

Bankruptcy & Student Loans

Can my student loan be discharged by bankruptcy?

Typically not, but there are some exceptions, like undue hardship.

How do bankruptcy courts determine undue hardship?

The bankruptcy court will ask these questions:

- Can you repay the loan and maintain a minimal standard of living?
- Will hardship continue for a significant portion of the loan repayment period?
- Have you made good faith efforts to repay the loan before filing bankruptcy?

How do I get the bankruptcy court to determine undue hardship?

You must file bankruptcy (chapter 7 or 13) and then, within the bankruptcy, file an adversary proceeding (a type of complaint) explaining why you have an undue hardship.

Federal Student Loans – Department of Justice may recommend discharge!

If you are trying to discharge federal student loans, the judge will ask the federal government whether or not it agrees that you have an undue hardship. You will be asked to fill out paperwork called an attestation. If the government agrees that you are experiencing an undue hardship, it will recommend that the court give you a full or partial discharge. Even if the government does not make this recommendation, the court might still find that you have an undue hardship.



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What happens to my loan if the bankruptcy court determines repayment would cause undue hardship?

Your loan may be fully or partially discharged or the loan terms may be improved, for example, with a lower interest rate.

What can I do if the bankruptcy court doesn't discharge my loans but I can't afford the payments?

Switching to a payment plan that is a better fit is often possible. Contact your loan servicer if you would like to discuss repayment plan options. You can get information about all of your federal student loans by logging on to "My Federal Student Aid."

Some private student loans can be discharged:

- Loans where the loan amount was higher than the cost of attendance (such as tuition, books, room, and board), which can occur when a loan is paid directly to a consumer.
- Loans to pay for education at unaccredited colleges, a school in a foreign country, or unaccredited training and trade certificate programs.
- Loans made to cover fees and living expenses incurred while studying for the bar exam or other professional exams.
- Loans made to cover fees, living expenses, and moving costs associated with medical or dental residency.
- Loans to a student attending school less than half-time.

It may not be too late!

If your bankruptcy was already approved, but you did not ask the court to make a determination of undue hardship before the case was closed, you can ask the court to reopen your bankruptcy case and then file the adversary proceeding.