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Student Loan Bankruptcy Options – Are there any?

June 21, 2013 - [Demetrios Sourmaidis](#) - [Leave a Comment](#)

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Currently, **student loans** cannot be discharged through standard bankruptcy courts. Special procedures have to be initiated outside the bankruptcy process which can be very difficult to navigate. This applies to both federal and private student loans. A decade long court case was recently completed that drives home just how difficult this process can be. There is legislation now being considered that could change this, but each bill is finding minimal support at this time.

To discharge student loans, the law requires borrowers to begin what is called an Adversary Proceeding. This is a lawsuit filed as part of a bankruptcy case, but is decided separately from the other proceedings. To “win” this lawsuit and have the student loans discharged, an Adversary applicant must prove to a judge that repaying them would be an undue hardship on the individual and his family if he has one.

This hardship must meet what is known as the Brunner Standard. The name is taken from a 1987 court case between Marie Brunner and a New York loan agency. Basically, an applicant must prove three points:

- The student loan borrower (and dependents) cannot meet a very basic standard of living on his current income and still pay his student loans.
- This current situation is going to continue for an extensive period of the life of the student loans.
- The borrower has attempted to make a good faith effort to **repay** the loan prior to filing bankruptcy.

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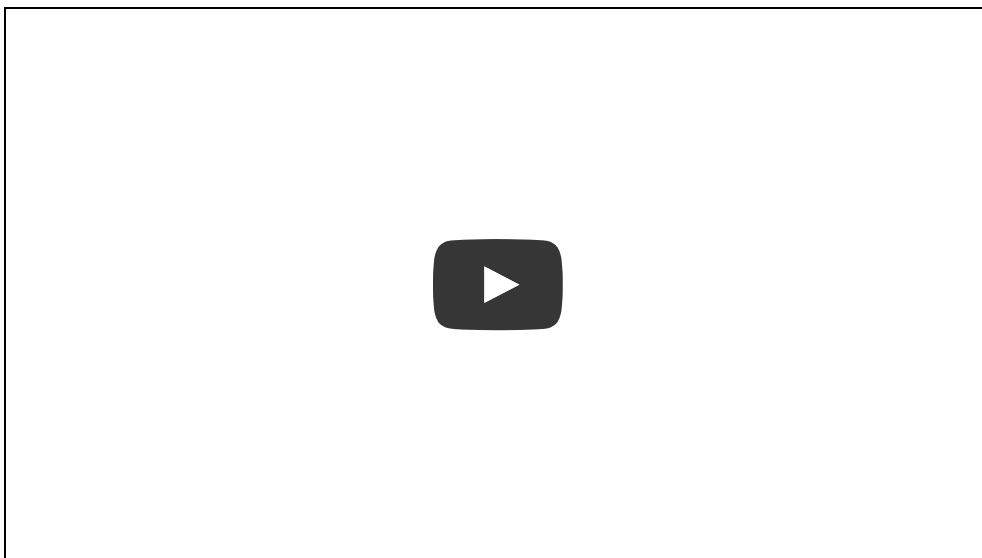
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These points are not easy to prove; the standard is very stringent and most applicants for bankruptcy already can barely afford an attorney. Because of this, few people even try to have their student loans discharged, opting to try and pay them when all other debt has been eliminated. In 2007, out of the 69,000 borrowers eligible to apply for discharge of their student loans, only 300 even attempted it.

The 9th Circuit Court recently ruled in favor of Michael Hedlund, partially discharging his student loans of \$85,000 incurred as an undergraduate and then later at Willamette Law School. After graduating LawSchool, Mr. Hedlund failed the bar exam on three occasions. He eventually had to take a job as a counselor for juveniles, trying to pay off his loans. Mr. Hedlund, now married, finally declared bankruptcy and filed his Adversary Proceeding at age 33. The case took 10 years to complete.


Throughout that time, Mr. Hedlund was represented by a law firm as a pro bono client. Basically, he had free attorneys. Add to that, Mr. Hedlund had graduated law school himself of course. Obviously, he had far more experience and expertise to draw on than the average applicant and it still took a decade.

What is important and should give hope to future applicants is that the 9th Circuit Court upheld the lower bankruptcy court's application of the Brunner Standard. The 9th agreed that Hedlund had provided more than enough evidence as to his family's income and expenses (leasing a reliable car and a cell phone for each parent for example). The 9th also upheld the bankruptcy court's finding that Mr. Hedlund should be required to find an additional part time job to augment his full time income. They also rejected that Mrs. Hedlund should be working three days a week rather than just one so she could maintain care of their child.



It also helped Mr. Hedlund's case that he had reached a settlement with one of his loan holders during the course of the proceedings. This showed the court that he was continuing to show good faith in trying to repay his debts. This action actually helped Mr. Hedlund when he rejected an offer from another loan holder; the bankruptcy and 9th Circuit courts found that this was a reasonable decision on his part and found against this particular loan holder.

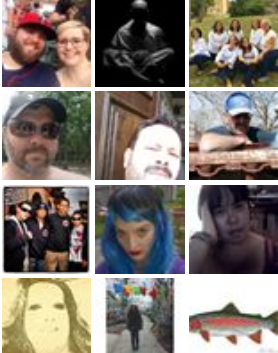
Mr. Hedlund's experience with the bankruptcy and 9th Circuit courts really drove home for lawmakers just how difficult this process is for borrowers. Senator Dick Durbin (D-IL) has



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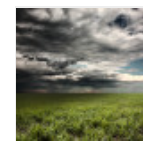


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sponsored The Fairness for Struggling Students Act of 2013 in order to streamline getting federal student loans through bankruptcy. Over in the House of Representatives, Steve Cohen (D-TN) has sponsored H.R. 532, The Private Loan Bankruptcy Fairness Act of 2013 which attempts to do the same for private student loans. Both bills have a few co-sponsors at this time, but are languishing in their judiciary committees.

While the law has not changed yet, the Hedlund case does show that borrowers can get their loans discharged if they are willing to put in the effort. Student Debt Relief can help with information on how to file Adversary Proceedings and to get started on discharging those student loans.

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