

Discharging Student Loans in Bankruptcy

Disclaimer

This presentation is for educational and informational purposes only.

It is not legal advice.

If you have questions regarding your specific situation, you should consult an attorney or the appropriate agency about your particular rights and options.

Public Counsel does **not** represent you in any way.

The information contained in this presentation is only accurate as of **April 27, 2026**, and is subject to change at any time.

Wait – You Can Do That?

Yes. Technically. But there is a process.

Student loan debt is not automatically discharged in a Chapter 7 or Chapter 13 bankruptcy. You must **also** file a separate lawsuit inside your bankruptcy case and show the court that repaying the loans would cause “undue hardship” for you and your dependents.



Student Loans & Bankruptcy: How Does It Work? (1/2)

The General Rule (11 U.S.C. § 523(a)(8)) → Student Loans are Not Automatically Discharged

- A Chapter 7 or Chapter 13 bankruptcy does not, on its own, eliminate student loan debt.
- To seek discharge of your student loans, you must also file a separate lawsuit inside your bankruptcy case called an “adversary proceeding.”

Why Consider Bankruptcy?

Bankruptcy is a last resort, but sometimes it's the only way out.

Reasons to consider bankruptcy may include that you have more income or assets than are already protected **and**...

- You have other debts, in addition to student loan debt, such as credit card debt, medical debt, or other household debt
- You are unable to afford your student loan payments, even with an income-driven repayment plan
- You are ineligible for student loan cancellation or forgiveness
- You have private student loan debt that you are unable to pay

Student Loans & Bankruptcy: How Does It Work? (2/2)

Not all education-related debts will be treated like student loans under § 523(a)(8).

- Debt owed directly to a university (i.e., unpaid tuition or fees) is *not* a student loan under the bankruptcy code.
- Some private student loans or educational financial arrangements are *not* “qualified educational loans,” and may be discharged in bankruptcy without any proof of hardship.

What Kind of Student Loans Do You Have, and How Do You Find Out?

Knowing the type(s) of student loan(s) you have is essential to understanding your options.

- To determine what options or relief you are eligible for, you first need to know:
 - Whether you have federal or private student loans?
 - What the status of your loans is?
 - Who holds your loans (loan holders)?
 - Who services your loans (loan servicers)?

What Kind of Student Loans Do You Have (and How Do You Find Out)?

- **Federal Student Loans**

- Found by logging into your Federal Student Aid account at [StudentAid.gov](https://studentaid.gov)

- **Private Student Loans**

- Not listed on StudentAid.gov (not issued or managed by the federal government)
- May be listed on your credit reports, which you can obtain at [AnnualCreditReport.com](https://annualcreditreport.com)
- If you know who your loan servicer is, log in to your online account with the servicer or call your servicer to get your loan information.

Things to look out for:

- Federal loans also appear on credit reports, making it hard to tell loans apart.
 - If a credit report loan is labeled “Department of Education,” “DEPT of ED,” or “DEPTED” → likely a federal loan (but not all federal loans are labeled this way).

Do You Have Federal Loans, Private Loans, or Both?

- If you borrowed the maximum amount in federal student loans, you may have also taken out private loans to cover the remaining costs.
 - You may also have a private student loan if you consolidated your federal loans with a private lender or fintech company like SoFi.
- **Federal loans are generally better** because the law provides borrowers with special benefits and protections.
- **Private loans do not have strong protections** for borrowers who are struggling to pay.
- The terms of private loans are set by the lender in the loan agreement, unlike federal student loan terms, which are set by law.

Federal Loans vs. Private Loans: An Overview

Federal Student Loans	Private Student Loans
Loans made through special government programs, including: <ul style="list-style-type: none">• Direct Loan Program• Perkins Program• FFEL Program	Made outside of federal government programs
Since 2019: <ul style="list-style-type: none">• All new federal loans are Direct Loans (issued directly by the federal government)	Issued by a bank, lender, or other institution
Older federal loan types (FFEL, Perkins) were issued by private lenders or schools but backed by the federal government	Not backed by the federal government

Important note: Many private lenders also manage and service federal loans, so it may be hard to tell at first which type you have. You may have both federal and private loans.

The 2- Step Process

Discharging student loans requires two distinct legal actions, not just one.

STEP 1



File for Bankruptcy

File a Chapter 7 or Chapter 13 bankruptcy case.



STEP 2



File an Adversary Proceeding

This is a separate lawsuit filed within your bankruptcy case against the lenders.

Step 1: File for Bankruptcy

- A student loan borrower must first file a bankruptcy (Chapter 7 or Chapter 13)
- You must complete required paperwork and credit counseling before filing
- Filing triggers an “automatic stay” that stops creditors from collecting against you
- Do not file for bankruptcy without the technical support of an experienced bankruptcy attorney, especially if you own a home and/or have significant non-qualified retirement savings!
- Watch Public Counsel’s [public-facing video](#) or review our [handout](#) for some things to keep in mind

Chapter 7 vs. Chapter 13

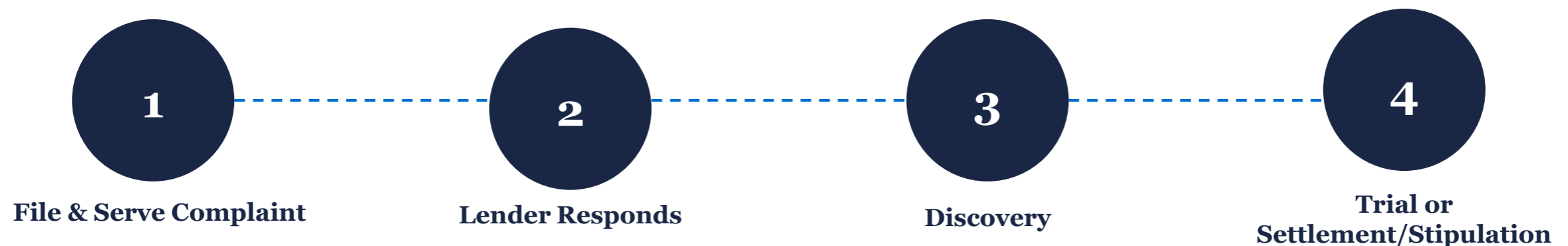
	Chapter 7 (Liquidation)	Chapter 13 (Reorganization)
Who Can File	Individuals whose income is below the state median (or who pass the “means test” if income is higher).	Any individual with a regular source of income.
Duration	3–6 months.	3–5 years.
How It Works	A trustee sells property that is not protected by law (“nonexempt assets”) and pays creditors with the proceeds.	Reorganizes debt through a court-approved repayment plan.
Asset Risk	Non-exempt assets may be sold.	You keep all your assets.
Co-signer Protection	None.	Yes. The “Co-Debtor Stay” (11 U.S.C. § 1301) stops collection against co-signers on private loans.

Note: A good bankruptcy attorney will review your income and assets and help you choose the best chapter for your situation.

Step 2: File an Adversary Proceeding

After filing bankruptcy, the next step is to file an adversary proceeding (“AP”), which is a separate lawsuit within your bankruptcy case against the lenders.

- ❖ In the complaint, you explain your financial situation to show your loans should be discharged based on “undue hardship.”
- ❖ If you have a previously discharged/closed bankruptcy, you may be able to file the AP through that already closed case *if you have not consolidated your student loans after you filed your bankruptcy.*
- ❖ *Caution:* Do not consolidate student loans after filing the AP.



What Does “Undue Hardship” Mean?

“Undue hardship” is the legal standard you must prove to discharge student loans. This is a three-part test, known as the Brunner test. The test is interpreted in different ways depending on where you live, the lender, the lender’s attorney, and the judge.

1

“Minimal” Standard of Living

Given your current income and expenses, can you maintain a “minimal” standard of living for yourself and/or your dependents if required to repay your loans?

2

Persistence of Financial Hardship

Is your financial situation likely to persist for a significant portion of the repayment period of the student loan? (This is often the hardest thing to prove.)

3

Good Faith Efforts

Have you made good faith efforts to repay the loans before seeking discharge?

Facts That May Help Show “Undue Hardship” (1/2)

- ❖ You attended for-profit school but didn't qualify for federal relief and/or you have private loans
- ❖ You obtained a discharge of your federal loans but still have private student loans
- ❖ You can afford your federal student loans but not your private student loans
- ❖ You have been in repayment for more than 10 years and:
 - You have had lower income most of those years;
 - You have medical issues that do not qualify for disability, but do limit your ability to work or earn more money
 - You have significantly reduced your necessary expenses (for example, you don't have a car in Los Angeles)
 - You are unemployed or been on unemployment for more than five years.

Facts That May Help Show “Undue Hardship” (2/2)

- ❖ You have tried to get lower payments, get put into deferment or forbearance, and/or made payments when possible.
- ❖ You have really good records of your last 5-10 years of job searches and financial history, including tax returns and bank statements.
- ❖ You are close to or over 40–50 years old

Note: As federal student loans change, your situation may fit the discharge test easier.

DOJ/ED Guidance: What Is It? (1/2)

In November 2022, the Department of Justice (DOJ) and Department of Education (ED) issued a new policy to make it easier for borrowers to discharge federal student loans in bankruptcy.

- The process is designed to reach a settlement with ED before trial.
- At the start of the adversary proceeding, the DOJ will provide a 15-page form called the Attestation of Undue Hardship form.
- DOJ/ED reviews form and may recommend discharge to judge.
- Judge makes final decision and can agree or disagree with DOJ.

Important Note: This is policy guidance that may change at any time and is not a law.

DOJ/ED Guidance: What Is It? (2/2)

Under the Guidance, DOJ will assume your hardship will continue if any of the following apply:

- You are **65 or older**
- You have a **disability or chronic injury** that limits your ability to work
- You have been **unemployed for at least 5 of the last 10 years**
- You **never got the degree** that the loan was for
- Your loan has been **in repayment status (not “in-school”) for at least 10 years**

What if none apply?

You can still describe other reasons why you cannot pay in the future (for example, you have not been able to find work in your field for a long time, your pay history has never been enough to pay necessities).

Can the government fight back?

Yes, but the Guidance says that will be **rare** and must be based on real facts, not guesswork. Having more than one box checked makes it even harder for them to argue.

DOJ/ED Guidance: When Does It Apply?

- Only applies to federal loans held by the Department of Education.
It does not apply to:
 - Private student loans
 - FFEL loans held by guarantors (e.g., ECMC)
 - Perkins loans still held by the school
 - Other federal loans not held by the Department of Education such as loans made through the Department of Health and Human Services

What Can the Bankruptcy Judge Decide to Do with My Student Loans?

If the judge finds undue hardship—or accepts the DOJ's recommendation—the court may:

- Discharge (cancel) all your student loans;
- Discharge (cancel) a portion of your loans; or
- Change the loan terms (such as lowering the interest rate) to make repayment more manageable.

What if My Student Loans Aren't Discharged in My AP?

- ❖ You can talk to an attorney about asking a higher court to change the judge's decision (an appeal).
 - ❖ Please seek assistance from a bankruptcy attorney *before* you file your bankruptcy and AP because if you do not provide the correct information, you may not be successful on an appeal
- ❖ Explore other options: deferment or forbearance, income-driven repayment, or a settlement with your loan holder.
- ❖ If you do not pay your private student loans for more than four years, the private lenders may lose the right to collect from you.

Key Points to Remember

- ✓ Student loan bankruptcy is a 2-step process: file bankruptcy, then file an adversary proceeding.
- ✓ You must prove “undue hardship,” which means that repaying loans prevents a minimal standard of living.
- ✓ Federal loans now have clearer discharge guidelines; private loans remain more challenging.
- ✓ Settlement is a powerful middle-ground option, especially for private loans.
- ✓ Bankruptcy is a last resort tool, but it can provide a real path forward when other options are exhausted.

Find an experienced student loan bankruptcy attorney who understands the process and can guide your case.

Resources & Where to Get Help

- Free information to help you with all types of student loan problems is available at NCLC's Student Loan Borrower Assistance website, studentloanborrowerassistance.org.
- Contact your local legal aid organization to see if you qualify for free help. You can find your local legal aid or legal services agency at [LawHelp.org](https://www.lawhelp.org).
 - Depending on where you live, there may be more than one organization in your area.
- The Student Loan Empowerment Network <https://studentloanhelp.dfpi.ca.gov/>
- Seek assistance from a free [Bankruptcy Clinic](#) in [Los Angeles](#), [Woodland Hills](#), [Santa Barbara](#), [Orange County](#), [Riverside](#), or [Coachella Valley](#)
- Review the DOJ/ED [Student Loan Bankruptcy Guidance](#)

Questions?