Student Loan Bankruptcy Exception

The US Bankruptcy Code at 11 USC 523(a)(8) provides an exception to bankruptcy discharge for education loans. This page provides a history of the legislative language in this section of the US Bankruptcy Code.

Student loans were dischargeable in bankruptcy prior to 1976. With the introduction of the US Bankruptcy Code (11 USC 101 et seq) in 1978, the ability to discharge education loans was limited. Subsequent changes in the law have further narrowed the dischargeability of education debt.

The exception to discharge for private student loans evolved over time. Prior to 1984, only private student loans made by a "nonprofit institution of higher education" were excepted from discharge. This was intended to protect the National Defense Student Loan Program (NDSL), the predecessor to the Perkins Loan Program. Those loans were made by colleges using a revolving loan fund created using matching federal contributions. The Bankruptcy Amendments and Federal Judgeship Act of 1984 made private student loans from all nonprofit lenders excepted from discharge, not just colleges, by striking the words "of higher education". The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 expanded this to include all "qualified education loans", regardless of whether a nonprofit institution was involved in making the loans.

Timeline

The following timeline illustrates the date of major changes in the treatment of student loans under the US Bankruptcy Code and related changes to other legislation:

- 2011: President Obama issues an executive order making the new version of income-based repayment available to borrowers two years earlier. To be eligible, borrowers may not have any loans from before 2008 and must have at least one loan in 2012 or a later year.
- 2010: The Health Care and Education Reconciliation Act of 2010 (P.L. 111-152, 3/30/2010) created a new version of income-based repayment. The new version cuts the monthly payment by a third, to 10% of discretionary income, and forgives the remaining debt after 20 years in repayment instead of 25 years. The new version is effective for new borrowers as of July 1, 2014. Borrowers with previous federal student loans as of June 30, 2014, are not eligible for the improved income-based repayment terms.
- 2007: The College Cost Reduction and Access Act of 2007 (P.L. 110-84, 9/27/2007) added income-based repayment as an option within both the FFEL and Direct Loan programs. This repayment

plan bases monthly loan payments on 15% of discretionary income, with discretionary income defined as the amount by which adjusted gross income exceeds 150% of the poverty line. After 25 years in repayment, the remaining amount owed is forgiven. This yields a lower monthly payment than the income-contingent repayment plan. The use of 150% of the poverty line as a threshold aligns the repayment plan with standards for bankruptcy fee waivers.

- 2006: The wage garnishment amount was increased from 10% to 15% by the Deficit Reduction Act of 2005 (P.L. 109-171, 2/8/2006).
- 2005: The US Supreme Court upholds the government's ability to collect defaulted student loans by offsetting Social Security disability and retirement benefits without a statute of limitations. See Lockhart v US (04-881, December 2005).
- 2005: An amendment enacted by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (P.L. 109-8, 10/17/2005) added an exception to discharge for qualified education loans, which includes most private student loans. Before this amendment only private student loans made under a "program funded in whole or in part by a governmental unit or nonprofit institution" were excepted from discharge. However, most private student loans included a nonprofit organization as the guarantor, and the courts have interpreted such loans as excepted from discharge.
- 2001: US Department of Education begins offsetting up to 15% of Social Security disability and retirement benefits to repay defaulted federal education loans.
- 1998: The Higher Education Amendments of 1998 (P.L. 105-244, 10/7/1998) struck the requirement that allowed education loans to be discharged after 7 years in repayment.
- 1996: Social Security benefit payments may be offset to repay defaulted federal education loans (Debt Collection Improvement Act of 1996, P.L. 104-134, 4/26/1996).
- 1993: The Higher Education Amendments of 1992 (P.L. 102-325, 7/23/1992) amended the Higher Education Act of 1965 to add income-contingent repayment as an option within the Direct Loan program. This repayment plan bases monthly loan payments on 20% of discretionary income, with discretionary income defined as the amount by which adjusted gross income exceeds 100% of the poverty line. After 25 years in repayment, the remaining amount owed is forgiven. The US Department of Education may require defaulted borrowers to repay their loans under income-contingent repayment. The availability of income-contingent repayment blocks most undue hardship petitions concerning federal student loans. (Parent PLUS loans are not eligible for income-contingent repayment.)
- 1991: An amendment to the Higher Education Act of 1965 made by the Emergency Unemployment Compensation Act of 1991 (P.L. 102-164, 11/15/1991) allows the federal government to

garnish up to 10% of disposable pay of defaulted borrowers.

- 1991: The Higher Education Technical Amendments of 1991 (P.L. 102-26, 4/9/1991) eliminated the statute of limitations and the defense of laches on federal education loans. Previously there was a six year limit.
- 1990: An amendment changed the time period required before a loan could be discharged from 5 years to 7 years. (Crime Control Act of 1990, P.L. 101-647, 11/29/1990)
- 1984: The Bankruptcy Amendments and Federal Judgeship Act of 1984 (P.L. 98-353, 7/10/1984) changed the language excepting loans from a "nonprofit institution of higher education" by striking the words "of higher education". This opened the door for private student loans to be excepted from discharge.
- 1979: An amendment (P.L. 96-56, 8/14/1979) excluded periods during which the repayment obligation was suspended, such as deferments and forbearances, from the 5 year period before an education loan could be discharged. The amendment also clarified the "to a governmental unit, or a nonprofit institution of higher education" language to indicate that government loans included those insured or guaranteed by a governmental unit and not just those made by a governmental unit, and that loans to a nonprofit institution of higher education were loans "made under any program funded in whole or in part by a governmental unit or a nonprofit institution of higher education".
- 1978: Initial enactment of the exception to discharge for education loans made by the government or colleges and universities. Loans were dischargeable if they had been in repayment for 5 years or represented undue hardship.
- 1976: A regulation precluded the discharge of education loans made by the government or a non-profit college or university during the first 5 years of repayment. Previously education loans were dischargeable in bankruptcy without any exceptions.

Current Legislative Language

Here is the current legislative language, as amended by Section 220 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), P.L. 109-8, effective October 17, 2005:

> 523(a) Exceptions to discharge
> …
> (8) unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents, for --
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> A.
>
> i. 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
> ii. an obligation to repay funds received as an

educational benefit, scholarship, or stipend; or

B. 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;

Previous Legislative Language

Here is the legislative language as amended by the Higher Education Amendments of 1998 (P.L. 105-244):

> 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 for an obligation to repay funds received as an educational benefit, scholarship or stipend, unless excepting such debt from discharge under this paragraph will impose an undue hardship on the debtor and the debtor's dependents;

Here is the legislative language as amended by the Crime Control Act of 1990 (P.L. 101-647, 11/29/1990):

> 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 for an obligation to repay funds received as an educational benefit, scholarship or stipend unless --
>
> A. such loan, benefit, scholarship, or stipend overpayment first became due more than 7 years (exclusive of any applicable suspension of the repayment period) before the date of the filing of the petition; or
> B. excepting such debt from discharge under this paragraph will impose an undue hardship on the debtor and the debtor's dependents;

Here is the legislative language as amended by the Bankruptcy Amendments and Federal Judgeship Act of 1984 (P.L. 98-353, 7/10/1984):

> for an educational 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 a nonprofit institution, unless
>
> A. such loan first became due before five years (exclusive of any applicable suspension of the repayment period) before the date of the filing of the petition; or
> B. excepting such debt from discharge under this paragraph will impose an undue hardship on the debtor and the debtor's dependents;

Here is the legislative language as amended by P.L. 96-56 (8/14/1979):

> for an educational 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 a nonprofit institution of higher education, unless
>
> A. such loan first became due before five years (exclusive of any applicable suspension of the repayment period) before the date of the filing of the petition; or
> B. excepting such debt from discharge under this paragraph will impose an undue hardship on the debtor and the debtor's dependents;

Here is the legislative language from before 1979 as enacted by the US Bankruptcy Code in 1978 (11 USC 101 et seq, P.L. 95-598, 1978). Prior to 1976 education loans were completely dischargeable in bankruptcy.

> to a governmental unit, or a nonprofit institution of higher education, for an educational loan, unless
>
> A. such loan first became due before five years before the date of the filing of the petition; or
> B. excepting such debt from discharge under this paragraph will impose an undue hardship on the debtor and the debtor's dependents;