

New Laws On The Horizon?

<http://fpbankruptcylaw.com/student-loans-and-bankruptcy-new-laws-on-the-horizon/>

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It is incredible to think that there is now more student loan debt in this country than credit card debt. In a report last month from the [National Association of Consumer Bankruptcy Attorneys \(NACBA\)](#) entitled *The Student Loan Debt Bomb*, it was pointed out that outstanding student loan debt now exceeds one trillion dollars. Like the mortgage meltdown, this debt bomb is ready to explode and it could induce serious damage to our economy. Senator Dick Durbin (D. – Ill.) is spearheading efforts to make changes that would allow for the inclusion of private student loans in bankruptcy. “There is no reason why private student loans should get treated differently from other private debt in bankruptcy,” said Durbin.

Why The Change?

When speaking to clients about student loans and bankruptcy, it is surprising to me how many potential filers are well informed and already know they cannot get rid of their student loans in bankruptcy. Why is this surprising? ...because prior to 2005, private student loans were actually dischargeable in bankruptcy.

2005 saw the implementation of [The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 \(BAPCPA\)](#).

These new laws imposed additional hurdles and roadblocks on potential filers. One drastic change eliminated the ability to wipe out private student loan debt. In fact, all student loans were dischargeable under our bankruptcy laws until 1976 with the enactment of the [Education Amendments of 1976](#).

So, why the change? The implementation of this “non-dischargeability” clause stems from the idea that certain professionals (doctors, lawyers, etc.) were incurring student loan debt, filing bankruptcy and subsequently moving on to successful careers, debt free. Any bankruptcy lawyer will tell you that nobody plans to file bankruptcy. Believe it or not, in most situations it is not even a choice.

The “Debt Bomb”

In February, 2012, [NACBA](#) released a report detailing the seriousness of the student loan crisis. Here is a [link to the full report](#) and some important statistics:

- College seniors who graduated with student loans in 2010 owed an average of \$25,250, up five percent from the previous year;
- Borrowing has grown far more quickly for those in the 35-49 age group, with school debt burden increasing by a staggering 47 percent;
- Loans to parents for the college education of children have jumped 75 percent since the 2005-2006 academic year;
- Of the Class of 2005 borrowers who began repayments the year they graduated, one analysis found 25 percent became delinquent at some point and 15 percent defaulted.

Given the current economic climate and the above statistics, it is clear why [NACBA](#) is shouting out this call to action. The fuse has clearly been lit and it is just a matter of time before the bomb explodes.

Why Should Student Loans Be Dischargeable In Bankruptcy?



A better question to ask is, “why shouldn’t they?” Almost all other private debt can be wiped out in bankruptcy and there is no reason why loans used to pay for education should be treated differently. Student loan lending is a for-profit industry and just like automobile loans, mortgage loans and credit cards, the lender is in the business to make money. With the potential for profit comes the inherent risk and lenders protect themselves from that risk in the form of interest rates. There are no freebies here and student loans are not charity.

Opponents say that by making private student loans dischargeable once again, all potential borrowers will suffer. Lenders will be forced to raise interest rates to protect themselves. Assuming this is true, would this same theory not apply to all private lending and credit?

If this protection were available to student loan borrowers, perhaps the lenders would be less likely to lend so much money to these young adults. As a result, tuition costs would drop as **ninety percent of revenues at for-profit colleges comes from grants and loans**. The ultimate goal is to have young men and women graduating from college with the potential for long, fruitful careers without the ball and chain of **debt slavery**.

Protecting Our Future

As a bankruptcy lawyer, there is nothing sadder than a young man or woman in their twenties preparing to file bankruptcy. Fresh out of college, with their entire lives ahead of them, the future should be bright and open. It is disheartening to know that with the rising cost of college tuition, most students are forced to bind themselves to this burdensome debt in order to fund their educations.

There is no quick fix and a real solution to this crisis will take time, but as a bankruptcy lawyer, I see no reason why private student loan debt should be treated any differently than other debt.