

United States Senate

WASHINGTON, DC 20510

October 28, 2024

The Honorable Merrick Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

The Honorable Miguel Cardona
Secretary of Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Dear Attorney General Garland and Secretary Cardona:

We are writing today to highlight and support your agencies' progress in making it easier for borrowers struggling financially to discharge their student loans in bankruptcy.¹ In November 2022, the Department of Justice (DOJ) and Department of Education (ED) released guidance to DOJ attorneys that sought to streamline the process of discharging student loans in bankruptcy.² In the time since, more and more borrowers have taken advantage of this guidance and received relief.³

The 1978 Bankruptcy Code allowed borrowers to discharge their federal student loans by demonstrating that repayment would impose an "undue hardship" on the borrower or by showing that the loan became due at least five years before the borrower's bankruptcy filing.⁴ Subsequent amendments benefitting lenders, however, removed the second option.⁵ Further, the "undue hardship" standard historically set an unnecessarily high bar that essentially required borrowers to demonstrate a certainty of hopelessness to obtain relief.⁶ The federal government's aggressive challenges in bankruptcy court against students who pursued undue hardship claims only exacerbated the issue.⁷ The lack of clarity resulted in a situation where 99.9% of borrowers who filed bankruptcy from 2011 to 2019 did not have their student loans discharged and remained burdened by student loans even after exiting the bankruptcy process.⁸

¹ Department of Justice, "Guidance for Department Attorneys Regarding Student Loan Discharge Litigation," November 17, 2022, https://www.justice.gov/d9/pages/attachments/2022/11/17/student_loan_discharge_guidance_-_guidance_text_0.pdf.

² *Id.*; U.S. Department of Justice, "Justice Department and Department of Education Announce Continuing Success of Student-Loan Bankruptcy Discharge Process," press release, July 17, 2024, <https://www.justice.gov/opa/pr/justice-department-and-department-education-announce-continuing-success-student-loan>.

³ U.S. Department of Justice, "Justice Department and Department of Education Announce Continuing Success of Student-Loan Bankruptcy Discharge Process," press release, July 17, 2024, <https://www.justice.gov/opa/pr/justice-department-and-department-education-announce-continuing-success-student-loan>.

⁴ Public Law 95-598, Section 523(a)(8), 92 Stat. 2549 (1978).

⁵ USC 523(a)(8).

⁶ The Washington Post, "Education Dept. shows limits of pandemic relief by fighting borrowers in bankruptcy," Danielle Douglas-Gabriel, July 17, 2021, <https://www.washingtonpost.com/education/2021/07/17/education-department-bankruptcy-policy/>.

⁷ *Id.*

⁸ Duke Law Journal, "The Student Loan Bankruptcy Gap," Jason Iuliano, Volume 70, Number 3, December 2020, pp. 498, 525-526, <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4046&context=dlj>.

In November 2022, after we advocated for a more simplified and transparent process,⁹ DOJ and ED published new guidance to make it easier for borrowers to discharge student loans through bankruptcy.¹⁰ The guidance outlined a more transparent, fair, and accessible process designed to empower borrowers burdened with crippling student loan debt who previously had no clear pathway for relief.¹¹

Previously unpublished data obtained by our offices show the impressive growth of the program thus far.¹² For example, while only roughly 200 borrowers attempted to discharge student debt in each of Fiscal Years (FY) 2021 and 2022,¹³ that number rose to 648 in FY 2023.¹⁴ In less than eight months in FY 2024, nearly 900 borrowers sought to discharge their student loans in bankruptcy, adding up to 1,520 borrowers since the guidance was implemented.¹⁵

Equally important, both unpublished and publicly available data show that the overwhelming majority of those who sought discharge using the new guidance were provided debt relief through full or partial discharge.¹⁶ The Biden Administration recommended approximately seven in 10 borrowers who filed using the updated guidance for full student loan debt discharge.¹⁷ The Administration recommended another 15% of borrowers receive partial debt discharge, meaning 85% of borrowers using the new guidance received recommendations for either full or partial debt discharge.¹⁸ Critically, courts accepted those recommendations in 98% of cases, meaning borrowers received real relief at the end of this process.¹⁹

⁹ Office of Senator Elizabeth Warren, “Senator Warren Urges the Department of Justice to Release New Student Loan Bankruptcy Guidance,” September 1, 2022, <https://www.warren.senate.gov/oversight/letters/senator-warren-urges-the-department-of-justice-to-release-new-student-loan-bankruptcy-guidance>; Office of Senator Dick Durbin, “Durbin, Schumer, Murray, Senators Call On Department Of Education, DOJ To Follow Through On Pledge To Improve Handling Of Student Debt Bankruptcy Claims,” March 31, 2022, <https://www.durbin.senate.gov/newsroom/press-releases/durbin-schumer-murray-senators-call-on-department-of-education-doj-to-follow-through-on-pledge-to-improve-handling-of-student-debt-bankruptcy-claims>.

¹⁰ U.S. Department of Justice, “Justice Department and Department of Education Announce Continuing Success of Student-Loan Bankruptcy Discharge Process,” press release, July 17, 2024, <https://www.justice.gov/opa/pr/justice-department-and-department-education-announce-continuing-success-student-loan>.

¹¹ Department of Justice, “Guidance for Department Attorneys Regarding Student Loan Discharge Litigation,” November 17, 2022, https://www.justice.gov/d9/pages/attachments/2022/11/17/student_loan_discharge_guidance_-_guidance_text_0.pdf.

¹² Data from the Department of Education on file with the Office of Senator Elizabeth Warren.

¹³ By filing adversary proceedings, or APs, as required.

¹⁴ Data from the Department of Education on file with the Office of Senator Elizabeth Warren.

¹⁵ *Id.*

¹⁶ Data from the Department of Education on file with the Office of Senator Elizabeth Warren; U.S. Department of Justice, “Justice Department and Department of Education Announce Continuing Success of Student-Loan Bankruptcy Discharge Process,” press release, July 17, 2024, <https://www.justice.gov/opa/pr/justice-department-and-department-education-announce-continuing-success-student-loan>.

¹⁷ Data from the Department of Education on file with the Office of Senator Elizabeth Warren.

¹⁸ *Id.*

¹⁹ U.S. Department of Justice, “Justice Department and Department of Education Announce Continuing Success of Student-Loan Bankruptcy Discharge Process,” press release, July 17, 2024, <https://www.justice.gov/opa/pr/justice-department-and-department-education-announce-continuing-success-student-loan>.

ED and DOJ deserve praise for the complete turnaround of student loan bankruptcy outcomes and you should continue to build on the successes of the streamlined guidance so that more borrowers with crushing student loan debt can find relief. We encourage your agencies to continue to expand awareness of the guidance so that the 43 million borrowers in the United States, who carry a total of \$1.6 trillion dollars in student loan debt, may be able to access relief if they need to file for bankruptcy.²⁰ The high rates of total or partial discharge for those who have applied through the new guidance suggest that many other borrowers would also qualify if they have applied. For years, borrowers came to correctly believe that there was essentially no way out of the crushing weight of student loans, even through bankruptcy. ED and DOJ have changed this narrative and you should continue to educate potentially qualifying borrowers, their attorneys, and other individuals and organizations who work to help borrowers.

We thank you for your agencies' ongoing commitment to helping borrowers struggling with student debt and urge continued outreach to expand awareness of the streamlined process for qualified borrowers. Further, for Congress and the public to better assess your agencies' plans to increase borrowers' access to relief through bankruptcy, please provide responses to the following questions by November 12, 2024:

1. What types of education and outreach have your agencies already used to reach borrowers regarding the new guidance?
2. What are your agencies' plans for continued and improved education and outreach about the streamlined process to borrowers who may benefit from it?
3. What specific goals do your agencies have for measuring the success of increased education and outreach to borrowers who may benefit from the streamlined process? How will these goals change over time if at all?
4. Do your agencies have systems in place so that borrowers who have filed for bankruptcy can track their filing? If a system does not yet exist, what resources do your agencies need to create one?
5. How much time elapses, on average, between a borrower's bankruptcy filing and a discharge determination entered by a court under the new process? Please provide a timeline of the different phases of the process (e.g., filing of an adversary proceeding, review by the assigned DOJ attorney, review by ED, recommendation filed by DOJ and ED) and how long each phase typically takes.
6. Do your agencies track or record the reasons for denial of discharge based on the factors considered under the guidance? If so, please describe the 3-5 most common reasons you have identified.

²⁰ Federal Student Aid, "Federal Student Aid Posts New Quarterly Reports to FSA Data Center," press release, August 30, 2023, <https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2023-08-30/federal-student-aid-posts-new-quarterly-reports-fsa-data-center>.

7. Do your agencies track or record student loan discharge outcomes by region? If so, please describe any regional trends you have observed.
8. How can Congress support your agencies as you increase your education and outreach efforts to borrowers?

Thank you for your attention to this important matter.

Sincerely,



Elizabeth Warren
United States Senator



Richard J. Durbin
United States Senator



Sheldon Whitehouse
United States Senator



Raphael Warnock
United States Senator