

FREQUENTLY ASKED QUESTIONS:

Bankruptcy Discharge and Education Loans

Q1. Why does AccessLex Institute, as a student loan holder, propose amending the bankruptcy code to make discharge easier?

As a nonprofit holder of a large portfolio of student loans, AccessLex Institute clearly has an interest in its loans being repaid—otherwise, its mission-based activities would be hindered. However, as a nonprofit, we have determined that the application of the current bankruptcy statute is inappropriate and needs to be repaired so that the treatment of student loans in bankruptcy is aligned with the policy and aspirational goals of the bankruptcy code.

Q2. Why is it important to amend the bankruptcy code in regard to student loans?

We believe it is sound policy to create a more consistent and efficient process for student loans to be considered for discharge across the bankruptcy court system, which should be beneficial to both the bankruptcy courts and distressed student loan borrowers. Changes through case law would likely be incremental and continue the current environment where differing tests, with differing application of such tests, in differing circuits prevails. A statutory amendment is more likely to result in the best policy outcome.

Q3. Why not eliminate section 523(a)(8) completely?

While it is important to ease both the procedural and substantive hurdles currently required in bankruptcy proceedings relating to student loan discharge, it is also important that incentives are not created to encourage bankruptcy to be used as a repayment plan.

Q4. What constitutes the 7-year repayment waiting period under the proposal?

The 7-year repayment waiting period would begin when the loan grace period ends. During periods where the borrower has been granted a mandatory deferment or forbearance the waiting period would be tolled.

Q5. Why don't discretionary deferments or forbearances, like those for economic hardship or illness, toll the waiting period?

We believe that the vast majority of student loan borrowers have a willingness to repay their loans, and that the inability to repay is generally the cause of delinquency and default. Bankruptcy is typically a last resort and it is common for borrowers to exhaust all avenues of deferment and forbearance before falling into default. Given that the very reasons for such discretionary forbearances are likely to be the drivers of the ultimate need for bankruptcy relief, it seems incongruous that extending the timeline for that relief would be beneficial to the borrower or the creditor.

Q6. Does repayment include payments of \$0 under income driven repayment plans?

No. A borrower participating in a qualified income-driven repayment plan with repayment terms providing for monthly payments no greater than 15 percent of discretionary income with the possibility of forgiveness after no longer than 25 years, would have such loans discharged by the current undue hardship test.

Q7. Wouldn't enrollment in an income-driven repayment plan (in lieu of discharge) protect borrowers in financial distress?

No. First, defaulted loans are not eligible for repayment under any of the federal income-driven repayment plans until they have been rehabilitated or consolidated into a federal Direct Consolidation Loan. Under AccessLex Institute's proposal, a defaulted loan would be considered "in repayment" and would become eligible for discharge after seven years in repayment without having to satisfy the undue hardship test.

Second, AccessLex Institute's proposal would not take away a borrower's ability to pursue discharge of their federal student loans in bankruptcy when enrolled in a federal income-driven repayment plan. Instead, a federal bankruptcy judge would apply the undue hardship test and consider the specific circumstances of each individual case to decide whether discharge is appropriate. We believe that being in an income-driven repayment plan and still not being able to pay one's bills should strengthen the case for discharge.

Finally, participation in an income-driven repayment plan without the option for discharge could impose additional burdens on the borrower that are at odds with the "fresh start" goal of the bankruptcy code. For example, accrued interest and other charges can increase the amount of debt over the life of the loan. Additionally, even if a borrower is able to successfully complete a 25-year income-driven repayment program, he could owe a significant amount of tax on the forgiven student loan debt. In contrast, discharge of his student loans in bankruptcy would give the borrower the opportunity to use his fresh start to improve his financial situation.

Q8. Why does AccessLex Institute suggest a period of seven years before a borrower may file bankruptcy without using the undue hardship test?

We believe seven years is a reasonable amount of time and demonstrates a borrower's good faith efforts to repay their loan. Also, there is a precedent for a 7-year repayment waiting period. In 1990, the 7-year repayment waiting period was implemented for student loan borrowers with respect to bankruptcy proceedings, which remained in place until the repayment term was eliminated from section 523(a)(8) by Congress in 1998.

Q9. Why are both federal and private education loans included in AccessLex Institute's bankruptcy proposal?

While federal student loan borrowers have the option of several income-driven repayment plans, which can help reduce their monthly payments, we believe the borrowers who are not eligible for a qualified income-driven repayment plan should have the possibility of bankruptcy discharge without having to satisfy the undue hardship test.

Q10. Why does the proposal include a one-time option to file for bankruptcy without using the undue hardship test?

Bankruptcy should not be viewed as another repayment plan, but something to help those who are in need. Borrowers need to understand the severity of the situation and not just use bankruptcy because they can. If an individual is successful in a previous bankruptcy filing and the individual obtains additional student loans but needs to file bankruptcy again, we believe it is fair for that borrower to go through the undue hardship test for any future loans that become subject to bankruptcy proceedings.

About AccessLex Institute: AccessLex Institute is a nonprofit organization committed to helping talented, purpose-driven students find their path from aspiring lawyer to fulfilled professional. In partnership with its nearly 200 Member law schools, improving access and positively influencing legal education have been at the heart of the Company's mission since 1983. AccessLex Institute has offices in West Chester, Pa., and Washington, D.C., with a team of accredited financial education counselors based throughout the United States. Learn more at [AccessLex.org](https://www.accesslex.org)