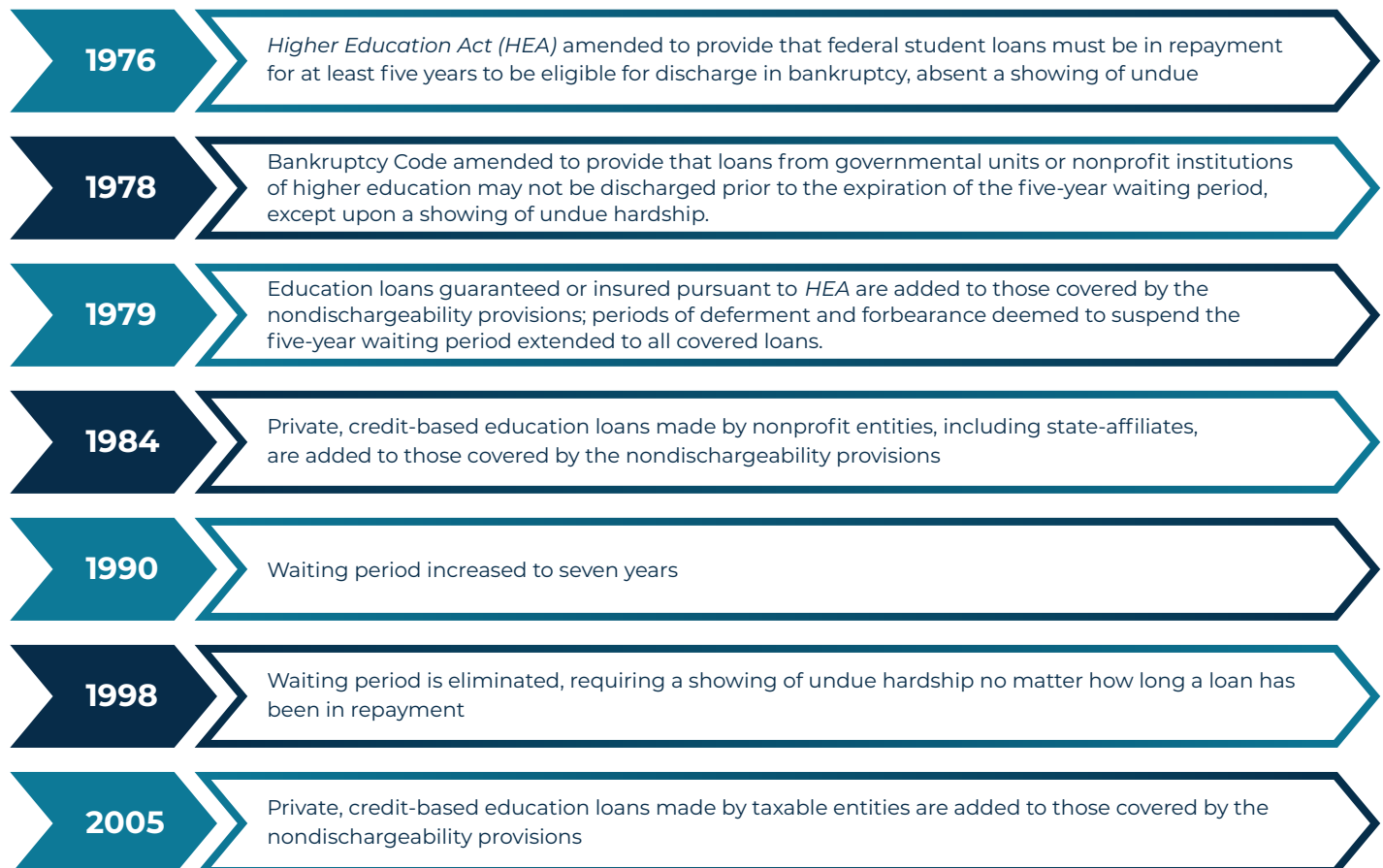


AccessLex Institute® proposes that education loans be considered on equal terms with other unsecured debt in a bankruptcy proceeding if the loan in question has been in repayment for at least seven years.

Prior to 1976, student loans, much like other forms of unsecured credit, were dischargeable in bankruptcy; but changes made over the last 40 years to the Bankruptcy Code have resulted in overly burdensome procedural and substantive hurdles to the discharge of student loans by borrowers. Today, a student loan borrower seeking discharge must engage in a separate adversary proceeding within the bankruptcy proceeding to prove that a student loan creates an “undue hardship” before a court may order full or partial discharge of such loans.

The resulting policy changes, as applied, fail to live up to the promise of a “fresh start” imagined by the bankruptcy code. Bankruptcy judges, due to legislative changes subsequent to the adoption of the undue hardship test, continue to apply a standard for relief that considers a borrower’s full remaining repayment period, even though that standard was intended to apply only during a limited waiting period. Many, including scholars and commentators in this field, have found application of the current standard to result in arbitrary, random, and sometimes seemingly unfair results. As a result of these hurdles, it is estimated that a mere 0.3 percent of student loan debtors in bankruptcy cases even seek to have their educational debts discharged.

Changes to the Treatment of Education Loans in Bankruptcy



AccessLex Institute Proposal

As a nonprofit holder of both federally-guaranteed and private, credit-based education loans, AccessLex Institute has long advocated for responsible borrowing, offered quality counseling and other relevant and timely information to student borrowers, and encouraged diligent repayment by borrowers. However, we recognize that the fresh start afforded through bankruptcy may be the most appropriate choice for student loan borrowers in financial distress and should be more accessible under certain circumstances.

Therefore, AccessLex Institute believes that it is time to better align the treatment of education loans with the sound public policy that supports bankruptcy relief in general by restoring reasonable and efficient opportunities in certain instances for full or partial discharge of education loans.

Specifically, **AccessLex Institute proposes that education loans be considered on equal terms with other unsecured debt in a bankruptcy proceeding if the loan in question has been in repayment for at least seven years** (exclusive of deferments or mandatory forbearances).

The current statutory framework and applicable undue hardship requirements would continue to apply to student loans:

- In repayment less than seven years;
- Owed by a borrower who had sought and been granted discharge of any student loan amount in a previous bankruptcy proceeding; or,
- Eligible to participate in an income-driven repayment plan that provides monthly payments no greater than 15% of discretionary income with the possibility of loan forgiveness after no longer than 25 years.

AccessLex Institute believes that this proposal sufficiently recognizes the unique nature of student loan debt, and properly balances the interests of various stakeholders, eliminating any opportunity for serial use of bankruptcy as a substitute student loan repayment plan and maintaining its focus as a last resort option for those truly in need.

Questions about AccessLex Institute's proposal may be directed to Nancy Conneely, Vice President of Policy, at nconneely@accesslex.org.