



AMERICAN
BANKRUPTCY
INSTITUTE

2023 Rocky Mountain Bankruptcy Conference

Consumer Hot Topics: Student Loans, Proofs of Claim, Post-Petition Assets and More

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CONCURRENT SESSION

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2023 ABI Rocky Mountain Seminar Consumer Hot Topics

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1. Recent Decisions Involving Rule 3002.1

In re White, 2022 WL 2826531 (Bankr. S.D. Ga. 2022)

Creditor held a security interest in the debtor's manufactured home. The confirmed plan bifurcated the claim. After confirmation the creditor filed a notice of postpetition mortgage fees, expenses and charges pursuant to Rule 3002.1(c). The debtor challenged the notice stating that the Rule did not apply. The court agreed with the debtor, finding that claims valued under § 506(a) are not being paid the "contractual installment payments," which is one of the two elements (the other being the property is the debtor's principal residence) under Rule 3002.1(a) to establish the Rule's applicability. The debtor's motion challenging the notice was thus moot, since the Rule did not apply, and the creditor was bound by the terms of the confirmed plan. If the debtor receives a discharge, the creditor will be unable to collect any further amounts in connection with the debt.

In re Neria, 2022 WL 17254478 (Bankr. N.D. Tex. 2022)

Debtor alleged numerous instances of mortgage servicer misconduct, such as misapplication of payment, retention of improperly paid interest on arrearage, escrow errors, failure to file payment change notices, failure to accurately respond to a RESPA request, and stay violations by collecting pre-petition debt through post-petition payments. Initially, the court found that the original plan was an "erroneous and nonsensical form-generated Chapter 13 plan" where it misclassified the mortgage debt as being paid in full through the plan. The court determined that Rule 3002.1 applied. The court found creditor violated the automatic stay and Rule 3002.1(b) by retaining an escrow overage for an unreasonable time as well as for retaining interest on the arrearage that it was not entitled to and required the return of that interest to the debtor. Under Rule 3002.1(i) the court has discretion on how to address rule violations. While it could have excluded evidence presented by the creditor, it decided that the "lack of clarity on the issues and the context of the current litigation" made it more palatable to permit the creditor to present the omitted information. It did,

however, award attorney's fees to debtor's counsel for the creditor's failure to comply with Rule 3002.1(b).

In re Luera, 2022 WL 17730898 (Bankr. S.D. Tex. 2022)

On the “eve of discharge” there was a belated claim objection to the mortgage creditor's amended claim. The original claim was timely filed but the amended claim was filed 899 days after the bar date. To compound the matter, the debtors waited until the 60th month of the plan to bring the objection. The amended claim was based upon ad valorem tax advances that under state law were due January 1 of the year the case was filed, though not paid until a post-petition date. The court determined circuit authority liberally permits amended claims. While the creditor could have been more proactive, the debtor's claimed prejudice was self-imposed, hence the amended claim was allowed. Among the debtors' argument was that since the debt was paid post-petition, the creditor failed to comply with Rule 3002.1(c) and include this amount in a notice of fees, expenses, and charges. The court decided that since the property tax came due pre-petition it belonged in the proof of claim rather than subject to Rule 3002.1(c).

In re Dewitt, 2022 WL 4588320 (Bankr. S.D. Ohio 2022)

Debtor's plan proposed to cure her mortgage arrearages. During the term of her plan, she did not pay property taxes and the mortgage holder paid the taxes on 3 different occasions. The creditor did not file the Rule 3002.1(c) notice on the third advance. When the plan was completed, trustee issued the notice of final cure and the creditor's response indicated that debtor was current. However, a year after discharge the creditor sought to foreclose, involving the third advance. The debtor reopened her bankruptcy case and the court found that the creditor caused harm by filing an inaccurate Fed. R. Bankr. P. 3002.1(g) response stating the debtor was current and failing to disclose a recent escrow advance. The court determined that on a subsequent hearing on damages or sanctions, creditor would be precluded from presenting any information that could have been included in its response to the final cure notice.

In re Fivecoate, 634 B.R. 720 (Bankr. D. S.C. 2021)

Debtor filed a motion seeking a determination of the final cure under Rule 3002.1(h). During the term of her plan, she received correspondence that she was not only post-petition current but paid ahead. However, when the creditor responded to the trustee's notice of final cure, it stated the debtor was delinquent for payments during the time she had been previously told she was paid ahead. At the hearing on the debtor's motion, it was revealed that the mortgage creditor had been misapplying the trustee's disbursements. The court found this to be a violation of the confirmation order. The court invoked 11 U.S.C. § 105(a) to deem the debtor current on her

mortgage and prohibiting the mortgage creditor from collecting any fees, interest, charges or other penalties in relation to the asserted non-payment.

In re Martin, 2022 WL 16937609 (Bankr. S.D. Tex. 2022)

Creditor held a property tax repayment agreement with the debtor and objected to plan confirmation, and which the court ultimately overruled. The required locally approved plan establishes that property tax creditors will be paid in full, but at the same time the plan requires the creditor to timely seek approval of any post-petition but pre-discharge attorney's fees or other assessments, have them approved by the court, and then paid through the Chapter 13 plan. This helps ensure that when the discharge is issued, there is no further property tax related obligation on the debtor that can spring out and imperil the fresh start.

Ogar v. Propel Financial Services, 2022 WL 4543198 (S.D. Tex. 2022)

The bankruptcy court acted within its discretion in denying as untimely a fee application by an oversecured property tax creditor who sought reimbursement for fees, expenses or charges that occurred 2½ years earlier in the case. The bankruptcy court applied the 180-day standard under Rule 3002.1.

Propel Financial Services v. Woodruff, 2022 WL 1556418 (S.D. Tex. 2022)

A lender who had paid the debtors' property taxes (and had the debtors sign a tax lien deed of trust to augment its rights) filed an application seeking post-petition fees and expenses under § 506(b). The bankruptcy court denied the application by applying Rule 3002.1(c)(2) and that the creditor did not file the application within 180 days of incurring the fees, expenses, or charges. On appeal the creditor argued that it held a statutory lien instead of a "security interest" in the principal residence. The district court determined that the creditor was a transferee and subrogee of the taxing authorities' rights and the statutory lien was not extinguished by the deed of trust because the state law requires the transferee to document the agreement. Rule 3002.1 and its noticing requirement do not apply to the statutory liens. The denial of the fee application was vacated and the matter remanded.

In re Edelstein, 645 B.R. 603 (Bankr. N.D. Ill. 2022)

Debtors filed a motion under Rule 3002.1(h) to determine final cure and the amount of the post-petition mortgage arrearage. The confirmed plan provided for \$17,513.56 in pre-petition arrearages and established the plan amount as the ceiling. After confirmation, the creditor filed its timely claim in an amount nearly double the plan amount. The creditor took no action on this discrepancy until it responded to the trustee's notice of final cure. The court found that under *Espinosa* the plan bound the creditor.

Harlow v. Wells Fargo & Co., 2022 WL 17586716 (Bankr. W.D. Va. 2022)

In a class action matter, the district court returned five counts to the bankruptcy court to address the creditor's motion to dismiss. The issues involved violations of Rule 3002.1(b), automatic stay violations, and abuse of process, contempt, and fraud on the bankruptcy court invoking § 105. The matter focused on the allegation that the creditor placed mortgage loans in forbearance, in the wake of the COVID-19 pandemic, without the borrower's permission, knowledge or request. The creditor noted these forbearances either through a Rule 3002.1 notice or a notice of forbearance placed on the docket. While some courts have found that a violation of Rule 3002.1 requires a failure to file a required notice, other courts, including this one, find that an inaccurate or incorrect notice can also be a violation of the Rule. The court stated that "Rule 3002.1 must have teeth to achieve its purposes, and that, different from a private right of action for compensatory damages, punitive, non-compensatory sanctions can be warranted to achieve its purposes." *Id.* at *5. The court also found a plausible claim for a stay violation under § 362(a)(3) if the creditor unilaterally placed loans in forbearance, determining that this could be an exercise of control over estate property. Further, the court found it plausible that the creditor could be in contempt for the same forbearance actions in violation of the confirmation orders. The court thus denied the motion to dismiss.

2. Satisfying Rule 3001 Filing Requirements

In re Myers, 2022 WL 3012567 (B.A.P. 9th Cir. 2022)

Debtors scheduled an unsecured debt as "disputed." A debt buyer filed a claim for the obligation and the documentation attached to the claim satisfied the requirements of Rule 3001(c)(3) for open-ended or revolving consumer credit agreements. Accordingly, the claim was entitled to prima facie validity. The debtors argued that the documentation provided did not satisfy state law requirements to produce either an authenticated written credit card application or authenticated evidence that debtors incurred charges on the account and made payments thereon. The BAP agreed with the debtors, reversing and remanding the matter.

In re Barnes, 2022 WL 4073309 (Bankr. D. Nev. 2022)

In a matter very similar to the above case, except the debtor did not schedule the unsecured claims as disputed. The bankruptcy court found that the debtor could not have claims disallowed for failure to authenticate the debt under a state law. It noted that the creditor complied with Rule 3001(c)(3)(A), the claims were consistent with the scheduled debt, and debtor scheduled the obligations without dispute.

In re Simmons, 643 B.R. 565 (Bankr. D. S.C. 2022)

Debtor objected to the mortgage holder's proof of claim, alleging that the attachment, Form 410A, was not accurate because it did not account for payments made by the

trustee in the debtor's previous case. The creditor acknowledged that not all payments were accounted for in the original claim, and with testimony the court found the application history was "complicated and inconsistent" and hard to decipher. After considering the evidence and testimony, the court determined that the information was not omitted from the claim, and it used its discretion under Rule 3001(c)(2)(D) to not further reduce the arrearage amount, but under Rule 3001(d)(2)(D)(ii), it awarded attorney's fees to debtor's counsel for having to file and prosecute the claim objection.

In re Travers, 635 B.R. 273 (Bankr. D. S.C. 2021)

Second mortgage creditor holding a HELOC failed to file a complete and accurate Form 410A with its initial claim and at hearing failed to provide evidence to support the claim's validity. Under Rule 3001(c)(2)(D), the court used its discretion to determine the "omitted information" could not be presented during the bankruptcy case and reasonable attorney's fees and costs were awarded to debtor's counsel.

In re Turnage, 642 B.R. 435 (Bankr. D. S.C. 2022)

Two debt buying creditors acquired their open-ended and close-ended claims post-petition and timely filed claims in the debtor's case. However, they only attached documentation detailing the acquisition of the claims, only disclosing the charge off dates and the principal amount owed plus a finance balance. Debtor did not recognize the claimants and objected to the claims for failing to attach copies of the original loan documents, notes, credit application, account statements or the original lender's account number; failure to provide an itemized statement of interest, fees, expenses or other charges; claiming a FDCPA violation for not complying with Rule 3001; and alleging that the claims were duplicates. Prior to the hearing the claims were amended. The court recognized that under Rule 3001, failure to provide the required information is itself not a basis to disallow a claim. The court noted that a review of the debtor's credit report, bankruptcy schedules, and the claims established that they were not duplicates. Further while the claims were based on open-ended consumer credit card agreements, Rule 3001(c)(3)(B) applied, and the documents identified in Rule 3001(c)(1) were only required to be provided if requested. While debtor made such a request, there was nothing in the record establishing when the request was made, to determine if the creditor failed to timely respond. Some of the claims involved were close-end credit agreements and subject to Rule 3001(c)(1)'s disclosure requirements. While the creditors ultimately complied, it was not until after the debtor objected to the claims. Further, the claims did not itemize the components of the total balance owed and thus failed to comply with Rule 3001(c)(2)(A). The court concluded that the creditors could further amend their claims, but it awarded debtor's counsel \$2,000 as reasonable fees based upon the creditors' non-compliance with Rule 3001(c).

3. Asset Appreciation Post-Confirmation, Revesting, and Conversion to Chapter 7

In re Barrera, 22 F.4th 1217 (10th Cir. 2022)

Debtors originally filed their case under Chapter 13. During the case they sold their residence and possessed the net proceeds. They subsequently converted the case to Chapter 7, and trustee claimed an interest in a portion of the proceeds that included the post-petition appreciation in value. The 10th Circuit focused its analysis on §§ 348(f)(1)(A), 541(a)(1) and 541(a)(6). Based on § 348(f)(1)(A), the court held that the sale proceeds were a distinct asset from the physical house, and thus they did not exist on the petition date. The court found support in § 1327(b) with the revesting of estate property after plan confirmation.

In re Klein, 2022 WL 3902822 (Bankr. D. Colo. 2022)

Debtors filed their Chapter 13 with one spouse holding a share of an LLC that owned an office building. At confirmation the value of the LLC was determined for purposes of § 1325(a)(4). Later during the case, it was discovered that the LLC had sold the building, generating significantly greater net proceeds for the debtor than the liquidation analysis calculated. The court looked to the estate termination theory and revesting under § 1327(b) to determine that the debtors retain the proceeds from the post-confirmation sale of a pre-petition asset, and further, the proceeds were not earnings under § 1306(a)(2) but generated from the sale of a business entity.

In re Castleman, 2022 WL 2392058 (W.D. Wash. 2022)

Debtor initially filed a Chapter 13 case, and after confirmation converted to Chapter 7. Between filing and conversion, their home's value increased by approximately \$200,000. The trustee sought to sell the property and use the nonexempt proceeds to pay creditors. Both the bankruptcy court and district court looked to § 348(f)(1)(A) and saw that the subsection was silent on whether the increase in value was a pre-petition asset that could not be separated from the asset, or a separate after-acquired property interest. Next, looking at § 541(a)(6), it determined that based upon the Code as a whole and circuit authority, the residence was estate property when the case was filed and as the debtor remained in possession at conversion, it was still estate property, including the increased equity.

In re Goetz, 2022 WL 16857109 (Bankr. W.D. Mo. 2022)

Debtor initially filed her case under Chapter 13 and scheduled her real property with a \$130,000 value and based on the mortgage and exemption, the unsecured creditors would receive no recovery in Chapter 7. Nearly 2 years later she converted to Chapter 7, and the property had a \$75,000 increase in value. Debtor sought to have the trustee abandon the property. The court noted that § 348(f)(1)(A) described the scope of estate property in a good faith conversion that if property is owned when the Chapter 13 is filed and retained on the date of conversion, it became part of the Chapter 7

estate. The court disagreed that post-petition equity was “new” property and viewed § 348(f)(1)(A) as plain language and that equity is not a distinct item of property. The court also found this conclusion consistent with § 348(f)(1)(B), that valuations in Chapter 13 are not applicable when the case converts to Chapter 7.

In re Adams, 2022 WL 2079725 (Bankr. W.D. Mich. 2022)

Debtors originally filed under Chapter 13 and two years later converted to Chapter 7. The trustee sought to sell their house and use the appreciated value to pay creditors. Debtors filed a motion to determine the proper date to value the property and to compel abandonment. Looking to circuit authority, the court denied the debtors’ motion and found the Code to be “relatively straightforward and, as this case illustrates, occasionally painful.” Thus, with the exception of post-petition earnings, the court held that the trustee could sell the property.

In re Croniser, 2022 WL 3639413 (Bankr. E.D. N.C. 2022)

While not a conversion case, it involved a Chapter 13 debtor whose confirmed plan provided for revesting at confirmation and a non-standard provision that allow the debtor to receive all net proceeds from the sale of vest property sold during the case. Approximately 5 months after confirmation the debtor sold a vacant residential lot that showed a 94.9% increase in value after filing the petition. The trustee sought a plan modification to bring the net proceeds into the case for payment to creditors. Consistent with circuit authority, the bankruptcy court found this increase in value a significant change that could not have been reasonably anticipated at confirmation.

4. DOJ Guidance on Student Loan Discharge: Comments and Suggestions

a. Documents and Forms

- A copy of the DOJ Guidance issued November 17, 2022, is included in the materials or is available at [Guidance for Department Attorneys Regarding Student Loan Bankruptcy Litigation](#).
- A copy of the Attestation Form is included in the materials or is available at [Attestation in Support of Request for Stipulation Conceding Dischargeability of Student Loans](#).
- The DOJ has provided an example of how to complete the Attestation Form. It exemplifies the level of detail that is required to obtain a successful settlement. A copy is included in the materials or is available at [Appendix B: Debtor Example Scenario](#).

b. Limitations on DOJ Guidance

- The Guidance only applies to bankruptcy cases pending on or after November 17, 2022. Thus, a debtor cannot reopen a prior case in hopes of taking advantage of the DOJ Guidelines to discharge a student loan—a new case must be filed.
- The Guidance only applies to government student loans — not private student loans. But there is a thought (hope?) that there may be some pressure on private lenders to follow the DOJ Guidelines.
- The Guidance is not binding on the DOJ, and it cannot be used by the debtor or the bankruptcy court to “compel” the DOJ to stipulate to the discharge of student loan debt.

c. The DOJ's Three-Part Analysis

- Present Ability to Pay: Based on the debtor’s income less the IRS expense standards, the DOJ will determine if the debtor lacks the present ability to pay. Basically, the debtor’s available income to repay the student loan must be zero or less.
- Future Ability to Pay: The DOJ will then assess whether the debtor’s inability to pay will persist into the future. The following factors create a presumption of a future inability to pay:
 - debtor is age 65 or older;
 - debtor has a disability or chronic injury impacting their income potential;
 - debtor has been unemployed for at least five of the last ten years;
 - debtor has failed to obtain the degree for which the loan was procured; or
 - the student loan has been in payment status other than “in-school” for at least ten years.
- Good Faith Efforts: The debtor must establish a good-faith effort to repay the student loan, such as efforts to earn income, reduce expenses, and to repay the loan. Debtors can establish their good faith if at least one of the following steps has been taken:
 - making a payment;
 - applying for a deferment or forbearance (other than in-school or grace period deferments);
 - applying for an IDR plan;
 - applying for a federal consolidation loan;
 - responding to outreach from a servicer or collector;

- engaging meaningfully with Education or their loan servicer, regarding payment options, forbearance and deferment options, or loan consolidation; or
- engaging meaningfully with a third party they believed would assist them in managing their student loan debt.

d. Important Points

- The information in the Attestation Form will make or break your case. Thus, it should be prepared with care, attention to detail, and include persuasive supporting information and documentation.
- Unlike the definition of income under the Bankruptcy Code, the Attestation Form requires the disclosure of all income, including Social Security Income and unemployment benefits.
- The DOJ can agree to a partial discharge of the student loan if the Attestation Form shows an ability to make at least a partial payment.
- Any settlement with the DOJ will require approval by the bankruptcy court. Consider whether your bankruptcy judge may balk at such a settlement.

e. Suggestions & Comments

- Contact your Assistant U.S. Attorney office to learn who will handle student loan discharge cases. Contact that person to establish a relationship and to learn their preferences on how their office and this person will handle these cases.
- Have your client obtain a list of all of their federal student loans available at [Federal Student Aid](#) so that all possible defendants can be named in the adversary proceeding.
- Familiarize yourself with the required Attestation Form, available in the materials or at <https://www.justice.gov/file/1552646/download>
 - The Attestation Form is similar to the bankruptcy statements and schedules, but it also requires more specific information than bankruptcy papers and should include more supporting documentation for expenses that are different than the IRS Standards.
 - It bears repeating that the Attestation Form includes Social Security income and unemployment benefits in calculating a debtor's income.

- File the adversary proceeding and as soon as possible thereafter, provide the U.S. Attorney assigned to these cases with the Attestation Form. The Attestation Form is what initiates the settlement process with the DOJ.
 - Note: there is not a court fee to file an adversary proceeding seeking a determination that a student loan is dischargeable.
 - Note: there is not a deadline to provide the Attestation Form, but to save time and expenses, providing it as soon as possible is a best practice.
- The Dept. of Education should provide the U.S. Attorney with a litigation report containing details of the student loan. You should ask the U.S. Attorney for a copy of this report and then supplement the debtor's Attestation Form if appropriate.
- To minimize expenses and expedite the U.S. Attorney's review of the Attestation Form, ask for a stipulation extending the time for the parties to make initial disclosures (Rule 7026(a)(1)) and to hold the planning conference (Rule 7026(f)).
- The first element requires a showing that a debtor has no available income to make the "normal" student loan payment (i.e., the 10-year amortization amount). If a debtor can make a partial payment, the DOJ may consider a partial discharge.
- If the debtors' expenses exceed the IRS Standards, are different than the IRS Standards, or are expected to soon increase above the IRS Standards, then provide solid proof of the expense amounts and cogent explanations as to why the excess expense amounts are reasonable given the debtors' circumstances.
- The DOJ can also consider a debtor's assets that could be readily converted to cash. However, exempt assets, and especially reasonable homes and vehicles, will generally be excluded from this analysis.

November 17, 2022

**GUIDANCE FOR DEPARTMENT ATTORNEYS REGARDING STUDENT LOAN
BANKRUPTCY LITIGATION**

I. Introduction

This memorandum provides guidance (Guidance) to Department of Justice (Department) attorneys regarding requests to discharge student loans in bankruptcy cases. Developed in coordination with the Department of Education (Education), this Guidance will enhance consistency and equity in the handling of these cases. In accordance with existing case law and Education policy, the Guidance advises Department attorneys to stipulate to the facts demonstrating that a debt would impose an undue hardship and recommend to the court that a debtor's student loan be discharged if three conditions are satisfied: (1) the debtor presently lacks an ability to repay the loan; (2) the debtor's inability to pay the loan is likely to persist in the future; and (3) the debtor has acted in good faith in the past in attempting to repay the loan.

To assist the Department attorney in evaluating each of these factors, a debtor will typically be asked to provide relevant information to the government by completing an attestation form (Attestation). The Attestation requests information about the debtor's income and expenses to enable the Department attorney to evaluate the debtor's present ability to pay. The Attestation also seeks information that will help the Department attorney evaluate the other two factors. In the following sections, this Guidance provides more detail about the Attestation that a debtor will be asked to complete, and how the information provided in the Attestation will be considered by the Department attorney. In Appendix A, this Guidance provides a sample attestation form. In addition, in Appendix B, this Guidance provides a concrete example of how a debtor's request for discharge of a student loan will be evaluated.

II. Objectives of the Guidance and Education's Role in Supporting Discharge Cases

In cases where a debtor seeks the discharge of a student loan in bankruptcy, the Department shares with Education the responsibility to represent the interests of the United States in accord with existing law and in the interests of justice. This responsibility includes recommending that a bankruptcy court grant full or partial discharge of student loan debts in appropriate cases. To fulfill that responsibility, Department attorneys should stipulate to facts necessary to demonstrate undue hardship and recommend discharge where the debtor provides information in the Attestation (or otherwise during the adversary proceeding) that satisfies the elements of the analysis below. Some debtors have been deterred from seeking discharge of student loans in bankruptcy due to the historically low probability of success and due to the mistaken belief that student loans are ineligible for discharge. Other student loan borrowers have been dissuaded from seeking relief due to the cost and intrusiveness entailed in pursuing an

adversary proceeding. This Guidance is intended to redress these concerns so that discharges are sought and received when warranted by the facts and law. In addition, Department attorneys are expected to consult proactively with Education to evaluate the specific circumstances of each case.

In collaborating in the preparation of this Guidance, the Department and Education have sought to promote three goals in particular:

1. To set clear, transparent, and consistent expectations for discharge that debtors understand regardless of representation;
2. To reduce debtors' burdens in pursuing an adversary proceeding by simplifying the fact-gathering process. This includes use of an Attestation, and where feasible, information provided through prior submissions to the bankruptcy court and available student loan servicing records;
3. Where the facts support it, to increase the number of cases where the government stipulates to the facts demonstrating a debt would impose an undue hardship and recommends to the court that a debtor's student loans be discharged.

Education is committed to supporting Department attorneys handling these cases. Department attorneys should expect that, for each adversary proceeding, Education will provide to the Department attorney a record of the debtor's account history, loan details, and—where available—educational history, which the Department attorney will share with the debtor. This information will be provided with the Education litigation report.

The Department attorney is expected to consult with Education in each case; consultation includes sharing the completed Attestation and conferring on an appropriate course of action. In its initial litigation report, Education will advise on matters including whether it has data relating to the presumptions in this Guidance regarding assessment of future circumstances and whether it considers the debtor made good faith efforts to repay their student loans. This process will ensure the final decision is informed by Education's experience administering student loans and its role as creditor. Once the Department attorney reaches a recommendation in accordance with this Guidance, the Department attorney shall submit their recommendation or approval, as appropriate, along with Education's recommendation, under the standard procedures applicable in that attorney's component.

III. Applicable Law

Under Section 523(a)(8) of the Bankruptcy Code, certain student loans may not be discharged in bankruptcy unless the bankruptcy court determines that payment of the loan “would impose an undue hardship on the debtor and the debtor’s dependents.” 11 U.S.C. § 523(a)(8); *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 278 (2010) (“the bankruptcy court must make an independent determination of undue hardship . . . even if the creditor fails to object or appear in the adversary proceeding.”).¹ This inquiry is undertaken through a formal adversary proceeding in the bankruptcy court. *United Student Aid Funds*, 559 U.S. at 263-64; Fed. R. Bankr. P. 7001(6). The parties in that proceeding may stipulate to the existence of certain facts and recommend that the bankruptcy court find, based on such facts, that repayment of the student loan would cause the debtor an undue hardship.

The most common framework for assessing undue hardship is the so-called *Brunner* test, emanating from *Brunner v. New York State Higher Education Services Corp.*, 831 F.2d 395 (2d Cir. 1987). To discharge a student loan under the *Brunner* test, a bankruptcy court must find that the debtor has established that (1) the debtor cannot presently maintain a minimal standard of living if required to repay the student loan, (2) circumstances exist that indicate the debtor’s financial situation is likely to persist into the future for a significant portion of the loan repayment period, and (3) the debtor has made good faith efforts in the past to repay the student loan. *Id.* at 396.

Other courts have employed a “totality of circumstances” test (Totality Test) to determine whether repayment of student loan debt would cause an undue hardship. *See, e.g., In re Long*, 322 F.3d 549, 553 (8th Cir. 2003). The Totality Test looks to: (1) the debtor’s past, present, and reasonably reliable future financial resources; (2) a calculation of the debtor’s and their dependents’ reasonably necessary living expenses; and (3) any other relevant facts and circumstances surrounding each particular bankruptcy case. *Id.*

This Guidance applies in both *Brunner* and Totality Test jurisdictions. Courts have recognized the *Brunner* and Totality Tests “consider similar information—the debtor’s current and prospective financial situation in relation to the educational debt and the debtor’s efforts at repayment.” *In re Polleys*, 356 F.3d 1302, 1309 (10th Cir. 2004); *see also In re Jespersen*, 571

¹ Section 523(a)(8) requires the debtor to demonstrate an undue hardship to discharge nearly all federal student loans, excluding Health Education Assistance Loans, as well as private education loans that meet the definition of qualified education loans under the Internal Revenue Code. *See* 26 U.S.C. § 221(d)(1).

F.3d 775, 779 (8th Cir. 2009).² Both tests require assessment of the debtor’s income and reasonable expenses to determine whether the debtor has the present and future ability to maintain a “minimal standard of living” while making student loan payments. *See, e.g., In re Hurst*, 553 B.R. 133, 137 (B.A.P. 8th Cir. 2017) (“[I]f the debtor’s reasonable financial resources will sufficiently cover payment of the student loan debt—while still allowing for a minimal standard of living—then the debt should not be discharged.”) (citing *In re Jespersen*, 571 F.3d at 779). Finally, both tests direct the court to review the debtor’s past efforts at repayment. *In re Polleys*, 356 F.3d at 1309; *see also In re Bronsdon*, 435 B.R. 791, 797 (B.A.P. 1st Cir. 2010).

IV. Discussion of the Applicable Factors

As explained above, consideration of student loan debt discharge requires an evaluation of a debtor’s present, future, and past financial circumstances. This Guidance offers a framework for Department attorneys to apply each of these factors.

With respect to the first factor, the Guidance relies upon the Internal Revenue Service Collection Financial Standards (the IRS Standards) to assess whether a debtor can presently maintain a “minimal standard of living” if required to repay student loan debt. In particular, the Department attorney is advised to use the IRS Standards to evaluate a debtor’s expenses, and then to compare those expenses to the debtor’s income, to determine whether the debtor has a present ability to pay the loan.

With respect to the second factor, the Guidance uses presumptions for determining whether inability to repay is likely to persist in the future. The Guidance recognizes, however, that even in the absence of such presumptions a debtor may be able to establish that their inability to pay will continue in the future.

With respect to the third factor, the Guidance identifies certain objective criteria that evidence a borrower’s good faith. In addition, the Guidance discusses how to evaluate a debtor’s

² The Eighth Circuit has described the Totality Test as “less restrictive” than the *Brunner* framework, *In re Long*, 322 F.3d at 554, but it has also recognized that the distinction between the standards “may not be that significant.” *Jespersen*, 571 F.3d at 779 n.1, 782. *See, e.g., In re Long*, 322 F.3d at 554-55 (“Simply put, if the debtor’s reasonable future financial resources will sufficiently cover payment of the student loan debt—while still allowing for a minimal standard of living—then the debt should not be discharged. Certainly, this determination will require a special consideration of the debtor’s present employment and financial situation—including assets, expenses, and earnings—along with the prospect of future changes—positive or adverse—in the debtor’s financial position”); *see also Jespersen*, 571 F.3d at 782 (the totality approach also requires consideration of “evidence of a less than good faith effort to repay . . . student loan debts”). The Guidance does not supersede applicable case law in the circuits. Department attorneys should advance the principles and goals described in this Guidance consistent with that case law.

payment history and decision to participate in an income-driven repayment plan, and clarifies that neither of these factors are dispositive evidence where other evidence of good faith exists.

Finally, the Guidance also provides direction to Department attorneys regarding the treatment of a debtor's assets and the availability of partial discharge.

The Attestation provided with this Guidance will assist in the assembly of the information needed to assess these factors.³ Department attorneys are expected to review completed Attestations in consultation with Education.

A. Assessment of Present Circumstances

The first factor relevant to whether a student loan debtor can meet the statutory undue hardship standard requires the debtor to prove an inability to presently maintain “a minimal standard of living” while making student loan payments. To address this factor, the Department attorney should complete two steps. First, the Department attorney should use the IRS Standards to determine the debtor's “allowable” expenses. Second, the attorney should compare those allowable expenses to the debtor's income to determine whether the debtor has income after expenses with which to make student loan payments. If the debtor's allowable expenses exceed their gross income, this element of the analysis is satisfied. If the debtor's financial circumstances changed since filing the initial bankruptcy petition, the Department attorney can look to the debtor's actual financial circumstances when making an undue hardship determination. *Cf. In re Walker* 650 F.3d 1227, 1232 (8th Cir. 2011).

1. Assessment of the Debtor's Expenses

The Attestation solicits expense information from debtors in categories corresponding to the IRS Standards, particularly the portions of the IRS Standards described as “National and Local Standards” and “Other Necessary Expenses.”⁴ The IRS Standards are a useful guide to assess a debtor's expenses for purposes of the “minimal standard of living” inquiry. Use of these standards will ensure more consistent and equitable treatment of debtors seeking discharge. The IRS has established and updated the IRS Standards to determine appropriate collection actions where taxpayers have outstanding unpaid tax obligations. The IRS Standards evaluate what

³ As discussed in more detail below, the Attestation requires a debtor to present information relevant to the Department attorney's analysis in an efficient, organized manner. If the debtor's satisfaction of the requirements for discharge are clearly demonstrated by the complaint or other facts available outside the Attestation, then upon verification of those facts, a Department attorney may recommend discharge without requiring that the debtor complete the Attestation.

⁴ Links to the IRS Standards are found at <https://www.irs.gov/businesses/small-businesses-self-employed/collection-financial-standards>.

expenses are “necessary to provide for a taxpayer’s health and welfare[.]”⁵ or, as described in the IRS Collection Manual, “the *minimum* a taxpayer and family needs to live.”⁶ Courts have recognized the IRS Standards as useful objective criteria in assessing “undue hardship” under Section 523(a)(8). *See, e.g., In re O’Hearn*, 339 F.3d 559, 565 (7th Cir. 2003); *In re Cota*, 298 B.R. 408, 415 (Bankr. D. Ariz. 2003). The IRS Standards list certain expenses (the National and Local Standards) for which they provide a recommended maximum allowance, but also recognize other potential expenses (Other Necessary Expenses) that are potentially necessary for an individual’s health and welfare.

Allowance of Expenses in National Standard Categories: The IRS National Standards consist of tables of allowable expense amounts in the following categories: food; housekeeping supplies; apparel and services; personal care products and services; and miscellaneous. Where the debtor’s expenses are below the amount allowed under the IRS National Standards, no further inquiry into the debtor’s actual expense amount is needed and the debtor is allowed the full National Standards amount. If a debtor’s reported expenses exceed the IRS National Standard amount, a debtor’s reasonable explanation for why particular actual expenses exceed the standard should be considered carefully by the Department attorney, in consultation with Education, and may be accepted if allowing the additional expenses is warranted by the debtor’s circumstances and would comport with a “minimal standard of living.”⁷

Allowance of Expenses in Local Standards Categories: The Local Standards provide expense standards for the categories of housing, utilities, and transportation. Unlike the expenses in the National Standards category, for the Local Standards categories, the Department attorney should limit the debtor to their *actual* expenses. To the extent such expenses do not exceed the amount prescribed in the Local Standards for the debtor’s location and household size, Department attorneys should consider the debtor’s actual expenses in these categories to be consistent with a minimal standard of living and treat such amount as allowed. If the debtor’s actual expense exceeds the Local Standards amount, Department attorneys should generally limit the debtor’s allowable expense to the standard amount. However, as with those expenses categorized as National Standards expenses, the Department attorney should, in consultation

⁵ IRS, *Collection Financial Standards*, <https://www.irs.gov/businesses/small-businesses-self-employed/collection-financial-standards>.

⁶ IRS, Internal Revenue Manual: Part 5.15.1.8 (July 24, 2019), https://www.irs.gov/irm/part5/irm_05-015-001#idm139862108264304 (emphasis added).

⁷ The decision whether to allow expenses in excess of the National and Local Standards will necessarily be fact-intensive, but allowable excess expenses could, for example, include specific health-related costs, costs for special dietary needs, unique commuting requirements, or other needs of the debtor or dependents.

with Education, carefully consider and accept a debtor's reasonable explanation for the need for the additional expenses.

Allowance of Other Necessary Expenses: The IRS Standards recognize "Other Necessary Expenses" in addition to the National and Local Standards expenses. The Attestation requests that debtors list expenses in these "Other Necessary Expense" categories. For example, the IRS Standards allow expenses for alimony and child support payments if they are court-ordered and actually being paid, as well as for baby-sitting, day care, nursery and preschool costs where reasonable and necessary. These Other Necessary Expenses are consistent with a "minimal standard of living," so long as they are necessary and reasonable in amount.⁸

Allowance for Reasonable Expenses Not Incurred: In addition to the comparison of expenses and income described above, Department attorneys should also recognize there may be circumstances in which a debtor's actual expenditures fall below the expenses required to maintain a minimal standard of living and to meet basic needs. For example, a debtor may be living in housing that the debtor is not paying for (e.g., the debtor is staying with a family member) or living in substandard or overcrowded housing but should not be required to remain there indefinitely. Likewise, a debtor may be forgoing spending on childcare, dependent care, technology, or healthcare that would otherwise be expenses one would reasonably expect to maintain a minimal living standard. A simple comparison of present expenses and income could unduly assess the debtor's financial situation against a standard that is below a minimal standard of living. In such circumstances, it would be inappropriate to conclude a debtor possesses income with which to make student loan payments and ignore the debtor's actual living standard. To address these situations, the Attestation provides an opportunity for a debtor to identify and explain expenses the debtor would incur if able to address needs that are unmet or insufficiently provided for. The Department attorney should use those projected expenses in assessing the debtor's present and future financial circumstances. Unless the amount of the projected expenses exceeds the Local Standards, it is not necessary to probe the debtor's calculation.

Appendix B includes specific examples of the recommended analysis of expenses.⁹

⁸ The Department attorney may consult the IRS Standards themselves to assist in determining whether these expenses are necessary to a debtor's minimal standard of living.

⁹ The Attestation process is intended to be distinct from the bankruptcy "means test," which is used to determine a debtor's eligibility for Chapter 7 relief. Although the means test also uses the IRS Standards as part of its calculation of a debtor's household disposable income for the purpose of establishing bankruptcy eligibility, courts have recognized that the means test is not a test of a "minimal standard of living." See *In re Miller*, 409 B.R. 299, 319–320 (Bankr. E.D. Pa. 2009) (means test not appropriate to determine whether the "undue hardship" standard is met) (citing *In re Savage*, 311 B.R. 835, 840 n.7 (1st Cir. B.A.P. 2004)). Moreover, the means test calculation differs from the Attestation in specific ways, including that (1) the means test (unlike

2. *Comparison of Expenses with the Debtor's Gross Income*

After determining the debtor's allowable household expenses using the National and Local Standards and Other Necessary Expenses, the Department attorney should compare the debtor's expenses to the debtor's household gross income. Gross income includes income from employment of the debtor and other household members, as well as unemployment benefits, Social Security benefits and other income sources. Debtors normally provide this information in the Schedule I filing. Where debtors filed this form less than 18 months prior to the adversary proceeding, the debtor may use the information on Schedule I to complete the Attestation. Where Schedule I was filed more than 18 months prior to the adversary proceeding or the debtor's circumstances have changed, the Attestation directs the debtor to provide the new income information.

Using the expense and income information provided in the Attestation, the Department attorney should determine whether the debtor possesses income with which to make student loan payments. If the debtor's allowable expenses exceed the debtor's income, the minimal standard of living requirement is satisfied and the debtor may be eligible for a student loan discharge, subject to consideration of the additional factors below. If, however, after considering the analysis described above, the debtor has sufficient discretionary income to make full student loan payments as required under their loan agreement, the debtor has not satisfied the test for undue hardship.¹⁰ Where a debtor's income allows for payment toward the student loan debt but in an amount insufficient to cover the required monthly student loan payment, the Department attorney

the Attestation) is required only for "consumer" debtors whose income exceeds a state "median," and (2) in practice, the means test often allows expenses regardless of their necessity to the debtor's basic or minimal standard of living, such as payments on multiple vehicles or for real property other than the debtor's residence.

¹⁰ Department attorneys are expected to consult with Education to determine the monthly repayment amount. Generally, where permitted in a given jurisdiction, the Department attorney should use the monthly payment amount due under a "standard" repayment plan for the student loan in question when determining whether the debtor has the ability to make payments. The standard repayment amount is the payment amount required to pay the student loan within the remaining term of the loan, as determined by Education. *See* 34 C.F.R. § 685.208. Where the account includes unpaid interest, Department attorneys should take care to ensure that the monthly payment amount would be sufficient to pay the loan obligation in full. Except as required by controlling law, the Department attorney should not use the monthly payment amount available through income-driven repayment plan options as the comparator. Finally, where a student loan has been accelerated, whether based on a debtor's payment default or otherwise, the Department attorney should, following consultation with Education, determine the standard repayment amount either prior to default or as calculated if the loan were removed from default status.

should consider the potential for a partial discharge (discussed more fully in Section IV.E. below).

B. Assessment of Future Circumstances

The second factor for discharge is whether the debtor's current inability to repay the debt while maintaining a minimal standard of living will likely persist for a significant portion of the repayment period. This showing is required in both *Brunner* Test and Totality Test jurisdictions. See *In re Thomas*, 931 F.3d 449, 452 (5th Cir. 2019); *In re Long*, 322 F.3d at 554.

A presumption that a debtor's inability to repay debt will persist is to be applied in certain circumstances, including: (1) the debtor is age 65 or older; (2) the debtor has a disability or chronic injury impacting their income potential;¹¹ (3) the debtor has been unemployed for at least five of the last ten years; (4) the debtor has failed to obtain the degree for which the loan was procured; and (5) the loan has been in payment status other than 'in-school' for at least ten years.¹² The Attestation is designed to identify any such circumstances, and it advises the debtor to disclose all of the circumstances applicable to their situation and not rely exclusively on a single presumptive basis for claiming a continuing inability to repay.

The presumptions identified in this Guidance are rebuttable. Although circumstances supporting rebuttal of a presumption will likely be uncommon, the Department attorney need not apply a particular presumption if the debtor's attestation nonetheless indicates a likely future ability to pay. Such a rebuttal must be based on concrete factual circumstances. Mere conjecture about the borrower's future ability is not enough. For example, the presumption in favor of a

¹¹ The debtor may, but is not required to, submit information from a treating physician indicating that the debtor suffers from a disability or chronic injury impacting their income potential, and when provided, that information should be considered carefully. The presumption may be applied even in the absence of a formal medical opinion.

Education offers Total and Permanent Disability (TPD) discharge for qualifying borrowers with certain severe disabilities. Because TPD discharge has its own requirements, the existence of that potential administrative relief generally should not foreclose the debtor from showing a future inability to pay. If, in the view of the Department attorney, the debtor may qualify for TPD discharge, the attorney can provide information to the debtor about the program. Finally, Education's denial of a TPD discharge request is not dispositive of the future circumstances analysis: a prior denial for TPD discharge only implies that Education determined the borrower is likely to have some ability to earn income at the time of the application based on the information provided and evaluation criteria in place, but does not otherwise suggest that the debtor's income is sufficient to service student loan debt or that future circumstances are likely to change.

¹² In the case of consolidation loans, the length of time the debtor has been in repayment includes periods in repayment on the original underlying loans.

debtor who failed to obtain a degree may be rebutted by evidence that the debtor has received employment offers with salaries significantly higher than their current income. In sum, a presumption may be rebutted by evidence that a debtor's future financial circumstances render them able to pay their outstanding debt.

The presumptions identified above are not the sole bases upon which a future inability to pay may be found. A debtor may attest to any facts the debtor believes are relevant to future inability to pay, and the Department attorney should review the Attestation to determine whether the facts presented by the debtor satisfy the standards for proof of likely persistence of inability to pay. A Department attorney may find, for example, that a debtor's financial circumstances are unlikely to improve in the future where the debtor has a significant history of unemployment, even if the debtor's unemployment does not meet the criteria for a presumption. A stipulation may also be appropriate, even absent a particular presumption, where the institution that granted the debtor's degree has closed, and that closure has inhibited a debtor's future earning capacity.¹³ Education has indicated that closure of a school after completion of the debtor's degree may affect a debtor's future ability to pay where the debtor incurs reputational harm from such closure or where the debtor's lack of access to records hampers employment efforts.¹⁴

C. Assessment of Good Faith

Whether a debtor has demonstrated good faith with regard to repayment of student loan debt depends upon the debtor's actions relative to their loan obligation.¹⁵ Good faith may be demonstrated in numerous ways and the good faith inquiry "should not be used as a means for courts" or Department attorneys "to impose their own values on a debtor's life choices." *Polleys*, 356 F.3d at 1310. A debt should not be discharged if the debtor has "willfully contrive[d] a hardship in order to discharge student loans," *id.*, abused the student loan system, *In re Coco*, 335 Fed. App'x 224, 228-29 (3rd Cir. 2009), for example, by committing fraud in connection with obtaining the loans, or otherwise demonstrated a lack of interest in repaying the debt, *id.*

¹³ Education offers a loan discharge for students attending a school that closed while the borrower was in attendance or shortly after withdrawal. As with a TPD discharge, the availability of this administrative relief should have limited influence on the analysis discussed in this Guidance. Debtors may not receive the "closed-school" discharge for a range of reasons that do not implicate their financial status.

¹⁴ The presumptions discussed in this Guidance are intended to direct a Department attorney's assessment of the debtor's situation and do not shift any burden of proof in undue hardship litigation. Before the court in the adversary proceeding, the debtor retains the burden of proof on all elements of the undue hardship claim.

¹⁵ In discussing good faith, this Guidance intends to encompass satisfaction of both Prong Three of the *Brunner* test and good faith as considered under the Totality Test in evaluating the debtor's past efforts at repayment.

Where the debtor has taken at least one of the following steps and in the absence of countervailing circumstances as discussed below, the steps demonstrate good faith. We would normally expect the Department attorney to be able to determine the presence of any countervailing circumstances based on the information contained in the Attestation and provided by Education or that is publicly available.

Evidence of good faith: The following steps evidence good faith:

- making a payment;
- applying for a deferment or forbearance (other than in-school or grace period deferments);
- applying for an IDR plan;
- applying for a federal consolidation loan;
- responding to outreach from a servicer or collector;
- engaging meaningfully with Education or their loan servicer, regarding payment options, forbearance and deferment options, or loan consolidation; or
- engaging meaningfully with a third party they believed would assist them in managing their student loan debt.

The good faith standard also assesses criteria such as “the debtor’s efforts to obtain employment, maximize income and minimize expenses.” *In re Mosko*, 515 F.3d 319, 324 (4th Cir. 2008) (citing *In re O’Hearn*, 339 F.3d at 564); see, e.g., *In re Jespersen*, 571 F.3d at 780. A debtor’s handling of finances in a manner that suggests responsible management of their debts, including student loan debts, also suggests good faith. A debtor has minimized expenses if their expenses fall within the IRS Standards as discussed in this Guidance.¹⁶ Good faith can be satisfied where debtors’ personal or family obligations significantly reduce their employment opportunities or increase their expenses.” Issues concerning employment, income, and expenses are case-specific and may be highly dependent on a debtor’s family, community, and individual circumstances. Debtors may provide an explanation of those circumstances, and the Department attorney should weigh the explanation in consultation with Education.

Actual payment history and IDR enrollment: Department attorneys should consider the following two issues that frequently arise and deserve additional attention: a debtor’s actual payment history and a debtor’s enrollment or non-enrollment in an IDR. Department of Education studies have shown that the servicing of student loan debt has been plagued at times

¹⁶ By contrast, a debtor whose expenses exceed the IRS Standards should not be foreclosed from showing they have minimized expenses, and the Department attorney and Education should carefully assess any explanations debtors may provide for exceeding the standard expenses.

by administrative errors and dissemination of confusing and inaccurate information, and that these issues may have affected debtors' responses to their loan obligations. In addition, the Consumer Financial Protection Bureau has found that debtors have been wrongfully denied IDRPs and that monthly payments have been inaccurately calculated. *See* Consumer Financial Protection Bureau, *Supervisory Highlights* Fall 2022, Summer 2021, and Fall. The Bureau has also found that servicers falsely but affirmatively represented to borrowers that loans were never dischargeable in bankruptcy. *See* Consumer Financial Protection Bureau, *Supervisory Highlights*, Fall 2014 & Fall 2015. These problems have also given rise to a lack of trust by debtors in the repayment process. As a result, the good faith inquiry should not disqualify debtors who may not have meaningfully engaged with the repayment process due to possible misinformation, wrongful IDRPs, or a lack of adequate information or guidance. When considering a debtor's attempts to engage with their student loan, attorneys should look at the entire life of the loan rather than merely considering the recent history.

Department attorneys should consider payment history within the broader context of the debtor's financial means and personal circumstances. Where other evidence of good faith exists, including evidence that the debtor lacked financial means to pay or that the debtor made meaningful contact with Education or the servicer to explore repayment options, the failure to repay (or inconsistent or limited repayment) does not indicate a lack of good faith. In some circumstances, the Department of Education may not have records or have incomplete records about a debtor. The absence of ED data should not reduce the weight of the borrower's evidence.¹⁷

Department attorneys should also exercise caution in assessing IDRPs. IDRPs are intended to provide a means through which debtors may respond to difficult financial circumstances, and the model Attestation asks a debtor to identify if they enrolled in an IDRPs and to offer an explanation if they did not. Where a debtor participated in an IDRPs, this factor is evidence of good faith.¹⁸

¹⁷ Between March 2020 and December 2022, borrowers were placed into an automatic COVID-related forbearance. The vast majority of borrowers remained in that forbearance for the duration of the period because it included a zero percent interest rate and eligibility toward IDRPs and PSLF forgiveness. Due to this extended period, many debtors may not have taken any action toward their loans. This period of inactivity is not evidence of bad faith and actions taken prior to March 2020 should not be discounted because they are not recent.

¹⁸ *See, e.g., In re Tingling*, 990 F.3d 304, 309 (2d Cir. 2021); *In re Krieger*, 713 F.3d 882, 884 (7th Cir. 2013); *In re Coco*, 2009 WL 1426757, at *228–229; *In re Mosko*, 515 F.3d at 323; *In re Barrett*, 487 F.3d 353, 363–64 (6th Cir. 2007); *In re Mosley*, 494 F.3d 1320, 1327 (11th Cir. 2007); *In re Jespersen*, 571 F.3d at 782–83; *In re Nys*, 446 F.3d 938, 947 (9th Cir. 2007); *In re Alderete*, 412 F.3d 1200, 1206 (10th Cir. 2005); *In re Bronsdon*, 435 B.R. at 802.

However, where a debtor has not enrolled in an IDRPs, the Department attorney should give significant weight to the fact that, as noted, Education has found widespread problems with IDRPs servicing. In particular, Education has advised that IDRPs have not always been administered in ways that have been effective for, or accessible to, student loan debtors. In some cases, borrowers may not have been aware of their IDRPs options. At times, servicers failed to inform borrowers about these options in favor of other repayment plans or nonpayment options like forbearance. Likewise, many schools have failed to advise prospective borrowers about IDRPs, despite being legally obligated to do so. *See* 20 U.S.C. § 1092(d). Thus, non-enrollment alone does not show a lack of good faith.

Where a debtor did not enroll in an IDRPs, the Department attorney is expected to look first to the debtor's Attestation response and to accept any reasonable explanation or evidence supporting the debtor's non-enrollment in an IDRPs. Acceptable explanations or evidence could include, for example:

- that the debtor was denied access to, or diverted or discouraged from using, an IDRPs, and instead relied on an option like forbearance or deferment;
- that the debtor was provided inaccurate, incomprehensible, or incomplete information about the merits of an IDRPs;
- that the debtor had a plausible belief that an IDRPs would not have meaningfully improved their financial situation;
- that the debtor was unaware, after reasonable engagement, of the option of an IDRPs and its benefits; or
- where permitted under controlling case law, that the debtor was concerned with the potential tax consequences of loan forgiveness at the conclusion of an IDRPs.

Where these explanations are based in part on contact or attempted contact with Education, servicers, or trusted third parties, they evidence good faith.

If a debtor provides an explanation that lacks sufficient detail or is not otherwise acceptable (or fails to provide any explanation), the debtor may still demonstrate good faith through other actions such as making payments, responding to outreach from a servicer or collector, enrolling in deferment or forbearance, making contact with Education or their servicer about their loan, or otherwise taking professional or financial steps that indicate a good-faith attempt to meet their loan obligations. In sum, we would expect Department attorneys not to oppose discharge for lack of good faith where there is a basis to conclude that the debtor's IDRPs non-enrollment was not a willful attempt to avoid repayment.

D. Consideration of a Debtor's Assets

A debtor's assets must also be considered in the undue hardship analysis. Department attorneys, however, should not give dispositive weight to the existence of assets that are not easily converted to cash or are otherwise critical to the debtor's well-being, and should be cautious in concluding that the existence of real property or other financial assets demonstrates a lack of undue hardship.¹⁹

The Attestation facilitates this inquiry by seeking information regarding the debtor's assets. It may be appropriate to suggest that a debtor consider liquidating an asset where the asset is unnecessary to the debtor's and dependents' support and welfare. Residential real property and funds in retirement accounts are often exempt from collection under federal or state exemption laws. Although the exempt status of property may not be dispositive of whether that property is necessary for a minimal standard of living, the Department attorney should be careful in considering such property in the undue hardship analysis. *In re Marcotte*, 455 B.R. 460, 471 (Bankr. D.S.C. 2011).²⁰ The Department recognizes that liquidating a primary residence or retirement account is an extreme measure and therefore requests to liquidate those assets should be exceptionally rare.

E. Partial Discharge.

Where appropriate and permissible under governing case law, Department attorneys may recognize the availability of partial discharge. Partial discharge occurs where the bankruptcy

¹⁹ The debtors' assets may be liquidated by a bankruptcy trustee to fund payments to creditors of the estate. Such property, if liquidated by the trustee, would not be available for the payment of student loan debt and thus should not be considered.

²⁰ The question of how exempt property should be considered under the "undue hardship" analysis has generated disagreement among courts. Generally, courts find that "the exempt character of an asset does not necessarily preempt its relevance to a hardship evaluation." *In re Armesto*, 298 B.R. 45, 48 (Bankr. W.D.N.Y. 2003); *see also In re Nys*, 446 F.3d at 947 (recognizing courts must consider availability of assets "whether or not exempt, which could be used to pay the loan"); *In re Gleason*, 2017 Bankr. LEXIS 3455, at *14 (Bankr. N.D.N.Y. Oct. 6, 2017) (allowing consideration of IRA or 401K account, regardless of exemption status). Other courts, however, have noted the necessity to weigh the policies underlying certain exemptions, for example, the homestead exemption in the debtor's residence, before considering such assets in assessing undue hardship. *Schatz v. Access Grp., Inc. (In re Schatz)*, 602 B.R. 411, 427-28 (1st Cir. B.A.P. 2019) (reversing bankruptcy court's treatment of exempt equity in homestead as dispositive of a lack of undue hardship). Notably, the *Schatz* opinion states that the bankruptcy court failed to make any finding whether the equity in the debtor's home could be liquidated without imposing an undue hardship on the debtor. *Id.* at 428.

court discharges a portion of the outstanding student loan debt while requiring payment of the remainder.²¹

Department attorneys may consider recommending partial discharge based upon a determination that the debtor has the ability to make some payments on the loan while maintaining a minimal standard of living, but an inability to make the full standard monthly repayment due. A partial discharge should not result in a remaining (undischarged) balance larger than what a debtor's discretionary income (as determined under the Prong One analysis) permits them to pay off in monthly payments over the remaining loan term. In practice, a full discharge is appropriate for debtors whose expenses are equal to or greater than their income where they meet the other elements of the analysis. Partial discharge may also be available to a debtor who is able to liquidate assets to pay a portion of the debt but remains unable to pay the remainder while maintaining a minimal standard of living. *See In re Stevenson*, 463 B.R. 586, 598-99 (Bankr. D. Mass. 2011); *In re Clavell*, 611 B.R. 504, 531-32 (Bankr. S.D.N.Y. 2020).

V. Procedures

Although the process for soliciting and reviewing the Attestation may vary from case to case, Department attorneys should generally observe the following procedures in soliciting Attestations.

A. **Submission of the Attestation**

Upon a debtor's commencement of an adversary proceeding seeking discharge pursuant to 11 U.S.C. § 523(a)(8), the Department attorney should provide a debtor the opportunity to complete and submit the Attestation. The Department attorney is encouraged to contact the debtor or debtor's counsel as soon as practicable after service of process in an adversary

²¹ Section 523(a)(8) is silent with respect to whether bankruptcy courts may discharge part of a student loan based on undue hardship. The concept, however, has been recognized by several courts of appeals. *See generally In re Miller*, 377 F.3d 616, 622 (6th Cir. 2004); *In re Saxman*, 325 F.3d 1168, 1173-1174 (9th Cir. 2003); *In re Alderete*, 412 F.3d at 1207; *In re Cox*, 338 F.3d 1238, 1243 (11th Cir. 2003). In most jurisdictions where no circuit level authority exists, lower courts have permitted partial discharges. *See, e.g., In re Rumer*, 469 B.R. 553, 564 n.12 (Bankr. M.D. Pa. 2012) (recognizing majority rule is to allow partial discharges); *In re Gill*, 326 B.R. 611, 644 (Bankr. E.D. Va. 2005) (recognizing lower courts have generally allowed partial discharges); *but see, e.g., In re Conway*, 495 B.R. 416, 423 (B.A.P. 8th Cir. 2013) (explaining that the general rule prevents discharging parts of individual loans). Prior to any partial discharge, a debtor must have established all elements necessary for an undue hardship determination. *See In re Saxman*, 325 F.3d at 1175; *Hemar Ins. Co. of Am. v. Cox (In re Cox)*, 338 F.3d 1238, 1243 (11th Cir. 2003).

proceeding, advising the debtor of the opportunity to submit the Attestation for review by the United States. Any Attestation should be submitted by a debtor under oath by signing under penalty of perjury pursuant to 28 U.S.C. § 1746. The Attestation requests that a debtor provide documents corroborating the debtor's stated income (tax returns, or where appropriate, paystubs or other documents proving income). The Department attorney may seek additional evidence where necessary to support representations in the Attestation.

Education will provide debtors' account history and loan details to the Department and that information will be provided to the debtor with the Attestation form.

B. Time for Attestation

Ideally, the Department attorney would solicit the Attestation from the debtor at the outset of the case to permit early consideration whether to stipulate to facts relevant to undue hardship. The Department attorney is not required to impose any strict time limit for the Attestation.

C. Bankruptcy Court Authority

The Department attorney should advise debtors that although the United States may stipulate to facts relevant to undue hardship and recommend to the bankruptcy court that a finding of undue hardship is appropriate, the United States' position is not binding on the bankruptcy court, which will render its own determination whether a debtor has met the standard for an undue hardship discharge. Department attorneys and debtors should cooperate to file appropriate documents to enable the court to consider whether to issue an order to discharge student loan debt based upon undue hardship.

VI. Conclusion

The goal of this Guidance is to provide Department attorneys with a consistent and practical approach for handling student loan discharge litigation. Because of the fact-specific nature of such litigation, questions may arise about how the Guidance should be applied in particular cases. For assistance in interpreting and implementing the Guidance, Department attorneys are invited to contact the Commercial Litigation Branch, Corporate/Financial Litigation Section of the Civil Division.²²

²² This memorandum applies only to future bankruptcy proceedings, as well as (wherever practical) matters pending as of the date of this Guidance. This Guidance is an internal Department of Justice policy directed at Department components and employees. Accordingly, it is not intended to and does not create any rights, substantive or procedural, enforceable at law by any party in any matter.

AMERICAN BANKRUPTCY INSTITUTE

[Updated November 2022]

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	
)	
[DEBTOR],)	Case No. _____
)	Chapter [7]
Debtors.)	
)	
_____)	
)	
[DEBTOR],)	
)	
Plaintiff,)	Adversary Pro. _____
)	
v.)	
)	
UNITED STATES DEPARTMENT)	
OF EDUCATION, [et al.],)	
)	
Defendant[s].)	
_____)	

ATTESTATION OF [NAME] IN SUPPORT
OF REQUEST FOR STIPULATION CONCEDING
DISCHARGEABILITY OF STUDENT LOANS

I, [NAME], make this Attestation in support of my claim that excepting the student loans described herein from discharge would cause an “undue hardship” to myself and my dependents within the meaning of 11 U.S.C. §523(a)(8). In support of this Attestation, I state the following under penalty of perjury:

I. PERSONAL INFORMATION

1. I am over the age of eighteen and am competent to make this Attestation.
2. I reside at _____ [address], in _____ County, [State].
3. My household includes the following persons (including myself):
_____ [full name] _____ [age] _____ [self]

[Updated November 2022]

_____ [full name] _____ [age] _____ [relationship]

_____ [full name] _____ [age] _____ [relationship]

Questions four through nine request information related to your outstanding student loan debt and your educational history. The Department of Education will furnish this information to the Assistant United States Attorney (“AUSA”) handling your case, and it should be provided to you. If you agree that the information provided to you regarding your student loan debt and educational history is accurate, you may simply confirm that you agree, and these questions do not need to be completed. If you have not received the information from Education or the AUSA at the time you are completing this form, or if the information is not accurate, you may answer these questions based upon your own knowledge. If you have more than one student loan which you are seeking to discharge in this adversary proceeding, please confirm that the AUSA has complete and accurate information for each loan, or provide that information for each loan.

4. I confirm that the student loan information and educational history provided to me and attached to this Attestation is correct: YES / NO [If you answered “NO,” you must answer questions five through nine].

5. The outstanding balance of the student loan[s] I am seeking to discharge in this adversary proceeding is \$ _____.

6. The current monthly payment on such loan[s] is _____. The loan[s] are scheduled to be repaid in _____ [month and year] [OR] _____. My student loan[s] went into default in _____ [month and year].

7. I incurred the student loan[s] I am seeking to discharge while attending _____, where I was pursuing a _____ degree with a specialization in _____.

8. In _____ [month and year], I completed my course of study and received a _____ degree [OR] In _____ [month and year], I left my course of study and did not receive a degree.

[Updated November 2022]

9. I am currently employed as a _____. My employer's name and address is _____ [OR] _____ I am not currently employed.

II. CURRENT INCOME AND EXPENSES

10. I do not have the ability to make payments on my student loans while maintaining a minimal standard of living for myself and my household. I submit the following information to demonstrate this:

A. Household Gross Income

11. My current monthly household **gross** income from all sources is \$ _____.¹

This amount includes the following monthly amounts:

_____ my **gross** income from employment (if any)
_____ my unemployment benefits
_____ my Social Security Benefits
_____ my _____
_____ my _____
_____ my _____
_____ **gross** income from employment of other members of household
_____ unemployment benefits received by other members of household
_____ Social Security benefits received by other members of household
_____ other income from any source received by other members of household

12. The current monthly household gross income stated above (select which applies):

¹ "Gross income" means your income before any payroll deductions (for taxes, Social Security, health insurance, etc.) or deductions from other sources of income. You may have included information about your gross income on documents previously filed in your bankruptcy case, including Form B 106I, Schedule I - Your Income (Schedule I). If you filed your Schedule I within the past 18 months and the income information on those documents has not changed, you may refer to that document for the income information provided here. If you filed Schedule I more than 18 months prior to this Attestation, or your income has changed, you should provide your new income information.

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_____ Includes a monthly average of the gross income shown on the most recent tax return[s] filed for myself and other members of my household, which are attached, and the amounts stated on such tax returns have not changed materially since the tax year of such returns; OR

_____ Represents an average amount calculated from the most recent two months of gross income stated on four (4) consecutive paystubs from my current employment, which are attached; OR

_____ My current monthly household gross income is not accurately reflected on either recent tax returns or paystubs from current employment, and I have submitted instead the following documents verifying current gross household income from employment of household members:

13. In addition, I have submitted _____ verifying the sources of income other than income from employment, as such income is not shown on [most recent tax return[s] or paystubs].

B. Monthly Expenses

14. My current monthly household expenses do not exceed the amounts listed below based on the number of people in my household for the following categories [Indicate “yes” if your expenses do not exceed the referenced amounts]:

(a) Living Expenses²

i.	Food	YES / NO
	\$431 (one person)	

² The living expenses listed in Question 14 and 15 have been adopted from the Internal Revenue Service Collection Financial Standards “National Standards” and “Local Standards” for the year in which this form is issued. This form is updated annually to reflect changes to these expenses.

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- | | | |
|------|---|----------|
| | \$779 (two persons)
\$903 (three persons)
\$1028 (four persons) | |
| ii. | Housekeeping supplies
\$40 (one person)
\$82 (two persons)
\$74 (three persons)
\$85 (four persons) | YES / NO |
| iii. | Apparel & Services
\$99 (one person)
\$161 (two persons)
\$206 (three persons)
\$279 (four persons) | YES / NO |
| iv. | Personal care products and services
(non-medical)
\$45 (one person)
\$82 (two persons)
\$78 (three persons)
\$96 (four persons) | YES / NO |
| v. | Uninsured medical costs
\$75 (per individual under 65)
\$153 (per individual over 65) | YES / NO |
| vi. | Miscellaneous expenses
not included elsewhere on this Attestation:
\$170 (one person)
\$306 (two persons)
\$349 (three persons)
\$412 (four persons) | YES / NO |

(b) Households Greater Than Four Persons

If your household consists of more than four people, please provide your *total* expenses for the categories in Question 14(a): \$ _____

[If you filed a Form 122A-2 Chapter 7 Means Test or 122C-2 Calculation of Disposable Income in your bankruptcy case, you may refer to lines 6 and 7 of those forms for information.]³

³ Forms 122A-2 and 122C-2 are referred to collectively here as the “Means Test.” If you filed a Means Test in your bankruptcy case, you may refer to it for information requested here and in other expense categories below. If you did not file a Means Test, you may refer to your Schedule

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(c) Excess Expenses

If your current monthly household expenses exceed the amounts listed above for any of the categories in Question 13(a) and you would like the AUSA to consider such additional expenses as necessary, you may list those expenses and explain the need for such expenses here.

15. My current monthly household expenses in the following categories are as follows:

(a) Payroll Deductions

i. Taxes, Medicare and Social Security \$ _____
[You may refer to line 16 of the Means Test or Schedule I, line 5]

ii. Contributions to retirement accounts \$ _____
[You may refer to line 17 of the Means Test or Schedule I, line 5]

Are these contributions required
as a condition of your employment? YES / NO

iii. Union dues \$ _____
[You may refer to line 17 of the Means Test or Schedule I, line 5]

iv. Life insurance \$ _____
[You may refer to line 18 of the Means Test or Schedule I, line 5]

Are the payments for a term policy
covering your life? YES / NO

v. Court-ordered alimony and child support \$ _____
[You may refer to line 19 of the Means Test or Schedule I, line 5]

I and Form 106J – Your Expenses (Schedule J) in the bankruptcy case, which may also list information relevant to these categories. You should only use information from these documents if your expenses have not changed since you filed them.

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- vi. Health insurance \$ _____
[You may refer to line 25 of the Means Test or Schedule I, line 5]

Does the policy cover any persons other than
yourself and your family members? YES / NO

- vii. Other payroll deductions

_____ \$ _____
\$ _____
\$ _____

(d) Housing Costs⁴

- i. Mortgage or rent payments \$ _____
ii. Property taxes (if paid separately) \$ _____
iii. Homeowners or renters insurance \$ _____
(if paid separately)
iv. Home maintenance and repair \$ _____
(average last 12 months' amounts)
v. Utilities (include monthly gas, electric \$ _____
water, heating oil, garbage collection,
residential telephone service,
cell phone service, cable television,
and internet service)

(e) Transportation Costs

- i. Vehicle payments (itemize per vehicle) \$ _____
ii. Monthly average costs of operating vehicles \$ _____
(including gas, routine maintenance,
monthly insurance cost)
iii. Public transportation costs \$ _____

(f) Other Necessary Expenses

- i. Court-ordered alimony and child support payments \$ _____
(if not deducted from pay)
[You may refer to line 19 of Form 122A-2 or 122C-2 or Schedule J, line 18]

⁴ You should list the expenses you actually pay in Housing Costs and Transportation Costs categories. If these expenses have not changed since you filed your Schedule J, you may refer to the expenses listed there, including housing expenses (generally on lines 4 through 6 of Schedule J) and transportation expenses (generally on lines 12, 15c and 17).

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- ii. Babysitting, day care, nursery and preschool costs \$ _____
[You may refer to line 21 of Form 122A-2 or 122C-2 or Schedule J, line 8]⁵

Explain the circumstances making it necessary
for you to expend this amount:

- iii. Health insurance \$ _____
(if not deducted from pay)
[You may refer to line 25 of the Means Test or Schedule J, line 15]

Does the policy cover any persons other than YES / NO
yourself and your family members?

- iv. Life insurance \$ _____
(if not deducted from pay)
[You may refer to line 25 of the Means Test or Schedule J, line 15]

Are the payments for a term policy YES / NO
covering your life?

- v. Dependent care (for elderly or disabled \$ _____
family members)
[You may refer to line 26 of the Means Test or Schedule J, line 19]

Explain the circumstances making it necessary
for you to expend this amount:

⁵ Line 8 of Schedule J allows listing of expenses for “childcare and children’s education costs.” You should not list any educational expenses for your children here, aside from necessary nursery or preschool costs.

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- vi. Payments on delinquent federal, state or local tax debt \$ _____
[You may refer to line 35 of the Means Test or Schedule J, line 17]

Are these payments being made pursuant YES / NO
to an agreement with the taxing authority?

- vii. Payments on other student loans \$ _____
I am not seeking to discharge

- viii. Other expenses I believe necessary for \$ _____
a minimal standard of living.

Explain the circumstances making it necessary
for you to expend this amount:

16. After deducting the foregoing monthly expenses from my household gross
income, I have _____ [no, or amount] remaining income.

17. In addition to the foregoing expenses, I anticipate I will incur additional monthly
expenses in the future for my, and my dependents', basic needs that are currently not met.⁶ These
include the following:

⁶ If you have forgone expenses for any basic needs and anticipate that you will incur such
expenses in the future, you may list them here and explain the circumstances making it necessary
for you to incur such expenses.

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III. FUTURE INABILITY TO REPAY STUDENT LOANS

18. For the following reasons, it should be presumed that my financial circumstances are unlikely to materially improve over a significant portion of the repayment period (answer all that apply):

___ I am over the age of 65.

___ The student loans I am seeking to discharge have been in repayment status for at least 10 years (excluding any period during which I was enrolled as a student).

___ I did not complete the education for which I incurred the student loan[s].

___ I have a permanent disability or chronic injury which renders me unable to work or limits my ability to work.

Describe the disability or injury and its effects on your ability to work, and indicate whether you receive any governmental benefits attributable to this disability or injury:

___ I have been unemployed for at least five of the past ten years.

Please explain your efforts to obtain employment.

19. For the following additional reasons, my financial circumstances are unlikely to materially improve over a significant portion of the repayment period (answer all that apply):

___ I incurred student loans I am seeking to discharge in pursuit of a degree I was unable to complete for reasons other than the closure of the educational institution.

Describe your reasons for being unable to complete the degree:

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___ I am not currently employed.

___ I am currently employed, but I am unable to obtain employment in the field for which I am educated or have received specialized training.

Describe reasons for inability to obtain such employment, and indicate if you have ever been able to obtain such employment:

___ I am currently employed, but my income is insufficient to pay my loans and unlikely to increase to an amount necessary to make substantial payments on the student loans I am seeking to discharge.

Please explain why you believe this is so:

___ Other circumstances exist making it unlikely I will be able to make payments for a significant part of the repayment period.

Explain these circumstances: _____

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IV. PRIOR EFFORTS TO REPAY LOANS

20. I have made good faith efforts to repay the student loans at issue in this proceeding, including the following efforts:

21. Since receiving the student loans at issue, I have made a total of \$_____ in payments on the loans, including the following:

____ regular monthly payments of \$_____ each.

____ additional payments, including \$_____, \$_____, and \$_____.

22. I have received ____ forbearances or deferments, for a period totaling ____ months.

23. I have attempted to contact the company that services or collects on my student loans or the Department of Education at least _____ times.

24. I have sought to enroll in one or more “Income Deferred Repayment Programs” or similar repayment programs offered by the Department of Education, including the following:

Description of efforts:

25. [If you did not enroll in such a program]. I have not enrolled in an “Income Deferred Repayment Program” or similar repayment program offered by the Department of Education for the following reasons:

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26. Describe any other facts indicating you have acted in good faith in the past in attempting to repay the loan, including efforts to obtain employment, maximize your income, or minimize your expenses:

V. CURRENT ASSETS

27. I own the following parcels of real estate:

Address:

Owners:⁷

Fair market value:

⁷ List by name all owners of record (self and spouse, for example)

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Total balance of _____
mortgages and
other liens.

28. I own the following motor vehicles:

Make and model: _____

Fair market value: _____

Total balance of _____
Vehicle loans
And other liens

29. I hold a total of _____ in retirement assets, held in 401k, IRA
and similar retirement accounts.

30. I own the following interests in a corporation, limited liability company,
partnership, or other entity:

Name of entity	State incorporated ⁸	Type ⁹ and %age Interest
_____	_____	_____
_____	_____	_____
_____	_____	_____

31. I currently am anticipating receiving a tax refund totaling \$_____.

VI. ADDITIONAL CIRCUMSTANCES

32. I submit the following circumstances as additional support for my effort to
discharge my student loans as an “undue hardship” under 11 U.S.C. §523(a)(8):

⁸ The state, if any, in which the entity is incorporated. Partnerships, joint ventures and some other business entities might not be incorporated.

⁹ For example, shares, membership interest, partnership interest.

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Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Signature:

Name:

Date:

APPENDIX B:
Debtor Example Scenario

On January 3, 2022, Jane Smith filed a chapter 7 bankruptcy case in Maryland. She later filed a complaint to seek to discharge approximately \$26,000 in student loans. The complaint and summons were served on February 12, 2022. In the complaint, Ms. Smith pleads that her student loan debt should be discharged because requiring payment will cause an “undue hardship” for her and her ten-year-old daughter, Sarah. Ms. Smith’s bankruptcy attorney forwards a signed Attestation to the Department Attorney with a copy of Ms. Smith’s 2020 tax return. (She has not yet completed the 2021 return.) Pursuant to the Guidance, the Department Attorney would evaluate the information provided in the Attestation as follows to determine if the facts in Ms. Smith’s case justify stipulating that she has shown an undue hardship within the meaning of Section 523(a)(8) of the Bankruptcy Code.

Part I: Personal Information

Part I of Ms. Smith’s Attestation lists relevant background information. It shows that she lives in Baltimore County, Maryland, in a household consisting of herself (age 30) and her daughter (age 10). She lists a student loan balance of \$26,369 and indicates her loan has been in default since June 2012. Part I also shows that Ms. Smith incurred her student loans to attend John Doe Community College, seeking a nursing degree, but that Ms. Smith left school in December 2010 and did not receive a degree. Ms. Smith is currently employed as a nursing assistant at Baltimore County Hospital in Baltimore.

Part II: Present Ability to Pay

Ms. Smith provided information about her income and expenses in Part II of the Attestation. Ms. Smith has reported on her Attestation that she earns \$3900 per month and has current monthly expenses of \$3782, including \$600 that is deducted from her paycheck for taxes, Medicare, Social Security, and health insurance. Ms. Smith has indicated that she resides in inadequate housing and needs to incur additional housing expenses to achieve a minimal standard of living which will increase her total expenses by \$800 (for a total expense amount of \$4582). Below are the steps the Department attorney, in consultation with Education, takes in analyzing Ms. Smith’s income and expenses:

- (1) The Department attorney checks Ms. Smith’s submitted tax return to determine if it is consistent with her stated monthly gross income (\$3900). Ms. Smith has not yet filed her 2021 tax return, so the only income the Department attorney can review is from her 2020 return. That return shows Adjusted Gross Income of \$45,952. This amount divided by 12 is \$3829, a monthly average which is consistent with (and

slightly less) than the \$3900 Ms. Smith has listed on the Attestation. The income stated on the Attestation thus appears correct.¹

(2) The Department attorney should use the IRS standards to determine Ms. Smith's allowable expenses:

- (a) Payroll deductions. Ms. Smith's payroll deductions of \$600 are almost certainly allowable. She has deducted \$400 for taxes, Medicare, and Social Security expenses, which are generally allowed under the IRS Standards, and the Department attorney should accept the amount of tax withholdings as an expense unless there is an obvious pattern of over withholding. In general, excessive withholding will be accompanied by a significant tax refund; however, Ms. Smith's most recent tax refund is \$3000² (which averages to a hypothetical \$250 in monthly income) an amount which is not significant. Accordingly, there is no basis to conclude that Ms. Smith has engaged in excessive withholding.

Ms. Smith's payroll deduction for health insurance of \$200 (Line 15(a)(vi)) is also almost certainly allowable. The Department attorney should generally allow health insurance expenses (whether payroll deductions or not) as long as the debtor indicates the policy covers only family members and not others. Here, Ms. Smith has indicated this on Line 15(a)(vi), and the deduction therefore appears appropriate.

- (b) Living Expenses (National and Local Standards).

Line 14 of the Attestation asks the debtor to confirm whether certain expenses are within amounts allowed under the IRS National Standards. Here, Ms. Smith has confirmed that her household monthly expenses do not exceed the allowed amounts for the following categories, and the Department attorney should allow the full amount for these categories (for a household of two):

Food: \$779
Housekeeping supplies: \$82
Apparel & Services: \$161
Personal care products and services: \$82
Miscellaneous: \$306

¹ The Department attorney may request further corroboration if necessary, for example, where a debtor's bankruptcy filings in total reflect unexplained inconsistencies.

² The Department attorney may review the debtor's most recent tax return to assess whether a listed refund suggests potential over-withholding.

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Ms. Smith has indicated that her uninsured medical costs are \$150, an amount which exceeds the IRS allowed amount of \$75. However, she has explained that her daughter requires medication and an inhaler, and the total cost not covered by insurance is \$150. Because Ms. Smith has reasonably explained why she needs this excess expense in order to meet her daughter's health care needs, she should be allowed her actual expense amount of \$150.

Ms. Smith's total expense amount for the categories identified in Line 14 is \$1560.

Lines 15(d) and (e) of the Attestation allow the debtor to list living expenses in categories corresponding to the IRS Local Standards. The following chart compares Ms. Smith's listed expenses to those allowed under the Local Standards for a family of two based on her locality. The final column shows the amount—typically, the lesser of the IRS Local Standards expense and Ms. Smith's actual expense in the category—that the Department attorney may treat as allowed, unless the Department attorney finds the higher amount within specific categories is justified.

Expense	Ms. Smith's Actual Expense	IRS Allowed Amount	Department Attorney Allowed Amount
Housing & Utilities	\$765	\$2233	\$765
Vehicle Payments	\$400	\$588	\$400
Average costs of operating vehicles	\$350	\$307	\$307
TOTAL	\$1515	\$3128	\$1472

Ms. Smith's actual expenses in each category other than "vehicle operating costs" are less than the amount allowed by the IRS Local Standards. Accordingly, they are consistent with a minimal standard of living. Ms. Smith exceeds the IRS Local Standards amount for vehicle operating costs. The Department attorney should generally limit the debtor's allowable expenses to the IRS Standard expenses amount, unless allowing the additional expenses is warranted by the debtor's circumstances.³

- (c) Other Necessary Expenses. Line 15(f) allows a debtor to list expenses consistent with the IRS Other Necessary Expenses categories. Ms. Smith has listed only one expense, \$150 per month for babysitting, day care or

³ The Department attorney may ask the debtor to provide an explanation for any expenses over the standard expense amount, but the Department attorney need not do so where, as shown below, the debtor's aggregate expenses as limited still show an inability to make student loan payments.

nursery and preschool costs. The Other Necessary Expenses categories require explanation of the necessity for these expenditures, and Ms. Smith explains that she needs to pay for her daughter to attend before and after care because her daughter's school schedule conflicts with her work schedule. Because Ms. Smith must pay this expense in order to maintain her job, and it is reasonable that she use the services provided by her daughter's school, this expense is "reasonable and necessary."

- (d) Expenses for Unmet Needs. The expenses calculated above total \$3782, an amount less than Ms. Smith's income. However, the Department attorney should also consider anticipated expenses that the debtor has identified on Line 17 of the Attestation. Ms. Smith has explained in Line 17 that she currently lives in her mother's basement apartment, but that this living situation is not sustainable. She has located an apartment for \$1300 per month where she intends to move within a few months, increasing her total housing and utilities expense by \$800. Because Ms. Smith will need to incur this additional expense in order to meet basic housing needs for her and her daughter, the Department attorney should consider Ms. Smith's anticipated rent increase when calculating her total expenses.

(e) Ms. Smith's allowable expenses (including the additional housing expense) total \$4582:

- \$600 – Payroll deductions
- \$1560 – National Standards
- \$1472 - Local Standards (without additional future housing expense)
- \$150 – Other Necessary Expenses
- \$800 – future expenses (additional housing expense)

- (3) Comparison to income. Ms. Smith's allowed expenses of \$4582 exceed her monthly income of \$3829, which has been verified by her tax returns. Because her allowed expenses exceed her income, the Department attorney should find she currently does not have sufficient means to pay her student loans while maintaining a minimal standard of living.

Part III: Future Circumstances

Part III of the Attestation allows a debtor to attest to matters showing that the inability to pay will persist into the future. In Line 18, the debtor can attest to circumstances that justify a *presumption* of a future inability to pay. Ms. Smith has indicated that her student loan went into repayment more than 10 years ago.⁴ Accordingly, she is entitled to a presumption that she will remain unable to repay the loan in the future.

⁴ This assertion is supported by Ms. Smith's statement in the Attestation that her loans entered repayment in June 2011, more than 10 years before she filed her bankruptcy case.

Although the presumption of future inability to pay is rebuttable, those circumstances should be infrequent. Illustratively, Ms. Smith has not provided any information in her Attestation that indicates a likely future ability to pay or that her financial circumstances are likely to change. The Attestation, as a whole, supports her claim that she will remain unable to pay. She has indicated on Line 19 that she (1) was forced to drop out of nursing school to care for her infant daughter, (2) she cannot obtain employment as a nurse because she did not obtain her degree, (3) her current job does not offer significant raises or promotions, and (4) she has been unable to obtain a second job and likely could not do so because her daughter suffers from asthma. None of that information provides a basis to rebut the presumption of future inability to pay. Indeed, this information would appear to support a conclusion that she lacks a future ability to pay even in the absence of any presumption. In this situation, there does not appear to be a need for the attorney to investigate further. Although there are circumstances where the Department attorney may reasonably make inquiry to supplement or elucidate statements in the Attestation, that need may be infrequent. In this example, the Department attorney should conclude that Ms. Smith's inability to pay will continue for a significant portion of the repayment period.

Part IV: Prior Efforts to Repay Loans

Part IV of the Attestation provides information the Department attorney should use to determine if Ms. Smith has made a good faith effort to repay her loans. In this case, good faith should likely be found, because the information provided on Ms. Smith's Attestation reflects that she has maximized income by obtaining full-time employment, minimized expenses, and has not willfully attempted to avoid repaying her loans.

Ms. Smith reports that she has made no payments on her loans (Line 21). Indeed, her responses on Part I of the Attestation show that the loans went into repayment in May 2011 and went into default in June 2012. While these facts are relevant to the "good faith" determination, the failure to make payments alone does not justify finding a lack of good faith. Here, Ms. Smith has offered an explanation for her failure to make payments (Line 26). She left school when her daughter was less than one year old. She had no support from the child's father and initially was unable to obtain part-time employment. Since that time, she has never obtained employment permitting her to pay her student loans.

Ms. Smith also indicates she has not enrolled in an IDR (Line 25). Failure to enroll in an IDR, however, is not dispositive of a lack of good faith. Here, Ms. Smith attests that she contacted her loan servicer to discuss IDRs. The servicer did not explain the process for enrolling and stated to Ms. Smith that she would pay a heavy tax burden if she completed a payment plan. Given the circumstances, as well as Ms. Smith's extremely limited income preventing any substantial payments under an IDR, nothing in the Attestation suggests she acted "willfully" by not enrolling in an IDR or was disinterested in repaying her loans. Rather, her lack of enrollment was reasonable in light of her confusion over the process as well as her concerns about tax consequences.

The Attestation also shows that Ms. Smith sought to maximize income and minimize expenses. On Line 26, she states that she continually worked full-time after her daughter started school, and that she cannot work more hours due to the need to care for her daughter. She also states she could not find higher paying work due to her lack of a degree. Line 26 presents information about minimization of expenses, including that Ms. Smith has lived with her mother for four years to reduce expenses. Finally, while Ms. Smith acknowledges she has acquired a vehicle with a car payment, she explains the need for reliable transportation. In addition, the vehicle payment is within the Local Standards above. Obtaining the vehicle is not evidence of a refusal to minimize expenses.

Part V: The Debtor's Assets

Ms. Smith's only asset is a 2018 Toyota Camry with approximately \$5000 in equity (Line 28). Even if Ms. Smith did not claim an exemption for her car, it would be unreasonable to expect Ms. Smith to liquidate this asset in order to pay her student loan. Ms. Smith's Attestation demonstrates that she needs her vehicle to maintain a minimal standard of living for herself and her daughter. Ms. Smith would therefore have to purchase a new vehicle if this asset were liquidated. Additionally, requiring Ms. Smith to pay down the student loan would still leave approximately \$20,000 due, and there is no showing that Ms. Smith would have the ability to satisfy this part of the student loan after liquidating the vehicle and paying \$5000. For these reasons, liquidation of the asset would be inappropriate.

Conclusion

Based on review of the Attestation, it is appropriate for the Department attorney to conclude that Ms. Smith is entitled to a discharge of her student loans. She does not have a current ability to pay her loans while maintaining a minimal standard of living; this inability is likely to persist into the future; and she has made good faith efforts to repay her loans. In addition, she does not have any assets that are reasonably available for liquidation.

The Department attorney should contact Ms. Smith's counsel and indicate the United States would be willing to enter into a stipulation that Ms. Smith has shown undue hardship under Section 523(a)(8) and recommend the Court grant her a judgment discharging her loans.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	
)	
JANE SMITH,)	Case No.
)	Chapter [7]
Debtors.)	
)	
_____)	
)	
JANE SMITH,)	
)	
Plaintiff,)	Adversary Pro. _____
)	
v.)	
)	
UNITED STATES DEPARTMENT)	
OF EDUCATION, [et al.],)	
)	
Defendant[s].)	
_____)	

ATTESTATION OF JANE SMITH IN SUPPORT
OF REQUEST FOR STIPULATION CONCEDING
DISCHARGEABILITY OF STUDENT LOANS

I, JANE SMITH, make this Attestation in support of my claim that excepting the student loans described herein from discharge would cause an “undue hardship” to myself and my dependents within the meaning of 11 U.S.C. §523(a)(8). In support of this Attestation, I state the following under penalty of perjury:

I. PERSONAL INFORMATION

1. I am over the age of eighteen and am competent to make this Attestation.
2. I reside at 123 Main Street, Towson MD 20204, in Baltimore County, Maryland.
3. My household includes the following persons (including myself):

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NAME: AGE: RELATIONSHIP:

Jane Smith 30 years [self]

Sarah Smith 10 years daughter

Questions four through nine request information related to your outstanding student loan debt and your educational history. The Department of Education will furnish this information to the Assistant United States Attorney (“AUSA”) handling your case, and it should be provided to you. If you agree that the information provided to you regarding your student loan debt and educational history is accurate, you may simply confirm that you agree, and these questions do not need to be completed. If you have not received the information from Education or the AUSA at the time you are completing this form, or if the information is not accurate, you may answer these questions based upon your own knowledge. If you have more than one student loan which you are seeking to discharge in this adversary proceeding, please confirm that the AUSA has complete and accurate information for each loan, or provide that information for each loan.

4. I confirm that the student loan information and educational history provided to me and attached to this Attestation is correct: YES / NO [If you answered “NO,” you must answer questions five through nine].

5. The outstanding balance of the student loan[s] I am seeking to discharge in this adversary proceeding is \$26,369.

6. The current monthly payment on such loan[s] is \$132. The loan[s] are scheduled to be repaid in ??? [month and year] [OR] ____ My student loan[s] went into default in June 2012 [month and year].

7. I incurred the student loan[s] I am seeking to discharge while attending John Doe Community College, where I was pursuing a nursing degree with a specialization in n/a.

8. In _____ [month and year], I completed my course of study and received a _____ degree [OR] In December 2010 [month and year], I left my course of study and did not receive a degree.

9. I am currently employed as a certified nursing assistant. My employer's name and address is Baltimore County Hospital, Baltimore MD [OR] _____ I am not currently employed.

II. CURRENT INCOME AND EXPENSES

10. I do not have the ability to make payments on my student loans while maintaining a minimal standard of living for myself and my household. I submit the following information to demonstrate this:

A. Household Gross Income

11. My current monthly household **gross** income from all sources is \$3900.¹

This amount includes the following the following monthly amounts:

\$3900 my **gross** income from employment (if any)
 _____ my unemployment benefits.
 _____ my Social Security Benefits
 _____ my child support
 _____ my _____
 _____ my _____
 _____ **gross** income from employment of other members of household
 _____ unemployment benefits received by other members of household
 _____ Social Security benefits received by other members of household
 _____ other income from any source received by other members of household

12. The current monthly household gross income stated above (select which applies):

¹ "Gross income" means your income before any payroll deductions (for taxes, Social Security, health insurance, etc.) or deductions from other sources of income. You may have included information about your gross income on documents previously filed in your bankruptcy, including Form B 106I, Schedule I - Your Income (Schedule I). If you filed your Schedule I within the past 18 months and the income information on those documents has not changed, you may refer to that document for the income information provided here. If you filed Schedule I more than 18 months prior to this Attestation, or your income has changed, you should provide your new income information.

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 X Includes a monthly average of income shown on the most recent tax return[s] filed for myself and other members of my household, which are attached, and the amounts stated on such tax returns have not changed materially since the tax year of such returns; OR

 Represents an average amount calculated from the most recent two months of gross income stated on four (4) consecutive paystubs from my current employment, which are attached; OR

 My current monthly household gross income is not accurately reflected on either recent tax returns or paystubs from current employment, and I have submitted instead the following documents verifying current gross household income from employment of household members: _____

13. In addition, I have submitted _____ verifying the sources of income other than income from employment, as such income is not shown on [most recent tax return[s] or paystubs].

B. Monthly Expenses

14. My current monthly household expenses do not exceed the amounts listed below based on the number of people in my household for the following categories [Indicate “yes” if your expenses do not exceed the referenced amounts]:

(a) Living Expenses²

i.	Food	YES / NO
	\$431 (one person)	
	\$779 (two persons)	
	\$903 (three persons)	
	\$1028 (four persons)	

² The living expenses listed in Question 14 and 15 have been adopted from the Internal Revenue Service Collection Financial Standards “National Standards” and “Local Standards” for the year in which this form is issued. This form is updated annually to reflect changes to these expenses.

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- | | | |
|------|---|-----------------|
| ii. | Housekeeping supplies
\$40 (one person)
\$82 (two persons)
\$74 (three persons)
\$85 (four persons) | YES / NO |
| iii. | Apparel & Services
\$99 (one person)
\$161(two persons)
\$206 (three persons)
\$279 (four persons) | YES / NO |
| iv. | Personal care products and services
(non-medical)
\$45 (one person)
\$82 (two persons)
\$78 (three persons)
\$96 (four persons) | YES / NO |
| v. | Uninsured medical costs
\$75 (per individual under 65)
\$153 (per individual over 65) | YES / NO |
| vi. | Miscellaneous expenses
not included elsewhere on this Attestation:
\$170 (one person)
\$306 (two persons)
\$349 (three persons)
\$412 (four persons) | YES / NO |

(b) Households Greater Than Four Persons

If your household consists of more than four people, please provide your *total* expenses for the categories in Question 14(a): \$ _____

[If you filed a Form 122A-2 Chapter 7 Means Test or 122C-2 Calculation of Disposable Income in your bankruptcy case, you may refer to lines 6 and 7 of those forms for information.]³

³ Forms 122A-2 and 122C-2 are referred to collectively here as the “Means Test.” If you filed a Means Test in your bankruptcy case, you may refer to it for information requested here and in other expense categories below. If you did not file a Means Test, you may refer to your Schedule I and Form 106J – Your Expenses (Schedule J) in the bankruptcy case, which may also list information relevant to these categories. You should only use information from these documents if your expenses have not changed since you filed them.

(c) Excess Expenses

If your current monthly household expenses exceed the amounts listed above for any of the categories in Question 13(a) and you would like the AUSA to consider such additional expenses as necessary, you may list those expenses and explain the need for such expenses here.

I buy inhalers and medications for my daughter, who has asthma, and the total cost not covered by insurance is approximately \$150 per month.

15. My current monthly household expenses in the following categories are as follows:

(a) Payroll Deductions

i. Taxes, Medicare and Social Security \$400
[You may refer to line 16 of the Means Test or Schedule I, line 5]

ii. Contributions to retirement accounts \$ 0
[You may refer to line 17 of the Means Test or Schedule I, line 5]

Are these contributions required
as a condition of your employment? YES / NO

iii. Union dues \$ n/a
[You may refer to line 17 of the Means Test or Schedule I, line 5]

iv. Life insurance \$ n/a
[You may refer to line 18 of the Means Test or Schedule I, line 5]

Are the payments for a term policy
covering your life? YES / NO

v. Court-ordered alimony and child support \$ n/a
[You may refer to line 19 of the Means Test or Schedule I, line 5]

vi. Health insurance \$200
[You may refer to line 25 of the Means Test or Schedule I, line 5]

Does the policy cover any persons other than
yourself and your family members? YES / **NO**

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vii. Other payroll deductions

_____	\$ <u>n/a</u>
_____	\$ _____
_____	\$ _____

(d) Housing Costs⁴

i.	Mortgage or rent payments	\$ <u>500</u>
ii.	Property taxes (if paid separately)	\$ <u>n/a</u>
iii.	Homeowners or renters insurance (if paid separately)	\$ <u>15</u>
iv.	Home maintenance and repair (average last 12 months' amounts)	\$ <u>n/a</u>
v.	Utilities (include monthly gas, electric water, heating oil, garbage collection, residential telephone service, cell phone service, cable television, and internet service).	\$ <u>250</u>

(e) Transportation Costs

i.	Vehicle payments (itemize per vehicle)	\$ <u>400</u>
ii.	Monthly average costs of operating vehicles (including gas, routine maintenance, monthly insurance cost)	\$ <u>350</u>
iii.	Public transportation costs	\$ <u>n/a</u>

(f) Other Necessary Expenses

i.	Court-ordered alimony and child support payments (if not deducted from pay) [You may refer to line 19 of Form 122A-2 or 122C-2 or Schedule J, line 18]	\$ <u>n/a</u>
ii.	Babysitting, day care, nursery and preschool costs [You may refer to line 21 of Form 122A-2 or 122C-2 or Schedule J, line 8] ⁵	\$ <u>150</u>

⁴ You should list the expenses you actually pay in Housing Costs and Transportation Costs categories. If these expenses have not changed since you filed your Schedule J, you may refer to the expenses listed there, including housing expenses (generally on lines 4 through 6 of Schedule J) and transportation expenses (generally on lines 12, 15c and 17).

⁵ Line 8 of Schedule J allows listing of expenses for "childcare and children's education costs." You should not list any educational expenses for your children here, aside from necessary nursery or preschool costs.

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Explain the circumstances making it necessary
for you to expend this amount:

I have to send my daughter to before care
and after care for school because her school day is
from 7:45-3:00 but I work from 7:00-3:30.
This is what her school charges.

- iii. Health insurance \$ n/a
(if not deducted from pay)
[You may refer to line 25 of the Means Test or Schedule J, line 15]

Does the policy cover any persons other than YES / NO
yourself and your family members?

- iv. Life insurance \$ n/a
(if not deducted from pay)
[You may refer to line 25 of the Means Test or Schedule J, line 15]

Are the payments for a term policy YES / NO
covering your life?

- v. Dependent care (for elderly or disabled \$ n/a
family members).
[You may refer to line 26 of the Means Test or Schedule J, line 19]

Explain the circumstances making it necessary
for you to expend this amount:

- vi. Payments on delinquent federal, state or local tax debt \$ n/a
[You may refer to line 35 of the Means Test or Schedule J, line 17]

Are these payments being made pursuant YES / NO
to an agreement with the taxing authority?

- vii. Payments on other student loans \$ n/a
I am not seeking to discharge

- viii. Other expenses I believe necessary for \$ n/a

a minimal standard of living.

Explain the circumstances making it necessary
for you to expend this amount:

16. After deducting the foregoing monthly expenses from my household gross income, I have \$128 remaining income.

17. In addition to the foregoing expenses, I anticipate I will incur additional monthly expenses in the future for my, and my dependents', basic needs which are currently not met.⁶

These include the following:

I live in a basement apartment at my mother's house, but it is not possible to live there anymore with my daughter turning 10 years old. We don't have our own kitchen and the living space is too small. I have found an apartment in our area near where I work for \$1300 per month. We are hoping to move there in a few months.

III. FUTURE INABILITY TO REPAY STUDENT LOANS

18. For the following reasons, it should be presumed that my financial circumstances are unlikely to materially improve over a significant portion of the repayment period (answer all that apply):

- ☐ I am over the age of 65.
- ☒ The student loans I am seeking to discharge have been repayment status for at least ten years (excluding any period which I was enrolled as a student).
- ☐ I did not complete the education for which I incurred the student loan[s].
- ☐ I have a permanent disability or chronic injury which renders me unable to work or limits my ability to work.

⁶ If you have forgone expenses for any basic needs and anticipate that you will incur such expenses in the future, you may list them here and explain the circumstances making it necessary for you to incur such expenses.

Describe the disability or injury and its effects on your ability to work, and indicate whether you receive any governmental benefits attributable to this disability or injury:

☐ I have been unemployed for at least five of the past ten years.

Please explain your efforts to obtain employment.

19. For the following additional reasons, my financial circumstances are unlikely to materially improve over a significant portion of the repayment period (answer all that apply):

☒ I incurred student loans I am seeking to discharge in pursuit of a degree I was unable to complete for reasons other than the closure of the educational institution.

Describe your reasons for being unable to complete the degree:

I was in nursing school but had to drop out to care for my daughter.

☐ I am not currently employed.

☒ I am currently employed, but I am unable to obtain employment in the field for which I am educated or have received specialized training.

Describe reasons for inability to obtain such employment, and indicate if you have ever been able to obtain such employment:

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I was in nursing school but did not complete my degree, so I cannot get a job as a nurse. I work as a nursing assistant.

- X I am currently employed, but my income is insufficient to pay my loans and unlikely to increase to an amount necessary to make substantial payments on the student loans I am seeking to discharge.

Please explain why you believe this is so:

I have looked for other jobs that pay more, but they require a degree. My current job does not offer any significant raises or promotions. I also need to work during the hours that my daughter is in school, so I can't work the night or weekend shifts at my current job even though it would pay more.

- X Other circumstances exist making it unlikely I will be able to make payments for a significant part of the repayment period.

Explain these circumstances:

My daughter is ten years old. She has severe asthma, requiring inhalers and other medication. Because of these conditions, working a second job is not possible for me. I need to be at home to ensure she is safe after school, and I can't afford a babysitter or additional after school care.

IV. PRIOR EFFORTS TO REPAY LOANS

20. I have made good faith efforts to repay the student loans at issue in this proceeding, including the following efforts:

21. Since receiving the student loans at issue, I have made a total of \$ 0 in payments on the loans, including the following:

___ regular monthly payments of \$ ___ each.

___ additional payments, including \$ ___, \$ ___, and \$ ___.

22. I have received no forbearances or deferments, for a period totaling ___ months.

23. I have attempted to contact the company that services or collects on my student loans or the Department of Education at least 10 times.

24. I have sought to enroll in one or more "Income Deferred Repayment Programs" or similar repayment programs offered by the Department of Education, including the following:

Description of efforts:

25. [If you did not enroll in such a program]. I have not enrolled in an “Income Deferred Repayment Program” or similar repayment program offered by the Department of Education for the following reasons:

I had heard of repayment plans, but I was confused when I tried to ask my servicer about the plans. They did not explain how to sign up, and they told me I might end up paying a lot of taxes if I did a payment plan. I can't afford to pay additional taxes.

26. Describe any other facts indicating you have acted in good faith in the past in attempting to repay the loan, including efforts to obtain employment, maximize your income, or minimize your expenses:

I've always worked full time after my daughter was old enough to go to school. I can't work more hours because I have to take care of her on the weekends and after school. I have looked for higher paying jobs, but they all require degrees.

I drove a used car for a long time, but I had to buy a new car a few years ago because my old one was starting to need a lot of repairs and I needed a reliable car to get to work and take my daughter to school, doctors etc. I've been living with my mother for the past 4 years to try and save expenses, but I need to move to an apartment. I'll need to stay in this area, though, because this is where my job and my daughter's school are.

All of my paycheck goes toward providing my daughter and myself with our necessities, including groceries, clothes for her, and her school supplies.

V. CURRENT ASSETS

27. I own the following parcels of real estate:

Address: None

Owners:⁷ _____

Fair market value: _____

Total balance of
 mortgages and
 other liens. _____

28. I own the following motor vehicles:

Make and model: 2018 Toyota Camry

Fair market value: \$25,000

Total balance of \$20,000
 Vehicle loans
 And other liens

29. I hold a total of \$ 0 in retirement assets, held in 401k, IRA and similar retirement accounts.

30. I own the following interests in a corporation, limited liability company, partnership, or other entity:

Name of entity	State incorporated ⁸	Type ⁹ and %age Interest
_____	_____	_____

⁷ List by name all owners of record (self and spouse, for example)

⁸ The state, if any, in which the entity is incorporated. Partnerships, joint ventures and some other business entities might not be incorporated.

⁹ For example, shares, membership interest, partnership interest.

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31. I currently am anticipating receiving a tax refund totaling \$3,000

VI. ADDITIONAL CIRCUMSTANCES

32. I submit the following circumstances as additional support for my effort to discharge my student loans as an “undue hardship” under 11 U.S.C. §523(a)(8):

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

/s/ Jane Smith
Signature:

Jane Smith
Name:

Date: February 25, 2022

Faculty

Hon. Kevin R. Anderson is a U.S. Bankruptcy Judge for the District of Utah in Salt Lake City, appointed on Sept. 4, 2015. Previously, he served for 17 years as the standing chapter 13 trustee for the District of Utah, administering more than 70,000 chapter 13 cases. Judge Anderson served as president of the National Association of Chapter 13 Trustees (NACTT), and he served on several national committees regarding chapter 13 legislation, rules, forms and policy. He has frequently written and presented on chapter 13 issues, including for the *Norton Bankruptcy Law Advisor*, the *ABI Journal*, the *NACTT Quarterly* and the *NACTT Academy for Consumer Bankruptcy Education*. He also is a Fellow in the American College of Bankruptcy. Prior to his appointment as chapter 13 trustee, Judge Anderson practiced for 13 years as a commercial litigator with an emphasis on civil fraud, real property, and representing chapter 11 and 7 trustees. He also clerked for Hon. David N. Naugle, U.S. Bankruptcy Judge for the Central District of California. Prior to law school, Judge Anderson worked for two years as a data systems specialist testing military and commercial jet engines for General Electric. He received his J.D. *cum laude* from the J. Ruben Clark Law School at Brigham Young University.

Adam M. Goodman is a standing chapter 13 trustee for the Districts of Colorado and Wyoming in Denver. He was appointed in Colorado on Oct. 1, 2017, and in Wyoming on Oct. 1, 2018. From Jan. 1, 2003, to Sep. 30, 2017, he was a standing chapter 13 trustee for the Northern District of Georgia. Mr. Goodman is a member of the State Bar of Georgia and The Florida Bar. He began his legal career representing consumer and business debtors in Tampa, Fla., then migrated to representing lending institutions and mortgage-holders in foreclosure and bankruptcy matters throughout the State of Florida. Mr. Goodman continued his creditors' rights practice in bankruptcy and problem loan workouts on a nationwide basis with a law firm in Atlanta. Prior to his appointment, he served as a staff attorney for a chapter 13 trustee. Mr. Goodman is a frequent speaker locally and nationally on chapter 13 topics and is a co-author of Thomson Reuters' *Chapter 13 Practice and Procedure*. He received his B.S. in 1990 from Florida State University and his J.D. in 1993 from Southern Texas College of Law.