Tax Lien Foreclosure Issues

Some History:

In re Hackler, 938 F.3d 473 (3d Cir. 2019) – tax foreclosure can be a preferential transfer. Court did not address tax foreclosure as fraudulent transfer.

Several bankruptcy judges within this district have concluded that a tax foreclosure can be a fraudulent transfer, including:

In re Berley Assocs., Ltd., 492 B.R. 433 (Bankr. D.N.J. 2013) (Kaplan, C.J.)

In re GGI Props., LLC, 568 B.R. 231 (Bankr. D.N.J. 2017) (Altenburg, J.)

In re Polanco, 622 B.R. 631 (Bankr. D.N.J. 2020) (Poslusny, J.)

In re Morawski, 2022 WL 1085739 (Bankr. D.N.J. 2022) (Sherwood, J.)

In re Heidt, 656 B.R. 10 (Bankr. D.N.J. 2023) (Gambardella, J.).

However, the date of transfer relates back to the date of filing of a lis pendens:

Polanco, 622 B.R. 631

In re Nealy, 623 B.R. 278 (Bankr. D.N.J. 2021) (Kaplan, C.J.)

In re Stahlberger, 2021 WL 509849 (Bankr. D.N.J. 2021) (Altenburg, J.)

In re Morawski, 2022 WL 1085737

Current Issues:

Does a debtor have standing to pursue a fraudulent transfer? If so, what can the debtor recover?

Most cases have not directly addressed this issue. In Wright, the court determined that the Bankruptcy Code only permits a debtor to pursue recovery under section 522(h). This issue is on appeal to the District Court.

Assuming a debtor has, or can obtain derivative standing, what can be recovered? The entire property or something else?

Nealy, 623 B.R. 278 (suggesting debtor may recover an amount sufficient to pay creditors in full plus the debtor's exemption)

Morawski, 2022 WL 1085739 (same)

What is the effect of Tyler v. Hennepin County, Minnesota, 598 U.S. 631 (2023) (tax foreclosure that resulted in the government realizing the equity in property over the amount of taxes owed was a taking) and 257-261 20th Ave. Realty, LLC v. Roberto, 477 N.J.Super 339 (App. Div. 2023), cert. granted 256 N.J. 535 (2024) (applying Tyler under New Jersey law)?

Roberto held that even if a tax lien foreclosure is completed by a private entity it would be considered a taking under New Jersey law.

Roberto also determined that the decision would apply to any case that was still open or on direct review, even if they predate the decision. Does a bankruptcy filing mean the case or issue was still in the pipeline? Does a bankruptcy filing "re-open" the pipeline?

Post-Petition Asset Appreciation

I. Chapter 13

A. Applicable Statutes

1. 11 U.S.C. § 1306- Property of the Estate

(a) Property of the estate includes, in addition to the property specified in section 541 of this title—

(1) all property of the kind specified in such section that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 11, or 12 of this title, whichever occurs first; and

(2) earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 11, or 12 of this title, whichever occurs first.

(b) Except as provided in a confirmed plan or order confirming a plan, the debtor shall remain in possession of all property of the estate.

2. 11 U.S.C. § 1327- Effect of Confirmation

(a) The provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan.

(b) Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.

(c) Except as otherwise provided in the plan or in the order confirming the plan, the property vesting in the debtor under subsection (b) of this section is free and clear of any claim or interest of any creditor provided for by the plan.

3. Conflicting Provisions

Section 1306 incorporates the definition of property of the estate from §541 of the bankruptcy code which would include all property that debtor

acquires while the Chapter 13 case is pending. Section 1327 of the bankruptcy code states that all property of the estate vests in the debtor upon confirmation except as otherwise provided in the plan or order confirming the plan. Section 1327 (c) states that the property vesting in the debtor under subsection (b) of § 1327 is free and clear of any claim or interest of any creditor provided for by the plan. So what happens with property acquired after confirmation i.e. appreciation in the value of real property.

Courts have developed at least five tests for dealing with post-petition appreciation.

(1) The Estate Termination Approach

The concept is that § 1327 vests all property in the debtor at confirmation and the Chapter 13 estate terminates at confirmation except as provided for in the debtor's plan. Thus, appreciation is not property of the bankruptcy estate and is retained by the debtor. This test ignores the language of 1306 regarding after acquired property and focuses solely on section 1327.

(2) The Estate Preservation Approach

The estate continues after confirmation and retains all pre-confirmation property and also includes any property the debtor acquires after confirmation. This approach essentially ignores the vesting language in section 1327(b). All property remains in the estate until case is discharged or closed.

(3) The Conditional Vesting Approach

Courts determine that the property is simultaneously property of the debtor and property of the estate. Under this approach, the debtor has an immediate and fixed right to the future enjoyment of the bankruptcy estate but that right is not final until the debtor has faithfully completed his obligations under the plan and is entitled to a discharge.

Courts adopting this approach reason that it results in a legitimate quid pro quo: in exchange for a discharge of debts and the ability to retain all assets under the protection of the automatic stay, the debtors have a continuing obligation to disclose all pre and post-confirmation assets and account for them under the plan where appropriate.

(4) The Estate Transformation Approach

At confirmation all property of the estate becomes property of the debtor. The Chapter 13 estate still exists and includes property essential to the debtor's performance of the plan; it contains only property necessary to performance of the plan, whether acquired before or after confirmation.

These courts reason that the post-confirmation estate must include property necessary to fulfill the plan because § 1322 and §1327 imply that the plan and confirmation order control the extent of vesting under §1327.

(5) The Estate Replenishment Approach

Pre-confirmation property of the estate becomes property of the debtor at confirmation but post-confirmation property becomes property of the estate; thus, at confirmation, property of the estate revests in the debtor; however, to the extent that the debtor obtains new property after the confirmation, the newly acquired property becomes property of the estate.

The newly acquired property would revest and become debtor property if the debtor filed modified plan that provided for the distribution of the after acquired property.

B. Recent Caselaw – Estate Replenishment Approach

In re Marsh, 647 B.R. 725 (Bankr. W.D. Mo 2023)
Provides an analysis of the five separate approaches with cases arising under each approach.

In re Larzelere, 633 B.R. 677 (Bankr. D.N.J. 2021)

FACTS: Debtor filed a chapter 7 on December 4, 2017 valuing his home at $219,000. The US Trustee moved to extend the time to object to discharge because the Debtor had three loan repayments to 401(k) loans and other budget issues. Debtor converted to Chapter 13 and confirmed his chapter 13 plan on July 26, 2018. The plan called for property of the estate to vest in the Debtor upon confirmation. In May 2021, the Debtor moved to sell the residence having obtained a contract to sell the property for $348,000. The Debtor further sought to pay off his plan early by making a lump sum payoff. The Chapter 13 Trustee objected on the grounds that

the Debtor was above median and had to pay disposable income for 60 months unless the Debtor paid a 100% dividend. The Trustee further objected and sought to have the Debtor increase the dividend to unsecured creditors based on the appreciation of the property.

The Court applied the **Estate Replenishment** Approach. The confirmation order vested the real property in the Debtor. The appreciation is not separate property from the real property and thus the Debtor retained the real property.

In re Elassal, 654 B.R. 434 (Bankr. E.D. Mich. 2023)

FACTS: Debtor filed Chapter 13 case in March 2021 and valued her home at $250,000 with liens of $228,000. The Debtor had obtained her home in a divorce action that required the home be sold or refinanced in 2 years. Debtor confirmed her Chapter 13 in July 2021. In February 2023, Debtor sought to sell her home for $435,000 and use the net proceeds of $173,655 to purchase a new home. The Trustee objected and argued the Debtor had to use the appreciation to pay creditors in full.

The Court applied the **Estate Replenishment** approach. Confirmation vested the real property in the Debtor and the Court also ruled that the appreciation could not be untethered from the real property itself.

II. Chapter 7 Converted Cases

A. Applicable Statutes

1. 11 U.S.C. § 348 Effect of Conversion

(a). *(1) Except as provided in paragraph (2), when a case under chapter 13 of this title is converted to a case under another chapter under this title—*

(A) property of the estate in the converted case shall consist of property of the estate, as of the date of filing of the petition, that remains in the possession of or is under the control of the debtor on the date of conversion;

(B) valuations of property and of allowed secured claims in the chapter 13 case shall apply only in a case converted to a case under chapter 11 or 12, but not in a case converted to a case under chapter 7, with allowed secured claims in

cases under chapters 11 and 12 reduced to the extent that they have been paid in accordance with the chapter 13 plan;

(2) If the debtor converts a case under chapter 13 of this title to a case under another chapter under this title in bad faith, the property of the estate in the converted case shall consist of the property of the estate as of the date of conversion.

B. Legislative History of 1994 Amendment to 11 U.S.C. §348

The legislative history states:

> This amendment would clarify the Code to resolve a split in the case law about what property is in the bankruptcy estate when a debtor converts from chapter 13 to chapter 7. The problem arises because in chapter 13 (and chapter 12), any property acquired after the petition becomes property of the estate, at least until confirmation of a plan. Some courts have held that if the case is converted, all of this after-acquired property becomes part of the estate in the converted chapter 7 case, even though the statutory provisions making it property of the estate do not apply to chapter 7. Other courts have held that property of the estate in a converted case is the property the debtor had when the original chapter 13 petition was filed. . . . This amendment overrules the holding in cases such as *Matter of Lybrook, 951 F.2d 136 (7th Cir. 1991)* and adopts the reasoning of *In re Bobroff, 766 F.2d 797 (3d Cir. 1985)*. However, it also gives the court discretion, in a case in which the debtor has abused the right to convert and converted in bad faith, to order that all property held at the time of conversion shall constitute property of the estate in the converted case.

C. Recent Caselaw

1. **In re Goetz, 95 F.4th 584 (8th Cir. 2024)** Estate gets Appreciation.

FACTS: Debtor filed a Chapter 13 case on August 19, 2020. Owned a residence worth $130,000 with a mortgage of $107,460. Debtor claimed her $15,000 exemption under state law. Debtor confirmed her Chapter 13 plan but on April 5, 2022 the Debtor converted her case to a Chapter 7 proceeding. At the time of conversion, Debtor's residence was work $205,000. Debtor moved to compel abandonment of the home. Bankruptcy Court denied motion to compel abandonment finding that the equity in the home belonged to the estate. The BAP affirmed. The Debtor appealed to the Eighth Circuit Court of Appeals.

The Eighth Circuit affirmed the BAP and the Bankruptcy Court. The court found that property of the chapter 7 estate included property that the Debtor owned on the date of the filing of the petition and that included her home because she had legal or equitable interest as defined in section 541 when the petition was filed. The Court determined the increased equity is proceeds arising from property of the estate and thus the increased equity became property of the estate under section 541(a). The home remained in the possession of the debtor on the date of conversion and the conditions of section 348(1)(A) had been met and the equity belonged to the Chapter 7 Trustee. No need to look at legislative history of section 348 because the language of the statute was clear and not ambiguous.

See also, **Castleman v. Burman (In re Castelman), 75 F. 4th 1052 (9th Cir. 2023)**

2. **Rodriquez v. Barrera (In re Barrera), 22 F.4th 1217 (10th Cir. 2022)**
Debtors retain post-petition appreciation

FACTS: Debtors filed for Chapter 13 on April 5, 2016. Debtors owned a home valued at $396,000 with various liens totaling $336,000. Debtors claimed $75,000 state homestead exemption. June 2016 Debtors confirmed their Chapter 13 plan. In April 2018, the Debtors sold the residence for $520,000 and retained $140,251 in equity. Two weeks after the closing, the Debtors converted their case to a chapter 7 case. On the date of conversion, the Debtors had $100,700 of the sale proceeds remaining. The Trustee filed a motion to compel the Debtors to turnover the non-exempt portion of the sale proceeds. Bankruptcy Court denied the motion. The Court found section 348 to be ambiguous and relying on the legislative history of the section 348 determined that property as defined in section 348 does not include appreciation. The BAP affirmed.
The 10th Circuit relied upon the legislative history of section 348 and held that the sale proceeds are not property of the Chapter 7 estate.

Pre-Confirmation Stay Relief v. Confirmation: Which Order Reigns Supreme?

Question:

Can a creditor, who received relief from the automatic stay prior to the confirmation of a plan, be bound by the plan's terms?

Answer:

Generally speaking, a creditor is bound by the terms of a confirmed plan even if the creditor obtained relief from the stay. In both Chapter 11 and Chapter 13 cases, a confirmed plan is binding on Debtors and Creditors. Courts have routinely held that confirmation orders, per Sections 1141(a) and 1327(a), supersede orders entered prior to the confirmation of the plan.

Code Provisions:

11 U.S.C. § 1327 (a)

(a) The provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan.

11 U.S.C. § 1141(a)

(a) Except as provided in subsections (d)(2) and (d)(3) of this section, the provisions of a confirmed plan bind the debtor, any entity issuing securities under the plan, any entity acquiring property under the plan, and any creditor, equity security holder, or general partner in the debtor, whether or not the claim or interest of such creditor, equity security holder, or general partner is impaired under the plan and whether or not such creditor, equity security holder, or general partner has accepted the plan.

Cases:

In Re Garrett, 185 B.R. 620 (Bankr. N.D. Ala. 1995)

In Re Sullivan, 2005 WL 428614 (Bankr. D. M.D. Fla. 2005)

In Re Lemma, 394 B.R. 315 (E.D. NY 2008)

In Re Beyha, 637 B.R. 430 (E.D. Pa. 2022)

United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260 (2010)

Post-Confirmation Considerations:

- Modified Plans: Creditors may still have a basis to object to future, post-confirmation modified plans. Though limited, there may still be issues relating to notice/service of post-confirmation of modified plans if a Creditor is not served or does not receive notice of the modified plan.
- Plans still need to be proposed in good faith pursuant to 11 U.S.C. § 1325(a)(3) and comply with the provisions of 11 U.S.C. §§ 1322 and 1325 generally. In a Chapter 11 proceeding, the plan must be proposed in good faith pursuant to 11 U.S.C. § 1129(a)(3) and comply with the provisions of 11 U.S.C. §§ 1123 and 1129 generally.
- Post-Confirmation Stay Relief: Though a Creditor may be bound by the terms of the confirmed plan regarding the treatment of its claim, there is still the possibility that a Debtor's failure to perform under the terms of the plan could lead to post-confirmation motions for relief and/or dismissal.
    - Cure & maintain plans: failure to make post-petition payments
    - Sale/refinance/loan modification plans: failure to complete by the deadline outlined in the confirmed plan/confirmation order

Motions to Reinstate: Considering the Standard of Proof

Question:

What are the standards and burdens of proof applicable to motions to reinstate a stay or dismissed case? What procedural rules apply to these motions? Has the movant met their burden under the applicable standard? What evidence has the movant provided to the Court to establish the basis for the relief sought?

Discussion:

A motion to reinstate can be plead as a motion for an injunction under Fed. R. Bankr. P. 7065; a motion for a new trial/amendment of judgment under Fed. R. Bankr. P. 9023; or a motion for relief from an order under Fed. R. Bankr. P. 9024.

In order to be successful under any of these rules, the proper basis for relief must be shown by the movant sufficient to meet the applicable standards of proof.

Applicable Court Rules:

Fed. R. Bankr. P. 7065 / Fed. R. Civ. P. 65

Fed. R. Bankr. P. 9023 / Fed. R. Civ. P. 59

Fed. R. Bankr. P. 9024 / Fed. R. Civ. P. 60

Cases:

Addington v. Texas, 441 U.S. 418 (1979)

In Re Wedgewood Realty Group, Ltd., 878 F.2d 693 (1989)

Bohus v. Beloff, 950 F.2d 919 (3d Cir. 1991)

In Re Jones, 354 B.R. 727 (W.D.Pa. 2006)

In Re Mercury Data Systems, Inc., 586 B.R. 260 (E.D.Ky. 2018)

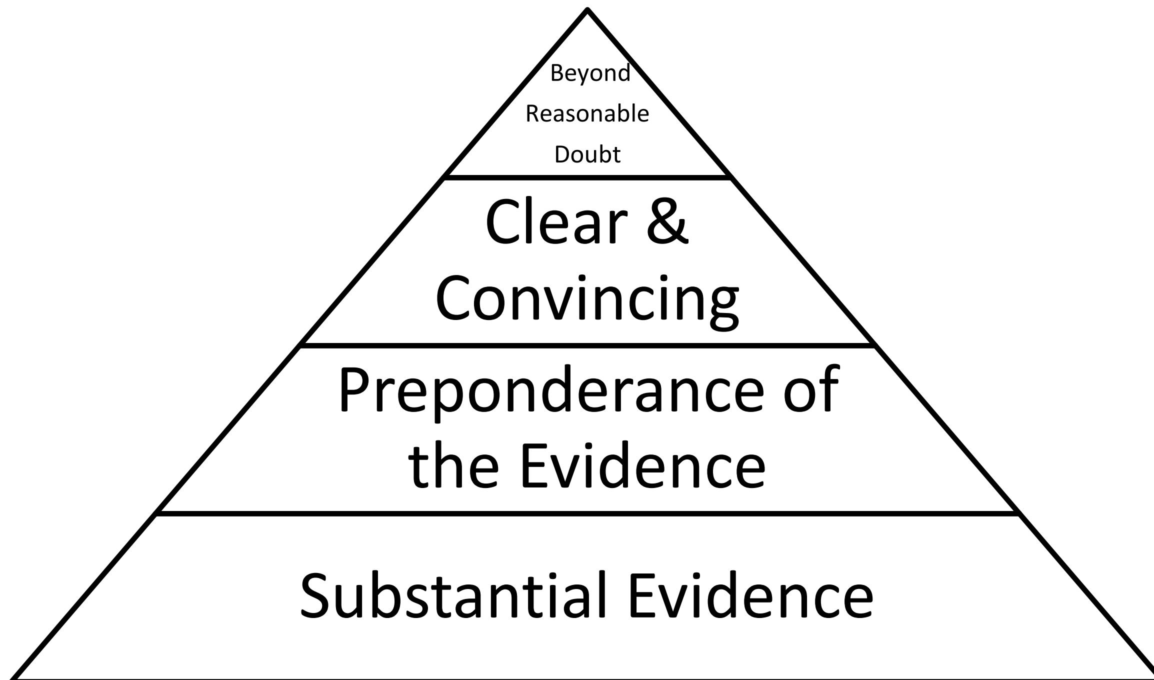
Beaudouin v. Village Capital Investment 613 B.R. 514 (E.D.Pa. 2020)

In Re Rams Associates, LP, 2021 WL 2024973 (D.N.J. 2021)

Burden vs. Standard of Proof:

The standard of proof for a given issue dictates the degree to which a party must prove its case in order to be successful.

The burden of proof is the requirement to satisfy the standard of proof.



Practical Considerations:

- **Why was the motion granted in the first place?**
- **What has changed between the granting of stay relief/dismissal of the case and the motion to reinstate?**
- **How much time has passed?**
- **What evidence exists now that would support reinstating the stay?**
- **Reach out to the adversary.**

STUDENT LOAN DISCHARGE IN BANKRUPTCY

STUDENT LOAN STATISTICS:

- ♦ U.S. student loan debt totals $1.74 trillion as of September 2023
- ♦ Student loan debt is now the second-highest consumer debt category after mortgages
- ♦ 54% of bachelor's degree recipients graduated with student loan debt in 2020-2021, and the average balance owed was $29,100
- ♦ The average U.S. household with student debt owes $55,347

Degree Type/Debt Type	Average Debt
Bachelor's degree	$29,100
Graduate school	$77,300
Parent PLUS loan	$29,526
Law school	$132,740
MBA	$51,850
Medical school	$206,924
Dental school	$293,900
Pharmacy school	$167,711
Nursing school	$40,000 - $54,999
Veterinary school	$147,258

- ♦ 20% of all American adults with undergraduate degrees have outstanding student debt; 24% postgraduate degree holders report outstanding student loans
- ♦ 40% of borrowers with outstanding debt related to their own education owe a balance on a student loan; 6% of borrowers owe for a child or grandchild's education

Sources:
https://educationdata.org/student-loan-debt-statistics
https://www.nerdwallet.com/article/loans/student-loans/student-loan-debt

FYI..... Student loan collection activity is scheduled to begin in September 2024

NEW ATTESTATION PROCESS:

As of November 17, 2022, the Department of Justice (DOJ), in cooperation with the Department of Education (DOE), announced a new process which will evaluate student loan discharge actions filed in bankruptcy proceedings. This new process is being implemented to increase transparency and consistency of the process and outcomes, reduce barriers that have prevented debtors from seeking discharge of student loans in the past, and when possible, increase the number of cases where the government is able to recommend to the court that debtors receive a discharge of their student loans.

The new process applies to all DOE federal loans. This includes:

- ♦ Direct Loans
- ♦ FFELP (Federal Family Education Loan Program)
- ♦ Perkins loans that are held by the government

***_**Private student loans ARE NOT subject to this new process**_

The process is available in bankruptcy cases that were open as of November 17, 2022, had a student loan adversary proceeding in process on that date, or were filed after that date.

Debtor's counsel should confirm loan eligibility and perform an ability to pay calculation before initiating the adversary proceeding. Debtor can obtain a copy of their Student Aid report from www.studentaid.gov

BEGINNING THE PROCESS:

- ♦ After the filing of the bankruptcy, an adversary proceeding must be initiated by filing a complaint to determine the dischargeability of the debt under Section 523(a)(8)
- ♦ The complaint and summons must be served in a manner consistent with Federal Rule of Bankruptcy Procedure (FRBP) 7004. No filing fee should be required, per FRBP 4007(b).
- ♦ Debtor's counsel should soon thereafter establish communication with the Assistant United States Attorney (AUSA) assigned to the case
- ♦ Debtor's counsel should then submit a completed attestation form which will trigger the settlement evaluation process
- ♦ The attestation form assists the parties in stipulating to the existence of certain facts and provides an avenue for the AUSA to recommend that the bankruptcy court find, based on those stipulated facts, that repayment of the student loan would cause the debtor an undue hardship

ATTESTATION FORM:

- ♦ The attestation form is not to be filed with the court
- ♦ Tracks the three Brunner prongs for evaluating hardship by examining present financial circumstances, future circumstances, and past good faith effort to pay the loans
- ♦ The most exhaustive inquiry involves the debtor's current financial circumstances
- ♦ The DOJ has issued detailed instructions for completing the attestation
- ♦ Debtor's counsel should carefully review and follow these instructions, to ensure that the attestation can be speedily reviewed, and that the AUSA is given data that he or she can rely on in advancing a recommendation regarding discharge

AFTER THE ATTESTATION FORM IS SUBMITTED:

- ♦ The AUSA will review it and may request additional information to supplement or verify the debtor's statements
- ♦ After the review, the AUSA will forward a recommendation to the DOE
- ♦ The agencies will work together to determine whether discharge should be recommended based on the responses provided in the debtor's attestation
- ♦ Pending the recommendation, the parties should file a joint request to suspend pre-trial deadlines and the trial date, to accommodate the review
- ♦ If discharge is the final recommendation, the entry of a stipulated judgment that the federal student loans at issue are dischargeable will be placed on the court docket

In re Hayward, 655 B.R. 458 (Bankr. W.D. Texas 2023)

Background:

Hayward (Debtor) filed an adversary seeking a hardship discharge of his student loans under 11 U.S.C. § 523(a)(8). DOE filed a Motion for Summary Judgment denying the claim that the student loans should be discharged. The DOE asserted that Debtor's student loans were not dischargeable because they arose post-petition and were not dischargeable as a matter of law. Debtor asserted that the loans were not post-petition loans because the lender on the consolidated loans was the same lender on the original student loans; therefore, the consolidation of the loans did not create new loans.

Debtor obtained twenty-seven (27) student loans between August 1979 and August 2017. Chapter 7 bankruptcy was filed on March 5, 2019. Discharge was granted on June 14, 2019 and case was closed on June 17, 2019. After discharge, Debtor obtained additional student loans consisting of a direct Stafford unsubsidized, a direct graduate plus loan, and a direct Stafford unsubsidized between June and November 2019. August 2022, he executed a Direct Consolidation Loan Application and Promissory Note. In September 2022, the DOE disbursed proceeds for a subsidized consolidation loan and an unsubsidized consolidation loan. Debtor filed an adversary in January 2023, asserting that his consolidated student loans of approximately $480,176.47 imposed an undue hardship and were dischargeable under 11 U.S.C. § 523(a)(8).

Decision:
DOE Motion for Summary Judgment granted. Court concluded that the consolidation loans are new and distinct post-petition student loans that cannot be discharged under 11 U.S.C. § 727(b). Because the Consolidation Note was executed after the date the Debtor filed his bankruptcy petition and the proceeds of the loans were disbursed after the filing of the petition, the consolidation loans extinguished and paid off the old pre-petition balances making new and distinct post-petition student loans that cannot be discharged under 11 U.S.C. § 727(b). Because the loans are post-petition debts that are non-dischargeable as a matter of law under 11 U.S.C. § 727(b), the Court need not address undue hardship under 11 U.S.C. § 523(a)(8).

In re Stewart, Bankr. D. Minnesota 2023, Case No. 20-40722 , Adversary No. 22-04053

Court Addresses an Amended Order re Stipulation for Discharge of Student Loans

Background:
The parties jointly filed a document captioned "Stipulation for Discharge of Plaintiff's United States Department of Education Loans and to Dismiss Adversary Proceeding with Prejudice" and the parties attached a proposed order to the Stipulation.

Court's Response:
Nowhere in the Federal Rules of Bankruptcy Procedure does it allow for the parties to direct the Court to adopt a litigant's determination that the criteria for discharge due to undue hardship is met. The Court stated in this instance, parties could resolve the adversary by consenting to the entry of a judgment that expressly states that the loans described in the Stipulation are dischargeable due to undue hardship under 11 U.S.C. § 523(a)(8).

November 17, 2022

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

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[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

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[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

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[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

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[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]

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[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

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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

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[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.*

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[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 IDRP 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 Jesperson,* 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 IDRP 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 IDRP. 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 IDRP enrollment 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 IDRP 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 IDRP enrollment. 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 IDRP and to offer an explanation if they did not. Where a debtor participated in an IDRP, this factor is evidence of good faith.[18]

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

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

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 IDRP 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

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[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]

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[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.

[Updated August 2023]

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE _____________ DISTRICT OF ____________

In re:	)	
	)	
	)	Case No. _______________
	)	Chapter [7]
Debtors.	)	
	)	
____	)	
	)	
	)	
	)	
Plaintiff,	)	Adversary Pro. ______________
	)	
v.	)	
	)	
UNITED STATES DEPARTMENT	)	
OF EDUCATION, [et al.],	)	
	)	
Defendant[s].	)	
____	)	

ATTESTATION OF [_______________] IN SUPPORT
OF REQUEST FOR STIPULATION CONCEDING
DISCHARGEABILITY OF STUDENT LOANS

PLEASE NOTE: This Attestation should be submitted to the Assistant United States Attorney handling the case. It should not be filed with the court unless such a filing is directed by the court or an attorney.

I, [____________________], 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 ________________________ [address], in ____________ County, _________[state].

3. My household includes the following persons (including myself):

___________________ [full name] ______[age] ______________[self]

___________________ [full name] ______[age] ______________[relationship]

___________________ [full name] ______[age] ______________[relationship]

___________________ [full name] ______[age] ______________[relationship]

___________________ [full name] ______[age] ______________[relationship]

___________________ [full name] ______[age] ______________[relationship]

Questions four through eight 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 <u>one</u> 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 and complete: <u>YES / NO / No Information Provided</u>

[If you answered anything other than "YES," you must answer questions five through eight].

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

6. The current monthly payment on such loan[s] is _________________. The loan[s] are scheduled to be repaid in ___________________ [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 _______________________, where I was pursuing a ____________ degree with a specialization in __________________.

8. In _______________ [month and year], I completed my course of study and received a __________________ 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 ____________________. My employer's name and address is __________________________ **[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 $___________.[1] This amount includes the following monthly amounts:

[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.

______________________ my ***gross*** income from employment (if any)
______________________ my unemployment benefits
______________________ my Social Security Benefits
______________________ my __________________
______________________ my __________________
______________________ my __________________
_____________________***gross*** income from employment of other members of household
____________________ unemployment benefits received by other members of household
____________________ Social Security benefits received by other members of household
_______________ other income from any source received by other members of household

12. The current monthly household gross income stated above (select which applies):

______ 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

______ 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:

____

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/do not exceed the amounts listed below based on the number of people in my household for the following categories:

(a) Living Expenses[2]

i. My expenses for food — do exceed — do not exceed
$466 (one person)
$777 (two persons)
$936(three persons)
$1123 (four persons)

ii. My expenses for housekeeping supplies — do exceed — do not exceed
$47 (one person)
$80 (two persons)
$85 (three persons)
$90 (four persons)

iii. My expenses for apparel & services — do exceed — do not exceed
$96 (one person)
$145(two persons)
$207 (three persons)
$252 (four persons)

iv. My expenses for (non-medical) personal care products and services — do exceed — do not exceed
$43 (one person)
$78 (two persons)
$91 (three persons)
$97 (four persons)

v. My miscellaneous expenses (not included elsewhere on this Attestation) — do exceed — do not exceed
$189 (one person)
$309 (two persons)
$381 (three persons)
$431 (four persons)

vi. My total expenses in these categories — do exceed — do not exceed
$841 (one person)

[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.

$1389 (two persons)
$1700 (three persons)
$1993 (four persons in household)
Add $356 per each additional member if more than four in household.

If you answered that your total expenses for any of the categories (i) through (v) exceed the applicable amount listed in those categories, and you would like the AUSA to consider your additional expenses for any such categories as necessary, you may list the total expenses for any such categories and explain the need for such expenses here. (You do not need to provide any additional information if you answered that your total expenses did not exceed the applicable amount listed in subsection (vi)).

(b) Uninsured medical costs:

My uninsured, out of pocket medical costs do exceed do not exceed

$79 (per household member under 65)
$154 (per household member 65 or older)

If you answered that your uninsured, out of pocket medical costs exceed the listed amounts for any household member, and you would like the AUSA to consider such additional expenses as necessary, you may list the household member's total expenses and explain the need for such expenses here.

[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

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]

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

______________________ $____________
______________________ $____________
______________________ $____________

---

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

(b) Housing Costs[4]

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)	$____________

(c) Transportation Costs

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

(d) 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]

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:

[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).

[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.

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 yourself and your family members? YES / NO

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 covering your life? YES / NO

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:

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 _______ [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:

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 age 65 or older.

___ 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 degree for which I incurred the student loan[s].

Describe how not completing your degree has inhibited your future earning capacity:

___ I have a disability or chronic injury impacting my income potential.

[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.

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

Please explain your efforts to obtain employment.

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 the student loans I am seeking to discharge in pursuit of a degree from an institution that is now closed.

Describe how the school closure inhibited your future earnings capacity:

___ 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:

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 $________ in payments on the loans, including the following:

___ regular monthly payments of $______ each.

___ additional payments, including $________, $________, and $________.

22. I have applied for ____ forbearances or deferments. I spent a period totaling ___ months in forbearance or deferment.

23. I have attempted to contact the company that services or collects on my student loans or the Department of Education regarding payment options, forbearance and deferment options, or loan consolidation at least ______ times.

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

Description of efforts:

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

26. Describe any other facts indicating you have acted in good faith in the past in attempting to repay the student loan(s) you are seeking to discharge. These may include efforts to obtain employment, maximize your income, or minimize your expenses. They also may include any efforts you made to apply for a federal loan consolidation, respond to outreach from a loan servicer or collector, or engage meaningfully with a third party you believed would assist you in managing your student loan debt.

V. CURRENT ASSETS

27. I own the following parcels of real estate:

Address: ___________________________

____

____

Owners:[7] ___________________________

____

Fair market value: ___________________________

Total balance of mortgages and other liens. ___________________________

28. I own the following motor vehicles:

Make and model: ___________________________

Fair market value: ___________________________

Total balance of Vehicle loans And other liens ___________________________

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:

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

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):

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

____
Signature:

____
Name:

____
Date:

[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.