

Student Gallery

BY ABIGAIL STONE

Why Courts Need to Consider the Impact of Student Loan Debt on Mental Health

Student loans have been a hot-button topic for the last several years, especially in recent months since the announcement of President Joe Biden's student loan forgiveness plan. Regardless of one's opinion of this plan, the reality is that this one-time forgiveness plan will not solve the student debt crisis for future borrowers.

However, the bankruptcy system still offers a potential relief option for student loan debtors. In the spirit of the Bankruptcy Code — that is, to provide relief to the honest-but-unfortunate debtor¹ — a powerful and important step to providing relief to a group of particularly vulnerable debtors is for all bankruptcy courts to consider the impact of mental health issues when conducting an undue-hardship analysis under § 523(a)(8) of the Bankruptcy Code. Giving those with mental health issues greater access to a student loan discharge could improve those very mental health concerns, improve worker productivity and positively impact the economy.



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Undue-Hardship Analysis in the Courts Today

Student loans are one of the few unsecured consumer debts that are typically not dischargeable in bankruptcy. Section 523(a)(8) establishes that a debtor is only permitted to discharge student loan debt if the debtor can show that paying the debt would cause “undue hardship” to the debtor or his/her dependents.² However, “undue hardship” is a standard that has never been defined by Congress or the U.S. Supreme Court. The various federal courts of appeals have developed different tests for defining undue hardship, with the Second, Third, Fourth, Fifth, Sixth, Seventh, Ninth, Tenth and Eleventh Circuits using the *Brunner* Test, the Eighth Circuit using a totality-of-the-circumstances test, and the First Circuit explicitly declining to adopt any specific test.³ These different tests and courts end up treating mental health concerns differently in their undue-hardship analyses.

Some bankruptcy courts have started to explicitly consider the effects of student loan debt on a debtor's mental health when doing their undue-hardship analyses. For example, the Eighth Circuit demonstrated this approach in 2005 when the court discharged the student loans of a debtor after finding that “preserving the Debtor's liability for even a portion of her education loan burden would impose a hardship on her.”⁴ The court further found that the debtor's mental health had impacted her earnings potential and that the stress from her student loan debt was “likely to affect [her] mental health adversely, causing an even greater decline in her earnings.”⁵ Thus, the court discharged the debtor's student loan debt largely because of the effect it was having, and would continue to have, on her mental health.

However, not all courts have joined the Eighth Circuit in weighing the “effect of the debt ... on the debtor's mental health”⁶ when conducting an undue-hardship analysis. Debtors with financial circumstances arguably more dire than the debtor in the Eighth Circuit case have not been granted a discharge because courts have declined to factor in the effect of the debt on a debtor's mental health.⁷ Thus, debtors in different jurisdictions may get vastly different outcomes, even if they have the same type of mental illness or amount of student debt.

⁴ *Reynolds v. Pa. Higher Educ. Assistance Agency* (In re Reynolds), 425 F.3d 526, 530-31 (8th Cir. 2005).

⁵ *Id.* at 533, n.6.

⁶ Kathryn E. Hancock, “A Certainty of Hopelessness: Debt, Depression, and the Discharge of Student Loans Under the Bankruptcy Code,” 33 *L. Psych. Rev.* 151, 163 (2009) (citing *Rouse v. SLND-Bank of N.D.* (In re Rouse), No. 07-30227, 2008 WL 4153678 (Bankr. D.N.D. 2008) (debtor with depression and attention-deficit/hyperactivity disorder denied discharge because he demonstrated improved and stable disposition when taking his medication); *Steers v. N.J. Higher Educ. Student Assistance Auth.* (In re Steers), No. 07-15302, 2008 WL 2038835 (Bankr. D.N.J. 2008) (debtor with depression and post-traumatic stress disorder denied discharge because her physician did not opine as to her prognosis or future employability); *Burton v. Educ. Credit Mgmt. Corp.* (In re Burton), 339 B.R. 856 (Bankr. E.D. Va. 2006) (debtor with bipolar disorder denied discharge because he did not present any evidence, other than his own testimony, regarding how his medical condition would impact his ability to sustain future long-term employment)). See also *Kitterman v. Sallie Mae Servicing* (In re Kitterman), 349 B.R. 775, 779 (Bankr. W.D. Ky. 2006) (holding that depression and fainting spells were not enough to interfere with debtor's ability to “succeed in school or maintain employment”); *McClain v. Am. Student Assistance* (In re McClain), 272 B.R. 42 (Bankr. D.N.H. 2002) (denying discharge to debtor with depression because he had been steadily employed, there was no indication that his condition would continue to deteriorate and his doctor testified that “depression is often treatable”).

⁷ See, e.g., *Velarde v. Educ. Credit Mgmt. Corp.* (In re Velarde), No. 08-15794-SSM, 2009 Bankr. LEXIS 2403, at *14 (Bankr. E.D. Va. Aug. 23, 2009). In this case, the debtor was having difficulty finding and keeping a job due to multiple hospitalizations because of mental health. Her only income sources were child support and Social Security benefits. Because she had a surplus of \$213 per month, the court declined to grant her a discharge. Compare with *Reynolds*, *supra* n.4, in which the debtor, who was employed and had a monthly surplus of \$700 per month, was still granted a discharge.

¹ Kevin M. Lewis, “How Hard Should It Be to Discharge a Student Loan in Bankruptcy?,” Cong. Rsch. Serv., LRB10192, 1 (Aug. 27, 2018) (stating that bankruptcy system “aims to give honest debtors a ‘fresh start’ — that is, to grant debtors relief for the debts they cannot repay”).

² 11 U.S.C. § 523(a)(8).

³ Kevin M. Lewis, “Bankruptcy and Student Loans,” Cong. Rsch. Serv., R45113, 1, 10, 28-29 (July 18, 2019).

Interplay of Student Loans and Mental Health

It is important to consider the interplay of student loan debt and mental health in an undue-hardship analysis for several compelling reasons. First, there is a mental health crisis in the U.S., and the odds are high that many debtors seeking student loan relief in bankruptcy are suffering from mental health concerns.⁸ One in five Americans will experience mental illness in a given year, and one in 25 Americans “lives with a serious mental illness, such as schizophrenia, bipolar disorder, or major depression.”⁹

Second, negative mental health takes a toll on our communities, economy and workplaces. Mental health issues have a large effect on an individual’s economic productivity; those with mental health issues are six times more likely to report diminished productivity at work compared to their peers with stable mental health.¹⁰ This results in a steep economic loss. For example, from 2001-03, “serious mental illness [was] associated with an annual loss in earnings totaling \$193.2 billion” in the U.S.¹¹ Those with mental health issues often have higher levels of absenteeism from work, with “absence rates that are approximately 5 percent higher” than their mentally healthy counterparts.¹² Thus, “[t]he toll that mental illness takes on worker productivity results in substantial economic costs for firms, employees, and society more generally.”¹³

These economic impacts are only further compounded by the economic effects that student loans have independently. Student loans have “enormous implications for individual borrowers, their families, society, and the economy.”¹⁴ Because of the crushing burden of student loan debt, debtors are postponing having children, buying homes and investing in the larger economy.¹⁵ Thus, student loan debt creates “a heavy weight on economic growth.”¹⁶ Furthermore, certain public-interest jobs and sectors are struggling because rather than taking the public-interest jobs, debtors are taking higher-paying jobs so they can keep up on their student loan payments.¹⁷

Third, recent studies have shown that mental health issues and student debt are largely intertwined in the U.S. Various empirical studies have shown that student debt is a major contributing factor and even cause of mental health issues and illnesses, regardless of one’s income level.¹⁸ Specifically, studies indicate that student loan debt can lead to depression, anxiety, substance abuse, suicidal

ideations, sleeplessness, obsessions and more.¹⁹ In addition, many student loan borrowers forego health insurance and health care so they can make their student loan payments, which means that there is a lack of access to mental health resources for these debtors, and thus little help for their conditions.²⁰

Benefits of Discharge for Mental Health

How will factoring in the effects of student loans on debtors’ mental health help these individuals and society as a whole? As outlined herein, some debtors’ mental health issues are caused by or exacerbated by their student loans. If these debtors can get their loans discharged, it is likely that their productivity and ability to work and contribute to society will increase.²¹ As previously mentioned, debtors with mental health issues are less productive at work, can be a drain on the economy and often cannot get the mental health treatment they need.²² If these debtors were given a discharge from their student debts, some debtors would be able to contribute more to society and to their communities.

A recent study highlighted the benefits that come to those who are freed from the mental burdens of their student loans. The study followed two groups of student loan borrowers who were in default on their student loans: (1) a group of borrowers who had student loans forgiven; and (2) another group of borrowers who still carried student loan debt.²³ The study found that those whose student loan debt had been forgiven experienced a variety of benefits: They were more likely to change jobs and land higher-paying positions; they were better able to manage their finances; they were less likely to default on other loans; and they contributed more to the economy by making large purchases (e.g., houses and cars).²⁴ These benefits were not seen in the group with unforgiven debts.

What Steps Should Courts Take?

What can bankruptcy courts do to start implementing these changes to provide much-needed relief to those with mental health issues? First, when weighing the undue hardship of a student loan on a debtor with mental health issues, courts should adopt the position of the Eighth Circuit and “examine the effect of a debt on the health and well-being of a debtor separately from its effect on future employment and income opportunities.”²⁵ Judicial precedent also shows

8 See *infra*, n.14.

9 “Mental Health,” Ctrs. for Disease Control (June 28, 2021), available at cdc.gov/mentalhealth/learn/index.htm (unless otherwise specified, all links in this article were last visited on Oct. 20, 2022).

10 Melissa Bubonya, Deborah A. Cobb-Clark & Mark Wooden, “Mental Health and Productivity at Work: Does What You Do Matter?,” *Lab. Econ.* (June 2017), at 150, 161.

11 *Id.* at 150.

12 *Id.*

13 *Id.* at 161.

14 Jinhee Kim & Swarn Chatterjee, “Student Loans, Health, and Life Satisfaction of U.S. Households: Evidence from a Panel Study,” 40 *J. Fam. & Econ. Issues* 36, 37 (2019).

15 Taneasha White, “For Many Borrowers, Student Loans Are a Mental Health Crisis,” *Verywell Mind* (Dec. 28, 2020), available at verywellmind.com/student-loans-are-a-mental-health-crisis-5093360.

16 Jason Iuliano, “The Student Loan Bankruptcy Gap,” 70 *Duke L. J.* 497, 532 (2020).

17 John Patrick Hunt, “Tempering Bankruptcy Nondischargeability to Promote the Purposes of Student Loans,” 72 *SMU L. Rev.* 725, 748 (2019).

18 See White, *supra* n.15; Hancock, *supra* n.6 (noting “the mere fact that being in debt and going bankrupt can lead to depression and anxiety”); Katrina M. Walsemann, Gilbert C. Gee & Danielle Gentile, “Sick of Our Loans: Student Borrowing and the Mental Health of Young Adults in the United States,” 124 *Soc. Sci. & Med.* 85, 92 (2014) (“[S]tudent loans are associated with poorer psychological functioning while enrolled in school as well as in early adulthood.”).

19 See, e.g., Stacey Sever, “Student Loans and Mental Health: A Hidden Crisis,” 70 *Alaska Nurse* (Nov. 3, 2019), at 12, 12 (“[A]round one-third of student debtholders physically lose sleep over their debt while half reported developing depression or anxiety.”); see also Kim & Chatterjee, *supra* n.14, 36 (“[M]ore severe debts are associated with worse health outcomes, such as depression, anxiety, suicide or attempted suicide, problem drinking, substance abuse and other psychotic disorders.”).

20 Michael Babula & Alp Idil Ersoy-Babula, “Falling Behind: The Role of Student Loans on Foregoing Healthcare,” 30 *Health & Soc. Care Community* 1944, 1944 (2021).

21 See, e.g., *Reynolds v. Pa. Higher Educ. Assistance Agency* (In re Reynolds), 425 F.3d 526, n.6 (8th Cir. 2005) (finding that stress from her student loan debt was “likely to affect Reynolds’s mental health adversely, causing an even greater decline in her earnings”).

22 Babula & Babula, *supra* n.20.

23 Marco Di Maggio, Ankit Kalda & Vincent Yao, “Second Chance: Life Without Student Debt,” Nat’l Bureau of Econ. Rsch., Working Paper No. w25810, 2020), available at papers.ssrn.com/sol3/papers.cfm?abstract_id=3376245.

24 Dina Gerdeman, “Forgiving Student Loan Debt Leads to Better Jobs, Stronger Consumers,” *Harv. Bus. Sch. Working Knowledge* (May 22, 2019), available at hbswk.hbs.edu/item/forgiving-student-loan-debt-leads-to-better-jobs-stronger-consumers (summarizing results of Di Maggio’s study).

25 *Brooks v. Educ. Credit Mgmt. Corp.* (In re Brooks), 406 B.R. 382, 391 (Bankr. D. Minn. 2009).

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that this can be done under both a *Brunner* test analysis and a totality-of-the-circumstances analysis.²⁶

Ultimately, the best way for systematic, nationwide change to come about would be for the Supreme Court to grant *certiorari* for a student loan bankruptcy case and clarify whether mental health effects should be a permanent part of the undue-hardship consideration. This could create more consistent outcomes for debtors across the nation and help people make more informed decisions about whether dis-

charge is a possibility for them. Regardless of whether or when the Supreme Court rules on this issue, bankruptcy debtors may benefit from citing these recent studies and research to make sure mental health concerns are given consideration in an undue-hardship analysis.

Conclusion

Even with President Biden's student debt forgiveness plan, student loan debt and mental health issues are not going away anytime soon. Greater access to student loan discharge for debtors with mental health issues will likely benefit not only the mental health of the debtors, but also the national economy and society at large. **abi**

²⁶ See, e.g., *ECMC v. Renville (In re Renville)*, No. CV-06-5-BU-RFC, 2006 U.S. Dist. LEXIS 81217 (D. Mont. Nov. 3, 2006) (mental health impact considered in *Brunner* jurisdiction); *Reynolds v. Pa. Higher Educ. Assistance Agency (In re Reynolds)*, 425 F.3d 526 (8th Cir. 2005) (mental health impact considered in totality-of-the-circumstances jurisdiction).

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