

CHAPTER 1

You Can Do It!

You have been told that it is impossible to bankrupt your student loans. Attorneys tell you this, the Department of Education tells you this, and it is common knowledge. But it is not true.

You can bankrupt your student loans or discharge your student loans through other means.

However, and this is a big however, it is very difficult. That is why you bought this book.

Chuck Stewart, Ph.D., author of this book, successfully bankrupted over \$54,000 in student loans as part of a Chapter 7 bankruptcy. Like many of you, after receiving his college degree he experienced years of difficulty getting a job. Either the job market was tight, or his degree was in a field that had too many other job seekers, or he lived in the wrong place with few jobs, or the company he worked for downsized and he lost his job, and more. If he tried to get “any” job, including ones well below his education, he was not hired because he was “over-qualified.” As he got older, ageism became a real barrier to employment. Years of part-time employment took its financial toll. Credit card debt mounted. He lost his house. He supported his very ill spouse. After 10-years of struggle, he had large debts, no retirement, no savings, no medical insurance, and little hope of ever finding a decent job. He subsisted at the poverty level.

Many of you have experienced similar problems: loss of job, years of part-time employment, never getting ahead. Many of you have your own medical illnesses — not bad enough to get you permanent disability (for which you could have your student loans discharged) — but bad enough to push you into poverty and keep you there. Medical problems are the number one cause of bankruptcy.

Overruled!

Jonathan G, 46, had \$100,000 in student loans incurred while earning a degree from the New England Conservatory of Music. He performed with two city orchestras and finally won a position with the Louisiana Philharmonic Orchestra in New Orleans. Even after reaching this high level of professionalism, he taught cello at Tulane University to earn a paltry \$20,000 a year. He filed bankruptcy to try and get out from under the crushing debt.

Attorneys from the Department of Education and a guarantee agency that held some of the loans scrutinized his living expenses and argued that he could trim his expenses if he canceled his Internet services (\$23.90/m), gym membership (\$48.51/m) and got rid of his cat (\$20/m). The bankruptcy judge sided with Mr. G saying that the Internet service was needed to look for work, the gym membership to work out the pain in his back caused from playing the cello, and the expenses related to the cat were not “luxuries” considering Mr. G was single and living alone. The judge ruled the loans caused an “undue hardship” and were discharged.

The Education Department appealed and Mr. G lost. The federal appellate court suggested Mr. G find a job as a music-store clerk.

Hechinger, J. (January 6, 2005) U.S. Gets Tough on Failure to Repay Student Loans, *Wall Street Journal*, v.CCXLV n.4.p.1



For some of you, either you did not finish your education or the training program you paid for was of such low quality or with outdated skills that you never landed a better paying job. In either case, education did not lead to a better life and participation in the American dream. Now you are saddled with student loan debts for an education that did not benefit you. How aggravating!

This book is for you.

What This Book Covers

This book discusses many strategies for discharging your student loans. The focus of the book is having your student loans discharged through either bankruptcy OR direct negotiation with the Department of Education (what is termed *Compromise* or *Write-Off*).

Bankruptcy: This book gives the step-by-step procedure for filing, mediating, and arguing an adversary proceeding as part of a Chapter 7 bankruptcy. *Student loans are not dischargeable in a straightforward Chapter 7 bankruptcy.* Student loans are listed as part of the over-all debt in a Chapter 7 bankruptcy, then, usually within 60 days of the creditor meeting, an adversary proceeding is filed with the bankruptcy court against the U.S. Department of Education. If you prevail, the court will discharge all or a portion of your student loans as part of your bankruptcy.

Negotiating a Discharge: If you are not planning a bankruptcy, this book can still provide important information for negotiating a reduction or discharge of your student loans through the *Compromise* or *Write-Off* procedures.

No other book provides the information or guidance needed to help you discharge student loans through bankruptcy or negotiation.

This book provides:

- Step-by-Step process for filing an adversary proceeding or negotiating a *Compromise* or *Write-Off*
- All forms
- Sample forms
- History and Analysis of the student loan program and its enforcement to help you prepare your own arguments.
- Mediation strategies
- Many more resources

Why You Should Use This Book

When the author of this book first contemplated bankrupting his student loans as part of his Chapter 7 bankruptcy, he sought the advice of a number of attorneys. All of them said it was virtually impossible to win an adversary proceeding but that they would take on the case for \$5,000 up front and \$250 per hour with court fees. Even still, they said he most likely would not win. The author was broke and could not possibly pay the attorney fees. So, he thought he had nothing to lose by representing himself. Being an academic with a number of published books (including a law dictionary), he researched the problem.

First, he discovered that people who represent themselves in an adversary proceeding are more likely to win. Judges are aware that if you can afford a high-priced lawyer, you are obviously not in terrible financial need. Also, you know your situation better than any hired attorney. You can argue your case with greater fervor and conviction.

Second, until the release of this book, there was no concise information that addressed the problem of bankrupting student loans through an adversary proceeding or negotiating a discharge through *Compromise* or *Write-Off*. The author researched many law journals, cases, and books to pull together everything that is needed to attack this problem. He also spoke with a number of people who have gone through the process, gleaning from them bits of information that is never written in law journals.

And third, this is a very personal journey. There are many self-help law books that describe the Bankruptcy process. When it comes to student loans, they devote less than a page to the problem and refer you to an attorney. These books are well written, but very impersonal. An adversary proceeding is very different. The courts will pry deeply into your life, making judgments every step along the way. They will question your purchasing decisions, e.g., did you minimize living expenses by getting rid of your pet to free up \$20 more a month to make payments to the government (see the box at the beginning of this chapter describing the ordeal of Mr. Jonathan G). They will question your inability to find work, and much more. You will feel besieged and belittled. The author of this book has been through this process and gives advice about how to minimize the government's efforts to beat you down, and, thus, win your case. No attorney isolated in a glass office, living in the upper levels of income, can possibly understand this.

Although the author cannot provide legal advice, he would like to hear your stories to improve future updates of this book. See the contact information on the "About the Author" page. Let's make it better for honest debtors to legitimately discharge student loans.

Who Qualifies for an Adversary Proceeding, Compromise, or Write-Off and When are they Applied?

You may qualify to file for an Adversary Proceeding, Compromise, or Write-Off if:

- You have student loans backed or issued by the U.S. Department of Education that you want to have discharged.
- You are ready to file, or have filed, a Chapter 7 Bankruptcy. Or, you are ready to file for a Compromise or Write-Off.
- It has not been more than 60 days since your Chapter 7 creditor meeting. (Does not apply to Compromise or Write-Off.)

- You cannot maintain your current living standard if forced to repay your outstanding debt, including your student loans.
- There are circumstances that will prevent you from obtaining sufficient income in the future to repay your student loans.

The courts have developed a number of comprehensive tests that delve much deeper into your living and financial conditions than the usual bankruptcy courts. These tests have revealed a number of rule-of-thumb guidelines that if you do not meet the conditions, it will be very difficult to explain away. Not that they are impossible to overcome, but it will be very difficult.

These conditions include:

- Your student loans should not make up more than 50% of your total debt.
- You should be living at or near the Federal Poverty Guideline.
- More than 5 years should have passed since obtaining your last student loan.
- You have been diligent in making payments on your student loans. When you were unable to make loan payments, you showed diligence by delaying payment through the proper use of forbearances and deferments, or negotiated alternative repayment plans.
- There should be a sense of "*hopelessness*" with the circumstances of your case.

How to Use this Book

If you have filed a Chapter 7 bankruptcy, you have discovered how relatively easy it is. Many free legal clinics can help with the bankruptcy and there are many fill-in-the-blanks books on the topic. Really, it is easy to file a Chapter 7 bankruptcy. The meeting with the creditors is a non-event. The meeting lasts a few minutes if there are no challenges to the debts of your case. If you visit the court a few days before

your meeting, you will be amazed how fast they go through the process. Maybe two cases in thirty have a creditor show up to challenge the bankruptcy. So relax. Within 3 months after the meeting of the creditors, your debt will be discharged.

An *Adversary Proceeding* is very different. This is a full-blown lawsuit against the government and its attorneys. They have 20 years of litigating this problem. As such, it is paramount that you educate yourself thoroughly on the topic. You are not expected to be an expert, but you must be able to hold your own. This book is for you.

If you plan to file a *Compromise* or *Write-Off*, this book provides everything you need to prepare your arguments and negotiate with the Department of Education.

It is strongly advised that you read every chapter in this book. Not just skim them, but also read them in depth. Take your time. Take a couple of days, and then revisit a chapter. As you begin preparing your case, reread sections that come to mind. You must become fully knowledgeable on this topic if you are to win. It usually takes months between each action in court, so you have time to prepare.

Chapter 2—Taking Control: Helps you evaluate your student loan situation. Perhaps bankruptcy is not the right action for you to take. There are many other ways to discharge student loans if you qualify. This chapter presents some of the alternatives to bankruptcy.

Chapter 3—History of Student Loan Program: Gives a historical background to the implementation of student loan programs backed or issued by the U.S. Department of Education. It is important for readers to understand how these programs came about and the concerns the public, and many in Congress, had over the increasing number of students defaulting on their government loans. Congress slowly amended the laws to make it more difficult for debtors to bankrupt their student loans. It is this Congressional debate that molded many court decisions. People planning to defend their adversary proceeding must be familiar

with this debate as they, too, will have to use the same language and concepts.

Chapter 4—Court Opinions and Tests: Briefly examines the U.S. bankruptcy system as related to the concept of “undue hardship.” Ultimately, to have student loans discharged, a debtor must present a strong case proving that repaying the student loans would create an undue hardship for them. Unfortunately, Congress failed to define undue hardship leaving it to courts to construct. This chapter describes in great details the four major tests used by a majority of United States courts to determine undue hardship and the dischargeability of student loans.

Chapter 5—“Undue Hardship” Arguments: Develops a set of characteristics common to all undue hardship tests and reviews some of the arguments you will use to meet the tests.

Chapter 6—Example Court Cases with Analysis: Presents a number of bankruptcy cases along with an analysis of why they succeeded or failed. You will gain a better understanding of the capricious nature of the courts and the overt aggressiveness displayed by the Department of Education. You will also learn how to evaluate your own case to increase the possibilities of success.

Chapter 7—Advocacy: The bankruptcy code that governs the discharge of student loans is bad law. The Department of Education and courts have mostly taken a very narrow interpretation of the law. As a result, few debtors are successful at having their student loans discharged through bankruptcy. This chapter discusses many of the limitations of the law and the poor application by the courts. You may want to engage in advocating for rescinding or overturning this law. If you are successful at having the law rescinded, then your student loan debt becomes just like any other unsecured debt and bankrupted through a standard Chapter 7 bankruptcy proceeding.

Chapter 8—Preparing for the Adversary Proceeding: This chapter helps you gather all the personal and financial information necessary to present a solid case for discharge of your student loan debt. Forms and worksheets were developed and are included in the Appendix.

Chapter 9—Step-By-Step Procedure for the Adversary Proceeding: This chapter gives the exact steps required to file an adversary proceeding, strategies for effective mediation, and presentation in court (if needed).

Chapter 10— Preparing Your Case for Compromise or Write-Off: This chapter helps you gather all the documents and personal information needed to prove during a Compromise or Write-Off negotiation that repaying your student loans would be impossible.

Chapter 11— Step-by-Step Negotiations for Compromise or Write-Off: Provides effective strategies for engaging the Department of Education in tough negotiations to discharge all or part of the student loans during Compromise or Write-Off proceedings.

Disclaimer

There is no guarantee that by using this book you will achieve a discharge of your student loans as part of your Chapter 7 bankruptcy or through aggressive negotiation. However, by following this book, you will be giving yourself the best shot at having your student loans discharged.

Further, the author of this book is not an attorney. No part of this book should be construed as being legal advice. If in doubt, consult an attorney in your area. Be aware, though, that very few attorneys are knowledgeable in this field. By reading this book, you probably will know more than the attorney you consult. An attorney or para-legal may be useful in helping you construct the legal document needed to file with the courts.