

This is a hot button question I get asked all the time. It's no wonder, with about [1 trillion dollars](#) (that's more than the auto industry bailout and the Wall Street bailout) in student loan debt in this country and a very bleak job market for college graduates, this will become a crisis in the coming years. In fact, this very well may be the next meltdown in the country.

So, the easy answer to this question is: anything is possible. However, it will be extremely unlikely you can discharge your student loan debt in either a [Chapter 7](#) or a [Chapter 13](#) bankruptcy. You see, government backed student loans were never really dischargeable in bankruptcy, unless you can prove undue hardship (I will get to that later). But, private student loans could be discharged the same way as your credit cards could be. However, since Congress passed BAPCPA (Bankruptcy Abuse Prevention and Consumer Protection Act) in 2005, private student loans are treated the same as the government backed student loans. You must prove undue hardship on your or your family in order for them to be discharged.

So what is undue hardship and how do you prove it? In the 6th Circuit (in which Michigan lies) we must follow the Brunner test ([Brunner v. New York State Higher Education Services Corp, 831 F.2d 395](#)). The Brunner test consists of three factors:

- 1) that the debtor cannot maintain, based on current income and expenses, a "minimal" standard of living for herself and her dependents if forced to repay the loans;
- 2) that additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment period of the student loans; and
- 3) that the debtor has made good faith efforts to repay the loans.

The first factor is sometimes easy to prove. If you are making no money, or live below the poverty level, then it is conceivable that you cannot maintain a minimal standard of living. This of course, will be up to the courts interpretation. The third factor is easy also. If you have been making payments on your student loans, but now you can't because of a disability or job loss, then you should be able to meet this factor. The problem is with the second factor.

The second factor will sink everyone. Basically, this factor says that if you your income problems are likely to exist for a long time during the repayment time, then there is undue hardship. How has the courts been interpreting this? You must prove to a certainty that your situation will continue indefinitely. You must predict the future that you will never, ever get a high paying job, you will never ever, get back to work, and you will never ever be able to work. That is an impossibility to predict (unless you are dead, then this issue will not really be a problem for you). There is just no way to prove that whatever situation you are in, that you will never be able to, in the future, provide for a minimal standard of living. It requires you to have a crystal ball or have a time machine.

How have some courts ruled on this factor? In *Wallace v. Educational Credit Management Corp.*, 2010 WL 5764771 (Bky.S.D. Ohio Dec. 1, 2010), the court ruled a legally blind diabetic, who was receiving social security disability of \$811 per month, could not get an undue hardship discharge. The court stated "It remains to be *seen* (italics added) whether he will find work or remain unemployed (no pun intended?).

More closer to home is the case of *In Re Proffer 07-30881-dof* (E.D. Mich 2008). Here, a 54 year old woman with a 17 year old daughter sought to have her student loans discharged as she was earning only \$20,000 per year (she was within the poverty guidelines) and could not find a higher paying job anywhere in Michigan. The court noted that she could look elsewhere for a job, like moving out of state. The court "believes that the plaintiff (Proffer) is resourceful enough to obtain sufficient monies to go to a job elsewhere if one was available by way of the internet, mail, or other methods". The court, however, did fashion a remedy that allowed Proffer to pay here students loan at 10% of her yearly income until she found more lucrative employment.

As you can see, student loans are and will be a burden on you until the law is changed (or until the economy gets better). Student loan default rates are on the rise and more and more people that are saddled with these loans will find it harder to buy a home or raise a family. They will work to pay off the loans, most of the time at a salary less than what they were promised when they first started college. And don't get me started on lawyers coming out of law school, they will fare the worst. For more information, contact your [Detroit Bankruptcy Lawyer](#).