

# **Discharge Ahead? An Empirical Look at the New Student Loan Discharge Process in Bankruptcy (with Dalié Jiménez & Belisa Pang)**

Matthew Bruckner, Professor  
Howard University School of Law  
[Mbruckner@howard.edu](mailto:Mbruckner@howard.edu)

## **ABSTRACT**

The legal framework for discharging student loan debt held by ~200,000 Americans with open bankruptcy cases changed in November 2022 with the Biden Administration's Department of Justice issuing "Guidance for Department Attorneys Regarding Student Loan Bankruptcy Litigation." The Guidance's were to "enhance consistency and equity in the handling of these cases" by 1) ensuring transparent and consistent expectations, 2) reducing the burden on debtors, and 3) making it easier for DOJ attorneys to recommend to the court that a debtor's student loans be discharged. While the Department claims that the new guidance has "made a real difference in borrowers' lives," no one had provided a deep dive into these cases. And so we've decided to do so.

This Article assesses whether the guidance has achieved its aims by providing an empirical analysis of student loan litigation in bankruptcy, including a comparison between the cases brought pre- and post-guidance. Here's what our initial data analysis tells us: a year after the new guidance was rolled out, there has been only a modest spike in people seeking to discharge their student loans and less than 700 debtors had obtained student loan relief. Put differently, the new Guidance has NOT encouraged a lot of new student loan borrowers to file bankruptcy. Of those that do file, people with more student loan debt are more likely to seek relief. To the extent that there is any encouragement to file for bankruptcy, it's likely regional because, perhaps, some courts or consumer bankruptcy attorneys are "early adopters" of

new legal regimes. [still collecting data on which attorneys file].

In addition to our empirical results, we will also lay out the details of the new guidance, what changed, and our methods. Once our data analysis is complete, we also expect to discuss why the new Guidance does not appear to have moved the needle relative to the substantial need for such relief.

This article is forthcoming in 41 EMORY BANKR. DEVELOPMENTS J. \_\_ (2025).