

The Development of Federal Student Loan Bankruptcy Policy

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Perhaps 200,000 to 250,000 student loan borrowers enter bankruptcy every year, and the large majority of student loans are issued under federal programs administered by the Department of Education (“Department”). Thus, the Department’s rules about when student-loan holders should consent to bankruptcy discharge are critically important. Nevertheless, they have received little attention compared to judicial doctrine relating to student loan bankruptcy.

This Article presents the first detailed history of the Department’s student loan bankruptcy policy. It first describes the current rules, under which loan holders are to oppose discharge unless the repayment would cause “undue hardship”—the standard for discharge under the Bankruptcy Code—or opposing discharge would cost more than one third the outstanding loan balance. These rules call for consent to discharge only where the borrower would be able to prevail against the holder in court by showing undue hardship or where consent would make the holder financially better off.