



AMERICAN  
BANKRUPTCY  
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# 2017 Hon. Eugene R. Wedoff Consumer Bankruptcy Conference

## **Educating Your Way into Debt: Is There Any Way "Out"?**

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## **Citations and Materials for Discussion of Student Loan Compromises and Cancellation of Indebtedness Income**

### ***Statutory References:***

26 U.S.C. § 108, Income from discharge of indebtedness

34 C.F.R. § 685.208, Repayment plans

34 C.F.R. § 685.209, Income-contingent repayment plans

34 C.F.R. § 685.210, Choice of repayment plan

34 C.F.R. § 685.211, Miscellaneous repayment provisions

### ***Case Law:***

*Brunner v. New York State Higher Educ. Servs. Corp.*, 831 F.2d 395 (2d Cir. 1987).

*In re Roberson*, 999 F.2d 1132 (7<sup>th</sup> Cir. 1993) (adopting the *Brunner* test).

*Krieger v. Educational Credit Mgmt. Corp.*, 713 F.3d 882, 884 (7<sup>th</sup> Cir. 2013) (“To the extent that the district judge thought that debtors *always* must agree to a payment plan and forgo a discharge, that is a proposition of law – an incorrect proposition ...”).

*Coatney v. U.S. Dep’t of Educ. (In re Coatney)*, 345 B.R. 905, 910-11 (Bankr. C.D. Ill. 2006) (grants debtor a four-year deferment of payments on his student loans, acknowledging that tax law mandates an “unfortunate result” if the debtor fully cooperates with and participates in an income-contingent repayment plan and the debtor has to “face a huge tax liability for imputed income in 18 years” when the unpaid balance is written off and then constitutes income to the debtor for tax purposes).

*Price v. DeVos (In re Price)*, 2017 Bankr. LEXIS 1748 at \*41-\*51 (Bankr. E.D. Pa. 2017) (with respect to whether the repayment period considered in the second factor of the *Brunner* test should be the original loan payment term or an extended loan term when a debtor is eligible to participate in an income-based, extended loan term program, this decision holds that “notwithstanding a debtor’s potential eligibility for an extended term student loan repayment program, if a debtor chose not to enter such a program in good faith, the repayment period under the second *Brunner* prong is the remaining contractual term of the debtor’s loan”).

### ***Resources:***

<https://studentaid.ed.gov/sa/repay-loans/understand/plans>

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KeyCite Yellow Flag - Negative Treatment

Unconstitutional or Preempted Negative Treatment Reconsidered by Florida ex rel. Atty. Gen. v. U.S. Dept. of Health and Human Services, 11th Cir.(Fla.), Aug. 12, 2011

KeyCite Yellow Flag - Negative Treatment Proposed Legislation

United States Code Annotated

Title 26. Internal Revenue Code (Refs & Annos)

Subtitle A. Income Taxes (Refs & Annos)

Chapter 1. Normal Taxes and Surtaxes (Refs & Annos)

Subchapter B. Computation of Taxable Income

Part III. Items Specifically Excluded from Gross Income (Refs & Annos)

26 U.S.C.A. § 108, I.R.C. § 108

§ 108. Income from discharge of indebtedness

Effective: December 18, 2015

Currentness

**(a) Exclusion from gross income.--**

**(1) In general.**--Gross income does not include any amount which (but for this subsection) would be includible in gross income by reason of the discharge (in whole or in part) of indebtedness of the taxpayer if--

(A) the discharge occurs in a title 11 case,

(B) the discharge occurs when the taxpayer is insolvent,

(C) the indebtedness discharged is qualified farm indebtedness,

(D) in the case of a taxpayer other than a C corporation, the indebtedness discharged is qualified real property business indebtedness, or

(E) the indebtedness discharged is qualified principal residence indebtedness which is discharged--

(i) before January 1, 2017, or

(ii) subject to an arrangement that is entered into and evidenced in writing before January 1, 2017.

**(2) Coordination of exclusions.--**

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**(A) Title 11 exclusion takes precedence.**--Subparagraphs (B), (C), (D), and (E) of paragraph (1) shall not apply to a discharge which occurs in a title 11 case.

**(B) Insolvency exclusion takes precedence over qualified farm exclusion and qualified real property business exclusion.**--Subparagraphs (C) and (D) of paragraph (1) shall not apply to a discharge to the extent the taxpayer is insolvent.

**(C) Principal residence exclusion takes precedence over insolvency exclusion unless elected otherwise.**--Paragraph (1)(B) shall not apply to a discharge to which paragraph (1)(E) applies unless the taxpayer elects to apply paragraph (1)(B) in lieu of paragraph (1)(E).

**(3) Insolvency exclusion limited to amount of insolvency.**--In the case of a discharge to which paragraph (1)(B) applies, the amount excluded under paragraph (1)(B) shall not exceed the amount by which the taxpayer is insolvent.

**(b) Reduction of tax attributes.**--

**(1) In general.**--The amount excluded from gross income under subparagraph (A), (B), or (C) of subsection (a)(1) shall be applied to reduce the tax attributes of the taxpayer as provided in paragraph (2).

**(2) Tax attributes affected; order of reduction.**--Except as provided in paragraph (5), the reduction referred to in paragraph (1) shall be made in the following tax attributes in the following order:

**(A) NOL.**--Any net operating loss for the taxable year of the discharge, and any net operating loss carryover to such taxable year.

**(B) General business credit.**--Any carryover to or from the taxable year of a discharge of an amount for purposes for determining the amount allowable as a credit under section 38 (relating to general business credit).

**(C) Minimum tax credit.**--The amount of the minimum tax credit available under section 53(b) as of the beginning of the taxable year immediately following the taxable year of the discharge.

**(D) Capital loss carryovers.**--Any net capital loss for the taxable year of the discharge, and any capital loss carryover to such taxable year under section 1212.

**(E) Basis reduction.**--

**(i) In general.**--The basis of the property of the taxpayer.

**(ii) Cross reference.**--

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For provisions for making the reduction described in clause (i), see section 1017.

**(F) Passive activity loss and credit carryovers.**--Any passive activity loss or credit carryover of the taxpayer under section 469(b) from the taxable year of the discharge.

**(G) Foreign tax credit carryovers.**--Any carryover to or from the taxable year of the discharge for purposes of determining the amount of the credit allowable under section 27.

**(3) Amount of reduction.**--

**(A) In general.**--Except as provided in subparagraph (B), the reductions described in paragraph (2) shall be one dollar for each dollar excluded by subsection (a).

**(B) Credit carryover reduction.**--The reductions described in subparagraphs (B), (C), and (G) shall be 33 # cents for each dollar excluded by subsection (a). The reduction described in subparagraph (F) in any passive activity credit carryover shall be 33 # cents for each dollar excluded by subsection (a).

**(4) Ordering rules.**--

**(A) Reductions made after determination of tax for year.**--The reductions described in paragraph (2) shall be made after the determination of the tax imposed by this chapter for the taxable year of the discharge.

**(B) Reductions under subparagraph (A) or (D) of paragraph (2).**--The reductions described in subparagraph (A) or (D) of paragraph (2) (as the case may be) shall be made first in the loss for the taxable year of the discharge and then in the carryovers to such taxable year in the order of the taxable years from which each such carryover arose.

**(C) Reductions under subparagraphs (B) and (G) of paragraph (2).**--The reductions described in subparagraphs (B) and (G) of paragraph (2) shall be made in the order in which carryovers are taken into account under this chapter for the taxable year of the discharge.

**(5) Election to apply reduction first against depreciable property.**--

**(A) In general.**--The taxpayer may elect to apply any portion of the reduction referred to in paragraph (1) to the reduction under section 1017 of the basis of the depreciable property of the taxpayer.

**(B) Limitation.**--The amount to which an election under subparagraph (A) applies shall not exceed the aggregate adjusted bases of the depreciable property held by the taxpayer as of the beginning of the taxable year following the taxable year in which the discharge occurs.

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(C) **Other tax attributes not reduced.**--Paragraph (2) shall not apply to any amount to which an election under this paragraph applies.

(c) **Treatment of discharge of qualified real property business indebtedness.**--

(1) **Basis reduction.**--

(A) **In general.**--The amount excluded from gross income under subparagraph (D) of subsection (a)(1) shall be applied to reduce the basis of the depreciable real property of the taxpayer.

(B) **Cross reference.**--

For provisions making the reduction described in subparagraph (A), see section 1017.

(2) **Limitations.**--

(A) **Indebtedness in excess of value.**--The amount excluded under subparagraph (D) of subsection (a)(1) with respect to any qualified real property business indebtedness shall not exceed the excess (if any) of--

(i) the outstanding principal amount of such indebtedness (immediately before the discharge), over

(ii) the fair market value of the real property described in paragraph (3)(A) (as of such time), reduced by the outstanding principal amount of any other qualified real property business indebtedness secured by such property (as of such time).

(B) **Overall limitation.**--The amount excluded under subparagraph (D) of subsection (a)(1) shall not exceed the aggregate adjusted bases of depreciable real property (determined after any reductions under subsections (b) and (g)) held by the taxpayer immediately before the discharge (other than depreciable real property acquired in contemplation of such discharge).

(3) **Qualified real property business indebtedness.**--The term "qualified real property business indebtedness" means indebtedness which--

(A) was incurred or assumed by the taxpayer in connection with real property used in a trade or business and is secured by such real property,

(B) was incurred or assumed before January 1, 1993, or if incurred or assumed on or after such date, is qualified acquisition indebtedness, and

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(C) with respect to which such taxpayer makes an election to have this paragraph apply.

Such term shall not include qualified farm indebtedness. Indebtedness under subparagraph (B) shall include indebtedness resulting from the refinancing of indebtedness under subparagraph (B) (or this sentence), but only to the extent it does not exceed the amount of the indebtedness being refinanced.

**(4) Qualified acquisition indebtedness.**--For purposes of paragraph (3)(B), the term "qualified acquisition indebtedness" means, with respect to any real property described in paragraph (3)(A), indebtedness incurred or assumed to acquire, construct, reconstruct, or substantially improve such property.

**(5) Regulations.**--The Secretary shall issue such regulations as are necessary to carry out this subsection, including regulations preventing the abuse of this subsection through cross-collateralization or other means.

**(d) Meaning of terms; special rules relating to certain provisions.--**

**(1) Indebtedness of taxpayer.**--For purposes of this section, the term "indebtedness of the taxpayer" means any indebtedness--

(A) for which the taxpayer is liable, or

(B) subject to which the taxpayer holds property.

**(2) Title 11 case.**--For purposes of this section, the term "title 11 case" means a case under title 11 of the United States Code (relating to bankruptcy), but only if the taxpayer is under the jurisdiction of the court in such case and the discharge of indebtedness is granted by the court or is pursuant to a plan approved by the court.

**(3) Insolvent.**--For purposes of this section, the term "insolvent" means the excess of liabilities over the fair market value of assets. With respect to any discharge, whether or not the taxpayer is insolvent, and the amount by which the taxpayer is insolvent, shall be determined on the basis of the taxpayer's assets and liabilities immediately before the discharge.

**[(4) Repealed.** Pub.L. 99-514, Title VIII, § 822(b)(3)(A), Oct. 22, 1986, 100 Stat. 2373]

**(5) Depreciable property.**--The term "depreciable property" has the same meaning as when used in section 1017.

**(6) Certain provisions to be applied at partner level.**--In the case of a partnership, subsections (a), (b), (c), and (g) shall be applied at the partner level.

**(7) Special rules for S corporation.**--

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**(A) Certain provisions to be applied at corporate level.**--In the case of an S corporation, subsections (a), (b), (c), and (g) shall be applied at the corporate level, including by not taking into account under section 1366(a) any amount excluded under subsection (a) of this section.

**(B) Reduction in carryover of disallowed losses and deductions.**--In the case of an S corporation, for purposes of subparagraph (A) of subsection (b)(2), any loss or deduction which is disallowed for the taxable year of the discharge under section 1366(d)(1) shall be treated as a net operating loss for such taxable year. The preceding sentence shall not apply to any discharge to the extent that subsection (a)(1)(D) applies to such discharge.

**(C) Coordination with basis adjustments under section 1367(b)(2).**--For purposes of subsection (e)(6), a shareholder's adjusted basis in indebtedness of an S corporation shall be determined without regard to any adjustments made under section 1367(b)(2).

**(8) Reductions of tax attributes in title 11 cases of individuals to be made by estate.**--In any case under chapter 7 or 11 of title 11 of the United States Code to which section 1398 applies, for purposes of paragraphs (1) and (5) of subsection (b) the estate (and not the individual) shall be treated as the taxpayer. The preceding sentence shall not apply for purposes of applying section 1017 to property transferred by the estate to the individual.

**(9) Time for making election, etc.**--

**(A) Time.**--An election under paragraph (5) of subsection (b) or under paragraph (3)(C) of subsection (c) shall be made on the taxpayer's return for the taxable year in which the discharge occurs or at such other time as may be permitted in regulations prescribed by the Secretary.

**(B) Revocation only with consent.**--An election referred to in subparagraph (A), once made, may be revoked only with the consent of the Secretary.

**(C) Manner.**--An election referred to in subparagraph (A) shall be made in such manner as the Secretary may by regulations prescribe.

**(10) Cross reference.**--

For provision that no reduction is to be made in the basis of exempt property of an individual debtor, see section 1017(c)(1).

**(e) General rules for discharge of indebtedness (including discharges not in Title 11 cases or insolvency).**--For purposes of this title--

**(1) No other insolvency exception.**--Except as otherwise provided in this section, there shall be no insolvency exception from the general rule that gross income includes income from the discharge of indebtedness.



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(2) **Income not realized to extent of lost deductions.**--No income shall be realized from the discharge of indebtedness to the extent that payment of the liability would have given rise to a deduction.

(3) **Adjustments for unamortized premium and discount.**--The amount taken into account with respect to any discharge shall be properly adjusted for unamortized premium and unamortized discount with respect to the indebtedness discharged.

(4) **Acquisition of indebtedness by person related to debtor.**--

(A) **Treated as acquisition by debtor.**--For purposes of determining income of the debtor from discharge of indebtedness, to the extent provided in regulations prescribed by the Secretary, the acquisition of outstanding indebtedness by a person bearing a relationship to the debtor specified in section 267(b) or 707(b)(1) from a person who does not bear such a relationship to the debtor shall be treated as the acquisition of such indebtedness by the debtor. Such regulations shall provide for such adjustments in the treatment of any subsequent transactions involving the indebtedness as may be appropriate by reason of the application of the preceding sentence.

(B) **Members of family.**--For purposes of this paragraph, sections 267(b) and 707(b)(1) shall be applied as if section 267(c)(4) provided that the family of an individual consists of the individual's spouse, the individual's children, grandchildren, and parents, and any spouse of the individual's children or grandchildren.

(C) **Entities under common control treated as related.**--For purposes of this paragraph, two entities which are treated as a single employer under subsection (b) or (c) of section 414 shall be treated as bearing a relationship to each other which is described in section 267(b).

(5) **Purchase-money debt reduction for solvent debtor treated as price reduction.**--If--

(A) the debt of a purchaser of property to the seller of such property which arose out of the purchase of such property is reduced,

(B) such reduction does not occur--

(i) in a title 11 case, or

(ii) when the purchaser is insolvent, and

(C) but for this paragraph, such reduction would be treated as income to the purchaser from the discharge of indebtedness,

then such reduction shall be treated as a purchase price adjustment.

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**(6) Indebtedness contributed to capital.**--Except as provided in regulations, for purposes of determining income of the debtor from discharge of indebtedness, if a debtor corporation acquires its indebtedness from a shareholder as a contribution to capital--

(A) section 118 shall not apply, but

(B) such corporation shall be treated as having satisfied the indebtedness with an amount of money equal to the shareholder's adjusted basis in the indebtedness.

**(7) Recapture of gain on subsequent sale of stock.**--

**(A) In general.**--If a creditor acquires stock of a debtor corporation in satisfaction of such corporation's indebtedness, for purposes of section 1245--

(i) such stock (and any other property the basis of which is determined in whole or in part by reference to the adjusted basis of such stock) shall be treated as section 1245 property,

(ii) the aggregate amount allowed to the creditor--

(I) as deductions under subsection (a) or (b) of section 166 (by reason of the worthlessness or partial worthlessness of the indebtedness), or

(II) as an ordinary loss on the exchange,

shall be treated as an amount allowed as a deduction for depreciation, and

(iii) an exchange of such stock qualifying under section 354(a), 355(a), or 356(a) shall be treated as an exchange to which section 1245(b)(3) applies.

The amount determined under clause (ii) shall be reduced by the amount (if any) included in the creditor's gross income on the exchange.

**(B) Special rule for cash basis taxpayers.**--In the case of any creditor who computes his taxable income under the cash receipts and disbursements method, proper adjustment shall be made in the amount taken into account under clause (ii) of subparagraph (A) for any amount which was not included in the creditor's gross income but which would have been included in such gross income if such indebtedness had been satisfied in full.

**(C) Stock of parent corporation.**--For purposes of this paragraph, stock of a corporation in control (within the meaning of section 368(c)) of the debtor corporation shall be treated as stock of the debtor corporation.

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**(D) Treatment of successor corporation.**--For purposes of this paragraph, the term "debtor corporation" includes a successor corporation.

**(E) Partnership rule.**--Under regulations prescribed by the Secretary, rules similar to the rules of the foregoing subparagraphs of this paragraph shall apply with respect to the indebtedness of a partnership.

**(8) Indebtedness satisfied by corporate stock or partnership interest.**--For purposes of determining income of a debtor from discharge of indebtedness, if--

(A) a debtor corporation transfers stock, or

(B) a debtor partnership transfers a capital or profits interest in such partnership,

to a creditor in satisfaction of its recourse or nonrecourse indebtedness, such corporation or partnership shall be treated as having satisfied the indebtedness with an amount of money equal to the fair market value of the stock or interest. In the case of any partnership, any discharge of indebtedness income recognized under this paragraph shall be included in the distributive shares of taxpayers which were the partners in the partnership immediately before such discharge.

**(9) Discharge of indebtedness income not taken into account in determining whether entity meets REIT qualifications.**--Any amount included in gross income by reason of the discharge of indebtedness shall not be taken into account for purposes of paragraphs (2) and (3) of section 856(c).

**(10) Indebtedness satisfied by issuance of debt instrument.**--

**(A) In general.**--For purposes of determining income of a debtor from discharge of indebtedness, if a debtor issues a debt instrument in satisfaction of indebtedness, such debtor shall be treated as having satisfied the indebtedness with an amount of money equal to the issue price of such debt instrument.

**(B) Issue price.**--For purposes of subparagraph (A), the issue price of any debt instrument shall be determined under sections 1273 and 1274. For purposes of the preceding sentence, section 1273(b)(4) shall be applied by reducing the stated redemption price of any instrument by the portion of such stated redemption price which is treated as interest for purposes of this chapter.

**(f) Student loans.**--

**(1) In general.**--In the case of an individual, gross income does not include any amount which (but for this subsection) would be includible in gross income by reason of the discharge (in whole or in part) of any student loan if such discharge was pursuant to a provision of such loan under which all or part of the indebtedness of the individual would be discharged if the individual worked for a certain period of time in certain professions for any of a broad class of employers.

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**(2) Student loan.**--For purposes of this subsection, the term "student loan" means any loan to an individual to assist the individual in attending an educational organization described in section 170(b)(1)(A)(ii) made by--

(A) the United States, or an instrumentality or agency thereof,

(B) a State, territory, or possession of the United States, or the District of Columbia, or any political subdivision thereof,

(C) a public benefit corporation--

(i) which is exempt from taxation under section 501(c)(3),

(ii) which has assumed control over a State, county, or municipal hospital, and

(iii) whose employees have been deemed to be public employees under State law, or

(D) any educational organization described in section 170(b)(1)(A)(ii) if such loan is made--

(i) pursuant to an agreement with any entity described in subparagraph (A), (B), or (C) under which the funds from which the loan was made were provided to such educational organization, or

(ii) pursuant to a program of such educational organization which is designed to encourage its students to serve in occupations with unmet needs or in areas with unmet needs and under which the services provided by the students (or former students) are for or under the direction of a governmental unit or an organization described in section 501(c)(3) and exempt from tax under section 501(a).

The term "student loan" includes any loan made by an educational organization described in section 170(b)(1)(A)(ii) or by an organization exempt from tax under section 501(a) to refinance a loan to an individual to assist the individual in attending any such educational organization but only if the refinancing loan is pursuant to a program of the refinancing organization which is designed as described in subparagraph (D)(ii).

**(3) Exception for discharges on account of services performed for certain lenders.**--Paragraph (1) shall not apply to the discharge of a loan made by an organization described in paragraph (2)(D) if the discharge is on account of services performed for either such organization.

**(4) Payments under National Health Service Corps loan repayment program and certain State loan repayment programs.**--In the case of an individual, gross income shall not include any amount received under section 338B(g) of the Public Health Service Act, under a State program described in section 338I of such Act, or under any other State loan repayment or loan forgiveness program that is intended to provide for the increased availability of health care services in underserved or health professional shortage areas (as determined by such State).

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**(g) Special rules for discharge of qualified farm indebtedness.--**

**(1) Discharge must be by qualified person.--**

**(A) In general.--**Subparagraph (C) of subsection (a)(1) shall apply only if the discharge is by a qualified person.

**(B) Qualified person.--**For purposes of subparagraph (A), the term “qualified person” has the meaning given to such term by section 49(a)(1)(D)(iv); except that such term shall include any Federal, State, or local government or agency or instrumentality thereof.

**(2) Qualified farm indebtedness.--**For purposes of this section, indebtedness of a taxpayer shall be treated as qualified farm indebtedness if--

**(A)** such indebtedness was incurred directly in connection with the operation by the taxpayer of the trade or business of farming, and

**(B)** 50 percent or more of the aggregate gross receipts of the taxpayer for the 3 taxable years preceding the taxable year in which the discharge of such indebtedness occurs is attributable to the trade or business of farming.

**(3) Amount excluded cannot exceed sum of tax attributes and business and investment assets.--**

**(A) In general.--**The amount excluded under subparagraph (C) of subsection (a)(1) shall not exceed the sum of--

**(i)** the adjusted tax attributes of the taxpayer, and

**(ii)** the aggregate adjusted bases of qualified property held by the taxpayer as of the beginning of the taxable year following the taxable year in which the discharge occurs.

**(B) Adjusted tax attributes.--**For purposes of subparagraph (A), the term “adjusted tax attributes” means the sum of the tax attributes described in subparagraphs (A), (B), (C), (D), (F), and (G) of subsection (b)(2) determined by taking into account \$3 for each \$1 of the attributes described in subparagraphs (B), (C), and (G) of subsection (b)(2) and the attribute described in subparagraph (F) of subsection (b)(2) to the extent attributable to any passive activity credit carryover.

**(C) Qualified property.--**For purposes of this paragraph, the term “qualified property” means any property which is used or is held for use in a trade or business or for the production of income.

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**(D) Coordination with insolvency exclusion.**--For purposes of this paragraph, the adjusted basis of any qualified property and the amount of the adjusted tax attributes shall be determined after any reduction under subsection (b) by reason of amounts excluded from gross income under subsection (a)(1)(B).

**(h) Special rules relating to qualified principal residence indebtedness.**--

**(1) Basis reduction.**--The amount excluded from gross income by reason of subsection (a)(1)(E) shall be applied to reduce (but not below zero) the basis of the principal residence of the taxpayer.

**(2) Qualified principal residence indebtedness.**--For purposes of this section, the term "qualified principal residence indebtedness" means acquisition indebtedness (within the meaning of section 163(h)(3)(B), applied by substituting "\$2,000,000 (\$1,000,000)" for "\$1,000,000 (\$500,000)" in clause (ii) thereof) with respect to the principal residence of the taxpayer.

**(3) Exception for certain discharges not related to taxpayer's financial condition.**--Subsection (a)(1)(E) shall not apply to the discharge of a loan if the discharge is on account of services performed for the lender or any other factor not directly related to a decline in the value of the residence or to the financial condition of the taxpayer.

**(4) Ordering rule.**--If any loan is discharged, in whole or in part, and only a portion of such loan is qualified principal residence indebtedness, subsection (a)(1)(E) shall apply only to so much of the amount discharged as exceeds the amount of the loan (as determined immediately before such discharge) which is not qualified principal residence indebtedness.

**(5) Principal residence.**--For purposes of this subsection, the term "principal residence" has the same meaning as when used in section 121.

**(i) Deferral and ratable inclusion of income arising from business indebtedness discharged by the reacquisition of a debt instrument.**--

**(1) In general.**--At the election of the taxpayer, income from the discharge of indebtedness in connection with the reacquisition after December 31, 2008, and before January 1, 2011, of an applicable debt instrument shall be includible in gross income ratably over the 5-taxable-year period beginning with--

**(A)** in the case of a reacquisition occurring in 2009, the fifth taxable year following the taxable year in which the reacquisition occurs, and

**(B)** in the case of a reacquisition occurring in 2010, the fourth taxable year following the taxable year in which the reacquisition occurs.

**(2) Deferral of deduction for original issue discount in debt for debt exchanges.**--

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(A) **In general.**--If, as part of a reacquisition to which paragraph (1) applies, any debt instrument is issued for the applicable debt instrument being reacquired (or is treated as so issued under subsection (e)(4) and the regulations thereunder) and there is any original issue discount determined under subpart A of part V of subchapter P of this chapter with respect to the debt instrument so issued--

(i) except as provided in clause (ii), no deduction otherwise allowable under this chapter shall be allowed to the issuer of such debt instrument with respect to the portion of such original issue discount which--

(I) accrues before the 1st taxable year in the 5-taxable-year period in which income from the discharge of indebtedness attributable to the reacquisition of the debt instrument is includible under paragraph (1), and

(II) does not exceed the income from the discharge of indebtedness with respect to the debt instrument being reacquired, and

(ii) the aggregate amount of deductions disallowed under clause (i) shall be allowed as a deduction ratably over the 5-taxable-year period described in clause (i)(I).

If the amount of the original issue discount accruing before such 1st taxable year exceeds the income from the discharge of indebtedness with respect to the applicable debt instrument being reacquired, the deductions shall be disallowed in the order in which the original issue discount is accrued.

(B) **Deemed debt for debt exchanges.**--For purposes of subparagraph (A), if any debt instrument is issued by an issuer and the proceeds of such debt instrument are used directly or indirectly by the issuer to reacquire an applicable debt instrument of the issuer, the debt instrument so issued shall be treated as issued for the debt instrument being reacquired. If only a portion of the proceeds from a debt instrument are so used, the rules of subparagraph (A) shall apply to the portion of any original issue discount on the newly issued debt instrument which is equal to the portion of the proceeds from such instrument used to reacquire the outstanding instrument.

(3) **Applicable debt instrument.**--For purposes of this subsection--

(A) **Applicable debt instrument.**--The term "applicable debt instrument" means any debt instrument which was issued by--

(i) a C corporation, or

(ii) any other person in connection with the conduct of a trade or business by such person.

(B) **Debt instrument.**--The term "debt instrument" means a bond, debenture, note, certificate, or any other instrument or contractual arrangement constituting indebtedness (within the meaning of section 1275(a)(1)).

(4) **Reacquisition.**--For purposes of this subsection--

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**(A) In general.**--The term "reacquisition" means, with respect to any applicable debt instrument, any acquisition of the debt instrument by--

- (i) the debtor which issued (or is otherwise the obligor under) the debt instrument, or
- (ii) a related person to such debtor.

**(B) Acquisition.**--The term "acquisition" shall, with respect to any applicable debt instrument, include an acquisition of the debt instrument for cash, the exchange of the debt instrument for another debt instrument (including an exchange resulting from a modification of the debt instrument), the exchange of the debt instrument for corporate stock or a partnership interest, and the contribution of the debt instrument to capital. Such term shall also include the complete forgiveness of the indebtedness by the holder of the debt instrument.

**(5) Other definitions and rules.**--For purposes of this subsection--

**(A) Related person.**--The determination of whether a person is related to another person shall be made in the same manner as under subsection (e)(4).

**(B) Election.**--

**(i) In general.**--An election under this subsection with respect to any applicable debt instrument shall be made by including with the return of tax imposed by chapter 1 for the taxable year in which the reacquisition of the debt instrument occurs a statement which--

**(I)** clearly identifies such instrument, and

**(II)** includes the amount of income to which paragraph (1) applies and such other information as the Secretary may prescribe.

**(ii) Election irrevocable.**--Such election, once made, is irrevocable.

**(iii) Pass-thru entities.**--In the case of a partnership, S corporation, or other pass-thru entity, the election under this subsection shall be made by the partnership, the S corporation, or other entity involved.

**(C) Coordination with other exclusions.**--If a taxpayer elects to have this subsection apply to an applicable debt instrument, subparagraphs (A), (B), (C), and (D) of subsection (a)(1) shall not apply to the income from the discharge of such indebtedness for the taxable year of the election or any subsequent taxable year.



§ 108. Income from discharge of indebtedness, 26 USCA § 108

**(D) Acceleration of deferred items.--**

**(i) In general.**--In the case of the death of the taxpayer, the liquidation or sale of substantially all the assets of the taxpayer (including in a title 11 or similar case), the cessation of business by the taxpayer, or similar circumstances, any item of income or deduction which is deferred under this subsection (and has not previously been taken into account) shall be taken into account in the taxable year in which such event occurs (or in the case of a title 11 or similar case, the day before the petition is filed).

**(ii) Special rule for pass-thru entities.**--The rule of clause (i) shall also apply in the case of the sale or exchange or redemption of an interest in a partnership, S corporation, or other pass-thru entity by a partner, shareholder, or other person holding an ownership interest in such entity.

**(6) Special rule for partnerships.**--In the case of a partnership, any income deferred under this subsection shall be allocated to the partners in the partnership immediately before the discharge in the manner such amounts would have been included in the distributive shares of such partners under section 704 if such income were recognized at such time. Any decrease in a partner's share of partnership liabilities as a result of such discharge shall not be taken into account for purposes of section 752 at the time of the discharge to the extent it would cause the partner to recognize gain under section 731. Any decrease in partnership liabilities deferred under the preceding sentence shall be taken into account by such partner at the same time, and to the extent remaining in the same amount, as income deferred under this subsection is recognized.

**(7) Secretarial authority.**--The Secretary may prescribe such regulations, rules, or other guidance as may be necessary or appropriate for purposes of applying this subsection, including--

**(A)** extending the application of the rules of paragraph (5)(D) to other circumstances where appropriate,

**(B)** requiring reporting of the election (and such other information as the Secretary may require) on returns of tax for subsequent taxable years, and

**(C)** rules for the application of this subsection to partnerships, S corporations, and other pass-thru entities, including for the allocation of deferred deductions.

**CREDIT(S)**

(Aug. 16, 1954, c. 736, 68A Stat. 32; June 29, 1956, c. 463, § 5, 70 Stat. 403; Pub.L. 86-496, § 1(a), June 8, 1960, 74 Stat. 164; Pub.L. 94-455, Title XIX, §§ 1906(b)(13)(A), 1951(b)(2)(A), Oct. 4, 1976, 90 Stat. 1834, 1836; Pub.L. 96-589, § 2(a), Dec. 24, 1980, 94 Stat. 3389; Pub.L. 97-354, § 3(e), Oct. 19, 1982, 96 Stat. 1689; Pub.L. 97-448, Title I, § 102(h)(1), Title III, § 304(d), Jan. 12, 1983, 96 Stat. 2372, 2398; Pub.L. 98-369, Div. A, Title I, § 59(a), (b)(1), Title IV, § 474(r)(5), Title VII, § 721(b)(2), Title X, § 1076(a), July 18, 1984, 98 Stat. 576, 839, 966, 1053; Pub.L. 99-514, Title I, § 104(b)(2), Title II, § 231(d)(3)(D), Title IV, § 405(a), Title VI, § 621(e)(1), Title VIII, §§ 805(c)(2) to (4), 822(a), (b)(1) to (3), Title XI, § 1171(b)(4), Title XVIII, § 1847(b)(7), Oct. 22, 1986, 100 Stat. 2105, 2179, 2224, 2266, 2362, 2373, 2513, 2856; Pub.L. 100-647, Title I, § 1004(a)(1) to (4), (6), Nov. 10, 1988, 102 Stat. 3385, 3387; Pub.L. 101-508, Title XI, §§ 11325(a)(1), (b), 11813(b)(6), Nov. 5, 1990, 104 Stat. 1388-466, 1388-551; Pub.L. 103-66, Title XIII, §§ 13150(a), (b), (c)(1) to (5), 13226(a)(1), (2)(B), (b)(1) to (3), Aug. 10, 1993, 107 Stat. 446, 447, 448, 487, 488; Pub.L. 104-188, Title I, § 1703(n)(2),

§ 108. Income from discharge of indebtedness, 26 USCA § 108

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Aug. 20, 1996, 110 Stat. 1877; Pub.L. 105-34, Title II, § 225(a), Aug. 5, 1997, 111 Stat. 820; Pub.L. 105-206, Title VI, § 6004(f), July 22, 1998, 112 Stat. 795; Pub.L. 107-147, Title IV, § 402(a), Mar. 9, 2002, 116 Stat. 40; Pub.L. 108-357, Title III, § 320(a), Title VIII, § 896(a), Oct. 22, 2004, 118 Stat. 1473, 1648; Pub.L. 110-142, § 2(a) to (c), Dec. 20, 2007, 121 Stat. 1803; Pub.L. 110-343, Div. A, Title III, § 303(a), Oct. 3, 2008, 122 Stat. 3807; Pub.L. 111-5, Div. B, Title I, § 1231(a), Feb. 17, 2009, 123 Stat. 338; Pub.L. 111-148, Title X, § 10908(a), Mar. 23, 2010, 124 Stat. 1021; Pub.L. 112-240, Title II, § 202(a), Jan. 2, 2013, 126 Stat. 2323; Pub.L. 113-295, Div. A, Title I, § 102(a), Dec. 19, 2014, 128 Stat. 4013; Pub.L. 114-113, Div. Q, Title I, § 151(a), (b), Dec. 18, 2015, 129 Stat. 3065.)

Notes of Decisions (46)

26 U.S.C.A. § 108, 26 USCA § 108

Current through P.L. 115-61. Title 26 current through P.L. 115-64.

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Student Loans in Bankruptcy

Undue Hardship

11 U.S.C. § 523(a)(8)(A)-(B) defines debts that are not dischargeable, which includes nearly all student loans:

- (a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

...

- (8) unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents, for—

(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;

...

What makes a hardship “undue?”

The Brunner Test

*Brunner v. N.Y. State Higher Educ. Servs. Corp.*, 831 F.2d 395, 396 (2d Cir. 1987) set the standard for what constitutes undue hardship:

- (1) [Debtor] cannot maintain, based on current income and expenses, a “minimal” standard of living for himself and his dependents if forced to repay the loans;
- (2) Additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment period of the student loans; and
- (3) He has made good faith efforts to repay the loans.

This test was adopted by the Seventh Circuit in *Matter of Roberson*, 999 F.2d 1132, 1137 (7th Cir. 1993), and has since been further affirmed and interpreted by two key decisions:

- *Krieger v. Educ. Credit Mgmt. Corp.*, 713 F.3d 882, 884 (7th Cir. 2012) (finding undue hardship and discharging loans); and
- *Tetzlaff v. Educ. Credit Mgmt. Corp.*, 794 F.3d 756, 759-60 (7th Cir. 2015) (finding no undue hardship and denying discharge).

**Real Life Application**

Government-backed student loans vs. private student loans: while both are typically considered non-dischargeable under § 523(a)(8), government-backed loans are different in at least one key respect: the wide variety of standardized, guaranteed ways to reduce payments or receive a non-bankruptcy discharge.

Private lenders have a lot of flexibility in determining how they will work with any given borrower. But that flexibility also means that they can insist on certain payment terms, and the borrower does not have much leverage to negotiate.

The government-backed loans, on the other hand, are specifically subject to several laws and regulations designed to ease the financial burden of payments, work with financially strapped borrowers, and reward borrowers who diligently pay or who choose to work in certain fields. All of the following topics covered apply only to Federally-backed loans.

**Income-Sensitive Repayment Plans**

- Income-Contingent Repayment Plan (ICR Plan)
- Income-Based Repayment Plan (IBR Plan)
- Revised Pay As You Earn Repayment Plan (REPAYE Plan)
- Pay As You Earn Repayment Plan (PAYE Plan)

ICR Plan	<ul style="list-style-type: none"><li>• Eligibility: everyone qualifies (including parent borrowers with PLUS loans who consolidate into a Direct Loan).</li><li>• Generally, borrower pays the lesser of the following:<ul style="list-style-type: none"><li>• 20 percent of discretionary income; or</li><li>• what borrower would pay on a repayment plan with a fixed payment over the course of 12 years.</li></ul></li><li>• Loan forgiveness after 25 years.</li></ul>
IBR Plan	<ul style="list-style-type: none"><li>• Eligibility: borrower must show a Partial Financial Hardship: if the annual amount due on eligible loans, as calculated under a 10-year Standard Repayment Plan, exceeds 15 percent of the difference between borrower's adjusted gross income (AGI) and 150 percent of the poverty line for borrower's family size in the state where borrower lives.</li><li>• For those who borrowed money before 7/1/2014, borrower pays 15 percent of his discretionary income, but never more than the 10-year Standard Repayment Plan amount.</li><li>• Loan forgiveness after 25 years.</li><li>• For those who borrowed money after 7/1/2014, borrower pays 10 percent of his discretionary income, but never more than the 10-year Standard Repayment Plan amount (essentially the same as the PAYE Plan).</li><li>• Loan forgiveness after 20 years.</li></ul>

REPAYE Plan	<ul style="list-style-type: none"> <li>• Eligibility: everyone qualifies.</li> <li>• Generally 10 percent of your discretionary income, with no cap.</li> <li>• Loan forgiveness after 20 years (25 for graduate loans).</li> </ul>
PAYE Plan	<ul style="list-style-type: none"> <li>• Eligibility: only those who borrowed money after 10/1/2007 and received a Direct Loan after 10/1/2011, AND borrower shows a Partial Financial Hardship.</li> <li>• Generally 10 percent of your discretionary income, but never more than the 10-year Standard Repayment Plan amount;</li> <li>• Loan forgiveness after 20 years.</li> </ul>

### **Rehabilitation**

Borrowers who are in default are typically barred from eligibility for any payment plans or discharges. Rehabilitation, however, is remarkably simple.

To rehabilitate a defaulted Direct Loan or FFEL Program loan, a borrower must agree in writing to:

- make nine monthly payments,
- make each payment within 20 days of the due date, and
- make all nine payments during a period of 10 consecutive months.

In addition, the rehabilitation payment does not have to be the standard monthly amount. In fact, a borrower can request any monthly amount so long as it is \$5 or more. However, the guarantor will typically request a payment amount that is equal to 15 percent of your discretionary income. In order to justify the lower amount, the borrower will be required to provide documentation of her income.

To rehabilitate a defaulted Federal Perkins Loan, a borrower must meet the foregoing requirements. However, there is less flexibility in the amount of the monthly payment, which is determined by the school where the borrower took out the loan.

### **Effect of an Adversary Action**

Adversary actions can result in a benefit to the debtor, depending on their circumstances when they file.

#### ***Private Student Loans***

Private lenders are not subject to the same regulatory requirements as the Federally-backed loan holders/guarantors. As a result, the payment plans that private lenders may offer can be far less beneficial, because they have sole discretion over what (or even whether) to offer. However, that can inure to the benefit of the debtor in an adversary case.

A private loan holder will be able to negotiate with a debtor outside the constraints of the regulations for payment plans. They may agree to a reduced balance, or interest change/forgiveness, or

a generous payment plan. In some smaller-balance instances a private loan holder may simply allow a default to be entered against them.

Conversely, trying to negotiate with a private loan holder without filing an adversary can be an exercise in futility. An adversary action can and often seems to spur willingness to compromise.

### ***Federally-Backed Loans***

An adversary will have a much lesser impact on Federally-backed loan holders/guarantors. This is because their hands are typically tied by the payment plan regulations, which are usually available to borrowers before an adversary is filed. In fact, sometimes an adversary interferes with the ability to apply for income-sensitive repayment.

For loans that are NOT defaulted prior to filing, a borrower is generally NOT permitted to apply for any income-sensitive payment plans while the adversary is pending. That is because a non-defaulted loan will revert to the original holder/guarantor after the adversary is dismissed, and that is the only entity who can process the application. (Note: this may not hold true if the original guarantor is ALSO the defendant in the adversary. Federally-backed loans will often be assigned to “specialized guarantors” upon the filing of an adversary.)

For a loan that is in default upon filing, the only way to apply for an income-sensitive plan during the pendency of the adversary is to consolidate into a direct loan (through the Ford Program). Direct consolidation is generally available at any time for defaulted loans, which would then enable the borrower to apply for income-sensitive repayment after the loan is consolidated.

While a federally-backed loan holder may not be able to compromise on balance, interest, or other terms of the loan, one helpful tactic can be to agree that if the borrower applies for an income-sensitive plan and completes it, any remaining outstanding balance is discharged in the bankruptcy.

### **Public Service Loan Forgiveness**

The Public Service Loan Forgiveness (PSLF) Program forgives the remaining balance on your Direct Loans after you have made 120 qualifying monthly payments under a qualifying repayment plan while working full-time for a qualifying employer.

Only employment with the following types of organizations qualifies for PSLF:

- Government organizations at any level (federal, state, local, or tribal);
- Not-for-profit organizations that are tax-exempt under Section 501(c)(3) of the Internal Revenue Code; and
- Other types of not-for-profit organizations that provide certain types of qualifying public services (including AmeriCorps and Peace Corps).

**Alternatives to Bankruptcy Discharge**

***Total and Permanent Disability (TPD) Discharge:***

- 1 – If borrower is a veteran, she can submit documentation from the U.S. Department of Veterans Affairs (VA) showing that the VA has determined that she is unemployable due to a service-connected disability;
- 2 – If borrower is receiving Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) benefits, he can submit a Social Security Administration (SSA) notice of award for SSDI or SSI benefits stating that his next scheduled disability review will be within 5 to 7 years from the date of his most recent SSA disability determination; or
- 3 – Borrower can submit certification from a physician that she is totally and permanently disabled. Physician must certify that borrower is unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment that:
  - Can be expected to result in death;
  - Has lasted for a continuous period of not less than 60 months; **or**
  - Can be expected to last for a continuous period of not less than 60 months.

Applying for TPD discharge on-line: <https://secure.disabilitydischarge.com/registration>

***False Certification***

1. Forgery: if the loan application was forged or signed by someone other than the borrower.
2. Ability to Benefit: if the borrower did not have a high school diploma or G.E.D., and the school failed to properly administer an approved exam to confirm the borrower would benefit from the educational program.
3. Disqualifying Status: if the borrower is legally ineligible to be certified or licensed in the occupation for which the education was specifically provided.



## LOAN DISCHARGE APPLICATION: FALSE CERTIFICATION (ABILITY TO BENEFIT)

William D. Ford Federal Direct Loan (Direct Loan) Program  
Federal Family Education Loan (FFEL) Program

OMB No. 1845-0058  
Form Approved  
Exp. Date 08/31/2017

**WARNING:** Any person who knowingly makes a false statement or misrepresentation on this form or on any accompanying document is subject to penalties that may include fines, imprisonment, or both, under the U.S. Criminal Code and 20 U.S.C. 1097.

### SECTION 1: BORROWER IDENTIFICATION

Please enter or correct the following information.

☐ Check this box if any of your information has changed.

SSN \_\_\_\_ - \_\_\_\_ - \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip Code \_\_\_\_\_

Telephone – Primary \_\_\_\_\_

Telephone – Alternate \_\_\_\_\_

E-mail (optional) \_\_\_\_\_

### SECTION 2: ABILITY TO BENEFIT INFORMATION

1. You are applying for this loan discharge as a:
  - ☐ Student borrower – Skip to Item 4.
  - ☐ Parent borrower – Continue to Item 2.
2. Student Name (Last, First, MI): \_\_\_\_\_
3. Student SSN: \_\_\_\_ - \_\_\_\_ - \_\_\_\_\_
4. Did you (or, for a parent PLUS borrower, the student) attend a postsecondary school prior to July 1, 2012?
  - ☐ Yes – Skip to Item 6.
  - ☐ No – Continue to Item 5.
5. Were you (or, for a parent PLUS borrower, the student), prior to July 1, 2012, officially registered at a postsecondary school, and scheduled to attend?
  - ☐ Yes – Continue to Item 6.
  - ☐ No – You are not eligible for this discharge.
6. Provide the following information about the postsecondary school referenced in Item 4 or 5:
  - a. School Name: \_\_\_\_\_
  - b. School Address (street, city, state, zip code): \_\_\_\_\_
7. On what date did you (or, for a parent PLUS borrower, the student) begin attendance or register at the postsecondary school in Item 4 or 5? \_\_\_\_\_
8. Is the postsecondary school in Item 6 the same school that you attended when you received the loan(s) you are requesting be discharged?
  - ☐ Yes – Skip to Item 11.
  - ☐ No – Continue to Item 9.
9. School Name: \_\_\_\_\_
10. School Address (street, city, state, zip code): \_\_\_\_\_
11. Dates of attendance at the school: \_\_\_\_\_ to \_\_\_\_\_
12. Name of program of study that you (or, for a parent PLUS borrower, the student) were enrolled in when you received the loan(s) you are requesting be discharged: \_\_\_\_\_
13. Did you (or, for a parent PLUS borrower, the student) have a high school diploma or General Education Development (GED) credential while enrolled?
  - ☐ Yes – You are not eligible for this discharge.
  - ☐ No – Continue to Item 14.
14. Did you (or, for a parent PLUS borrower, the student) receive a GED before completing the program?
  - ☐ Yes ☐ No
15. When did you first enroll in a postsecondary school? \_\_\_\_\_



# AMERICAN BANKRUPTCY INSTITUTE

Borrower Name: \_\_\_\_\_ Borrower SSN: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

## SECTION 2: ABILITY TO BENEFIT INFORMATION (CONTINUED)

16. Before you (or, for a parent PLUS borrower, the student) were admitted to the school, did the school give an entrance examination?
- ☐ Yes – Continue to Items 17 – 20.  
☐ No – Skip to Item 22.  
☐ Don't Know – Skip to Item 22.
17. Give the date of the test if you know it:  
\_\_\_\_\_
18. Give the name of the test if you know it:  
\_\_\_\_\_
19. Give the score on the test if you know it:  
\_\_\_\_\_
20. Did anything appear improper about the way the test was given or scored?
- ☐ Yes – Continue to Items 21 – 22.  
☐ No – Skip to Item 22.
21. Explain in detail what appeared improper:  
\_\_\_\_\_  
\_\_\_\_\_
22. Provide the following about anyone who can support your statement:
- a. Name: \_\_\_\_\_
- b. Address (street, city, state, zip code):  
\_\_\_\_\_  
\_\_\_\_\_
- c. Telephone number: \_\_\_\_\_
23. Did you (or, for a parent PLUS borrower, the student) complete a developmental or remedial program at the school?
- ☐ Yes – Continue to Items 24 – 27.  
☐ No – Skip to Item 28.  
☐ Don't Know – Skip to Item 28.
24. Provide the name of the program:  
\_\_\_\_\_
25. Provide the dates of the program:  
\_\_\_\_\_ to \_\_\_\_\_
26. Provide the courses you took in the program:  
\_\_\_\_\_  
\_\_\_\_\_
27. Provide the grades you earned in the program:  
\_\_\_\_\_  
\_\_\_\_\_
28. Did you (or, for a parent PLUS borrower, the student) successfully complete 6 credits or 225 clock hours of coursework that applied toward a program offered by the school before you received a Direct Loan or FFEL Program loan to pay for attendance in this program?
- ☐ Yes – You are not eligible for this discharge.  
☐ No – Continue to Item 29.  
☐ Don't Know – Continue to Item 29.
29. Did the holder of your loan receive any money back (a refund) from the school on your behalf?
- ☐ Yes – Continue to Items 30 – 31.  
☐ No – Skip to Item 32.  
☐ Don't Know – Skip to Item 32.
30. What was the amount of the refund?  
\$ \_\_\_\_\_
31. Explain why the money was refunded:  
\_\_\_\_\_
32. Did you (or, for a parent PLUS borrower, the student) make any monetary claim with, or receive any payment from, the school or any third party (see definition in Section 6) in connection with enrollment or attendance at the school?
- ☐ Yes – Continue to Items 33 – 35.  
☐ No – Sign and date the form in Section 3. Submit this form to the loan holder in Section 7.  
☐ Don't Know – Sign and date the form in Section 3. Submit this form to the loan holder in Section 7.
33. Provide the following about the party with whom the claim was made or from whom payment was received:
- a. Name: \_\_\_\_\_
- b. Address (street, city, state, zip code):  
\_\_\_\_\_  
\_\_\_\_\_
- c. Telephone number: \_\_\_\_\_
34. What is the amount and the status of the claim?
- a. Amount: \_\_\_\_\_
- b. Status: \_\_\_\_\_
35. What was the amount of any payment received? If none, write "none".  
\$ \_\_\_\_\_
- Sign and date the form in Section 3. Submit this form to the loan holder in Section 7.

**Borrower Name:** \_\_\_\_\_ **Borrower SSN:** \_\_\_\_ - \_\_\_\_ - \_\_\_\_\_

**SECTION 3: BORROWER CERTIFICATIONS, ASSIGNMENT, AND AUTHORIZATION**

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- **I certify** that—
  1. I have read and agree to the terms and conditions for loan discharge, as specified in Section 5.
  2. Under penalty of perjury, all of the information I have provided on this form and in any accompanying documentation is true and accurate to the best of my knowledge and belief.
- **I hereby assign and transfer** to the U.S. Department of Education (the Department) any right to a refund on the amount discharged that I may have from the school identified in Section 2 of this form and/or any owners, affiliates, or assignees of the school, and from any third party that may pay claims for a refund because of the actions of the school, up to the amount discharged by the Department on my loan(s).
- **I authorize** the loan holder to which I submit this request (and its agents or contractors) to contact me regarding my request or my loan(s), including repayment of my loan(s), at the number that I provide on this form or any future number that I provide for my cellular telephone or other wireless device using automated telephone dialing equipment or artificial or prerecorded voice or text messages.

**Borrower's Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

**SECTION 4: DEFINITIONS**

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- The **William D. Ford Federal Direct Loan (Direct Loan) Program** includes Federal Direct Stafford/Ford (Direct Subsidized) Loans, Federal Direct Unsubsidized Stafford/Ford (Direct Unsubsidized) Loans, Federal Direct PLUS (Direct PLUS) Loans, and Federal Direct Consolidation (Direct Consolidation) Loans.
- The **Federal Family Education Loan (FFEL) Program** includes Federal Stafford Loans (both subsidized and unsubsidized), Federal Supplemental Loans for Students (SLS), Federal PLUS Loans, and Federal Consolidation Loans.
- The **holder** of your Direct Loan Program loan(s) is the U.S. Department of Education (the Department). The holder of your FFEL Program loan(s) may be a lender, a guaranty agency, or the Department. Your loan holder may use a servicer to handle billing and other communications related to your loans. References to "your loan holder" on this form mean either your loan holder or your servicer.
- **Loan discharge** due to false certification of ability to benefit cancels your obligation (and any endorser's obligation, if applicable) to repay the remaining portion on a Direct Loan or FFEL Program loan, and qualifies you for reimbursement of any amounts paid voluntarily or through forced collection on the loan. For consolidation loans, only the amounts of the underlying loans that were used to pay for the program of study listed in Section 2 will be considered for discharge. The loan holder reports the discharge to all credit reporting agencies to which the holder previously reported the status of the loan.
- The **student** refers to the student for whom a parent borrower obtained a Direct PLUS Loan or Federal PLUS Loan.
- **Third party** refers to any entity that may provide reimbursement for a refund owed by the school, such as a State or other entity offering a tuition recovery program or a holder of a performance bond.

**SECTION 5: TERMS AND CONDITIONS FOR LOAN DISCHARGE BASED ON FALSE CERTIFICATION**

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- You are only eligible for this form of discharge if you received the loan on which you are requesting discharge on or after January 1, 1986.
- By signing this form, you are agreeing to provide, upon request, testimony, a sworn statement, or other documentation reasonably available to you that demonstrates to the satisfaction of the Department or its designee that you meet the qualifications for loan discharge based on false certification, or that supports any representation that you made on this form or any accompanying documents.
- By signing this form, you are agreeing to cooperate with the Department or the Department's designee in any enforcement action related to this application.
- This application may be denied, or your discharge may be revoked, if you fail to provide testimony, a sworn statement, or documentation upon request, or if you provide testimony, a sworn statement, or documentation that does not support the material representation that you have made on this form or on any accompanying documents.

## SECTION 6: INSTRUCTIONS FOR COMPLETING THE FORM

When completing this form, type or print using dark ink. Enter dates as month-day-year (mm-dd-yyyy). Use only numbers. Example: February 10, 2014 = 02-10-2014. If you need more space to answer any of the items, continue on separate sheets of paper and attach them to this form. Indicate the number of the Item(s) you are answering and include your name and Social Security Number (SSN) on the top of pages 2 and 3 and on all attached pages. **Return the completed form and any attachments to the address shown in Section 7.**

## SECTION 7: WHERE TO SEND THE COMPLETED FORM

Return the completed form and any required documentation to:  
(If no address is shown, return to your loan holder.)

If you need help completing this form, call:  
(If no telephone number is shown, call your loan holder.)

## SECTION 8: IMPORTANT NOTICES

**Privacy Act Notice.** The Privacy Act of 1974 (5 U.S.C. 552a) requires that the following notice be provided to you:

The authorities for collecting the requested information from and about you are §421 et seq. and §451 et seq. of the Higher Education Act of 1965, as amended (20 U.S.C. 1071 et seq. and 20 U.S.C. 1087a et seq.) and the authorities for collecting and using your Social Security Number (SSN) are §§428B(f) and 484(a)(4) of the HEA (20 U.S.C. 1078-2(f) and 1091(a)(4)) and 31 U.S.C. 7701(b). Participating in the William D. Ford Federal Direct Loan (Direct Loan) Program or the Federal Family Education Loan (FFEL) Program and giving us your SSN are voluntary, but you must provide the requested information, including your SSN, to participate.

The principal purposes for collecting the information on this form, including your SSN, are to verify your identity, to determine your eligibility to receive a loan or a benefit on a loan (such as a deferment, forbearance, discharge, or forgiveness) under Direct Loan and/or FFEL Programs, to permit the servicing of your loan(s), and, if it becomes necessary, to locate you and to collect and report on your loan(s) if your loan(s) becomes delinquent or defaults. We also use your SSN as an account identifier and to permit you to access your account information electronically.

The information in your file may be disclosed, on a case-by-case basis or under a computer matching program, to third parties as authorized under routine uses in the appropriate systems of records notices. The routine uses of this information include, but are not limited to, its disclosure to federal, state, or local agencies, to private parties such as relatives, present and former employers, business and personal associates, to consumer reporting agencies, to financial and educational institutions, and to guaranty agencies in order to verify your identity, to determine your eligibility to receive a loan or a benefit on a loan, to permit the servicing or collection of your loan(s), to enforce the terms of the loan(s), to investigate possible

fraud and to verify compliance with federal student financial aid program regulations, or to locate you if you become delinquent in your loan payments or if you default. To provide default rate calculations, disclosures may be made to guaranty agencies, to financial and educational institutions, or to state agencies. To provide financial aid history information, disclosures may be made to educational institutions. To assist program administrators with tracking refunds and cancellations, disclosures may be made to guaranty agencies, to financial and educational institutions, or to federal or state agencies. To provide a standardized method for educational institutions to efficiently submit student enrollment statuses, disclosures may be made to guaranty agencies or to financial and educational institutions. To counsel you in repayment efforts, disclosures may be made to guaranty agencies, to financial and educational institutions, or to federal, state, or local agencies.

In the event of litigation, we may send records to the Department of Justice, a court, adjudicative body, counsel, party, or witness if the disclosure is relevant and necessary to the litigation. If this information, either alone or with other information, indicates a potential violation of law, we may send it to the appropriate authority for action. We may send information to members of Congress if you ask them to help you with federal student aid questions. In circumstances involving employment complaints, grievances, or disciplinary actions, we may disclose relevant records to adjudicate or investigate the issues. If provided for by a collective bargaining agreement, we may disclose records to a labor organization recognized under 5 U.S.C. Chapter 71. Disclosures may be made to our contractors for the purpose of performing any programmatic function that requires disclosure of records. Before making any such disclosure, we will require the contractor to maintain Privacy Act safeguards. Disclosures

may also be made to qualified researchers under Privacy Act safeguards.

**Paperwork Reduction Notice.** According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1845-0058. Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The obligation to respond to this collection is required to obtain or retain a benefit (34 CFR 682.402(e)(3), or 685.215(c)). If you have comments or concerns regarding the status of your individual submission of this form, **contact your loan holder(s) (see Section 7) directly.**



# **LOAN DISCHARGE APPLICATION: FALSE CERTIFICATION (UNAUTHORIZED SIGNATURE/PAYMENT)**

**William D. Ford Federal Direct Loan (Direct Loan) Program  
Federal Family Education Loan (FFEL) Program**

OMB No. 1845-0058  
Form Approved  
Exp. Date 08/31/2017

**WARNING:** Any person who knowingly makes a false statement or misrepresentation on this form or on any accompanying document is subject to penalties that may include fines, imprisonment, or both, under the U.S. Criminal Code and 20 U.S.C. 1097.

## **SECTION 1: BORROWER IDENTIFICATION**

Please enter or correct the following information.

☐ **Check this box if any of your information has changed.**

SSN \_ \_ \_ - \_ \_ - \_ \_ \_

Name \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip Code \_\_\_\_\_

Telephone – Primary \_\_\_\_\_

Telephone – Alternate \_\_\_\_\_

E-mail (optional) \_\_\_\_\_

## **SECTION 2: UNAUTHORIZED SIGNATURE/PAYMENT INFORMATION**

**This form is not to be used for allegations of identity theft.**

**1.** You are applying for this loan discharge as a:

- ☐ Student borrower – Skip to Item 4.  
☐ Parent borrower – Continue to Item 2.

**2.** Student Name (Last, First, MI):

\_\_\_\_\_

**3.** Student SSN:

\_ \_ \_ - \_ \_ - \_ \_ \_

**4.** School Name:

\_\_\_\_\_

**5.** School Address (street, city, state, zip code):

\_\_\_\_\_  
\_\_\_\_\_

**6.** Dates of attendance at the school:

\_\_\_\_\_ to \_\_\_\_\_

**7.** Which document(s) was signed without your authorization?

- a. ☐ Loan application  
b. ☐ Promissory note  
c. ☐ Master promissory note  
d. ☐ Combined application/promissory note  
e. ☐ Loan check  
f. ☐ Electronic funds transfer authorization  
g. ☐ Master check authorization

**8.** Did you (or, for a parent PLUS borrower, the student) ever receive any money from the school, or did the school ever reduce the amount of money that you (or, for a parent PLUS borrower, the student) owed to the school?

- ☐ Yes – Continue to Item 9.  
☐ No – Skip to Item 11.  
☐ Don't Know – Skip to Item 11.

**9.** On what date did the school return money or reduce the amount owed?

\_\_\_\_\_

**10.** What amount did the school return or by what amount did the school reduce the amount owed?

\$ \_\_\_\_\_

**11.** How did you (or, for a parent PLUS borrower, the student) pay the tuition and fees owed to the school?

\_\_\_\_\_  
\_\_\_\_\_

**12.** Provide the following about the school employee or other person associated with the school who signed your name on the document(s) identified in Item 7. Write "Don't Know" if you do not know the name/position of the person:

a. Name: \_\_\_\_\_

b. Position: \_\_\_\_\_

## 2017 HON. EUGENE R. WEDOFF CONSUMER BANKRUPTCY CONFERENCE

Borrower Name: \_\_\_\_\_ Borrower SSN: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

### SECTION 2: UNAUTHORIZED SIGNATURE/PAYMENT INFORMATION (CONTINUED)

13. Explain the circumstances under which the school employee or other person associated with the school identified in Item 12 signed your name on the documents identified in Item 7:
- \_\_\_\_\_
14. Did you (or, for a parent PLUS borrower, the student) make any monetary claim with, or receive any payment from, the school or any third party (see definition in Section 5) in connection with enrollment or attendance at the school?
- ☐ Yes – Continue to Item 15.  
☐ No – Skip to Item 18.  
☐ Don't Know – Skip to Item 18.
15. Provide the following about the party with whom the claim was made or from whom payment was received:
- a. Name: \_\_\_\_\_
- b. Address (street, city, state, zip code): \_\_\_\_\_
- c. Telephone number: \_\_\_\_\_
16. What is the amount and the status of the claim?
- a. Amount: \$ \_\_\_\_\_
- b. Status: \_\_\_\_\_
17. What was the amount of any payment received? If none, write "none". \$ \_\_\_\_\_
18. Did the holder of your loan receive any money back (a refund) from the school on your behalf?
- ☐ Yes – Continue to Item 19.  
☐ No – Sign and date the form in Section 3. Submit this form with documentation of your signature to the loan holder in Section 7.  
☐ Don't Know – Sign and date the form in Section 3. Submit this form with documentation of your signature to the loan holder in Section 7.
19. What was the amount of the refund?  
\$ \_\_\_\_\_
20. Explain why the money was refunded:
- \_\_\_\_\_
- \_\_\_\_\_
- Sign and date the form in Section 3. Submit this form with documentation of your signature to the loan holder in Section 7.

**Documentation of your signature is required.** You must attach documents containing four other samples of your signature. At least two of these samples must show that your signatures were made within one year before or after the date of the documents on which someone else signed your name. Examples of documents include cancelled checks, tax returns, and driver's licenses. If you do not provide these samples, you cannot be considered for a loan discharge.

### SECTION 3: BORROWER CERTIFICATIONS, ASSIGNMENT, AND AUTHORIZATION

- I certify that—
1. I am applying for a discharge of my Direct Loan or FFEL Program loan(s) because the loan application, promissory note, combined application/promissory note, loan disbursement check, electronic funds transfer authorization, or master check authorization was not authorized for the reasons stated in this form.
  2. I did not sign any of the documents I selected in Section 2, Item 7.
  3. I have read and agree to the terms and conditions for loan discharge, as specified in Section 6.
  4. Under penalty of perjury, all of the information I have provided on this form and in any accompanying documentation is true and accurate to the best of my knowledge and belief.
- I hereby assign and transfer to the U.S. Department of Education (the Department) any right to a refund on the amount discharged that I may receive from the school identified in Section 2 of this form and/or from any owners, affiliates, or assignees of the school, and from any third party that may pay claims for a refund because of the actions of the school, up to the amount discharged by the Department on my loan(s).
- I authorize the loan holder to which I submit this request (and its agents or contractors) to contact me regarding my request or my loan(s), including repayment of my loan(s), at the number that I provide on this form or at any future number that I provide for my cellular telephone or other wireless device using automated telephone dialing equipment or artificial or prerecorded voice or text messages.

Borrower's Signature \_\_\_\_\_ Date \_\_\_\_\_

**SECTION 4: INSTRUCTIONS FOR COMPLETING THE FORM**

When completing this form, type or print using dark ink. Enter dates as month-day-year (mm-dd-yyyy). Use only numbers. Example: February 10, 2014 = 02-10-2014. If you need more space to answer any of the items, continue on separate sheets of paper and attach them to this form. Indicate the number of the Item(s) you are answering and include your name and Social Security Number (SSN) on page 2 and all attached pages. **Return the completed form and any attachments to the address shown in Section 7.**

**SECTION 5: DEFINITIONS**

- The **William D. Ford Federal Direct Loan (Direct Loan) Program** includes Federal Direct Stafford/Ford (Direct Subsidized) Loans, Federal Direct Unsubsidized Stafford/Ford (Direct Unsubsidized) Loans, Federal Direct PLUS (Direct PLUS) Loans, and Federal Direct Consolidation (Direct Consolidation) Loans.
- The **Federal Family Education Loan (FFEL) Program** includes Federal Stafford Loans (both subsidized and unsubsidized), Federal Supplemental Loans for Students (SLS), Federal PLUS Loans, and Federal Consolidation Loans.
- The **holder** of your Direct Loan Program loan(s) is the Department. The holder of your FFEL Program loan(s) may be a lender, a guaranty agency, or the Department. Your loan holder may use a servicer to handle billing and other communications related to your loans. References to “your loan holder” on this form mean either your loan holder or your servicer.
- **Unauthorized signature** means that the school, without the borrower’s authorization, signed the borrower’s name on the loan application or promissory note.
- **Unauthorized payment** means that the school, without the borrower’s authorization, endorsed the borrower’s loan check or signed the borrower’s authorization for electronic funds transfer or master check, and did not give the loan proceeds to the borrower or apply the loan proceeds to charges owed by the student to the school.
- **Loan discharge** due to an unauthorized signature on a loan application or promissory note cancels your obligation (and any endorser’s obligation, if applicable) to repay the remaining portion on a Direct Loan or FFEL Program loan, and qualifies you for reimbursement of any amounts paid voluntarily or through forced collection on the loan. Loan discharge due to an unauthorized signature on a loan check, electronic funds transfer authorization, or master check authorization applies only to the amount of the unauthorized payment. For consolidation loans, only the amount of the underlying loans associated with the document listed in Section 2, Item 7 will be considered for discharge. The loan holder reports the discharge to all credit reporting agencies to which the holder previously reported the status of the loan and removes any adverse credit history previously associated with the loan.
- The **student** refers to the student for whom a parent borrower obtained a Direct PLUS Loan or Federal PLUS Loan.
- **Third party** refers to any entity that may provide reimbursement for a refund owed by the school, such as a State or other entity offering a tuition recovery program or a holder of a performance bond.

**SECTION 6: TERMS AND CONDITIONS FOR LOAN DISCHARGE BASED ON FALSE CERTIFICATION**

- You are only eligible for this form of discharge if you received the loan on which you are requesting discharge on or after January 1, 1986.
- By signing this form, you are agreeing to provide, upon request, testimony, a sworn statement, or other documentation reasonably available to you that demonstrates to the satisfaction of the Department or its designee that you meet the qualifications for loan discharge based on false certification, or that supports any representation that you made on this form or any accompanying documents.
- By signing this form, you are agreeing to cooperate with the Department or the Department’s designee in any enforcement action related to this form.
- This application may be denied, or your discharge may be revoked, if you fail to provide testimony, a sworn statement, or documentation upon request, or if you provide testimony, a sworn statement, or documentation that does not support the material representation that you have made on this form or on any accompanying documents.

**SECTION 7: WHERE TO SEND THE COMPLETED FORM**

Return the completed form and any documentation to:  
(If no address is shown, return to your loan holder.)

If you need help completing this form, call:  
(If no telephone number is shown, call your loan holder.)

## SECTION 8: IMPORTANT NOTICES

**Privacy Act Notice.** The Privacy Act of 1974 (5 U.S.C. 552a) requires that the following notice be provided to you:

The authorities for collecting the requested information from and about you are §421 et seq. and §451 et seq. of the Higher Education Act of 1965, as amended (20 U.S.C. 1071 et seq. and 20 U.S.C. 1087a et seq.) and the authorities for collecting and using your Social Security Number (SSN) are §§428B(f) and 484(a)(4) of the HEA (20 U.S.C. 1078-2(f) and 1091(a)(4)) and 31 U.S.C. 7701(b). Participating in the William D. Ford Federal Direct Loan (Direct Loan) Program or the Federal Family Education Loan (FFEL) Program and giving us your SSN are voluntary, but you must provide the requested information, including your SSN, to participate.

The principal purposes for collecting the information on this form, including your SSN, are to verify your identity, to determine your eligibility to receive a loan or a benefit on a loan (such as a deferment, forbearance, discharge, or forgiveness) under the Direct Loan and/or FFEL Programs, to permit the servicing of your loan(s), and, if it becomes necessary, to locate you and to collect and report on your loan(s) if your loan(s) becomes delinquent or defaults. We also use your SSN as an account identifier and to permit you to access your account information electronically.

The information in your file may be disclosed, on a case-by-case basis or under a computer matching program, to third parties as authorized under routine uses in the appropriate systems of records notices. The routine uses of this information include, but are not limited to, its disclosure to federal, state, or local agencies, to private parties such as relatives, present and former employers, business and personal associates, to consumer reporting agencies, to financial and educational institutions, and to guaranty agencies in order to verify your identity, to determine your eligibility to receive a loan or a benefit on a loan, to permit the servicing or collection of your loan(s), to enforce the terms of the loan(s), to investigate possible fraud and to verify compliance with federal student financial aid program regulations, or to locate you if you become delinquent in your loan payments or if you default. To provide default rate calculations, disclosures may be made to guaranty agencies, to financial and educational institutions, or to state agencies. To provide financial aid history information, disclosures may be made to educational institutions. To assist program administrators with tracking refunds and cancellations, disclosures may be made to guaranty agencies, to financial and educational institutions, or to federal or state agencies. To provide a standardized method for

educational institutions to efficiently submit student enrollment statuses, disclosures may be made to guaranty agencies or to financial and educational institutions. To counsel you in repayment efforts, disclosures may be made to guaranty agencies, to financial and educational institutions, or to federal, state, or local agencies.

In the event of litigation, we may send records to the Department of Justice, a court, adjudicative body, counsel, party, or witness if the disclosure is relevant and necessary to the litigation. If this information, either alone or with other information, indicates a potential violation of law, we may send it to the appropriate authority for action. We may send information to members of Congress if you ask them to help you with federal student aid questions. In circumstances involving employment complaints, grievances, or disciplinary actions, we may disclose relevant records to adjudicate or investigate the issues. If provided for by a collective bargaining agreement, we may disclose records to a labor organization recognized under 5 U.S.C. Chapter 71. Disclosures may be made to our contractors for the purpose of performing any programmatic function that requires disclosure of records. Before making any such disclosure, we will require the contractor to maintain Privacy Act safeguards. Disclosures may also be made to qualified researchers under Privacy Act safeguards.

**Paperwork Reduction Notice.** According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1845-0058. Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The obligation to respond to this collection is required to obtain or retain a benefit (34 CFR 682.402(e)(3), or 685.215(c)). If you have comments or concerns regarding the status of your individual submission of this form, **contact your loan holder(s) (see Section 7) directly.**





## LOAN DISCHARGE APPLICATION: FALSE CERTIFICATION (DISQUALIFYING STATUS)

William D. Ford Federal Direct Loan (Direct Loan) Program  
Federal Family Education Loan (FFEL) Program

OMB No. 1845-0058  
Form Approved  
Exp. Date 08/31/2017

**WARNING:** Any person who knowingly makes a false statement or misrepresentation on this form or on any accompanying document is subject to penalties that may include fines, imprisonment, or both, under the U.S. Criminal Code and 20 U.S.C. 1097.

### SECTION 1: BORROWER IDENTIFICATION

Please enter or correct the following information.

☐ Check this box if any of your information has changed.

SSN \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip Code \_\_\_\_\_

Telephone – Primary \_\_\_\_\_

Telephone – Alternate \_\_\_\_\_

E-mail (optional) \_\_\_\_\_

### SECTION 2: DISQUALIFYING STATUS INFORMATION

To qualify for a loan discharge based on false certification due to a disqualifying status you (or, for a parent PLUS borrower, the student) must have been unable—at the time the school originated or certified your loan—to meet the **legal requirements for employment** in your state of residence (or, for a parent PLUS borrower, the student's state of residence) in the occupation for which the program of study was intended.

1. You are applying for this loan discharge as a:

- ☐ Student borrower – Skip to Item 4.  
☐ Parent borrower – Continue to Item 2.

2. Student Name (Last, First, MI):

\_\_\_\_\_

3. Student SSN:

\_\_\_\_\_

4. School Name:

\_\_\_\_\_

5. School Address (street, city, state, zip code):

\_\_\_\_\_

6. Dates of attendance at the school:

\_\_\_\_\_ to \_\_\_\_\_

7. Name of the program of study that you (or, for a parent PLUS borrower, the student) were enrolled in when the school certified or originated the loan that you are requesting to have discharged:

\_\_\_\_\_

8. Indicate your disqualifying status by checking the appropriate box(es) below:

- ☐ Age  
☐ Physical condition  
☐ Mental condition  
☐ Criminal record  
☐ Other (specify): \_\_\_\_\_

9. You must provide documentation to prove that you (or, for a parent PLUS borrower, the student) had the disqualifying status indicated in Item 8. You must also document the state legal requirements for employment that you (or, for a parent PLUS borrower, the student) could not meet. Provide a citation to the specific state law or regulation below, or attach a copy of the law or regulation to your application.

\_\_\_\_\_

10. Before certifying or originating the loan, did the school ask you (or, for a parent PLUS borrower, the student) if the disqualifying status in Item 8 existed?

- ☐ Yes – Skip to Item 12.  
☐ No – Continue to Item 11.  
☐ Don't Know – Continue to Item 11.

## 2017 HON. EUGENE R. WEDOFF CONSUMER BANKRUPTCY CONFERENCE

Borrower Name: \_\_\_\_\_ Borrower SSN: \_\_\_\_ - \_\_\_\_ - \_\_\_\_\_

### SECTION 2: DISQUALIFYING STATUS INFORMATION (CONTINUED)

11. Did you (or, for a parent PLUS borrower, the student) inform the school of the disqualifying status before the loan was certified or originated?
- ☐ Yes  
☐ No
12. Did you (or, for a parent PLUS borrower, the student) make any monetary claim with, or receive any payment from, the school or any third party (see definition in Section 5) in connection with enrollment or attendance at the school?
- ☐ Yes – Continue to Item 13.  
☐ No – Skip to Item 16.  
☐ Don't Know – Skip to Item 16.
13. Provide the following about the party with whom the claim was made or from whom payment was received:
- a. Name: \_\_\_\_\_
- b. Address (street, city, state, zip code):  
\_\_\_\_\_  
\_\_\_\_\_
- c. Telephone number: \_\_\_\_\_
14. What is the amount and the status of the claim?
- a. Amount: \$ \_\_\_\_\_
- b. Status: \_\_\_\_\_
15. What was the amount of any payment received? If none, write "none".  
\$ \_\_\_\_\_
16. Did the holder of your loan receive any money back (a refund) from the school on your behalf?
- ☐ Yes – Continue to Items 17-18.  
☐ No – Sign and date the form in Section 3. Submit the form and documentation to the loan holder in Section 7.  
☐ Don't Know – Sign and date the form in Section 3. Submit the form and documentation to the loan holder in Section 7.
17. What was the amount of the refund?  
\$ \_\_\_\_\_
18. Explain why the money was refunded:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Sign and date the form in Section 3. Submit the form and documentation to the loan holder in Section 7.

### SECTION 3: BORROWER CERTIFICATIONS, ASSIGNMENT, AND AUTHORIZATION

- I certify that—
1. I have read and agree to the terms and conditions for loan discharge, as specified in Section 6.
  2. Under penalty of perjury, all of the information I have provided on this form and in any accompanying documentation is true and accurate to the best of my knowledge and belief.
- I hereby assign and transfer to the U.S. Department of Education (the Department) any right to a refund on the amount discharged that I may have received from the school identified in Section 2 of this form and/or from any owners, affiliates, or assignees of the school, and from any third party that may pay claims for a refund because of the actions of the school, up to the amount discharged by the Department on my loan(s).
- I authorize the loan holder to which I submit this request (and its agents or contractors) to contact me regarding my request or my loan(s), including repayment of my loan(s), at the number that I provide on this form or at any future number that I provide for my cellular telephone or other wireless device using automated telephone dialing equipment or artificial or prerecorded voice or text messages.

Borrower's Signature \_\_\_\_\_ Date \_\_\_\_\_

## SECTION 4: INSTRUCTIONS FOR COMPLETING THE FORM

When completing this form, type or print using dark ink. Enter dates as month-day-year (mm-dd-yyyy). Use only numbers. Example: February 10, 2014 = 02-10-2014. If you need more space to answer any of the items, continue on separate sheets of paper and attach them to this form. Indicate the number of the Item(s) you are answering and include your name and Social Security Number (SSN) on page 2 and all attached pages. **Return the completed form and any attachments to the address shown in Section 7.**

## SECTION 5: DEFINITIONS

- The **William D. Ford Federal Direct Loan (Direct Loan) Program** includes Federal Direct Stafford/Ford (Direct Subsidized) Loans, Federal Direct Unsubsidized Stafford/Ford (Direct Unsubsidized) Loans, Federal Direct PLUS (Direct PLUS) Loans, and Federal Direct Consolidation (Direct Consolidation) Loans.
- The **Federal Family Education Loan (FFEL) Program** includes Federal Stafford Loans (both subsidized and unsubsidized), Federal Supplemental Loans for Students (SLS), Federal PLUS Loans, and Federal Consolidation Loans.
- The **holder** of your Direct Loan Program loan(s) is the Department. The holder of your FFEL Program loan(s) may be a lender, a guaranty agency, or the Department. Your loan holder may use a servicer to handle billing and other communications related to your loans. References to “your loan holder” on this form mean either your loan holder or your servicer.
- **Loan discharge** due to false certification (disqualifying status) cancels your obligation (and any endorser’s obligation, if applicable) to repay the remaining portion on a Direct Loan or FFEL Program loan, and qualifies you for reimbursement of any amounts paid voluntarily or through forced collection on the loan. For consolidation loans, only the amount of the underlying loans that were used to pay for the program of study listed in Section 2 will be considered for discharge. The loan holder reports the discharge to all credit reporting agencies to which the holder previously reported the status of the loan and removes any adverse credit history previously associated with the loan.
- The **student** refers to the student for whom a parent borrower obtained a Direct PLUS Loan or Federal PLUS Loan.
- **Program of study** means the instructional program leading to a degree or certificate in which you (or, for parent PLUS borrowers, the student) were enrolled.
- **Origination and certification** are steps in a school’s processing of a loan. In the Direct Loan Program, a loan is **originated** when the school creates an electronic loan origination record after determining that the borrower meets all loan eligibility requirements. In the FFEL Program, a loan is **certified** when the school signs a loan application or submits an electronic loan record to the lender or guaranty agency after determining that the borrower meets all loan eligibility requirements.
- **Third party** refers to any entity that may provide reimbursement for a refund owed by the school, such as a State or other entity offering a tuition recovery program or a holder of a performance bond.

## SECTION 6: TERMS AND CONDITIONS FOR LOAN DISCHARGE BASED ON FALSE CERTIFICATION

- You are only eligible for this form of discharge if you received the loan on which you are requesting discharge on or after January 1, 1986.
- By signing this form, you are agreeing to provide, upon request, testimony, a sworn statement, or other documentation reasonably available to you that demonstrates to the satisfaction of the Department or its designee that you meet the qualifications for loan discharge based on false certification (disqualifying status), or that supports any representation that you made on this form or on any accompanying documents.
- By signing this form, you are agreeing to cooperate with the Department or the Department’s designee in any enforcement action related to this application.
- This application may be denied, or your discharge may be revoked, if you fail to provide testimony, a sworn statement, or documentation upon request, or if you provide testimony, a sworn statement, or documentation that does not support the material representation that you have made on this form or on any accompanying documents.

## SECTION 7: WHERE TO SEND THE COMPLETED FORM

Return the completed form and any documentation to:  
(If no address is shown, return to your loan holder.)

If you need help completing this form, call:  
(If no telephone number is shown, call your loan holder.)

## SECTION 8: IMPORTANT NOTICES

**Privacy Act Notice.** The Privacy Act of 1974 (5 U.S.C. 552a) requires that the following notice be provided to you: The authorities for collecting the requested information from and about you are §421 et seq. and §451 et seq. of the Higher Education Act of 1965, as amended (20 U.S.C. 1071 et seq. and 20 U.S.C. 1087a et seq.) and the authorities for collecting and using your Social Security Number (SSN) are §§428B(f) and 484(a)(4) of the HEA (20 U.S.C. 1078-2(f) and 1091(a)(4)) and 31 U.S.C. 7701(b). Participating in the William D. Ford Federal Direct Loan (Direct Loan) Program or the Federal Family Education Loan (FFEL) Program and giving us your SSN are voluntary, but you must provide the requested information, including your SSN, to participate.

The principal purposes for collecting the information on this form, including your SSN, are to verify your identity, to determine your eligibility to receive a loan or a benefit on a loan (such as a deferment, forbearance, discharge, or forgiveness) under the Direct Loan and/or Direct Loan Programs, to permit the servicing of your loan(s), and, if it becomes necessary, to locate you and to collect and report on your loan(s) if your loan(s) becomes delinquent or defaults. We also use your SSN as an account identifier and to permit you to access your account information electronically.

The information in your file may be disclosed, on a case-by-case basis or under a computer matching program, to third parties as authorized under routine uses in the appropriate systems of records notices. The routine uses of this information include, but are not limited to, its disclosure to federal, state, or local agencies, to private parties such as relatives, present and former employers, business and personal associates, to consumer reporting agencies, to financial and educational institutions, and to guaranty agencies in order to verify your identity, to determine your eligibility to receive a loan or a benefit on a loan, to permit the servicing or collection of your loan(s), to enforce the terms of the loan(s), to investigate possible fraud and to verify compliance with federal student financial aid program regulations, or to locate you if you become delinquent in your loan payments or if you default. To provide default rate calculations, disclosures may be made to guaranty agencies, to financial and educational institutions, or to state agencies. To provide financial aid history information, disclosures may be made to educational institutions. To assist program administrators with tracking refunds and cancellations, disclosures may be made to guaranty agencies, to financial and educational institutions, or to federal or state agencies. To provide a standardized method for educational institutions to efficiently submit student

enrollment statuses, disclosures may be made to guaranty agencies or to financial and educational institutions. To counsel you in repayment efforts, disclosures may be made to guaranty agencies, to financial and educational institutions, or to federal, state, or local agencies.

In the event of litigation, we may send records to the Department of Justice, a court, adjudicative body, counsel, party, or witness if the disclosure is relevant and necessary to the litigation. If this information, either alone or with other information, indicates a potential violation of law, we may send it to the appropriate authority for action. We may send information to members of Congress if you ask them to help you with federal student aid questions. In circumstances involving employment complaints, grievances, or disciplinary actions, we may disclose relevant records to adjudicate or investigate the issues. If provided for by a collective bargaining agreement, we may disclose records to a labor organization recognized under 5 U.S.C. Chapter 71. Disclosures may be made to our contractors for the purpose of performing any programmatic function that requires disclosure of records. Before making any such disclosure, we will require the contractor to maintain Privacy Act safeguards. Disclosures may also be made to qualified researchers under Privacy Act safeguards.

**Paperwork Reduction Notice.** According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1845-0058. Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The obligation to respond to this collection is required to obtain or retain a benefit (34 CFR 682.402(e)(3), or 685.215(c)). If you have comments or concerns regarding the status of your individual submission of this form, **contact your loan holder(s) (see Section 7) directly.**



TPD-APP

## DISCHARGE APPLICATION: TOTAL AND PERMANENT DISABILITY IMPORTANT INFORMATION

- William D. Ford Federal Direct Loan Program
- Federal Family Education Loan Program
- Federal Perkins Loan Program
- TEACH Grant Program

### READ THIS FIRST

- This is an application for a total and permanent disability discharge of your William D. Ford Federal Direct Loan (Direct Loan) Program, Federal Family Education Loan (FFEL) Program, and/or Federal Perkins Loan (Perkins Loan) Program loan(s), and/or your Teacher Education Assistance for College and Higher Education (TEACH) Grant Program service obligation.
- You only need to submit a single application to the U.S. Department of Education to apply for discharge of all of your Direct Loan, FFEL, and/or Perkins Loan program loans and your TEACH Grant service obligations. **Throughout this application, the words “we,” “us,” and “our” refer to the U.S. Department of Education.**
- To qualify for this discharge, you must meet **one** of the following requirements:
  1. You are a veteran who has been determined by the U.S. Department of Veterans Affairs (VA) to be **unemployable due to a service-connected disability**, and you provide documentation from the VA of that determination;  
**OR**
  2. You have received a Social Security Administration (SSA) notice of award for Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) stating that **your next scheduled disability review will be 5 to 7 years or more from the date of your last SSA disability determination**, and you provide a copy of that SSA notice of award.  
**OR**
  3. You provide a certification from a physician in Section 4 of this Discharge Application that you are unable to engage in any substantial gainful activity (see definition in Section 5) by reason of a medically determinable physical or mental impairment that:
    - o Can be expected to result in death;
    - o Has lasted for a continuous period of not less than 60 months; or
    - o Can be expected to last for a continuous period of not less than 60 months.
- If you do not meet requirement #1 or requirement #2, you may qualify for discharge by obtaining a certification from a physician in Section 4 of this application, as described above for requirement #3. If you can provide the documentation to show that you meet requirement #1 or #2 above, you are **not** required to have a physician complete Section 4.
- If you are a veteran applying for discharge under requirement #1, you must provide documentation from the VA showing that the VA has determined that you are unemployable due to a **service-connected** disability. You do not meet this requirement if your disability is not service-connected. The following two types of VA determinations meet this requirement: (1) a determination that you have a service-connected disability (or disabilities) that is 100% disabling; or (2) a determination that you are totally disabled based on an individual unemployability determination.
- If you are applying for discharge under requirement #2, the SSA notice of award that you provide must show that your next scheduled disability review will be **5 to 7 years or more from the date of your last SSA disability determination**. You do not meet this requirement if the notice of award states that your next scheduled disability review will be within less than 5 years. If the notice of award does not clearly state the date of your next scheduled review, contact the SSA office that issued the award and request a Benefits Planning Query (BPQY). The BPQY provides a summary of your SSA disability benefits, including the scheduled date for your next disability review. If your BPQY shows that your next scheduled review will be 5 to 7 years or more from the date of your last SSA disability determination, you may submit a copy of your BPQY to show that you meet requirement #2.
- If you are granted a discharge based on requirement #2 or requirement #3, we will monitor your status during a 3-year post-discharge monitoring period. Your discharged loans or TEACH Grant service obligation may be reinstated if you do not meet certain requirements during this period, as explained in Section 6 of this form.
- Except for VA or SSA determinations as described above (requirements #1 and #2), a disability determination by another federal or state agency does not qualify you for this discharge.
- Loan amounts discharged due to total and permanent disability may be considered taxable income by the Internal Revenue Service (IRS). Contact the IRS for more information.
- If you wish to designate an individual or organization to represent you in matters related to your total and permanent disability discharge request, you must complete the Total and Permanent Disability: Applicant Representative Designation form. You may obtain this form from our Total and Permanent Disability Discharge Servicer (see below for contact information).
- Before submitting your application, make sure that Section 3 and (if required) Section 4 include all requested information. Incomplete or inaccurate information may cause your application to be delayed or rejected.

### WHERE TO SEND YOUR COMPLETED DISCHARGE APPLICATION

Send your completed application with any required documentation (see the instructions in Section 2 on page 2) to the following address:

**U.S. Department of Education**  
TPD Servicing  
PO Box 87130  
Lincoln, NE 68501-7130

If you need help completing this form, contact our Total and Permanent Disability Discharge Servicer:

Phone: 1-888-303-7818  
E-Mail: [disabilityinformation@nelnet.net](mailto:disabilityinformation@nelnet.net)  
Web site: [www.disabilitydischarge.com](http://www.disabilitydischarge.com)

**DISCHARGE APPLICATION: TOTAL AND PERMANENT DISABILITY**

William D. Ford Federal Direct Loan, Federal Family Education Loan, Federal Perkins Loan, and TEACH Grant Programs

**WARNING:** Any person who knowingly makes a false statement or misrepresentation on this form or on any accompanying documents will be subject to penalties that may include fines, imprisonment, or both, under the U.S. Criminal Code and 20 U.S.C. 1097.**SECTION 1: APPLICANT IDENTIFICATION**

Please enter or correct the following information.

☐ Check this box if any of your information has changed.

SSN      -      -      -      -      -      -

DOB      -      -      -      -      -      -

Name      -      -      -      -      -      -

Address      -      -      -      -      -      -

City, State, Zip Code      -      -      -      -      -      -

Telephone      -      -      -      -      -      -

E-mail Address (Optional)      -      -      -      -      -      -

**SECTION 2: INSTRUCTIONS FOR COMPLETING AND SUBMITTING THIS APPLICATION**

- Carefully read the entire application, including page 1, the instructions in this section, and the additional information on the following pages.
- Type or print in dark ink. Sign and date the application in Section 3. If you are required to have a physician complete Section 4, enter your name and Social Security Number at the top of page 2 (if not preprinted).
- Send the completed application with any required documentation to:

**U.S. Department of Education, TPD Servicing, PO Box 87130, Lincoln, NE 68501-7130**

- Are you a veteran who has received a determination from the U.S. Department of Veterans Affairs (VA) that you are **unemployable due to a service-connected disability**?  
☐ Yes – Attach documentation of the VA determination and complete Section 3. **You are not required to have a physician complete Section 4.**  
☐ No – Continue to Item 2.
- Have you received an SSA notice of award for SSDI or SSI benefits or an SSA Benefits Planning Query (BPQY) stating that **your next scheduled disability review will be 5 to 7 years or more from the date of your last SSA disability determination**?  
☐ Yes – Attach a copy of the SSA notice of award or BPQY and complete Section 3. **You are not required to have a physician complete Section 4.**  
☐ No – Complete Section 3 and **have a physician who is a doctor of medicine or osteopathy complete and sign Section 4. You must submit this application to us within 90 days of the date of your physician's signature in Section 4.**

**SECTION 3: APPLICANT'S DISCHARGE REQUEST, AUTHORIZATION, UNDERSTANDINGS, AND CERTIFICATIONS**I **request** that the U.S. Department of Education discharge my Direct Loan, FFEL, and/or Perkins Loan, program loan(s), and/or my TEACH Grant service obligation.I **authorize** any physician, hospital, or other institution having records about the disability that is the basis for my request for a discharge to make information from those records available to the U.S. Department of Education.I **understand** that:

- If I am applying for discharge based on a physician's certification in Section 4, I must submit this application to the U.S. Department of Education within 90 days of the date of my physician's signature in Section 4.
- Unless I am a veteran who provides the documentation described above in Section 2, Item 1, I may be required to repay a discharged loan or satisfy a discharged TEACH Grant service obligation if I fail to meet certain requirements during a post-discharge monitoring period, as explained in Section 6.
- If I am a veteran who does not meet the requirement described above in Section 2, Item 1, and I have obtained a certification from a physician in Section 4, the certification by the physician on this form is only for the purposes of establishing my eligibility to receive a discharge of a Direct Loan Program loan, a FFEL Program Loan, a Perkins Loan Program loan, and/or a TEACH Grant service obligation, and is not for purposes of determining my eligibility for, or the extent of my eligibility for, VA benefits.
- If I wish to designate an individual or organization to represent me in matters related to my total and permanent disability discharge request, I must complete and submit the Total and Permanent Disability Discharge: Applicant Representative Designation form.

I **certify** that: **(1)** I have a total and permanent disability, as defined in Section 5; and **(2)** I have read and understand the information on the discharge process, the terms and conditions for discharge, and the eligibility requirements to receive future loans or TEACH Grants as explained in Sections 6 and 7.

Signature of Applicant or Applicant's Representative (see NOTE below)

Date

Printed Name of Representative (if applicable)

**NOTE:** You may designate an individual or organization to represent you in matters related to your total and permanent disability discharge request. If you wish to designate a representative, you must complete the Total and Permanent Disability: Applicant Representative Designation form. You may obtain this form from our Total and Permanent Disability Discharge Servicer. See the "Read This First" section of this form for contact information.

# AMERICAN BANKRUPTCY INSTITUTE

Applicant Name: \_\_\_\_\_ Applicant SSN: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

## SECTION 4: PHYSICIAN'S CERTIFICATION

### Information and Instructions for Physician:

- The applicant identified above is applying for a discharge of a federal student loan and/or a teaching service obligation for a federal grant on the basis that he or she has a total and permanent disability, as defined in Section 5 of this form. To qualify for a discharge, the applicant must be unable to engage in any substantial gainful activity (as defined below and in Section 5) by reason of a medically determinable physical or mental impairment that **(1)** can be expected to result in death; or **(2)** has lasted for a continuous period of not less than 60 months; or **(3)** can be expected to last for a continuous period of not less than 60 months. This disability standard may be different from standards used under other programs in connection with occupational disability, or eligibility for social service or veterans benefits. A determination that the applicant is disabled by another federal agency (for example, the Social Security Administration) or a state agency does not automatically establish the applicant's eligibility for this loan discharge.
- Complete this form only if you are a doctor of medicine or osteopathy legally authorized to practice in a state, as defined in Section 5, and only if the applicant's condition meets the definition of total and permanent disability in Section 5.
- Print legibly in dark ink or type. All fields must be completed. If a field is not applicable, enter "N/A." Your signature date must include month, day, and year (mm-dd-yyyy).**
- Provide all requested information for Items 1, 2, and 3 below, and attach additional pages if necessary. Complete the physician's certification at the bottom of this page. The applicant's loan discharge application cannot be processed if the information requested in this section is missing or if your signature is missing.
- If you make any changes to the information you provide in this section, you must initial each change.
- Please return the completed form to the applicant or the applicant's representative.** The U.S. Department of Education may contact you for additional information or documentation.

**1. Medically Determinable Physical or Mental Impairment.** Does the applicant have a medically determinable physical or mental impairment that **(a)** prevents the applicant from engaging in any substantial gainful activity, in any field of work, and **(b)** can be expected to result in death, or has lasted for a continuous period of not less than 60 months, or can be expected to last for a continuous period of not less than 60 months?

☐ Yes ☐ No

**Substantial gainful activity** means a level of work performed for pay or profit that involves doing significant physical or mental activities, or a combination of both. *If the applicant is able to engage in any substantial gainful activity, in any field of work, you must answer "No." The determination of whether or not the applicant can perform substantial gainful activity is not based on whether the applicant can perform his or her current or past job or profession.*

**IF THE ANSWER TO QUESTION 1 IS NO, DO NOT COMPLETE THIS APPLICATION.**

**2. Disabling Condition.** Complete Items **(a)** and **(b)** regarding the applicant's disabling impairment. **Do not use abbreviations or insurance codes.**

**(a)** Provide your diagnosis of the applicant's impairment: \_\_\_\_\_

**(b)** Describe the severity of the disabling physical or mental impairment, including, if applicable, the phase of the disabling condition: \_\_\_\_\_

**3. Limitations.** Explain how the disabling condition prevents the applicant from engaging in substantial gainful activity in any field of work by responding to Items **(a)** through **(e)** below, as relevant to the applicant's condition. Attach additional pages if more space is needed. In addition to what is required below, you may include any additional information that you believe would be helpful in understanding the applicant's condition, such as medications used to treat the condition, surgical and non-surgical treatments for the condition, etc.

**(a)** Limitations on sitting, standing, walking, or lifting: \_\_\_\_\_

**(b)** Limitations on activities of daily living: \_\_\_\_\_

**(c)** Residual functionality: \_\_\_\_\_

**(d)** Social/behavioral limitations, if any: \_\_\_\_\_

**(e)** Current Global Assessment Function Score (for psychiatric conditions): \_\_\_\_\_

### Physician's Certification

- I certify** that, in my best professional judgment, the applicant identified above is unable to engage in any substantial gainful activity in *any* field of work by reason of a medically determinable physical or mental impairment that **(1)** can be expected to result in death; or **(2)** has lasted for a continuous period of not less than 60 months; or **(3)** can be expected to last for a continuous period of not less than 60 months.
- I understand** that an applicant who is currently able to engage in any substantial gainful activity in *any* field of work does not have a total and permanent disability as defined on this form.

I am a doctor of (check one) ☐ medicine ☐ osteopathy/osteopathic medicine.

I am legally authorized to practice in the state identified below and I have provided my professional license number below.

State Where Legally Authorized to Practice \_\_\_\_\_

Professional License Number (stamp is acceptable; subject to verification through state records) \_\_\_\_\_

Physician's Signature (a signature stamp is not acceptable) \_\_\_\_\_

Date (mm-dd-yyyy) \_\_\_\_\_

Printed Name of Physician (first name, middle initial, last name) \_\_\_\_\_

Address (stamp is acceptable) \_\_\_\_\_

City, State, Zip Code \_\_\_\_\_

Telephone \_\_\_\_\_

Fax \_\_\_\_\_

E-mail Address (Optional) \_\_\_\_\_

## SECTION 5: DEFINITIONS

- If you have a **total and permanent disability**, this means that:
  - (1) You are unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment that can be expected to result in death, or that has lasted for a continuous period of not less than 60 months, or that can be expected to last for a continuous period of not less than 60 months; **OR**
  - (2) You are a veteran who has been determined by the VA to be **unemployable due to a service-connected disability**.
- IMPORTANT INFORMATION ABOUT THE DEFINITION OF "TOTAL AND PERMANENT DISABILITY":**
  - To demonstrate that you have a total and permanent disability in accordance with paragraph (1) of this definition, you must either (a) provide a copy of an SSA notice of award for SSDI or SSI benefits or an SSA Benefits Planning Query (BPQY) stating that your next scheduled disability review will be 5 to 7 years from the date of your last SSA disability determination, or (b) have a physician who is a doctor of medicine or osteopathy complete Section 4 of this application.
  - To demonstrate that you have a total and permanent disability in accordance with paragraph (2) of this definition, you must provide documentation of a determination from the VA that you are unemployable due to a service-connected disability. See page 1 of this form for more information on acceptable documentation.
  - The above definition of "total and permanent disability" may differ from disability standards used by other federal agencies. Except for certain individuals who have received SSA notices of award for SSDI or SSI benefits, as explained above, or for certain veterans, a disability determination by another federal or state agency does not establish your eligibility for a discharge of your loan(s) and/or TEACH Grant service obligation due to a total and permanent disability.
- **Substantial gainful activity** means a level of work performed for pay or profit that involves doing significant physical or mental activities, or a combination of both.
- A **discharge of a loan** due to a total and permanent disability cancels your obligation (and, if applicable, an endorser's obligation) to repay the remaining balance on your Direct Loan, FFEL, and/or Perkins Loan program loans. A **discharge of a TEACH Grant service obligation** cancels your obligation to complete the teaching service that you agreed to perform as a condition for receiving a TEACH Grant.
- The **post-discharge monitoring period** begins on the date we grant a discharge of your loan(s) or TEACH Grant service obligation and lasts for three years. If you fail to meet certain conditions at any time during or at the end of the post-discharge monitoring period, we will reinstate your obligation to repay your loan(s) or complete your TEACH Grant service. See Section 6 for more information. **Note to Veterans:** The post-discharge monitoring period does not apply if you are a veteran who receives a discharge based on a determination from the VA that you are unemployable due to a service-connected disability.
- The **William D. Ford Federal Direct Loan (Direct Loan) Program** includes Federal Direct Stafford/Ford Loans (Direct Subsidized Loans), Federal Direct Unsubsidized Stafford/Ford Loans (Direct Unsubsidized Loans), Federal Direct PLUS Loans (Direct PLUS Loans), and Federal Direct Consolidation Loans (Direct Consolidation Loans).
- The **Federal Family Education Loan (FFEL) Program** includes Federal Stafford Loans (both subsidized and unsubsidized), Federal Supplemental Loans for Students (SLS), Federal PLUS Loans, and Federal Consolidation Loans.
- The **Federal Perkins Loan (Perkins Loan) Program** includes Federal Perkins Loans, National Direct Student Loans (NDSL), and National Defense Student Loans (Defense Loans).
- The **Teacher Education Assistance for College and Higher Education (TEACH) Grant Program** provides grants to students who agree to teach full time for at least four years in high-need fields in low-income elementary or secondary schools as a condition for receiving the grant funds. If a TEACH Grant recipient does not complete the required teaching service within eight years after completing the program of study for which the TEACH Grant was received, the TEACH Grant funds are converted to a Direct Unsubsidized Loan that the grant recipient must repay in full, with interest, to the U.S. Department of Education.
- The **holder** of your FFEL Program loan(s) may be a lender, a guaranty agency, or the U.S. Department of Education. The holder of your Perkins Loan Program loan(s) may be a school you attended or the U.S. Department of Education. The holder of your Direct Loan Program loan(s) and/or your TEACH Grant Agreement to Serve (if you received a TEACH Grant) is the U.S. Department of Education. Your loan holder may use a servicer to handle billing and other matters related to your loan. The term "holder" as used on this application means either your loan holder or, if applicable, your loan servicer.
- The term "**state**" for purposes of the physician's certification in Section 4 (the physician must be licensed to practice in a state) includes the 50 United States, the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, Guam, the U.S. Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.
- A **representative** is a member of your family, your attorney, a law firm or legal aid society, or another individual or organization authorized to act on your behalf in connection with your total and permanent disability discharge application.

## SECTION 6: DISCHARGE PROCESS / ELIGIBILITY REQUIREMENTS / TERMS AND CONDITIONS FOR DISCHARGE (continues on next page)

### APPLYING FOR DISCHARGE (ALL APPLICANTS):

1. **Submission of discharge application.** After you submit your completed discharge application and any required documentation to us, we will send you a notice that will:
  - Acknowledge receipt of your application;
  - Explain the process for our review of total and permanent disability discharge applications; and
  - Inform you that your loan holders will suspend collection activity or continue the previous suspension of collection activity on your loans while we review your application for discharge (you are not required to make any payments on your loans during this period).
2. **Consequences of failure to submit discharge application.** If you do not submit an application for total and permanent disability discharge to us within 120 days of notifying us that you intend to submit an application, collection activity will resume on your loans, and your loan holder may capitalize any unpaid interest that accrued during the 120-day period. This means that the unpaid interest will be added to the principal balance of your loans, and interest will then be charged on the increased loan principal amount. However, if you have a FFEL Program loan and the loan holder is a guaranty agency, or if you have a Federal Perkins Loan, unpaid interest will not be capitalized at the end of the 120-day period.



## SECTION 6: DISCHARGE PROCESS / ELIGIBILITY REQUIREMENTS / TERMS AND CONDITIONS FOR DISCHARGE (continued)

### **DISCHARGE PROCESS FOR VETERANS WHO HAVE BEEN DETERMINED BY THE VA TO BE UNEMPLOYABLE DUE TO A SERVICE-CONNECTED DISABILITY:**

- 1. Our review of your discharge application.** We will review the documentation from the VA to determine if you are totally and permanently disabled as described in paragraph (2) of the definition of “total and permanent disability” in Section 5 of this application.
- 2. Determination of eligibility or ineligibility for discharge.** If we determine that you are totally and permanently disabled, you will be notified that your loans and/or TEACH Grant service obligation has been discharged. The discharge will be reported to nationwide consumer reporting agencies, and any loan payments received on your loan on or after the effective date of the determination by the VA that you are unemployable due to a service-connected disability will be refunded to the person who made the payments.

If we determine that you are **not** totally and permanently disabled, you will be notified of that determination. The notification will include:

- The reason or reasons for the denial of your discharge application;
- An explanation that your loans are due and payable to the loan holder under the terms of the promissory note that you signed and that your loans will return to the status they were in at the time you applied for a total and permanent disability discharge;
- An explanation that your loan holder will notify you of the date you must resume making payments on your loans; and
- An explanation that if you applied for a discharge of a TEACH Grant service obligation, you must comply with all terms and conditions of your TEACH Grant Agreement to Serve.

The notification will also explain your ability to request reconsideration of this determination or to submit a new discharge application:

- You may request that we re-evaluate your discharge application if, within 12 months of the date of the notification from us that you are ineligible for discharge, you provide us with additional documentation from the VA that supports your eligibility for discharge (you do not have to submit a new application); or
- If the documentation from the VA does not indicate that you are unemployable due to a service-connected disability, you may reapply for discharge under the “Discharge Process For All Other Applicants,” as described below (you must submit a new application with the required documentation from the SSA or a physician’s certification in Section 4).

### **DISCHARGE PROCESS FOR ALL OTHER APPLICANTS:**

- 1. Our review of your discharge application.** If you submit a discharge application supported by an award of benefits notice from the SSA or an SSA Benefits Planning Query (BPQY), we will review the SSA notice of award (or BPQY) to determine if it meets the requirements described in Section 2, Item 2 of this form. If you submit a discharge application supported by a physician’s certification in Section 4 of this application, we will review the physician’s certification and any accompanying documentation to determine if you are totally and permanently disabled as described in paragraph (1) of the definition of “total and permanent disability” in Section 5 of this application. We may also contact your physician for additional information, or may arrange for an additional review of your condition by an independent physician at our expense. Based on the results of this review, we will determine your eligibility for discharge.

If we determine during our review of your application that you received a Direct Loan or Perkins Loan program loan, or a TEACH Grant before the date we received the SSA notice of award (or BPQY) or before the date the physician certified your application in Section 4, and a disbursement of that loan or grant is made after that date, but before we have granted a discharge, we will suspend processing of your discharge request until you ensure that the full amount of the disbursement is returned to the loan holder or (for a TEACH Grant) to us.

If you apply for a total and permanent disability discharge and we determine as part of its review that a new Direct Loan or Perkins Loan program loan or a new TEACH Grant was made to you on or after the date we received the SSA notice of award (or BPQY) or the date the physician certified your application in Section 4, and before the date we grant a discharge, we will deny your discharge request. Collection will resume on your loans and you will again be responsible for complying with the terms and conditions of your TEACH Grant Agreement to Serve.

- 2. Determination of eligibility or ineligibility for discharge.** If we determine that you are totally and permanently disabled, we will notify you that a discharge has been approved, and that you will be subject to a post-discharge monitoring period for three years beginning on the discharge date. The notification of discharge will explain the terms and conditions under which we will reinstate your obligation to repay your loan or to complete your TEACH service, as described in Item 3, below. The discharge will be reported to nationwide consumer reporting agencies, and any loan payments that were received after the date we received the SSA notice of award for SSDI or SSI benefits (or BPQY) or after the date the physician certified your discharge application will be returned to the person who made the payments.

If we determine that you are **not** totally and permanently disabled, we will notify you of that determination. The notification will include:

- The reason or reasons for the denial of your discharge application;
- An explanation that your loans are due and payable to the loan holder under the terms of the promissory note that you signed and that your loans will return to the status that would have existed if your total and permanent disability discharge application had not been received;
- An explanation that your loan holder will notify you of the date you must resume making payments on your loans;
- An explanation that if you applied for a discharge of a TEACH Grant service obligation, you must comply with all terms and conditions of your TEACH Grant Agreement to Serve;
- An explanation that you are not required to submit a new total and permanent disability discharge application if, within 12 months of the date of our notification to you that you are ineligible for discharge, you provide additional information regarding your disabling condition that supports your eligibility for discharge, and you request that we re-evaluate your discharge application; and
- An explanation that if you do not request re-evaluation of your prior discharge application within 12 months of the date of our notification of ineligibility for discharge, and you still wish to have us re-evaluate your eligibility for a total and permanent disability discharge, you must submit a new total and permanent disability discharge application to us.
- If you request a re-evaluation of your total and permanent disability discharge application or submit a new total and permanent disability discharge application, as described above, your request must include new information regarding your disabling condition that was not provided to us in connection with your prior application for discharge.

## SECTION 6: DISCHARGE PROCESS / ELIGIBILITY REQUIREMENTS / TERMS AND CONDITIONS FOR DISCHARGE (continued)

**3. Post-discharge monitoring period.** If you are granted a discharge, we will monitor your status during the 3-year post-discharge monitoring period that begins on the date the discharge is granted. We will reinstate the requirement for you to repay your loans and/or complete your TEACH Grant service if, at any time during or at the end of the post-discharge monitoring period, you:

- Receive annual earnings from employment that exceed the poverty guideline amount (see **Note** below) for a family of two in your state, regardless of your actual family size;
- Receive a new loan under the Direct Loan Program or the Perkins Loan Program, or a new TEACH Grant;
- Receive a disbursement of a Direct Loan Program or Perkins Loan Program loan or a TEACH Grant that was initially disbursed prior to your discharge date and you fail to ensure that the disbursement is returned to the loan holder or (for a TEACH Grant) to us within 120 days of the disbursement date; or
- Receive a notice from the SSA indicating that you are no longer disabled or that your continuing disability review will no longer be the 5- to 7-year period indicated in the SSA notice of award for SSDI or SSI benefits or BPQY.

During the 3-year post-discharge monitoring period, you (or your representative) must:

- Promptly notify us of any changes in your address or telephone number;
- Promptly notify us if your annual earnings from employment exceed the poverty guideline amount for a family of two in your state (see **Note** below), regardless of your actual family size;
- Upon request, provide us with documentation of your annual earnings from employment, on a form that we will provide; and
- Promptly notify us if you receive a notice from the SSA indicating that you are no longer disabled or that your continuing disability review will no longer be the 5- to 7-year period indicated in the SSA notice of award for SSDI or SSI benefits or BPQY (after you had been previously determined to be disabled by the SSA, were receiving SSDI or SSI benefits, and had a continuing disability review period of 5 to 7 years or more from the date of your last SSA disability determination).

**Note:** The poverty guideline amounts are updated annually and may be obtained at <http://aspe.hhs.gov/poverty>. We will notify you of the current poverty guideline amounts during each year of the post-discharge monitoring period.

**4. Reinstatement of obligation to repay discharged loans or complete discharged TEACH Grant service obligation.** If you do not meet the requirements described above in Item 3 at any time during or at the end of the post-discharge monitoring period, we will reinstate your obligation to repay your loans and/or to complete your TEACH Grant service. If your loans are reinstated, you will be responsible for repaying your loans to us in accordance with the terms of your promissory note(s). Your loans will be returned to the status that would have existed if we had not received your total and permanent disability discharge application. However, you will not be required to pay interest on your loans for the period from the date of the discharge until the date your repayment obligation was reinstated. We will be your loan holder. If your TEACH Grant service obligation is reinstated, you will again be subject to the requirements of your TEACH Grant Agreement to Serve. If you do not meet the terms of that agreement and the TEACH Grant funds you received are converted to a Direct Unsubsidized Loan, you must repay that loan in full, and interest will be charged from the date(s) that the TEACH Grant funds were disbursed.

If your obligation to repay your loans or to complete your TEACH Grant service is reinstated, we will notify you of the reinstatement. This notification will include:

- The reason or reasons for the reinstatement;
- For loans, an explanation that the first payment due date on the loan following the reinstatement will be no earlier than 60 days following the date of the notification of reinstatement; and
- Information on how you may contact us if you have questions about the reinstatement, or if you believe that your obligation to repay a loan or complete TEACH Grant service was reinstated based on incorrect information.

## SECTION 7: ELIGIBILITY REQUIREMENTS TO RECEIVE FUTURE LOANS OR TEACH GRANTS

**FOR VETERANS WHO RECEIVE A TOTAL AND PERMANENT DISABILITY DISCHARGE BASED ON A DETERMINATION BY THE VA THAT THEY ARE UNEMPLOYABLE DUE TO A SERVICE-CONNECTED DISABILITY:**

If you are a veteran who is granted a **discharge** based on a determination that you are totally and permanently disabled as described in paragraph (2) of the definition of “total and permanent disability” in Section 5 of this application, you are not eligible to receive future loans under the Direct Loan Program or the Perkins Loan Program, or future TEACH Grants, unless:

- You obtain a certification from a physician that you are able to engage in substantial gainful activity; and
- You sign a statement acknowledging that the new loan or TEACH Grant service obligation cannot be discharged in the future on the basis of any injury or illness present at the time the new loan or TEACH Grant is made, unless your condition substantially deteriorates so that you are again totally and permanently disabled.

**FOR ALL OTHER INDIVIDUALS WHO RECEIVE A TOTAL AND PERMANENT DISABILITY DISCHARGE:**

If you are granted a **discharge** based on a determination that you are totally and permanently disabled in accordance with paragraph (1) of the definition of “total and permanent disability” in Section 5 of this application, you are not eligible to receive future loans under the Direct Loan Program or the Perkins Loan Program, or future TEACH Grants, unless:

- You obtain a certification from a physician that you are able to engage in substantial gainful activity;
- You sign a statement acknowledging that the new loan or TEACH Grant service obligation cannot be discharged in the future on the basis of any injury or illness present at the time the new loan or TEACH Grant is made, unless your condition substantially deteriorates so that you are again totally and permanently disabled; and

If you request a Direct Loan Program or Perkins Loan Program loan, or a new TEACH Grant, within three years of the date that a previous loan or TEACH Grant was discharged, you resume payment on the previously discharged loan or acknowledge that you are once again subject to the terms of the TEACH Grant Agreement to Serve before receiving the new loan.

# AMERICAN BANKRUPTCY INSTITUTE

## SECTION 8: IMPORTANT NOTICES

**Privacy Act Notice.** The Privacy Act of 1974 (5 U.S.C. 552a) requires that the following notice be provided to you:

The authorities for collecting the requested information from and about you are §421 *et seq.*, §451 *et seq.*, §461 *et seq.*, and §420L *et seq.* of the Higher Education Act of 1965, as amended (the HEA) (20 U.S.C. 1071 *et seq.*, 20 U.S.C. 1087a *et seq.*, 20 U.S.C. 1087aa *et seq.*, and 20 U.S.C. 1070g *et seq.*) and the authorities for collecting and using your Social Security Number (SSN) are §§428B(f) and 484(a)(4) of the HEA (20 U.S.C. 1078-2(f) and 1091(a)(4)) and §31001(i)(1) of the Debt Collection Improvement Act of 1996 (31 U.S.C. 7701(c)). Participating in the Federal Family Education Loan (FFEL) Program, the William D. Ford Federal Direct Loan (Direct Loan) Program, the Federal Perkins Loan (Perkins Loan) Program, and/or the Teacher Education Assistance for College and Higher Education (TEACH) Grant Program and giving us your SSN are voluntary, but you must provide the requested information, including your SSN, to participate.

The principal purposes for collecting the information on this form, including your SSN, are to verify your identity, to determine your eligibility to receive a FFEL, Direct Loan, and/or Perkins Loan program loan or a TEACH Grant, to receive a benefit on a loan (such as a deferment, forbearance, discharge, or forgiveness) or a discharge of a TEACH Grant service obligation, to permit the servicing of your loan(s) or TEACH Grant(s), and, if it becomes necessary, to locate you and to collect and report on your loan(s) if your loan(s) become delinquent or in default. We also use your SSN as an account identifier and to permit you to access your account information electronically.

The information in your file may be disclosed, on a case-by-case basis or under a computer matching program, to third parties as authorized under routine uses in the appropriate systems of records notices.

For a loan or for a TEACH Grant that has not been converted to a Direct Unsubsidized Loan, the routine uses of the information that we collect about you include, but are not limited to, its disclosure to federal, state, or local agencies, to institutions of higher education, and to third party servicers to determine your eligibility to receive a loan or a TEACH Grant, to investigate possible fraud, and to verify compliance with federal student financial aid program regulations.

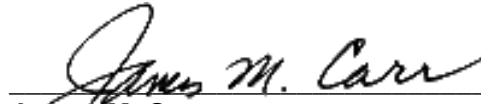
In the event of litigation, we may send records to the Department of Justice, a court, adjudicative body, counsel, party, or witness if the disclosure is relevant and necessary to the litigation. If this information, either alone or with other information, indicates a potential violation of law, we may send it to the appropriate authority for action. We may send information to members of Congress if you ask them to help you with federal student aid questions. In circumstances involving employment complaints, grievances, or disciplinary actions, we may disclose relevant records to adjudicate or investigate the issues. If provided for by a collective bargaining agreement, we may disclose records to a labor organization recognized under 5 U.S.C. Chapter 71. Disclosures may be made to our contractors for the purpose of performing any programmatic function that requires disclosure of records. Before making any such disclosure, we will require the contractor to maintain Privacy Act safeguards. Disclosures may also be made to qualified researchers under Privacy Act safeguards.

For a loan, including a TEACH Grant that has been converted to a Direct Unsubsidized Loan, the routine uses of this information also include, but are not limited to, its disclosure to federal, state, or local agencies, to private parties such as relatives, present and former employers, business and personal associates, to creditors, to financial and educational institutions, and to guaranty agencies to verify your identity, to determine your program eligibility and benefits, to permit making, servicing, assigning, collecting, adjusting, or discharging your loan(s), to enforce the terms of the loan(s), to investigate possible fraud and to verify compliance with federal student financial aid program regulations, to locate you if you become delinquent in your loan payments or if you default, or to verify whether your debt qualifies for discharge or cancellation. To provide default rate calculations, disclosures may be made to guaranty agencies, to financial and educational institutions, or to federal, state or local agencies. To provide financial aid history information, disclosures may be made to educational institutions. To assist program administrators with tracking refunds and cancellations, disclosures may be made to guaranty agencies, to financial and educational institutions, or to federal or state agencies. To provide a standardized method for educational institutions to efficiently submit student enrollment status, disclosures may be made to guaranty agencies or to financial and educational institutions. To counsel you in repayment efforts, disclosures may be made to guaranty agencies, to financial and educational institutions, or to federal, state, or local agencies.

**Paperwork Reduction Notice.** According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a currently valid OMB control number. Public reporting burden for this collection of information is estimated to average 0.5 hours (30 minutes) per response, including the time for reviewing instructions, searching existing data resources, gathering and maintaining the data needed, and completing and reviewing the information collection. Individuals are obligated to respond to this collection to obtain a benefit in accordance with 34 CFR 674.61(b) or (c), 34 CFR 682.402(c)(2) or (c)(9), 34 CFR 685.213(b) or (c), and 34 CFR 686.42(b). Send comments regarding the burden estimate(s) or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20210-4537, or e-mail [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov) and reference OMB Control Number 1845-0065. **IMPORTANT: Do NOT return the completed Discharge Application to this address. If you return the completed form to this address, it will delay the processing of your application.**

If you have comments or concerns regarding the status of your individual submission of this form, contact the U.S. Department of Education at 1-888-303-7818.



  
James M. Carr  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

IN RE:	)	
	)	
KEITHIA LYNN LONGWORTH,	)	Case No. 15-01005-JMC-7
	)	
Debtor.	)	
_____	)	
	)	
KEITHIA LYNN LONGWORTH,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Adversary Proceeding No. 16-50023
	)	
DEUTSCHE BANK ELT NAVIENT & SLM	)	
TRUSTS and EDUCATIONAL CREDIT	)	
MANAGEMENT CORPORATION,	)	
	)	
Defendants.	)	

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

THIS MATTER came before the Court for a bench trial on May 15, 2017.<sup>1</sup>

<sup>1</sup> This adversary proceeding was joined for the purpose of discovery and trial with Adversary Proceeding No. 16-50021 and Adversary Proceeding No. 16-50022 (Docket No. 24). Prior to trial, Adversary Proceeding No. 16-50022 was resolved by an agreed consent to judgment, providing for the bankruptcy discharge of Ms. Longworth's

Plaintiff Keithia Lynn Longworth (“Ms. Longworth”) appeared by counsel Portia L. Douglas and James E. Rossow, Jr. Defendant Educational Credit Management Company (“ECMC”)<sup>2</sup> appeared by counsel Andrew M. Palmer. Deutsche Bank ELT Navient & SLM Trusts (“Trusts”) did not participate in the trial, consistent with ECMC’s representation that it holds all student loans that are at issue in this adversary proceeding. At the conclusion of the trial, the Court took the matter under advisement.

The Court, having reviewed the evidence presented at the trial, the *Joint Stipulation of Facts and Documentary Evidence* filed by the parties on May 8, 2017 (Docket No. 43) (the “Stipulation”), *Educational Credit Management Corporation’s Trial Brief* filed on May 10, 2017 (Docket No. 44), *Plaintiff’s Trial Brief in Support of Discharge of Student Loans* filed on May 10, 2017 (Docket No. 45), and the other matters of record in this adversary proceeding; having weighed the credibility of the witnesses; having heard the presentations of counsel at the trial; and being otherwise duly advised, now enters the following findings of fact and conclusions of law as required by Fed. R. Civ. P. 52, made applicable to this adversary proceeding by Fed. R. Bankr. P. 7052.

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debts with regard to the educational loans that were the subjects of such adversary proceeding. At trial, the parties advised the Court that all matters in dispute in Adversary Proceeding No. 16-50021 will be resolved by agreement, with appropriate pleadings to be submitted to the Court for approval providing for the bankruptcy discharge of Ms. Longworth’s debts with regard to the educational loans that are the subjects of that adversary proceeding. An agreed consent to judgment memorializing that agreement was subsequently filed and approved.

<sup>2</sup> The parties stipulated in connection with the trial that ECMC is the sole holder of all claims arising from the educational loans that are the subjects of this adversary proceeding.

### Findings of Fact

As contained in the Stipulation, Ms. Longworth and ECMC have jointly stipulated to the following facts:<sup>3</sup>

1. Ms. Longworth is a 64-year-old single woman who lives alone.
2. Ms. Longworth is presently employed as a librarian at the Brownsburg Public Library where she earns \$12.65 per hour for 37.5 hours each week, and \$18.975 per hour for 4.5 hours each month.
3. Ms. Longworth also works 4.5 hours each week at LifeWay Christian Resources where she earns \$8.25 per hour.
4. In 2005, Ms. Longworth began to consider working as a librarian and she ultimately decided to pursue a Master of Library Sciences degree.
5. Ms. Longworth began her Master's program in the summer of 2005.
6. She also decided to simultaneously obtain a Professional Educator's License.
7. In addition to the loans held by ECMC, Plaintiff owed certain student loans to the Department of Education, which were the subject of Adversary Proceeding No. 16-50022, *Keithia Lynn Longworth v. U.S. Department of Education and Great Lakes Educational Loan Services Inc.* (the "DOE Adversary Proceeding"). On February 8, 2017, the Department of Education entered into an *Agreed Consent to Judgment* in Adversary Proceeding No. 16-50022 [Doc 28] providing for the discharge of the loans owed by Plaintiff to the Department of Education (the "DOE Loans"). On February 13, 2017, the Court entered *Judgment* in the DOE Adversary Proceeding directing that the DOE Loans be discharged pursuant to 11 U.S.C. §523(a)(8) [Doc 30].

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<sup>3</sup> These stipulated facts (findings 1 through 29) are included verbatim, with no adjustment to account for grammatical or typographical errors or to include terms defined elsewhere herein.

8. In January 2009, Ms. Longworth began working part-time at LifeWay Christian Resources where she has continued to work.

9. In December 2011, Ms. Longworth completed her Master's program and received her Master in Library Science.

10. Ms. Longworth graduated from her Master's program with a 3.788 GPA.

11. In December 2011, Ms. Longworth obtained a part-time position with the Indianapolis Marion County Public Library and Ms. Longworth was also working at Lifeway Christian Resources. Ms. Longworth worked for the Indianapolis Marion County Public Library until June 2014. In June 2014, Ms. Longworth obtained her current full-time librarian position at the Brownsburg Public Library.

12. On or about April 28, 1998, Ms. Longworth executed a consolidation application and Promissory Note for a consolidation loan formerly guaranteed by the Pennsylvania Higher Education Assistance Agency ("PHEAA"). The Consolidation loan ("PHEAA Loan") in the amount of \$21,450 was disbursed on May 6, 1998. The interest rate on this loan is currently 3.12%. ECMC has chosen to consent to the discharge this consolidation loan; thus, Ms. Longworth will no longer be responsible for repayment of this loan.

13. ECMC now holds the PHEAA Loan by way of assignment from PHEAA.

14. On August 26, 2007, Ms. Longworth executed a Federal Stafford Loan Master Promissory Note for loans formerly held by USA Funds, Inc. Two loans were disbursed on August 16, 2007 in the amounts of \$8,500.00 and \$12,000.00 respectively ("USAF Loans"). The interest rate on these loans is currently 6.8%.

15. ECMC now holds the two USAF Loans by way of assignment from USAF.

16. The ECMC Loans are loans made by a governmental unit as defined by 11 U.S.C.

§ 523(a)(8)(A)(i).

17. As of February 5, 2017, Ms. Longworth owed ECMC \$52,713.37 in principal and \$2,665.33 in interest for a total of indebtedness of \$55,378.70 to ECMC, including the loan which ECMC will consent to a discharge. The remaining two loan balances are as follows:

<b>Loan Type</b>	<b>Amount</b>	<b>Disbursement Date</b>	<b>Interest Rate</b>
FFEL Stafford Subsidized (USAF)	\$10,720.25	8/16/2007	6.80%
FFEL Stafford Unsubsidized (USAF)	21,986.66	8/16/2007	6.80%

18. Interest is accruing on the ECMC loans at \$7.80 per day.

19. Between December 5, 2002 and August 18, 2007, Ms. Longworth has made \$14,198.34 in payments on the PHEAA Loan now owed to ECMC.

20. Ms. Longworth's last payment on the PHEAA loan was in the amount of \$206.12 on August 18, 2007.

21. To date, Ms. Longworth has not made any payments on the USAF Loans now held by ECMC.

22. If Ms. Longworth consolidated the ECMC Loans into a single Direct Consolidation Loan, she is eligible for REPAYE and other repayment programs.

23. ECMC contends that, if Ms. Longworth has a partial financial hardship as defined by 34 C.F.R. § 682.215(a)(4), she would be eligible for the IBR program under the Federal Family Education Loan Program. 34 C.F.R. § 682.215.

24. If she participated in the REPAYE program following consolidation, Ms. Longworth's current monthly payment would be approximately \$52.45 based upon her AGI of \$24,384.00, family size of one. Payments under the IBR program would be \$76.78 monthly. Standard Repayment without consolidation would be \$607.39 monthly, and with consolidation Standard Repayment would be \$344.14 monthly.



25. Ms. Longworth's payment under the REPAYE and any of the income-based repayment programs would change annually based in her adjusted gross income.

26. Ms. Longworth may eventually be eligible for the Public Service Loan Forgiveness ("PSLF") Program available for borrowers who are employed in public service jobs—individuals employed in federal, state or local government.

27. The PSLF forgives the remaining balance on Direct Loans after the borrower makes 120 qualifying payments, which are on-time payments. Eligibility and determinations of qualification for the program are not made until all qualifying payments are completed.

28. If Ms. Longworth stopped working full time for an eligible employer during repayment, she would not be eligible for the program.

29. If Ms. Longworth pursues consolidation of the remaining loans and elects a REPAYE or other income-driven repayment plan, the monthly payments under her chosen program are considered qualifying payments under PSLF.

The Court makes the following additional findings of fact:

30. Ms. Longworth owns a condominium she purchased in 2001. She scheduled the condominium as having a value of \$86,575 based on a "drive-by" appraisal conducted in 2014 in conjunction with a mortgage refinancing to reduce her monthly payment. She testified that the condominium would need costly renovations and repairs (e.g., windows, electrical, flooring) to yield the appraised amount at a sale. There are two mortgages against the condominium for the total scheduled principal amount of \$67,601. Her payments for the mortgages total approximately \$523 each month, and she pays \$218 each month for condominium association dues.

31. Ms. Longworth owns an unencumbered 2004 Chevrolet Malibu with over 200,000 miles of usage. Its estimated value is \$2,000. The vehicle needs steering repairs estimated to cost \$1,200-\$1,600.

32. Ms. Longworth's adult daughter suffers from epilepsy. Although her daughter lives independently in the Indianapolis area with public disability assistance, her daughter depends upon Ms. Longworth for care in those instances when her daughter suffers seizures.

33. Ms. Longworth is in reasonably good health. However, she suffered from shingles in 2016 and may be subject to a recurrence of that debilitating and extremely painful condition. She also has a degenerative disc ailment that currently does not prevent her from working.

34. Before her divorce in 1992, Ms. Longworth earned an associate degree in child care technology and worked in the childcare field.

35. After the divorce, she earned a bachelor of arts degree in communication in 1997 and a graduate degree as a master of library science ("Master's") in 2011. Ms. Longworth's graduate education path was guided by Federal publications and advisors who led her to believe that after earning her Master's, she would likely earn at least \$45,660 per year as a librarian. In fact, in part as the result of the Great Recession that America experienced from approximately December 2007 through July 2009, her annual earnings as a librarian have been materially lower than those projected by the Federal government and Ms. Longworth's educational advisors.

36. Ms. Longworth financed most of the cost of her undergraduate and graduate education by educational loans. In connection with her undergraduate education, Ms. Longworth

borrowed approximately \$22,450 in educational loans. She has made payments of approximately \$14,200 toward those educational loans.<sup>4</sup>

37. The two loans that are subjects of this adversary proceeding are identified as (1) an “FFEL Stafford Subsidized” loan in the principal amount of \$8,500, and (2) an “FFEL Stafford Unsubsidized” loan in the principal amount of \$12,000 (together, the “Two Loans”).<sup>5</sup> The Two Loans were disbursed on August 16, 2007. She has not made any payment on either of the Two Loans. Ms. Longworth’s principal balance owed on the Two Loans as of May 9, 2017 is \$33,233.30, which continues to accrue interest at 6.8% or \$4.73 *per diem*.<sup>6</sup>

38. Including the Two Loans that are the subjects of this adversary proceeding, Ms. Longworth borrowed about \$41,000 in educational loans to finance her pursuit of her Master’s. With respect to all graduate loans other than the Two Loans, the holders of those other loans, including ECMC, have agreed to the bankruptcy discharge of Ms. Longworth’s obligations. Ms. Longworth made approximately \$307<sup>7</sup> in payments toward certain of those other loans (for which the U.S. Department of Education consented to discharge).

39. Ms. Longworth has been managing her student loans and their repayment and actively communicated with the various servicers of her student loans. She made the payments described above and, at various points since taking out the undergraduate and graduate student loans, Ms. Longworth consolidated certain of the undergraduate student loans to lower her

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<sup>4</sup> See finding 19 above.

<sup>5</sup> See finding 17 above.

<sup>6</sup> These figures conflict with the figures in findings 17 and 18 above. The Court understands that the figures in findings 17 and 18 relate to all loans ECMC held, including the Two Loans and those with respect to which ECMC agreed to a bankruptcy discharge.

<sup>7</sup> See Exhibit 16. This brings the total payments Ms. Longworth made toward her undergraduate and graduate student loans to approximately \$14,500.

payment amount, and sought and was eligible for forbearance and/or deferment of certain of the loans.<sup>8</sup> Ms. Longworth testified that the time period to “claim” forbearance or deferment options, which she believes she would have qualified for based alone on her income level, had been used up and her loans would have gone into full payment status in 2016. There is no evidence that she has ever attempted to evade her student loan creditors.

40. As of the trial and for the foreseeable future, Ms. Longworth’s income is, and will be, derived from full-time employment (37.5 hours per week) as a librarian at the Brownsburg Public Library (the “Library”) and part-time employment (4.5 hours per week) at LifeWay Christian Resources. At the Library, Ms. Longworth has earned approximately \$25,692 per year from 2014 through 2016, and is projected to earn about the same annual amount for 2017 and the foreseeable future.<sup>9</sup> Ms. Longworth intends to continue to work as a librarian at least until she is 70 years old. She intends to delay drawing Social Security income benefits until age 70, and has less than \$11,500 in retirement accounts.<sup>10</sup> Of course, her ongoing employment by the Library is subject to the will of her employer to retain her, subject to the vagaries of public budgeting. It is unlikely that Ms. Longworth can materially increase her income.

41. Ms. Longworth’s projected net monthly income is approximately \$1,650,<sup>11</sup> and her monthly expenses are approximately \$1900. She tries to cover the shortfall of income versus

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<sup>8</sup> See Exhibit 20.

<sup>9</sup> The Library has provided very modest raises in the neighborhood of 2% each year since Longworth began working there. In addition, Ms. Longworth received a one-time upward adjustment to her hourly rate to bring her pay rate up to the Library’s then minimum pay rate for her position.

<sup>10</sup> See Exhibit 10.

<sup>11</sup> Ms. Longworth’s Exhibit 3 indicates a projected monthly income of \$1,734.63, based upon the assumption that she would continue to earn \$85.39 per month for overtime work performed at the Library. However, Ms. Longworth testified that she no longer receives overtime pay for a portion of her hours worked each month and that her monthly income projected on Exhibit 3 should be reduced by approximately \$85.39.

expenses by reducing certain discretionary spending for items like food, housekeeping, entertainment or recreation.<sup>12</sup>

42. Ms. Longworth commenced her chapter 7 bankruptcy case on February 19, 2015 (the “Petition Date”). As of the commencement of her bankruptcy case and until January 25, 2016, Ms. Longworth intended to pay her educational loan indebtedness. She had initially budgeted a payment of \$90 each month toward the payment of educational loan debt (see *Schedule J* filed on February 19, 2015 (Bankruptcy Case Docket No. 1)). However, she later concluded that she could not make any further payment toward her educational loans and filed an amended *Schedule J* on January 25, 2016 (Bankruptcy Case Docket No. 36) removing the student loan payment from her monthly expenses.

43. Among the obligations she must pay, after and notwithstanding her bankruptcy discharge, are pre-petition debts to the Federal and/or State taxing authorities totaling approximately \$747.

44. Ms. Longworth does not have the financial wherewithal to effectively seek a discharge of her obligations for the Two Loans by participating in the available Federal repayment programs. Were Ms. Longworth to attempt to pursue the available Federal programs, she would likely suffer adverse financial consequences. She would likely either (1) default and be faced with collection activity by ECMC (that might include the setoff of a significant part of her modest Social Security income benefits that are likely to be drawn on in approximately five years); or (2) even if she could make required payments for up to 20 years, achieve a forgiveness of an ever-growing debt that might result in a substantial income tax liability arising from cancellation of indebtedness income. ECMC’s employee, Jennifer Skerbinc, suggested that Ms.

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<sup>12</sup> Before filing her bankruptcy petition, Ms. Longworth was relying on credit cards to bridge the shortfall. She no longer uses credit cards.

Longworth should participate in the government's REPAYE (or similar) income-based repayment program. Under that program, if Ms. Longworth made her payment of \$52.45 each month called for, her debt under the Two Loans would grow by almost \$90 per month through interest accrual.<sup>13</sup> Ms. Skerbinc conceded that if Ms. Longworth successfully made such payments for 20 years (until Ms. Longworth was about 84 years old), the discharge of debt at the conclusion would generate a large income tax liability to the extent the value of Ms. Longworth's assets exceeded her other liabilities; e.g., she is balance sheet solvent. This effectively means that Ms. Longworth would lose any equity in her condominium that might exist at the time of the debt discharge under the program.

45. Based upon her projected income and expenses, it is clear that Ms. Longworth could not successfully participate in any available Federal repayment program without experiencing severe financial harm. She could not do so and maintain a minimal lifestyle.

46. Ms. Longworth testified extensively at the trial, both on direct examination and intensive cross-examination by ECMC's counsel. The Court finds her testimony to be fully credible. Ms. Longworth lives modestly and has made serious efforts to maximize her income by working at the best jobs she has been able to find that fit her experience and educational training. Ms. Longworth has diligently explored job opportunities in her field that are consistent with her level of education, training, abilities and geographic constraints imposed upon her by her circumstances.

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<sup>13</sup>  $\$4.73 \times 30 \text{ days} = \$141.90$ , less the \$52.45 REPAYE monthly payment amount calculated by ECMC, yields an average monthly increase in the amount of the debt of \$89.45.

### Conclusions of Law

1. Any finding of fact above will also be a conclusion of law, and any conclusion of law will also be a finding of fact to support the judgment of the Court.

### *Jurisdiction and Venue*

2. This court has jurisdiction in this matter pursuant to 28 U.S.C. §§ 157 and 1334.

3. This adversary proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).

4. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

### *Exception to Discharge: § 523(a)(8)*

5. Section 523(a)(8) provides, in relevant part:

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

\* \* \*

(8) unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents, for –

(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; ....

6. The “undue hardship” inquiry is a “case-specific, fact-dominated standard.”

*Krieger v. Educ. Credit Mgmt. Corp.*, 713 F.3d 882, 884 (7<sup>th</sup> Cir. 2013). In *Matter of Roberson*, 999 F.2d 1132, 1135 (7<sup>th</sup> Cir. 1993), the Seventh Circuit Court of Appeals adopted the three-prong test for undue hardship articulated by the Second Circuit Court of Appeals in *Brunner v. New York State Higher Educ. Servs. Corp.*, 831 F.2d 395, 396 (2d Cir. 1987) (*per curiam*), as

follows:

- (1) that the debtor cannot maintain, based on current income and expenses, a “minimal” standard of living for [him]self and [his] dependents if forced to repay the loans;
- (2) that additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment period of the student loans; and
- (3) that the debtor has made good faith efforts to repay the loans.

7. Ms. Longworth, as debtor, “has the burden of establishing each element of the test by a preponderance of the evidence.” *Goulet v. Educ. Credit Mgmt. Corp.*, 284 F.3d 773, 777 (7<sup>th</sup> Cir. 2002) (citing *Grogan v. Garner*, 498 U.S. 279, 291, 111 S.Ct. 654, 112 L.Ed.2d 755 (1991)).  
*First Prong – Minimal Standard of Living*

8. Whether Ms. Longworth can maintain a minimal standard of living “should serve as the starting point for the ... inquiry since information regarding the debtor’s current financial situation generally will be concrete and readily obtainable ... .” *Roberson*, 999 F.2d at 1135. Therefore, the Court must examine the “debtor’s current financial condition to see if payment of the loans would cause [her] standard of living to fall below that minimally necessary.” *Id.*

9. Since the Petition Date, Ms. Longworth’s income has decreased. Notwithstanding the modest 2% annual raises and a one-time adjustment to raise her hourly rate to the newly established minimum set by the Library, her overall hours have been reduced and overtime pay has been eliminated. Ms. Longworth has made additional concerted efforts to reduce her expenses. (She refinanced her mortgage loans to lower the payments, for example.) She covers the monthly negative gap between take-home pay and expenses through decreasing discretionary spending and delaying maintenance/repairs.

10. Ms. Longworth’s modest lifestyle equates to a minimal standard of living. The expenses she incurs are required for a minimal standard of living. *See Rutherford v. William D.*



*Ford Direct Loan Program (In re Rutherford)*, 317 B.R. 865, 878 (Bankr. N.D. Ala. 2004), setting forth the following elements as establishing a minimal standard of living in modern American society: (1) shelter and furnishing, maintaining, heating and cooling it; (2) basic utilities including electricity, water, gas and telephone; (3) food, personal hygiene products, clothes, and shoes; (4) vehicles, including gasoline, insurance, routine maintenance and unexpected repairs; (5) health insurance or the ability to pay for medical and dental expenses when they arise, life insurance or other savings for burials and other final expenses; and (6) small diversions or sources of recreation.

11. Ms. Longworth has no excess income available to make any significant paydown of the Two Loans, even at the \$52.45 per month REPAYE payment calculated by ECMC.<sup>14</sup>

12. Ms. Longworth has satisfied the first prong of the *Brunner* test.

*Second Prong – State of Affairs is Likely to Persist*

13. “ ‘Requiring evidence not only of current inability to pay but also of additional, exceptional circumstances, strongly suggestive of continuing inability to repay over an extended period of time, more reliably guarantees that the hardship presented is “undue.” ’ ” *Roberson*, 999 F.2d at 1136 (quoting *Brunner*, 831 F.2d at 396).

14. Generally speaking, the second prong requires a court to make a prediction about the future based on a debtor’s current circumstances to determine whether her inability to pay endures long enough (“a significant portion of the repayment period”) such that the hardship debtor is presently experiencing (“this state of affairs”) really is undue (“additional circumstances”).

15. Ms. Longworth’s income since graduating with her Master’s has not increased

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<sup>14</sup> Paying that amount would increase her projected budget deficit to over \$300 per month.

sufficiently to allow her to repay the Two Loans, and her present financial difficulties are likely to persist for the foreseeable future.<sup>15</sup>

a. Objective data show that librarian positions are projected to grow 2% (slower than average) from 2014 to 2024 (*See* Exhibit 13.) This is a gloomier picture than the same report that was published in 2004-05, which predicted “very good” job opportunities “because a large number of librarians are expected to retire in the coming decade, creating many job openings.” (*See* Exhibit 18.)

b. Ms. Longworth’s future prospects for a higher paying job are not good. She has made a good faith effort searching for higher paying jobs in her field with no success. Although she has formally applied (without success) for only two positions since March of 2014, she has diligently searched for and has not found any other positions consistent with her training and experience that would pay more than her position with the Library.

c. Ms. Longworth’s earning potential has been tested in the marketplace since her graduation,<sup>16</sup> and her earning capacity appears to have peaked. Her unsuccessful attempts to acquire a higher paying job and the consistently low-level pay scale indicate that she has maximized her income potential.

16. Ms. Longworth intends to continue working after reaching full retirement age in order to pay her necessary living expenses. She has a small retirement savings that, at her

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<sup>15</sup> The relevant time period – “a significant portion of the repayment period” – is the repayment period on the Two Loans, not any extended repayment period potentially available under income-based, extended-period repayment programs. *See Price v. Devos (In re Price)*, 573 B.R. 579, 606 (Bankr. E.D. Pa. 2017). Based on the evidence presented, the Court cannot determine with certainty what the repayment period is for the Two Loans. This is not dispositive, however, because “the foreseeable future” would encompass “a significant portion of the repayment period.”

<sup>16</sup> Contrast the debtor in *Brunner*, who filed for the discharge of her student loans within a month of the date the first payment of her loans came due and, as of the time of the hearing, only ten months had elapsed since her graduation. *Brunner*, 831 F.2d at 397.

current expense level of approximately \$1,900 per month, would be consumed in less than one year. She does not intend to draw Social Security benefits until age 70 and, at that point, subjects herself to the risk of having the government setoff against her Social Security benefits or having those benefits garnished. *See Lockhart v. U.S.*, 546 U.S. 142, 126 S.Ct. 699, 163 L.Ed.2d 557 (2005).

17. “The size of the debt is relevant – the larger it is, the more likely that imposing full liability on the debtor will produce an undue hardship ... .” *Greene v. U.S. Dep’t of Educ.*, 770 F.3d 667, 670 (7<sup>th</sup> Cir. 2014). The current principal balance on the Two Loans is approximately \$33,000, which continues to accrue interest at \$4.73 *per diem*.

a. Paying \$33,000 plus interest would be a significant burden on Ms. Longworth considering her straitened financial circumstances. The repayment programs offered do not help with this because (1) Ms. Longworth cannot make the monthly payments, (2) the interest accrual would add to the amount of the debt rather than decrease the amount of the debt during the repayment program term, (3) she would incur a significant tax liability for cancellation of indebtedness income when her ability to repay it is virtually nonexistent,<sup>17</sup> and (4) over the duration of the repayment program period (10-25 years, depending on the program), the likelihood of Ms. Longworth’s missing a payment and going into default is very high, especially given that her modest lifestyle yields a monthly deficit without counting a payment

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<sup>17</sup> *See* 26 U.S.C. § 108; *Abney v. U.S. Dep’t of Educ. (In re Abney)*, 540 B.R. 681, 689 (Bankr. W.D. Mo. 2015) (“a court ... must be mindful of both the likelihood of a debtor making significant payments under the IBRP, and also of the additional hardships which may be imposed by these programs. As stated, interest and other charges would continue to accrue while the Debtor participated in IBRP, meaning that the total debt would be increasing. ... Furthermore, borrowers who default while in an IBRP program lose eligibility. ... And, even if the Debtor were able to navigate the 25-year program without a misstep, he could well then be faced with a significant tax debt when the debt is forgiven. To explain, discharge of a debt in bankruptcy is not itself a taxable event. However, forgiveness of a student loan at the end of the IBRP period is taxable in the same way as forgiveness of any other debt outside bankruptcy. That is, to the extent a debtor’s assets exceed liabilities after the forgiveness, the forgiven debt is taxable income.”)

toward her student loans and there is no cushion to absorb a major expense (her home needs costly repairs, her 13 year old car with high mileage will need to be repaired or replaced in the not-too-distant future, a medical bill, etc.).

18. Ms. Longworth's current state of affairs strongly suggests that her current inability to pay will continue over an extended, indefinite period of time through no fault of her own.

19. "[T]he dischargeability of student loans should be based upon the certainty of hopelessness, not simply a present inability to fulfill financial commitment." *Roberson*, 999 F.2d at 1136 (quoting *In re Briscoe*, 16 B.R. 128, 131 (Bankr. S.D.N.Y. 1981)). The Court finds a certainty of hopelessness in Ms. Longworth's financial circumstances – "[t]here is no reason to think that a brighter [financial] future is in store" – and that imposing the obligation to repay the student loans would produce an undue hardship.

20. Ms. Longworth has satisfied the second prong of the *Brunner* test.

*Third Prong – Good Faith*

21. "A debtor's good faith efforts to repay his student loans are measured by his ability to 'obtain employment, maximize income, and minimize expenses.' " *Tetzlaff v. Educ. Credit Mgmt. Corp.*, 794 F.3d 756, 760 (7<sup>th</sup> Cir. 2015) (quoting *Roberson*, 999 F.2d at 1136)). Good faith does not entail commitment to future efforts to repay – debtors do not always have to agree to a payment plan and forgo a discharge. *Krieger*, 713 F.3d at 884.

a. Ms. Longworth has maximized her income and minimized her expenses in an effort to repay her student loans. She works one full-time job and one part-time job, and has trimmed her expenses, including reducing her mortgage payment, to a level that cannot be described as anything but a minimal standard of living. Ms. Longworth did not ignore her

student loan debt or try to evade her creditors; rather, she consolidated her student loan debt and sought deferments and/or forbearances and remained actively engaged in managing the debt.

b. Ms. Longworth intended to pay \$90 per month on her student loan debt after the Petition Date. She did not file this adversary proceeding until nearly a year later when she determined that she could not make any further payments and maintain her minimal standard of living.

c. As noted above, Ms. Longworth has paid, in total, approximately \$14,500 toward her educational loan debt, none of which was paid toward the Two Loans. While recognizing *Tetzlaff*'s position that paying down one student loan does not equate to good faith efforts to repay a different loan, the Court notes that Ms. Longworth paid a significant amount toward her educational debt in the order it came due (why she paid the most toward her undergraduate loans), as she had funds available, and without incentives to pay one loan before another, which distinguishes her actions from those of Mr. Tetzlaff.<sup>18</sup>

d. As a matter of law, Ms. Longworth is not required to enroll in an income-based or -contingent repayment program in order to show good faith. *Krieger*, 713 F.3d at 884. For the reasons described above, Ms. Longworth has made a sound financial decision not to enroll in such a program and thus her failure to enroll is not indicative of a lack of good faith.

22. Ms. Longworth has satisfied the third prong of the *Brunner* test.

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<sup>18</sup> See *Tetzlaff*, 794 F.3d at 761 ("Furthermore, as the bankruptcy court noted, it seems that Tetzlaff repaid his debt to Florida Coastal largely because he needed the school's cooperation in releasing his diploma and transcript. Thus, Tetzlaff was motivated by certain incentives to pay down his Florida Coastal debt that do not apply to the repayment of his debt held by Educational Credit.").

**Decision**

Based on the foregoing, the Court concludes that Ms. Longworth's employment, education, borrowing and repayment history, present economic circumstances, and future employment prospects support the conclusion that the Two Loans should be discharged pursuant to § 523(a)(8).

A. The Trusts are hereby DISMISSED as not holding either of the Two Loans that are the subjects of this adversary proceeding.

B. Ms. Longworth has proven by a preponderance of the evidence each and all of the necessary elements such that the student loan debt owed by Ms. Longworth to ECMC is DISCHARGEABLE pursuant to § 523(a)(8).

The Court will enter judgment in favor of Ms. Longworth and against ECMC consistent with these findings of fact and conclusions of law contemporaneously herewith.

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