



U.S. Department of Justice

Office of the Associate Attorney General

Associate Attorney General

Washington, D.C. 20530

November 17, 2022

MEMORANDUM FOR: ALL UNITED STATES ATTORNEYS
ALL CIVIL CHIEFS

FROM: THE ASSOCIATE ATTORNEY GENERAL 

SUBJECT: Guidance for Department attorneys regarding student loan discharge litigation.

Enclosed is guidance outlining a new Department-wide process for handling cases in which an individual seeks to discharge student loan debts in bankruptcy. The Department worked closely with the Department of Education on these materials. The new process is intended to streamline the handling of student loan discharge cases for both Department attorneys and debtors, ensure greater transparency for everyone involved in these cases, and lead to fairer, more consistent results, in which the government agrees to recommend discharge in situations where the facts support it.

The Bankruptcy Code provides that student loan debts may be discharged in bankruptcy if the bankruptcy court determines that payment would impose an undue hardship on the debtor and the debtor's dependents. Where a debtor seeks to discharge a student loan in bankruptcy, the Department shares with the Department of Education the responsibility to represent the interests of the United States. The attached guidance sets out a new process by which debtors can provide relevant information to Department attorneys, and outlines when Department attorneys may recommend that the bankruptcy court make an undue hardship determination. The new process and attendant guidance are consistent with the case law governing the statutory undue-hardship standard.

The Department of Justice and Department of Education are committed to ensuring the bankruptcy system, and this new process, work for borrowers and for Department attorneys—we want to reduce the burden on you and on individuals seeking discharge. We will continue to monitor how the new process plays out on the ground and will assess the effectiveness of this guidance after the first year, and beyond as warranted.

The enclosed package contains a memorandum setting out the new process for considering student loan discharge cases, along with a form that should be used, as appropriate, to gather required facts. The package also contains an example, with a hypothetical debtor, to illustrate and help clarify application of the guidance. In the coming weeks, subject-matter experts from the Civil Division will convene briefing sessions to discuss the process laid out in these materials and answer any questions you or your attorneys may have. If you have any questions in the meantime, please contact Deputy Assistant Attorney General Michael Granston in the Civil Division.