2</u> Summons and Notice of Pre-Trial Conference) filed by Nancy Olszewski Ryan of Legal Services of Northern Virginia on behalf of Gember Beruk. (Ryan, Nancy)
10/27/2022	<u>6</u> (1 pg)	Certificate of Service (Re: related document(s) <u>2</u> Summons and Notice of Pre-Trial Conference) filed by Nancy Olszewski Ryan of Legal Services of Northern Virginia on behalf of Gember Beruk. (Ryan, Nancy)
10/27/2022	<u>7</u> (1 pg)	Certificate of Service (Re: related document(s) <u>2</u> Summons and Notice of Pre-Trial Conference) filed by Nancy Olszewski Ryan of Legal Services of Northern Virginia on behalf of Gember Beruk. (Ryan, Nancy)

10/27/2022	<u>8</u> (1 pg)	Certificate of Service (Re: related document(s) <u>2</u> Summons and Notice of Pre-Trial Conference) filed by Nancy Olszewski Ryan of Legal Services of Northern Virginia on behalf of Gember Beruk. (Ryan, Nancy)
10/27/2022	<u>9</u> (1 pg)	Certificate of Service (Re: related document(s) <u>2</u> Summons and Notice of Pre-Trial Conference) filed by Nancy Olszewski Ryan of Legal Services of Northern Virginia on behalf of Gember Beruk. (Ryan, Nancy)
10/31/2022	<u>10</u> (16 pgs)	Response to (Re: related document(s) <u>1</u> Complaint filed by Gember Beruk) filed by Great Lakes Educational Loan Services. (Palacios, Lilian)
10/31/2022	<u>11</u> (1 pg)	Letter (Re: related document(s) <u>1</u> Complaint filed by Gember Beruk) filed by Great Lakes Educational Loan Services. (Palacios, Lilian)
11/17/2022	<u>12</u> (5 pgs)	Motion to Stay filed by Robert K. Coulter of Office of the US Attorney on behalf of U.S. Department of Education. (Coulter, Robert)
11/18/2022	13	Inquiry/General Checksheet Issued to Robert K. Coulter regarding Motion, Notice of Hearing; Motion To Stay-A hearing is required on the referenced motion. As the moving party, you are responsible for setting the matter for hearing. (Re: related document(s) <u>12</u> Motion to Stay filed by U.S. Department of Education) (Chandler, Kimberly)
11/20/2022	<u>14</u> (4 pgs)	Inquiry/General Checksheet BNC Certification of Service (Re: related document(s) 13 Inquiry/General Checksheet) (Admin.) (Entered: 11/21/2022)
11/21/2022	<u>15</u> (4 pgs)	Notice of Motion and Notice of Hearing (Re: related document(s) <u>12</u> Motion to Stay filed by U.S. Department of Education) filed by Robert K. Coulter of Office of the US Attorney on behalf of U.S. Department of Education. Hearing scheduled for 11/29/2022 at 09:30 AM at Judge Kenney's Courtroom, 200 S Washington St, 2nd Flr, Courtroom I, Alexandria, VA. (Coulter, Robert)
11/21/2022	<u>16</u> (4 pgs)	Entered in Error, Please see Amended Consent Order in entry #18. Consent Order On Motion To Stay Adversary Proceeding (Related Doc <u>12</u>) (Chandler, Kimberly) Modified on 12/19/2022. (Sheridan, Michelle)
11/23/2022	<u>17</u> (6 pgs)	BNC certificate of mailing of order (Re: related document(s) <u>16</u> Order on Motion to Stay) (Admin.) (Entered: 11/24/2022)
12/19/2022	<u>18</u> (4 pgs)	Amended Consent Order; Adversary Proceeding is hereby stayed through and including February 17, 2023. Status Conference on February 21, 2023@9:30 a.m.(Re: related document(s) <u>16</u> Order on Motion to Stay) Status Conference Hearing scheduled for 2/21/2023 at 09:30 AM at Judge Kenney's Courtroom, 200 S Washington St, 2nd Flr, Courtroom I, Alexandria, VA. (Chandler, Kimberly)
12/19/2022	19	Entry Modification Made Entered in Error with missing status hearing and stay deadline date, please see Amended Order in entry #18: See entry (Re: related document(s) <u>16</u> Order on Motion to Stay) (Sheridan, Michelle)
12/21/2022	<u>20</u> (6 pgs)	BNC certificate of mailing of order (Re: related document(s) <u>18</u> Amended Order) (Admin.) (Entered: 12/22/2022)

12/21/2022	<u>21</u> (6 pgs)	BNC certificate of mailing of order (Re: related document(s) <u>18</u> Amended Order) (Admin.) (Entered: 12/22/2022)
01/25/2023	<u>22</u> (7 pgs; 2 docs)	Motion for Approval of Agreement filed by Robert K. Coulter of Office of the US Attorney on behalf of U.S. Department of Education. (Attachments: # <u>1</u> Proposed Order) (Coulter, Robert)
01/25/2023	<u>23</u> (4 pgs)	Consent Order (Related Doc # <u>22</u>) (Chandler, Kimberly)

PACER Service Center			
Transaction Receipt			
01/27/2023 11:04:15			
PACER Login:	jmichaux	Client Code:	
Description:	Docket Report	Search Criteria:	22-01050-BFK Fil or Ent: filed Doc From: 0 Doc To: 99999999 Format: html Page counts for documents: included
Billable Pages:	3	Cost:	0.30

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

IN RE:)	
)	
GEMBER BERUK,)	CASE NO. 22-10913-BFK
)	
Debtor.)	
<hr/>		
)	
GEMBER BERUK,)	
)	
Plaintiff,)	
)	
v.)	AD. PRO. NO. 22-01050-BFK
)	
U.S. DEPARTMENT OF EDUCATION, ET AL.,)	
)	
Defendants.)	

CONSENT MOTION FOR ENTRY OF ORDER DISCHARGING STUDENT LOANS
AND MEMORANDUM IN SUPPORT THEROF

The United States of America requests that the Court enter an order discharging the Plaintiff's student loans at issue in this proceeding pursuant to the provisions of 11 U.S.C. Section 523(a)(8). Counsel for the United States has discussed the relief requested in this motion with counsel for the Plaintiff who consents to such relief. As grounds for this Motion, the United States avers the following:

The above-captioned adversary proceeding was filed on October 18, 2022. Dkt. No. 1. In this adversary proceeding, Plaintiff seeks to discharge certain student loan obligations owed to the U.S. Department of Education (DoE Loan). Plaintiff asserts that requiring her to repay the

Robert K. Coulter
Assistant United States Attorney
VSB: 42512
2100 Jamieson Avenue
Alexandria, Virginia 22314
Tel: (703) 299-3745
Counsel for the United States of America

loans would constitute an undue hardship pursuant to 11 U.S.C. Sec. 523(a)(8).¹

The United States agrees that the Plaintiff is entitled to a discharge of the DOE Loan obligations at issue in this proceeding. The parties have executed a proposed Consent Order that accompanies this Motion.

CONCLUSION

For the foregoing reasons, the United States respectfully requests that its Motion be granted.

Respectfully submitted,

JESSICA D. ABER
UNITED STATES ATTORNEY

By: /s/ Robert K. Coulter
Robert K. Coulter
Assistant United States Attorney

¹ The Plaintiff and the U.S. Department of Education are the real parties in interest in this proceeding. Although named as a party to this proceeding, Great Lakes Education Loan Services, Inc., is a loan servicer, not a loan holder.

CERTIFICATE OF SERVICE

I hereby certify a copy of foregoing will be filed with the United States Bankruptcy Court electronically in the CM/ECF system. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

Date: January 25, 2023

/s/ Robert K. Coulter
ROBERT K. COULTER

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

IN RE:)	
)	
GEMBER BERUK,)	CASE NO. 22-10913-BFK
)	
Debtor.)	
_____)	
)	
GEMBER BERUK,)	
)	
Plaintiff,)	
)	
v.)	AD. PRO. NO. 22-01050-BFK
)	
U.S. DEPARTMENT OF EDUCATION, ET AL.,)	
)	
Defendants.)	

CONSENT MOTION TO STAY ADVERSARY PROCEEDING
AND MEMORANDUM IN SUPPORT THEROF

The United States of America requests that the Court stay further action in the above-entitled adversary proceeding through and including February 17, 2023. Counsel for the United States has discussed the relief requested in this motion with counsel for the Plaintiff who consents to such relief. As grounds for this Motion, the United States avers the following:

1. The above-captioned adversary proceeding was filed on October 18, 2022. Dkt. No. 1. A Summons and Notice in an Adversary Proceeding as well as an Initial Scheduling Order were entered on the same date. Dkt. Nos. 2 and 3. The United States' deadline to answer or otherwise respond to the Complaint expires on November 17, 2022.

Robert K. Coulter
Assistant United States Attorney
VSB: 42512
2100 Jamieson Avenue
Alexandria, Virginia 22314
Tel: (703) 299-3745
Counsel for the United States of America

2. On August 6, 2021, the United States Department of Education (“Education”) announced an extension through January 31, 2022 of its policy suspending payments and collection activities regarding federally-held student loans. Suspension of payments and collections on federal student loans originated with the enactment of the “Coronavirus Aid, Relief, and Economic Security Act” (the “CARES Act”) on March 27, 2020, and after expiration of these provisions of the CARES Act, suspension of payments and collections have been extended through executive action and regulatory action of the Department. Education has now further extended its policy to suspend payments and collection of federal student loan debt through December 31, 2022.¹

3. In addition, the Department of Justice has, on November 17, 2022, issued new guidance regarding requests to discharge student loans in bankruptcy cases. The guidance is an effort to enhance consistency and equity in the handling of student loan discharge adversary proceedings. The United States seeks a temporary stay to review and implement the new guidance.

4. The United States requests the Court to stay this adversary proceeding through February 17, 2023. A stay of this proceeding will further the goal of minimizing the financial impact of the COVID-19 pandemic on Federal student loan borrowers by assisting those borrowers in avoiding litigation costs and burdens during the pendency of the suspension. In

¹ It appears that the Plaintiff and the Department are the real parties in interest in this proceeding. Although named as a party to this proceeding, Great Lakes Education Loan Services, Inc. is a loan servicer, not a loan holder.

addition, a stay of this proceeding will allow the Plaintiff and the Defendant to implement the Government's new guidance on student loan discharge cases.

5. Courts have "broad discretion" to stay proceedings in matters before them. *Clinton v. Jones*, 520 U.S. 681, 706 (1997). "[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. North Am. Co.*, 299 U.S. 248, 254 (1936); *see also* Fed. R. Civ. P. 1.

6. In bankruptcy proceedings, courts have found the power to issue a stay of proceedings is derived from Section 105(a) of the Bankruptcy Code, which authorizes the court to issue "any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a). *See, e.g., U.S. Bank N.A. v. Perlmutter (In re South Side House, LLC)*, 470 B.R. 659, 684 (Bankr. E.D.N.Y. 2012) (Court has inherent authority to stay bankruptcy proceedings under Section 105(a)) (*citing Musselman v. Home Ins. Co. of Ind. (In re Finley, Kumble, Wagner, Heine, Underberg, Manley, Myerson & Casey)*, 1990 U.S. Dist. LEXIS 10235 at *2 (S.D.N.Y. Aug. 7, 1990) (Section 105(a) authorizes bankruptcy to enter a complete stay of an adversary proceeding)).

7. In this case, staying continuation of the litigation is appropriate. In addition, Education's announced policy concerning discharge of some student loan obligations could affect the outcome of this proceeding, and as such, the matter should be stayed during implementation of such policy. Therefore, the United States, with the consent of the Debtor,

requests that the Court stay the present matter, and suspend compliance with the summons and the Initial Scheduling Order, through February 17, 2023.

8. The Parties further request the Court set a status conference in this proceeding on or after February 17, 2023, to reset any scheduling order deadlines, trial dates, or other deadlines imposed in this adversary proceeding. The parties shall file a joint status report one week prior to this date (*i.e.*, by February 10, 2022), advising the Court whether they believe any grounds exist for requesting a further extension of the stay of this proceeding, or whether dismissal or placement of the adversary proceeding case back on the Court's active docket is appropriate.

Respectfully submitted,

JESSICA D. ABER
UNITED STATES ATTORNEY

By: /s/ Robert K. Coulter
Robert K. Coulter
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify a copy of foregoing will be filed with the United States Bankruptcy Court electronically in the CM/ECF system. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

Date: November 17, 2022

/s/ Robert K. Coulter
ROBERT K. COULTER

Faculty: Student Loans in 2023: Is Bankruptcy Finally a Viable Option?

Christie D. Arkovich is an attorney with the Law Offices of Christie D. Arkovich, P.A. in Tampa, Fla., and practices in consumer bankruptcy law, including debt relief, foreclosure defense, creditor harassment, loan modifications, deficiency waivers, short sales and student loans. She is a frequent speaker at various consumer-oriented continuing legal education seminars for ABI, NACA, Westlaw and the Tampa Bay Bankruptcy Bar Association (TBBBA) on topics such as student loans, creditor harassment and bankruptcy. She also writes a quarterly column for the TBBBA, Student Loan Sidebar, and regularly contributes videos on the firm's Youtube Channel, Student Loan Sidebar, about recent student loan-related laws, regulations and developments nationwide. Whenever possible, Ms. Arkovich takes the opportunity to share her knowledge about student loans gained from prior work as trial counsel for Sallie Mae, ECMC and other student loan servicers or guarantors, and from her practice now on the consumer side of things. She recently served on the Student Loan Committee for the new Student Loan Management Program in the Bankruptcy Court for the Middle District of Florida and has been the Consumer Chair for CLE for the Tampa Bay Bankruptcy Bar Association from 2019-22. Following law school, Ms. Arkovich interned with the Hillsborough County State Attorney's Office and clerked with the Florida Bar. Thereafter, she worked in commercial litigation for three years for private law firms until starting her own consumer practice in 1995. Ms. Arkovich received her B.A. in political science from Stetson University in 1989 and her J.D. cum laude from Stetson University College of Law in 1992, where she was a member of the Stetson Law Review.

Hannah W. Hutman is a partner at Hoover Penrod, PLC in Harrisonburg, Va., where she represents debtors in cases pending under chapters 7, 12, 13 and 11, and frequently represents creditors and trustees in bankruptcy proceedings and insolvency-related matters. She previously had started her own practice when she was 29. Ms. Hutman is a member of the panel of Chapter 7 Trustees for the Western District of Virginia and is a frequent presenter on a wide variety of insolvency-related topics. She has represented national and regional banks in all

aspects of commercial collections, including restructuring obligations, asset liquidations and dispositions, and foreclosure. A member of the panel of chapter 7 trustees for the Western District of Virginia, Ms. Hutman is a frequent presenter on a wide variety of insolvency-related topics and coauthored a chapter in Bankruptcy Practice in Virginia. She is active in the Virginia network of the International Women's Insolvency & Restructuring Confederation and currently serves as the liaison for the Western District of Virginia. She also is a member of the Board of Governors for the Bankruptcy Section of the Virginia State Bar and serves as a councilmember for the Bankruptcy Section of the Virginia Bar Association. Outside of the office, Ms. Hutman serves on the board of a local free medical clinic, engaging with other professionals seeking to provide affordable health care to low-income members of her community. She is AV-rated by Martindale-Hubbell, has routinely been listed in Super Lawyers as a "Rising Star" and selected as a member of Virginia's "Legal Elite," and was honored as one of ABI's "40 Under 40" in 2018. Ms. Hutman received her B.A. summa cum laude from Columbia Union College in Takoma Park, Md., and her J.D. from the Marshall Wythe School of Law at the College of William and Mary in Williamsburg, Va.

Chad Van Horn is a managing partner and founder of Van Horn Law Group, P.A. in Fort Lauderdale, Fla., and focuses on bankruptcy, business and real estate transactions, commercial and real estate litigation, loan modifications and landlord/tenant disputes. His personal and corporate bankruptcy practice focuses on foreclosure defense, debt-consolidation/debt-relief, consumer law, student loan consolidation, corporate representation, civil litigation and estate-planning/asset protection. Mr. Van Horn built his firm into a top-five bankruptcy firm in Florida, based on the number of cases filed in a year (PACER.gov). In addition, he worked with Florida state representatives to put a bill before the legislature to increase the bankruptcy car exemption from \$1,000 to \$5,000, ensuring that more people can keep their cars. He also filed the first subchapter V bankruptcy in the Southern District of Florida and won the first U.S. case protecting past NFL players from having to relinquish NFL Concussion Settlement funds during chapter 7. Mr. Van Horn authored *The Debt Life and Everything You Need to Know About Bankruptcy in Florida*, and he has been featured in the *Daily Business Review*, the *South Florida Business Journal* and the *Wall Street Journal*. Mr. Van Horn has been recognized as a "Superstar Pro Bono Attorney of the Year" by Legal Aid Services of Broward County, recently received a "40 Under 40" award by the *South Florida Business Journal* and was selected for Leadership Broward

Class XXXVI, and he is an ABI “40 Under 40” honoree for 2022. He is admitted to practice in Florida and before the U.S. Supreme Court, and he is AV-Rated by Martindale-Hubbell. In addition, he is Board Certified in Consumer and Business Bankruptcy Law by the American Board of Certification. Since starting his law practice, Mr. Van Horn and his firm have taken on more than 200 pro bono cases, which prompted Legal Aid of Broward to name him Pro Bono Attorney of the Year. He received his B.S. in business management with a focus on entrepreneurship and international business from Robert Morris College in Pittsburgh, and his J.D. from Nova Southeastern University’s Shepard Broad Law School in 2009, where he was elected graduating class speaker.