



CLLA HILL DAY
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Student Loan Bankruptcy Reform
A Balanced, Objective Solution

The Problem

- Student loan debt has grown from **\$500 billion (2006)** to over **\$1.8 trillion (2025)**.
- Under current law (11 U.S.C. § 523(a)(8)), student loans are dischargeable only upon proof of “**undue hardship**.”
- “Undue hardship” is **not defined** in the Bankruptcy Code.
- Most courts apply the 1987 *Brunner* test — widely criticized as subjective, outdated, and overly burdensome.
- Results are inconsistent across jurisdictions, discouraging legitimate filings and creating uncertainty for borrowers and creditors alike.

Administrative guidance issued by the Department of Education and DOJ in 2022 has improved consistency in some federal loan cases — but:

- It applies only to **federal loans**,
- It is **not statutory law**, and
- It can be withdrawn at any time.

Congressional action is needed to create a clear, durable standard.

The CLLA Solution: Replace “Undue Hardship” with “Substantial Hardship”

The Commercial Law League of America (CLLA) proposes amending § 523(a)(8) to adopt an objective, balanced “substantial hardship” standard.

A Student Loan Would Be Dischargeable If:

1. The loan first became due **at least 10 years** before the bankruptcy filing;
 2. Repayment would reduce the debtor’s disposable income below **80% of the applicable means-test threshold**; and
 3. The financial condition is likely to persist for **at least five years**.
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Presumed Hardship in Clearly Qualifying Cases

Hardship would be presumed if the debtor:

- Receives **Social Security disability benefits**;
- Has a **100% VA disability rating** or individual unemployability determination;
- Had household income averaging less than **175% of federal poverty guidelines** in the seven years before filing; or
- Has current household income below **200% of poverty guidelines** and:
 - Relies solely on Social Security or retirement income; or
 - Supports an elderly, chronically ill, or disabled family member.

Reorganization Option

In Chapter 11, 12, or 13 cases, discharge would be available if the debtor commits to paying **10% of the outstanding principal** as of the petition date.

Why This Approach Works

- Creates **clear, objective standards**
- Promotes **uniformity nationwide**
- Protects borrowers facing genuine long-term hardship
- Preserves creditor rights and accountability
- Provides statutory certainty rather than temporary administrative policy
- It is consistent with the criteria utilized in the successful DOJ program

Unlike proposals that eliminate § 523(a)(8) entirely or address only private loans, the CLLA proposal represents a **balanced compromise** between debtor and creditor interests.

The Ask

Congress should amend 11 U.S.C. § 523(a)(8) to codify a clear, objective hardship standard.

The CLLA proposal offers a practical, fair, and durable solution to the student loan discharge dilemma.