

# Introduction to the Department of Justice Student Loan Bankruptcy Litigation Guidance

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**Education**

Mr. Curtis is a graduate of the University of Virginia School of Law. Prior to entering private practice, he served as law clerk for bankruptcy judges Steven Massey and A. David Kahn on the United States Bankruptcy Court for the Northern District of Georgia.

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**Education**

Ms. Daniel received her law degree, *cum laude*, from the Indiana University Maurer School of Law. She earned her BA, with high distinction, in political science from Indiana University.

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# COURSE STRUCTURE

- PART I**      **INTRODUCTION:** Background and Objectives of the Guidance
- PART II**      **FUNDAMENTALS:** Components of the Guidance
- PART III**      **IMPLEMENTATION:** Using the Guidance and the Attestation
- PART IV**      Questions and Answers

# Part I: Introduction

## The Background

**The Undue Hardship Standard:** The “heightened standard for discharge of student loans.”

11 U.S.C. § 523(a)(8)

- Student loans may not be discharged “unless excepting such debt from discharge under this paragraph would impose an *undue hardship* on the debtor and the debtor’s dependents[.]”

*Brunner* Test

- Three-part test: Past, Present, Future

Totality of the Circumstances Test

- Multipart Test
- Elements and factual showing similar to *Brunner*

# Part I: Introduction

## The Objectives of the Guidance

1. Set clear, transparent, and consistent expectations for debtors;
2. Reduce burdens by simplifying the fact-gathering process through a form Attestation; and
3. Identify proceedings where the government may stipulate to facts demonstrating undue hardship.

# Part II: Fundamentals

## General Purpose and Principles

The Guidance has **two** components:

- Recommendations to attorneys representing the United States for assessing undue hardship
- Procedure for the submission of an Attestation to facilitate the assessment.

Important Principles:

- The Guidance and the Attestation work together for prompt and efficient results.
- The Guidance relies on open communication between the parties to reduce litigation burdens.
- The Court must ultimately make a finding, regardless of the Guidance. The Guidance cannot compel a result or negate case law.

# 1. Assessing Present Circumstances:

Can the debtor make loan payments “while maintaining a minimal standard of living”?

The Guidance encourages use of the **IRS Standards** to assess a “minimal standard of living.”

1. *National Standards*: food, housekeeping supplies, apparel, personal care products and services, and miscellaneous (plus uninsured medical costs)
2. *Local Standards*: housing and transportation
3. *Other Necessary Expenses*: taxes, health and life insurance, day care, and other expenses

# 1. Assessing Present Circumstances:

## Measuring Expenses

### The IRS National Standard Expenses:

Food

Housekeeping supplies

Apparel

Personal care

Miscellaneous

Uninsured medical costs

1. **The debtor can claim the National Standard expense amounts** (even if actual expenses are lower)

*Ex. Food – The debtor can claim the full National Standard Amount (\$431), even if actual cost is \$350. See Attestation Qu. 14(a)(i).*

2. **The debtor can claim the combined total National Standard Expense amount** (for categories other than uninsured medical costs).

*Ex. Family of two can claim total of \$1410 for combined National Standard expenses, regardless of amounts in categories. See Attestation Qu. 14(a)(vi).*

3. The debtor can claim **Standard uninsured medical expenses amount** (for each household member)

*See Attestation Qu. 14(b)*



# 1. Assessing Present Circumstances:

## Measuring Expenses

### Exceeding the IRS National Standard Expenses

**A debtor may request the AUSA consider allowing amounts in excess of the National Standards.**

- If a debtor claims more than the *combined* standard amount for food, housekeeping supplies, apparel, personal care and miscellaneous expenses, the debtor may explain which category is over the standard and why. See *Attestation Qu. 14(a)*
- For out-of-pocket medical costs, a debtor may explain the reason for exceeding the standard amount for each household member. See *Attestation Qu. 14(b)*
- The Guidance asks whether the additional expenses are necessary for a debtor's minimal standard of living.

# 1. Assessing Present Circumstances:

## Measuring Expenses

### The IRS Local Standard Expenses

Housing

Transportation

### IRS Local Standards (*Attestation Qu. 15(b) and (c)*)

- Unlike the National Standards, the Local Standards are “caps,” and the debtor may claim **the lesser of** the actual or standard amounts.
- The debtor should list actual expenses in these categories.

#### *Housing Expenses* include:

- Rent or mortgage payments
- Taxes and insurance
- Home maintenance
- Utilities.

#### *Transportation Expenses* include:

- Vehicle “Ownership costs” (vehicle payments)
- Vehicle “Operating costs” (gas, maintenance, insurance)
- Public transportation costs
- Standards apply to each vehicle (not combined)

*As with the National Standards, a debtor may request allowance of amounts in excess of the Local Standards.*

# 1. Assessing Present Circumstances:

## Measuring Expenses

### Other Necessary Expenses

Childcare

Health insurance

Alimony

Taxes

Other Expenses

### Other Necessary Expenses (Attestation Qu. 15(a) and (d))

- IRS Standards impose no formal caps, but these should be *necessary* and *reasonable*.
- Most require some form of explanation on the Attestation (*See* Attestation Questions 15(a) and 15(c).
- The Attestation has sections for Payroll Deductions (15(a)) and Other Necessary Expenses (15(d)), but these are all “other necessary expenses” under the IRS Standards.

# 1. Assessing Present Circumstances: Measuring Expenses

## Anticipated Future Expenses

**Anticipated Future Expenses:** Expenses the debtor is not currently incurring but needs to incur for a minimal standard of living (e.g., upgrade substandard housing).

The Guidance allows such expenses if they are:

1. Consistent with the IRS National and Local Standards (or where the debtor adequately explains why their expenses would exceed the allowed amounts), or
2. They are IRS Other Necessary Expenses and are necessary and reasonable for a minimal standard of living.

*The Attestation (Qu. 17) allows the debtor to list anticipated future expenses.*

# 1. Assessing Present Circumstances:

## Making the Determination

After the debtor's allowed expenses are calculated, they are compared to the debtor's gross income (Qu. 16)

- As with expenses, the entire household's income should be provided.
- Income must be verified as described in the Attestation.
- If income does not exceed expenses the debtor *satisfies* Prong One.
- If income exceeds allowed expenses by enough to make the regular student loan payment, the debtor *fails* Prong One.
- If income exceeds expenses by less than the standard monthly payment amount, the debtor *satisfies* Prong One, but only a *partial discharge* may be appropriate.

## 2. Assessing Future Circumstances:

Will current inability to repay persist for a significant portion of the repayment period?

The Guidance creates *presumptions* that the inability to repay will persist if:

1. The debtor is 65 or older;
2. The debtor has a disability or injury impacting income potential;
3. The debtor has been unemployed for at least 5 of last 10 years;
4. The debtor failed to obtain degree for which loan was procured;
5. The debtor's loan has been in repayment status for 10 years.

Presumptions are *rebuttable* if there is *concrete evidence* that the debtor would have the future ability to pay.

Presumptions are *not* the only basis for satisfying Prong Two.

### 3. Assessing Past Circumstances:

Has the debtor demonstrated good faith efforts to repay the student loan debt?

The good faith test is *fact-sensitive* and *multi-factored*.

No single factor is dispositive.

The Guidance assesses:

- The debtor's behavior relating to the student debt, and
- The debtor's efforts to obtain employment, maximize income and minimize expenses

### 3. Assessing Past Circumstances:

Has the debtor demonstrated good faith efforts to repay the student loan debt?

The following behaviors toward the debt are treated as evidence of good faith:

- Meaningful engagement with servicers or others
- Past payments
- Applications for deferment or forbearance
- Consideration of or enrollment in an IDR

The following factors also are considered when determining whether a debtor has made efforts to obtain employment, maximize income, and minimize expenses:

- Does the debtor display responsible debt management?
- Do the debtor's expenses fall within the IRS Standards?
- Do the debtor's personal or family obligations reduce employment opportunities or increase expenses?



### 3. Assessing Past Circumstances:

Has the debtor demonstrated good faith efforts to repay the student loan debt?

Failure to Make Payments

A debtor's failure to make payments is *not* dispositive of good faith.

- Department attorneys will consider payment history within the broader context of the debtor's financial means and personal circumstances.
- Department attorneys will consider behavior towards the debt and other evidence of good faith

### 3. Assessing Past Circumstances:

Has the debtor demonstrated good faith efforts to repay the student loan debt?

Income-Driven Repayment Plans & Good Faith

Non-enrollment in an IDRPs also is **not** *per se* lack of good faith.

Guidance asks whether there was a *reasonable explanation* for non-enrollment rather than a *willful attempt* to avoid repayment?

Reasonable explanations could include:

- The debtor was discouraged from enrolling or denied access
- The debtor was given inaccurate information
- The debtor held a plausible belief that an IDRPs would not improve their circumstances
- The debtor was unaware of IDRPs options, despite engagement with the loans
- The debtor was concerned about the impact of potential tax consequences

## 4. Assets & Undue Hardship

How are assets to be judged in looking at undue hardship?

- Recommending discharge may not be appropriate where debtor retains significant assets inconsistent with a minimal standard of living.
- The exempt status of property is generally not dispositive.
- Dispositive weight is not given to the existence of assets that are not easily converted to cash.

The Guidance provides for:

- Consideration of whether the retention of the asset is necessary for the debtor to maintain a minimal standard of living.
- Great caution in assessing whether a residence or retirement assets demonstrate a lack of undue hardship. Including such assets is an “extreme measure that should be exceptionally rare.”

## 5. Partial Discharge

The Guidance encourages *partial discharge* where the debtor satisfies the undue hardship elements but has some ability to make payments on the loan.

- Generally possible if debtor has significant assets or disposable income to pay part of the loan(s).
- Partial discharge should be tailored to leave only a balance the debtor can pay over the remaining loan term.
- Case law in some jurisdictions might not allow partial discharge.

# Part III: Implementation

## The Attestation

### The Attestation:

- Is designed to make the guidance *easier* to apply.
- May be used at *any* point in the litigation, but the debtor is strongly encouraged to complete early.
- Does *not* limit the United States' ability to seek verification or supporting documentation.
- May avoid the need for costly fact-finding in discovery.
- Should not be docketed. This is for the internal consideration of DOJ and Education.

# The Attestation

Six parts:

1. Personal Information;
2. Current Income and Expenses
3. Future Inability to Repay Student Loans
4. Prior Efforts to Repay Student Loans
5. Current Assets; and
6. Additional Circumstances

[Updated January 2023]

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF \_\_\_\_\_

In re:	)	
	)	
[DEBTOR],	)	Case No. _____
	)	Chapter [7]
Debtors,	)	
	)	
_____	)	
	)	
[DEBTOR],	)	
	)	
Plaintiff,	)	Adversary Pro. _____
	)	
v.	)	
	)	
UNITED STATES DEPARTMENT	)	
OF EDUCATION, [et al.],	)	
	)	
Defendant[s].	)	
_____	)	

The Attestation generally does not need to be filed.

ATTESTATION OF [NAME] IN SUPPORT  
OF REQUEST FOR STIPULATION CONCEDING  
DISCHARGEABILITY OF STUDENT LOANS

*PLEASE NOTE: This Attestation should be submitted to the Assistant United States Attorney handling the case. It should not be filed with the court unless such a filing is directed by the court or an attorney.*

I, [NAME], make this Attestation in support of my claim that excepting the student loans described herein from discharge would cause an “undue hardship” to myself and my dependents within the meaning of 11 U.S.C. §523(a)(8). In support of this Attestation, I state the following under penalty of perjury:

I. PERSONAL INFORMATION

1. I am over the age of eighteen and am competent to make this Attestation.
2. I reside at \_\_\_\_\_ [address], in \_\_\_\_\_ County, [State].

# The Attestation

# The Attestation

[Updated January 2023]

3. My household includes the following persons (including myself):

\_\_\_\_\_ [full name] \_\_\_\_\_ [age] \_\_\_\_\_ [self]

\_\_\_\_\_ [full name] \_\_\_\_\_ [age] \_\_\_\_\_ [relationship]

\_\_\_\_\_ [full name] \_\_\_\_\_ [age] \_\_\_\_\_ [relationship]

*Questions four through eight request information related to your outstanding student loan debt and your educational history. The Department of Education will furnish this information to the Assistant United States Attorney (“AUSA”) handling your case, and it should be provided to you. If you agree that the information provided to you regarding your student loan debt and educational history is accurate, you may simply confirm that you agree, and these questions do not need to be completed. If you have not received the information from Education or the AUSA at the time you are completing this form, or if the information is not accurate, you may answer these questions based upon your own knowledge. If you have more than one student loan which you are seeking to discharge in this adversary proceeding, please confirm that the AUSA has complete and accurate information for each loan, or provide that information for each loan.*

4. I confirm that the student loan information and educational history provided to me and attached to this Attestation is correct and complete: YES / NO/ No Information Provided [If you answered anything other than “YES,” you must answer questions five through eight].

5. The outstanding balance of the student loan[s] I am seeking to discharge in this adversary proceeding is \$ \_\_\_\_\_.

6. The current monthly payment on such loan[s] is \_\_\_\_\_. The loan[s] are scheduled to be repaid in \_\_\_\_\_ [month and year] **[OR]** \_\_\_\_ My student loan[s] went into default in \_\_\_\_\_ [month and year].

7. I incurred the student loan[s] I am seeking to discharge while attending \_\_\_\_\_, where I was pursuing a \_\_\_\_\_ degree with a specialization in \_\_\_\_\_.

If ED does not provide information, the debtor should provide.



# The Attestation

[Updated January 2023]

8. In \_\_\_\_\_ [month and year], I completed my course of study and received a \_\_\_\_\_ degree. [OR] In \_\_\_\_\_ [month and year], I left my course of study and did not receive a degree.

9. I am currently employed as a \_\_\_\_\_. My employer's name and address is \_\_\_\_\_ [OR] \_\_\_\_\_ I am not currently employed.

## II. CURRENT INCOME AND EXPENSES

10. I do not have the ability to make payments on my student loans while maintaining a minimal standard of living for myself and my household. I submit the following information to demonstrate this:

### A. Household Gross Income

11. My current monthly household **gross** income from all sources is \$\_\_\_\_\_.<sup>1</sup>

This amount includes the following monthly amounts:

- \_\_\_\_\_ my **gross** income from employment (if any)
- \_\_\_\_\_ my unemployment benefits
- \_\_\_\_\_ my Social Security Benefits
- \_\_\_\_\_ my \_\_\_\_\_
- \_\_\_\_\_ my \_\_\_\_\_
- \_\_\_\_\_ my \_\_\_\_\_
- \_\_\_\_\_ **gross** income from employment of other members of household
- \_\_\_\_\_ unemployment benefits received by other members of household
- \_\_\_\_\_ Social Security benefits received by other members of household
- \_\_\_\_\_ other income from any source received by other members of household

<sup>1</sup> "Gross income" means your income before any payroll deductions (for taxes, Social Security, health insurance, etc.) or deductions from other sources of income. You may have included information about your gross income on documents previously filed in your bankruptcy case, including Form B 106L, Schedule I - Your Income (Schedule I). If you filed your Schedule I within the past 18 months and the income information on those documents has not changed, you may refer to that document for the income information provided here. If you filed Schedule I more than 18 months prior to this Attestation, or your income has changed, you should provide your new income information.

The debtor should provide all sources of household income.

The debtor may reference Schedule I to complete this section.

# The Attestation

[Updated January 2023]

12. The current monthly household gross income stated above (select which applies):

\_\_\_\_\_ Includes a monthly average of the gross income shown on the most recent tax return[s] filed for myself and other members of my household, which are attached, and the amounts stated on such tax returns have not changed materially since the tax year of such returns; OR

\_\_\_\_\_ Represents an average amount calculated from the most recent two months of gross income stated on four (4) consecutive paystubs from my current employment, which are attached; OR

\_\_\_\_\_ My current monthly household gross income is not accurately reflected on either recent tax returns or paystubs from current employment, and I have submitted instead the following documents verifying current gross household income from employment of household members:

\_\_\_\_\_

13. In addition, I have submitted \_\_\_\_\_ verifying the sources of income other than income from employment, as such income is not shown on [most recent tax return[s] or paystubs].

**B. Monthly Expenses**

14. My current monthly household expenses do/do not exceed the amounts listed below based on the number of people in my household for the following categories:

The debtor should submit documentation verifying income.

# The Attestation

[Updated January 2023]

(a) Living Expenses<sup>2</sup>

- |      |                                                                                                                                                                                                                             |                                                                           |
|------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------|
| i.   | My expenses for food<br>\$431 (one person)<br>\$779 (two persons)<br>\$903 (three persons)<br>\$1028 (four persons)                                                                                                         | do exceed <input type="checkbox"/> do not exceed <input type="checkbox"/> |
| ii.  | My expenses for housekeeping supplies<br>\$40 (one person)<br>\$82 (two persons)<br>\$74 (three persons)<br>\$85 (four persons)                                                                                             | do exceed <input type="checkbox"/> do not exceed <input type="checkbox"/> |
| iii. | My expenses for apparel & services<br>\$99 (one person)<br>\$161 (two persons)<br>\$206 (three persons)<br>\$279 (four persons)                                                                                             | do exceed <input type="checkbox"/> do not exceed <input type="checkbox"/> |
| iv.  | My expenses for (non-medical) personal<br>care products and services<br>\$45 (one person)<br>\$82 (two persons)<br>\$78 (three persons)<br>\$96 (four persons)                                                              | do exceed <input type="checkbox"/> do not exceed <input type="checkbox"/> |
| v.   | My miscellaneous expenses (not included<br>elsewhere on this Attestation)<br>\$170 (one person)<br>\$306 (two persons)<br>\$349 (three persons)<br>\$412 (four persons)                                                     | do exceed <input type="checkbox"/> do not exceed <input type="checkbox"/> |
| vi.  | My total expenses in these categories<br>\$785 (one person)<br>\$1410 (two persons)<br>\$1610 (three persons)<br>\$1900 (four persons in household)<br>Add \$344 per each additional member if more than four in household. | do exceed <input type="checkbox"/> do not exceed <input type="checkbox"/> |

<sup>2</sup> The living expenses listed in Question 14 and 15 have been adopted from the Internal Revenue Service Collection Financial Standards "National Standards" and "Local Standards" for the year in which this form is issued. This form is updated annually to reflect changes to these expenses.

*For National Standards Expenses, the debtor should indicate whether their expenses do exceed or do not exceed the allowed amount.*

# The Attestation

[Updated January 2023]

If you answered that your total expenses for any of the categories (i) through (v) exceed the applicable amount listed in those categories, and you would like the AUSA to consider your additional expenses for any such categories as necessary, you may list the total expenses for any such categories and explain the need for such expenses here. (You do not need to provide any additional information if you answered that your total expenses did not exceed the applicable amount listed in subsection (vi)).

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(b) Uninsured medical costs:

My uninsured, out of pocket medical costs do exceed  do not exceed

\$75 (per household member under 65)  
\$153 (per household member 65 or older)

If you answered that your uninsured, out of pocket medical costs exceed the listed amounts for any household member, and you would like the AUSA to consider such additional expenses as necessary, you may list the household member's total expenses and explain the need for such expenses here.

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[If you filed a Form 122A-2 Chapter 7 Means Test or 122C-2 Calculation of Disposable Income in your bankruptcy case, you may refer to lines 6 and 7 of those forms for information.]<sup>3</sup>

15. My current monthly household expenses in the following categories are as follows:

(a) Payroll Deductions

i. Taxes, Medicare and Social Security \$ \_\_\_\_\_  
[You may refer to line 16 of the Means Test or Schedule I, line 5]

<sup>3</sup> Forms 122A-2 and 122C-2 are referred to collectively here as the "Means Test." If you filed a Means Test in your bankruptcy case, you may refer to it for information requested here and in other expense categories below. If you did not file a Means Test, you may refer to your Schedule I and Form 106J – Your Expenses (Schedule J) in the bankruptcy case, which may also list information relevant to these categories. You should only use information from these documents if your expenses have not changed since you filed them.

The debtor may provide an explanation if their expenses exceeded the allowed amount.

The debtor may refer to Forms 122A-2 and 122C-2 or Schedule I and Form 106J when completing this section of the attestation.

# The Attestation

[Updated January 2023]

The debtor should identify any payroll deductions.

- ii. Contributions to retirement accounts \$ \_\_\_\_\_  
 [You may refer to line 17 of the Means Test or Schedule I, line 5]  
 Are these contributions required as a condition of your employment? YES / NO
- iii. Union dues \$ \_\_\_\_\_  
 [You may refer to line 17 of the Means Test or Schedule I, line 5]
- iv. Life insurance \$ \_\_\_\_\_  
 [You may refer to line 18 of the Means Test or Schedule I, line 5]  
 Are the payments for a term policy covering your life? YES / NO
- v. Court-ordered alimony and child support \$ \_\_\_\_\_  
 [You may refer to line 19 of the Means Test or Schedule I, line 5]
- vi. Health insurance \$ \_\_\_\_\_  
 [You may refer to line 25 of the Means Test or Schedule I, line 5]  
 Does the policy cover any persons other than yourself and your family members? YES / NO
- vii. Other payroll deductions  
 \_\_\_\_\_ \$ \_\_\_\_\_  
 \_\_\_\_\_ \$ \_\_\_\_\_  
 \_\_\_\_\_ \$ \_\_\_\_\_

(b) Housing Costs<sup>4</sup>

- i. Mortgage or rent payments \$ \_\_\_\_\_
- ii. Property taxes (if paid separately) \$ \_\_\_\_\_
- iii. Homeowners or renters insurance (if paid separately) \$ \_\_\_\_\_
- iv. Home maintenance and repair \$ \_\_\_\_\_

<sup>4</sup> You should list the expenses you actually pay in Housing Costs and Transportation Costs categories. If these expenses have not changed since you filed your Schedule J, you may refer to the expenses listed there, including housing expenses (generally on lines 4 through 6 of Schedule J) and transportation expenses (generally on lines 12, 15c and 17).

The debtor should provide their *actual* expenses for the Local Standards categories. The debtor is typically allowed the lesser of their actual amount or the allowed amount.

# The Attestation

[Updated January 2023]

- v. (average last 12 months' amounts)  
Utilities (include monthly gas, electric water, heating oil, garbage collection, residential telephone service, cell phone service, cable television, and internet service) \$ \_\_\_\_\_

(c) Transportation Costs

- i. Vehicle payments (itemize per vehicle) \$ \_\_\_\_\_  
ii. Monthly average costs of operating vehicles (including gas, routine maintenance, monthly insurance cost) \$ \_\_\_\_\_  
iii. Public transportation costs \$ \_\_\_\_\_

(d) Other Necessary Expenses

- i. Court-ordered alimony and child support payments (if not deducted from pay) \$ \_\_\_\_\_  
[You may refer to line 19 of Form 122A-2 or 122C-2 or Schedule J, line 18]  
ii. Babysitting, day care, nursery and preschool costs \$ \_\_\_\_\_  
[You may refer to line 21 of Form 122A-2 or 122C-2 or Schedule J, line 8]<sup>5</sup>

Explain the circumstances making it necessary for you to expend this amount:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Health insurance (if not deducted from pay) \$ \_\_\_\_\_  
[You may refer to line 25 of the Means Test or Schedule J, line 15]

Does the policy cover any persons other than yourself and your family members? YES / NO

<sup>5</sup> Line 8 of Schedule J allows listing of expenses for "childcare and children's education costs." You should not list any educational expenses for your children here, aside from necessary nursery or preschool costs.

The debtor may list other necessary expenses they believe are required to maintain a minimal standard of living.

# The Attestation

[Updated January 2023]

iv. Life insurance \$ \_\_\_\_\_  
(if not deducted from pay)  
[You may refer to line 25 of the Means Test or Schedule J, line 15]

Are the payments for a term policy YES / NO  
covering your life?

v. Dependent care (for elderly or disabled family members) \$ \_\_\_\_\_  
[You may refer to line 26 of the Means Test or Schedule J, line 19]

Explain the circumstances making it necessary  
for you to expend this amount:

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vi. Payments on delinquent federal, state or local tax debt \$ \_\_\_\_\_  
[You may refer to line 35 of the Means Test or Schedule J, line 17]

Are these payments being made pursuant YES / NO  
to an agreement with the taxing authority?

vii. Payments on other student loans \$ \_\_\_\_\_  
I am not seeking to discharge

viii. Other expenses I believe necessary for \$ \_\_\_\_\_  
a minimal standard of living.

Explain the circumstances making it necessary  
for you to expend this amount:

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16. After deducting the foregoing monthly expenses from my household gross  
income, I have \_\_\_\_\_ [no, or amount] remaining income.

The debtor should  
calculate their net  
income by deducting  
their expenses from  
their household gross  
income.

# The Attestation

[Updated January 2023]

17. In addition to the foregoing expenses, I anticipate I will incur additional monthly expenses in the future for my, and my dependents', basic needs that are currently not met.<sup>6</sup> These include the following:

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### III. FUTURE INABILITY TO REPAY STUDENT LOANS

18. For the following reasons, it should be presumed that my financial circumstances are unlikely to materially improve over a significant portion of the repayment period (answer all that apply):

- I am age 65 or older.
- The student loans I am seeking to discharge have been in repayment status for at least 10 years (excluding any period during which I was enrolled as a student).
- I did not complete the degree for which I incurred the student loan[s].

Describe how not completing your degree has inhibited your future earning capacity:

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- I have a disability or chronic injury impacting my income potential.

Describe the disability or injury and its effects on your ability to work, and indicate whether you receive any governmental benefits attributable to this disability or injury:

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<sup>6</sup> If you have forgone expenses for any basic needs and anticipate that you will incur such expenses in the future, you may list them here and explain the circumstances making it necessary for you to incur such expenses.

The debtor may ask that the AUSA consider any additional expenses that the debtor anticipates incurring in the future to maintain a minimal standard of living.

The debtor should indicate whether they should be entitled to any of the enumerated presumptions.



# The Attestation

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\_\_\_ I have been unemployed for at least five of the past ten years.  
Please explain your efforts to obtain employment.

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19. For the following additional reasons, my financial circumstances are unlikely to materially improve over a significant portion of the repayment period (answer all that apply):

\_\_\_ I incurred the student loans I am seeking to discharge in pursuit of a degree from an institution that is now closed.

Describe how the school closure has inhibited your future earning capacity:

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\_\_\_ I am not currently employed.

\_\_\_ I am currently employed, but I am unable to obtain employment in the field for which I am educated or have received specialized training.

Describe reasons for inability to obtain such employment, and indicate if you have ever been able to obtain such employment:

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The debtor may provide additional facts that demonstrate that their future financial circumstances are unlikely to materially improve.

# The Attestation

[Updated January 2023]

\_\_\_ I am currently employed, but my income is insufficient to pay my loans and unlikely to increase to an amount necessary to make substantial payments on the student loans I am seeking to discharge.

Please explain why you believe this is so:

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\_\_\_ Other circumstances exist making it unlikely I will be able to make payments for a significant part of the repayment period.

Explain these circumstances: \_\_\_\_\_

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#### IV. PRIOR EFFORTS TO REPAY LOANS

20. I have made good faith efforts to repay the student loans at issue in this proceeding, including the following efforts:

21. Since receiving the student loans at issue, I have made a total of \$ \_\_\_\_\_ in payments on the loans, including the following:

\_\_\_ regular monthly payments of \$ \_\_\_\_\_ each.

\_\_\_ additional payments, including \$ \_\_\_\_\_, \$ \_\_\_\_\_, and \$ \_\_\_\_\_.

22. I have applied for \_\_\_ forbearances or deferments. I spent a period totaling \_\_\_ months in forbearance or deferment.

The debtor should confirm whether they have made any of the identified efforts to repay their loans or meaningfully engage with their student loan debt.

# The Attestation

[Updated January 2023]

23. I have attempted to contact the company that services or collects on my student loans or the Department of Education regarding payment options, forbearance and deferment options, or loan consolidation at least \_\_\_\_\_ times.

24. I have sought to enroll in one or more “Income Driven Repayment Programs” or similar repayment programs offered by the Department of Education, including the following:

Description of efforts:

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25. [If you did not enroll in such a program]. I have not enrolled in an “Income Driven Repayment Program” or similar repayment program offered by the Department of Education for the following reasons:

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26. Describe any other facts indicating you have acted in good faith in the past in attempting to repay the student loan(s) you are seeking to discharge. These may include efforts to obtain employment, maximize your income, or minimize your expenses. They also may include any efforts you made to apply for a federal loan consolidation, respond to outreach from

The debtor should describe any other good faith efforts to repay their student loan debt.

# The Attestation

[Updated January 2023]

a loan servicer or collector, or engage meaningfully with a third party you believed would assist you in managing your student loan debt.

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## V. CURRENT ASSETS

27. I own the following parcels of real estate:

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The debtor must list any assets.

Owners:<sup>7</sup> \_\_\_\_\_  
\_\_\_\_\_

Fair market value: \_\_\_\_\_

Total balance of mortgages and other liens: \_\_\_\_\_

28. I own the following motor vehicles:

Make and model: \_\_\_\_\_

Fair market value: \_\_\_\_\_

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<sup>7</sup> List by name all owners of record (self and spouse, for example)

# The Attestation

[Updated January 2023]

Total balance of \_\_\_\_\_  
Vehicle loans  
And other liens

29. I hold a total of \_\_\_\_\_ in retirement assets, held in 401k, IRA  
and similar retirement accounts.

30. I own the following interests in a corporation, limited liability company,  
partnership, or other entity:

Name of entity	State incorporated <sup>8</sup>	Type <sup>9</sup> and %ag. Interest
_____	_____	_____
_____	_____	_____
_____	_____	_____

31. I currently am anticipating receiving a tax refund totaling \$ \_\_\_\_\_.

## VI. ADDITIONAL CIRCUMSTANCES

32. I submit the following circumstances as additional support for my effort to  
discharge my student loans as an "undue hardship" under 11 U.S.C. §523(a)(8):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Signature: \_\_\_\_\_  
\_\_\_\_\_

<sup>8</sup> The state, if any, in which the entity is incorporated. Partnerships, joint ventures and some other business entities might not be incorporated.

<sup>9</sup> For example, shares, membership interest, partnership interest.

The debtor should provide their anticipated tax refund.

The debtor may provide any other additional facts supporting discharge.

Finally, the debtor should sign the Attestation under penalty of perjury.

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# Part IV: Questions and Answers