

# UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA

## “Student Loan Guidelines”

### Guidelines for Adversary Proceedings to Determine Dischargeability of Educational Loans Held by the Department of Justice [11 U.S.C. § 523(a)(8)]

Under 11 U.S.C. § 523(a)(8), individual debtors may seek a judgment to discharge student loans where such student loans would impose an undue hardship on the debtor and the debtor’s dependents.

On January 27, 2022, the United States Department of Justice (“DOJ”), in cooperation with the United States Department of Education (“DOE”), announced guidance with respect to student loan bankruptcy litigation (the “DOJ Guidance”).<sup>1</sup> On November 17, 2022, the DOJ Guidance became effective and applies **ONLY** to student loans in proceedings in which the DOE is a defendant (“DOE Student Loans”).<sup>2</sup>

To assist parties with following the DOJ Guidance, our court provides these Guidelines for the Central District of California (“Student Loan Guidelines”). The Student Loan Guidelines apply *only* to adversary proceedings under 11 U.S.C. § 523(a)(8) the DOE is a defendant.

## I. Summary of DOJ Guidance

The DOJ Guidance applies to future bankruptcy cases and proceedings, as well as (wherever practical) to pending matters. Given that the DOJ Guidance is an internal DOJ policy, it does not create any substantive or procedural rights enforceable at law. The Guidance seeks to promote three goals:

- 1) To set clear, transparent, and consistent expectations for discharging DOE student loans that debtors can understand whether they are represented by counsel or are self-represented litigants;
- 2) To reduce debtors’ burden in filing adversary proceedings to discharge of DOE Student Loans by simplifying the fact-gathering process; **and**
- 3) Where the facts support it, to increase the number of proceedings in which the DOE stipulates to facts demonstrating the existence of undue hardship and then recommends that the court discharge a debtor’s DOE Student Loans.

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<sup>1</sup> [Justice Department and Department of Education Announce a Fairer and More Accessible Bankruptcy Discharge Process for Student Loan Borrowers | OPA | Department of Justice](#)

<sup>2</sup> [Student Loan Discharge Guidance -- Fact Sheet \(justice.gov\)](#)

After a debtor commences an adversary proceeding under 11 U.S.C. § 523(a)(8), the DOJ attorney assigned to the proceeding will provide debtor/plaintiff with an “Attestation Form.”<sup>3</sup> The DOJ attorney will also provide debtor with the debtor’s Student Loan account history and details, which the DOJ obtained from the DOE.

The Attestation consists of a lengthy form to be prepared by the debtor under penalty of perjury. The Attestation requires debtor to provide detailed information concerning the following:

- 1) debtor’s current income and expenses,
- 2) debtor’s future inability to repay their Student Loans,
- 3) debtor’s prior efforts to repay their Student Loans,
- 4) debtor’s current assets, and
- 5) any additional circumstances demonstrating debtor’s undue hardship.

The Attestation also requests that debtor provide documentation supporting debtor’s stated income. The DOJ may request additional evidence where necessary to verify the information described in debtor’s Attestation.

The DOJ Guidance offers detailed instructions for evaluating an Attestation and its supporting documentation, focusing on the factors relevant to a court’s determination of dischargeability under *Brunner v. New York State Higher Educ. Svcs. Corp.*, 831 F.2d 395 (2d Cir. 1987), which applies in the Ninth Circuit pursuant to *In re Pena*, 155 F.3d 1108, 1112 (9<sup>th</sup> Cir. 1998). The DOJ Guidance also requires the DOJ to consult with the DOE in reviewing debtor’s Attestation and verifying documents and/or evidence provided by debtor when determining an appropriate course of action in each proceeding.

Next, the DOJ and DOE determine whether debtor has demonstrated that:

- (a) absent a discharge of DOE Student Loans, debtor and the debtor’s dependents would suffer undue hardship;
- (b) debtor presently lacks an ability to repay DOE Student Loans;
- (c) debtor’s ability to pay DOE Student Loans is likely to persist in the future; **and**
- (d) debtor has acted in good faith in the past in attempting to repay DOE Student Loans.

If a debtor has demonstrated the above, the DOJ Guidance advises DOJ attorneys to stipulate to the established facts and to recommend that the court issue a partial or full discharge of the debtor’s DOE Student Loans. DOJ must advise debtors that its stipulation and recommendation do not bind the court, which will render its own determination as to whether the DOE Student Loans are dischargeable.

The DOJ Guidance provides encouragement to debtors and DOE attorneys to cooperate in filing the appropriate documents to enable the court to consider whether to issue an order to discharge DOE Student Loans.

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<sup>3</sup> Link to Department of Justice website where Attestation can be accessed at: [Student Loan Discharge Guidance -- Guidance Text \(justice.gov\)](#)

## II. This Court's Guidelines for 11 U.S.C. § 523(a)(8) Adversary Proceedings

### A. Current Deadlines per FRBP and FRCP

Once a debtor commences an adversary proceeding under 11 U.S.C. §523(a)(8), there are related preliminary deadlines set forth in the FRBP and FRCP.<sup>4</sup> First, the debtor must timely serve the DOE with process<sup>5</sup>, i.e. a summons and the complaint. Assuming timely, proper service of process, the DOE must answer or otherwise respond to the complaint within 35 days after service of the summons.<sup>6</sup> The court must generally issue a scheduling order within 90 days following service of the complaint.<sup>7</sup> And, within 21 days prior to the initial scheduling conference or the deadline for issuing a scheduling order, the parties must convene a discovery conference, exchange the material described in FRBP Rule 26(a)(1)(A), and file a discovery plan.

### B. Solving Challenges of Deadlines

1. Challenges. Deadlines set forth in the FRBP, FRCP and the LBR<sup>8</sup> do not allow sufficient time to accomplish requirements of the DOJ Guidance, namely for (1) the DOE to provide the DOJ with the history and account details of the debtor/plaintiff's DOE Student Loan, (2) for transmittal of that information and the Attestation to the debtor, (3) for the debtor to gather the necessary documentation to complete the Attestation, (4) for the DOJ and DOE to analyze the debtor's Attestation and corroborating documents, and (5) for the DOJ to make its recommendation to the court.

2. Court's Student Loan Guidelines. The court believes that allowing time for the parties to comply with the with the DOJ Guidance will save resources of the parties' and the court, and will make management of adversary proceedings under 11 U.S.C. § 523(a)(8) efficient and fair. Thus, the Court adopted these Student Loan Guidelines, which apply to adversary proceedings for the discharge of student loans under Section 523(a)(8) where DOE is a defendant and to which the Guidance applies.

3. Stipulation After Service of Summons and Complaint. After the Debtor/Plaintiff files the complaint and serves the DOE with process<sup>9</sup>, if the parties want the court to order sufficient time to follow the DOJ Guidance, the parties must file a stipulation that conforms to the stipulation attached as **Exhibit A** ("Student Loan Stipulation"). The Student Loan Stipulation sets forth the parties' agreement to, and requests the court's approval of, the following:

- a. Extend by 120-days the deadline by which DOE must answer or otherwise respond to the Debtor/Plaintiff's complaint ("DOE Extended Response Deadline");
- b. Set or continue the status conference to a date that is 60 or more days from the date the adversary proceeding was filed, at which the parties will discuss the DOJ Guidance and inform the Court about the status of the Student Loan Stipulation;

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<sup>4</sup> All references to FRBP or FRCP refer to the Federal Rules of Bankruptcy Procedure or Federal Rules of Civil Procedure.

<sup>5</sup> FRBP 7004(e)

<sup>6</sup> FRBP 7012(a)

<sup>7</sup> FRBP 7016 and FRCP 16(b)(2).

<sup>8</sup> Local Bankruptcy Rules for the Central District of California

<sup>9</sup> FRBP 7004(e)

- c. Agree that calculation of the deadlines<sup>10</sup> set forth in FRBP Rules 26(a)(1)(C) (exchange of initial disclosures), 26(f)(1) (conduct discovery conference), and 26(f)(2) (filing a discovery plan), which apply to sections under 11 U.S.C. § 523(a)(8) pursuant to FRBP Rule 7026, from the date of the continued scheduling conference; **and**
- e. Agree that good cause exists for delay in issuing a scheduling order after the deadline set forth in FRCP Rule 16(b)(2), which applies to adversary proceedings pursuant to FRBP Rule 7016.

C. **Additional Provisions.** An order approving the Stipulation must conform to the example attached as **Exhibit B**. Related FRBP and LBR apply to (a) filing documents and lodging a judgment or other order if the parties reach an agreement about dischargeability.

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<sup>10</sup> See FRCP 16(b), 26(a)(1)(A), 26(a)(1)(C), 26(f)(1), and 26(f)(2); and FRBP 7016 and 7026.