Dēmos

AN EQUAL SAY AND AN
EQUAL CHANCE FOR ALL

No Recourse

Putting an End to Bankruptcy's Student Loan Exception

About Dēmos

Dēmos is a public policy organization working for an America where we all have an equal say in our democracy and an equal chance in our economy.

Our name means "the people." It is the root word of democracy, and it reminds us that in America, the true source of our greatness is the diversity of our people. Our nation's highest challenge is to create a democracy that truly empowers people of all backgrounds, so that we all have a say in setting the policies that shape opportunity and provide for our common future. To help America meet that challenge, Dēmos is working to reduce both political and economic inequality, deploying original research, advocacy, litigation, and strategic communications to create the America the people deserve.

demos.org
220 Fifth Avenue, 2nd Fl.
New York, NY 10001

Media Contact
ddonald@demos.org
212.633.1405 ext. 551

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EXECUTIVE SUMMARY

In the past two decades, we have gone from a system of financing higher education primarily through public investment, grant aid, and modest family savings, to one in which the majority of graduates take on debt. While a college degree is one of the surest methods of gaining a foothold in the middle class, this reliance on debt has meant that a growing number of students struggle to pay it off—particularly in a still-uncertain economy. Nearly one-in-seven student loans are in default within three years of a borrower leaving school, and student loans were the only type of debt to see both overall balances and delinquencies rise in the aftermath of the recession.

There is a clear need to reinvest in public higher education, by increasing state support and grant aid in order to reduce the need for undergraduates to borrow. But due to decades of neglect, a growing number of borrowers face trouble repaying the debts they've already incurred. Currently, of all federal Direct Loans not currently held by students in school or in a grace period, nearly 7 percent (totaling $42.5 billion) are currently in default, [1] and nearly 17 percent of loans in repayment (totaling $58.2 billion) are more than 30 days delinquent.[2] Yet another 12 percent of loans (totaling $68.0 billion) not held by students who are currently in school or in a grace period are in deferment or forbearance either due to economic hardship, unemployment, or a borrower's perceived inability to pay.[3] The sheer amount of borrowers struggling to repay loans speaks to a need for failsafe protections for borrowers who clearly cannot meet their debt obligations in a regular or timely manner, if ever.

Where other consumer debt is concerned, such a failsafe already exists in our long-standing legislation and jurisprudence surrounding bankruptcy. But despite the rise in student debt, student loans are treated differently than almost every other form of debt incurred by American households. Due to a series of amendments to the Bankruptcy Code beginning in the mid-1970s, student loans have become extraordinarily difficult to discharge.

While it is not impossible to have student loans forgiven, they are treated far less favorably than most forms of debt. In fact, student loans are treated more or less the same as debts for child support or alimony, tax claims, and criminal penalties. The normal goals of risk-sharing, rehabilitation, and relief for the financially distressed—values that provide the foundation of our bankruptcy laws—are not available to individuals who borrowed money to finance their education. Instead, an individual seeking to discharge student loans must satisfy an onerous and ill-defined "undue hardship" standard, in some cases effectively making it impossible to discharge loans even in the most hopeless of financial circumstances.[4] The barrier is so high that 99.9% of individuals with student loan debt who file bankruptcy do not even bother to allege an "undue hardship."

There is no sound rationale for applying such an unforgiving bankruptcy standard to federal student loans, particularly in an era where the vast majority of students must borrow in order to get a bachelor's degree. To simultaneously require that students take on debt while making that debt extremely difficult to discharge is a particularly cruel policy trap.

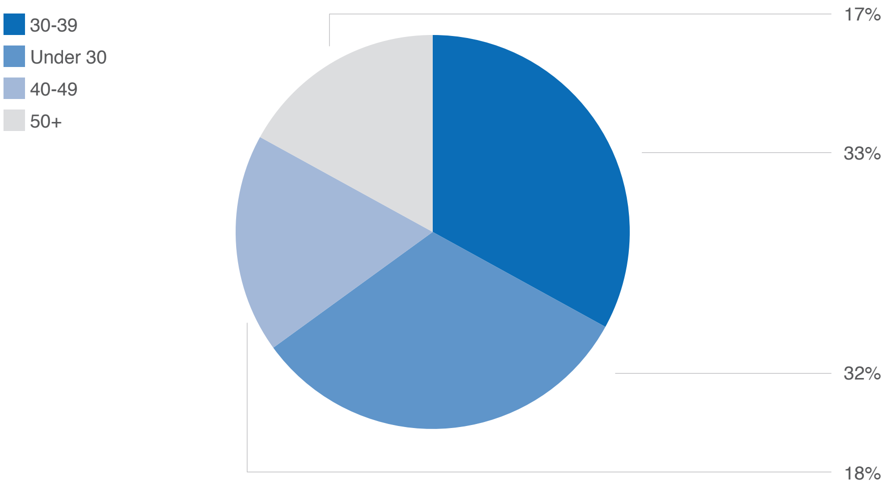
The need to allow Americans to discharge their debts in times of hardship has been recognized since our nation's founding. Acknowledgment of the importance of a sound bankruptcy system is enshrined in the United States Constitution which authorizes Congress to enact "uniform Laws on the subject of Bankruptcies throughout the United States."[5] The ability for individuals to move on after a personal tragedy, a failed commercial venture, or the effects of an unexpected recession is necessary for a secure and healthy economy.

This is also not a question of cost. Allowing the most extreme cases of student loan debt to be forgiven in bankruptcy would only cost the government $3 billion, representing only 3 percent of the total amount of loans doled out by the government *each year*. This is far less than is expected to be forgiven by other relief programs like Public Service Loan Forgiveness and Income-Based Repayment (or "Pay As You Earn"), in service of a policy that is squarely targeted at distressed borrowers.

Allowing Americans to discharge their federal student loan debt in bankruptcy will give Americans still battered by the recession a chance at a fresh start. And it would provide an avenue of relief for older Americans struggling under the yoke of loan debt. As Figure 1 below shows, over one-third of the $1.2 trillion in student debt—or nearly $420 billion—is currently held by those 40 or older. Older Americans in particular who struggle to pay off loan debt do not have the luxury of decades of future income to repair the damage to their credit or the lost savings and wealth that the debt portended.

Both as bankruptcy policy and education policy, there is no good rationale for treating student loans more harshly than consumer debts or other unsecured loans. In an era where student loans are a requirement for most students to even access the higher education system, they should not be loaded with penalties and disincentives through the Bankruptcy Code.[6] Instead, federal student loans should be dischargeable in bankruptcy under the same standard as other unsecured consumer debt. Or, as now-Senator Elizabeth Warren wrote as a professor in 2007, "[w]hy should students who are trying to finance an education be treated more harshly than someone who negligently ran over a child or someone who racked up tens of thousands of dollars gambling?"[7]

Figure 1. Student Loan Debt by Age Group, 2014



Source: Federal Reserve Bank of New York, 2015

Doing so would simply be a small step in reducing the burden of student debt, and would not constitute in any way an incentive for reckless or irresponsible behavior, as some have suggested. Even if the bankruptcy code were reformed, individuals with student loans would still have to satisfy the same Chapter 7 "means test" as other distressed borrowers, meaning that discharge would only be available to those individuals who, based on their monthly income and expenses, truly cannot pay their debts. It would simply apply the same last-resort protection on other debts to the increasing ranks of student debtors.

The history of bankruptcy protections in the United States dates back to the ratification of the Constitution,[8] and nearly two centuries of congressional action and court rulings established the foundation by which debtors could seek protections from their creditors. First, during the New Deal and then again in 1978, Congress passed and updated what is widely referred to as the Bankruptcy Code as a modern series of mechanisms for dealing with economic misfortunes often beyond the control of the individual. As explained by the Supreme Court in *Local Loan Co. v. Hunt*,[9] the bankruptcy code was designed to ensure that economic difficulties were not able to spiral into full-blown catastrophes:

> *[Bankruptcy] gives to the honest but unfortunate debtor… a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt.*

Our bankruptcy laws serve a private goal by providing an opportunity for people to get back on their feet and a societal goal by increasing the ranks of people contributing to the broader economy and by potentially decreasing the number of people reliant on public assistance. The need for a fresh start gets to the heart of why the bankruptcy code exists and reflects the fact that individuals should not be unduly penalized for larger economic trends that are beyond their control. The significance of these protections has only been heightened in the aftermath of the Great Recession.

And yet, our bankruptcy laws have failed to account for the rise of student debt, which has ballooned to become the largest pool of non-housing debt held by Americans. Not only has the total student debt portfolio ballooned, but a significant percentage of borrowers have either defaulted or become seriously delinquent on their loans, or sought out protections such as deferment or forbearance (or income-based repayment plans) to lower or delay their monthly payments. For some, existing protections could be sufficient in giving borrowers time to get back on their feet. But for others, the debt taken on to pay for college will never pan out, due to broader economic trends or a lack of college quality, or simply bad luck. Right now, those borrowers are more or less stuck with their student debt for decades,[10] if not forever. Rather than spending decades facing this burden, some would be better off with an opportunity for a fresh start.

THE CURRENT STATE OF STUDENT LOAN DISCHARGE IN BANKRUPTCY

An estimated 87 percent of the $1.2 trillion outstanding student loan balance in the United States comes from federal student loans.[11] The current 3-year default rate on federal student loans—defined as the percent of loans more than 270 days late on payments within 3 years of leaving school—is 13.7 percent.[12] More than 17 percent of all student loans in repayment (that is, those who do not have loans in deferment, forbearance, or a grace period) are at least 30 days delinquent on their payments.[13]

This debt could put an enormous drag on the American economy, by potentially suppressing homeownership, consumer spending, and long-term saving,[14] and for those struggling to pay their student loans it stands a serious barrier to social and economic mobility. But because this debt is difficult to discharge in bankruptcy, the most obvious solution to this problem is unavailable.

Under current federal law, student loans are treated more harshly than most forms of debt. While most unsecured debts may be discharged in bankruptcy proceedings, student loans are only dischargeable under a heightened "undue hardship" standard. Few categories of debt are treated as unfavorably by the Bankruptcy Code, and this places student loans in the same category as debts for child support or alimony, tax claims, and criminal penalties.

As the timeline on page nine illustrates, the "undue hardship" standard came to apply to student loans only after the 1976 amendments to the Bankruptcy Code. The standard initially applied only for the first 5 years of a loan's repayment, after which the student loan could be discharged like most other forms of debt. However, that five-year period was extended several times and has come to encompass the entire student loan repayment period.[15]

"Undue Hardship": The Standard for Student Loan Discharge in Bankruptcy

Section 523(a)(8) of the Bankruptcy Code states that, in order to have student loans discharged, an individual must prove that he or she would face an "undue hardship" in repaying those loans.[16] However, the Bankruptcy Code does not define "undue hardship," and federal courts have been tasked with finding a workable interpretation of the term. While the standard adopted by courts to determine whether an "undue hardship" exists differs based on jurisdiction, courts primarily rely on one of two tests—the *Brunner* test or the "totality of the circumstances" test.[17]

The Brunner Test

The *Brunner* Test originates from a 1987 New York case[18] that was decided when the "undue hardship" test only applied to individuals seeking to have their student loans discharged within 5 years of the loan first becoming due. This test requires that a person demonstrate three things to a bankruptcy court prior to having his or her student debt discharged:

- The borrower would not "based on current income and expenses" be able to "maintain a 'minimal' standard of living for himself or herself and his or her dependents if forced to repay" their student loan(s);
- There are additional circumstances that strongly indicate that the borrower's "current inability to pay will extend for a significant portion of the repayment period of the loan"; and
- The borrower made good-faith efforts to repay the loan before filing for bankruptcy.[19]

The *Brunner* test has been adopted in 9 of the 11 federal circuits.[20] However, recent cases have displayed that the courts in at least some circuits are questioning their continued adherence to *Brunner*—recognizing that the *Brunner* test essentially requires courts to find a "certainty of hopelessness" before they can authorize the discharge of student debt[21] and that the test was crafted when the law and the circumstances surrounding student debt were vastly different.[22] As a result of these decisions, some commentators have speculated that "*Brunner*'s hold on the majority" may soon be under threat.[23]

The Totality of the Circumstances Test

The Eighth Circuit determined that the *Brunner* test does not provide the courts with the discretion required to discharge student debts in instances when "undue hardship" exists.[24] To this end, courts in the Eighth Circuit apply what is known as the "totality of the circumstances" test.[25] This standard requires borrowers to demonstrate they are incapable of "paying the student loans in question while still maintaining a minimal standard of living."[26] In determining whether a borrower meets this burden, courts will consider a number of factors, including: "(1) the debtor's past, present, and reasonably reliable future financial resources; (2) a calculation of the debtor's and her dependent's reasonable necessary living expenses; and (3) any other relevant facts and circumstances surrounding each particular bankruptcy case."[27]

The First Circuit has not yet formally adopted the *Brunner* test or the totality of the circumstances test,[28] however, courts in the Circuit apply the "totality of the circumstances" test with greater frequency.[29]

"Undue Hardship" in Practice: Who Gets Their Loans Forgiven?

The standards laid out in the *Brunner* test and the "totality of the circumstances" test are only slightly clearer than the phrase "undue hardship" itself. Both tests leave too much discretion to judges to craft their own interpretations about what constitutes a minimal standard of living and to consider factors like an individual's choice of major or professional goals as part of the bankruptcy process. A 2012 investigation by the *New York Times* described the difficulty that borrowers face in "convincing a federal judge that there is a 'certainty of hopelessness' to their financial lives for much of the repayment period."[30] The lack of a uniform standard creates considerable uncertainty about who is eligible for discharge.

The example of Doug Wallace Jr., a legally blind 33-year-old man who suffers from diabetes and underwent several major surgeries, demonstrates how difficult the "undue hardship" standard is to satisfy in practice, and underscores how hard it can be to know in advance if it's worth the prolonged legal proceedings.[31] In 2012, Mr. Wallace had been unemployed since leaving a job in 2005 due to his medical condition.[32] Upon filing Chapter 7 bankruptcy in 2006, Mr. Wallace's medical debt and other loans were discharged, but the $89,000 in student loans he owed has been the subject of litigation for years.[33] In 2010, the bankruptcy court postponed its determination of whether or not Mr. Wallace had met the "undue hardship" standard citing the need for further hearings on his medical condition and efforts to find work.[34]

A number of recent empirical studies have clarified what student loan discharge and the "undue hardship" standard look like in the aggregate.[35] Fewer than one-tenth of one percent (0.1%) of bankrupt individuals with student loans even attempt to seek discharge of their student loans.[36] That means that 99.9% of individuals with student loan debt who filed bankruptcy do not even bother to allege an "undue hardship." Of the 0.1% of bankrupt student loan debtors who seek discharge, a significant percentage receives at least partial forgiveness.

One recent study examined a nationwide sample of borrowers seeking to discharge student loans in bankruptcy and found that 39% of debtors who claimed "undue hardship" discharged some or all of their student loans. [37] The study also found that lower monthly income, lower expenses, and lower income in the year prior to filing for bankruptcy all correlated with a higher percentage of student debt discharge.[38] The study further found that student loan debtors with medical hardships, unemployed borrowers, and those over age sixty received higher percentages of discharge than other debtors.[39]

While empirical studies of student loan discharge suggest that increased utilization of the bankruptcy courts might solve some of America's trillion-dollar student debt overhang, the need for reform remains strong. For one thing, it is likely that individuals asserting "undue hardship" are among the most distressed in bankruptcy. If that's the case, the discharge rates found in these studies are likely to be substantially lower for the majority of individuals struggling with student loan debts.

A larger complicating problem is that student loans are becoming the primary form of debt among young households. It is conceivable that distressed student borrowers do not carry other forms of readily-dischargeable debt (such as medical, housing, or auto debt), since the mere presence of student debt may prevent home or automobile purchases. In short, right now student debt acts as an "extra" debt that an individual can attempt to discharge in tandem with other debts. But given the uncertainty of the "undue hardship" process, individuals could be discouraged from ever seeking relief if student debt is the only form of crippling debt they have.[40]

Increased utilization of the existing bankruptcy system could bring some much needed assistance. But current bankruptcy laws are unlikely to provide sufficient relief to the vast majority of individuals currently in default or delinquent on their student loans.

A Timeline of Student Loans and Bankruptcy[41]

- Prior to 1976, both private and federal student loans could be discharged in bankruptcy under the same standard as other consumer debt.[42]
- In 1976, Congress amended the bankruptcy code and introduced the heightened "undue hardship" standard for federal student loans. During the first five years of repayment, student loans could only be discharged if the individual could demonstrate an "undue hardship" before a bankruptcy judge. After five years of repayment, federal student loans could be discharged under the same standard as consumer debt.[43]
- In 1984, another round of reforms to the Bankruptcy Code made it so that private student loans would be treated the same as federal loans: dischargeable only under the "undue hardship" standard during the first five years of repayment and like other consumer debt after five years.[44]
- In 1990, Congress extended the time period during which student debt could only be discharged under a showing of an "undue hardship" from five years to seven years. After seven years, student loans could be discharged under the same standard as consumer debt.[45]
- In 1993, amendments to the Higher Education Act permitted the federal government to garnish a portion of borrowers' disposable income to repay defaulted federal loans.[46]
- In 1996, the law was changed so that borrowers' Social Security benefits could be offset to repay defaulted federal student loans.[47]
- In 1998, Congress eliminated the provision that allowed federal student loans to be discharged like other forms of consumer debt after 7 years of repayment.[48]
- In 2005, Congress enacted the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) which eliminated the provision that allowed private education loans to be discharged like other forms of consumer debt after 7 years of repayment. All student loans became dischargeable only if an individual can demonstrate an "undue hardship" before a bankruptcy judge.[49]

THE CASE FOR DISCHARGEABILITY

Although student loan discharge is available to a small subset of distressed individuals, a staggering amount of student borrowers are being denied the relief we afford to other forms of debt. Currently, of all direct loans not currently held by students in school or in a grace period, nearly 7 percent (totaling $42.5 billion) are currently in default, and nearly 17 percent of loans in repayment (totaling $58.2 billion) are more than 30 days delinquent.[50] Yet another 12 percent of loans not held by students currently in school or in a grace period (totaling $68.0 billion) are in deferment or forbearance either due to economic hardship, unemployment, or a borrower's perceived inability to pay.[51] And yet, less than one-tenth of one percent of bankrupt student loan debtors are even seeking discharge in bankruptcy. This problem goes far beyond underutilization of the bankruptcy courts. It would benefit both the private individuals affected and the larger economy to have distressed borrowers able to get out from under their massive debt burdens and participate again in the productive economy.

The "undue hardship" test is a harsh standard without a compelling policy rationale and runs contrary to the traditional goals of bankruptcy. Education debt bears little distinction from other types of more readily-dischargeable debt.[52] Struggling student loan debtors should be treated like all other borrowers and given the opportunity to rehabilitate themselves and reenter the productive economy.

Making federal student loans dischargeable is sound education policy as well. The federal government attempts to support the pursuit of higher education via grants, tax incentives, and subsidized borrowing (that is, providing loans that are less costly than those provided by private banks). But encouraging students to enter college also means that the government has an obligation to provide back-end protections for the students whose investment does not bear fruit. The knowledge that student debt is even slightly less likely to cause a lifetime of financial catastrophe could ease the minds of uneasy students who want to attend and complete college but are justifiably afraid to take on any debt.

America's trillion dollar student debt overhang is a matter of macroeconomic significance and, for many borrowers, cancels out many of the financial benefits of higher education. The government should make student loans more easily forgivable. Doing so would remove important barriers to higher education and would go a long way toward realizing the proper role the government should play in shielding individuals from the risks of unemployment and economic downturn that are often outside of an individual's control.

Student Loans and the Purpose of Bankruptcy

Our system of bankruptcy, at a fundamental level, is about resolving the problems that arise when a person who has borrowed money becomes unable to repay his or her creditors. Bankruptcy law embodies a societal recognition that holding people to unpayable debts can be individually devastating and creates enormous social and economic costs.

When a debt becomes unpayable, a common refrain is that this is a failure of individual responsibility, and debts are often framed in stigmatizing moral terms. This misunderstands what loans are. Lenders charge interest rates in exchange for the risk that they take when they lend money. The very existence of interest rates evidences that risks are to be shared between debtors and creditors, and bankruptcy exists to ensure that all the burdens are not pushed onto the party with fewer resources.

Even more, this misunderstands the purpose of *student loans*. Student debt is not debt for consumption, but rather debt in service of an investment—in this case, investment in human capital. Student loans are now the primary means by which students access the higher education system, in an era when most recognize that access to higher education is the surest ticket to financial stability. To simultaneously require that students take on debt while making that debt extremely difficult to discharge is a particularly cruel policy trap.

Excluding student loans from the bankruptcy system flies in the face of centuries of sensible bankruptcy policy and threatens the economic mobility and risk-taking that has made the American economy so dynamic.[53] Further, making federal student loans dischargeable in bankruptcy reflects that economic success often depends on factors that are outside of an individual student's control. Rather than imposing all of the risk of a bad job market on private individuals, the federal government has an incentive to minimize that risk through both front-end investment (through grant aid), as well as back-end relief (through debt relief). Having an educated population has broad and powerful societal benefits, and society should share some of the risk currently borne almost entirely by students.

Proposed Reform: Repeal the Student Loan Exception

The most straightforward way to end the student loan exception would be to simply strike the student loan exception from Section 523(a)(8) of the Bankruptcy Code.[54] This would eliminate the provision requiring individuals to demonstrate an "undue hardship" to a bankruptcy court. As a result, student loans would be normally dischargeable alongside other unsecured consumer loans.

Any attempt to discharge a student loan would remain subject to all of the other provisions of the Bankruptcy Code—including, of course, the provisions designed to prevent abuse of the system.[55] Individuals with student loans would still have to satisfy the same Chapter 7 "means test" as other borrowers, meaning that discharge would only be available to those individuals who, based on their monthly income and expenses, truly cannot pay their debts.[56]

This was the proposal of the 1997 National Bankruptcy Review Commission ("NBRC"), a nonpartisan commission established as part of the 1994 Bankruptcy Reform Act and whose members were appointed by the President, Congress, and the Chief Justice.[57] In summarizing the rationale behind its recommendation, the NBRC stated that treating student loans like all other forms of unsecured debt "would be consistent with federal policy to encourage educational endeavors."[58] As the NBRC emphasized,

> *The question at issue in this Proposal is not whether anyone wants individuals to discharge their debts, educational loans or otherwise. The question is whether a debtor overloaded with consumer debts incurred to buy a car, a vacation, or a pizza can resort to bankruptcy but a debtor who borrows to pay for tuition and books cannot.*[59]

For that reason, the NRBC recommended that Congress eliminate Section 523(a)(8) so student loans would be treated like all other unsecured debts.[60] In short, student loans should be dischargeable in bankruptcy under the same standard as other unsecured loans.

How Much Would Bankruptcy Reform Cost?

To estimate the total cost to the federal government of allowing student debt to be dischargeable in bankruptcy, we need to first calculate the total amount of student debt currently held by individuals who already file for Chapter 7 bankruptcy. In 2012, there were 816,271 successful individual Chapter 7 bankruptcies.[61] Using data from the Consumer Bankruptcy Project, Dr. Robert Lawless calculated that 17.2 percent of all individuals in bankruptcy held some student debt[62] (as of 2007, the most recent data available), implying that approximately 140,399 individuals who successfully filed for bankruptcy in 2012 held some student debt. According to Dr. Lawless's calculations, bankruptcy filers with student debt held a mean of $19,836; extrapolating these figures to the entire population yields a total of $2.78 billion in student debt held by successful Chapter 7 filers in 2012.

What share of this amount, then, would be borne by the federal government if student debt were dischargeable? First, we can expect that nearly all of the $2.78 billion would indeed be discharged, since unsecured debt, such as student debt is completely dischargeable in a Chapter 7 bankruptcy.[63] However, the cost of discharge would be shared by private lenders, whose portfolios accounted for 14 percent of total outstanding student debt as of July 2013.[64] Since we don't have data on the shares of bankruptcy filers' student debt that is owed to the federal government and private lenders, we use the above estimate to calculate that 14% of the $2.78 billion, or approximately $400 million, is owed to private lenders, and thus $2.4 billion is owed to the federal government. Since we assume that under our proposed policy all of this debt would be discharged, the yearly cost to the federal government would be **$2.4 billion** as well.

This is, of course, simply a ballpark estimate—there are several factors that could drive the actual cost of the policy higher or lower. Moderating factors include:

- The possibility that bankruptcy filers with student debt may hold a higher share of private student debt than the population as a whole. A higher share of high debt student debtors borrow privately,[65] a population that is also more likely to default on their loans, suggesting that bankruptcy filers with student debt may also borrow more heavily from private lenders as well.

- The cost to the federal government being lower, since the federal government doesn't recover the entire amount on defaulted student loans currently. If, as suspected, most bankruptcy filers with student debt are also in default on their student loans, the actual net cost would be lower than our estimate.
- Factors which might drive the policy's cost higher:
- Including an estimate of discharged student loans in Chapter 13 bankruptcies. Though we didn't include it in this estimate, because of the complexities of discharge under Chapter 13, we can predict that some share of the more than 310,000 individual Chapter 13 filers[66] hold student debt, some of which would receive at least a partial discharge.
- The possibility that more individuals might choose to file for bankruptcy if student debt were dischargeable. Given that approximately 14% of student borrowers default on their loans,[67] this is certainly a realistic possibility.

Q&A ON STUDENT LOAN DISCHARGEABILITY

If student loans are dischargeable, won't people be encouraged to avoid taking individual responsibility for their decisions?

The moral hazard arguments against the discharge of student loans in bankruptcy come in several different forms but share a common theme. Since the mid-1970s, when Congress first made federal student loans hard to discharge during the first five years of repayment, there has been a steady warning that graduates with great career prospects would simply choose not to work, discharge their loans, and, several years later, find themselves in lucrative professions.[68] The fear, in short, is that people will either do nothing after graduation or will enrich themselves on the public's dollar.

This fear is unfounded. The NBRC's final report found that "available evidence does not support the notion that the bankruptcy system was systematically abused when student loans were more easily dischargeable."[69] Even when the reforms were first adopted in the 1970s, an earlier federal bankruptcy commission "acknowledged that student loan abuse was more perception than reality."[70] Furthermore, the Bankruptcy Code already includes safeguards such as the means test to prevent abuse of the system. And there are strong incentives in place to discourage individuals from using the bankruptcy system except when absolutely necessary. After filing for bankruptcy, it can take years for individuals' credit scores to recover.[71]

Isn't making student loans dischargeable a regressive policy that will benefit high earners?

One concern that has been raised against student loan proposals is that student loan forgiveness is economically regressive because student loans are held primarily by middle- and upper-class individuals.[72] It is true that Income-Based Repayment ("IBR") and other forms of debt relief primarily benefit individuals with larger loans, many of whom have graduate degrees. However, this concern is misplaced when it comes to making student loans more readily dischargeable through bankruptcy.

Unlike calls for across-the-board student loan forgiveness, making student loans dischargeable in bankruptcy would ensure that debt relief is targeted to those individuals *most* in need of relief.

Chapter 7 of the Bankruptcy Code includes provisions to prevent abuse, and the "means test" ensures that only distressed individuals would be able to discharge their student loans. While much of the student loan balance in the country is held by families whose income is in the 40-90% percentile of the income distribution,[73] these families are not going to be the primary recipients of relief through bankruptcy.

Making student loans more readily dischargeable in bankruptcy is decidedly more progressive than existing income-based repayment plans (see below).

Don't Income-Based Repayment and Pay As You Earn provide sufficient relief to student debtors?

Currently, individuals with federal loans can obtain Income-Based Repayment (IBR) or Pay As You Earn (PAYE) as a way to make their monthly debt obligations more manageable.

Under IBR, monthly payments are adjusted to reflect an individual's income and family size. The standard IBR payments are 15% of a person's "discretionary" income, meaning 15% of all income above 150% of the poverty level, and, after 25 years, the remaining balance of the student loans is forgiven.[74] The government makes some additional payments to offset interest that accumulates over a small portion of the IBR period. For individuals working in qualifying public service jobs, the balance is forgiven after 10 years rather than 25.[75]

The PAYE program is similar, but is only available to individuals who were issued government-backed loans issued after October 1, 2007. Under PAYE, the cap is 10% of discretionary income, and discharge is available after only 20 years.[76]

These programs provide an important backstop for those struggling with student loan payments, but are not quite sufficient in helping truly distressed borrowers wipe the slate clean.

One problem with the debt relief offered by IBR and PAYE minimizes monthly payments but can result in borrowers paying thousands more in loan payments overall, due to interest accrual. These programs are designed as short-term relief from unemployment or low wages, and only provide long-term relief in cases where a borrower's wages are low for many years.

As currently designed, IBR and PAYE can also lead to exorbitant tax burdens for many borrowers at the end of the coverage period. The provision for forgiveness at the end of the repayment period offers enormous relief; however, IBR and PAYE recipients owe income taxes on any loan amount that is forgiven. In other words, unpayable student debts are converted into a large tax obligation. Individuals on IBR facing financial hardships are likely to find this tax bill particularly burdensome. Because many individuals actually accrue interest while under IBR and PAYE, this tax bill can be quite substantial in relationship to the student loan in question.

A similar issue is the timeline involved. Borrowers can only receive forgiveness after 20 or 25 years of payments. The purpose of bankruptcy is to recognize extreme circumstances when borrowers are unlikely to be able to meet their debt obligations. Making these borrowers wait two decades for relief increases uncertainty and counteracts the point of bankruptcy: to provide a clean financial slate.

Another issue with IBR and PAYE is that the benefits fall primarily to those with high debt obligations—such as individuals with graduate degrees—and not necessarily to the individuals who need relief most.[77] Based on the New America Foundation's IBR calculations, "[a] borrower with an MBA or a law degree can easily have a six-figure loan balance forgiven, even if his income exceeds $100,000 for much of his repayment term."[78] Low-income borrowers are unlikely to see that kind of relief under IBR, but would be the exact beneficiaries of bankruptcy reform.

Does Chapter 13 restructuring provide sufficient relief to student debtors?

Chapter 13 is another provision under the Bankruptcy Code that opponents have cited as a reason not to make student loans more easily dischargeable. Unlike Chapter 7, which allows for immediate discharge, Chapter 13 Bankruptcy allows individuals with regular incomes to readjust their monthly debt payments to more manageable levels for a three- to five-year period.[79] At the end of the Chapter 13 period, certain loans may be eligible for discharge. However, after the 1990 amendments to the Bankruptcy Code, student loans may no longer be discharged through Chapter 13.[80]

Individuals with student loans may file for Chapter 13 and reduce their monthly payments on those loans for several years. At the end of that period, their student loans will revert into standard repayment. While this option may be appealing to individuals who anticipate a higher income in future years and to borrowers with mortgages who want to avoid losing their homes in Chapter 7, this route offers no principal reduction on student loans. Because interest continues to accumulate even during Chapter 13, many individuals leave bankruptcy owing a higher balance on their student loans than they did before filing for bankruptcy protection. [81] In this way, Chapter 13 provides a similar relief to IBR-type plans, without the forgiveness.

For Chapter 13 to serve as a serious solution to the student debt crisis, student loans would need to be forgivable under Chapter 13 as they were prior to the 1990 amendments.[82] Short of this change, Chapter 13 offers no assurance that individuals can lower their overall student debt balances.

CONCLUSION

Allowing the dischargeability of student loans in bankruptcy makes sense both as economic policy and education policy. We want an educated populace. Earning power and employment opportunities increase dramatically with a college degree. In some cases, though, degrees come at a cost that exceeds their value, and in others, students are obligated to take on debt but do not end up graduating. These cases can result in years of financial distress and can suppress overall economic growth.

We need to reduce the burden of student debt, and ensure that the prospect of a college degree does not come with a fear of financial ruin. There is much that states and the federal government can do to reduce the need to borrow—through increased investment and well-targeted grant aid. But reforming bankruptcy laws will provide those individuals who did everything they were told—work hard, attend college, take on federally-approved student loans—with the peace of mind that, in the worst of circumstances, those loans will not stay with them for the rest of their lives.

All Americans should have an equal chance in our economy, and that includes students who take on loans for higher education. There is nothing inherently irresponsible about seeking to makes oneself more skilled as a worker or more marketable as an employee. To the contrary, this type of ambition should be fostered and encouraged. Our current bankruptcy laws make the risk of taking on student debt too great. As with other forms of debt, for those with good intentions who catch a bad break, there should be a way to rebuild. Simply allowing student debt to be treated like other forms of debt can re-open pathways to the middle class and help ensure that the burden of student debt on our economy is not inevitable.

ENDNOTES

1. Analysis of U.S. Department of Education Data: Federal Student Loan Portfolio. https://studentaid.ed.gov/about/data-center/student/portfolio.
2. *Id.*
3. Analysis of U.S. Department of Education Data: Direct Loan Portfolio By Deferment Type; Direct Loan Portfolio by Forbearance Type: https://studentaid.ed.gov/about/data-center/student/portfolio. For more, see Ben Miller, "A Closer Look at Student Loan Deferment and Forbearance," February 2015, http://www.edcentral.org/defermentforbearance/.
4. Booker, Charles. "The Undue Hardship of Education." 39 J.L. & Educ. 273, 275 (2010).
5. United States Constitution, Article 1, Section 8, Clause 4.
6. *See* "Ending Student Loan Exceptionalism: The Case for Risk-Based Pricing and Dischargeability." 126 Harv. L. Rev. 587 (2012. http://www.harvardlawreview.org/media/pdf/vol126_student_loan_exceptionalism.pdf.
7. Warren, Elizabeth. "Student Loan Scandal Fallout." Credit Slips (June 3, 2007), http://www.creditslips.org/creditslips/2007/06/student_loan_sc.html.
8. *See* Bankruptcy power, Article I, Section 8, Clause 4. https://www.law.cornell.edu/wex/bankruptcy_power.
9. *Local Loan Co. v. Hunt*. 292 U.S. 234, 245 (1934).
10. Currently, borrowers can enroll in income-based repayment plans that forgive debt after 20 or 25 years, conditioned on the borrower making the required monthly payments every month during that time.
11. *See* Rohit Chopra. *Student Debt Swells, Federal Loans Now Top a Trillion*. CFPB (July 17, 2013.http://www.consumerfinance.gov/newsroom/student-debt-swells-federal-loans-now-top-a-trillion/.)
12. U.S. Department of Education. "Three-Year Official Cohort Default Rates for Schools." http://www2.ed.gov/offices/OSFAP/defaultmanagement/cdr.html.
13. Analysis of U.S. Department of Education Data: Federal Student Loan Portfolio: Direct Loan Portfolio by Delinquency Status. https://studentaid.ed.gov/about/data-center/student/portfolio.
14. Brown, Meta and Sydnee Caldwell. *Young Student Loan Borrowers Retreat from Housing and Auto Markets*. Federal Reserve Bank of New York, April 17, 2013. http://libertystreeteconomics.newyorkfed.org/2013/04/young-student-loan-borrowers-retreat-from-housing-and-auto-markets.html.
15. *See, e.g.*, Charles Booker. *The Undue Hardship of Education*. 39 J.L. & Educ. 273, 275 (2010).
16. 11 U.S.C. § 523(a)(8).
17. In 2012, the Supreme Court declined to hear a case that would have clarified what the standard for determining "undue hardship" should be and create cohesion across the United States. *Traversa v. Educ. Credit Mgt. Corp.*, 444 F. App'x 472 (2d Cir. 2011) *cert. denied*, 133 S. Ct. 135 (U.S. 2012).
18. *In re Brunner*, 46 B.R. 752, 756 (S.D.N.Y. 1985) *aff'd sub nom. Brunner v. New York State Higher Educ. Services. Corp.*, 831 F.2d 395, 396 (2d Cir. 1987).
19. *Id.* at 755-56; *see also* Federal Student Aid: An Office of the U.S. Department of Education, *Forgiveness, Cancellation, and Discharge*. http://studentaid.ed.gov/repay-loans/forgiveness-cancellation.
20. Although courts have applied the *Brunner* test in slightly different ways, each circuit court except the First and Eighth has adopted the test. *See, e.g.*, *In re Wolfe*, 501 B.R. 426, 433 n. 17 (Bankr. M.D. Fla. 2013); *see also In re Shaw*, 08-30319-H3-7, 2015 WL 1000213, at *4 (Bankr. S.D. Tex. Mar. 3, 2015) (outlining the *Brunner* test and noting that it is the test that has been most widely adopted by courts in determining whether "undue hardship" exists). The First Circuit is comprised of Massachusetts, Maine, New Hampshire, Rhode Island and Puerto Rico. The Eighth Circuit contains Arkansas, Iowa, Minnesota, Missouri Nebraska, North Dakota and South Dakota. The combined population of these states (excluding Puerto Rico) is only 31.2 million—a mere 10% of the U.S. population.
21. *See, e.g.*, *Krieger v. Educ. Credit Mgt. Corp.*, 713 F.3d 882, 885 (7th Cir. 2013) (describing the *Brunner* test as requiring a "certainty of hopelessness" and noting that such a showing seems to be beyond what is required to prove "'undue hardship"); *see also id.* at 884 ("The statutory language is that a discharge is possible when payment would cause an 'undue hardship'. It is important not to allow judicial glosses, such as the language in … *Brunner*[] to supersede the statute itself.").
22. *See In re Roth*, 490 B.R. 908, 920-22 (Bankr. App. 9th Cir. 2013) (Pappas, J., concurring) (Pappas urged the Ninth Circuit to revisit its stance on *Brunner* at the next available opportunity and described how circumstances had changed since *Brunner* was decided and adopted in the Ninth Circuit—making the "test … a relic of times long gone." Specifically, Pappas noted: (1) that *Brunner* was decided when "undue hardship" only had to be proven if an individual was seeking to discharge his or her debt within 5 years of it becoming due; (2) that the Ninth Circuit adopted *Brunner* after the Bankruptcy Code had been amended and when individuals were required to show "undue hardship" if they were seeking to discharge student debt within 7 years of it becoming due; (3) that the types of student debt that require a showing of "undue hardship" in order to be discharged have been expanded to include private student loans; and (4) that the amount of debt students amass is now significantly higher than it has been in the past. Thus, "in determining whether repayment of a student loan constitutes an undue hardship, a bankruptcy court should be afforded flexibility to consider all relevant facts about the debtor and the subject loans." In Pappas' view, *Brunner* does not provide this flexibility.); *Wolfe*, 501 B.R. at 433-44 (describing how student bankruptcy law has changed since the time that *Brunner*).
23. Fletcher, Michael J. and J. Jackson Waste. "Student Loan Discharge Decisions Poke Holes in the *Brunner* Test." XXXIII(2) Am. Bankr. Inst. J., Feb. 2014. http://www.bakermanock.com/sites/default/files/publications/ABI%20Journal%20Article.Student%20Loan%20Discharge%20Decisions%20Poke%20Holes%20in%20the%20Brunner%20Test..%20%20By%20J.%20Jackson%20Waste%20and%20Michael%20J.%20Fletcher.pdf.
24. *In re Long*, 322 F.3d 549, 554 (8th Cir. 2003) ("We prefer a less restrictive approach to the 'undue burden' inquiry. We are convinced that requiring our bankruptcy courts to adhere to the strict parameters of [the *Brunner*] test would diminish the inherent discretion contained in §523(a)(8)(B) [(the undue hardship provision of the Bankruptcy Code)]. Therefore, we … embrace a totality-of-the-circumstances approach…. We believe that fairness and equity require each undue hardship case to be examined on the unique facts and circumstances that surround the particular bankruptcy.").
25. *See Id.*; Julie Swedback and Kelly Prettner. "Discharge or No Discharge? An Overview of Eighth Circuit Jurisprudence in Student Loan Discharge Cases." 36 Wm. Mitchell L. Rev. 1679 (2010). http://web.wmitchell.edu/law-review/wp-content/uploads/documents/8.Swedback.pdf.
26. *In re Kopf*, 245 B.R. 731, 741 (Bankr.D.Me. 2000).

27. *Long*, 322 F.3d at 554; *see also In re Bronsdon*, 435 B.R. 791, 800 (Bankr. App. 1st Cir. 2010) (The First Circuit characterized the totality of the circumstances test as seeking to answer one question: "Can the debtor now, and in the foreseeable near future, maintain a reasonable, minimal standard of living for the debtor and the debtor's dependents and still afford to make payments on the debtor's student loans?").
28. *See In re Nash*, 446 F.3d 188, 191 (1st Cir. 2006).
29. *See Bronsdon*, 435 B.R. at 797-98 ("Most of the bankruptcy courts within the First Circuit have adopted the totality of the circumstances test over the *Brunner* test, although a few courts within this circuit have applied *Brunner* instead.").
30. Lieber, Ron. "Last Plea on School Loans: Proving a Hopeless Future." *New York Times* (Aug. 31, 2012). http://www.nytimes.com/2012/09/01/business/shedding-student-loans-in-bankruptcy-is-an-uphill-battle.html?pagewanted=all.
31. *See id.*; Ron Lieber. "An Update on a Student Debt Case," *New York Times* (Sept. 12, 2012). http://bucks.blogs.nytimes.com/2012/09/12/an-update-on-a-student-debt-case/.
32. Lieber, Ron. "Last Plea on School Loans: Proving a Hopeless Future."
33. *See In re Wallace*, 443 B.R. 781 (Bankr. S.D. Ohio 2010); Ron Lieber, "An Update on a Student Debt Case."
34. *Id.*
35. Iuliano, Jason. "An Empirical Assessment of Student Loan Discharges and the Undue Hardship Standard." 86 Am. Bankr. L.J. 495, 513 (Summer 2012); Rafael I. Pardo & Michelle R. Lacey, "The Real Student-Loan Scandal: Undue Hardship Discharge Litigation." 83 Am. Bankr. L.J. 179, 196–200 (2009).
36. Jason Iuliano. "An Empirical Assessment of Student Loan Discharges and the Undue Hardship Standard." 86 Am. Bankr. L.J. at 499.
37. *Id.* at 512-13. Approximately 27% entered into settlement agreements with their lenders, and the remaining 12% received some kind of judicial relief.
38. *Id.* at 513.
39. *Id.* at 514.
40. A recent report from the Federal Reserve Bank of New York found that individuals with student loan debts held less mortgage and auto debt than average people of the same age. *See* Meta Brown and Sydnee Caldwell. "Young Student Loan Borrowers Retreat from Housing and Auto Markets." Federal Reserve Bank of New York: Liberty Street Economics (April 17, 2013) http://libertystreeteconomics.newyorkfed.org/2013/04/young-student-loan-borrowers-retreat-from-housing-and-auto-markets.html. It is likely that individuals whose sole or primary debt obligations come from student loans are less likely to file for bankruptcy than individuals with more readily dischargeable consumer debts, given that student loan relief depends entirely on the success of their "undue hardship" showing.
41. *See* FinAid. "Answering Your Questions, Student Loan Bankruptcy Exception." http://www.finaid.org/questions/bankruptcyexception.phtml.
42. *See* 11 U.S.C. § 35(a) (1976) (repealed 1978).
43. *See* Education Amendments of 1976, Pub. L. No. 94-482, §127(a), 90 Stat. 2081, 2141; The Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, § 316, 92 Stat. 2549, 2678 (codified at 11 U.S.C. § 523(a)(8)). For a fuller legislative history of the introduction and development of the student loan nondischargeabiltiy provision, *see* Duke Chen, C*RS Report for Congress: Student Loans in Bankruptcy*, Congressional Research Service (July 26, 2007). http://www.policyarchive.org/handle/10207/bitstreams/19283.pdf.
44. *See* Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, § 454(a)(2), 98 Stat. 333 (Supp. 1984) (amending 11 U.S.C. § 523(a)(8)).
45. *See* Crime Control Act of 1990, Pub. L. No. 101-647, 3621, 104 Stat. 4789 (1990) (amending 11 U.S.C. § 523(a)(8)).
46. *See* Emergency Unemployment Compensation Act of 1991, Pub. L. No. 102-164 (1991); Deficit Reduction Act of 2005, Pub. L. No. 109-171 (2006).
47. *See* Debt Collection Improvement Act of 1996, Pub. L. No. 104-134 (110 Stat. 1321-358 *et seq.*) (codified at 31 U.S.C. § 3716). Despite lacking a statute of limitations, this provision was upheld by the Supreme Court. *Lockhart v. U.S.*, 546 U.S. 142 (2005).
48. *See* Higher Education Amendments of 1998, § 971, Pub. L. No. 105-244, 112 Stat. 1581, 1837 (1998) (amending 11 U.S.C. § 523(a)(8)).
49. *See* Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA), Pub. L. No. 109-8, § 220, 119 Stat. 23 (2005) (amending 11 U.S.C. § 523(a)(8)).
50. Analysis of U.S. Department of Education Data: Federal Student Loan Portfolio: https://studentaid.ed.gov/about/data-center/student/portfolio.
51. Analysis of U.S. Department of Education Data: Direct Loan Portfolio By Deferment Type; Direct Loan Portfolio by Forebearance Type: https://studentaid.ed.gov/about/data-center/student/portfolio. For more, see Ben Miller, "A Closer Look at Student Loan Deferment and Forbearance," February 2015, http://www.edcentral.org/defermentforbearance/.
52. Webley, Kayla. "Why Bankruptcy Won't Erase Student Loan Debt." TIME.com (Feb. 9, 2012). http://business.time.com/2012/02/09/why-cant-you-discharge-student-loans-in-bankruptcy/.
53. *See* Robert Kuttner. "The Debt We Shouldn't Pay," *New York Review of Books* (May 2013), http://www.nybooks.com/articles/archives/2013/may/09/debt-we-shouldnt-pay/ ("Before 1706, bankruptcy simply meant insolvency, and the bankrupt was packed off to debtors' prison. It dawned on the reformers of the day that this practice was economically irrational. As the legal historian of bankruptcy Bruce Mann wrote, 'it beggared debtors without significantly benefiting creditors.' Once behind bars, a debtor had no means of resuming productive economic life, much less satisfying his debts. In this insight was the germ of Chapter 11 of the modern US bankruptcy code, the provision that allows an insolvent corporation to write off old debts and have a fresh start as a going concern."); Bruce H. Mann. *Republic of Debtors: Bankruptcy in the Age of American Independence*. Harvard University Press, 2002, p. 18.
54. Specifically, this could be achieved by repealing Section 523(a)(8) in its entirety.
55. *Id.*; *see also* 11 U.S.C. § 707(b)(1).
56. *See* U.S. Courts. "Chapter 7 Liquidation Under the Bankruptcy Code." http://www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyBasics/Chapter7.aspx; Nolo: Law for All, "The Bankruptcy Means Test: Are You Eligible for Chapter 7 Bankruptcy?" http://www.nolo.com/legal-encyclopedia/chapter-7-bankruptcy-means-test-eligibility-29907.html.
57. In its final recommendations to Congress, the National Bankruptcy Review Commission's sole recommendation on the dischargeability of student loans was that "Section 523(a)(8) should be repealed." Recommendations to Congress, National Bankruptcy Review Commission, 1.4.5 (1997), p. 6. http://govinfo.library.unt.edu/nbrc/report/03recomm.pdf.
58. National Bankruptcy Review Commission. "Chapter 1: Consumer Bankruptcy." In *Bankruptcy: The Next Twenty Years: National Bankruptcy Review Commission Final Report* (Oct. 20, 1997). http://govinfo.library.unt.edu/nbrc/report/07consum.pdf.

59. *Id*. at 207.
60. *Id*. at 216; *see also* David Lat. "An Interview with Steven Harper, Former Kirkland Partner and Author of 'The Lawyer Bubble.'" Above the Law: A Legal Web Site (Apr. 9, 2013). http://abovethelaw.com/2013/04/an-interview-with-steven-harper-former-kirkland-partner-and-author-of-the-lawyer-bubble/ ("There was never a good reason that they weren't; they don't belong with child support, alimony, criminal penalties, taxes.").
61. U.S. Courts. "Bankruptcy Statistics: 12-Month Period Ending December." http://www.uscourts.gov/Statistics/BankruptcyStatistics/12-month-period-ending-december.aspx.
62. Personal Communication from Robert Lawless.
63. 63 American Bar Association. "General Comparison of Chapter 7 and Chapter 13 Bankruptcy." http://www.americanbar.org/content/dam/aba/migrated/publiced/practical/books/family_legal_guide/bankruptcy_7_13.authcheckdam.pdf.
64. Chopra (2013).
65. *Ibid*.
66. U.S. Courts. "Table F-2: U.S. Bankruptcy Courts—Business and Non-Business Cases Commenced, by Chapter of the Bankruptcy Code, During the 12-Month Period Ending September 30, 2014." http://www.uscourts.gov/uscourts/Statistics/BankruptcyStatistics/BankruptcyFilings/2014/0914_f2.pdf
67. U.S. Department of Education. Three-Year Official Cohort Default Rates for Schools. http://www2.ed.gov/offices/OSFAP/defaultmanagement/cdr.html.
68. National Bankruptcy Review Commission. "Chapter 1: Consumer Bankruptcy."
69. *Id*. at 213.
70. *Id*. at 209.
71. See MyFICO. "Bankruptcy types and how the FICO score treats them." http://www.myfico.com/crediteducation/Questions/Bankruptcy-Types.aspx.
72. For background on the distributional breakdown, *see* Mike Konczal, "A First Look into Some Distributional Student Loan Data" (Nov. 9, 2011), http://rortybomb.wordpress.com/2011/11/09/a-first-look-into-some-distributional-student-loan-data/; Matt Bruenig, "Student debt disproportionately burdens the well-off" (Aug. 10, 2012), http://mattbruenig.com/2012/08/10/student-debt-disproportionately-burdens-the-well-off/.
73. *See* Mike Konczal, "A First Look into Some Distributional Student Loan Data." https://rortybomb.wordpress.com/2011/11/09/a-first-look-into-some-distributional-student-loan-data/.
74. *See* Federal Student Aid: An Office of the U.S. Department of Education. "If your student loan debt is high relative to your income, you may qualify for the Income-Based Repayment Plan (IBR)." http://studentaid.ed.gov/repay-loans/understand/plans/income-based. The IBR system is only available to individuals who can demonstrate a "partial financial hardship." This is not to be confused with the "undue hardship" standard necessary in bankruptcy. Indeed, the IBR definition of "partial financial hardship" can be determined using a straightforward formula.
75. *Id*.
76. *See* Federal Student Aid: An Office of the U.S. Department of Education. "Pay As You Earn Plan." http://studentaid.ed.gov/repay-loans/understand/plans/pay-as-you-earn.
77. *See* Jason Delisle and Alex Holt. *Safety Net or Windfall?: Examining Changes to Income-Based Repayment for Federal Student Loans*, New America Foundation (October 16, 2012). http://newamerica.net/publications/policy/safety_net_or_windfall; *see also* Matt Bruenig. "The problems with income-based repayment" (March 22, 2013), http://mattbruenig.com/2013/03/22/the-problems-with-income-based-repayment/.
78. Delisle, Jason and Alex Holt. *Safety Net or Windfall?*, New America Foundation. http://newamerica.net/publications/policy/safety_net_or_windfall.
79. U.S. Courts. Chapter 13: Individual Debt Adjustment. http://www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyBasics/Chapter13.aspx.
80. *See* http://govinfo.library.unt.edu/nbrc/report/07consum.pdf at 210; General Accounting Office, Student Loans: Characteristics of Defaulted Borrowers in the Stafford Student Loan Program 7 (April 1991).
81. The NBRC's 1997 recommendations noted the inadequacy of Chapter 13 to student loan debtors, stating "[i]f a debtor does not find a way to make all student loan payments in addition to other Chapter 13 obligations, the debtor will face an even more overwhelming loan obligation at the end of the Chapter 13." Chapter 1: Consumer Bankruptcy in National Bankruptcy Review Commission, *Bankruptcy: The Next Twenty Years*.
82. *See Id*.

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