



CLLA HILL DAY
March 2, 2026
Student Loan Bankruptcy Reform
The Need for a Clear and Balanced Standard

Background: How We Got Here

The dischargeability of student loans in bankruptcy has changed dramatically over the past 45 years:

- **Pre-1976** – Student loans were treated like other unsecured debt and were dischargeable.
- **1976** – Congress limited discharge to loans in repayment more than five years, unless “undue hardship” was proven.
- **1978** – Bankruptcy Code § 523(a)(8) adopted similar limits.
- **1990–1998** – The time-based discharge was extended to seven years, then eliminated entirely.
- **2005 (BAPCPA)** – Nearly all student loans, including private loans, became nondischargeable absent a showing of “undue hardship.”

Today, student loans can only be discharged by proving “undue hardship” — a term not defined in the Bankruptcy Code.

The Current Legal Standard: Brunner

Most courts apply the 1987 *Brunner* test, which requires debtors to prove:

1. They cannot maintain a minimal standard of living if forced to repay the loans;
2. This condition is likely to persist for a significant portion of the repayment period; and
3. They have made good faith efforts to repay.

The *Brunner* test is widely criticized as outdated, subjective, and excessively burdensome. It produces inconsistent results and discourages debtors from even seeking relief.

The Scope of the Problem

- Student loan debt has grown from **\$500 billion in 2006** to **over \$1.835 trillion (Q4 2025)**.
- Legislative reform efforts have repeatedly stalled.
- Executive forgiveness efforts have provided targeted relief (e.g., disability, long-term IDR/PSLF participants), but broad cancellation was struck down by the Supreme Court.



- As of January 2025, approximately **\$188.8 billion** had been forgiven for 5.3 million borrowers — but this relief is limited and program-specific.

While helpful to some, these programs do not resolve the structural uncertainty surrounding § 523(a)(8).

DOJ/DOE Guidance: A Temporary Fix

In 2022, the Department of Education and Department of Justice introduced guidance to standardize how “undue hardship” is evaluated in bankruptcy cases involving federal loans.

Under this process:

- Debtors submit a financial attestation.
- Government attorneys review and may recommend discharge.
- Courts retain final authority.

Early results suggest the program has improved consistency. However:

- It applies only to **federal loans**.
- It is **not law** and may be withdrawn or modified.
- It does not resolve uncertainty for private loans.
- Courts remain bound by *Brunner* in most jurisdictions.

Permanent statutory clarity is needed.

The CLLA Solution: A Clear, Balanced Standard

In 2019, the CLLA Bankruptcy and Creditors’ Rights Sections jointly proposed an amendment to § 523(a)(8) that replaces the vague “undue hardship” standard with a defined “substantial hardship” test.

Substantial Hardship Standard

A student loan would be dischargeable if:

1. The loan first became due **at least 10 years** before bankruptcy filing;
2. The debtor’s monthly disposable income would fall below **80% of the applicable means-test threshold** if repayment were required; and
3. The debtor’s financial condition is likely to persist for **at least five years**.

Presumptive Substantial Hardship

Hardship is presumed if:

- The debtor receives Social Security disability benefits;



- The debtor has a 100% VA disability rating or individual unemployability determination;
- Household income averaged less than **175% of federal poverty guidelines** during the seven years before filing; or
- Household income is less than **200% of federal poverty guidelines** and:
 - Income is limited to Social Security or retirement benefits; or
 - The debtor supports an elderly, chronically ill, or disabled family member.

Chapter 11, 12, and 13 Option

In reorganization cases, discharge would be available if the debtor commits to paying **10% of the outstanding principal** as of the petition date.

Why the CLLA Proposal Works

Unlike proposals that:

- Eliminate § 523(a)(8) entirely, or
- Limit discharge only to private loans,

The CLLA approach:

- Creates objective, predictable standards;
- Protects genuinely distressed borrowers;
- Maintains creditor protections;
- Applies uniformly;
- Provides long-term statutory certainty.

It represents a balanced compromise between debtor and creditor interests and aligns with CLLA's mission of fairness and equality.

Conclusion

Student loan debt now exceeds \$1.8 trillion. The current “undue hardship” standard is inconsistent, unpredictable, and outdated. Administrative guidance offers temporary relief but lacks permanence and statutory authority.

Congress should codify a clear, objective standard for student loan discharge in bankruptcy. The CLLA proposal provides a balanced, workable framework that restores predictability while preserving accountability.

We respectfully urge Congress to consider this approach.