

History of the Bankruptcy Discharge for Student Loans

The U.S. Bankruptcy Code provides an exception to discharge of federal and private student loans at [11 USC 523\(a\)\(8\)](#).

The statutory language that establishes the exception to discharge is as follows:

- A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt...
 - unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents, for –
 - an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution; or
 - an obligation to repay funds received as an educational benefit, scholarship, or stipend; or
 - any other educational loan that is a qualified education loan, as defined in [section 221\(d\)\(1\) of the Internal Revenue Code of 1986](#), incurred by a debtor who is an individual

This table summarizes the major changes to the treatment of student loans in bankruptcy.

Year	Change	Reference	Effective Date
2005	Qualified education loans, which include most federal and private student loans, are excepted from bankruptcy discharge	Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (P.L. 109-8)	10/17/2005
	Borrowers are no longer able to discharge student loans in bankruptcy	Higher Education	

1998	after 7 years in repayment unless they can demonstrate undue hardship in an adversarial proceeding	Amendments of 1998 (P.L. 105-244)	10/7/1998
1991	Federal education loans are no longer subject to a 6-year statute of limitations	Higher Education Technical Amendments of 1991 (P.L. 102-26)	4/9/1991
1990	Borrowers may discharge student loans in bankruptcy after 7 years in repayment (increased from 5 years).	Crime Control Act of 1990 (P.L. 101-647)	5/28/1991
1987	Establishes a three-prong definition for undue hardship that (1) the borrower is unable to maintain a "minimal" standard of living for the borrower and the borrower's dependents while repaying the debt, (2) this state of affairs is likely to persist for most of the repayment period and (3) the borrower has made a good faith effort to try to repay the debt. The Brunner Test applies in the 2nd, 3rd, 4th, 5th, 6th, 7th, 9th, 10th and 11th circuits.	Brunner v. New York Higher Education Services Corp., 831 F.2d 395, 396 (2nd Cir. 1987)	10/14/1987
1984	The exception to discharge is expanded to include private student loans that were made under "any program funded in whole or in part by a ... nonprofit institution" by striking "of higher education" from "nonprofit institution of higher education"	Bankruptcy Amendments and Federal Judgeship Act of 1984 (P.L. 98-353)	10/8/1984
1981	Establishes a totality of circumstances test for undue hardship that requires consideration of the borrower's past, present and likely future financial resources, the reasonable necessary living expenses of the borrower and the borrower's dependents and any other relevant facts and circumstances. The totality of circumstances test applies in the 8th circuit.	Andrews v. South Dakota Student Loan Assistance Corp. (In re Andrews), 661 F.2d 702, 704 (8th Cir. 1981)	10/14/1981
1979	The exception to discharge is expanded to include loans insured, guaranteed or funded in whole or in part by a governmental unit in addition to loans made by a governmental unit	P.L. 96-56	8/14/1979

1979	The exception to discharge excludes deferments and forbearances from the 5-year exclusion period before student loans can be discharged in bankruptcy	P.L. 96-56	8/14/1979
1978	Education loans made by the government or nonprofit institutions of higher education are excepted from discharge during the first 5 years in repayment, encoding previous regulations in statute for the first time	The Bankruptcy Reform Act of 1978 (P.L. 95-598)	11/6/1978
1976	Student loans are excepted from bankruptcy discharge by federal regulation unless they represent an undue hardship for the borrower and the borrower's dependents or they had been in repayment for at least 5 years. Student loans were dischargeable in bankruptcy prior to 1976.	Federal Regulations	